



EMPLOYMENT TRIBUNALS

Claimant: Mrs Y Barron

Respondent: Medway NHS Foundation Trust

Heard at: Ashford (by video)

On: 13-16 May 2025 & 4 July 2025 (In Chambers)

Before: Employment Judge Corrigan
Ms B Leverton
Ms C Oldfield

Appearances

For the claimant: In person

For the respondent: Ms G Crew, Counsel

Reserved Judgment

1. The Tribunal has found the Respondent contravened the Equality Act 2010 in respect of both the claim of discrimination arising from disability and failure to make reasonable adjustments.

Reasons

1. The claims and list of issues had been set down in Case Management Orders and then further amended by the parties as per pages 108-109. During evidence the claimant conceded that allegations 3.1.1. and 3.1.2 below occurred before the respondent had knowledge of her disabilities. It had been agreed we were considering liability only at this stage although I have included the remedy issues below.

Issues

2. The issues the Tribunal will decide are set out below.

Time limits

- 2.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 17 February 2023 may not have been brought in time.
- 2.2 Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
 - 2.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
 - 2.2.2 If not, was there conduct extending over a period?
 - 2.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
 - 2.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
 - 2.2.4.1 Why were the complaints not made to the Tribunal in time?
 - 2.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

3. Disability

- 3.1 It is not in dispute that the claimant had a disability as defined in section 6 of the Equality Act 2010, namely migraines and depression, at the time of the events the claim is about.

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

- 4.1 Did the respondent treat the claimant unfavourably by:
 - 4.1.1 Failing to express to the claimant, at least two months prior to the claimant's appraisal on 28 July 2022, the major concerns it had about her performance (withdrawn by the claimant);
 - 4.1.2 Deciding to implement a performance management policy on or about 14 July 2022 without reference

to, or consultation with, the claimant (withdrawn by the claimant);

- 4.1.3 Failing to suspend the performance action plan after the disclosure of the claimant on 9 August 2022 of her disabilities;

- 4.2 Did the following things arise in consequence of the claimant's disability:

- 4.2.1 The claimant needed to read and re-read information and it took her longer to process and understand information, to engage in learning and to maintain concentration and motivation. The claimant could not work at the same speed or assimilate knowledge as quickly as her peers.

- 4.3 Was the unfavourable treatment because of any of those things?

- 4.4 Was the treatment a proportionate means of achieving a legitimate aim? The respondent says that its aims were:

- 4.4.1 To ensure the required competency level of a clinical coder was met in compliance with the requisite National Clinical Coding Standards and the respondent's internal standards set out in the Additional Terms of Appointment, including meeting the competency requirements and taking the National Coding Exam within three years of appointment (which can be attempted from year two onwards).

- 4.5 The Tribunal will decide in particular:

- 4.5.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;
- 4.5.2 could something less discriminatory have been done instead;
- 4.5.3 how should the needs of the claimant and the respondent be balanced?

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

The respondent admits that the claimant was disabled by reason of depression, anxiety and chronic migraines. The Respondent says that the Claimant first disclosed her disabilities on 9 August 2022, and

that it had no knowledge of her disabilities – actual or constructive – before that date.

The claimant submits that she first made reference to ‘medical issues’ during her appraisal on 28 July 2022 but accepts she did not declare her disabilities in full until 9 August 2022.

5. Failure to make reasonable adjustments (Equality Act 2010 sections 20 and 21)

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

The respondent admits that the claimant was disabled by reason of depression, anxiety and chronic migraines. The Respondent says that the Claimant first disclosed her disabilities on 9 August 2022, and that it had no knowledge of her disabilities – actual or constructive – before that date.

The claimant submits that she first made reference to ‘medical issues’ during her appraisal on 28 July 2022 but accepts she did not declare her disabilities in full until 9 August 2022.

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

5.2.1 A requirement that trainee clinical coders met the National Clinical Coding Standards, maintained a log book and complied with the Respondent’s own internal standards at each stage of her training (PCP1); and

5.2.2 That a trainee clinical coder who did not satisfy PCP1 would be subject to a performance management process (PCP2).

5.3 Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant’s disability, in that the targets set by the respondent did not take into account the claimant needed longer to assimilate knowledge and to work at the same speed as the claimant’s peers due to disabilities?

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 be taken to avoid the disadvantage? The claimant suggests:

- 5.5.1 suspending the performance management process on the claimant's full disclosure of her disabilities;
 - 5.5.2 allowing the claimant to have an input into performance action plans to include targets and timescales;
 - 5.5.3 exploring what was the root cause of the claimant's errors and their underlying cause; and/or
 - 5.5.4 the respondent's trainer adopting a process of observing and working through examples with the Claimant rather than the process actually used.
- 5.6 was it reasonable for the respondent to have taken those steps and when?
- 5.7 Did the respondent fail to take those steps?

6. Remedy for discrimination

- 6.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?
- 6.2 What financial losses has the discrimination caused the claimant?
- 6.3 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?
- 6.4 If not, for what period of loss should the claimant be compensated?
- 6.5 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?
- 6.6 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?
- 6.7 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?
- 6.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

- 6.9 Did the respondent or the claimant unreasonably fail to comply with it?
- 6.10 If so is it just and equitable to increase or decrease any award payable to the claimant?
- 6.11 By what proportion, up to 25%?
- 6.12 Should interest be awarded? How much?

Hearing

- 7. The tribunal heard evidence from the Claimant on her own behalf. The tribunal heard evidence from Ms N Willey (Clinical Coding Training Manager at the relevant time and now Deputy Head of Clinical Coding); Mr Chris Carter (Head of Clinical Coding) and Mr Simon Bailey (Director of Business Intelligence) on behalf of the respondent.
- 8. There was a 488 page bundle. In addition the respondent provided some additional documents during the course of the hearing with the consent of the claimant and the tribunal.
- 9. The parties made oral submissions and the claimant provided a written submission.
- 10. Based on the evidence heard and the documents before us we found the following facts.

