EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8001281/2024 Hearing Held at Aberdeen on 22, 23 and 24 April 2025, and Members' Meeting on 8 August 2025

Employment Judge: M A Macleod
Tribunal Member: V Lockhart
Tribunal Member: C Jackson

XY	**Claimant** **In Person**
Baker Hughes Energy Technology UK Limited	**Respondent** **Represented by** **Ms L Byars** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that:

(1) The claimant's claim under section 15 of the Equality Act 2010 fails, in the judgment of the majority, and is therefore dismissed; and

(2) The claimant's claim under section 20/21 of the Equality Act 2010 fails, unanimously, and is therefore dismissed.

REASONS

1. The claimant presented a claim to the Employment Tribunal on 22 August 2024, in which he complained that he had been discriminated against on the grounds of disability.

2. The respondent submitted an ET3 response in which they resisted the claimant's claims.

3. A Hearing was listed to take place at the Employment Tribunal, Aberdeen, on 22 to 24 April 2025. The claimant appeared on his own behalf, accompanied by his wife (who was present in a supportive rather than representative capacity). The respondent was represented by Ms Byars, solicitor.

4. The parties presented a Joint Bundle of Productions, upon which reliance was placed in the course of the Hearing.

5. The respondent called as witnesses:

   - Shane O'Neill, Labour Relations Leader for Europe;
   - James Derek Holroyd, Global Commercial Processing Tools Leader

6. The claimant gave evidence on his own account.

List of Issues

7. Parties agreed a List of Issues, in the following terms:

Discrimination arising from disability, Section 15 Equality Act ("the Act")

1. Was the claimant treated unfavourably in respect of how the respondent calculated his bonus entitlements under the company financial performance element of the respondent's Fullstream bonus scheme ("the Bonus Scheme")?

2. If the answer to 1 is yes, (which the respondent denies) the respondent accepts that such unfavourable treatment arose in consequence of the claimant's disability, namely due to his absences from work (which the respondent accepts were disability related).

3. If there was unfavourable treatment, was the treatment a proportionate means of achieving a legitimate aim, namely:

a. **Encouraging and motivating the contributions of those employees of the respondent who are at work and actively serving the respondent, and**

b. **Rewarding and recognising the contributions of those employees actively serving the respondent and who contribute to the achievement of the company performance metrics which trigger the company financial performance element of the Bonus Scheme.**

Failure to make reasonable adjustments: Section 20, 21 and 39(2)(b) and (d) of the Act

4. **Does the eligibility requirement of the Bonus Scheme where employees upon commencing long-term sick leave become ineligible for the company financial performance element of the Bonus Scheme amount to a provision, criterion or practice?**

5. **If so, did this place the claimant at a substantial disadvantage as compared to an employee who does not share the claimant's disability?**

6. **If yes, did the respondent fail in its duty to take reasonable steps to avoid the disadvantage? The claimant suggested the following as a reasonable adjustment, for the respondent, which could have been taken to avoid the disadvantage:**

    a. **Excluding the claimant's disability related absences when determining his eligibility for the company financial performance element of the Bonus Scheme.**

8. Based on the evidence led and the information presented, the Tribunal was able to find the following facts admitted or proved.

Findings in Fact

9. The claimant, whose date of birth is 25 October 1969, commenced employment with the respondent on 18 November 2013.

10. The respondent is an industrial services company providing products, services, manufacturing and skilled labour to the energy industry.

11. The claimant was offered his job, as a Senior Systems Engineer (EPC), reporting to Alan Johnston, Engineering Manager, by letter dated 1 November 2013 sent to him by Joti Manku, GE Global Operations – HR Operations (84). The letter attached a Welcome Pack and contract of employment.

12. The contract of employment (85ff) provided that his salary would be £85,000 per annum. It also set out the following provision under "Incentive Plan":

"Membership of the Oil and Gas Enterprise Bonus Plan. The target amount for 2013 is 15%, pro-rated based on your start date and subject to satisfactory performance.

You are eligible to participate in the plan effective from your start date. See Section 2, paragraph 2 for payment conditions. Further details of the plan will be provided to when you start (sic)."

13. The claimant's hours of work were 37.5 hours per week, Monday to Friday. The position was said to be "Senior Professional Band", and his date of continuous employment with the respondent was 18 November 2013.

14. Section 2 of the contract of employment was entitled "Standard Terms and Conditions of Employment" (90ff).

15. In paragraph 2, the "Bonus or Incentive Plan" was set out:

"If you are eligible to participate in a bonus or incentive plan operated by the Company or the GE Group, it will be included in your Key Terms. Bonus and incentive plans are dependent on the achievement of certain objectives, which vary depending upon your business and role and/or your personal contribution. Eligibility and participation will be determined by the Company at its discretion.

