EMPLOYMENT TRIBUNALS

Claimant: **Mr Halstead**

Respondent: **J D Wetherspoons Plc**

Heard at: **Bristol (by CVP)** **On:** **6, 7, 8 and 9 May 2025**

Before: **Employment Judge Murdoch**
Ms Cusack
Mr Bompas

Representation
Claimant: Ms Davies, counsel
Respondent: Mr Zaman, counsel

REASONS

JUDGMENT having been sent to the parties and written reasons having been requested in accordance with Rule 60(4) of the Employment Tribunals Rules of Procedure 2024, the following reasons are provided:

Introduction

1. The claimant was employed by the respondent from 11 May 2019 and continues to work for the respondent now. He is employed as a Kitchen Associate.

2. The claimant's claims are of failure to make reasonable adjustments and disability related harassment.

3. It is not in dispute that the claimant has a disability – by reason of autism – as defined in section 6 of the Equality Act 2010 (EqA). The claimant was diagnosed with autism at the age of two years old.

The hearing

4. We heard the claims on 6, 7, 8 and 9 May 2025.

5. The claimant was represented at the hearing by counsel, and was otherwise supported by his mother, Ms Sarah Halstead. Both the claimant and his mother gave sworn oral evidence.

6. The respondent was represented by counsel, and called sworn oral evidence from Joe Davey (Area Manager) and Luke Bakewell (People Operations Manager).

7. We considered the oral evidence and four witness statements from the claimant and the above named people, documents from an agreed 427 page bundle which the parties introduced in evidence, and closing submissions.

8. We deliberated and gave oral judgment on the last day.

Reasonable Adjustments

9. I explained to the parties that the overriding objective is to deal with cases fairly and justly, which includes seeking flexibility and ensuring that the parties are on an equal footing. Fair and just treatment does not always mean treating everyone in the same way.

10. The Equal Treatment Bench Book gives advice as to steps that the Tribunal may wish to take to meet any particular individual needs to ensure that everyone understands each other and everyone can participate fully in the process on a fair and equal basis.

11. Every judge is under a duty to take into account the advice in the Equal Treatment Bench Book when hearing a case involving people with disabilities (*R (on application of King) v Isleworth Crown Court* 2001). Each person must be treated as an individual so that their specific needs can be considered and appropriate action taken.

12. I emphasised to the claimant that we wanted to make sure that everyone understands each other and everyone can participate fully in this process.

13. I noted that it was not in dispute that the claimant has a disability by reason of autism as defined in section 6 of the EqA. I noted that I had read the section in the Equal Treatment Bench Book on the autism spectrum condition and I had considered suggestions that may help the claimant participate fully in this process.

14. I noted that we had seen the correspondence to the Employment Tribunal where the claimant had sought reasonable adjustments, stating that they are required in order to remove a disadvantage, namely the claimant's disability of autism, and the disadvantage this causes him due to his significant propensity to stress, anxiety, the need to double-check information, and limited focus. I noted that we had seen the respondent's response to these requests, which objected to some of the suggestions, and that we had also seen the claimant's response to the respondent's response, as well as the Employment Tribunal's decision on this matter.

15. Employment Judge Roper had decided as follows:

> "The claimant is entitled to attend by video with his mother beside him to assist him through the process. Nonetheless for the duration of his evidence, the claimant's mother will not be able to give his

evidence instead of the claimant, and he must give his evidence himself. The application for all questions in cross examination to be sent to the claimant three days ahead of the hearing is refused. The claimant will be afforded such extended time and rest breaks as may prove necessary to enable him to answer any questions in cross examination. Any such questions must be limited to those which are directly relevant to the agreed list of issues in respect of the claims which the claimant chooses to pursue."

16. I noted that was the judicial decision already taken on this matter but asked if there was anything else that we could arrange to help the claimant fully participate in this hearing.

17. Taking into account autism as a specific condition, the correspondence and judicial decision already made on this matter, the claimant's own view as to his needs, and the practical advice in Equal Treatment Bench Book, we prescribed the following reasonable adjustments:

    a. We would explain the different stages of the procedure, and we would signpost where we are throughout the hearing.
    b. We would ensure that regular breaks were taken during the course of the hearing.
    c. We would be clear and disciplined with the timetable so that we did not have any long unbroken sessions, we had one hour for lunch, we did not start before 10am, and we did not run past 4pm on any day.
    d. As above, we would be pausing for breaks throughout the day, but I stressed that if anyone needed a short break immediately for any reason, they were to just ask.
    e. I asked that everyone avoid legal or management jargon or acronyms, and that we all use clear accessible everyday language.
    f. I noted that the claimant was to just let me know if he missed something and needed something repeating or if he did not understand something.
    g. When the claimant was giving evidence, we agreed that:
        i. We would break for 10 minutes for every hour that the claimant was giving evidence.
        ii. The claimant was able to get up and stretch and walk around whenever he wanted;
        iii. Ms Halstead could assist the claimant find the relevant page in the bundle, or if the claimant did not understand the question, she could (with my permission) explain the question to him, but I explained that she was not to give evidence on his behalf.
        iv. We did not expect eye contact from the claimant and that he could look wherever he needed to look to make him feel comfortable and help him concentrate.
        v. I asked the respondent's counsel to only ask questions that were directly relevant to the agreed list of issues, to keep his cross-examination as short as possible (in other words, be precise and concise), and to ask clear questions (I did not want to see hypothetical, compound, complicated or ambiguous questions).