Facts

- 11. The claimant began her employment with the respondent on 7 January 2013. On 25 August 2021 she began working as a Trainee Accredited Clinical Coder (the role with which we are concerned). She commenced the role with 6 others.
- 12. This involves training over a 3 year period with the expectation staff reach full competency within 3 years. The claimant and her peers went through a formal training plan in the first year between August 2021 and July 2022. Their work was audited at regular intervals to check progress. The training and auditing is resource intensive. They are measured against specific objectives like basic coding principles, the three dimensions of coding accuracy and output.
- 13. The terms and conditions included the following requirements during training: completion of the Clinical Coding Standards Course within 6 months, demonstration of learning across all specialities by completion of a log book and there are timescales from year 2 in relation to sitting the exam (p113). The

- terms and conditions state that if a member of staff is unable to meet the required competency level they will be unable to work as a coder and that if a staff member does not complete appropriate training and meet work competencies they will be managed under the capability policy and this could lead to dismissal (114).
14. The respondent works to National Coding requirements though we were not shown these.
 15. The work is high volume and high pressure and of high importance to the respondent. Coding forms the basis for payment of medical procedures and also for learning from discharge notes. Inaccuracies can lead to significant loss of revenue and also incorrect learning about e.g. mortality.
 16. It is accepted the claimant had two disabilities at the relevant time, migraines and depression & anxiety. She has had both for almost all her adult life but in the past they have been well managed. Shortly after her appointment into the role, in August 2021, the claimant experienced a number of issues involving close family members needing her support in serious situations. This caused her migraines to recur, and a depressive episode. She did record in her log that she had been impacted by personal issues in October 2021 but otherwise accepts that she did not share her difficulties with her managers at that time. There is a suggestion that the log was later amended by the claimant to add the personal details. In any event she does not contest that she did not tell the employer until the appraisal. She says she was in survival mode and just trying to get through each day. She did not inform her management but this impacted her ability to study in her own time, as required for her role. Her concentration, focus and motivation were all affected by her conditions. She was also withdrawn. At the worst, she was having 3-4 migraines a week.
 17. Ms Willey the claimant's Line Manager reported that the claimant was up and down during her training, and this is reflected in the training log, with both positive comments and constructive feedback. The claimant was given feedback in her log book. She also was aware herself that she had fallen behind completing her log book. However there was no mention of performance management until her appraisal. Ms Willey's view in evidence was that the claimant was competent but needed to just show her commitment and consistency. Mr Carter disagreed and felt the claimant lacked aptitude for the role. He strongly believed that someone struggling in the way the claimant was would not progress to pass the exam within the time scales.
 18. In fact, Mr Carter and Ms Willey had decided on 14 July 2022 that the claimant was going to be performance managed, had drafted a plan, and had discussed informing the claimant in her appraisal (on 28 July 2022). Concerns included that her log book had not been completed, the training had not been completed and that the claimant was both slow and inaccurate. Ms Willey reports that Mr Carter instructed her to be firm and that if the claimant raised issues, to respond

- to the effect that “we all have issues”. She says her natural inclination is to be “soft” and the advice was she should be firm so that the claimant was in no doubt about the situation.
19. In her appraisal on 28 July 2022 the claimant scored herself the lowest score of 5, as did Ms Willey. The claimant herself said she had found the role very challenging; had underestimated its complexity and the knowledge needed. She felt she had gone awry and not found her stride. She said things happening in her personal life had not helped her concentration and she had not been able to give 100% (p127).
20. She had successfully completed the standards course but not all the subjects within her training log (p127). She said that she fully acknowledged she had been underperforming and that she had struggled significantly over the year. She said she now realised she should have sought support with her personal and medical issues but felt overwhelmed. She said that with support she could make the necessary improvements (p127). The claimant was informed that she was to be performance managed and raised that she had personal and medical issues.
21. Ms Willey commented in the appraisal that the claimant had had some personal issues which had probably impacted her performance “as she has found it difficult to compartmentalise priorities” (these were her words and not the claimant’s words) (p131). The claimant said “I am incredibly disappointed to have not achieved my objectives and was devastated to learn that performance measures will be implemented...I have not been able to compartmentalise my difficulties and I found a comment made by my line manager during the appraisal regarding how other members of the team also have issues but they have been able to compartmentalise them, and the performance management process itself quite harsh....I am determined to address the issues that have affected my performance so that I can perform to the standard I know I am capable of.” The reference to compartmentalising difficulties came from Ms Willey and what she had been advised to say to avoid being “soft” to the claimant. Ms Willey made the comment she had been instructed to make and the claimant gave no further details of her difficulties, finding the comment harsh. Ms Willey says she told Mr Carter.
22. Mr Carter then met with the claimant on 29 July 2022 to run through the performance improvement plan. It was an informal meeting under the performance management policy (pp461-474). There is a different policy dealing with ill health. The policy states the following:
- 22.1 appropriate action should be taken promptly as soon as it is noticed that the employee is not performing certain aspects of the job satisfactorily;

- 22.2 an employee judged in the appraisal as not meeting the required standard may be subject to performance management;
 - 22.3 managers can progress straight to stage 2 or stage 3 formal stages where the unacceptable performance is likely to have serious consequences on service delivery or the financial security of the Trust is at risk and it is considered that the level of performance cannot be remedied by training in a reasonable period;
 - 22.4 managers must offer support when implementing the policy in order to assist improvement where possible;
 - 22.5 managers must produce and agree where possible with the employee a comprehensive action plan for improvement;
 - 22.6 employees must highlight to their manager any factors which may impact their ability to perform and advising of any necessary training and support required to improve performance;
23. The process has three stages, stage 1 -an informal stage; stage 2 – a formal monitoring stage and stage 3 a formal hearing. A manager has discretion regarding moving between the stages and each stage can be extended as necessary to continue to support staff to improve their performance at work. All meetings should be conducted in a supportive and sensitive manner and are to enable the manager and employee to discuss the performance and consider what support can be offered to achieve the necessary standards. Paragraph 6.3 lists the matters to be discussed as relevant, which include the employee's response including work or personal issues; agreeing the necessary support to enable the employee to achieve the objectives and recommendations from Occupational Health, where necessary. The meeting should result in an action plan which makes clear the expected standards; a realistic timescale (normally between 4-6 weeks) for review giving sufficient time for any identified support and training to be undertaken that would support improvement; identification of necessary training, coaching, mentoring supervision and other support to meet the objectives set.
24. In the informal stage a review period and expectations of improved performance will be set. If these are met then the manager and employee will continue with supervision to enable continued performance and general well-being. If they are not met the manager will advise of progression to the next stage or an extended period of informal monitoring where appropriate.
25. At stage 2, the formal monitoring stage, the meeting will explore further the individual circumstances in a supportive and sensitive manner and set out a further set of objectives in an action plan. During the period the employee's performance is closely monitored and it is expected there will be appropriate

