# THE EMPLOYMENT TRIBUNALS

| **Claimant** | | **Respondent** |
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| **Miss F Johnson** | **v** | **Home Office** |

**Heard at**: London Central **On**: 23-27 and 30 June 2025

**Before: Employment Judge Glennie**

**Representation:**
**Claimant:** In person
**Respondent:** Mr L Dilaimi (Counsel)

# JUDGMENT ON LIABILITY

**1. The following complaints under section 15 of the Equality Act 2010 are well-founded:**

**1.1 Failing to implement the recommendation of the appeal panel that the line manager should take steps to determine whether the previous allegations of bullying and harassment had been fully looked into.**

**1.2 Failing to allow the Claimant access to IT.**

**1.3 Failing to pay the Claimant correctly.**

**2. The other complaints are dismissed.**

**3. Remedies for the successful complaints will be determined at a hearing 26 September 2025, with 1 day allocated.**

# REASONS

1. By her claim to the Tribunal the Claimant, Miss Johnson, made complaints of direct discrimination because of disability; discrimination because of something arising from disability; failure to make reasonable adjustments; and victimisation. The Respondent, the Home Office, disputed those complaints.

2. Once the evidence had been concluded, the Respondent conceded one complaint of discrimination because of something arising from disability, and the Claimant withdrew one complaint of direct discrimination. Both of these matters are reflected in the issues set out below.

## Preliminary matters

3. The hearing had been listed to be heard by a full panel consisting of an employment judge and two lay members. In the event, the Tribunal was unable to find lay members for the hearing. I explained the position to the parties, and stated that, although it would be a matter for me to decide whether the hearing should proceed before me as a judge alone, I would take into account their preferences. I said that if I were to decide that the hearing should remain to be heard by a full panel, that would not be possible within the current hearing allocation, and that the hearing would inevitably be postponed, probably for a number of months. The Respondent was content for the hearing to proceed before me alone: the Claimant said that she would have preferred a full panel, but would rather proceed with me hearing the case alone than have the hearing postponed.

4. Taking into account the parties' preferences and the interests of justice, I decide to proceed with the hearing. I decided to hear and determine the issues as to liability in the first instance.

5. On the morning of 25 June I was required to hear another matter, and the present hearing recommenced after the lunch break.

6. Having heard the evidence and submissions, I reserved judgment as there was insufficient time remaining within the allocation for me to deliberate and deliver an oral judgment with reasons.

## The issues

7. The issues were discussed at a preliminary hearing for case management on 28 September 2023, following which an agreed list was drafted. The issues were further refined in discussion at the commencement of this hearing, and a revised agreed list was produced. It was agreed that there was no live issue as to time limits. The Respondent accepted that the Claimant was disabled at all material times by the condition of clinical depression. The issues on liability to be determined were as follows.

8. **Direct discrimination because of disability**.

8.1 The Claimant relies on the following acts or omissions. Did these occur?

8.1.1 Since 17 May 2023 the Respondent has made little or no effort to reinstate the Claimant or implement the recommendations to enable the Claimant to return to work.

8.1.2 Not pursued by the Claimant.

8.1.3 On 12 June 2023 Rod McClean told the Claimant that he would continue to be her line manager and he then continued to be her line manager.

8.1.4 On or after 12 June 2023 the Respondent told the Claimant that she would remain in the Serious Organised Crime and International Criminality Directorate and that a medical certificate and Occupational Health (OH) referral would be required to ascertain her fitness to work and any reasonable adjustments.

8.1.5 The Respondent has refused the Claimant's request for the Respondent or its OH adviser to engage with her treating psychiatrist to help identify potentially suitable vacancies and make recommendations in terms of any necessary reasonable adjustments to facilitate her return to work.

8.1.6 The Respondent has not given the Claimant any response since she spoke to Rod McLean on 30 June 2023 reiterating her desire to return to work.

8.1.7 The Respondent has failed to provide feedback to the Claimant regarding repayment of overpayment of wages.

8.1.8 As the OH adviser said to the Claimant on 10 July 2023 the Respondent provided very little information to OH regarding the Claimant's case or what posts were available.

8.1.9 The Respondent has removed the Claimant's IT access during her sick leave, leaving her unable to review potential vacancies.

8.2 If those matters occurred, did the Respondent treat the Claimant less favourably than it treated or would treat a real or hypothetical comparator in circumstances that were the same or not materially different?

8.3 If so, did the Respondent treat the Claimant less favourably because of her disability?

9. **Discrimination because of something arising from disability.**

9.1 The Claimant relies on the following acts or omissions. Did these occur?

9.1.1 Failing to implement the recommendations of the appeal panel.

9.1.2 Failing to engage with the Claimant and provide any meaningful support and assistance from 17 May 2023 to date.

9.1.3 Failing to allow the Claimant access to IT.

9.1.4 Refusing to engage with the Claimant's medical advisers.

9.1.5 Failing to pay the Claimant correctly (conceded by the Respondent).

9.2 If these matters occurred, did they amount to unfavourable treatment?

9.3 If so, did the Respondent subject the Claimant to this treatment because of something arising from her disability, namely her absence?

9.4 Can the Respondent show that the treatment was a proportionate means of achieving a legitimate aim?

10. **Failure to make reasonable adjustments.**

11. Did the Respondent apply the following provisions, criteria or practices (PCPs)?:

11.1 Not implementing the recommendations of the appeal panel, specifically:

11.1.1 That the decision to terminate the Claimant's employment be overturned and that she be reinstated on the same terms.