18. All parties confirmed they understood and that they were content with these reasonable adjustments.

19. We are content that all these reasonable adjustments were adhered to throughout the hearing.

Credibility of the claimant's oral evidence

20. The respondent submitted in their written closing submissions that the claimant was not a wholly reliable witness. The respondent argued that during his cross-examination, when more difficult or direct questions were posed to him that tended not to support his claims, the claimant often tended to suggest he did not know or could not recall. The respondent argued that the claimant also tended, on some occasions, to divert the Tribunal's attention to matters he wanted to talk about as opposed to addressing the questions posed and the central allegations he has brought before the Tribunal. The respondent then invited the Tribunal to prefer the respondent's evidence over the claimant's evidence in the case of a disputed issue.

21. We disagree. We found that the claimant to be an entirely credible and reliable witness. He did his absolute best to answer questions that he was asked. He was clear when he could not remember the details. When he could remember the details, he gave a clear and detailed account of events. He was also clear when he did not understand and the respondent's representative was then able to re-frame the question.

22. For the avoidance of doubt, we thought all witnesses were entirely credible and reliable, and we are grateful for their assistance to the Tribunal.

Issues for the Tribunal to decide

23. We agreed there to be two claims:

    a. Harassment related to disability (s. 26 EqA); and
    b. Reasonable Adjustments (ss. 20 & 21 EqA).

Agreed list of issues

24. The agreed list of issues were as follows:

> **1.Time limits**
>
> 1.1. The claim form was presented on 19 March 2024. The claimant commenced the Early Conciliation process with ACAS on 10 November 2023 (Day A). The Early Conciliation Certificate was issued on 19 December 2023 (Day B) (a period of 39 days not including Day A). Accordingly, any act or omission which took place before 12 November 2023 (which allows for any extension under the Early Conciliation provisions) is potentially out of time so that the Tribunal may not have jurisdiction to hear that complaint.

1.2 Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
1.2.1. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act or omission to which the complaint relates?
1.2.2. If not, was there conduct extending over a period?
1.2.3. If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
1.2.4. If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
1.2.4.1. Why were the complaints not made to the Tribunal in time?
1.2.4.2. in any event, is it just and equitable in all the circumstances to extend time?

2. Disability

2.1. It is not in dispute that the claimant has a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about, by reason of autism.

3. Harassment related to disability (Equality Act 2010 s. 26)

3.1. Did the respondent do the following things (see Scott Schedule for pleadings references):

3.1.1. respond disproportionately to allegations of a breach of employee discount policy in terms of the process followed,
3.1.2. fail to inform the claimant when his disciplinary process was paused,
3.1.3. invite the claimant to a SOSR hearing threatening him with dismissal,
3.1.4. eventually offer withdrawal from that SOSR process without explaining why,
3.1.5. aggressively apply its long-term absence policy and grievance policy,
3.1.6. fail to respond to the claimant's grievance, and
3.1.7. refuse to provide any compensatory gesture.

3.2. If so, was that unwanted conduct?
3.3. Did it relate to the claimant's protected characteristic, namely disability?
3.4. Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?
3.5. If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

4. Reasonable Adjustments (Equality Act 2010 ss. 20 & 21)

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

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

4.2.1. not informing, training in, or explaining the employee discount user policy suitably for an employee with autism;

4.2.2. the standard manner of handling of initial allegation made to the claimant;

4.2.3. not ensuring sufficient information and training was provided to company managers with regard to the claimant’s autism;

4.2.4. not carefully managing the claimant’s stress levels at that initial stage;

4.2.5. not ensuring he had a representative/companion at the first investigation meeting;

4.2.6. the standard nature of the disciplinary process applied after 17 Aug 2023 meeting;

4.2.7. not carefully managing the claimant’s stress levels in that later stage;

4.3. Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant’s disability, by causing the claimant anxiety?

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

4.5. What steps (the ‘adjustments’) could have been taken to avoid the disadvantage? The claimant suggests (in italics):

4.5.1. not informing, training in, or explaining the employee discount user policy suitably for an employee with autism (adjustment – doing this);

4.5.2. the standard manner of handling of initial allegation made to the claimant, (adjustment – referring to existing Neurodiversity Plan, using an informal process, ensuring the claimant had a companion, checking he was comfortable and whether any support was required);

4.5.3. not ensuring sufficient information and training was provided to company managers with regard to the claimant’s autism, (adjustment – doing this);

4.5.4. not carefully managing the claimant’s stress levels at that initial stage, (adjustment – doing this);

4.5.5. not ensuring he had a representative/companion at the first investigation meeting, (adjustment – doing this);

4.5.6. the standard nature of the disciplinary process applied after 17 Aug 2023 meeting, (adjustment – referring to existing Neurodiversity Plan, considering need for any disciplinary process at all, using an informal process, checking he was comfortable and whether any support was required);

4.5.7. not carefully managing the claimant’s stress levels in that later stage (adjustment – doing this).

4.6. Was it reasonable for the respondent to have to take those steps and when?

4.7. Did the respondent fail to take those steps?

5. Remedy

Discrimination
5.1. Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?
5.2. What financial losses has the discrimination caused the claimant?
5.3. What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?
5.4. Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?
5.5. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply? If so, did either party unreasonably fail to comply with it by, the claimant asserts, the respondent failed to provide an outcome? If so, is it just and equitable to increase any award payable to the claimant and, if so, by what proportion up to 25%?
5.6 Should interest be awarded? How much?