- support and communication including 1:1s. Again if the claimant's performance does not improve as required the formal monitoring can be extended or they can progress to stage 3.
26. A stage 3 meeting is convened where the performance has not improved and all options of support have been explored. This is a formal meeting with a management statement of case and the employee can submit any supporting evidence they wish. Options open to the panel include a further review specifying the monitoring period and review date (in addition to dismissal/redeployment).
27. If an employee raises a grievance consideration should be given to suspending the procedure while the complaint is investigated.
28. The invitation to the informal stage 1 meeting came from Ms Willey. The Claimant was told in the invitation she could contact OH if she needed personal support. The meeting was with Chris Carter. There are no notes of the meeting. There was no discussion about the claimant's personal and medical issues and how they were impacting performance. He had already drawn up the two week performance plan in which the claimant had to complete 40 spells and meet 4 out of 5 objectives. His view was that the 5 objectives set were lenient. They were measured against how her peers had performed over the year not how they were currently performing. It allowed for a significantly greater number of errors. He had in mind that the second year would be even more intensive. He did not really expect the claimant to be able to meet it. There was one 1:1 scheduled and the claimant was also to be given feedback on each spell.
29. The stage 1 performance improvement plan commenced on 1 August 2022.
30. On 9 August 2022 in her 121 meeting the claimant raised with Ms Willey that she had the two disabilities and that they had had an impact on her concentration and performance. She also said work pressures of coding deadlines and trying to improve output had also affected her. There was a discussion about an OH referral and due to a misunderstanding about the process the claimant said and Ms Willey accepted that she would refer herself. This was inaccurately recorded by Ms Willey and relayed to Mr Carter as the claimant declining a referral to Occupational Health at this time. Neither Ms Willey or Mr Carter took any responsibility for this or appeared to understand that OH recommendations would assist the respondent in stage 1 of the performance process (as set out in the respondent's process - referred to at paragraph 23 above).
31. The claimant said she was feeling "shell-shocked" and that a decision had already been made and she only had 2 weeks to turn things around. She said she would never be able to turn things around in 2 weeks and that no mitigating circumstances had been taken into account. Ms Willey's focus was that she had not been aware of the health issues or how the claimant's personal

- circumstances were affecting her and that support had already been given. She did give some guidance on coding as requested by the claimant but otherwise neither she nor Mr Carter took any action on the information disclosed by the claimant (pp137-139).
32. The respondent continued with what both sides accept was an audit of 40 spells with objectives the claimant was unlikely to be able to meet. On 12 August 2022 she was told she had failed to meet the objectives.
33. On 16 August 2022 the claimant emailed Chris Carter as follows:
- “The short timeframe I was given to demonstrate a significant improvement, coupled with the nature of my medical and domestic issues, made me question how realistic these targets were given the point from which I was starting.
- This led me to asking [Ms Willey] during our 1-2-1 on the 9th August, if I could have more time to allow me the opportunity to see my GP with a view to adjusting my medication. No additional time was given. I feel I was asking for reasonable adjustments to be made and this may have made a difference to the outcome of this audit.
- I understand that it is at your discretion whether we proceed to the next stage of this process. I did raise this with you on Friday and would like to ask again for time to allow adjustments to my medication to be made. If I am able to alleviate my symptoms and receive counselling support for my domestic issues, I can see no other barrier to me being able to perform my role effectively in the very near future.
- I am asking for you to reconsider your decision and allow me more time, taking in to account my extenuating circumstances”.
34. Mr Carter replied to say he did not believe they were in the position to change the current path although he did agree to speak to Employee Relations. He said his concerns with the medical and domestic issues was that they are only being raised now yet in his view she had had opportunity to raise this over the year. He said there were still basic coding principles and processes not being followed which after a year simply should not be occurring (p141).
35. On the same day the claimant emailed HR and said she wanted the formal process to be halted (p140).
36. On 18 August 2022 Chris Carter emailed HR, copying Ms Willey, observing the claimant had been off sick the last two days but had also attended with a suitcase to collect her coding books. He said “we have our concerns about this, we potentially think she is doing some sort of study activity from home in relation to activities she should have completed a long time ago....” (p153).
37. The claimant submitted a grievance on 18 August 2022. Twelve minutes later, and without having seen the grievance, the ER Manager involved said the

- performance management meeting would continue to go ahead and the processes would run along either side of each other. The grievance was about the claimant's circumstances not being taken into account and her request for time to address the issues which had led to the performance concerns being declined. She made reference to the fact she was not expected to try the exam until 2 years in post and to meet the competency requirements within 3 years. She said she was asking for the formal process to be halted and her individual circumstances to be given due consideration as they were at the root of why performance management measures had been implemented (she did not here distinguish between her extreme personal situation supporting family members and her disabilities). She wanted time to address these issues so that she had a fair chance to improve her performance and demonstrate her competency (pages 161-162).
38. The matter nevertheless was progressed to a stage 2 meeting on 19 August 2022.
39. Mr Carter explained that the claimant's performance was not at a satisfactory level. She had undertaken a full year's training. She was expected to have completed the course and the log book but she was not where they would expect her to be at this stage in terms of coding principles, indexing, 4 step, missing diagnosis and understanding, sequencing and totality. He compared her with the 5 other new recruits who had progressed with the same or less support.
40. The claimant acknowledged that she was sometimes making simple errors and said this was because of the symptoms she had been having. Mr Carter's response was that he was concerned she had not raised this at the time. She said she was not wanting to make excuses but try her best. She said she had spoken to her Line Manager about a significant traumatic event that was having a significant impact. She referred to the Line Manager's response being that other members of staff have issues and are able to compartmentalise them. The claimant said it was now on reflection she could see why she was making errors. She mentioned taking migraine medication which added to her brain fog.
41. Chris Carter said at the time she had said she did not know why she was making errors. He said it was expected to a certain extent in the first 3-6 months and then sometimes it would just click but this had not happened for the claimant in the last 6 months.
42. The claimant explained why she found it difficult to talk about mental health and that she had just been trying to get through each day. She said she was taking action now.