11.1.2 That HR look to find a suitable Home Office manager who has experience dealing with staff on long-term sick leave.

11.1.3 That the line manager take steps to determine whether the previous allegations of bullying and harassment had been fully looked into.

11.2 Failing to engage with the Claimant or provide any meaningful support and assistance from 17 May 2023 to date.

11.3 Failing to allow the Claimant access to IT to review possible employment vacancies.

11.4 Refusing to engage with the Claimant's medical advisers.

11.5 Failing to correctly pay the Claimant.

12. Was the Claimant put at a substantial disadvantage by the application of the alleged PCPs? The disadvantage relied on by the Claimant is exacerbation of her health condition, impeding her return to work and exposing her to an increased risk of being subject to absence management procedures and dismissal.

13. If the Respondent knew, or could reasonably be expected to know, that the Claimant was disabled and likely to be placed at a substantial disadvantage compared with persons who are not disabled, did the Respondent take such steps as were reasonable for it to have to take to avoid the disadvantage? The Claimant asserts that the following steps should have been taken:

13.1 Implementing the recommendations of the appeal panel.

13.2 Engaging with the Claimant and providing meaningful support and assistance from 17 May 2023 to date.

13.3 Allowing the Claimant access to IT to review possible employment vacancies.

13.4 Engaging with the Claimant's medical advisers.

13.5 Paying the Claimant correctly.

13.6 The adjustments set out in the Claimant's letter to Sir Alex Chisholm dated 21 May 2023 and her phone call with Rod McLean on 30 June 2023.

14. **Victimisation.** The protected act relied on is the Claimant's appeal letter dated 14 March 2023.

14.1 Did the following acts or omissions occur:

14.1.1 The Respondent's failure to implement the recommendations of the appeal panel.

14.1.2 The Respondent's failure to support the Claimant in a return to work.

14.2 If so, was the Claimant subjected to this treatment by reason of the protected act?

## Evidence and findings of fact

15 I heard evidence from the following witnesses:

15.1 The Claimant, Miss Johnson.

15.2 Mr Rod McLean, the Claimant's former line manager.

15.3 Ms Marcia Morrison, HR Business Partner.

15.4 Mr Colin Beach, Synergy Payroll Lead.

15.5 I also read a statement from the Claimant's treating psychiatrist, Dr Jalmbrant, who was not called as neither Mr Dilaimi nor I wished to ask her any questions.

16 There was an agreed bundle of documents, and page numbers in these reasons refer to that bundle unless indicated otherwise. There were also two additional bundles provided by the Claimant.

17 The Claimant commenced employment with the Respondent as a civil servant in November 2000. In 2012 she was diagnosed with clinical depression. It is not necessary to go into great detail about her condition, as the Respondent accepts that she was disabled by reason of it during the period when the events relevant to the claim occurred.

18 In 2014 the Respondent loaned the Claimant to the Department for Communities and Local Government. She did not thereafter work for the Respondent until 2024, as she was subsequently loaned to the Cabinet Office in two different roles.

19 In March 2017 the Claimant made a complaint to Cabinet Office HR about her working environment and alleged bullying and harassment. She found the response to her complaint unsatisfactory. It is not necessary for the purposes of the present claim to go into the details of those complaints: it is, however, relevant to record that the Claimant considered that they had not been properly addressed or resolved.

20 In November 2018 the Claimant began a period of sickness absence, arising from her depression. She submitted fit notes to her manager at the Cabinet Office. It appears that the Respondent (the Home Office) remained unaware of the Claimant's absence for several years. Her health worsened during 2019 and 2020, to the extent that she was unable to submit fit notes.

21 The entitlement to sick pay under the Claimant's contact was for 5 months at full pay, then 5 months at half pay, and nil pay thereafter. The Respondent, however, continued paying the Claimant full pay throughout until around March 2022, when the then HR Business Partner Mr MacDonald made contact with her and discovered the continuing payments. It is not clear to me, and again nor is it necessary for me to

decide, how much the Claimant received beyond her contractual entitlement; but the Respondent's evidence is that the total gross overpayment for the period was around £239,000.

22 There followed an investigation and disciplinary process which was not the subject of any of the complaints and which I do not need to describe in detail, but which forms an important part of the background to the claim. The outcome of this was that the disciplinary manager, Ms Page-Jones, decided that the Claimant should be dismissed for gross misconduct in relation to the overpayments up to that point, a decision conveyed by a letter dated 21 February 2023 at pages 759-762.

23 In March 2023 there occurred the first of a series of incorrect payments to the Claimant which are the subject of complaints in the list of issues. For ease of reference, I will set these out all together in due course, rather than inserting them into the general chronology of events.

24 The Claimant appealed against the decision to dismiss her. Her appeal letter of 14 March 2023 at pages 776-778 made various points, including allegations of breaches of the Equality Act. The appeal was heard by Mr Philpott, and the Claimant attended with a Trade Union representative and Dr. Jalmbrant.

25 On 17 May 2023 Mr Philpott gave the outcome in an Appeal Notification Form at pages 362-3. He found that there had been significant failings in the process, and at page 363 that:

"…the initial Decision Maker concluded that [the Claimant's] "acceptance of full pay for a prolonged period of time due to your mitigating circumstances was not the result of deliberate internal fraudulent conduct". I agree with that decision and believe that it directly contradicts the decision to uphold the misconduct allegation in relation to [the Claimant's] honesty and integrity. I therefore overturn that decision in full."