To be eligible to receive a payment under any bonus or incentive plan you must be employed and not under notice (whether given by you or the Company) as at the payment date. Any payment will not become part of your contractual remuneration for pension purposes or otherwise.

The level of any payment in one year does not entitle you to the same or a higher payment in a future year. The Company reserves the right at any time to terminate or amend any bonus or other incentive plan without notice or compensation.

If you commence employment with the Company on or after 1 October you will be eligible to participate in the scheme for the following calendar year but not for the actual year of joining unless notified separately in the Key Terms."

16. The claimant signed the contract of employment on 3 November 2013.

17. On 14 December 2017, the respondent wrote to the claimant (96) to offer the claimant a position with GE Oil & Gas UK Limited as "SPS PEM Siccar Point", reporting to Gareth Davies, Engineering Manager – Engineering Operations Management, starting on 1 January 2018.

18. The employment contract attached to that offer (97ff) provided, under Key Terms, that he would be entitled to continuing membership of the Fullstream, and referred to Section 2, paragraph 2 for payment conditions.

19. In the claimant's Standard Terms and Conditions of Employment (101ff), paragraph 2 provided:

"If you are eligible to take part in a bonus or incentive plan it will be included in your Key Terms. Bonsu and incentive plans are dependent on the achievement of certain objectives, which vary depending on your business, role and/or your personal contribution.

To be eligible to receive a payment under any bonus or incentive plan you must be employed and not under notice (whether given by you or the

Company) at the payment date. Bonus and incentive payments are not a contractual entitlement and the Company may terminate or amend any bonus or other incentive plan without notice or compensation.

If you join the Company, or are newly eligible for an Incentive Plan, on or after 1 October, you will be able to participate in the scheme for the following calendar year but not for the actual year of joining."

20. Under paragraph 4, the terms and conditions set out the provisions relating to Insurance Plans:

"The Company operates several insurance plans in which you may be eligible to participate.

Membership of any such plan is subject to the terms and conditions imposed by the relevant plan provider and receipt of benefits under these plans is subject to the plan provider accepting (and continuing to accept) a claim. The Company will have no liability to you in the event that a claim is rejected by the plan provider (whether at the outset of the claim or at a later date).

The Company may end your participation in any plan and/or withdraw or amend any of the rules or benefits (including the level of cover) without providing a replacement or other compensation.

Provision of any benefits under these plans will in no way affect the Company's right to terminate your employment in accordance with the terms of this contract or otherwise at any time."

21. On 6 January 2022, the claimant was diagnosed with a very aggressive form of skin cancer (a malignant melanoma). He had surgery to remove a tumour and also lymph nodes by March 2022, and over the succeeding months, he was subject to many scans and procedures.

22. The claimant immediately became absent from work from 6 January 2022. As at the date of the Tribunal Hearing, the claimant remains absent from work due to his ongoing illness and its treatment.

23. On 28 April 2022, the respondent wrote to the claimant (246) to advise that they acknowledged that the claimant was currently unfit to work due to ill health. However, they confirmed that, in terms of the Sickness Absence Policy, his entitlement to Company sick pay of 26 weeks (paid) in a rolling 52 week period would come to an end on 6 July 2022. From 7 July 2022, the claimant would only be entitled to Statutory Sick Pay (SSP), which would continue to be paid up to 23 July 2022. Thereafter, the respondent would not make any further payments from the respondent in relation to his absence.

24. The final paragraph of the letter stated: *"Baker Hughes, work alongside our Income Protection Insurer, UNUM, to provide support to both employees and employer when an employee is absent due to ill health. Therefore, they have been informed of your current absence and will contact you to arrange an appointment to assess where there are opportunities to assist. This will enable them to support you during your absence, return to work, and/or submission of Income Protection claim, if necessary."*

25. On 2 August 2022, UNUM wrote to the respondent (247) to advise that the commencement date for their liability was 7 July 2022, the claimant having become incapacitated on 6 January 2022; and that *"This is the period of time we have used to assess the claim and determine whether XY satisfies the definition of incapacity."*

26. They advised that they had sought advice from the claimant's medical practitioners, and that *"Due to the above we are satisfied that the definition of incapacity has been fulfilled and we have therefore accepted the claim."* They went on to confirm that an initial period of £4,457.47 covering the period 7 July 2022 to 31 July 2022 would be paid into the claimant's bank account in the days to come. They also said that the claimant's total annual benefit due on the claim would be £65,079.00. This represented payment of 75% of pensionable salary.

