Case Number: 2306206/2023

EMPLOYMENT TRIBUNALS

Claimant: **G Hassell**

Respondent: **Tesco Stores Limited**

Heard at: **London South, by CVP** **On: 7-10 April 2025**

Before: EJ Rice-Birchall; J Clewlow; S Townsend

Representation
Claimant: **In person**
Respondent: **Mr Zovidavi, counsel**

JUDGMENT

1. The complaint of direct disability discrimination is not well-founded and is dismissed.
2. The complaint of harassment related to disability is not well-founded and is dismissed.
3. The complaint of failure to make reasonable adjustments for disability is not well-founded and is dismissed.

REASONS

Background

1. The claimant was employed by the respondent, a well-known retail business, as a Stock and Administration Manager at their superstore in Thornton Heath, from 19 May 2003. He was a full time team manager. Early conciliation started on 30 September 2023 and ended on 1 November 2023. The claim form was presented on 8 November 2023.

2. The claimant brings claims for direct discrimination / harassment related to disability and failure to make reasonable adjustments in relation to the respondent's refusal to provide support with travel to / from work, the failure to address the claimant's grievance in relation to this issue and the decision by Mr Lumm to consider all the claimant's grievances together (the claimant having submitted seven separate grievances).

3. The claimant suffered a serious head injury during 2023. Disability is conceded in respect of that head injury but was not conceded in respect of

depression and anxiety on which Mr Hassall also relied.

The Issues

4. The issues for the Tribunal to decide were as follows. These were set out in the Record of Preliminary hearing and were confirmed at the outset to be the issues to be determined by the Tribunal:

1. Time limits

1.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 1 July 2023 may not have been brought in time.

1.2 Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

1.2.2 If not, was there conduct extending over a period?

1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
1.2.4.1 Why were the complaints not made to the Tribunal in time?

1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

2. Disability

2.1 The claimant says he has the following disabilities: a traumatic head injury, anxiety and depression.

2.2 The respondent accepts that the claimant's head injury would amount to disability under the Equality Act 2010 and that it had knowledge of this condition since June 2023. The respondent denies that the claimant's anxiety and / or depression amounts to a disability under the Act.

2.3 Did the claimant have the following disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:

2.3.1 Did they have a physical or mental impairment: anxiety and / or depression?

2.3.2 Did it have a substantial adverse effect on their ability to carry out day-to-day activities?

2.3.3 If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?

2.3.4 Would the impairment have had a substantial adverse effect on their ability to carry out day-to-day activities without the treatment or other measures?

2.3.5 Were the effects of the impairment long-term? The Tribunal will decide:
2.3.5.1 did they last at least 12 months, or were they likely to last at least 12 months?
2.3.5.2 if not, were they likely to recur?

2.4 Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

3. Direct disability discrimination (Equality Act 2010 section 13)1

3.1 Did the respondent do the following things:

3.1.1 On or around July / August 2023 Ms Dickason (HR) failed to discuss the claimant's request for travel support?

3.1.2 On date to be determined Ms Dickason rejected the claimant's fourth grievance (of 15 September 2023).

3.1.3 On 7 June 2024 Mr Lumm failed to deal with the claimant's grievance dated 15 September 2023 against Ms Dickason.

3.2 Was that less favourable treatment? The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's. If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether they were treated worse than someone else would have been treated.

3.3 If so, was it because of disability?

3.4 Did the respondent's treatment amount to a detriment?

4. Harassment related to disability (Equality Act 2010 section 26)

4.1 Did the respondent do the following things:

4.1.1 On or around July / August 2023 Ms Dickason (HR) failed to discuss the claimant's request for travel support?

4.1.2 On date to be determined Ms Dickason rejected Claimant's fourth grievance (of 15 September 2023).

4.1.3 On 7 June 2024 Mr Lumm failed to deal with the claimant's grievance dated 15 September 2023 against Ms Dickason.

4.2 If so, was that unwanted conduct?

4.3 Did it relate to disability?

4.4 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment

for the claimant?

4.5 If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

5. Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

5.1 Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

5.2 A "PCP" is a provision, criterion or practice. Did the respondent have the following PCPs:

5.2.1 Requirement to physically attend his place of work (PCP 1)

5.2.2 Practice of hearing grievances together (PCP 2).

5.3 Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that:

5.3.1 PCP1: due to his head injury he was unable to drive and due to his anxiety and depression (in combination with his head injury) he was unable to use public transport

5.3.2 PCP 2: due to his anxiety and depression he was unable to deal with the grievances together because he found it too stressful.
5.4 Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?

5.5 What steps could have been taken to avoid the disadvantage? The claimant suggests:

5.5.1 Provide travel assistance in the form of payment of a taxi to / from work, in full or in part (PCP 1).

5.5.2 To have heard the grievances separately? [The claimant says that the first, second and third grievances should each have been heard separately and that the fifth to seventh grievances could have been heard together but separately from the first, second and third grievances].
5.6 Was it reasonable for the respondent to have to take those steps and when?

5.7 Did the respondent fail to take those steps?

The evidence

5. There was bundle of documents of 729 pages plus an index and medical disclosure of 255 pages. There was some additional late disclosure from the respondent and an extract of the ACAS Code from the claimant.

6. On behalf of the claimant, the Tribunal heard evidence from the claimant and Barry Owen, who was employed by the respondent from May 1992 until April 2023. There was no witness statement from the claimant and so the Tribunal took his particulars of claim (to the extent that they were still

relevant to the issues to be determined) as his evidence in chief. Roly Lumm, Store Manager; Suzanne Dickason, HR; and Stuart Smith, Store Manager had prepared a statement and gave oral evidence on behalf of the respondent.

The facts found on the balance of probability

7. The claimant had a period of depression in 2018 which lasted approximately five months. The claimant says that was because he felt the respondent had unfairly increased his workload. There was no evidence of any medication having been taken.

8. The claimant submitted his first grievance on 5 May 2023 (grievance 1).The Tribunal was not taken to this or any of the grievances, and the content of the grievances is not relevant to the issues to be determined. Rather, the claim is about the respondent's handling of the grievances.

