



EMPLOYMENT TRIBUNALS

Claimant: Miss L Hyland

Respondent: Manchester City Council

HELD AT: Manchester (the claimant and her representative attending by CVP)

ON: 2 – 4 December 2024

In chambers: 20 May 2025

BEFORE: Employment Judge Porter
Ms C Nield

REPRESENTATION:

Claimant: Miss N Hyland, the claimant's sister

Respondent: Ms I Baylis, counsel

RESERVED JUDGMENT

The unanimous judgment of the tribunal is that:

1. The claims under s15 Equality Act 2010 are not well-founded and are hereby dismissed.
2. The claim under s13 Equality Act 2010 is not well-founded and is hereby dismissed.

REASONS

Issues to be determined

1. At the outset of the hearing counsel for the respondent indicated that the List of Issues for determination by the tribunal was as set out in the Case Management Order made by EJ Ross on 20 May 2024 (see Appendix 1).
2. The claimant asserted that the List of Issues was incorrect as the claimant relied on the mental impairment of an anxiety disorder **and** non-organic psychosis. After a short break to take instructions, counsel for the respondent confirmed that the respondent did concede that the claimant was, at the relevant time, a disabled person with the mental impairments of anxiety disorder **and** non-organic psychosis. The respondent had no objection to the amendment of the List of Issues to reflect that.
3. The claimant asserted that she intended to argue that the discriminatory conduct had been going on for 6 or 7 years and that this was the reason for the claimant's relapses into poor health and non-attendance. Counsel for the respondent asserted that:
 - 3.1 The cause of the claimant's disability was not relevant to the determination of the issues;
 - 3.2 There were only two issues as had been identified in the List of Issues; and
 - 3.3 the claimant would need to seek leave to amend the claim if she wished to pursue any additional matters.
4. The claimant confirmed that she wished to make application for leave to amend the claim to include additional issues.
5. The procedure for this application, and the principles of law which the tribunal would follow when considering the application, were explained and the claimant was given some time to prepare the application.
6. The claimant made an application for leave to amend her claim before the full panel at the commencement of the hearing and an Order made on 3 December 2024. The Order with reasons are provided under separate cover.
7. Having decided that the application for leave to amend was successful in part only, the List of Issues to be determined by the tribunal was amended as set out at Appendix 2.
8. The respondent presented an Amended Response in relation to the amended claim.

Orders

9. A number of orders were made for the conduct and good management of the proceedings during the course of the Hearing. In making the orders the

tribunal considered the overriding objective and the Employment Tribunals Rules of Procedure 2013. A number of applications were made during the course of the hearing and the full tribunal panel considered these. Orders arising, with reasons, are provided under separate cover.

Submissions

10. Both representatives agreed that there was insufficient time, at the conclusion of the Hearing, to make submissions. It was agreed that the parties should exchange written submissions and an Order was made for that exchange and the provision of copies for the tribunal's deliberations in chambers. The tribunal has considered those submissions with care but does not repeat them here.

Evidence

11. The claimant gave evidence.

12. The respondent relied upon the evidence of:-

- 12.1. Mr Eamon Considine, Operations Manager and Dismissing officer;
- 12.2. Ms Sally Hughes, Service Manager and Appeal Officer;
- 12.3. Ms Helen Fallows, Operational Lead, Business Support;
- 12.4. Mr Gordon Barr, HR Specialist

13. The witnesses provided their evidence from written witness statements. They were subject to cross-examination, questioning by the tribunal and, where appropriate, re-examination.
14. An agreed bundle of documents was presented. Additional documents were presented during the course of the Hearing, either in accordance with the Orders referred to above or with consent. During the course of giving evidence Ms Fallows introduced a new document, a Role Profile and it was agreed and ordered that it be added to the bundle at page numbers 350-351. References to page numbers in these Reasons are references to the page numbers in the agreed Bundle with the prefix "B".

Constitution of the tribunal panel

15. The panel of three was listed to make a reserved decision in chambers on 20 January 2025. Unfortunately, one of the tribunal members was unable to attend due to ill-health. The hearing was adjourned to a date to be fixed. Sadly, the tribunal was then informed that the lay member had passed away. Both parties were advised of this and they both consented, in writing, to the tribunal continuing to sit as a panel of two.

Findings of Fact

16. The two member panel relied on the following unanimous findings of fact made by the full panel in making the Orders during the course of the hearing.
17. The claimant started work for the respondent in July 2012. Her substantive role was as a Grade 4 Support Worker. In 2016 the claimant suffered from ill-health and an OH report suggested adjustments to enable the claimant to remain in employment, namely, that the claimant should be removed from that post. The claimant was therefore transferred to a post in Business Support, Resource Team Administrator.
18. The claimant stayed in the post until 2022 when she was moved to a further temporary post.
19. The claimant was a member of the trade union and sought and obtained advice from her trade union representative, Bernard Candlin, during the course of her employment. Bernard Candlin represented the claimant at some attendance management meetings.
20. On 18 July 2023 the claimant was dismissed on the grounds of medical capability. The letter of dismissal (pg 152-155 of the Bundle) makes no reference to absences, improvement notices or case management warnings. The dismissal letter states:

In view of our discussions, and medical advice that you are unable to return to your current role for the near future and given that no alternative role could be found for you through our redeployment process, it is with regret that my decision is that you should be dismissed with your contractual notice.

21. The claimant was not represented by the trade union at that time. She was assisted by her sister, who is a law student.
22. The claimant appealed the decision. Her appeal was unsuccessful and the decision to dismiss upheld.
23. The claim was presented on 20 December 2023 following a period of Early Conciliation which began on 10 October 2023 and ended on 21 November 2023, when the EC certificate was issued by ACAS.

Additional Findings of Facts (Findings of the two member tribunal panel)

24. Having considered all the evidence the tribunal has made the following additional findings of fact. Where a conflict of evidence arose the

tribunal has resolved the same, on the balance of probabilities, in accordance with the following findings.

25. The respondent accepts that the claimant was disabled during the relevant time period by way of anxiety disorder and non-organic psychosis.
26. The claimant started work for the respondent in July 2012. Her substantive role was as a Grade 4 Support Worker. In 2014 the claimant suffered from ill-health with mental health difficulties. In 2016 an Occupational Health report suggested adjustments to enable the claimant to remain in employment, namely, that the claimant should be removed from that post. The claimant was therefore transferred to a post in Business Support, Resource Team Administrator. This was a temporary non-funded role; it was created and allocated to the claimant as a supportive measure whilst her capability to continue in her substantive role was assessed and in order to allow her to learn new skills.
27. Where an employee is medically unfit to carry out their role it is the respondent's normal practice to transfer the employee to a temporary position, normally for 6 months, to give the employee skills to give them more chance of finding alternative employment under the Mpeople scheme (see below). This move to the role of Resource Team Administrator was a temporary move. The claimant's substantive role remained as Support Worker and she continued to receive her salary as a Grade 4 Support Worker. The respondent paid for agency staff to cover the claimant's substantive role as a Grade 4 Support Worker. The claimant stayed in the temporary Resource Team Administrator role for about 5 years before OH recommended that she move from that post (see below) for medical reasons. The claimant did not complain about this or seek employment in a different role. The claimant's position as Resource Team Administrator was supernumerary. There was no budget allocated to that post to enable the post to become permanent. Attempts were made during the claimant's tenure to make a business case for the role and to offer the claimant a permanent contract in that role. The claimant received advice from her trade union representative about this at the time. It is unclear from the evidence as to whether the claimant was formally offered a new role and whether she rejected it. However, there remained no budget for the Resource Team Administrator role, the claimant remained in that role until she was no longer medically fit to carry out that role, and she raised no formal complaint or grievance about the failure to provide her with a permanent role.
28. The claimant had significant periods of absence by reason of ill-health. From 30 January 2020 to the termination of employment on 18 July 2023 the claimant had a total of 416 absences. During these absences the respondent appointed agency staff to perform the claimant's duties. There were regular referrals to Occupational Health. A number of adjustments were made to the claimant's working conditions on the recommendation of Occupational Health. Stress risk assessments were carried out. Adjustments were made to how the claimant performed her duties and how she attended work. The claimant was allowed to work from home for a

period. When this proved unsatisfactory for the claimant's health she was assigned to office bases. The claimant struggled to work at certain office bases and she was moved to different offices with her agreement. The claimant did not make any formal complaint that the respondent had failed to provide the adjustments as recommended by Occupational Health.