27. The limited payment period applicable to the claim was 5 years, which would be reached on 6 July 2027.

28. The respondent wrote to the claimant on 3 August 2022 (254) to confirm that UNUM had accepted his application for benefit.

29. On 5 February 2024, Lorenzo Simonelli, Chairman and Chief Executive of the respondent, emailed all staff to confirm the payout results of the respondent's short-term incentive program (241). Based on "outstanding 2024 financial results", the overall payout by the respondent was 140%. Of that, 108% related to the free cash flow, adjusted EBITDA and revenue, and 32% to the consolidated blueprint priorities. They were subject to adjustment based on business segment performance, and could then be adjusted further by 0 to 200% for individual performance for employees in grades 1 to 11.

30. On 8 May 2024, the claimant submitted an email (264) to Peter Mutten attaching a grievance he wished to submit.

31. The grievance (265) stated:

*"My grievance is with the **Fullstream Bonus Policy**. The reason for my grievance that the policy automatically excluded me from the entire Fullstream Bonus scheme due to long term absence.*

I was included in an email informing me of the Fullstream Bonus payout on 7th February 2024 which would lead any reasonable person receiving the email to assume that they were included in the Fullstream Bonus payout. However, no payout or communication saying otherwise was received by myself.

I have attempted informal resolution of this by informing Peter Mutten, my line manager at the time bonuses were paid out and who has some knowledge of my absence. I asked a reasonable question as to why a company performance bonus (part of Fullstream) had not been paid out to me. Peter checked and advised that the Fullstream Bonus documentation stated that 'long-term sick leave (as defined by local *policy) – not eligible (from start of long-term sick leave)'. I queried this further stating 'A few external sources that help people off work with a disability (cancer being defined as such) reckon that personal performance can be withheld but company performance can't and withholding it could be discrimination under the Equality Act or a breach of contract'…'More clarity other than 'local policy' is needed here'. I waited two weeks for a response before asking Peter about progress. I also asked Peter to send me the Grievance Procedure as I have no access to BH systems. I informed him I would have to raise a grievance and that I intend to go to ACAS if there is no resolution, but I am attempting to resolve informally/formally with Baker Hughes first. Peter advised when he sent me the grievance procedure that he had raised a ticket with HR and their response was just to reaffirm the policy. I had specifically asked for more clarity, but I believe that that request has been ignored.*

As I understand, the Fullstream Bonus comprises two parts, ie a company performance part and a personal performance part. The parts comprise 70% and 30% of the bonus respectively and may have multipliers applied. I do not have a grievance with no receiving the 30% (personal performance) part of the bonus as I was not in attendance to receive this. I do, however, have a grievance with not receiving the 70% (company performance) part as this has nothing to do with personal performance and only company financial performance is a trigger for paying out this part of the bonus.

Firstly, my absence is due to disability. As you will be aware, my disability is due to Metastatic Melanoma (stage 3c) cancer. Cancer is defined as a disability and a protected characteristic of the Equality Act 2010. Automatic exclusion from the Fullstream Bonus scheme because of long term sickness absence where that absence is due to disability may be discrimination. I do not believe that disability absence should be included in a catch all 'long term' absence definition. Disability related absence should be managed separately from sickness management and all disability related absence should be treated as unique to the individual. In *any case, I do not believe that my absence is being treated as unique or as a disability. I do not believe that it is managed in any separate way to what would happen if i was absent with no disability. In fact, the Fullstream Bonus policy allows for those on maternity absence to be included in the Fullstream Bonus scheme but excludes those on disability absence where both are protected characteristics in the Equality Act 2010.*

Secondly, the 70% company performance part of the bonus based on company performance is awarded simply because of company financial metrics hitting performance indicators and has nothing to do with personal performance. My individual attendance, or lack of, would make no considerable difference overall impact and is inconsequential on those financial metrics of a company the size of Baker Hughes. Its entirely possible for an employee in attendance to receive no personal performance bonus but receive the company performance bonus. Every equivalent employee role in the Fullstream Bonus scheme has the same calculation applied to their salary to come to the 70% payout figure. It is not alterable by line management based on personal performance or any personal characteristic. The fact that I am an employee should be sufficient reason to pay out the company performance part of the bonus to me.

Thirdly, it seems strange that you awarded me a 10-year service award during my absence, but I am excluded from Fullstream. That implies that my absence due to disability had no effect on a length of service award but did influence a Fullstream award. My absence due to disability seems to matter for one but not the other.

*The details in **Land Registry v Houghton & Others UKEAT/0149/14/BA** and the prior Employment Tribunal give some reasoning as to why I have the grievance.*

Regards,

XY"

32. The respondent replied to the claimant, in the person of Richard Bryce (271) on 15 May 2024:

"Hi XY,

Referring to your note via Ollie Farrell raising a grievance on the topic of ineligibility for Fullstream while on Long Term Absence.