9. The claimant had had no time off work due to any mental health condition between 2018 and 2023.

10. On 12 May 2023, the claimant commenced a period of sickness absence, returning to work on 2 October 2023. The sick note, dated 11 May 2023, cited "low mood, anxiety, stress at work, inability to sleep." The claimant was prescribed sleeping tablets. According to the claimant, this period of sickness absence was occasioned as a result of stress which arose from a restructure at work which affected the claimant's role.

11. Shortly after he began his period of sickness absence, the claimant had a serious head injury. His fit note dated 29 June 2023 cites severe stress and also brain injury.

12. The claimant submitted the second and third grievances (grievances 2 and 3) on 10 July 2023.

13. On 13 July 2023 the claimant attended OH. Aside of mention of his head injury, the report referred to the claimant experiencing an "elevated level of stress and anxiety triggered by perceived work-related concerns which he first raised with management in January 2023." It explained that he had been prescribed some medication to help him re-establish a normal sleeping pattern. The OH report said that "stress is not a medical condition…elevated levels of stress over a prolonged period can sometimes lead to a more significant mental health problem such as anxiety or depression." It concluded that the claimant was unlikely to be considered disabled because of his stress condition as it was not likely to last more than 12 months and should be "self-limiting with no regular treatment being required."

14. The fit note dated 20 July 2023 cites head injury and does not mention any mental impairment.

15. On 22 July 2023, the claimant wrote to complain about the appointed grievance manager and said: "I do not feel able or capable to effectively handle my grievances if pooled together." He did not give any reason for that feeling.

16. On 28 July 2023, a new grievance manager was appointed, Ms Sinclair. As the claimant had asked for his grievances not to be heard until he was well enough to return to work, the claimant was asked to reach out to Ms Sinclair once he felt well enough for the hearings to take place. The email stated: “All 3 grievances will be heard by Kayleigh in which ever order you see fit and she will provide 3 separate outcomes.”

17. There was a further visit to OH on 17 August 2023. That report made no mention of any mental health issues but stated that the claimant was unlikely to be able to drive for 12 months, which “presents a considerable barrier to his return to work.” OH discussed contacting Access to Work to establish whether he met the criteria for assisted travel. OH made no suggestion that the respondent should provide financial assistance for the claimant’s travel to work. The report stated that public transport would not be an option because it would be a complicated and protracted journey and the claimant, rationally, feared another incident in which he might bang his head. The report made some suggestions for adjustments, for example to undertake administrative tasks only on the claimant’s return to work, and avoid any work on the shop floor or warehouse, which were implemented by the respondent,

18. The claimant requested, from the respondent, assistance with travel costs occasioned by the fact he could no longer drive to work. He wrote to Mr Smith on 26 August 2023 to follow up on a conversation they had the previous week about the respondent “providing financial assistance for travel due to my injury.”

19. The email continued: “Based on HR’s feedback, you mentioned that the company has never offered such support, so I would not receive support.” The claimant then gave two examples of where financial support had been given in relation to travel arrangements.

20. The first was for Mr Carbary, who was moved from the Malden store when a Store Manager was appointed who could not manage Mr Carbary again due to an historic allegation/grievance/outcome. The respondent, said the claimant, had offered to pay Mr Carbary’s additional travel expenses in respect of his move..

21. The second example given was that of “Sukhwinder” who, alleged the claimant, was afforded a full-time driver after a driving offence.

22. One of the examples given was from 2000 and the other from 2010.

23. The claimant considered that denial of support for him would be inconsistent with the respondent's past actions based on these examples.

24. The claimant sent another email, inter alia repeating his request, on 31 August 2023. As Mr Smith was on holiday, he forwarded it to Ms Dickason, whose role it was to provide HR support to him (and other store managers) . In order to avoid further delay, Ms Dickason made a decision which she them communicated to the claimant on 1 September as follows:

"Tesco do provide travel support for a period of time in certain circumstances and the policy can be found on colleague help. This in the main is offered where a colleague has been asked by Tesco to move to a different place of work and will incur increased travel costs. In terms of providing travel support to yourself because you are unable to drive to work due to your injury, the cost of this would not be deemed reasonable and is not in line with the policy. I understand that Stuart has offered for you to work in a Convenience store nearer to your home as an adjustment but you declined this. Is this something you would be willing to reconsider? I understand you have contacted Access to Work and this may take 12 weeks for an assessment. Is using public transport an option?"

25. The claimant responded to explain that his inability to use public transport stemmed from the inherent risk of head injury; that the store where he had been offered to work was small and cramped and that, because of his stress and depression, it was necessary for him to work in familiar surroundings with colleagues he knew and trusted. The claimant said he would be raising a grievance about it as he was not happy with the decision.

26. On 31 August 2023, the claimant went to the doctor who confirmed that he was well enough to return to work but noted that the claimant did not have transport. The doctor wrote: "asking employer to provide transport, no success so far. Asking me to sign him off but put comment that he could be back if he can have transport. I am not sure I can give note like that. I give further sick note for two weeks, he will continue to discuss transport." The reason for absence was head injury.

27. The claimant raised a grievance against Ms Dickason on 15 September 2024 based on her decision to deny the claimant financial travel assistance.

28. On 20 September 2023, Mr Smith wrote to the claimant to inform him that a decision had been made that the respondent would not hear his grievance against Ms Dickason "due to the fact that Suzanne's email to you…was a description of the application of the policy which is the current policy which applies to all colleagues within the business as per the last update on March 2023." The email confirmed that the claimant still had three grievances outstanding as the claimant did not want them heard until after he had returned from sickness absence. The letter continued: "we are concerned with the volume of grievances you are raising and currently have open and are concerned this will cause difficulty in us responding to and resolving these concerns as effectively as possible. We would like to support you with getting your 3 outstanding grievances heard and resolved, as such should you change your mind and wish for these to be heard sooner please do let us know and we will get this arranged as soon as possible."

29. The claimant returned to work on 2 October 2023. A return to work form was completed by Mr Smith. It was noted that the claimant was fit to return to work "with support which has been denied".