26 Mr Philpott then made five recommendations, as follows:

"(1) The decision to terminate [the Claimant's] employment is overturned and that she is reinstated on the same terms as if the dismissal had not taken place.

"(2) That HR look to find her a suitable Home Office manager that has experience in managing staff on long term sick absence.

"(3) That the line manager takes steps to determine whether the previous allegations of bullying and harassment against [the Claimant] had been fully looked into. [This referred to the complaints referred to above, made by the Claimant while working at the Cabinet Office].

"(4) That the normal Home Office attendance management policy continues until such time as a decision is made on whether [the Claimant] can either return to work or requires medical inefficiency.

"(5) That HR look at ways to ensure that greater care is taken to "monitor" loans / secondments, to avoid similar issues arising again in the future, not only in terms of avoiding "overpayments", but in particular around health & safety and the wellbeing of staff.

27 The Claimant's line manager at this point was Mr McLean, who had been in that role since March 2022. He and the Claimant were previously acquainted with each other, but the Claimant had never worked under his management.

28 On 21 May 2023 the Claimant wrote to Sir Alex Chisholm, the Cabinet Office Permanent Secretary, at pages 366-8, giving her account of events and asking for help with her return to work. Although as noted above in relation to the issues, the Claimant withdrew her complaint arising from this letter, she relied on it as evidence of her situation at the time and her wish to return to work.

29 Mr McLean learned of the appeal outcome in early June 2023, having been on leave in May. He wrote to the Claimant on 12 June 2023 at pages 372-3. He said that she would be reinstated on the same terms and conditions as before and that her continuity of service would be unaffected. Mr McLean said that the role that the Claimant had left in 2014 no longer existed, but that she would remain in the relevant directorate under his management for the time being. He also said that a medical certificate confirming fitness to work or placing the Claimant back on sick leave would be required, and that there was a need for a further OH referral to cover fitness for work and any reasonable adjustments.

30 The Claimant replied on 17 June 2023, expressing surprise on her own part and that of her psychiatrist that the Respondent was proposing that she should return to work in the same business area and with the same line management, despite there being no post available. Attaching a medical certificate covering the period up to 15 August 2023, which stated that she was not fit for work, the Claimant wrote that in the circumstances her medical advisers could not declare her fit to work. She also asked about a response to the 5 recommendations made by Mr Philpott.

31 On 26 June 2023 at page 383 the Claimant wrote to Mr McLean and others saying that she did not have access to Home Office IT, meaning that she could not obtain information about policies, procedures, or available posts. Mr McLean replied on 28 June 2023 stating that he had ordered a laptop for the Claimant, and this was delivered to her on 29 June 2023.

32 In paragraphs 73-75 of her witness statement the Claimant described a telephone call between herself and Mr McLean on 30 June 2023. She said that she gained the clear impression that Mr McLean did not agree with the

decision to reinstate her and that he was annoyed by the situation. The Claimant stated that she said that she wanted to return to work, and that Mr McLean said that there was no role available at her grade; said that he did not think that someone who was as unwell as the Claimant described would be able to do a job at Grade 6; and suggested that she might think about being downgraded. The Claimant also stated that Mr McLean said that she needed to submit a fit note covering the period from her dismissal to her reinstatement, otherwise the system would record her as AWOL. In paragraph 75 of her statement, the Claimant said that she was very upset by the call.

33 When cross-examined about this, Mr McLean said that he had no recollection of this conversation. There clearly was a conversation on this date, as also on 30 June 2023 the Claimant sent an email at page 396 to Mr McLean thanking him for taking the time to speak earlier and asking for a username and password for the internal IT system ("POISE"). She also said that she was keen to return to work, but anxious about returning to the same environment, and asked for details of available posts. In the light of this, I accepted the Claimant's account of the conversation with Mr McLean.

34 On 7 July 2023 the Claimant sent an email at pages 395-396 to Mr McLean, copied to others including Ms Morrison, stating that IT Services had told her that as she was absent sick, she could not have a POISE username or password, and so was unable to access IT.

35 Dealing with this aspect in paragraph 14.7 of her witness statement, covering the period July – October 2023, Ms Morrison said this:

"…..it is an internal policy that if an employee is away from work for 60 days or more, the employee's IT access to the Respondent's platforms is removed (page 323). I am not aware of the rationale for the policy however, part of my role is to ensure compliance with the policy and I was comfortable that we were compliant with it. At the time, I wrongly advised the Claimant that no one had IT access once they had been away for over two months (page 530) [which in fact records 4 months]. However, I later corrected myself and told the Claimant that the policy did not apply to anyone on maternity leave (or parental leave) but that it did apply to those on sickness absence (page 651)".

36 When cross-examined on this aspect, Ms Morrison said that she had asked IT for access to be allowed and that this request was rejected. She said, "we were told it wasn't allowed". Although stating in paragraph 14.8 of her witness statement that her understanding was that the Claimant could still access the Civil Service jobs website with her personal email address, and could then see internal and external vacancies, Ms Morrison agreed that not being on POISE made it more difficult for people to get information (seemingly not restricting this to information about job vacancies). This was consistent with the Claimant's evidence in paragraphs 97 and 98 of her witness statement, where she identified jobs available via expressions of interest, not being able to consult policies, not being able to get support

from networks and not being able to contact people as disadvantages of not having access to POISE. Ms Morrison further stated that she had said that she, Mr McLean and the Claimant's trade union representative could help with providing information, but this was not ideal.