The law on reasonable adjustments

25. The duty to make reasonable adjustments is found primarily in sections 20 and 21 EqA. It is unique as it requires positive action by employers to avoid substantial disadvantage caused to disabled people by aspects of the workplace. To that extent it can require an employer to treat a disabled person more favourably than others are treated.

26. The duty to make reasonable adjustments arises pursuant to s20(3) EqA:

> "… where a provision, criterion or practice of [the respondent] puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled [the employer must] take such steps as it is reasonable to have to take to avoid the disadvantage."

27. This requires first the identification of a relevant provision, criterion or practice (PCP), then a finding that that PCP puts the claimant at a substantial disadvantage (in comparison with persons who are not disabled) and then a consideration of whether the employer has taken such steps as are reasonable to avoid the disadvantage.

28. Section 21 EqA provides that a failure to comply with any of the requirements in section 20 is a failure to comply with the duty to make reasonable adjustments. That amounts to discrimination against the disabled person.

The law on harassment

29. Section 26(1) EqA provides as follows:

> "(1) A person (A) harasses another (B) if:
> (a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of:
(i) violating B's dignity, or
(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B...

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

30. To determine whether the conduct is related to the protected characteristic, it is necessary to consider the mental processes of the alleged harasser (*Henderson v General & Municipal Boilermakers Union* [2016] EWCA Civ 1049). This may be conscious or unconscious.

31. As set out in the Equality and Human Rights Commission's Code, "unwanted conduct" can include "a wide range of behaviour" (paragraph 7.7) and it is not necessary for the employee to expressly state that they object to the conduct (paragraph 7.8).

32. When looking at the effect of harassment, this involves a subjective and objective test. The subjective test is to assess the effect that the conduct had on the complainant, and the objective test is to assess whether it was reasonable for the conduct to have that effect (*Pemberton v Inwood* 2018 ICR 1291, CA).

33. In relation to the subjective element, different individuals may react differently to certain conduct and that should be taken into account. However, as set out in *Richmond Pharmacology v Dhaliwal* 2009 ICR 724 by Mr Justice Underhill (as he was then named): "if, for example, the tribunal believes that the claimant was unreasonably prone to take offence, then, even if she did genuinely feel her dignity to have been violated, there will have been no harassment within the meaning of the section. Whether it was reasonable for a claimant to have felt her dignity to have been violated is quintessentially a matter for the factual assessment of the tribunal. It will be important for it to have regard to all the relevant circumstances, including the context of the conduct in question."

Findings of fact

34. The claimant commenced his second and current stint of employment with the respondent at The Crown in Berkhamstead on 11 May 2019, subsequently moving to The Albany Place in Trowbridge on 13 September 2021. He continues to work for the respondent now.

35. The claimant's first stint of employment with the respondent was between 20 September 2018 and 1 April 2019 at The Crown in Berkhamstead. He resigned from this job to try a different one but returned to the respondent approximately one month later on 11 May 2019.

36. The respondent – J D Wetherspoon PLC – operates within the leisure and hospitality industry owning a large chain of pubs and hotels throughout the

UK. The respondent employs in excess of 42,000 employees across approximately 800 pubs.

Discounted meal incident

37. On 12 August 2023, the claimant and his mother, Ms Halstead, went out for a meal at one of the respondent's pubs. They were accompanied by five members of their family who were visiting them. The claimant was inputting the order into his phone for his group of seven, but became confused, so handed his phone to his mother who finished collecting the orders. Ms Halstead then handed the phone back to the claimant and he sent the order off via the Wetherspoons app.

38. At the final stage of the order, which the claimant completed, a screen would have appeared asking the claimant to input his email address and tick that he accepted both the employee discount policy and the privacy policy. We find that the claimant input his email address, ticked the relevant boxes, and placed the order using the employee discount policy of 20%. The total saving for the usage of this employee discount policy was £19.17.

39. We find that the claimant and Ms Halstead were both unaware that one of the rules of the employee discount policy was that it could only be applied to a group of up to four people (including the employee). If they had known this, we find that they would not have applied the employee discount policy to their order, as they were in a group of seven people.

First investigation

40. On the 17 August 2023, approximately one hour prior the end of the claimant's shift, his colleague, Mr Connor Aylesbury-Humphries, came into the kitchen and informed the claimant that Mr Jamie Law wanted to see the claimant in the office. The claimant asked Mr Humphries if he knew what it was about. Mr Humphries did not know. We accept the claimant's evidence that he had 'no idea what was happening'. We accept that the claimant knew that Mr Law was the shift manager, but that he had never engaged in conversation with him before.

41. This investigation meeting was called without prior notice and without explaining what the meeting was about. No advance contact was made with Ms Halstead. No attempt had been made to have an informal chat to the claimant about the issue in advance.

42. Mr Law explained at the outset that he had asked the claimant to the meeting to investigate a potential violation of the employee discount policy and explained that Mr Humphries would be note-taker and witness. He then asked the claimant if he required a witness and the claimant responded 'I'm okay'. We accept the claimant's evidence that he did not really understand what was meant by the word 'witness' in this context and the respondent accepted that this could have more than one meaning. The discussion started but later in the discussion the claimant said 'can I ask what this is about' which clearly shows he had not grasped what was going on, namely that this was a formal investigation. Instead of answering

the claimant's question about what was going on, and setting out again the context and purpose of the meeting, Mr Law ignored the claimant's request for clarity, and asked him a question about what he knew about the discount policy.