30. The claimant walked to work on 2 October because he had not had his travel expenses put into place. It is approximately a 20 mile round trip. He

also attempted to walk on 3 October 2023 but did not complete the journey. This was in spite of the fact that colleagues had offered him lifts.

31. On 2 October 2023, the claimant's adjustment passport was issued after a reasonable workplace adjustment meeting with Mr Smith. It included an adjustment of no heavy lifting/manual handling in accordance with OH advice and was to be reviewed on 3 November 2023.

32. At that meeting, the claimant told Mr Smith that he had walked to work. Mr Smith asked him why he wouldn't accept lifts from colleagues who had offered to give him lifts to and from work. The claimant replied: "I don't want to make it easy for Tesco". Mr Smith made a note of this conversation later. Again, the claimant was offered the opportunity to work from a store nearer to his home.

33. In fact, other than on 2 (and partially on 3) October, the claimant was able to secure lifts every day from colleagues until he secured financial assistance for travel from Access to Work on 23 November 2023, as signposted by OH.

34. On 23 January 2024, the claimant attended a further OH appointment. OH confirmed that the claimant was ready to take on more of the activities he would normally be expected to undertake. It reported "some anxiety" which was attributed to a loss of confidence resulting from his head injury.

35. In February 2024, the claimant was put on a trial of duloxetrine. The Tribunal understands that to be a drug prescribed for anxiety but there was no evidence before it as to this, nor as to its effects. In that appointment the claimant had reported "low mood" to his GP but had also discussed bowel habits and abdominal symptoms.

36. The fourth and fifth grievances were submitted on 11 March 2024.

37. There were communications between the claimant and Kayleigh Sinclair, who had been appointed the grievance manager, about the grievance hearing and it was agreed that Kayleigh would hear the grievances separately and provide separate outcomes, but the implication was still that there would only be one grievance hearing, albeit that the grievances would be separated within it and three separate outcomes. However, the claimant wrote to say: "I am pleased to confirm that I have reviewed and accepted the proposal, which will allow me the control and flexibility I have been requesting. I will be focussing and preparing for one grievance at a time, with each being heard on a separate day." This was not what was agreed with Kayleigh, but was the claimant's own interpretation.

38. In any event Kayleigh left the role of store manager and a new grievance manager, Mr Lumm was appointed.

39. The Tribunal was not taken to any similar communications with Mr Lumm in advance of the grievance hearing on 26 March 2024, though Mr Lumm did request, and the claimant did send, all of the outstanding grievances in advance of the hearing. The claimant did not take the opportunity to communicate that he did not wish all of the grievances to be dealt with together to Mr Lumm.

40. A grievance hearing took place on 26 March 2024. The claimant was accompanied by Mr Owen as his mental health support. The grievance was heard by Mr Lumm. The notes run to 31 pages and all six grievances were discussed. At the end of the hearing Mr Lumm said that he would conduct an investigation. His intention was to investigate all grievances and provide an outcome to all and at no point did the claimant object to this or indicate any understanding that there would be further, separate grievance hearings in respect of each grievance. There was no evidence to support the claimant's contention that he believed the meeting of 26 March was a pre-meeting before a grievance hearing was held in relation to each of his grievances. At the end of the meeting, he confirmed that he had no concerns.

41. The claimant submitted a sixth grievance on 1 April 2024 which was included into the investigation by Mr Lumm.

42. On 12 May 2024, the claimant wrote to Mr Lumm as follows: "Please forgive me, but I cannot recall if we discussed my grievance against Suzanne Dickason on 15 September 2023, which was subsequently astonishingly denied permission to proceed by Ms Dickason. This grievance is important to me, and I believe it warrants your attention if you have not yet addressed it."

43. Mr Lumm forwarded the claimant's email to Katy Rabbitte of HR, who replied: "Yes we declined to hear it I believe Stuart sent the response for the reasons why will look for it and send it over." There is a further email in which Ms Rabbitte sends the draft email to Mr Lumm. Accordingly, Mr Lumm declined to deal with it.

44. The claimant attended an outcome meeting with Mr Lumm on 7 June 2024. On the same date he was sent an outcome letter and investigation report.

45. He also appealed the outcome but made no mention of any disadvantage as a result of the grievances being heard together or, indeed, surprise that all grievances were heard together.

Law

<u>Disability</u>

46. s.6 Equality Act 2010 (EqA 2010) provides:
(1) A person (P) has a disability if—
(a) P has a physical or mental impairment, and
(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

47. (6) Schedule 1 (disability: supplementary provision) has effect.
Per Schedule 1, para 2:
(1) The effect of an impairment is long-term if—
(a) it has lasted for at least 12 months,
(b) it is likely to last for at least 12 months, or
(c) it is likely to last for the rest of the life of the person affected.

48. If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.

49. For the purposes of sub-paragraph (2), the likelihood of an effect recurring is to be disregarded in such circumstances as may be prescribed.

50. Regulations may prescribe circumstances in which, despite sub-paragraph (1), an effect is to be treated as being, or as not being, long-term.

51. Per Schedule 1, para 5
(1) An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if—
(a) measures are being taken to treat or correct it, and
(b)but for that, it would be likely to have that effect.

(2) “Measures” includes, in particular, medical treatment and the use of a prosthesis or other aid.

52. There is no requirement that the claimant have a diagnosed psychiatric condition in order to have a ‘mental impairment’.

53. The Tribunal should reach a decision as to whether the claimant had a physical or mental impairment and separately the question of adverse effects. However this decision does not have to be made in a particular order and, in some cases, a decision on the latter may inform the decision on the former.

54. The burden is on the claimant to show that he is disabled. It is not necessary for expert evidence to be submitted to establish that an individual meets the definition under s.6 EqA 2010 but the claimant must nonetheless put forward sufficient evidence to discharge that burden.

55. ‘Substantial’ means more than minor or trivial (s.212 EqA 2010). The Equality Act 2010 - Guidance on matters to be taken into account in determining questions relating to the definition of disability (‘the Guidance’) explains that factors that may be relevant to considering whether an impact is ‘substantial’ include matters such as the time taken and way in which an activity is carried out, the cumulative effects of an impairment or impairments, how far a person can reasonably expected to modify their behaviour and the extent that environmental factors impact on effects.