37 I accepted Ms Morrison's evidence that, although in the first instance she told the Claimant that the Respondent's policy was that no one who had been absent from work for 60 days or longer would retain access to POISE, she subsequently corrected that and said that this did not apply to individuals on maternity or paternity leave, but did apply to those on sickness absence. I find that this was in fact the Respondent's policy.

38 Returning to 10 July 2023, on this date the Claimant attended an OH assessment by telephone. The referral, at pages 390-392, had been completed by Mr McLean. I considered that the information included by Mr McLean was of a sort that one would expect in the circumstances. He ticked various alternatives on the form and provided the following further explanation:

"[The Claimant] has been off work since late 2018 with a severe depressive illness. She had an OH referral in spring / early summer that confirmed she was not fit to work at that point. This referral is to establish whether the situation has changed and if she is fit to work what support she might need to reintegrate into the workplace.

"[The Claimant's] role would be as an office-based senior policy manager in the Home Office, managing a team, developing and implementing policy, advising Ministers and engaging with senior officials and external stakeholders. The roles are high pressured, often stressful and require individuals to operate at pace."

39 The Claimant's evidence, which Mr Dilaimi did not dispute, was that the OH physician told her that the Respondent had provided very little information on her case or on what posts were available.

40 The OH report, dated 10 July 2023 at pages 404-406, included the following:

"It seems her mental health is improving a lot but she remains medically unfit for work, in my opinion. If she can continue to work with her psychologist to improve her confidence and resilience, I am optimistic that she can achieve a return to work in the next couple of months.

"There are no adjustments I can recommend at this time as she is not medically fit to return to work. So I can advise when she is medically fit, it would be helpful for us to write to her psychiatrist. Please let me know if you would like me to do this."

41 It seemed to me that it was possible to read the second extract above as meaning that the OH physician was suggesting writing to the psychiatrist

either when the Claimant was fit to return to work, presumably in connection with adjustments, or there and then in order to obtain assistance with the question when the Claimant would be fit to return. I considered the first of these to be the more likely.

42 The Claimant sent an email to Mr McLean on 30 July 2023 at page 446 expressing concern at the lack of progress in her return to work. Mr McLean replied on 1 August 2023 stating that he had been on leave, and that the process of finding a new post should await the Claimant being ready for a phased return to work.

43 Meanwhile, on 30 July 2023 the Claimant had submitted a grievance at pages 474-489. The essence of this was a complaint that little was being done to facilitate her return to work. Under "Requested Outcome" the Claimant wrote: "I would like support to help identify suitable postings and implement reasonable adjustments as identified by Occupational Health and my Drs (including my psychiatrist) to help me return to work."

44 On 6 September 2023 at page 471 Sarah Gawley, a Director from outside of the Claimant's line management chain, wrote saying that she had been asked to consider the grievance. She stated that she considered that the grievance should be dealt with informally, primarily as Mr McLean had not had sufficient time to implement the recommendations from the decision to reinstate the Claimant, but also because she was not yet fit to return to work. Ms Gawley also said that she was recommending that someone other than Mr McLean take on line management responsibilities for the Claimant's return.

45 Mr Philpott's third recommendation in his decision of 17 May 2023 was that steps should be taken to determine whether the allegations made by the Claimant about her treatment in 2017-18 had been fully looked into. In paragraph 13.4 of his witness statement Mr McLean said that this recommendation had been implemented, in that "we" (meaning himself and Ms Morrison) came to the conclusion that, given the historic nature of the allegations, no further action should be taken. This view was reflected in an email date 17 August 2023 from Ms Al-Shemmeri at page 494, in which she said that "no evidence could be found regarding these allegations and due to the length of time that had elapsed since the alleged bullying took place it is not something that the department can reasonably take forward for investigation at this time."

46 The Claimant's oral evidence on this aspect included a point that she made to Ms Al-Shemmeri in an email of 3 September 2023 at page 493. This was that she had not been asked about the allegations, and that it would be normal for a complainant to be spoken to. The Claimant also said that she believed that those concerned had felt that they did not need to deal with the matter properly because she was off sick.

47 In cross-examination Mr McLean said that he did not have a good answer to the question why he did not ask the Claimant about the allegations

before deciding that no further action should be taken. He said that the relevant events had taken place 5 or 6 years previously and that emails would not have been retained when employees moved department. He said that he did not dispute that more efforts should have been made, but that it was not correct that no efforts had been made. He continued that Ms Morrison had looked into the matter. When Ms Morrison was cross-examined, she said that she and Mr McLean had felt that there was no real hope of getting to the bottom of the complaints.

48 A meeting took place on 29 September 2023 between the Claimant, Mr McLean and Ms Morrison, notes of this being at page 530. There was discussion of the ongoing overpayments of salary. Mr McLean said that a new line manager was being sought and that a fresh OH review would take place when the Claimant was ready to return to work. The Claimant said that she did not have IT access and Ms Morrison was to see whether there was a way to have access reinstated (with the subsequent outcome already described above).

49 An OH report of 18 October 2023 at pages 614-616 advised that the Claimant was temporarily unfit to continue in her role. There was a discussion of this report, the overpayment issue and access to IT at a meeting between the Claimant, Mr McLean and Ms Morrison on 3 November 2023.

50 A further OH review was arranged for 2 January 2024. On 29 November 2023 the Claimant wrote to Mr McLean asking whether this could take place any earlier, and whether her treating psychiatrist should be asked to provide a report. Mr McLean replied that he would see what he could do. In the event, the appointment was brought forward to 12 December 2023.