43. During the course of this meeting, the claimant confirmed that on 12 August 2023, he had used his employee discount on an order for himself and more than three additional people. He did this because he did not know there was a limit on the group number. Mr Law explained to the claimant that he had breached the discount policy. The claimant also confirmed that his mother had access to the MyJDW app on her phone to look at his rota timetables. Mr Law explained to the claimant that that was a breach of the data security policy. The claimant said he did not know the policy on those two issues, apologised for the inconvenience, said it would not happen again and that he would get his mother to delete the app right away (which she did).

44. After this meeting, the claimant told Mr Law that he was autistic, and a cursory Neurodiversity Plan was quickly filled in on the same day (17 August 2023). As part of this conversation, the claimant was clear that he required his mother to attend formal meetings with him.

Second investigation

45. A second investigation was held on 25 August 2023, at which the claimant's mother was also in attendance. The details outlined above were reconfirmed by the claimant and his mother. They explained why Ms Halstead had access to the app on her phone, as she writes down his rota so the claimant can plan bus times and lifts from his mother to and from work. Ms Halstead explained that unless someone says to the claimant – this is something I want you to read – he would not do it. They both explained how this is part of the claimant's autism, and that someone would have needed to show him the relevant policies if they wanted him to read them or sit him down and go through it with him. During this meeting, Ms Halstead asked how much knowledge Mr Law and other staff had of autism.

46. Mr Law adjourned and returned to confirm that he would need more time to make a decision. Both the claimant and Ms Halstead noted that this did not help his anxiety, and Ms Halstead asked Mr Law to talk to management about the stress and anxiety this was causing him, stating that he had been hiding in his room.

47. It was also noted that the claimant had not been paid correctly, which had been adding to the anxiety. In addition, the claimant had not been having appraisals, despite the fact that it is the respondent's standard policy to hold appraisals.

Invitation to disciplinary hearing

48. On 31 August 2023, Mr Law sent the claimant a letter inviting him to a disciplinary hearing for gross misconduct. The allegations were of 'dishonesty' in the course of duties in his 'abuse' of the employee discount

policy and failure to comply with data protection and/or confidentiality policy. A date/time/venue was set. The letter stated that the claimant could be accompanied by a work colleague or a trade union representative. His mother was not invited. No reasonable adjustments were offered. The respondent admitted that this was a template letter that had not been adapted in light of the claimant's needs.

Sick Leave and Occupational Health Report

49. On 31 August 2023 (the same day as receiving the invitation to the disciplinary hearing), Ms Halstead sent an email to the respondent explaining the significant impact on the claimant, attaching information about autism and a doctor's note, and confirming that the claimant was now on sick leave.

50. We accept the evidence of the claimant and Ms Halstead that the respondent's behaviour from 17 August until 31 August 2023 had caused the claimant significant stress and anxiety. The claimant's significant stress and anxiety continued over a period of several months where the claimant was unable to leave his bedroom. The claimant's GP referred him to a mental health nurse, with whom he had seven monthly appointments with between 28 September 2023 and 10 April 2024. The claimant and Ms Halstead have explained in detail the significant negative impact that this had on their household.

51. On 1 September 2023, Ms Halstead specifically requested an Occupational Health report. The respondent agreed.

52. On 11 September 2023, the respondent invited the claimant to a long-term absence meeting on 18 September 2023. The claimant's mother was invited to attend this time. On 13 September, Ms Halstead replied to say that the occupational health report meeting was arranged on that same date and that the Occupational Health report should be obtained first before any sick leave meeting. Ms Halstead also noted that there had been no update on the disciplinary hearing.

53. On 14 September 2023, the respondent emailed Ms Halstead to agree that it was not beneficial to conduct a long-term sickness meeting in the absence of the Occupational Health report and apologised for the effect this has had on the claimant. The respondent explained that the disciplinary hearing had been put on hold pending receipt of the occupational health report.

54. The Occupational Health assessment was carried out via a telephone call on 18 September 2023 and the report is dated the same day. The occupational Health Advisor noted that:

    a. The claimant is not fit for work at this time as he is suffering with anxiety and under the care of his GP.
    b. The claimant reported his situation at work has caused him 'intense distress' and reported feeling 'persecuted and let down'.
    c. One to one explanations are required for the claimant to understand important documentation/polices.

d. The claimant's mother acts in a caring capacity and assists the claimant with technical tasks, finances and route planning.
e. The claimant would need assistance from his mother when using the respondent's app.
f. The claimant requires the following reasonable adjustments:
    i. Ms Halstead to attend all formal meetings to support the claimant;
    ii. Be patient with the claimant under pressure;
    iii. Additional breaks required when under pressure to get fresh air to help reduce the pressure; and
    iv. Can struggle reading the screen, buddy to help.
g. During a performance management process, the claimant needs advance notice of the time, date, venue and attendees, advance notice of the process and exact reasons for the meeting, and mother in attendance is vital.

Grievance and commencement of litigation

55. On 23 September 2023, Ms Halstead raised a formal grievance on behalf of the claimant.

56. On the 4 October 2023, the claimant was sent an invitation to a grievance hearing to be held on 6 October 2023. A time, date and venue was set. The venue was unfamiliar, as were the people. The letter stated that a work colleague or Trade Union rep could accompany the claimant. Ms Halstead was not invited, again.