56. The Guidance says that in general, ‘day-to-day activities are things people do on a regular or daily basis’ (D3) and can include general work-related activities.

57. There must be a causal link between the impairment and the substantial adverse effect, although it need not be direct (**Sussex Partnership NHS Foundation Trust v Norris** EAT0031/12, EAT; **Primaz v Carl Room Restaurants Ltd t/w Mcdonald’s Restaurants Ltd and ors** [2022] IRLR 194, EAT).

58. When considering the potential effects of an impairment in the absence of treatment and whether the effects were likely to last for more than 12 months, 'likely' should be interpreted as 'could well happen' (**Boyle v SCA Packaging Ltd** (Equality and Human Rights Commission intervening) [2009] ICR 1056, HL (NI)).

Knowledge of disability

59. Where the protected characteristic is disability, the employer's knowledge of the disability is relevant to the question of whether the employer treated the employee less favourably on the grounds of that protected characteristic. The requisite knowledge that the employee is disabled may be actual or constructive and is of the facts constituting the disability, namely (as also clarified by the Equality Act 2010 (EqA), Sch 1) a physical or mental impairment, and that the impairment has a substantial and long-term adverse effect on the employee's ability to carry out normal day-to-day activities.

60. Provided that the employer has actual or constructive knowledge of such facts, it need not be shown that the employer was aware, as a matter of law, that these facts meant the employee was a 'disabled person' within the meaning of the legislation.

61. It is for the employer to make its own judgment as to whether or not it considers the employee to be disabled, and not to simply rely on the opinion of an adviser.

62. Knowledge of disability in one part of an organisation, or on the part of one individual in an organisation, does not mean that that knowledge can be imputed to the organisation generally, or to any or all of its employees, for all purposes, and in particular in the context of deciding whether there has been direct discriminatory conduct.

63. In **Gallop v Newport City Council** 2014 IRLR 211, CA the Court of Appeal held that it will be sufficient to establish knowledge of disability if the employer knew or ought to have known the facts which when analysed satisfy the statutory definition of disability. That requires knowledge of an impairment but not necessarily a diagnosis; knowledge that that impairment has a substantial effect on ordinary day to day activities; and knowledge of the facts that establish the long term condition.

64. This does mean that knowledge of a label or bare diagnosis, such as 'dyslexia' is not conclusive. That is because the range of experiences is wide and the effect of the condition is variable, so not all will satisfy the Eq A statutory tests. The respondent must also have knowledge of the substantial effect on ordinary day to day activities and that it has lasted at least a year, or is likely to do so.

65. This also means that for constructive knowledge, more than the bare label is required – some expression of disability or need, or an identification of difficulty, something to trigger or prompt a deeper check.

66. It also follows that the threshold for triggering constructive knowledge is a low one – see also Code of Practice para 5.15: “An employer must do all they can reasonably be expected to do to find out if a worker has a disability. What is reasonable will depend on the circumstances. This is an objective assessment. When making enquiries about disability, employers should consider issues of dignity and privacy and ensure that personal information is dealt with confidentially.’ Whether or not the employer is found to have constructive knowledge turns on what would have reasonably been known to it after those enquiries had been made.

Burden of proof

67. S.136 EqA 2010 provides: (1) This section applies to any proceedings relating to a contravention of this Act. (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred. (3) But subsection (2) does not apply if A shows that A did not contravene the provision.

68. The guidance set out in **Igen v Wong** [2005] ICR 9311, CA (approved by the Supreme Court in **Hewage v Grampian Health Board** [2012] ICR 1054, SC and **Efobi v Royal Mail Group Ltd** [2021] ICR 1263, SC) still sets out the correct approach to interpreting the burden of proof provisions. In particular:

    a. it is for the claimant to prove on the balance of probabilities facts from which the Tribunal could conclude that the employer has committed an act of discrimination, in the absence of an adequate explanation (para 79(1), see also **Ayodele v Citylink Ltd and anor** [2018] ICR 748, CA at paras 87 - 106);

    b. it is unusual to find direct evidence of discrimination and ‘[i]n some cases the discrimination will not be an intention but merely based on the assumption that “he or she would not have fitted in”’ (para 79(3));

    c. therefore the outcome of stage 1 of the burden of proof exercise will usually depend on ‘what inferences it is proper to draw from the primary facts found by the tribunal’ (para 79(4));

    d. ‘in considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts’ (para 79(6));

    e. where the claimant has satisfied stage 1 it is for the employer to then prove that the treatment was in no sense whatsoever on the grounds of the protected characteristic on the balance of probabilities’ (para 79(11)-(12)).

69. In **Igen v Wong** the Court of Appeal cautioned tribunals ‘against too readily inferring unlawful discrimination on a prohibited ground merely from

unreasonable conduct where there is no evidence of other discriminatory behaviour on such ground' (para 51).

70. In **Madarassy v Nomura International PLC** [2007] ICR 867, CA Mummery LJ stated that: 'The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination' (para 58).

Direct discrimination

71. S.13 EqA 2010 provides: (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

72. It is not enough for treatment to be different in order to be 'less favourable', but the claimant does not have to experience actual disadvantage (see **Chief Constable of West Yorkshire Police v Khan** [2001] ICR 1065, HL).

73. The Equality and Human Rights Commission Employment Statutory Code of Employment (the 'Employment Code') provides: 3.5 The worker does not have to experience actual disadvantage (economic or otherwise) for the treatment to be less favourable. It is enough that the worker can reasonably say that they would have preferred not to be treated differently from the way the employer treated – or would have treated – another person.

74. Treatment can be 'because of' a protected characteristic if it is inherently discriminatory.

75. However, more commonly treatment is found to be 'because of' a protected characteristic not because it is inherently discriminatory, but because the conscious or subconscious reason the alleged perpetrator is treating someone less favourably is the protected characteristic.