51 The Claimant stated in paragraph 139 of her witness statement, and I accept (there being no note of this meeting in the bundle), that a further catch up meeting took place on 30 November 2023, at which the same people attended and the same matters were discussed as previously.

52 Mr Andrew Cooke-Welling replaced Mr McLean as the Claimant's line manager on 4 December 2023.

53 A further OH report was produced on 12 December 2023 at pages 912-914. This stated that there had been an improvement in the Claimant's health and that she wished to return to work. The physician said that the Claimant was fit to return to work with adjustments. On 21 December 2023 at pages 1072-3 the OH physician wrote to the Claimant's treating psychiatrist asking for a report addressing various points, including fitness for work, treatment and adjustments.

54 Mr Cooke-Welling and the Claimant met on 10 January 2024. Mr Cooke-Welling had not seen the latest OH report, but the Claimant explained that it said that she was fit to return to work, and later emailed a copy to him. They discussed access to the IT system and a possible move to Mr Cooke-

Welling's team based in Manchester. Mr Cooke-Welling asked whether the Claimant wanted ill-health retirement, and she replied that she did not.

55 The Claimant and Mr Cooke-Welling met again on 1 February 2024. Mr Cooke-Welling was unable to give a date for the Claimant's return to work and again asked whether she wished to take ill-health retirement. She again said that she did not. They met on a further occasion on 21 February 2024 and the Claimant began a phased return to work on 4 March 2024.

56 There remain to be explained the overpayments made to the Claimant after her dismissal and successful appeal. These were made while the Claimant remained on sickness absence, at a time when her entitlement to sick pay had ended and when she should not therefore have received any pay. Mr Beach stated that the following incorrect payments were made:

56.1 February 2023: an incorrect tax refund of £209.60.

56.2 March 2023: £2,211.69.

56.3 July 2023: £1,831.75.

56.4 August 2023: £1,220.59.

56.5 September 2023: the Claimant was paid in full, but with her agreement the payment was stopped.

56.6 November 2023: the Claimant received no pay, but her payslip showed payment of 15 pence.

56.7 December 2023: 2 pence.

56.8 January 2024: an incorrect tax refund of £832.12.

56.9 February 2024: an incorrect tax refund of £1,047.53.

57 Mr Beach stated that the total of these overpayments was £7,353.30, which sum the Claimant has been asked to repay. (I made the total £7,353.35, but nothing turns on that difference).

58 Mr Beach also explained that the overpayments in question had occurred because the Respondent's system did not have a "reinstatement" option. The nearest was "rehire", which when used erroneously reset the Claimant's sick pay entitlement to 0, as if her previous sickness absence had not occurred.

**The applicable law and conclusions on the issues**

59 Section 136 of the Equality Act makes the following provisions about the burden of proof to be applied in relation to all alleged contraventions of the Act:

*(1) ……..*

*(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*

*(3) But subsection (2) does not apply if A shows that A did not contravene the provision.*

60 In **Efobi v Royal Mail Group [2021] ICR 1263** the Supreme Court confirmed that the two stage approach identified in relation to the previous anti-discrimination legislation in **Igen v Wong [2005] ICR 931** and **Madarassy v Nomura [2007] ICR 867** remained valid under the Equality Act. At the first stage, the burden is on the claimant to prove, on the balance of probabilities, facts from which the tribunal could properly conclude, in the absence of an adequate explanation, that an unlawful act of discrimination had occurred. At this stage, a difference in protected characteristic and a difference in treatment alone would not, without more, be sufficient. There would have to be something else (which might not in itself be very significant) to provide the basis of such a finding. If such facts were proved, the burden moved to the respondent at the second stage to explain the reasons for the alleged discriminatory treatment and satisfy the tribunal that the protected characteristic had played no part in those reasons.

61 Before dealing with the heads of complaint and issues individually, I observe that the list of issues was drafted at an earlier stage of the proceedings, and therefore before certain events (for example, the Claimant's return to work) had occurred. The list consequently refers to certain matters on the basis that they are continuing, when in fact at the present time that is no longer the case.

62 **Direct discrimination because of disability**. Section 13 of the Equality Act 2010 provides as follows:

*(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.*

63 Issue 8.1.1 concerns reinstatement of the Claimant following her successful appeal against dismissal and the implementation of Mr Philpott's five recommendations (the first of which was that the Claimant should be reinstated). The Claimant has been reinstated, commencing a phased return to work on 4 March 2024.

64 My findings on the five recommendations are as follows (using the numbering in the appeal outcome and set out above):

(1) The dismissal was overturned and the Claimant was reinstated.

(2) It is possible to read Mr Philpott's recommendation as indicating that he did not consider Mr McLean to be a suitable line manager for the Claimant, or in a more general way without that implication. In either event, as from September 2023 a new line manager was being sought, and Mr Cooke-Welling took on the role in December 2023.

(3) Mr Maclean and Ms Morrison did "take steps" to determine whether the earlier allegations had been fully looked into, but (as I find) only in the most technical and limited sense. Essentially, they thought about what could be done and decided that further investigation would be fruitless. I find the Claimant's point that they could at least have spoken to her before reaching that conclusion to be well made. Doing so might have enabled some further, focussed, enquiries to be made (although equally, it might not have done so). I consider, however, that deciding not to do anything by way of determining whether the earlier allegations had been fully looked into, but instead deciding that any further investigation would be fruitless, amounted to a failure to comply with the spirit of this recommendation.