In line with our grievance policy I wanted to clarify with you informally that this approach is defined in the Global Plan document for Fullstream Bonus, which I have attached for your reference (page 11 'Eligibility'). This Plan is a global document and the LOA rules are applied consistently, subject to any local adjustments which we do not believe apply in your case.

I appreciate you may be disappointed by this, but we continue to wish you well in your ongoing treatment and recovery.

Regards

Richard"

33. Mr Bryce attached the respondent's Fullstream Participant Guide for 2024 (272ff), dated 23 April 2024.

34. The Guide set out the summary and objectives of the Fullstream scheme, which were to attract and retain talent through reward opportunities tied to the financial success of the company and Strategic Blueprint goals; differentiate participant reward based on individual performance; create a global program which is easy to understand and execute; drive desired outcomes and behaviours reflecting the respondent's core values; and aligning to shareholders' expectations.

35. It went on to state that the financial goals for 2024 were based on the following metrics (274):

- *"Free Cash Flow (35% weightage)*

- *Adjusted EBITDA (25% weightage)*

- *Revenue (10% weightage)"*

36. EBITDA refers to earnings before interest, tax, depreciation and amortisation, and is a figure intended to represent the true profit of the company.

37. Eligibility to receive the bonus during a period of leave of absence was dependent on the reason for the absence, and in some cases, the duration of the leave of absence (282).

38. If an employee were absent due to maternity, paternity or parental leave, they would be eligible for at least one year, after which the entitlement would be driven by local policy or regulation; if an employee were on voluntary leave such as educational or sabbatical leave, they would be eligible for 90 days, after which they would be ineligible.

39. The Guide confirmed that if an employee were absent on short-term sick leave (as defined by local policy), they would be eligible throughout for the bonus; but if an employee were absent on long-term sick leave (as defined by local policy), they would not be eligible from the start of long-term sick leave.

40. An employee on garden leave is not eligible to receive the bonus.

41. The respondent's Sickness Absence Policy (effective from 1 April 2024) (129ff) set out the policy aims as follows:

"Baker Hughes Company and its affiliates (collectively 'the Company') seeks to encourage all employees to maximise their attendance at work while recognising that there may be occasions when employees will be absent due to sickness or incapacity.

The Company seeks to support employees during any sickness absence and assist them in their re-integration into the workplace following such absence where reasonably possible.

The Company aims to apply a consistent procedure when an employee is absent from work on the grounds of sickness or incapacity. Accordingly, the Company will monitor and track such absences, and the Company and the employee will take the necessary action to enable the employee to return to work."

42. The policy provided that Company Sick Pay is inclusive of Statutory Sick Pay (SSP) and is paid at the discretion of the Company for genuine sickness absence, up to a maximum of 26 weeks in any continuous period of sickness absence (137), at 100% of basic salary excluding shift allowances or additional payments).

43. Appendix A of the policy sets out provisions in relation to the handling of "Long-Term Absence", beyond a period of 26 weeks (cumulative) in a 52-week rolling period. It provided that in such circumstances, the employee's condition would be considered by the insurer, and that acceptance on the scheme would not be guaranteed.

44. On 15 May 2024, the claimant emailed Mr Bryce (287) to advise that he appreciated his email but that this was the second time he had been told informally that it was policy/procedure, and that this was frustrating. As a result, he requested that the respondent continue with the formal Grievance.

45. On 20 May 2024, Nick Dunn, Quality Manager, wrote to the claimant (294) to invite him to attend a Grievance Meeting on Thursday 23 May 2024 at 1530, to be held by MS Teams, which would be accounted a formal Grievance Meeting.

46. Mr Dunn attached the following documents with his invitation:

- Grievance Policy
- SSP & UNUM Referral letter 28 April 2022
- Baker Hughes Sickness Absence Policy 1 April 2024

- UNUM Income Protection Guide
- Acceptance onto Income Protection letter June 2022
- Fullstream Bonus Participation Guide 2024.

47. The claimant submitted further information in writing in advance of the Meeting (296ff), setting out obligations placed on the respondent by the Equality Act 2010 and the EHRC Statutory Code of Practice. In particular, he identified the requirement to make reasonable adjustments to avoid a disadvantage arising from a provision, criterion or practice (PCP), and observed that there were no reasonable adjustments made within the Fullstream Participant Guide nor the UK Sickness Absence Policy.