43. There was a discussion about the timing of the exam and the claimant's understanding that there was scope for more time (she referenced 12 months) and Mr Carter saying there was a standard she should be at by this stage.
44. The claimant said she was now taking medication and hoping things would settle. She had increased her medication for migraines and that it would take 3 weeks to establish. She said she had increased her anti-depressant and if that did not work they may start her on different medication (later she said she had stopped medication for migraines but increased the anti-depressant in the hope this would help her migraines and then another medication would be tried if this was not effective after 3 weeks). She said the migraines meant she got word blindness, blind vision and it impacted focus. She confirmed that she had contacted OH and had been advised her manager needed to do the referral. She confirmed Ms Willey had done this on 17th August.
45. She said that in the process she felt defeated. She felt he had already made his decision and she knew she would not be able to meet the objectives in the time and she struggled with the intensity of the situation. Mr Carter again said the starting point was a year ago.
46. She said the team had invested 12 months in her and that it did not make sense for the sake of another 3 months, or a few weeks to months, to throw that away. Mr Carter said it was not the first time they had a coder that hadn't made the grade and he felt he could judge whether people could take the exam or not.
47. Mr Carter and Employee Relations then said the objectives for the formal stage would stay the same. The claimant then said she wanted three weeks for her medication to settle. To go straight into the formal stage would produce no changes. Following an adjournment Mr Carter said he would agree to the three weeks for the medication before starting the formal process. That was to be the same audit as previously and if she was unsuccessful they would look to redeployment.
48. No other training or time to revise and catch up on the training she had missed due to her ill health was offered. There was no consideration given to waiting for the OH outcome.
49. Again Mr Carter did not really think the claimant was going to meet the objectives.
50. In her 1-2-1 meeting on 31 August 2022 the claimant is recorded as saying she felt in a better place. Although she was also only saying her migraines were 50% better and she still needed to see her GP again about this. There is a record of the claimant asking for the OH referral to be chased. She is also recorded as saying that the family issues had caused her to neglect her own well-being which impacted her concentration. These issues were reaching the

- point of being resolved and she felt more positive. She is recorded as saying the performance management process was horrible.
51. On 6 September in her next 1-2-1 meeting she is recorded as saying she was feeling happier and there had been an improvement as she only suffered migraines 3 days a week. She also said she was now focusing better and not making glaring errors. It is noted that OH were very short staffed and would be in touch to provide an appointment date (p177). It is noted that the claimant's output figures were average LOS 1.71 with average spells coded 13.4. The other trainees had an average LOS 2.10 and average spells 19.36. The objective was average LOS 2.5 and 15 coded spells. There is also a note that a new trainee was starting.
52. On 12 September 2022 the stage 2 audit commenced for two weeks. On 22 September 2022 the claimant was invited to a formal stage 2 review meeting on 26 September 2022. The letter said that if the action plan had been met then the monitoring would cease and they would continue with supervision to enable continued performance and general well-being. If the objectives were not met, redeployment would commence. In preparation for this meeting Mr Carter was advised by HR that in fact there would need to be a stage 3 hearing under the process before redeployment.
53. Mr Carter is recorded as saying to HR on 23 September 2022 that he had no problem with the claimant continuing to work in clinical coding whilst looking for another role as he could put her on basic coding activity. HR had advised that "...as she isn't off sick or suspended...it's [preferable] she undertakes work rather than be off, otherwise there's no grounds for this...unless her performance were to be causing issues/risks so significant that there was a case for her to be suspended. It hasn't technically been decided that she isn't capable until the outcome of the hearing, it is your findings and recommendation based on her unfortunately not meeting the targets set.... I think you said you could still utilise her in your team and have work she can do, obviously she would come off performance monitoring, and depending on the nature of the role you may want to give her defined/separate duties appropriate to what you deem her to be able to complete, or allow her to continue doing the role but accept that she will complete less etc" (pp184-185).
54. The emails show that both Mr Carter and HR planned to support the claimant in obtaining redeployment rather than be dismissed.
55. The stage 2 performance review meeting took place on 26 September 2022. The claimant had met the first objective, achieving 91% of individual assigned codes being correct, whereas the target was 85%. She did not meet objective 2, having 138 coding errors across the audit, whereas the target was no more than 80 errors. In respect of objective 3 the target was no more than 6 errors across the audit and the claimant made 16. She did meet objective 4 as she

- made no repeated errors. In respect of objective 5 she coded 13.8 spells per day with an average LOS of 2 days compared to the target of 15 spells and LOS 2.5. Although she did not meet the target it was an improvement on the figures discussed in her last 1-2-1. Mr Carter said that based on this the claimant would not pass the qualification.
56. The claimant indicated she wished to appeal at the stage 3 hearing. Mr Carter said in the meantime she would be taken off performance monitoring and be placed on specific tasks as listed at page 192.
57. The claimant said there was no way she could have achieved the targets set. The starting position was far too high taking into account her medical condition. She had felt under the microscope. She referenced again that the training period was three years and queried whether she needed to be ready at this stage. Mr Carter said that from the second year she needed to demonstrate all activities completed from the log book and show a consistent output. Certain activities were not completed in her log book. They each continued to repeat issues raised previously with Mr Carter saying if she was this impacted they could not continue due to the impact on the team and saying the claimant should have raised the health issues earlier. He said she had started at the same point as any employee and they were looking at where she should be as a first year trainee. HR explained there could be no decision on redeployment at this stage as the claimant was not in agreement.
58. In her 1-2-1 meeting on 28 September 2022 she is recorded as saying she wanted her log book updated to reflect that all subjects had in fact been completed (except HRG training).
59. Mr Carter produced the management report which begins at page 196. In that he said that the requirements of the first year of training are to complete the course within 6 months of being appointed and to demonstrate learning across all specialties by completion of a log book. He said it was made clear that there is a requirement to study in your own time and have a commitment to learning. He said the main issues with the claimant's performance was there had been no consistent progression in:
- 59.1 not missing key information inc. diagnoses, comorbidities and procedures;
 - 59.2 understanding/thinking about primary diagnosis and procedure;
 - 59.3 understanding of what to reflect in codes;
 - 59.4 understanding of medical records/clinical information;
 - 59.5 knowledge/awareness/interpretation of Coding standards and Local Policies;
 - 59.6 Coding output; and
 - 59.7 Asking questions.