(4) The attendance management policy was applied until the Claimant returned to work.

(5) The recommendation about taking care to avoid overpayments seems to be of general application beyond (but not excluding) the Claimant. There were in fact further overpayments after the reversal of the Claimant's dismissal. It is not easy to determine whether there was a failure to "look at ways" to take "greater care" in this regard. Ultimately, I concluded that Mr Philpott's recommendations should not be interpreted too strictly, and that the history of further overpayments showed a failure to comply with the spirit of the recommendation.

65 I therefore find that there was a failure to implement recommendations (3) and (5). I also find that recommendations (1) and (2) could have been addressed more speedily, although this does not mean that there was a failure to implement them. I find that these, and recommendation (4), were implemented.

66 I have then considered whether the Claimant has proved facts from which, in the absence of an explanation, I could properly conclude that the failure to implement recommendations (3) and (5) occurred because she was a disabled person. This involves a comparison between the Claimant and a non-disabled person whose circumstances were the same or not materially different from hers. This would be a non-disabled person who had been dismissed and had successfully appealed against this, who had made the earlier complaints, had the same sort of sickness absence record, and had been overpaid in the same sort of way.

67 I find nothing in the facts that suggests that the Claimant's status as a disabled person played any part in these events. In my judgement, there is no reason why it would have an influence on the decision that further investigation of the earlier complaints would be fruitless or on the erroneous making of further overpayments. Indeed, the Claimant's case was that the former happened because she was absent, and therefore overlooked, rather than expressly because she was disabled. (This point will be discussed further in relation to discrimination because of something arising from disability).

68 If I am wrong in concluding that recommendations (1), (2) and (4) were implemented, the same reasoning would apply. I find nothing in the facts to suggest that such shortcomings as there were in the Respondent's approach were in any way influenced by the fact that the Claimant was disabled.

69 The Claimant withdrew the complaint in issue 8.1.2.

70 With regard to issue 8.1.3, it is the case that Mr McLean remained as the Claimant's line manager after 12 June 2023, until 4 December 2023. Efforts to find another line manager began in September 2023.

71 I find nothing in the facts that could properly form the basis of a finding that that Mr McClean's continuing as the Claimant's line manager for that period was in any way influenced by the Claimant's disability.

72 In reaching this conclusion, I have had particular regard to the Claimant's account of the conversation with Mr McLean on 30 June 2025, which I have accepted. The Claimant's criticisms of Mr McLean in relation to this conversation do not, however, support the proposition that he took a negative view of her situation because she was disabled. Instead, they tend to support the propositions that Mr McLean took a negative view because he believed that the Claimant should not have been reinstated and/or that she was not as unwell as she claimed to be. It is entirely understandable that gaining this impression from the conversation was distressing for the Claimant, and would cause her to believe that Mr McLean should not continue as her manager.

73 These matters do not, however, provide a basis on which I could properly find, in the absence of an explanation, that Mr McLean continued as the Claimant's manager because of her disability. This is in part because, if anything, they would provide reasons why Mr McLean would <u>not</u> want to continue in that role, and in part because they are reasons other than the Claimant's disability why he might have taken a negative view of her situation.

74 It is the case, as stated in issue 8.1.4, that the Claimant was told that she would remain in the relevant Directorate and that a medical certificate and OH referral would be required to ascertain her fitness to work and any reasonable adjustments.

75 Again, I found nothing in the facts to suggest that the Respondent would have treated a non-disabled person in circumstances not materially different from the Claimant's in a different way. When cross-examined about this aspect, the Claimant said that "once they knew I was disabled they were content to leave things as they were". As my findings of fact show, the Respondent did not leave things as they were, although it could be argued that a number of matters could have been progressed with greater speed. I found no logic, however, in the proposition that knowledge of the Claimant's disability would have influenced any decision as to whether she should or should not remain in the same Directorate as before. I also find that medical certificates and an OH referral would be required as a matter of course in relation to any employee seeking to return to work after the length of time that applied to the Claimant, whether or not they were disabled.

76 In relation to issue 8.1.5, the OH physician did ultimately engage with the Claimant's treating psychiatrist by writing to the latter on 21 December 2023. I have found that the more likely interpretation of the OH adviser's report of 10 July 2023 is that the recommendation was to approach the psychiatrist when the Claimant was ready to return to work. One might or might not agree with the Respondent taking that approach, but there is nothing in the facts to suggest that this was done because of the Claimant's disability. The Claimant's response to this point in cross-examination was to the effect that the Respondent did not particularly want to get her back to work and was "using" her disability which, if correct, would if anything suggest that there was a reason other than her disability in play.

77 Issue 8.1.6 concerned Mr McLean not responding to the Claimant about her return to work following their conversation on 30 June 2023. Mr McLean in fact responded by way of his email of 1 August 2023, having received an email from the Claimant on 30 July. The allegation that he failed to respond was not therefore established on the facts. To the extent that the allegation might be understood as including a complaint that he should have responded more speedily, I do not consider that there is anything in a delay of a small number of weeks to suggest that the Claimant's disability had any influence over that. There is nothing in the facts to support a finding that Mr McLean would have acted differently in the case of a non-disabled person whose circumstances were not materially different. Furthermore, I accepted Mr McLean's evidence that he was on leave during July 2023. He did not say that he was absent for the whole of the month, but I find that his being on leave establishes a non-discriminatory explanation for such delay as there was.