48. He went on to say that the automatic exclusion from Fullstream based absence records was, he believed, unfavourable treatment based on a consequence arising from his disability, that is, the need to take a leave of absence due to his treatment and rehabilitation from cancer. He did not consider it to amount to a proportionate means to achieve a legitimate aim. He considered that saving a few thousand pounds from his bonus was not proportionate.

49. He said that because there is no need for a comparator in this type of discrimination, it was irrelevant to say that he was treated the same as non-disabled persons, or that the policy was applied consistently.

50. He went on to quote from the Statutory Code of Practice by showing that there is an example at paragraph 6.33 of the Code, of allowing a disabled worker to take a period of disability leave. The example is specifically that *“A worker who has cancer needs to undergo treatment and rehabilitation. His employer allows a period of disability leave and permits him to return to his job at the end of this period.”*

51. He also quoted an example on the EHRC website in the section headed “Discrimination arising from Disability”: *“An employee with cancer is prevented from receiving a bonus because of time she has taken off to*

receive treatment." He asserted that this alone would lead any reasonable person in his position to believe that they at least had a case.

52. He went on to observe that the Code states that if the aim is simply to reduce costs because it is cheaper to discriminate, this would not be legitimate.

53. He compared the provisions under maternity leave, where an employee retains their right to the bonus despite not having contributed to the company's profits during that year.

54. The Grievance Meeting took place as scheduled on 23 May 2024. Minutes of the Meeting were taken (308ff) and sent to the claimant by email dated 28 May 2024 (307).

55. The claimant attended and was accompanied by Gavin Reilly. Mr Dunn chaired the meeting, and was accompanied by Hayley Worley, HR Business Partner, who took the minutes.

56. The claimant was permitted to set out his position at the start of the Meeting. He accepted that he was not due a bonus in relation to personal performance, since he had been absent throughout the relevant period, but for the main part of the bonus, he maintained that his eligibility was excluded due to a matter arising in consequence of his disability, namely his long-term absence due to sickness.

57. Following the Meeting, Mr Dunn issued an outcome letter on 18 June 2024 (345ff) in which he summarised what he understood to be the claimant's grievance.

58. In that letter, Mr Dunn stated:

"During the grievance meeting on 23rd May 2024, you were asked whether you believed the 70% business element of the Fullstream Business Plan should be payable (if payment is triggered) for the full 5 years an employee may remain on Group Income Protection. You stated that 'that's up to you guys…to decide what you think is reasonable and

how you can objectively justify that' (Minutes of Grievance Meeting 23/05/24). You went on to say that 'I don't think it's reasonable just to stop it at the same time you would step people who are off with non-disabilities or non-protected characteristics' (Minutes of Grievance Meeting 23/05/24). I believe that your response to that question illustrates exactly the type of challenge that would face the business in determine who, when and for how long someone should remain entitled to participate in the Fullstream Bonus Plan, during periods of long-term sick-leave. The definition of what constitutes a disability for the purposes of the Equality Act is ultimately a legal and not medical determination. In that context, I believe that the risk of subjective and potentially discriminatory decisions being taken in those circumstances is far greater than the application of communicated and consistently applied Fullstream Plan Terms.

I've reviewed the case law you referenced (Land Registry v Houghton & Others UKEAT/0149/14/BA) and note that this relates to employees actively working during a bonus period but being excluded from payment due to some formal warnings they had received under the employer's sickness absence procedure. I believe your situation is quite different insofar as you were not actively in work during the 2023 bonus period and our Plan Terms have been consistently applied to everyone in your situation (90 other UK employees and yourself).

I believe that you have been treated the same way as every other employee in your situation and that the Plan terms have been applied correctly. You received a pro-rata bonus payment in April 2023 for the 2022 Plan Year, but ceased to be eligible to participate in the plan from 8th July 2022 and, as such, didn't receive a payment in April 2024…"

59. As a result, Mr Dunn decided not to uphold the claimant's grievance. He notified the claimant of his right to appeal against this decision within 5 working days of receipt of his letter.

60. On 18 June 2024, the claimant submitted an appeal by email (349). He attached his letter of appeal (351) with that email.

61. In his appeal, he set out a number of points:

- He believed he had been subjected to unfavourable treatment regarding his automatic exclusion from the Fullstream Bonus Plan based on long-term absence, even though that absence was a consequence arising from disability.

- He did not believe that there were any reasonable adjustments in place regarding his absence due to disability, nor that any reasonable adjustments were offered in the decision letter, despite his previously raising Disability Leave as a reasonable adjustment which could be offered by employers.

- He expected that consideration should have been given to whether the absence was disability-related or not, and that some form of reasonable adjustments would have been discussed.