76. In such cases the focus in determining whether there has been direct discrimination is on the motivation, intention and knowledge of the decision maker (knowledge of others cannot be imputed) (**Gallop v Newport City Council (No.2)** [2016] IRLR 395). The protected characteristic must be the conscious or subconscious reason for treatment.

77. For treatment to be 'because of' a protected characteristic, the characteristic does not have to be the only or main reason for treatment, it only has to be an effective cause (**Nagarajan v London Regional Transport** [1999] ICR 877, HL).

78. In the context of direct disability discrimination, it is not necessary for the decision maker to have actual knowledge of a specific condition or cause of a disability or that the individual as a matter of law satisfies the test under s.6 EqA 2010. The question is whether they the alleged perpetrator has knowledge of the underlying facts which amount to the disability (ie., the presence of an impairment with a long-term and substantial adverse effect on the individual's ability to carry out normal day-to-day activities): **Urso v Department for Work & Pensions** [2017] IRLR 304 paras 52 – 60.

Failure to make reasonable adjustments

79. S.20 EqA 2010 provides:

> (1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.
>
> (2) The duty comprises the following three requirements.
>
> (3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

80. Schedule 8, para 20 provides:

> (1) A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know—
>
> (b) in any case referred to in Part 2 of this Schedule, that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement.

81. The term 'provision, criterion or practice' ('PCP') should be construed widely to include any informal policies, criteria, conditions or prerequisites (para 4.5 of the Employment Code).

82. S.212 EqA states that: '"substantial" means more than minor or trivial'. It is necessary for the Tribunal to identify the substantial disadvantage faced by a claimant (**Environment Agency v Rowan** [2008] ICR 218, EAT) as a result of any PCP. The proper comparator for the purposes of identifying if an employee is put to a substantial disadvantage in comparison with persons who are not disabled should be identified by reference to the specific disadvantage relied on (**Griffiths v Work and Pensions** [2017] ICR 160, CA at paras 20 and 21).

83. An employee must show on the balance of probabilities that they were in fact put to the substantial disadvantage relied on and the Tribunal must have regard to the overall picture, not just medical evidence. The focus of the Tribunal should be on the result of the adjustment or lack of adjustment, not on the process followed by an employer (**Royal Bank of Scotland v Ashton** [2011] ICR 632, EAT at paras 20 – 24 and authorities cited therein).

84. In considering whether an adjustment was reasonable, the Tribunal must consider whether the adjustment contended for would or could have removed the disadvantage (**Romec Ltd v Rudham** [2007] 7 WLUK 408 at para 38), although it does not need to be guaranteed to be a success (**Griffiths** at para 29).

85. In **Tarbuck v Sainsbury's Supermarkets Ltd** UKEAT/0136/0, an employee claimed that the employer's failure to discuss steps to be taken to eliminate her disadvantage in the competition for alternative jobs in a redundancy exercise amounted to a failure to make reasonable adjustments. The EAT held that, while an employer would be wise to consult with a disabled employee in order to be better informed, the test of reasonableness related to what the employer did or did not do, not what it considered. The EAT held that the duty to make reasonable adjustments does not impose a duty on the employer to discuss with an employee what steps it might reasonably take.

Harassment related to disability

86. S.26 EqA 2010 provides: (1) A person (A) harasses another (B) if— (a) A engages in unwanted conduct related to a relevant protected characteristic, and (b) the conduct has the purpose or effect of— (i) violating B's dignity, or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

    (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account— (a) the perception of B; (b) the other circumstances of the case; (c) whether it is reasonable for the conduct to have that effect.

87. The same acts cannot amount to both harassment and 'a detriment' s.212(1) EqA. Accordingly, if the Tribunal upholds the Claimant's claims of direct discrimination it does not need to go on to consider whether any of the same conduct amounted to harassment (or vice versa).

88. 'Unwanted conduct' covers a wide range of conduct and essentially means the conduct was unwelcome or uninvited (see paras 7.7-7.8 of the Employment Code).

89. 'Related to' is a broad test, which requires an assessment of evidence in the round. The perpetrator's own knowledge or perception of the alleged victim's protected characteristic will be relevant, as will their view of whether or not the conduct related to the protected characteristic, but

neither is conclusive (see **Hartley v Foreign and Commonwealth Office Service** UKEAT/0033/15/LA at paras 23-24).

90. An individual does not have to be disabled themselves in order to suffer from harassment 'related to' disability: the harassment could be related to disability if it is directed at someone because they are perceived to have a disability.

91. For treatment to be 'related to' disability, a claimant must establish that there is the necessary link between the disability and treatment (for example, **Private Medicine Intermediaries Limited v Miss C Hodkinson and ors** UKEAT/0134/15/LA at paras 36-38, in which the EAT overturned the ET's finding of harassment related to disability where the ET found that the treatment complained of was in the context of an illness suffered by the claimant, but had not found that the illness was related to her disability).

92. The concepts of violating an employee's dignity or creating an intimidating, etc., environment, convey a degree of seriousness, as per the guidance given by Elias LJ in **Land Registry v Grant** [2011] ICR 1390 at para 47: Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment. The claimant was no doubt upset that he could not release the information in his own way, but that is far from attracting the epithets required to constitute harassment. In my view, to describe this incident as the tribunal did as subjecting the claimant to a "humiliating environment" when he heard of it some months later is a distortion of language which brings discrimination law into disrepute.

93. The claimant referred to a number of cases, and extract from the EHRC Code and from ACAS as set out below:

94. In relation to the duty to make reasonable adjustments, the claimant relied on **Archibald v Fife** as authority for the proposition that employers must take reasonable steps to avoid the disadvantage. In that case, the SC confirmed that the duty might require the employer to treat a disabled employee more favourably to remove the disadvantage.

95. We were also taken to the EHRC Code which highlights a number of adjustments that might be reasonable for an employer to take. Whilst it includes allowing a disabled worker a different place of work, it does not mention providing financial assistance with travel costs. To the contrary, the Access to Work website specifically mentions taxi fares to support a worker if the employee cannot use public transport. Access to Work covers the types of assistance that are outside of the scope of the employer's duty to make reasonable adjustments, for example, getting to and from work.