60. He said she had received significantly more training days during worktime than her peers and had many ad hoc 1-2-1 chats with her line manager. He said that although she had said she had some difficult personal and family circumstances it was only once she was told that she was facing performance management that she entered retrospectively comments about her personal matters in her log book.
61. He again incorrectly recorded that the claimant had declined the OH referral on 9 August 2022. He also said that at the stage 2 formal meeting she had not taken any steps to address her issues up to this point but had now spoken to her GP and the 3-week settling-in period was agreed.
62. The claimant requested and was given additional time to prepare for the stage 3 hearing.
63. On 21 October there is an email discussion between HR and Mr Carter commenting on the OH report which they had yet to see and saying: "though of course you have/had no reasonable time to act on it due to the lateness of her raising medical issues in discussion around performance concerns and agreeing to a referral (which is of course the potential response if [the claimant] says we have this now, I should have more time for it to be acted on it etc.). It is a shame it takes so long here as it's a detriment to both sides."
64. In her 1-1 on 24 October 2022 she said she felt she was taking back control of her life. She had had an appointment with a neurologist regarding her migraines and had introduced more medication. She had begun counselling sessions. She said she felt everything was now in place regarding getting to a state where she could function. She is recorded as again saying she could not have made the requisite improvement in the time but that she felt she could within months. Again there was a comment from her Line Manager, when asked how she would feel in the same situation with issues in her life, that she would have compared herself to peers and would have worked on self-improvement. She was told the outcome from her OH appointment would have an impact on the management process.
65. She saw Occupational Health on 25 October 2022. The management referral at page 218 said she was undergoing performance management. It was again inaccurately recorded that she had initially declined the OH referral. The report dated 25 October 2022 confirmed that the claimant had a long history of depression which had been managed with anti-depressants over the years and most recently since 2020. She also had a long standing history of migraines though had been able to come off medication in 2021. It recorded that since commencing her current role a series of events in her personal life had impacted her personal well-being and work performance. The stress resulted in migraine headaches 3-4 times per week and that her vision and her ability to focus and concentrate were affected by the symptoms; that when she had a migraine she struggled to read and made mistakes in her work. She had re-

started medication and by this time had not had a migraine for a couple of weeks. She had also had adjustments to her medication for depression which had been beneficial as well as starting talking therapies. It recorded that her difficulties were an ongoing source of stress and worry. It referred to the stress as a result of being performance managed also being an ongoing difficulty for her.

66. A number of adjustments were suggested as follows:

“[the claimant will benefit from an understanding, supportive and flexible approach, tailoring adjustments on days she is having particular difficulty....whilst her ability to focus and concentrate remains reduced, she will benefit from avoiding complex tasks or activities which require prolonged periods of concentration or allocating additional time to undertake these activities. I have advised her to inform her manager/supervisor if she feels her ability to focus and concentrate is insufficient to work safely and this should be given consideration when deploying her work... Regular one to one meetings to ensure she is coping with both her contracted hours of work and the duties required of her along with enabling you to address any concerns identified will also be beneficial to her ongoing recovery.” It also records that the claimant was saying she did not wish to be redeployed as she felt she was capable of completing the full range of duties required of her role and she needed additional time to allow her to meet the performance management targets required of her. It said she may well have a problem if stressed in the future.

67. The claimant also prepared a report for the hearing which she submitted the same day. At page 230 she explained the significant issues her family had been dealing with in her first year of the role and that this had led to her neglecting herself and struggling to undertake training. She explained the stress had triggered the onset of migraines which significantly impaired her ability to concentrate, her vision and ability to process information. She had begun the process of recommencing medication in February. She had been on a maintenance dose for her depression but the events led to a depressive episode. She had now (since 17 October 2022) been on new migraine treatment in addition to that prescribed by her GP and had started counselling and taken action to manage her depression. She explained that she was never going to be able to achieve the objectives set but if she had not been experiencing the difficulties she had been, the outcome would have been different.

68. She said there were gaps in her knowledge. She said given time, now that the support was in place, she would be able to address the issues and make the necessary improvements. She requested additional time to stabilise and catch up on her learning and felt she needed a minimum of three months.

69. The stage 3 hearing was held on 31 October 2022. Mr Carter said in that meeting that since the stage 2 hearing the claimant's case load for surgical services had been reduced due to the impact of her work on the cases that matter most. He had given her simpler work. The auditing had not continued save for the normal auditing of the team on an ongoing basis. He said the performance management was not about learning being missed but about basic coding principles not being followed. He said they were checking on a case by case basis and had already afforded her extra time and support and they could no longer sustain the further training needed. He also queried whether, given her underlying vulnerability, she would cope with stage 2 of the training with the exam preparation and the hours needed to be put in. He also commented on the adjustments saying that for a trainee of year 1 it is more important they are coding more and more complex cases, and so allowing adjustments did not fit with that. The claimant asked for 3 months to stabilise and do the learning she had missed due to the personal circumstance and her migraines and depression.
70. The decision was announced making it clear that it was not up for discussion. The panel acknowledged that there were mitigations the claimant had put forward in respect of health and it was paramount this was taken into consideration. She was given three months as requested but with what Mr Bailey described as very stringent competencies to be met along the way, which included that an incremental improvement needed to be seen. There was to be intense support in the first month but then less and there was the possibility that it would be stopped early if the requisite improvement was not made. The claimant was to do the requisite personal study at this time. The targets were agreed between Mr Carter and the claimant – although the claimant felt she had little scope to object.
71. Mr Carter inserted an additional protection which was that if the claimant met all the objectives except the numerical targets that she would have to meet a minimum of 10 spells of 2 days average duration. This was to avoid a situation where only a very few spells were done to ensure the other objectives were met. There was an initial 10 day training period then the claimant commenced the staged PIP with 5 consecutive audits starting 21 November 2022 and due to end 3 February 2023. With respect to complexity, the claimant had a choice of files and if she were to have a moment of difficulty at work she was to switch to something less complex but still inform her line manager.
72. In her 1-2-1 on 5 December 2022 the claimant confirmed that her medication had made such difference to her migraines and her therapist had been helpful and her family circumstances were much better. She had felt nauseous in anticipation of her results and only met 2 objectives but Mr Carter agreed to her continuing. The same occurred in the next two week audit. At the review on 19 December 2022 it was decided to initiate reconvening the stage 3 meeting.