29. There is no satisfactory evidence to support the claimant's assertion that the respondent failed to provide her with the necessary support and/or failed to provide the adjustments as recommended by OH.
30. The claimant was asked to attend various meetings under the respondent's absence policy, by reason of her significant length of sickness absence. On occasion she was issued with improvement notices – a requirement to improve her attendance or face possible further action under the policy. However, the claimant raised no formal grievance about being subjected to this procedure. The respondent did not take action under that policy to terminate the claimant's employment by reason of her poor attendance record.
31. On 29 October 2021 an Occupational Health Report following a review, advised that the claimant would be unlikely to ever go back to her Grade 4 Support Worker post (B77). The claimant did not and does not challenge that advice.
32. The claimant stayed in the Resource Team Administrator post until 2022. However, that role began to change and the claimant expressed concern about the changes and the effect on her mental health. A period of absence prompted a further referral to Occupational Health who advised that the claimant was unable to continue in that role and recommended a move from that post to "a role in which she has more feeling of 'job security', well-defined tasks, consistent workload, and good support from management".(B90-91) The claimant did not and does not challenge that advice or recommendation.
33. In 2022 the claimant moved to a further temporary post, working alongside another person to help them complete their tasks.
34. From 2011 the respondent has operated a redeployment process 'MPeople'[B325]. This is both for people who are potentially facing redundancy/end of fixed term contract/and people who are medically incapable of carrying out their role.
35. On 15 July 2022 the claimant attended an Attendance Management Review meeting with her line manager, Chris Culkin, Resource and Governance Team Leader (B93). It was noted that:
 - 35.1. The claimant had been absent from work since 23 March 2022 but was now fit to return with adjustments as recommended by OH;
 - 35.2. Healthworks, the respondent's OH provider, had recommended that the claimant be permanently removed to a new role;

- 35.3. The claimant would start the MPeople process;
- 35.4. The claimant expressed an interest in returning to her Grade 4 Support Worker role, indicating that she would only be able to do this if there was a guarantee of no lone working. It was noted that Healthworks would seek further advice from the claimant's GP on whether the claimant was fit to return to the Support Worker Role.
36. A letter was sent advising the claimant that she had been referred to the Mpeople process to support her to find a suitable alternative role **(B95)**
37. The aim of the Mpeople process was to match the claimant to suitable alternative roles within the Council. The process is agreed at the outset to be 12 weeks duration. During this time the claimant was allocated an Mpeople case worker (HROD) who was actively matching her to appropriate vacancies as they arose. The claimant was matched to roles according to her skill set, preferences and current terms and conditions as far as possible. This included her current grade, hours, and location of work. As a redeployee, the claimant was treated as a priority candidate for the vacancies that she had been matched to.
38. In the operation of the M-people process, the candidate prepares an anonymised "Baseline" in which the candidate sets out their skills, qualifications and evidence of their skills, utilising the STAR system: setting out the Situation, Task, Activity and Result. The allocated M-people case worker sends the candidate's anonymised baseline to multiple Business Support managers for the same role based in different offices. The managers receive the initials of the candidate but no other personal information. Where the candidate does not meet the criteria for the role and the manager does not shortlist for an interview, if the baseline is submitted again, within a short time frame, the managers would not consider the baseline again. If the candidate had been interviewed and was unsuccessful, and the baseline is submitted again within a short time frame, the candidate would not be interviewed again for the same role, regardless of location. As a result, when a baseline is received for a current vacancy it is normal practice for the manager to investigate whether that baseline has been received and considered in the recent past.
- [On this the tribunal accepts the evidence of the respondent's witnesses.]*
39. During the 12-week process, the claimant was expected to work positively and proactively with her line manager and her Mpeople Lead towards the objective of moving into another role. Unless there were strong reasons to decline, she was expected to accept a suitable alternative role offered within the council via the Mpeople process.
40. The claimant was subsequently invited to attend an Mpeople engagement meeting with her MPeople Lead, Andy Garrett along with her line manager Chris Culkin.

[During the operation of the MPeople process Andy Garrett changed his last name to Smith. Some documentation refers to the name Smith. In the following reasons he is referred to as Garrett/Smith]

41. On 10 October 2022, an initial Mpeople engagement meeting took place. It was initially agreed in this meeting to match the claimant to roles in South Manchester due to her medical restrictions. An outcome of the meeting was sent by way of letter to the claimant (B98-99).
42. At the claimant's 4-week review meeting, Andy Garrett/Smith had taken over the claimant's redeployment process. It was agreed that within the last 4 weeks there had not been any suitable matches for South Manchester, and so the scope of positions to be considered was widened to include roles outside of South Manchester (B119).
43. The claimant was offered a number of interviews. However, the claimant continued to suffer from sickness absence, and she missed the following interviews:
 - 43.1. An interview for Business Support Officer role in Youth Justice (487568) on the 23 November 2022.
 - 43.2. An interview for PRS Business Support Officer on 2 December 2022; and
 - 43.3. Another interview for Electoral Services Data Processor on the 7 December 2022.
44. On 31 December 2022, the claimant returned to work after 26 days of sickness absence. Her Mpeople case worker Andy Garrett/Smith contacted the manager for a Business Support Officer role the claimant had missed and convinced him to interview the claimant. However, the claimant was not successful during this interview (**B102**). The claimant raises no complaint about that.
45. The claimant attended the 8-week review meeting on the 16 January 2023 with her case worker Andy Garrett/Smith and line manager Chris Culkin. In this meeting it was reiterated to the claimant her responsibilities in the Mpeople process and Andy Garrett/Smith highlighted the importance of her engagement so that she had the best opportunity of securing a new role. A letter confirming the meeting outcome was sent to the claimant (B100-101).
46. On 12 January 2023 Andy Garrett/Smith sent the claimant's anonymised baseline to Linda Ball North Business Support Locality Manager, for consideration for the role of Business Support Officer Level 1 Ref: 501210. The email states (B184):

Please note, the baseline should be viewed from a broad fit perspective as m people candidates do not have the opportunity to tailor their baseline to specific vacancies, they provide a generic baseline to demonstrate their skills, abilities and experience and this should be used for shortlisting against your vacancy. If you

feel the baseline broadly demonstrates the skills and experience required for the role, we would encourage you to explore further gaps at an interview and ask that you take this into consideration when assessing them against the role profile for the position.

In the event that you decide not to shortlist, please provide detailed feedback (that I can share) using the form attached below detailing why the candidate is not suitable.

47. The claimant was not shortlisted for the post and written Feedback was provided to the claimant's m-People case worker Andy Garrett/Smith giving reasons why the claimant was not shortlisted **(C184-186)** stating:

From their baseline, it doesn't appear that LH has the level of administrative experience that we are looking for this particular role. They have mentioned working in a Business Admin role for a few years and mention working on different IT systems but it only seems to relate to rotas and timesheets. The Business Support Officer based at Cornerstones will be the sole Business Support Officer working within that team. They will support many different teams and we require an experienced administrator who is used to working with multiple systems and who is used to working with minimal supervision because their line manager will not be based on site with them.