96. The claimant referred to **G4S Cash Solutions (UK) Ltd v Powell** UKEAT/0243/15 in which the EAT upheld a tribunal's decision that an

employer was required, as a reasonable adjustment, to protect the pay of a disabled employee who was assigned to a less skilled role following a period of sickness absence. The EAT rejected a submission that pay protection could never be a reasonable adjustment. The EAT noted that while it will not be an everyday event for an employer to provide long-term pay protection, cases can be envisaged where this may be a reasonable adjustment as part of a package to get an employee back to work or to keep them in work. However, this adjustment related to the role being performed and not to travel to and from the workplace.

97. The claimant referred to **The Environment Agency v Donnelly** UKEAT/0194/13/MC. The Tribunal had found that the respondents had been guilty of disability discrimination. Notably, the finding of harassment related to disability was reversed on appeal as the terms of the email sent could not reasonably be seen as falling within the definition of harassment.

98. The Tribunal also reviewed, at the claimant's request, **Rakova v London North West Healthcare NHS Trust** UKEAT/0043/19/LA. The passage to which we were referred was as follows: "Turning then to the ET's finding on substantial disadvantage so far relevant to the complaint addressed by the first ground of appeal, it is apparent that the ET accepted that the adjustments the Claimant was seeking - ….. - would have made her more efficient. It took the view, however, that this did not demonstrate that she was placed at a substantial disadvantage. No explanation is provided for why the ET reached that conclusion.

99. The judgment continues: "For my part, I cannot see that it can be assumed that a desire to achieve greater efficiency does not reflect the suffering of a substantial disadvantage. Whilst it might be that a Stakhanovite desire for greater productivity would be entirely unrelated to any disadvantage suffered by the employee in question, it is also possible that, where the disability in question means that an employee is unable to work as productively as other colleagues, adjustments to enable her to be more efficient would indeed relate to the substantial disadvantage she would otherwise suffer."

100. In **Royal Bank of Scotland v Ashton** [2011] ICR 632 while there may be cases where it would be a reasonable adjustment to disapply the employer's normal sick pay policy, such a case would have to be "exceptional". When considering whether an employer had failed in its duty to make a reasonable adjustment for a disabled employee, it was wrong to focus upon the process of reasoning by which a possible adjustment was considered. The focus should be upon the practical result of the measures which could be taken.

101. We were referred to paragraph 24 which says: “Thus, so far as reasonable adjustment is concerned, the focus of the Tribunal is, and both advocates before us agree, an objective one. The focus is upon the practical result of the measures which can be taken. It is not — and it is an error — for the focus to be upon the process of reasoning by which a possible adjustment was considered. As the cases indicate, and as a careful reading of the statute would show, it is irrelevant to consider the employer's thought processes or other processes leading to the making or failure to make a reasonable adjustment. It is an adjustment which objectively is reasonable, not one for the making of which, or the failure to make which, the employer had (or did not have) good reasons.”

102. The Tribunal was further referred by the claimant to an extract from an ACAS document entitled “Formal Grievance procedure”. The extract states as follows, under the heading: “If there are related grievances”:” if there are 2 or more related grievances, the employer should:

- Still follow the formal procedure, for all the grievances
- Keep information confidential
- Consider what each employee wants
- Explain to the employees how it is dealing with the process

There is some flexibility in how to run the grievance procedure in these situations. For example, the employer could decide to hold a single meeting to cover all the grievances if the employees agree. Each employee still has the right to their own grievance meeting in which employees who are part of the grievance are not present.”

Conclusions

Disability

103. The claimant says he has the following disabilities: a traumatic head injury, anxiety and depression.

104. The respondent accepts that the claimant’s head injury would amount to disability under the Equality Act 2010 and that it had knowledge of this condition since June 2023. The respondent denies that the claimant’s anxiety and / or depression amounts to a disability under the Act.

Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about by reason of anxiety and depression?

105. The time these complaints is about falls into two categories: June-September 2023 which was when the respondent refused the claimant financial assistance for travel costs and May/June 2024 when Mr Lumm is

alleged to have refused to deal with the grievance against Ms Dickason (presumably because it is not dealt with in the outcome).

106. The claimant did have a mental impairment of some combination of stress/anxiety/depression from May 2023 which had a substantial adverse effect on his ability to carry out day-to-day activities, as the claimant was prevented from working by it from May 2023 until the head injury, which occurred on 4 June 2023. After the head injury, the cause of absence from work was less clear, but the OH reports clearly focussed on the claimant's head injury. The claimant was able to return to work on 2 October 2023 and was also able to raise a number of grievances which are articulated and detailed. There is no medical evidence of any substantial adverse effect on day to day activities after that time but the claimant's impact statement states that when he is particularly depressed he withdraws, and struggles with day to day tasks. However, there was no indication of how frequent or prolonged these episodes were.

107. It appears that the claimant may have been prescribed anti-depressants around February 2024. There was no evidence before us of the effect of that medication.

Were the effects of the impairment long-term? The Tribunal will decide: did they last at least 12 months, or were they likely to last at least 12 months? If not, were they likely to recur?

108. The time these complaints is about falls into two categories: June-September 2023 which was when the respondent refused the claimant financial assistance for travel costs and May/June 2024 when Mr Lumm is alleged to have refused to deal with the grievance against Ms Dickason.

109. The Tribunal finds that the stress/depression/anxiety (the mental impairment) has now lasted twelve months or more and indeed had done so by May 2024 when Mr Lumm is alleged to have refused to deal with the additional grievance.

110. Therefore, the claimant's mental health impairment has lasted twelve months or more. The Tribunal is unclear on the effect of the medication, but taking the (unchallenged) impact statement at face value, there is a substantial impact on the claimant's daily tasks and relationships.

Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

111. However, the respondent couldn't know or have been expected to know that the impairment would last more than 5 months particularly as the OH report on 13 July 2023 says stress is not a disability and the subsequent report of August doesn't mention any mental health condition at all and focuses solely on the claimant's physical head injury.

112. It was reasonable for the respondent to accept OH's opinion at face value and to consider that any mental health impairment was, as in 2018, a reaction to life events rather than an impairment.