78 The Claimant's oral evidence about issue 8.1.7 was that she could not believe it when she again began receiving overpayments after her reinstatement. On this point in particular I find myself in agreement with Mr Dilaimi's frank and rightly sympathetic observation in submissions that what the Claimant has been through is "awful". She had been dismissed for gross misconduct in connection with the earlier overpayments; she had

experienced and was continuing to experience severe mental health difficulties; and, having been reinstated on appeal, found that once again she was being paid salary to which she was not entitled. In cross-examination the Claimant said "I couldn't believe it was happening again". The practical difficulty about the overpayments was that the Claimant's state benefits would cease when she was paid, but she knew that she could not spend the money received as she would be bound to repay it in due course.

79 The complaint about lack of feedback on the overpayments amounted to the Claimant drawing the Respondent's attention to what was happening, and the problem not being resolved. The Claimant herself, however, said in her oral evidence in relation to the reason why this happened, "I can't imagine it was because I was disabled". I find that she was right to make this concession. There is no suggestion, and no reason for me to believe, that the Respondent brought about this situation intentionally. I cannot see any other way in which the Claimant's disability could have been causative of the overpayments (her absence arising from her disability being another matter). I find there is no basis in the facts for a finding that the overpayments occurred because of the Claimant's disability.

80 With regard to issue 8.1.8, I have found that the information provided to the OH adviser in July 2023 was within the parameters of what would be normal in such a situation. There is no reason to find that Mr McLean would have given more information in the case of a non-disabled person. There is no logical reason why that would be so. I therefore find that there is no difference in treatment as compared to the way in which a hypothetical non-disabled comparator would be treated. There is also nothing in the facts on which I could properly base a finding that the Claimant was treated as she was because of her disability.

81 Whether or not it is correct to characterise what happened regarding the Claimant's IT access as the Respondent removing it, as stated in issue 8.1.9, it is the case that she did not have IT access while absent on sick leave. It is also the case that she was asking for such access. On the findings I have made as to the Respondent's policy, the facts are not such that I could properly find that the lack of IT access occurred because of the Claimant's disability (although again, the position is different with regard to her sickness absence as something arising in consequence of her disability).

82 **Discrimination arising from disability**. Section 15 of the Equality Act provides as follows:

*(1) A person (A) discriminates against a disabled person (B) if –*

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

83 Issue 9.1.1 raises essentially the same matters as issue 8.1.1. My findings regarding the five recommendations made by Mr Philpott given under the latter apply again here. There was a failure to implement recommendations (3) and (5), and recommendations (1) and (2) could have been implemented more speedily, although this did not amount to a failure to implement them.

84 The Respondent has conceded that the failure to implement recommendation (5) amounted to unfavourable treatment because of something arising in consequence of the Claimant's disability (namely, her absence), and has not argued that this failure was justified in terms of subsection (1)(b). That complaint is therefore well-founded.

85 I have gone on to consider whether, in relation to the failure to implement recommendation (3), the facts are such that, in the absence of an explanation, I could properly find that this occurred because of the Claimant's absence. The Claimant argued that, had she been present at work, Mr McLean and/or Ms Morrison would have spoken to her about the earlier allegations. Mr Dilaimi submitted that this was not necessarily the case, and that doing so could have raised false hopes, although that was not a point made by either of Ms Morrison or Mr McLean, and I do not find that this was any part of their thinking.

86 I concluded that the facts were such that, in the absence of an explanation, I could properly find that the failure to implement the recommendation because of the Claimant's absence. In my judgement, the Claimant plausibly suggested that, had she been at work, she would have been asked about the matter. I find it probable that she would have been, as it would have been a simple and obvious step to take. I also find it plausible that Ms Morrison and/or Mr McLean could have failed to do this because the Claimant was absent: not out of any form of malice, but because the Claimant was not visible (either physically in the office or working remotely), and so liable to be overlooked, or not prioritised.

87 I therefore find that the burden is on the Respondent to show that it did not contravene section 15. I also find that it has not done so. The evidence of Ms Morrison and Mr McLean was that they did not conduct any further investigation or make any further enquiries because they considered that there was no point in doing so. I do not consider that this is sufficient to show that the Claimant's absence from work was not a factor in their taking that view. Given what I have said about how it would have been simple to at least have asked the Claimant about her earlier complaints, I find that this probably was a factor.

88 The Respondent did not argue justification in relation to this element. I therefore find that this complaint is well-founded.

89 I consider that the allegation in issue 9.1.2 is put in general terms such that it adds little, if anything, to the other more specific issues. I do not find that

there was a complete failure to engage with the Claimant or a failure to provide any meaningful support or assistance. To the extent that there were shortcomings in what was done, these are covered by the other issues.

90 Issue 9.1.3 concerns the Claimant not being allowed access to IT. As described above, she was not given such access during her sickness absence. Mr Dilaimi conceded, rightly in my judgement, that the Claimant's absence made a material contribution to the withholding of access, so that the test of causation under section 15 was made out. He relied, however, on justification under subsection (1)(b). He submitted that the policy of not allowing IT access to those who had been absent sick for more than 60 days (as compared to those absent on maternity or parental leave) was a proportionate means of achieving a legitimate aim. In support of the legitimate aim, he submitted that the situation of an employee on sickness absence was different from that of an employee on maternity or parental leave because the former is, by definition, not fit for work: it was therefore a legitimate aim to protect them from interference with their sickness absence leave.