48. Neither the claimant nor her trade union representative raised any complaint about Linda Ball's refusal to grant the claimant an interview for that role.

49. On 17 January 2023, Andy Garrett/Smith reached out to the Operational Lead for Business Support (Children's and Adult's) Helen Fallows, to ascertain whether there were any roles in the services based in Etrop Court, Wythenshawe.

50. Helen Fallows is currently employed by the respondent as Operational Lead, Business Support, which is in the Adult Social Care Directorate. She has held that post since 1 August 2017. She has worked for the Council since 24th March 2003. Prior to her involvement in this matter, she did not know the claimant and does not recall ever having met her before. The claimant does not challenge that evidence.

51. On 17 January 2023 at 10.30 the claimant's anonymised baseline (B179-182) was sent to Helen Fallows and the South Business Support Locality Manager to consider the claimant **(B187)** for the role of South Business Support Officer Level 1. This was sent to them both as there was a Business Support post which they were having difficulties recruiting for. They had tried to advertise the role internally and externally (B189) and Helen Fallows, as part of her role as Operational Lead for Business Support, was to support the South Business Support Locality Manager to get through the process by liaising with the HR Business Partner for the Directorate.

52. On receipt of the claimant's baseline Helen Fallows contacted Linda Ball, North Business Support Locality Manager, to check whether the baseline

for the candidate with the initials “LH” had been considered previously. Helen Fallows’ recollection of how that contact arose, whether by telephone call or a meeting or in writing, is poor. Helen Fallows was informed by Linda Ball that the baseline for candidate “LH” had been considered for the same role which was based at a different office in the North, that LH had not been selected for interview for the same post in the North and that written feedback had been provided, indicating that the candidate lacked the necessary experience.

53. Ms Fallows has a poor recollection of whether she reviewed the baseline herself at that time, or whether she simply accepted the recent decision of Ms Linda Ball, before advising the M-people caseworker, Andy Garrett/Smith, that the candidate LH was not suitable for the role, without Ms Fallows herself making an assessment of the baseline first. On balance we find that Ms Fallows simply relied on the fact that Ms Linda Ball had recently rejected the candidate for the same post. In making this finding we note that:

- 53.1. Ms Fallows replied to Andy Garrett/Smith with her rejection very quickly - the same day;
- 53.2. Ms Fallows did not provide the detailed feedback for the rejection as requested and as provided by Ms Ball.

54. By email dated 17 January 2023 at 13.09 (B195) Ms Fallows advised Andy Garrett/Smith:

We have several times received this application for Business Support posts and I believe we have interviewed her in the past and she does not meet the criteria for the role.

55. That email contains an error. The claimant was not interviewed for the role. The recollection of Ms Fallows as to how she made such an error is poor.

56. The recollection of Ms Fallows as to why she identified the candidate as “she” is poor. She cannot explain how the sex of the candidate could be known if the baselines were completely anonymised.

57. The claimant’s baseline mentioned working in a Business Admin role for a few years and also working on different IT systems, however it only related to rotas and timesheets. The role profile for Business Support Officer requires a sole Business Support Officer working within that team. It required providing support to various teams and therefore required an experienced administrator who was used to working with multiple systems which would include Liquidlogic, the customer recording system, SAP, the finance system, Microsoft Outlook, for emails and documents, ELMS, for ordering of equipment for customer’s homes, answering the phones and managing message taking under minimal supervision because their line manager would not have been based on site with them.

58. Ms Fallows did not have any prior knowledge in relation to the claimant's sickness records, she was not aware that the claimant had a disability.
59. The Business Support recruiting managers involved in reviewing the claimant's baseline did not have any prior knowledge of the reason for the candidate being on the MPeople programme, of the candidate's sickness records, her absences or that the candidate had a disability.
60. A 12-week Review Meeting took place on 1 February 2023 which was attended by Andy Garrett/Smith, the claimant and her manager, Chris Culkin. During this meeting, Andy discussed the Business Support Officer Level 2 interview, which the claimant was unable to attend on the 7 December 2022 due to sickness absence. It was explained to the claimant that Andy had contacted the manager when he was notified the claimant was back in work, and it was agreed to offer another opportunity to be interviewed. The feedback from this interview, was that the claimant came across well, however she was late to the interview. It was once again highlighted the importance of her engagement. An outcome of this meeting was sent by letter (B102-103).
61. The claimant was invited to attend an interview for Business Support Officer Level 2 on the 6 February 2023. However, she did not attend because she believed a role in Manchester Town Hall Extension would not work well for her anxiety and stress levels because it's location in Manchester City Centre (B135).
62. A subsequent interview was arranged for the claimant, the interview was for a Business Support Officer Level 2 role based in Hulme. However, the claimant refused to attend the interview due to personal negative associations with Hulme (B136).
63. The claimant requested Voluntary Severance 'VS'. Andy Garrett/Smith met with Head of Service, Sally Hughes, and it was decided they would not support VS. This was because they are within their right to elect the option of either continuing with the matching process or directing the candidate into a role. Given that the claimant was a medical redeployee, rather than someone in a role that become obsolete following an organisational restructure, the decision was made to proceed to a Medical Capability Hearing.
64. The final Mpeople review meeting took place on 24 March 2023, it was attended by Andy Garret/Smith, the claimant and her manager, Chris Culkin. During this meeting, it was discussed that the Mpeople process was a 12-week process, which commenced on 20 September 2022. This was subsequently prolonged for a total of 26 weeks and unfortunately the medical redeployment process had not been successful. An outcome of this meeting was sent by way of letter (B106).

65. Both the Resource Team Administrator role and post held by the claimant from 2022 were supernumerary.
66. A recruiter receiving a baseline from a candidate under the Mpeople process would not know the reason someone was in the process, so there could be no general assumptions as to whether they had a disability or any sort of absence level it could just be, for example, that they were on a one year fixed contract for a role that was being discontinued.
67. By email dated 2 May 2023 (B139) the claimant was invited by her line manager Chris Culkin to a Medical capability hearing on 18 May 2023. Extracts read as follows:

I have invited you to this meeting because it is clear from the medical advice that you are unable to fulfil the requirements of your substantive post and an alternative role that fits your medical restrictions has not been identified after a prolonged search via the m people medical move process.

During our m people meetings, we have discussed with you your medical restrictions and how they impact on your ability to fulfil the requirements of your substantive role, and we have followed the Medical Move process for an extended period to support you to find an alternative role. This hearing will be the final opportunity to consider these matters and any other relevant points.

You are entitled to representation from a trade union representative, friend or colleague and you should make the necessary arrangements in this regard.

...

I must caution you that it is possible that an outcome of the meeting will be dismissal with contractual notice in line with the Council's managing attendance policy. However, a decision on this will not be made until you have had a full opportunity to put forward everything that you wish to raise.

68. The Managing Attendance Hearing took place on 18 May 2023 in accordance with the Council's Managing Attendance Policy. Andy Garrett/Smith (HR Officer) attended as the claimant's Mpeople caseworker, Chris Culkin (Business Development and Resourcing Manager) as Presenting Officer, and Eamon Considine as the Hearing Officer. The claimant was not present. Bernard Candlin was in attendance as the claimant's Trade Union representative.
69. Mr Considine is employed by the respondent as Operations Manager, for Manchester City Council's Disability Supported Accommodation Service, which is in Adult's Directorate. He has held that post since August 2021. He oversees the delivery of services, coordinating with staff and external partners to ensure that services are effective, efficient and align with organisational values and goals. This Service is a supported

accommodation service which supports adults with learning disabilities and autism to live independently. Its aim is to enhance the lives of individuals with learning disabilities by providing quality housing and person-centred support and care in the heart of the city and community life.