113. As of June -September 2023, given the claimant's history of the previous incident in 2018, which was resolved after 5 months, and which arose in similar circumstances, the Tribunal considers that it is unlikely that this episode would have lasted more than 5 months. That view is also confirmed by the OH report of 13 July 2024 which states that the claimant's mental health condition was unlikely to be a disability and would be self-limiting. The respondent cannot have had knowledge at that time of a mental impairment of anxiety or depression.

114. The OH report from 23 January 2024 confirmed that the claimant was ready to take on more of the activities he would normally be expected to undertake. It reported "some anxiety" which was attributed to a loss of confidence and states that "it is not uncommon for individuals who have experienced the sort of injury he had to develop depression/anxiety after the event." It states that he would be offered stress management focussed counselling. That is insufficient to make the respondent aware or put the respondent on notice of disability.

115. There was no further communication with the respondent concerning the claimant's mental health impairment.

Direct disability discrimination (Equality Act 2010 section 13)1

116. On or around July / August 2023 Ms Dickason did fail to discuss the claimant's request for travel support, in that she wrote to him to explain that his request could not be granted as it was not in accordance with the travel policy.

117. Ms Dickason did not reject the claimant's fourth grievance (of 15 September 2023). It was Mr Smith who made the decision, in conjunction with HR. During cross examination, the claimant acknowledged that he had made a mistake and withdrew this allegation.

118. It is accepted that, on 7 June 2024, Mr Lumm failed to deal with the claimant's grievance dated 15 September 2023 against Ms Dickason.

119. As regards the failure to discuss the claimant's request for travel support, the claimant relies on two comparators: Mr Sukhwinder and Mr Carbary.

120. The Tribunal finds that there were material differences between their circumstances and that of the claimant. Sukhwinder was a director who was required to drive between stores as part of his role and Mr Carbary moved at the respondent's request to another store. In any event, these examples are historic, stemming from 2000 and 2010. The Tribunal accepts the respondent's proposition that the claimant's failure to find any more recent comparator supports the general proposition that providing financial travel assistance was simply not done and was not in accordance with the travel policy.

121. That leads us to conclude that a hypothetical comparator, in the same position as the claimant but without the claimant's disability, would have been treated in exactly the same way.

122. In any event, there is no evidence from which the Tribunal could conclude that Ms Dickason failed to discuss the claimant's request for travel support because of disability. Rather it was because of the respondent's policy.

123. As regards Mr Lumm's failure on 7 June 2024 to deal with the claimant's grievance dated 15 September 2023 against Ms Dickason, again the Tribunal concludes that that was not less favourable treatment. There was no named comparator, but there was no evidence from which to conclude that the claimant was treated worse than someone else was treated who had the same circumstances as the claimant, but for the disability. That is because the reason why in this case is the previous rejection of the grievance by Mr Smith, which itself was based on HR advice, and advice from HR that he should not deal with it based on that previous rejection.

124. In any event, there is no evidence from which the Tribunal could conclude that Mr Lumm's failure to deal with the grievance was the claimant's disability, in circumstances in which Mr Lumm heard six of the claimant's grievances and provided an outcome on 25 points.

125. The claims of direct discrimination fail and are dismissed.

<u>Harassment related to disability (Equality Act 2010 section 26)</u>

126. As stated above, on or around July / August 2023 Ms Dickason (HR) did fail to discuss the claimant's request for travel support.

127. As above the allegation about Ms Dickason's rejection of the claimant's fourth grievance (of 15 September 2023) is withdrawn.

128. Mr Lumm did fail to deal with the claimant's grievance dated 15 September 2023 against Ms Dickason.

129. The Tribunal accepts in both cases that this was unwanted conduct.

130. However, the Tribunal does not accept, in either case, that this was related to disability. There was no evidence from which to suggest it was. Whist it may not have been the outcome the claimant wanted, there was nothing to suggest it was related to disability, though it did relate to the respondent's travel policy. Further, because he had already raised numerous grievances, the respondent was reluctant to deal with more in circumstances in which the respondent made their view of the policy clear.

131. The Tribunal does not accept that the respondent's conduct had the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. There was no evidence to suggest that it did.

132. The Tribunal further does not accept that it had that effect. There was no evidence before us as to that. In fact there is no way to conclude that the email sent by Ms Dickason could represent or contain material which had the purpose or effect of violating the claimant's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive

environment for him. The letter was polite and answered the claimant's question. The fact that the claimant was not given the answer he wanted does not mean that the statutory definition is satisfied,

133. The claims of harassment fail and are dismissed.

Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

134. As stated above, the respondent knew or could reasonably have been expected to know that the claimant had the physical head injury at all material times but did not know and could not reasonably have been expected to know about the claimant's alleged disability of stress, anxiety and/or depression.

PCPs

135. The Tribunal accepts that the respondent had a requirement for the claimant to physically attend his place of work (PCP 1).

136. The Tribunal further accepts that the respondent had a practice of hearing grievances together (PCP 2).

Substantial disadvantage

137. PCP 1 put the claimant at a substantial disadvantage as, due to his head injury, he was unable to drive and was anxious about using public transport due to his fear of having another head injury.

138. There was no evidence of any substantial disadvantage caused by PCP1 because of the claimant's mental impairment. He argued that due to anxiety and depression, in combination with his head injury, he was unable to use public transport, but the Tribunal is not satisfied that this is due to the mental health impairment and indeed the OH report indicates that the anxiety over use of public transport stemmed from the fear of having another head injury. The report stated that public transport would not be an option because it would be a complicated and protracted journey and the claimant, rationally, feared another incident in which he might bang his head.

139. PCP 2 did not put the claimant at a substantial disadvantage compared to someone without the claimant's disability. The claimant alleges that, due to his anxiety and depression he was unable to deal with the grievances together because he found it too stressful. There was no medical evidence whatsoever to support the claimant's assertion in this regard and the claimant gave no evidence whatsoever to explain why or how, in fact, he found it stressful to deal with more than one grievance at a time, nor did he articulate this in the grievance hearing with Mr Lumm, when he acquiesced with Mr Lumm hearing all of the grievances together, only now arguing that he believed it was just an initial meeting and that there would subsequently be a number of additional meetings to deal with each of his grievances individually. This evidence is simply not credible.