- No defence was offered by the respondent for the unfavourable treatment; he would have expected some explanation of the decision to automatically exclude disabled employees from Fullstream when they receive income protection in terms of a proportionate means of achieving a legitimate aim. He argued that cost could not be used as an objective justification since there were a maximum of 91 employees receiving income protection but not in receipt of a bonus, whereas the bonus is paid to more than 4.500 employees in the UK.

- The disadvantage to which he was put, he maintained, was that there is no recognised disability leave which is treated from other long-term absence.

- Where unfavourable treatment arises, there is no need for a comparator, though the decision letter set out a number of comparisons in terms of treatment.

62. The claimant went on to set out his challenges to the outcome letter and to the issues which he considered had not been addressed therein. Fundamentally, he argued that there were no reasonable adjustments made for the disadvantage to which he was subject, and no objective justification for the claimant's exclusion from the bonus scheme.

63. The claimant was invited to a Grievance Appeal Hearing on 28 June 2024, taking place in person in the respondent's Stoneywood Park office, in Aberdeen. The claimant attended and was accompanied by Gavin Reilly. The Hearing was chaired by James Holroyd, Global Commercial Processing Tools Leader. Angela Pickard attended as a representative of Human Resources, and took notes. The respondent produced minutes of the Hearing, which were transcribed from a recording taken at the time (355).

64. The claimant set out in detail his arguments about the exclusion he had experienced from the Fullstream Bonus Scheme. He maintained that it was unfavourable treatment relating to disability that he was excluded from Fullstream, and that would not be applied to those on parental or maternity leave.

65. He referred to the ACAS website in relation to supporting disabled people at work. He reiterated that he was not claiming the bonus insofar as relating to personal performance, but only in relation to the company's performance. He compared the situation to that of a shareholder who does no work for the company but still receives a dividend. He argued that if he were to receive the bonus, it would have no substantial negative impact on the active employees nor was there any financial impact on the company.

66. The claimant went on to state that by failing to apply the law correctly and recognise legally protected medical conditions amounting to a disability, this amounted to discrimination.

67. He set out his position at length, and was given the opportunity to do so by Mr Holroyd.

68. Following the Hearing, Mr Holroyd considered the claimant's appeal and all that he had said in the Hearing. He issued his outcome letter on 31 July 2024 (381ff).

69. He confirmed that he did not agree with the claimant's assertions that his exclusion from the Fullstream Bonus Scheme was unfavourable treatment because of disability-related absence, and was not objectively justified; nor that it was a failure to make reasonable adjustments.

70. With regard to unfavourable treatment, Mr Holroyd said:

"After thorough consideration of the matter, for the reasons set out below, I am of the view that you have not been treated unfavourably.

You remained eligible for the Bonus during the first 26 weeks of sickness absence. Your eligibility for bonus only ceased at 26 weeks, i.e. at the point you moved on to Group Income Protection ('GIP') and were therefore no longer in active service.

The effect of GIP is that the right to the remuneration normally received (including bonus) is suspended and in its place the employee receives the benefit (the benefit being 75% of your pensionable salary). GIP provides the advantage that an employee can continue to receive an income with a view to them returning to work in the future (if possible), in circumstances in which they would otherwise have no monthly income and may ultimately have had their employment terminated on the grounds of ill health capability.

The suspension of normal remuneration (including bonus) is intrinsically linked to the receipt of GIP and I have accordingly concluded that this is not unfavourable treatment due to disability (given that without GIP you would be worse off)."

71. He went on to say that even if it did amount to unfavourable treatment, it would be objectively justified:

"The Bonus is paid to employees at work and actively serving the Company, in recognition that all such employees contribute to achievement of the Company Performance metrics. I'm satisfied that the aim of such Bonus is to reward, encourage and motivate such contributions.

My view is that the Company applies this fairly because the Bonus is not withheld in full from those on sickness absence, rather it is pro-rated, not only to the period spent at work but also the first 26 weeks of sickness absence. Once a disabled employee continues to be absent beyond 26 weeks they qualify for GIP (unless the insurer concludes that the employee is fit to work). As I understand it, the only situation in which a disabled employee would not be eligible to receive GIP after 26 weeks of absence is if they are deemed fit to work."

72. So far as reasonable adjustments were concerned, he said that the purpose of reasonable adjustments is to enable an employee to play a full part in the world of work, including supporting them to remain at work or to return to work from absence. If the respondent were to continue to pay the Bonus after 26 weeks, Mr Holroyd's view was that this would in no way assist with this.

73. He went on:

"In your original grievance letter you referenced the EHRC Statutory Code of Practice and provided a specific example of a reasonable adjustment: an employee being permitted to take a period of disability leave to undergo cancer treatment. This is something the business has accommodated for you – you have had a period of absence to undergo your treatment.