70. Mr Considine has known the claimant on a professional basis since 2014. He had no direct day to day contact with the claimant within his role as Operations manager.

71. At the hearing on 18 May 2023:

71.1. the claimant's representative Mr Candlin stated that he believed that she should be entitled to a "compromise" payment;

71.2. he also stated that he believed the claimant had been discriminated against because she was not shortlisted for an interview for a role at Etrop Court;

71.3. Mr Considine explored the discrimination allegation further at the hearing, and asked the claimant M-People case worker, Andy Garrett/Smith to clarify why the complainant was not shortlisted for an interview. Andy stated that the claimant did not meet the criteria for the role and was therefore not shortlisted;

71.4. Mr Considine explained his opinion to Mr Candlin that, in those circumstances, the failure to interview the claimant did not amount to discrimination. Mr Candlin did not provide any further explanation of his allegation that this was an act of discrimination.

72. Mr Considine decided to adjourn the hearing in order to obtain further information about how the claimant's medical situation had progressed from occupational health. He also requested further documentation around support that management had offered to the claimant. He obtained a copy of the email from Ms Fallows (see paragraph 96 above) explaining the reason for the decision not to select the claimant for interview. He accepted what was said in that email. He did not carry out any further investigation, he did not match the claimant's baseline against the criteria for the role.

73. Shortly after the initial hearing on 18 May 2023 was adjourned, the claimant submitted a grievance to Sally Hughes, Service Manager (**B207-246**). Due to the nature of her grievance, Mr Considine decided that he was unable to reconvene the Attendance Management Hearing until this was addressed. He was then informed by Sally Hughes that following an informal meeting with the claimant it was agreed that the claimant would submit her grievance statement to be considered as further evidence when the Management Attendance hearing reconvened. The claimant did not pursue this complaint as a formal grievance.

74. Mr Considine decided to reconvene the Management Attendance hearing by sending a letter, which was wrongly dated 3 May 2023, to the claimant (B141-142). Mr Considine did not seek assistance from HR in drafting that letter. It was prepared by Mr Considine himself, he read it through before he

sent it, he did not ask HR to check its contents before it was sent. Extracts from the letter read as follows:

Disciplinary hearing 18/7/23

During the disciplinary hearing held on Thursday 18th May 2023 I adjourned the meeting. I am writing to invite you to the reconvened hearing on Tuesday 18th July 2023....

The reason for the reconvened hearing is to allow me to make a final decision in consideration of medical capability. As discussed at the hearing these were that: you are unable to fulfil the requirements of your substantive post and an alternative role that fits your medical restrictions has not been identified after a prolonged search via the M people medical move process ...

You were advised that these allegations constitute gross misconduct, which if found may result in your summary dismissal

75. An OH report was obtained on 23 May 2023 following a telephone consultation with the claimant. (B241-242). The report advised that the claimant was unfit for work at the present time and that it was "unlikely that the claimant would be able to return to her substantive support worker role due to requirements for lone working and shift working which would have a negative impact on her mental health."
76. Mr Culkin held a further Attendance Management Review hearing with the claimant by telephone on 20 June 2023 to discuss the most recent OH report and the soon to be reconvened hearing before Mr Considine. The claimant confirmed that she was currently unfit for work. (B143-144)
77. The Attendance Management Hearing was reconvened on 18 July 2023. Mr Considine was the Hearing Officer. He was supported at the hearing by Andy Garrett /Smith M-People Caseworker, Gordon Barr HROD Specialist, with Chris Culkin (Business Development & Resourcing Manager) as presenting officer. The claimant attended virtually via Teams along with her sister Natalie Hyland. The claimant was not represented by the trade union at this hearing.
78. At the commencement of the hearing Mr Considine apologised for the wording of his letter (see paragraph 116 above) and for any distress that it had caused the claimant. Mr Considine explained to the claimant that one of the options to be considered was whether to dismiss the claimant from her employment, with notice, on the grounds of medical capability.
79. During the hearing Mr Considine considered the evidence put forward by the presenting officer and the mitigating statement (B145-151) presented by the claimant.
80. Having reviewed all the evidence from both parties, Mr Considine was satisfied that the respondent has acted reasonably and fairly and that sufficient reasonable adjustments to support the claimant through the Managing Attendance and M People process had been put in place. These included:

- 80.1. Completing Regular Attendance Management Review Meetings and Return to Work meetings;
 - 80.2. Referral to occupational health and where possible their recommendations were followed;
 - 80.3. 1:1 regular supervision meetings and work assessments;
 - 80.4. Flexible working patterns were identified and implemented to support the claimant around difficulties with getting into work and managing her work schedules;
 - 80.5. Access to laptop and mobile device in order to support home working when required as part of flexible work agreement
81. Mr Considine was also satisfied that all reasonable options had been explored in attempting to find a suitable alternative role for the claimant. He found that Andy Garrett who was the claimant's M-people case worker through the M-people process had made efforts to secure an alternative role compatible with her medical restrictions, and that she was in this process for 26 weeks following an extension from the standard duration of 12 weeks.
82. Mr Considine considered the claimant's mitigation statement and the complaints within it and concluded:
- 82.1. **Point 1- The delay in reconvening the AMH:** There had been a delay caused by the need to obtain further medical evidence before reaching a decision. A further delay was caused following the claimant's submission of a grievance as he was unable to reconvene the hearing until this was formally addressed and an agreement to move forward was reached between the Claimant and the service manager Sally Hughes.
 - 82.2. **Point 2- The request for Financial Compensation.** This request of an additional payment or "compromise" payment was put forward by the claimant's trade union representative, Bernard Candlin, at the pre-adjourned Attendance Management Hearing on 18 May 2023. As discussed at that meeting him at the meeting such a payment would not apply under these circumstances and would be outside of Manchester City Council's Managing Attendance Policy and procedures.
 - 82.3. **Point 3- Request for Claimant's notice salary payment to be paid in a one-off payment due to her financial position.** The claimant's notice salary (12 weeks' pay) would be paid as a lump sum as "Post employment Notice Pay."
 - 82.4. **Point 4 -Breach of Equality Act 2010.** The claimant stated that her trade union representative Bernard Candlin had informed her, she had been refused an interview for a Business Support role and that this was due to her medical condition and sickness record. Based on the documentary evidence this was unsubstantiated. There was no evidence to support this allegation;
 - 82.5. **Allegation that the service did not adequately support her through the managing attendance process.** The evidence submitted by the presenting officer on behalf of the service, confirmed that the

service has acted reasonably and fairly in line with Manchester City Council's Managing Attendance Policy, and that reasonable adjustments put in place were appropriate. There was no satisfactory evidence to substantiate the allegation pertaining to inadequate support was submitted by her or her;

- 82.6. **Allegation stating that the initial hearing was adjourned due to poor evidence in paperwork.** The hearing was adjourned in order to seek further medical evidence prior to making a decision.

83. Having considered all of the evidence Mr Considine concluded that:

- 83.1. the respondent had acted reasonably and fairly in line with Manchester City Council's Managing Attendance Policy, and that reasonable adjustments put in place were appropriate;
- 83.2. the claimant had been absent from work for a significant period, and despite all reasonable adjustments, there was no reasonable indication that she would be able to return to her substantive role or find a suitable alternative position. Occupational health assessments were considered, and adjustments were made wherever possible, but her ability to work across the city was limited, which restricted her options for alternative roles within the organisation;
- 83.3. Her permanent position as Grade 4 Support Worker required agency cover during her absence from the post, which resulted in both a financial burden on the organisation and a negative impact on the continuity of service provided to individuals relying on our care.
- 83.4. The ongoing reliance on temporary staff had implications for service quality and stability, which became unsustainable over time;
- 83.5. The inability of the claimant to return to work in her role posed significant operational challenges and her prospects for redeployment were limited. The service had acted reasonably and fairly and had made every effort to find the claimant suitable alternative employment;
- 83.6. In these circumstances the decision was that the claimant should be dismissed on the grounds of medical capability.