57. On the 5 October 2023, the claimant's mother responded to this stating that the claimant would not be able to attend the grievance hearing, noting the very short notice that had been given, and stating as follows: "the thought of a meeting of the type described is making this worse, due to his disability. I would be grateful for your proposals as to how this meeting could be run without causing [the claimant] this level of anxiety, which we can then consider, and perhaps add our own suggestions".

58. On the same day (5 October 2023), the respondent responded to say they were sorry that the claimant was feeling this way. They stated that they needed to take some time to consider how to support the claimant, but asked in the meantime whether they had any thoughts on what may be beneficial.

59. On 9 November 2023, the respondent sent a letter to the claimant to try again to arrange a grievance meeting for 24 November 2023. Ms Halstead was invited this time. The respondent noted that they should let them know if they wanted to request any adjustments.

60. On 10 November 2023, the claimant commenced the Early Conciliation process with ACAS.

61. On 14 November 2023, Ms Halstead responded to the respondent to say that a 'return to work was completely out of the question'. She noted that the respondent had failed to make any reasonable adjustments for the

claimant during this process, which had been the sole cause of the claimant's decline in health, anxiety and severe loss of confidence.

62. On 16 November 2023, the respondent responded to the claimant, noting that they believed a return to work was possible if the claimant was willing, setting out a list of reasonable adjustments that might help the claimant attend a long-term sickness meeting and a grievance meeting. The respondent also asked whether they should interpret Ms Halstead's comment that a 'return to work was completely out of the question' as the claimant's resignation.

63. On 21 November 2023, Ms Halstead responded to say that the claimant had 'absolutely not resigned but has been subject to appalling treatment with no adjustment made for his condition'. She noted that she had commenced litigation proceedings.

64. No grievance meeting took place. The respondent worked hard on its written response to the grievance, initially upholding parts of it and then editing it so that they rejected all parts of it. The draft went through various iterations. It is accepted by the parties that the respondent never in fact issued a formal written response to the claimant's grievance.

"Some other substantial reason" (SOSR) meeting

65. On 11 December 2023, the respondent formally invited the claimant to a 'some other substantial reason hearing' on 15 December 2023. The respondent noted that the purpose of the hearing was to discuss the breakdown in relations and why the claimant did not wish to attend a long term sick and grievance meeting.

66. Ms Halstead noted in her witness statement that this was the first time that the respondent had offered proper reasonable adjustments. This included:

    a. Meeting to be held via zoom;
    b. Questions to be sent in advance of the hearing;
    c. A written submission could be provided by Brandon instead of attending the hearing;
    d. The time and location of the hearing can be changed if necessary;
    e. Sarah is welcome to attend the hearing as a companion; and
    f. An invitation to suggest any other reasonable adjustments in advance of the meeting.

67. On 13 December 2023, Ms Halstead responded to request a list of written questions. On 19 December 2023, the respondent sent the questions that would have been asked in the meeting, requesting a response by 5 January 2024. On 5 January 2024, the claimant sent the respondent written answers to the questions.

68. We note that the respondent, at this point (i.e. around mid-December), seemed to have taken on board their positive duty to make reasonable adjustments. The reasonable adjustments offered and accepted at this

stage had such a positive impact that the relationship between the claimant and respondent from this point onwards became repairable.

Return to work

69. On 19 January 2024, the respondent wrote to the claimant and his mother to inform them that they were withdrawing from the SOSR process, and instead offered an informal meeting with his friend and colleague Mr Humphries at his old place of work, The Albany Palace, at any time that worked for the claimant. The respondent proposed a catch up over a drink. Ms Halstead was invited. Mr Davey and Mr Bakewell would then briefly and informally introduce themselves to the claimant.

70. On 22 January 2024, Ms Halstead responded stating that she had discussed the matter with the claimant and they were in agreement with the proposal suggested. She also requested a compensatory gesture from the respondent.

71. On 16 February 2024, the informal meeting went ahead as planned. It was very successful and paved the way to the claimant's return to work.

72. On 22 February 2024, Mr Davey and Mr Bakewell met with the claimant's mother. During this meeting, there was a discussion about reasonable adjustments that could be put in place to support the claimant's return to work, and also to support him thereafter.

73. On 8 March 2024, the respondent decided that it was not going to offer the claimant any compensation or goodwill gesture for the situation.

74. On 19 March 2024, the claim form was submitted.

75. On 28 March 2024, a long-term sickness meeting was held remotely over Zoom where a return to work was agreed including a phased return to work plan and reasonable adjustments.

76. On 11 April 2024, the claimant returned to work.

77. The reasonable adjustments put in place were:

    a. the claimant not to work the busy shifts over the Easter period;
    b. a colleague's support with the claimant's e-learning;
    c. arranging shifts whereby the claimant's mother could give him a lift to and from work;
    d. on days when the claimant had to get the bus to finish at the same time as one of his colleagues;
    e. to carry out a wellbeing meeting with the claimant and review his neurodiversity checklist; and
    f. with the claimant's consent making the managers in the pub aware of the claimant's reasonable adjustments so he could be supported in the best possible way in the workplace.

78. On 16 April 2024, Mr Davey held a wellbeing meeting with the claimant and his mother. This included a review and completion of the respondent's

neurodiversity checklist to ensure that all reasonable adjustments had been identified and enacted where possible.