73. On 21 December 2022 the claimant was invited to the meeting on 9 January 2023. In her report to the panel the claimant raised that the conditions they had imposed had negated the purpose for the request for additional time. She said “rather than alleviating the pressure [the claimant] was under and allowing...space to recover and work on improving her knowledge, the...conditions amplified the pressure, creating an environment which [was] not conducive to learning or recovery”. She reminded the panel she had not been able to discuss her concerns. She explained her well-being had been affected. She said she had not been given sufficient time to recover to address the capability concerns and she had had no time to breathe. She said she had by then been under 5 months of scrutiny and had not had space to recover as she tried to recover from depression and it had had a negative effect on her health. She recognised that there was a lot of management resource going into the process but it had not been her chosen path. In this meeting there is discussion about the OH report but without the actual report in front of them.
74. The decision on redeployment was communicated on 16 January 2022. Between 17 January and 6 March 2023 the claimant was allowed to continue in the team doing modified duties.
75. On 24 January 2023 the claimant appealed.
76. In her 1-2-1 on 30 January 2023 it is recorded that she had had to discontinue some of her medication for migraines due to her heart rate. She had been working from home since December with a good daily output.
77. She was referred to Occupational Health again following an absence on 10 January 2023 due to her mental health. The report said the claimant was fit for work and regaining full fitness would depend on the successful resolution of her work concerns. It said she was currently waiting for a cardiology appointment and managed the depression with medication (this is undated but the index places it on 31 January 2023).
78. The appeal hearing took place on 27th February and 1st March 2023 and the appeal was dismissed on 3 March 2023. By this time the claimant reported having started to have panic attacks. She commenced a trial period in the role of Gynaecology Pathway Coordinator role on 6 March 2023 and was confirmed in that post on 4 April 2023. She started other migraine medication in April 2023.
79. The claimant initially tried to put this period behind her and settle into her new role. She met with both Mr Carter and Ms Willey to seek to obtain some closure which was unsuccessful. The second of these was 5 April 2023.
80. The claimant contacted ACAS on 17 May 2023 and the certificate is dated 23 June 2023. She submitted her claim on the same date.

81. We heard that there were two coders out of the claimant's peers who went on maternity leave during their three year training period. We also heard that there was a coder who had not had to pass the exam due to performance anxiety. The panel was also told that suitable accommodation would be made should an employee be absent from work as a result of a physical illness.

Relevant law

82. s15 Equality Act 2010 states 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. This does not apply however if A does not have the requisite knowledge.
83. s20 Equality Act requires "...where a provision, criterion or practice of [the employer] puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled" [the employer]... is "to take such steps as it is reasonable to have to take to avoid the disadvantage." A substantial disadvantage is defined in section 212 as more than minor or trivial.
84. *RBS v Ashton* [2011] ICR 632, in particular paragraphs 13 and 24, provides that:
- "it is irrelevant...what an employer may or may not have thought in the process of coming to a decision as to whatever adjustment might or might not be made. It does not matter what process the employer may have adopted to reach that conclusion. What does matter is the practical effect of the measures concerned....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."
85. The Tribunal does need to consider how effective the adjustment would be in removing or reducing the particular disadvantage, and a prospect of it doing so may make an adjustment reasonable (*Romec Ltd v Rudham* EAT 0069/07 and *Leeds Teaching Hospital NHS Trust v Foster* EAT 0552/10).
86. Whether an adjustment is reasonable depends on the particular circumstances of the case.
87. Although it is obviously wise and good practice to consult the employee, if an employer fails to make reasonable adjustments it is not a defence that it consulted the employee (*Tarbuck v Sainsbury's Supermarket Ltd* [2006] IRLR 664). A similar premise applies to a failure to make proper enquiries in respect

to what would alleviate a substantial disadvantage (*Southampton City College v Randall* UKEAT/0372/05/D). The duty to make reasonable adjustments is on the employer.

88. The burden of proof is set out at section 136 Equality Act. This states that if there are facts from which the Tribunal could decide, in the absence of any other explanation, that s 15 or s20 has been contravened by A then it must hold the contravention occurred unless A shows that it did not contravene the provision.
89. s123 Equality Act 2010 states that the tribunal does not have jurisdiction to consider a claim submitted more than three months after the act complained of, unless it is just and equitable to extend the time limit.
90. s123(3) states that conduct extending over a period is to be treated as done at the end of the period however a failure to do something is done when the person decides not to do it. In the absence of evidence to the contrary a person is taken to decide on a failure to do something when either they do an act inconsistent with it or on the expiry of the period when they could reasonably be expected to do it. It is possible for there to be an ongoing duty and a continuing omission to make reasonable adjustments where the evidence suggested the employer was still considering the adjustments and in the absence of the assertion of an intervening act in accordance with s123 (3) (4) Equality Act (*Kingston upon Hull City Council v Matuszowicz* [2009] ICR 1170).

Conclusions

Discrimination arising from disability

Did the respondent treat the claimant unfavourably by:

Failing to suspend the performance action plan after the disclosure of the claimant on 9 August 2022 of her disabilities?

91. Following the claimant's disclosure of her disabilities the respondent did not suspend the performance action plan or remain at the informal stage as requested by the claimant. This was unfavourable treatment. The respondent carried on auditing the claimant over the very brief two-week period, then held the stage 2 meeting. There was eventually agreement for a very short pause of three weeks for the initial medication adjustment then straight into another audit followed by stage 3. The stage 3 was followed by a short training period and then more auditing before the resumed stage 3 meeting and the redeployment decision. The claimant's migraines had been re-triggered and she was having a depressive episode, both a consequence of a series of challenging life events for her family. From the outset she was asking for time

to complete her recovery and catch up before the continuation of the performance management. She did not get this.

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

The claimant needed to read and re-read information and it took her longer to process and understand information, to engage in learning and to maintain concentration and motivation. The claimant could not work at the same speed or assimilate knowledge as quickly as her peers.

92. She was having 3-4 migraines a week and these did affect her vision and ability to read. She would have word blindness. It also affected her information processing. She made basic errors. Her concentration, focus and motivation were all affected by her conditions. She was also withdrawn. We accept that she could not work at the same speed or assimilate knowledge as quickly as her peers during this recurrence of her migraines and the depressive episode.

Was the unfavourable treatment because of any of those things?