84. Mr Considine confirmed at the meeting that the claimant was dismissed with effect from 18 July 2023. He confirmed his decision to the claimant in writing by letter dated 18 July 2023. The letter confirmed that the claimant had a right of appeal against the decision, and should she wish to exercise that right, she must do so in writing within ten working days of receipt of this letter **(B152-155)**.

85. On 7 August 2023, the claimant appealed the decision by way of email to Sally Hughes **(B251)**. Ms Hughes is currently employed by the Council as the Service Lead, Disability Supported Accommodation Service, Manchester Shared Lives Services and Manchester Short Breaks Service. She oversees the delivery of services, leading the management and staffing teams to ensure that the support and care that is offered is of a high standard and compliant with the relevant regulations. She liaises with colleagues and external partners to ensure that services are effective, efficient and align with organisational values and goals. She directly line

manages two Operations Managers. She has known the claimant since August 2017. She had no direct day to day contact with the claimant within her role as Service Manager.

86. On 19 September 2023 the Attendance Management Appeal hearing took place, Eamon Considine attended as Presenting Officer, Sally Hughes as Hearing Officer and Gordon Barr as HR Support. The claimant attended virtually along with her sister, Natalie Hyland. This was conducted as a full rehearing.

87. During the appeal hearing:

- 87.1. the claimant was given full opportunity to state her case;
- 87.2. Ms Hughes considered each of the points of appeal;
- 87.3. the claimant stated that she did not agree with the decision to dismiss on the grounds of medical capability but stated that she did not wish to continue to work for the respondent and sought a payment of financial consideration

[The claimant accepted that she stated this as correct during the course of this hearing]

88. Ms Hughes gave careful consideration to the grounds of appeal and took into account all the circumstances including the following:

- 88.1. The Mpeople process had been extended to allow her to find an alternative role and had made every effort to find the claimant suitable alternative employment;
- 88.2. the claimant had been absent from work for a significant amount of time and there was no indication of when she would have been able to return to her substantive role or find a suitable alternative role;
- 88.3. Occupational health assessments were considered, and adjustments were made wherever viable;
- 88.4. the claimant stated that she no longer wanted to work for the respondent; and
- 88.5. The operational and financial impact of her inability to return to her Support Worker role and the significant extension of the redeployment process;
- 88.6. the service took its duty of care towards the claimant very seriously and did what could be done to support her whilst she was working within the Resourcing Team and whilst in the Mpeople process;
- 88.7. Despite all reasonable adjustments, this situation could not be sustained any longer by the service.

89. Ms Hughes decided to uphold the hearing officer's decision to dismiss the claimant for the reasons set out in her letter dated 3 October 2023 (B156-168).

90. The claimant did not want to return to work for the respondent. She accepts in evidence before the tribunal that there was no option other than dismissal available to the respondent.

91. There was an email exchange on 13 January 2023 (B189) about the role of Business Support Officer in - Etrop between Tina Beattie and Helen Fallows and the procedure for re-advertising. Helen Fallows stated:

I spoke to Alice in HR about the same issue for [REDACTED] and got it bypassed. Do you want to start again afresh or go straight out internal/external?

THE LAW

92. Section 15 Equality Act 2010 provides that a person (A) discriminates against a disabled person (B) if:

- A treats B unfavourably because of something arising in consequence of B's disability, and
- A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

93. In **Secretary of State for Justice and anor v Dunn EAT 0234/16** the EAT identified the following four elements that must be made out in order for the claimant to succeed in a s15 claim:

- there must be unfavourable treatment
- there must be something that arises in consequence of the claimant's disability
- the unfavourable treatment must be because of (i.e. caused by) the something that arises in consequence of the disability, and
- the alleged discriminator cannot show that the unfavourable treatment is a proportionate means of achieving a legitimate aim.

94. The term "unfavourable treatment" is not defined in Equality Act. The Equality and Human Rights Commission's Code of Practice on Employment (2011) ('the EHRC Employment Code') states that it means that the disabled person 'must have been put at a disadvantage'. There is no need for a comparator in order to show unfavourable treatment.

95. In **Basildon and Thurrock NHS Foundation Trust V Weerasinghe 2016 ICR 305** the EAT stated that there is a need to identify two separate causative steps for a claim under s15 EQA to be made out. These are that:

- the disability had the consequence of 'something', and

- the claimant was treated unfavourably because of that 'something'.

96. In **Sheikholeslami v University of Edinburgh 2018 IRLR 1090** the EAT stated that: 'On causation, the approach to s15 is now well established... In short, this provision requires an investigation of two distinct causative issues: (i) did A treat B unfavourably because of an (identified) something? and (ii) did that something arise in consequence of B's disability? The first issue involves an examination of the putative discriminator's state of mind to determine what consciously or unconsciously was the reason for any unfavourable treatment found. If the "something" was a more than trivial part of the reason for unfavourable treatment then stage (i) is satisfied. The second issue is a question of objective fact for an employment tribunal to decide in light of the evidence.'

97. S136 EQA provides that once a claimant has proved facts from which an employment tribunal could decide that an unlawful act of discrimination has taken place, the burden of proof 'shifts' to the respondent to prove a non-discriminatory explanation.

98. In a claim under s15 EQA, in order to prove a prima facie case of discrimination and shift the burden to the employer to disprove his or her case, the claimant will need to show:

- that he or she has been subjected to unfavourable treatment
- that he or she is disabled and that the employer had actual or constructive knowledge of this
- a link between the disability and the 'something' that is said to be the ground for the unfavourable treatment
- some evidence from which it could be inferred that the 'something' was the reason for the treatment.

99. If the prima facie case is established and the burden then shifts, the employer can defeat the claim by proving either:

- that the reason or reasons for the unfavourable treatment was/were not in fact the 'something' that is relied upon as arising in consequence of the claimant's disability, or
- that the treatment, although meted out because of something arising in consequence of the disability, was justified as a proportionate means of achieving a legitimate aim.

100. The burden of proof is on the respondent to establish justification. The EAT In **Stott v Ralli Ltd 2022 IRLR 126** acknowledged that the test of

justification in s15 EQA requires that the treatment complained of amounts to a proportionate means of achieving a legitimate aim. The test is an objective one for the tribunal to determine, not a band of reasonable responses test. Tribunals must engage in ‘critical scrutiny’ by weighing an employer’s justification against the discriminatory impact, considering whether the means correspond to a real need of the undertaking, are appropriate with a view to achieving the aim in question, and are necessary to that end.