140. Whilst there may have been a problem with handover, the claimant had every opportunity to communicate effectively with Mr Lumm.

141. In any event, the Tribunal finds there was no actual disadvantage to the claimant in the grievances being dealt with together, and indeed none was pointed to by the claimant. It is unclear what he says the disadvantage was. It appears that there may have been a fear of disadvantage, rather than actual disadvantage, as all of his grievances were heard and an outcome delivered. At no point has the claimant suggested that the outcome may have been different had he been allowed to have an individual meeting for each grievance.

Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?

142. The respondent knew of the disadvantage caused to the claimant by being unable to drive or take public transport to get to work as this was explained by the claimant and the PH report indicated that he could neither drive to work nor take public transport.

143. The claimant's explanation was that his inability to use public transport stemmed from the inherent risk of head injury; that the store where he had been offered to work was small and cramped and that, because of his stress and depression, it was necessary for him to work in familiar surroundings with colleagues he knew and trusted.

144. Although, on 22 July 2023, the claimant wrote to complain about the appointed grievance manager and said: "I do not feel able or capable to effectively handle my grievances if pooled together", it cannot be said that the respondent knew of the disadvantage which the claimant alleged would be caused to him by dealing with the grievances together. There was no further explanation of what the disadvantage was or how the claimant would be disadvantaged by the grievances being pooled together.

What steps could have been taken to avoid the disadvantage?

145. As regards PCP1, the claimant suggested that the respondent should provide travel assistance in the form of payment of a taxi to / from work, in full or in part. The amount requested was approximately £200 per week.

146. The Tribunal finds that such financial travel assistance would not have been a reasonable adjustment, even for such a large employer. The claimant never suggested part payment, but in any event, the Tribunal finds that any form of financial assistance would not be a reasonable adjustment in all of the circumstances of the case, for the following reasons.

147. An application to Access to Work was suggested by OH and was successful, resulting in Access to Work meeting the travel assistance payments for a significant period of time. The Tribunal finds that the purpose of the legislation is to seek to remove work-related disadvantage. That does not include travel to and from work. None of the examples in the EHRC Code mention travel to work and the Tribunal considers that Access to Work exists to address issues of travel rather than putting the

onus on employers.

148. Offering financial assistance may be palatable for a respondent if just one person requests it. But if a number of people request it then it would in any event be unreasonable and unmanageable.

149. The respondent did offer other reasonable adjustments to help alleviate the disadvantage. There were two options for a place of work closer to the claimant's home, and the respondent was aware that the claimant had offers of lifts from colleagues.

150. The claimant's reason for not working at the other two stores offered as alternative places of work by the respondent is not accepted. He says it was too small and cramped, but given that his role was purely office based (adjustments had been made to his role to avoid the need to go into the warehouse or onto the shop floor) the Tribunal considers that the fact of the locations being small and cramped is not relevant. Further, for reasons stated, the respondent had no obligation to make any adjustments for the claimant's alleged mental impairment. If it did, there was no evidence to suggest that the claimant's impairment made it necessary for him to work in familiar surroundings with colleagues he knew and trusted, or that he would suffer a substantial disadvantage by not being in familiar surroundings and with colleagues he knew and trusted.

151. Further, the fact that the claimant, initially at least, would not take lifts from colleagues demonstrates to the Tribunal, in line with the comment to Mr Smith about "not making it easy for Tesco", that the claimant did not want to accept any other adjustment but the financial support he requested and felt he deserved. He was unwilling to make any compromise or consider whether any of the other suggested adjustments were reasonable. During the proceedings the claimant conceded that, in his own words, he was "obstinate" in refusing the lifts from colleagues as he wanted the respondent to make the requested adjustment.

152. The Tribunal does not consider that it would have been a reasonable adjustment to have heard the grievances separately.

153. Alternatively, the claimant seems to suggest (from the list of issues) that the first, second and third grievances should each have been heard separately and that the fifth to seventh grievances could have been heard together but separately from the first, second and third grievances. The Tribunal does not consider that that would have been a reasonable adjustment either.

154. The time frame was such that the claimant had said he did not want to have his grievances dealt with before his return to work and so there had already been a significant delay, and there had already been two changes of grievance manager. In the circumstances it was reasonable to hear the grievances together, and it would not have been a reasonable adjustment to hear them each separately.

155. The Tribunal finds that the claimant had a number of misconceptions about the grievance process.

156. First, it is not possible to say that each grievance required a meeting of 3-4 hours. The period required is totally dependent on the grievance; the content; how detailed the grievance letter itself is and whether further clarification is required or not as the case may be. If the grievance itself gives sufficient information, there may be no or little need for further explanation.

157. Second, although the respondent's witnesses had not had occasion to combine grievances previously, they also had not experienced employees raising multiple grievances. In the Tribunal's experience, it is not uncommon to combine grievances where a number are brought in a relatively close time frame by the same individual such that they can be dealt with together. Of course consent is needed if combining grievances from different people, that goes without saying, but not so if they are all from the same person.

158. The Tribunal considers that an employee's right is for the grievance to be heard and considered, not to have a minimum of a three hour hearing or to have each grievance heard separately. We find that the claimant has misinterpreted the ACAS guidance where it talks of related grievances, as that section deals with grievances from different individuals rather than from the same person.

159. It was not reasonable for the respondent to have to taken the steps suggested by the claimant. The Tribunal found that the claimant's expectations were unrealistically high.

160. The claim that the respondent has failed to make reasonable adjustments fails and is dismissed.

Time limits

161. For completeness, the list of issues identified that, given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 1 July 2023 may not have been brought in time. However, time was not dealt with by either party during the hearing, either during evidence or submissions and none of the complaints before the Tribunal relate to something that happened before 1 July 2023. All allegations are therefore in time.

Approved by:

Employment Judge Rice-Birchall

10 April 2025

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at *https://www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/