79. On 14 May 2024, Mr Davey held a meeting to review the measures that were put in place.

80. Ms Halstead notes in her witness statement that the approach taken by the respondent in terms of disability support since his return to work has been completely different to what he experienced in 2023.

81. We would go several steps further than that and say that the respondent's approach to reasonable adjustments has been exemplary since approximately mid-December 2023. On 11 December 2023, when proposing a meeting, the respondent suggested a whole list of reasonable adjustments but with an open mind to any other ideas. This helpful approach led to a creative solution of providing written questions and answers, which then paved the way for an informal meeting in the pub, which in turn, then facilitated the claimant's return to work. The respondent's disability support for the claimant since his return to work also appears to have been exemplary.

82. We commend both parties for remedying this relationship in these circumstances.

Conclusions

Time limits

83. The list of issues states that any act or omission which took place before 12 November 2023 is potentially out of time so that the Tribunal may not have jurisdiction to hear that complaint.

84. The claim to the Tribunal was not made within three months (plus early conciliation extension) of the act or omission to which the complaint relates.

85. However, we find that the claim was presented in time because there was conduct extending over a period, as set out in full in the claimant's closing submissions. We deem that period to be from 17 August 2023, which is the date the claimant was called to the first investigation meeting about his incorrect usage of the staff discount, until 8 March 2024, which is the date that the respondent declined to offer any compensation or a gesture of goodwill to the claimant for failure to make reasonable adjustments. The former date commenced the overall state of affairs, which was then followed by a series of connected and related acts and omissions, and the latter date was the end of the series of connected and related acts and omissions. The claim was made on 19 March 2024, which is obviously within three months of 8 March 2024.

86. We therefore do not need to go on to consider whether the claim was made within a time frame that was just and equitable, but for the avoidance of doubt, we do think that the claim was made within a just and equitable time frame, as the claimant was hoping the respondent would

offer compensation or a goodwill gesture for the situation, and it only confirmed on 8 March 2024 that it was not going to do so.

Reasonable Adjustments

Did the respondent know, or could it reasonably have been expected to know that the claimant had the disability? From what date? (section 4.1 in list of issues)

87. In the respondent's amended grounds of resistance, the respondent accepts that they had a record dated 21 February 2019 (during the claimant's previous period of employment with the respondent) which shows that the respondent as a company, and also the pub that he was employed at that time (The Crown in Berkhamsted), had actual knowledge of his disability.

88. The claimant then left employment with the respondent on 1 April 2019 and rejoined on 11 May 2019. The claimant transferred pubs on 13 September 2021 moving from The Crown, Berkhamsted, to The Albany Palace, Trowbridge, due to the claimant's family moving home. The information about the claimant's disability was not passed on from The Crown in Berkhamsted to the claimant's new pub, The Albany Palace in Trowbridge, at the time of his transfer.

89. The respondent accepts that the company as a whole had actual knowledge of the claimant's disability. The respondent says that the staff member that conducted the first investigation, Mr Law, lacked actual knowledge of the claimant's disability on or before 17 August 2023. But, importantly, the respondent accepts that Mr Law had constructive knowledge in that he should have been aware of the claimant's disability at that time.

90. It is therefore not disputed that the respondent knew, or could reasonably have been expected to know, that the claimant had a disability from 21 February 2019, or at least from 11 May 2019 (the latter date being the date the claimant's second stint of employment commenced).

Did the respondent have the following provision, criterion or practice (PCPs) (section 4.2 in list of issues)

91. **Not informing, training in, or explaining the employee discount user policy suitably for an employee with autism.** We accept the respondent's position that the claimant has pleaded the relevant date of this PCP as on or around 11 May 2019 (i.e. upon re-joining). This is out of time, as we have decided that the relevant period commenced from the 17 August 2023 when the first investigation meeting was held.

92. **The standard manner of handling of initial allegation made to the claimant.** We interpret this to mean the calling of the first investigation that occurred on 17 August 2023. We find that it is a PCP to call a formal investigation meeting in accordance with standard procedures upon identifying a breach of the discount policy.

93. **Not ensuring sufficient information and training was provided to company managers with regard to the claimant's autism.** We accept the respondent's position that the claimant has pleaded the relevant date of this information and training PCP to be between 11 May 2019 to 17 August 2023. This is out of time, as we have decided that the relevant period commenced from the 17 August 2023 when the first investigation meeting was held.

94. **Not carefully managing the claimant's stress levels at that initial stage.** This is vague in its drafting. We do not find that it is a PCP as such to 'not carefully manage the claimant's stress levels at that initial stage', but we do find that it is a PCP to apply a standard procedure for investigating any breach of the discount policy.

95. **Not ensuring he had a representative/companion at the first investigation meeting.** We find that it is a PCP to not invite a representative or companion at the first investigation, which is set out in the respondent's disciplinary and dismissal policy and procedure as follows: "There is no right to be accompanied in investigation meetings or informal disciplinary meetings. If employees wish to be accompanied, consideration will be given to any request."

96. **The standard nature of the disciplinary process applied after 17 August 2023 meeting.** We find that it is a PCP to conduct a disciplinary hearing in accordance with standardised procedures if the investigation officer recommends advancing to that stage.

97. **Not carefully managing the claimant's stress levels in that later stage**. This is vague in its drafting. We do not find that 'not carefully managing the claimant's stress levels in that later stage' is a PCP as such. We do find, however, that it is a PCP to invite the claimant to a meeting to discuss any grievance lodged and long-term sick leave absence in accordance with standardised procedures.

Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability, by causing the claimant anxiety? (section 4.3 in list of issues)

98. We will now look at the remaining five PCPs that were retained from seven PCPs listed above (as we found two PCPs to be out of time). We have refined the drafting of the five remaining PCPs in accordance with our above findings on what exactly constituted a PCP in this case and what did not.

99. **First PCP: Call a formal investigation meeting in accordance with standard procedures upon identifying a breach of the discount policy.** The claimant was verbally told to attend a meeting by his colleague. What it transpired to be was, in fact, a formal investigation meeting with someone that claimant did not know, without advance notice, with no agenda, and with no support from his mother. We find this puts the claimant at a substantial disadvantage compared to someone without the claimant's autism because the comparator, although they may find such a meeting daunting, would not suffer the 'intense distress' that the claimant

did, would likely not need their mother present to help them process information and explain his need for reasonable adjustments, and would likely realise the seriousness of the meeting from the outset, and be able to ask for help more easily if needed.

100. **Second PCP: Apply standard procedure for investigating any breach of the discount policy.** The respondent had a strict zero tolerance policy at that time for anyone that breached the discount policy. The respondent admitted in oral evidence that they were tough on anyone that breached this policy at the time. They categorised breach of discount policy as gross misconduct, and suspended people on the spot so that they could carry out a full investigation and ensure that the employee no longer posed a risk to the business. We find that the application of this standard procedure puts claimant at a substantial disadvantage compared to someone without the claimant's autism. A comparator, although they may find immediate suspension on full pay to be stressful, would not necessarily feel the intensity of stress and anxiety that the claimant did.

101. Additionally, in the case of someone without the claimant's autism, they might have known about the rules of the discount policy and broken them dishonesty, or they might have been dishonest when asked if they had broken the rules. In this kind of case, we understand that the respondent might want to suspend them while they were investigating, but in the claimant's case, there was no evidence whatsoever of dishonesty. The claimant admitted straight away to breaking the rules of the discount policy because he was unaware of the rules. A typical feature of autism is a strong desire to adhere to rules. The claimant stated immediately that he was sorry and that it would not happen again now he understood what the rules were.

102. We do not think the claimant posed a risk to the respondent. We do not understand the reason for suspending the claimant during the investigatory stage. We also do not understand why Mr Law decided it was appropriate to move to the disciplinary stage having conducted a second investigatory meeting with the claimant's mother present who informed him about the impact of the claimant's autism.

103. **Third PCP: No right to a representative or companion allowed during the investigatory meetings.** We have seen from numerous sources of written and oral evidence that the claimant requires his mother to be present at any formal meetings (see, for example, the report from Occupational Health Advisor who described this reasonable adjustment as 'vital'). We find that the application of this standard procedure not to allow a representative or companion to be present during the investigation meeting (and to only consider it if specifically requested) puts claimant at a substantial disadvantage compared to someone without the claimant's autism. A comparator would not need the assistance of their mother and carer in an investigatory meeting, like the claimant does, and if they wanted someone to be present, they would likely be confident to ask for that.

104. **Fourth PCP: Conduct a disciplinary hearing in accordance with standardised procedures if the investigation officer recommends**

advancing to that stage. The continuation of the process, with a second investigatory meeting on 25 August 2023, and then the invitation to a formal disciplinary hearing for gross misconduct caused the claimant so much stress that he went on sick leave due to the mental strain related to work. As set out in our findings of fact, the allegations in the disciplinary hearing invitation letter were of 'dishonesty' in the course of duties in his 'abuse' of the employee discount policy and failure to comply with data protection and/or confidentiality policy. A date/time/venue was set. The letter stated that the claimant could be accompanied by a work colleague or a trade union representative. No mention of his mother was made. No reasonable adjustments were offered. The respondent admitted that this was a template letter that had not been adapted in light of the claimant's needs.

105. This clearly puts claimant at a substantial disadvantage compared to someone without the claimant's autism. Mr Bakewell agreed in cross-examination that the claimant 'went off sick because of the stress and anxiety caused by the process'. Mr Davey stated in oral evidence that if he had he been the disciplinary officer, he would have found no further action. This supports the claimant's position that this was a case that did not need to progress to the disciplinary stage, as it might have done for someone without the claimant's autism, as it could have been resolved informally at the earliest stages.

106. **Fifth PCP: Invite the claimant to a meeting to discuss any lodged grievances and long-term sick leave absences, in accordance with standardised procedures.** Repeatedly asking the claimant in a standard manner to attend meetings to discuss his grievance and his long-term sickness absence puts the claimant at a substantial disadvantage compared to someone without the claimant's autism. The claimant was very unwell at this point in time and understandably felt his needs were not being understood or heard. The respondent should not have been using the standard process to deal with the grievance and the long-term sick leave in these circumstances – it should have been offering reasonable adjustments in accordance with the claimant's needs as an autistic person. As we found in our finding of facts section, the respondent did not properly and considerately offer appropriate reasonable adjustments until approximately mid-December 2023.

Did the respondent know, or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage? (section 4.4 in list of issues)

107. The respondent could reasonably have been expected to know that claimant was likely to be placed at the disadvantage because the respondent had knowledge of claimant's autism. The disability checklist completed in 2019 stated that claimant's disability can place him at a substantial disadvantage depending on what he is doing, and this included processing information. The respondent could reasonably have been expected to know that the claimant was likely to be placed at a disadvantage in the form of anxiety because formal processes, with unfamiliar people, initiated without notice are very stressful. If the respondent had an informed understanding of the claimant's autism in the

way they do now, then the reasonable adjustments now in place would have been in place earlier. These adjustments would have managed claimant's stress in a more suitable way so that he was not placed at this disadvantage.