101. The Equality and Human Rights Commission’s Code of Practice on Employment (2011) (‘the EHRC Employment Code’) sets out guidance on objective justification. In essence, the aim pursued should be legal, should not be discriminatory in itself, and should represent a real, objective consideration. Although business needs and economic efficiency may be legitimate aims, the Code states that an employer simply trying to reduce costs cannot expect to satisfy the test (see para 4.29). As to proportionality, the Code notes that the measure adopted by the employer does not have to be the only possible way of achieving the legitimate aim, but the treatment will not be proportionate if less discriminatory measures could have been taken to achieve the same objective (see para 4.31).
102. The close connection that often exists in practice between a failure to make reasonable adjustments and objective justification under s15 was also acknowledged by Lord Justice Elias in **Griffiths v Secretary of State for Work and Pensions 2017 ICR 160 CA** when he said: ‘An employer who dismisses a disabled employee without making a reasonable adjustment which would have enabled the employee to remain in employment — say allowing him to work part-time — will necessarily have infringed the duty to make adjustments, but in addition the act of dismissal will surely constitute an act of discrimination arising out of disability. The dismissal will be for a reason related to disability and, if a potentially reasonable adjustment which might have allowed the employee to remain in employment has not been made, the dismissal will not be justified.’
103. The EHRC Employment Code, which states that ‘[i]f an employer has failed to make a reasonable adjustment which would have prevented or minimised the unfavourable treatment, it will be very difficult for them to show that the treatment was objectively justified’ — para 5.21.
104. *Section 13 of the Equality Act 2010*: provides that ‘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’.
105. It is necessary for the tribunal to establish whether there was a difference in treatment of the claimant when compared with another person, who is a “comparator”. This can either be an actual person, or persons, or, a hypothetical one. A comparator must be someone who does not share the relevant protected characteristic, and whose circumstances are not materially different from the claimant’s. If there is a difference in treatment, then the tribunal must consider whether there any findings of fact from which

they could draw the inference that the difference in treatment was on the grounds of the alleged protected characteristic. If there are such facts, then the burden falls on the respondent to prove that any difference in treatment was NOT because of the protected characteristic.

106. In **London Borough of Islington v Ladele** [2009] IRLR 154 the EAT stated:

(1) In every case the tribunal has to determine the reason why the claimant was treated as he was. As Lord Nicholls put it in *Nagarajan v London Regional Transport* [1999] IRLR 572, 575—“this is the crucial question”. He also observed that in most cases this will call for some consideration of the mental processes (conscious or subconscious) of the alleged discriminator.

(2) If the tribunal is satisfied that the prohibited ground is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reason. It is sufficient that it is significant in the sense of being more than trivial:

(3) As the courts have regularly recognised, direct evidence of discrimination is rare and tribunals frequently have to infer discrimination from all the material facts. The courts have adopted the two-stage test, which reflects the requirements of the Burden of Proof Directive (97/80/EEC). These are set out in *Igen v Wong*.

(4) The explanation for the less favourable treatment does not have to be a reasonable one; it may be that the employer has treated the claimant unreasonably. That is a frequent occurrence quite irrespective of the race, sex, religion or sexual orientation of the employee. So the mere fact that the claimant is treated unreasonably does not suffice to justify an inference of unlawful discrimination to satisfy stage one. ...

(5) It is not necessary in every case for a tribunal to go through the two-stage procedure. In some cases it may be appropriate for the tribunal simply to focus on the reason given by the employer and if it is satisfied that this discloses no discrimination, then it need not go through the exercise of considering whether the other evidence, absent the explanation, would have been capable of amounting to a prima facie case under stage one of the *Igen* test:

(6) It is incumbent on a tribunal which seeks to infer (or indeed to decline to infer) discrimination from the surrounding facts to set out in some detail what these relevant factors are.

107. In **Talbot v Costain Oil, Gas and Process Ltd and ors** 2017 ICR D11, the EAT stated:

- it is very unusual to find direct evidence of discrimination

- normally a tribunal's decision will depend on what inference it is proper to draw from all the relevant surrounding circumstances, which will often include conduct by the alleged discriminator before and after the unfavourable treatment in question
- it is essential that the tribunal makes findings about any 'primary facts' that are in issue so that it can take them into account as part of the relevant circumstances the tribunal's assessment of the parties and their witnesses when they give evidence forms an important part of the process of inference
- assessing the evidence of the alleged discriminator when giving an explanation for any treatment involves an assessment not only of credibility but also of reliability, and involves testing the evidence by reference to objective facts and documents, possible motives and the overall probabilities
- where there are a number of allegations of discrimination involving one person, conclusions about that person are obviously going to be relevant in relation to all the allegations
- the tribunal must have regard to the totality of the relevant circumstances and give proper consideration to factors that point towards discrimination in deciding what inference to draw in relation to any particular unfavourable treatment
- if it is necessary to resort to the burden of proof in this context, S.136 EqA provides, in effect, that where it would be proper to draw an inference of discrimination in the absence of 'any other explanation', the burden lies on the alleged discriminator to prove there was no discrimination.

Determination of the Issues – by the two member tribunal panel

108. This includes, where appropriate, any additional findings of fact not expressly contained within the findings above but made in the same manner after considering all the evidence.

Refused the claimant an interview for the role of Business Support Officer based in Etrop Court.

109. The claimant was not selected for interview for this role. That is unfavourable treatment within the meaning of s15 Equality Act 2010.
110. The key question is what was the reason for the decision. The claimant asserts that the reason was her absence which arose from her disability.
111. The tribunal bears in mind that it is very unusual to find direct evidence of discrimination and that normally a tribunal's decision will depend on what inference it is proper to draw from all the relevant surrounding circumstances, which will often include conduct by the alleged discriminator before and after the unfavourable treatment in question.

112. We have considered all the evidence to decide whether there any circumstances from which it could be inferred that the claimant's absence was the reason for the unfavourable treatment.
113. We have considered the email at B189 (see paragraph 91 above) in which it looks like a name has been blanked out. This email is not about the claimant and we would agree with the respondent that it is impossible to know whether the name relates to an Mpeople mover or some other relevant staff member involved in a recruitment process. There is no satisfactory evidence that this email is related to the rejection of the claimant for this or any other role. The tribunal is not prepared to draw any adverse inference from that email and the redaction of the name within it. It is not, by itself, evidence to contradict the respondent's witnesses evidence that the names of the candidates in the Mpeople scheme are not revealed to them in the selection process.
114. The tribunal is not prepared to draw any adverse inference from the trade union representative's bare assertion that the failure to interview the claimant was an act of discrimination. Mr Candlin has not been called to give evidence in support of and/or by way of explanation of that bare assertion.
115. We note, in particular:
- 115.1. Ms Fallows' evidence that she did not know the identity of the candidate for the post, only their initials. That is inconsistent with the email dated 17 January 2023 (see paragraph 54 above) identifying the candidate as "her" and "she". Ms Fallows' recollection of how she came to identify the candidate, the claimant, as "her" and "she" is poor;
- 115.2. Ms Fallows incorrectly stated in that email to Andy Garrett/Smith that the claimant had been previously interviewed for the post. Again, Ms Fallows' recollection on how she came to make that error is poor (see paragraphs 54 – 56 above);
- 115.3. Ms Fallows' evidence as to the reason for not selecting the claimant for interview is inconsistent: it is not clear whether she simply rejected the application because Linda Ball had recently rejected the application for the same job, without actually making an assessment of the skills shown in the baseline against the skills required for the role herself. Or whether, at the same time, before sending the rejection to Andy Barrett/Smith, she made an assessment of the skills and agreed with Linda Ball's previous assessment (see our finding at paragraph 53 above);
- 115.4. E-mail correspondence shows that there had been difficulty filling this role;

115.5. Andy Garrett/Smith's reminder to Linda Ball (see paragraph 46 above) that when considering a baseline from a MPeople candidate that:

If you feel the baseline broadly demonstrates the skills and experience required for the role, we would encourage you to explore further gaps at an interview and ask that you take this into consideration when assessing them against the role profile for the position.

This strongly suggests that recruiters should be slow to reject an MPeople candidate without interview.