You also suggested during your grievance that the Company fails to make reasonable adjustments in relation to its policies and procedures. You specifically mentioned absence triggers and redundancy exercises i.e. that disability related absences should be discounted for the purposes of triggering a capability process and also when absence is considered as *part of selection criteria for redundancy. Whilst no specific reference is made to such matters in the Company's procedures, I understand that the Company do adopt these practices and do discount disability related leave in such circumstances."*

74. Finally, Mr Holroyd addressed the Employment Appeal Tribunal referred to by the claimant, **Land Registry v Houghton & Others UKEAT/0149/14/BA**. He maintained that the circumstances of that case were different to the claimant's case. The claimant had also asked why he had received a 10 year service award while absent on sick leave, and Mr Holroyd responded that this award, unlike the Bonus, is a one-off payment based on loyalty to the Company, rather than a bonus paid annually in recognition of the contribution made by those at work in any given year.

75. As a result of the claimant's grievance appeal having been rejected by the respondent, no bonus payment was paid to the claimant in relation to 2023 or 2024.

76. The claimant and respondent agree that in the event that the claimant's claim succeeds, the loss of bonus award for 2023 was £16,934, and for 2024, it was £15,758.

77. The claimant also claims that he has suffered injury to feelings as a result of the treatment of which he complains by the respondent. He believed that his grievance was not treated with the appropriate level of seriousness, and that he was simply told repeatedly that the decision to exclude him from Fullstream was based on company policy. The claimant's cancer symptoms continued over the relevant period from the point where he alleges the respondent acted unlawfully towards him, and so did his treatment, which has been ongoing. The respondent, he asserts, should have been well aware of this impact upon him. He has found dealing with the grievance, and more largely with the correspondence on this matter with the respondent, to be very training,

and that he was not getting straight answers to what he regarded as very reasonable questions.

78. The emotional trauma of the original diagnosis, the uncertainty as to his prognosis and the ongoing pain (from which the claimant was suffering during the course of the Hearing in this case) were all features of the claimant's experience since January 2022; his position is that when the respondent was aware of these effects upon him, and still refused to grant him access to the bonus scheme, he did not deserve to be treated by them in the way he was.

79. The claimant also said that the grievance process itself caused stress, worry and anxiety for him, including loss of appetite and sleepless nights.

Submissions

80. Parties presented written submissions, to which they both spoke, and which were read and carefully taken into consideration by the Tribunal in its deliberations. These are not set out in detail here, but are referred to in the decision section below as appropriate.

The Relevant Law

81. Section 15 of the Equality Act 2010 provides:

(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.

(2) *Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.*

82. Section 20 of the Equality Act 2010 sets out requirements which form part of the duty to make reasonable adjustments, and a person on whom that duty is imposed is to be known as A. The relevant sub-sections for the purposes of this case are sub-section (3) and (5). Sub-section (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."* Sub-section (5): *"The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put 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 provide the auxiliary aid."*

83. Section 21 of the 2010 Act provides as follows:

> *"(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.*
>
> *(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person…"*

Discussion and Decision

84. The Agreed List of Issues is as follows:

Discrimination arising from disability, Section 15 Equality Act ("the Act")

1. **Was the claimant treated unfavourably in respect of how the respondent calculated his bonus entitlements under the company financial performance element of the respondent's Fullstream bonus scheme ("the Bonus Scheme")?**

2. If the answer to 1 is yes, (which the respondent denies) the respondent accepts that such unfavourable treatment arose in consequence of the claimant's disability, namely due to his absences from work (which the respondent accepts were disability related).

3. If there was unfavourable treatment, was the treatment a proportionate means of achieving a legitimate aim, namely:

   a. Encouraging and motivating the contributions of those employees of the respondent who are at work and actively serving the respondent, and

   b. Rewarding and recognising the contributions of those employees actively serving the respondent and who contribute to the achievement of the company performance metrics which trigger the company financial performance element of the Bonus Scheme.

Failure to make reasonable adjustments: Section 20, 21 and 39(2)(b) and (d) of the Act

4. Does the eligibility requirement of the Bonus Scheme where employees upon commencing long-term sick leave become ineligible for the company financial performance element of the Bonus Scheme amount to a provision, criterion or practice?

5. If so, did this place the claimant at a substantial disadvantage as compared to an employee who does not share the claimant's disability?

6. If yes, did the respondent fail in its duty to take reasonable steps to avoid the disadvantage? The claimant suggested the following as a reasonable adjustment, for the respondent, which could have been taken to avoid the disadvantage:

a. **Excluding the claimant's disability related absences when determining his eligibility for the company financial performance element of the Bonus Scheme.**

85. We addressed these issues in turn.

1. **Was the claimant treated unfavourably in respect of how the respondent calculated his bonus entitlements under the company financial performance element of the respondent's Fullstream bonus scheme ("the Bonus Scheme")?**

86. It is necessary to establish what treatment the claimant asserts to have been unfavourable, and whether it can be said that it was unfavourable to him for a reason arising in consequence of his disability.