What steps (the 'adjustments') could have been taken to avoid the disadvantage? (section 4.5 in list of issues)

108. Adjustments that could have been taken to avoid the disadvantage include:

a. Sending forms accessible to employees in advance to claimant;
b. Explaining any important policies or documentation to the claimant on a one to one basis;
c. Prior notice of meetings where it is explained what the meeting is about;
d. Contact to be made with Ms Halstead in advance of any meeting;
e. Right to be accompanied to any formal meeting by Ms Halstead;
f. Ensuring that HR files follow an employee if they transfer to another pub so that important information about disability is in the right place and accessible to the right people at the right time;
g. Attempting to resolve issues informally where possible; and
h. Checking in with the claimant to see how he is doing and if he requires any assistance with anything.

Was it reasonable for the respondent to have to take those steps and when? (section 4.6 in list of issues)

109. We find that it was reasonable for the respondent to have taken those steps at the relevant time (e.g. contacting Ms Halstead in advance of any meeting).

Did the respondent fail to take those steps? (section 4.7 in list of issues)

110. We find that the respondent failed to take those steps until around approximately mid-December 2023.

111. The reasonable adjustment claim therefore succeeds.

Harassment related to disability

Did the respondent do the following things? (section 3.1 in list of issues)

112. We find that the respondent did **respond disproportionately to allegations of a breach of employee discount policy in terms of the process followed**. As set out earlier, the respondent had a zero tolerance policy regarding breach of the discount policy, and treated it as a gross misconduct offence, suspending people on the spot upon discovery. Applying this zero tolerance policy to someone with autism who did not know the rule and was not dishonest in his misuse of it is not a proportionate response. Zero tolerance policies are often problematic because they fail to take into account the diverse needs of individuals, including those with disabilities. As the claimant said in his cross-

examination: “They were right to investigate, but I felt like there was a way of doing it. All it had to take was someone to sit down and explain things in a way I understand.”

113. We do not find that the **respondent failed to inform the claimant when his disciplinary process was paused with sufficient particularity.** The respondent should have, ideally, proactively reached out to the claimant and his mother setting out that the disciplinary process had been paused while the claimant was on sick leave (or alternatively they could have just decided not to progress to the disciplinary stage). They did not proactively inform the claimant about the pause. Instead, as set out in the findings of facts, on 13 September 2023, Ms Halstead wrote to the respondent noting that there has been no update on the disciplinary hearing. On 14 September 2023, the respondent responded to explain that the disciplinary hearing has been put on hold pending receipt of the occupational health report. So the respondent did inform the claimant that the disciplinary process was paused.

114. We find that the **respondent invited the claimant to a SOSR hearing, and they set out possible outcomes which included dismissal**. See findings of facts above.

115. We find that the **respondent did withdraw from that SOSR process without explaining why in a formal written letter**. However, we also note that the claimant had asked several times for matters to be dealt with informally, and at this point, the respondent had finally taken that on board and was attempting to resolve the problem informally. The withdrawal of the SOSR process happened after the successful exchange of written questions and answers and then the situation evolved into a live and sensitive attempt to bring the claimant back to work, which went very positively.

116. We find that the **respondent applied its long-term absence policy and grievance policy in this case in standardised way**, without taking into account the different needs of the claimant. See above.

117. We find that the **respondent failed to respond in writing to the claimant’s grievance**. The respondent accepted this, and one of its witnesses inferred that this was regrettable.

118. We find that the **respondent decided not to provide any compensatory gesture to the claimant**. See above.

If so, was that unwanted conduct? Did it relate to the claimant’s protected characteristic, namely disability? (section 3.2 and 3.3 in list of issues)

119. We find that this was unwanted conduct by the claimant and that it did relate to the claimant’s disability (the ‘relate to’ test is a broad one here). This is because we have found that the respondent, *inter alia*, responded disproportionately to allegations of a breach of employee discount policy in terms of the process followed, and applied its long-term absence policy and grievance policy in a standardised way. The claimant clearly did not want to be treated in this way and this conduct did not take

into account the claimant's differing needs due to his disability. This unwanted conduct therefore clearly relates to the disability in question.

Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant? If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect. (section 3.4 and 3.5 in list of issues)

120. The claimant does not submit that this is a case in relation to purpose, but one concerning the effect of the unwanted conduct.

121. While we acknowledge that the claimant genuinely perceived the respondent's conduct as intimidating between August and December 2023, we also recognise that the respondent has the right to investigate potential breaches of their internal policies. The respondent was addressing the situation in a standardised manner, such as sending template letters. Standardised performance management processes, which often involve investigations and disciplinary hearings, are inherently challenging and stressful for all parties involved, but they do not meet the threshold of 'intimidating' (otherwise an employer would never be able to conduct performance management). We therefore cannot conclude that, under these circumstances, the claimant's perception of intimidation was reasonable.

122. The harassment claim therefore does not succeed.

Approved by:

Employment Judge Murdoch
Date: 24 July 2025

REAONS SENT TO THE PARTIES ON
11 August 2025

Jade Lobb
FOR THE TRIBUNAL OFFICE