116. We have given careful consideration to the reason put forward by Ms Fallows for her decision not to interview the claimant and note in particular as follows:

116.1. The redeployment process 'MPeople' is both for people who are potentially facing redundancy/end of fixed term contract/and people who are medically incapable of carrying out their role. A recruiter would not know the reason someone was in the process, so there could be no general assumptions as to whether they had a disability or any sort of absence level;

116.2. Ms Fallows did not know the claimant, had never met her. Ms Fallows was unaware of the reason for the candidate "LH" being in the Mpeople process, did not know that the candidate "LH" was disabled, did not know the level of absence of the candidate "LH";

116.3. It is standard practice for a candidate to be rejected if they have recently been rejected for the same role;

116.4. Linda Ball had rejected the application on the basis of the candidate's lack of skills. She had provided feedback for her reason. Her assessment was not challenged by the claimant or her trade union representative at the time;

117. In all the circumstances the tribunal accepts the evidence of Ms Fallows and finds that the reason for the refusal to interview the claimant was because her baseline did not provide sufficient evidence of the skills required for the post. The reason for the refusal did not relate to the claimant's absences. Ms Fallows poor recollection of the events in January 2023, and her mistake in saying that the claimant had been interviewed are not enough for the tribunal to conclude that Ms Fallows was lying as to the real reason for the refusal to interview. Ms Fallows is seeking to recall a decision taken quickly nearly two years ago. Memories do fade over time.

118. The claim under s15 Equality Act in relation to the refusal to interview for this post is unsuccessful and is hereby dismissed.

Dismissal

119. The claimant was dismissed. It is not clear on what grounds the claimant asserts that the act of dismissal was unfavourable treatment. It is her clear evidence that she did not want to remain in the employment of the respondent. The complaint is that the respondent failed to pay the claimant compensation for, and to acknowledge responsibility for, the poor treatment, the breach of duty care, which the claimant now alleges took place over the years of her employment. That is not a claim for determination by this tribunal. The act of dismissal did not amount to unfavourable treatment. The claim is unsuccessful and is hereby dismissed.
120. Further, and in the alternative, if we are wrong on that, the tribunal has considered the claim on the basis that the dismissal did amount to unfavourable treatment.
121. The claimant was dismissed. It is accepted by the respondent that the principal reason for the claimant's dismissal was medical incapability, her unfitness for a role, which arose from her disability.
122. There was unfavourable treatment because of something arising in consequence of disability.
123. The next question is whether the treatment complained of amounts to a proportionate means of achieving a legitimate aim. The tribunal notes that the test is an objective one for the tribunal to determine, the tribunal must engage in 'critical scrutiny' by weighing an employer's justification against the discriminatory impact, considering whether the means correspond to a real need of the undertaking, are appropriate with a view to achieving the aim in question, and are necessary to that end.
124. The respondent relies on the following aim, namely that:
- The claimant's position required agency cover during her absence, which resulted in both a financial burden on the organisation and a negative impact on the continuity of service provided to individuals relying on the respondent's care. The ongoing reliance on temporary staff had implications for service quality and stability, which became unsustainable over time.
125. It was clarified in evidence that it was the claimant's substantive post as a Grade 4 supportworker which required agency cover during the claimant's

absence from the role on alternative duties following the recommendation of OH.

126. Until her dismissal or move to a different permanent role the claimant's substantive role was that of Grade 4 Support worker. The respondent could not appoint a permanent member of staff to that role. Therefore, the respondent was required to fill that role with agency staff. In addition, the respondent was required to cover the claimant's absences in the Resource Team Administrator role with agency staff. It is the undisputed evidence of the respondent's witnesses that the ongoing reliance on temporary agency staff had a negative impact on the continuity of service provided to individuals relying on the respondent's care.
127. The tribunal is satisfied that the aim is a legitimate one: it is legal, is not discriminatory in itself, and represents a real, objective consideration. The aim is not purely one of business needs and economic efficiency. The respondent did express genuine concerns about the cost of employing agency staff as this impacted on the service it could provide generally to its service users. However, this was not a case of an employer simply trying to reduce costs.
128. The next question is whether the treatment was an appropriate and reasonably necessary way to achieve those aims. The claimant had been unable to carry out her substantive role as a Support Worker for some 7 years. She had been transferred to the temporary supernumerary role as Resource Team Administrator. That role had changed and OH advised that the claimant could no longer continue in that role. She had been allocated a further temporary supernumerary role and then placed on the MPeople process in an attempt to find the claimant alternative work. That had been unsuccessful. The time on MPeople had been extended. The MPeople case worker had taken active steps to secure interviews for the claimant. He had taken steps to obtain an interview when the claimant had missed one due to ill-health (see paragraph 44 above). He made the direct approach to Ms Fallows about the position in Etrop Court. Mr Considine, the dismissing officer, adjourned the Attendance Management meeting in May 2023 to obtain up to date medical advice as to the claimant's capability to work. He also requested that the claimant attend a further review meeting with her line manager, Mr Culkin, to discuss the OH report. At the time of making the decision to dismiss the claimant was unfit to return to work and had not identified any steps which would assist in helping her back to work. By the time of the Appeal Hearing, a full rehearing of the issues, the claimant made it clear that she did not want to return to work.

129. The claimant suggested no alternatives to dismissal. The claimant put forward no reasonable adjustments which could be made to secure her return to work either immediately or at some time in the near future. The respondent had obtained OH advice regularly throughout the claimant's employment and had made reasonable adjustments as suggested by OH.. There is no satisfactory evidence to support the claimant's assertion that the OH recommendations had not been followed or that management had failed to provide her with adequate support. The claimant was a member of the trade union, had sought their advice on employment matters. At no time had she presented a formal complaint that she was not being supported, that further adjustments to her working conditions were needed.

130. The claimant makes complaints relating to errors in procedure. The claimant asserts that there was an unreasonable delay between the hearing on 18 May 2023 and the reconvened hearing on 18 July 2023. However, the delay was in part due to the respondent obtaining up-to date medical advice and the claimant raising a grievance. That was a legitimate reason for the delay. The claimant asserts that she was not given full documentation for the hearing on 18 July 2023. However, this was rectified by the Appeal Hearing, which was a full rehearing. The claimant was upset by the reconvened hearing being called a disciplinary hearing (see paragraph 74 above). That was understandable. However, Mr Considine apologised for the error and clearly carried out his decision making on the basis that the hearing was a Capability hearing. There is no satisfactory evidence to support any assertion that his decision making was adversely affected or prejudiced by him mistakenly referring to the reconvened hearing as a Disciplinary hearing to consider an allegation of gross misconduct. (see below).

131. There is no satisfactory evidence to support an assertion that something less discriminatory could have been done instead. The claimant did not want to continue in employment. No adjustments had been identified by her to assist her return to work. The MPeople process had been extended already, no alternative employment had been found, and the claimant did not identify any vacancies which she could be interviewed for.

132. In all the circumstances, the tribunal finds that was the dismissal was an appropriate and reasonably necessary way to achieve the respondent's legitimate aim. Nothing less discriminatory could have been done to avoid dismissal. In balancing the needs of the claimant against the needs of the respondent it is noted that the respondent had not rushed to the decision, it had made reasonable adjustments, it had taken reasonable steps to find the claimant alternative employment. During this time costs of the agency work filling the claimant's post as Support Worker continued, adversely affecting

the budget for the provision of services generally. The use of agency staff continued to affect the quality of service it was providing to service users. Balancing that against the continuation of employment of an employee who no longer wished to work for the respondent, who put forward no alternatives to dismissal, the tribunal finds that the respondent had waited long enough, had taken sufficient steps to avoid the dismissal. The needs of the respondent outweighed the needs of the claimant. In all the circumstances dismissal was justified.

133. The claim under s15 Equality is not well-founded and is hereby dismissed.

Direct discrimination

134. Mr Considine did send the letter wrongly dated 3 May 2023 (see paragraph 74 above).

135. The tribunal is not satisfied that Mr Considine would have treated a non-disabled comparator any differently. The tribunal accepts the evidence of Mr Considine and finds that he drafted the letter himself, using the wrong template. This was a very basic error and shows a lack of care in preparing correspondence. There is no evidence to suggest that Mr Considine would have acted differently if the person receiving the letter was not disabled.