93. The unfavourable treatment was because Mr Carter had formed the view, prior to the appraisal, that the claimant was not going to meet the stringent requirements needed in the role and that she needed to be promptly managed out via the performance management process. This was based on the basic errors she was making and that she was not at the level he would expect of someone at the end of their first year in terms of "coding principles, indexing, 4 step, missing diagnosis and understanding sequencing and totality" (p166). He had experience before of seeing who ended up passing the exam and who did not and also compared the claimant to her peers to form this view.
94. We accept that the claimant's basic errors and her delay in respect of her peers at the time were because of her significant symptoms affecting vision, reading, information processing, judgment, concentration, focus and motivation. As Mr Carter effectively observed in the stage 3 meeting the role cannot be done without these attributes.

Was the treatment a proportionate means of achieving a legitimate aim? The respondent says that its aims were:

To ensure the required competency level of a clinical coder was met in compliance with the requisite National Clinical Coding Standards and the respondent's internal standards set out in the Additional Terms of Appointment, including meeting the competency requirements and taking the National Coding Exam within three years of appointment (which can be attempted from year two onwards).

The Tribunal will decide in particular:

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

could something less discriminatory have been done instead;

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

95. We accept that ensuring clinical coders met the competency requirements and took the coding exam within 3 years of appointment was a legitimate aim.
96. However we find that continuing the performance management process once the claimant informed the respondent of her disabilities, at least in the manner the respondent did so, was not a proportionate means of achieving that aim. In fact proceeding with the performance process and subjecting the claimant to multiple audits under that process, made it worse and ensured that she did not achieve it as she was removed from post before she had been able to fully recover.
97. The fact is the claimant's abilities were significantly affected by the re-triggering of her migraines and her depressive episode. She did consult her GP and her neurologist and adjusted medications and started talking therapies to seek to settle the migraines and help her come through the depressive episode. She also put solutions in place in respect to the family situation. These steps took time. This was not a quick fix situation. It appears that initially there was an adjustment to her anti-depressants and then new medication was added in respect of her migraines, which she then had to stop again due to her heart rate and try something else. This was not just a 3-week process in respect of one medication change.
98. Whilst she was well enough to attend work she accepts she was not performing at her full capacity. She needed a period of time to put in those steps to recovery, to allow them to work, and catch up what she had missed before she could perform at her full capacity. The refusal to pause the process or remain at the informal stage did not allow her that time. Instead the pressure remained on her to perform during audits, whilst she was unable to perform at her full capacity, and indeed eventually increased as she progressed down the process with repeated back to back audits. In our view taking that route, along with some of the respondent's managers' judgmental comments created a hostile environment (though we note that the claimant has not brought a harassment claim and the respondent has not defended one). Certainly it was not an environment conducive to her recovery and successful performance. We agree that it was setting her up to fail. This route was very unlikely to facilitate her reaching the requisite standard and indeed Mr Carter was proceeding on that basis; that he did not expect the claimant's performance to reach the required level.
99. Allowing the claimant time at the informal stage to properly recover and catch up before, if still needed, progressing down the performance route including the auditing, was not likely to take much longer but would have been much more conducive to her recovery and performance at full capacity. If need be she could have been on adjusted duties during this period, as she was after the performance process ended. The respondent had already invested substantially in her training and was more likely to achieve the legitimate aim

- by allowing her to reach a place where she was performing at her best. The respondent does not know how the claimant will perform at her best, though she herself is confident she can perform the role when well. Ms Willey in evidence also expressed the view that the claimant is capable if she can show her commitment and become more consistent. Both of those attributes were likely to improve with a full recovery. Mr Carter is firmly of the view that the claimant's progress at the end of year 1 is a good predictor of her progress in year 3 and that she would not succeed. This view does not allow for the fact that much of her year 1 she had the barriers presented by flare ups of both of her conditions, due to personal issues that were being resolved, and that these were temporary. Mr Carter had not seen the claimant perform at full capacity from which he could make a fair assessment of her performance in year 3. He compares her with her peers and with his previous experience of coders who did not make it, neither of which is a fair comparison given the claimant's disabilities and their temporary flare up.
100. These decisions were being made at the end of the claimant's first year and she needed to reach the requisite standard by the end of year 3. The respondent had time to allow her recovery, especially as the performance management process that was pursued did not end until March 2023 in any event, by which time the respondent had impeded the claimant's recovery. We note that the respondent can clearly accommodate lengthy absences as other colleagues went on maternity leave during their 3 years. The respondent is also able to be flexible towards others as we were told that there was a coder with performance anxiety who has not in fact had to sit the exam. The panel was also told that suitable accommodation would be made should an employee be absent from work as a result of a physical illness.
101. We also note that the respondent did not commence the process during the first year despite having concerns, but let the claimant continue for the full year before telling her the job was at risk.
102. At some point the respondent might have reached a stage when they needed to consider whether they could wait any longer for the claimant's recovery, based on any medical evidence in respect of prognosis. It might have needed to have further pauses on her road to recovery. At that point a different type of capability process might have been necessary rather than subjecting the claimant to audits when she was not at her full capabilities for health reasons.
103. The respondent accepted they had the requisite knowledge.

Failure to make reasonable adjustments

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

A requirement that trainee clinical coders met the National Clinical Coding Standards, maintained a log book and complied with the Respondent's own internal standards at each stage of her training (PCP1); and

That a trainee clinical coder who did not satisfy PCP1 would be subject to a performance management process (PCP2).

104. This was not in dispute. There was a requirement for a clinical coder to be at the requisite standard at the end of the first year. A clinical coder that fell sufficiently below that standard would be subject to performance management.

Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that the targets set by the respondent did not take into account the claimant needed longer to assimilate knowledge and to work at the same speed as the claimant's peers due to disabilities?

105. PCP1 put the claimant at a substantial disadvantage because she did not reach the expected stage/standard for a first year trainee coder by the time of her appraisal at end of year 1 due at least in part to the re-triggering of migraines and her depressive episode. Both of these had a significant impact on her concentration, focus and motivation and the migraines affected her reading, vision, judgment and information processing. This did mean she needed longer to assimilate knowledge and to work at the same speed as her peers. This also affected her ability to do the home study expected in the first year of the role.
106. PCP2 did put the claimant at a substantial disadvantage in the expedited form it took in her case. She was not given the time she asked for to recover and so whilst still experiencing the above symptoms she was subjected to intense audits under the threat of dismissal/redeployment; there were very short timescales given for improvement under the process (much less than the usual 4-6 weeks in the policy) and a rapid escalation through the stages. It did put the claimant at a disadvantage as she was not ready health-wise and failed at every stage, whilst the pressure and stress of the process ultimately exacerbated her symptoms.