91 I find that the principal difficulty with Mr Dilaimi's submission is that the Claimant was asking for IT access and explaining why she wanted it. There was no question of her wanting, or needing, to be protected from interference with her sick leave. She wanted to return to work.

92 I find that the general legitimate aim did not apply in the Claimant's case. It was not a legitimate aim to protect the Claimant from something from which she did not wish or need to be protected. Alternatively, if the general aim should be considered as legitimate, it was not proportionate to refuse IT access in the Claimant's case. The Respondent has not given any evidence as to why an exception could not have been made for the Claimant, but has simply relied on the general policy. I have therefore concluded that the Respondent has not shown that the withholding of access was justified, and that this complaint is well-founded.

93 Section 20 of the Equality Act includes the following provision about the duty to make reasonable adjustments:

> *(2) The duty comprises the following three requirements.*
>
> *(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.*

94 In **Ishola v Transport for London [2020] EWCA Civ 112** the Court of Appeal noted that the concept of a provision, criterion or practice (PCP) was to be interpreted widely and purposively, but that a PCP did not apply to every act of unfair treatment of an employee. The Court of Appeal held

that "all three words carry the connotation of a state of affairs…….indicating how similar cases are generally treated or would be treated if it occurred again" and that a practice indicated "some form of continuum in the sense that it is the way in which things generally are or will be done." In that case, the Employment Tribunal had been entitled to conclude that the Respondent's failure to investigate the Claimant's grievance was not a practice of requiring him to return to work without a proper investigation of his grievance.

95 In the present case, the Claimant relied on 5 PCPs. The first (issue 11.1) was that of not implementing the recommendations made by Mr Philpott, with further detail given in the sub-issues. I find that this does not amount to a PCP within the terms identified in **Ishola**. To the extent that there was such a failure (to which question my findings above apply), there was no evidence that other similar cases were generally treated or would be treated in a similar way. I find that it is clear that what occurred in the Claimant's case was particular to the circumstances of her case. What occurred does not indicate that this was the way in which things generally were or would be done.

96 I find that the same is true of the proposed PCPs in issues 11.2, 11.4 and 11.5. In my judgement it could not realistically be said that the way in which things generally were or would be done was to fail to engage with someone in the Claimant's position or provide meaningful support and assistance; to refuse to engage with medical advisers; or to pay employees on sick leave incorrectly. I find that, to the extent that these things happened, they have to be regarded as truly one-off occurrences that arose in the particular circumstances of the Claimant's case.

97 The position is different with regard to the PCP identified in issue 11.3 (failing to allow IT access) as there was a policy to this effect. I find that there was a PCP.

98 I do not, however, consider that it is necessary to work through the other elements of the complaint of failure to make reasonable adjustments. I say this because:

95.1 It would not be proportionate to consider the other elements on the alternative assumption that my conclusion about proposed PCPs 1,2, 4 and 5 may be wrong.

95.2 The complaint arising from PCP 3 covers the same ground as the complaint of discrimination under section 15 relating to the refusal of IT access, where I have found in the Claimant's favour. It would add nothing to that finding to work through the reasonable adjustments complaint in order to determine whether or not it might also succeed under that head. (The same would also be true of the complaint under proposed PCP 5, which mirrors the section 15 complaint which the Respondent has conceded).

99 There remains the complaint of victimisation. Section 27 of the Equality Act provides that:

*(1) A person (A) victimises another person (B) if A subjects B to detriment because –*

*(a) B does a protected act…..*

*(2) Each of the following is a protected act –*

*…(d) making an allegation (whether or not express) that A or another person has contravened this Act.*

100 The Respondent accepts that the Claimant's appeal letter dated 14 March 2023 was a protected act. It included allegations of breach of the Equality Act.

101 The Claimant relies on two detriments. The first is the Respondent's alleged failure to implement Mr Philpott's recommendations (issue 14.1.1). My findings under issue 8.1.1 (direct discrimination) as to whether there were failures to implement the recommendations are applicable again here. I have found that there was a failure to implement recommendations (3) and (5).

102 I do not, however, find anything in the facts that, in the absence of an explanation, could properly form the basis of a finding that the allegations of breach of the Equality Act in the appeal letter played any part in the failure to implement those recommendations. At most, there is the Claimant's impression (which I have accepted as genuine) that Mr McLean did not agree with the decision to reinstate her; was annoyed with the situation; and doubted that she was as unwell as she said she was. Even if the Claimant's impression about all of those was correct, and those were Mr McLean's views, this would not form a basis for finding that the allegations of discrimination had played a part in the two failures identified.

103 The second alleged detriment is that of failing to support the Claimant in a return to work. I do not consider that the broad proposition that the Respondent failed to support the Claimant in this respect is made out on the facts. There clearly was some support (although the Claimant has criticisms of it) and she did return to work. To the extent that there were shortcomings I find, for the reasons already given, that there is no basis on which I could properly conclude that the allegations of discrimination in the appeal letter played a part in those.

104 The outcome on liability therefore is that three complaints succeed under section 15, being the failure to implement Mr Philpott's recommendation about investigating the earlier complaints; failing to allow IT access; and failing to pay the Claimant correctly.

105 A further hearing to assess remedies has been listed with the agreement of the parties on 26 September 2025. I encourage the parties to undertake discussions with a view to seeing whether they can agree on remedies. If they are able to reach a settlement, they should notify the Tribunal as soon as possible.

Employment Judge Glennie

Dated: ……..……27 August 2025..…...

Judgment sent to the parties on:

27 August 2025

…….....

…….....
For the Tribunal Office