136. Further, and in any event, there are no facts from which the tribunal could infer that the reason for any less favourable treatment was the claimant's disability.

137. Further, and in any event, the tribunal accepts the explanation of Mr Considine and finds that the reason he sent this letter was because he made a mistake. A serious mistake. He drafted the letter himself. He did not have it checked by HR before sending it. The letter was clearly drafted without much, if any care, because even the date was wrong. On hearing of the error he apologised to the claimant. The reason for sending the letter was the carelessness of Mr Considine. It was not related to the claimant's disability.

138. The claim under s13 Equality is not well-founded and is hereby dismissed.

Case Number: 2413631/2023

Approved by
Employment Judge Porter
Date: 11 June 2025

RESERVED JUDGMENT SENT TO THE PARTIES ON
Date: 14 July 2025

ON BEHALF OF THE TRIBUNAL

Appendix 1

List of Issues identified in the Order of EJ Ross made on 20 May 2024

1. Time Limits

1.1 Having regard to the extension of time provisions in section 207B(3) and 207B(4) in this case, the claimant's claim for section 15 discrimination related to dismissal was presented within the time limits.

1.2 If the claimant is also relying on the refusal to interview her for the role of the Business Support position based in Etrop Court as an act of disability discrimination, that may be out of time. In those circumstances the Tribunal will ask itself:

1.2.1 Was the claim made to the Tribunal within three months (allowing for any 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 (allowing for any early conciliation extension) of the end of that period?

1.2.4 If not, were the claims made within such further period as 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 respondent agrees that the claimant was a disabled person within the meaning of section 6 Equality Act 2010 at the relevant time by reason of an anxiety disorder.

3. Discrimination arising from disability (Equality Act 2010 section 15)

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

3.2 If so, did the respondent treat the claimant unfavourably in the following alleged respect:

Refused the claimant an interview for the role of Business Support Officer based in Etrop Court.

3.3 Did the following arise in consequence of the claimant's disability:

3.3.1 The claimant's sickness absence.

3.4 Did the respondent fail to interview the claimant for the role of Business Support Officer based in Etrop Court because of the claimant's absence from work, and was that absence from work because of her disability?

3.5 If so, can the respondent show that there was no unfavourable treatment because of something arising in consequence of disability?

3.6 If not, was the treatment a proportionate means of achieving a legitimate aim? What was the respondent's aim.:

3.7 The Tribunal will decide in particular:

3.7.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;

3.7.2 could something less discriminatory have been done instead;

3.7.3 how should the needs of the claimant and the respondent be balanced?

Dismissal

3.8 Did the respondent treat the claimant unfavourably in dismissing the claimant?

3.9 Did the following arise in consequence of the claimant's disability: her unfitness to return to her substantive role?

3.10 Has the claimant proven facts from which the Tribunal could conclude that the dismissal was because of the claimant's unfitness to return to her substantive role?

3.11 Did the respondent dismiss the claimant because she was unfit to return to her substantive role?

3.12 If so, can the respondent show that there was no unfavourable treatment because of something arising in consequence of disability?

3.13 If not, was the treatment a proportionate means of achieving a legitimate aim? What was the respondent's legitimate aim?

3.14 The Tribunal will decide in particular:

3.14.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;

3.14.2 could something less discriminatory have been done instead;

3.14.3 how should the needs of the claimant and the respondent be balanced?

4. Remedy for discrimination

4.1 What financial losses has the discrimination caused the claimant? If the claimant had been able to return to work in an administrative role for the respondent, when would that have happened? What income would the claimant have received in that role?

4.2 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

4.3 If not, for what period of loss should the claimant be compensated?

4.4 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

4.5 Is there a chance that the claimant's employment would have ended in any event because of the claimant's illhealth? If so, when? Should their compensation be reduced as a result?

4.6 Should interest be awarded? How much?

APPENDIX 2

Amended LIST OF ISSUES

1. Time Limits

1.1 Having regard to the extension of time provisions in section 207B(3) and 207B(4) in this case, the claimant's claim for section 15 discrimination related to dismissal was presented within the time limits.

1.2 If the claimant is also relying on the refusal to interview her for the role of the Business Support position based in Etrop Court as an act of disability discrimination, that may be out of time. In those circumstances the Tribunal will ask itself:

1.2.1 Was the claim made to the Tribunal within three months (allowing for any 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 (allowing for any early conciliation extension) of the end of that period?

1.2.4 If not, were the claims made within such further period as 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 respondent agrees that the claimant was a disabled person within the meaning of section 6 Equality Act 2010 at the relevant time by reason of an anxiety disorder and non-organic psychosis

3. Discrimination arising from disability (Equality Act 2010 s 15)

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

3.2 If so, did the respondent treat the claimant unfavourably in the following alleged respect:

Refused the claimant an interview for the role of Business Support Officer based in Etrop Court.

3.3 Did the following arise in consequence of the claimant's disability:

3.3.1 The claimant's sickness absence.

3.4 Did the respondent fail to interview the claimant for the role of Business Support Officer based in Etrop Court because of the claimant's absence from work, and was that absence from work because of her disability?

3.5 If so, can the respondent show that there was no unfavourable treatment because of something arising in consequence of disability?

3.6 If not, was the treatment a proportionate means of achieving a legitimate aim? What was the respondent's aim.:

3.7 The Tribunal will decide in particular:

3.7.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;

3.7.2 could something less discriminatory have been done instead;

3.7.3 how should the needs of the claimant and the respondent be balanced?

Dismissal

3.8 Did the respondent treat the claimant unfavourably in dismissing the claimant?

3.9 Did the following arise in consequence of the claimant's disability: her unfitness to return to her substantive role?

3.10 Has the claimant proven facts from which the Tribunal could conclude that the dismissal was because of the claimant's unfitness to return to her substantive role?

3.11 Did the respondent dismiss the claimant because she was unfit to return to her substantive role?

3.12 If so, can the respondent show that there was no unfavourable treatment because of something arising in consequence of disability?

3.13 If not, was the treatment a proportionate means of achieving a legitimate aim? What was the respondent's legitimate aim?

3.14 The Tribunal will decide in particular:

3.14.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;

3.14.2 could something less discriminatory have been done instead;

3.14.3 how should the needs of the claimant and the respondent be balanced?

4. Direct Discrimination s13 Equality Act 2010

4.1 What are the facts in relation to the following allegation:

- (1) Disciplinary hearing letter dated for 18th July 2023 – stated 'you were advised that these allegations constitute gross misconduct which if found may result in your summary dismissal'. An attendance management hearing for a person with a long-standing mental health disability should never have been referred to as gross misconduct and be facing disciplinary action.

4.2 Has the claimant proven facts from which the Tribunal could conclude that in any of those respects the claimant was treated less favourably than someone in the same material circumstances without a disability was or would have been treated? The claimant relies on a hypothetical comparison.

4.3 If so, has the claimant also proven facts from which the Tribunal could conclude that the less favourable treatment was because of disability?

4.4 If so, has the respondent shown that there was no less favourable treatment because of disability ?

5. Remedy for discrimination

5.1 What financial losses has the discrimination caused the claimant? If the claimant had been able to return to work in an administrative role for the respondent, when would that have happened? What income would the claimant have received in that role?

5.2 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

5.3 If not, for what period of loss should the claimant be compensated?

5.4 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

5.5 Is there a chance that the claimant's employment would have ended in any event because of the claimant's illhealth? If so, when? Should their compensation be reduced as a result?

5.6 Should interest be awarded? How much?