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

107. Once the claimant declared her disabilities and asked for the process to remain at the informal stage the respondent did know that the claimant had had significant barriers to her performance during her first training year and she was asking for time to recover and catch up. She was saying she did not think she could make the required improvement in the short timescales. She also explained the changes to her medication and the different appointments she had to try to bring both conditions under control and it was clear there was not a 3-week fix, though the respondent chose to interpret it that way.
108. As the process proceeded the claimant elaborated on her symptoms more and the OH report (which the claimant had been prepared to have from the outset) confirmed that her vision, ability to focus and concentrate were affected and

during a migraine she struggles to read and makes mistakes in her work. It referred to the stress as a result of being performance managed also being an ongoing difficulty for her and that she needed more time to meet the targets. It explained the potential impact of more stress.

What steps could be taken to avoid the disadvantage? The claimant suggests:

suspending the performance management process on the claimant's full disclosure of her disabilities;

allowing the claimant to have an input into performance action plans to include targets and timescales;

exploring what was the root cause of the claimant's errors and their underlying cause; and/or

the respondent's trainer adopting a process of observing and working through examples with the Claimant rather than the process actually used.

was it reasonable for the respondent to have taken those steps and when?

109. We do not agree that the performance management process should have been suspended. However the respondent's own process would have enabled the necessary steps if the respondent had followed it more fully.

110. The informal stage is to enable discussion of the support needed and should include a discussion of the employee's reasons for the performance issues including work or personal issues and anticipates considering recommendations from occupational health. It should result in a realistic timescale for review allowing enough time for improvement and any support or training. This can be extended if needed at the manager's discretion. There is no requirement to conduct an audit- that was Mr Carter's chosen method of monitoring.

111. In our view the process adopted by the respondent should have been adjusted as follows:

111.1 following their own policy in a constructive and supportive manner without a preconceived goal of redeployment, adjusting as appropriate (and as set out below) to the new information from the claimant, such as her need for time to recover and catch up on training;

111.2 remaining at the informal stage 1 while the claimant's health stabilised - giving her the time needed to complete the medication changes needed for her migraines and allowing her to recover from her depressive episode (this is more than just the three weeks needed for one particular drug to settle);

111.3 allowing the claimant the time to catch up on what she had missed during her first year due to her ill health and adjusting expectations to reflect the fact that the impact of her conditions was that she had not had the same opportunities as

her peers in the first year but had been severely struggling i.e. extending the first year of training;

111.4 adjusting the claimant's duties so that she had the simpler tasks until she was able to reintroduce complex coding;

111.5 providing training/coaching through 1-2-1 meetings that were supportive in tone and without judgmental comments, including working through examples with the claimant;

111.6 having a realistic timescale to measure improvement once the claimant had recovered, bearing in mind the normal 4-6 weeks timescale in the policy and the fact the claimant likely needed longer not less time due to her disabilities;

111.7 avoiding audits as the mechanism for performance monitoring (over and above the normal audits faced by the whole team) and avoiding comparison with non-disabled peers;

111.8 particularly avoiding an audit with targets she was unlikely to be able to meet as that is setting her up for failure;

111.9 adjusting performance targets to accommodate the claimant's disabilities.

112. We accept that if, after 3-6 months, the claimant was still not well enough or was well enough but was unable to perform the full duties at the requisite standard then the respondent may have needed to progress through the performance stages. We remain of the view that intense auditing should have been avoided, due to the added pressure this would, and did put on the Claimant, thus exacerbating her existing stress levels, and that the respondent should have ensured the claimant was fit and able to fulfil any form of measurement before embarking on it. Exactly how the procedure progressed ought to depend on whether the claimant had recovered or not and if not, the focus ought to have been the prognosis for recovery rather than subjecting her to performance monitoring she was unable to fulfil because of her symptoms.

Did the respondent fail to take those steps?

113. The respondent did fail to take most of these steps. The respondent did not extend the informal stage while the claimant recovered. The three weeks for medication to adjust before proceeding to stage 2 was only part of what she needed. It was not long enough and it did not involve the process remaining at the informal stage. The respondent did not allow the claimant time to catch up on the training in year 1 which she had missed. The respondent ultimately had to adjust the claimant's duties while she waited for the stage 3 meetings and redeployment but did not do so at the stage 1 informal stage while she recovered/caught up. The respondent did not remove complex tasks from the claimant until her focus and concentration had improved as recommended by Occupational Health. She was just told she could change tasks if she was having a particular difficulty and she would have to raise this with her Line Manager.

114. The respondent continued to impose repeated audits on the claimant as she progressed through the stages, although the targets were lower than expected at the end of year 1.

115. The claimant was not even given the 4-6 weeks between reviews, never mind longer.

116. The claimant was given a 10 day training period at the stage 3 level but not at the stage 1 level.

117. We note that the claimant has not made any claim in respect of the redeployment. Ultimately if the claimant could not perform adequately with the requisite adjustments then redeployment would also likely be a reasonable adjustment for an organisation like the respondent to make. We have not been asked to consider the adequacy of that process and have not done so.

Time limits

Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 17 February 2023 may not have been brought in time.

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

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

If not, was there conduct extending over a period?

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

If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

Why were the complaints not made to the Tribunal in time?

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

118. The relevant decisions under the procedure had been made prior to 17 February 2023, ending in particular with the redeployment decision on 16 January 2023.

119. The reasonable adjustments should have been made prior to that date and a completely different process should have been followed. It may be that has an impact on the relevant time limits.

120. However we have gone straight to consideration of the final point and proceeded on the basis the claim is out of time. Our view is that if the claim was submitted outside the statutory time limits it would be just and equitable to extend time and it is not necessary to consider any complexity of the time limits. The claimant pursued the internal performance management procedure to its conclusion

with the appeal outcome on 3 March 2023. A claim about decisions on that date would be in time. Her new role was not confirmed until 4 April 2023 and she had the second of her meetings to try to achieve closure on 5 April 2023. The ordeal of the performance management process that was followed at least in lay terms did not end until then. She contacted ACAS on 17 May, obtained the certificate on 23 June 2023 and submitted her claim on that date. In our view she has acted promptly at every stage, exhausted the internal process first and then promptly issued proceedings. It is just and equitable to extend time back to the date the respondent became aware of the disabilities to include the management of the performance process from that date.

Approved by
Employment Judge Corrigan
24 July 2025

Sent to Parties.
28 July 2025

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