87. It is the claimant's case that having been excluded from the Fullstream Bonus Scheme at the point when he moved on to long-term sickness absence, and thus being deprived of the financial benefit which would otherwise have accrued to him, amounted to unfavourable treatment under section 15.

88. We considered the authorities to which we were referred, and it is helpful to set out the relevant principles which are derived from those authorities.

89. In **Trustees of Swansea University Pension and Assurance Scheme and another v Williams [2018] UKSC 65**, the Supreme Court gave consideration to the relevant questions to be asked in relation to section 15 claims, at paragraph 12, in which they said (Lord Carnwath) that *"…section 15 appears to raise two simple questions of fact: what was the relevant treatment and was it unfavourable to the claimant?"*

90. In that case, a disabled employee argued that he had been subjected to discrimination on the grounds of disability following ill health retirement. Having reduced his hours due to disability, the claimant was entitled, following retirement, to immediate access to pension. His entitlement to an enhancement to the lump sum and annuity was calculated based on

his salary immediately prior to his retirement (that is, his lower salary based on reduced hours). The Supreme Court dismissed his appeal and held, at paragraph 28, that *"The only basis on which Mr Williams was entitled to any award at that time was by reason of his disabilities. As Mr Bryant says, had he been able to work full time, the consequence would have been, not an enhanced entitlement, but no immediate right to a pension at all."*

91. The "guidance" in that case quoted by Ms Byars is found in a passage quoted from Langstaff J's Judgment in the Employment Appeal Tribunal, which was endorsed by the Court of Appeal and then the Supreme Court, to the effect that treatment which is advantageous cannot be found to be unfavourable merely because it could have been more advantageous, or, put another way, because it was insufficiently advantageous.

92. Ms Byars also referred us to **Cowie and others v Scottish Fire and Rescue Services [2022] EAT 121**, in which the EAT found that while the advantage provided in that case by the paid special leave policy could have been improved by removing certain pre-conditions for entitlement, it did not amount to unfavourable treatment by virtue of the fact that it could, hypothetically, have been even more favourable. It also found that there is a relatively low threshold for a finding of unfavourable treatment.

93. We sought to identify what was the "something arising" in consequence of the claimant's disability. In our judgment, that was the claimant's inability to attend work (as was the case in **Cowie**).

94. The claimant's argument is that the unfavourable treatment he endured was exclusion from the Fullstream Bonus Scheme on reaching the point in his absence when it became long term sickness absence.

95. The respondent argues that the whole period requires to be considered, alongside the steps taken by the respondent to ameliorate the claimant's circumstances by paying his full sick pay for 26 weeks, as well as allowing him to receive a bonus payment in respect of those 26 weeks,

and giving him access to the group income protection policy provided by the respondent through UNUM.

96. In our judgment, while the respondent's submissions are attractive, we must consider the fundamental question of whether or not the claimant's exclusion from the bonus scheme was unfavourable treatment. The respondent asks us to take into consideration a number of factors which they say demonstrate that, in the round, the claimant was not unfavourably treated, and that, in any event, unfavourable treatment does not mean treatment which was in fact favourable but could have been more favourable.

97. In doing that, we are of the view that the respondent's focus is too broad. The question is much simpler than they assert. Essentially, it is our view that the fact that, after 26 weeks, the claimant was denied not only the opportunity to receive a bonus under the Fullstream scheme, but also the right to the payment which would have arisen under that scheme. That was unfavourable treatment. We bear in mind that this is not a matter for comparison between the claimant and an individual not suffering from a disability. In light of the questions in **Williams**, the claimant was excluded from the bonus scheme and the payment which would have arisen as a result, and that was unfavourable to the claimant.

98. To take into consideration the fact that other treatment was afforded to the claimant would, in our judgment, miss the point; the relevant treatment which we must consider is the exclusion from the bonus scheme, and of itself, it is clear that that was unfavourable treatment to the claimant. He was deprived of a right which he would otherwise have enjoyed.

2. If the answer to 1 is yes, (which the respondent denies) the respondent accepts that such unfavourable treatment arose in consequence of the claimant's disability, namely due to his absences from work (which the respondent accepts were disability related).

3. If there was unfavourable treatment, was the treatment a proportionate means of achieving a legitimate aim, namely:

a. **Encouraging and motivating the contributions of those employees of the respondent who are at work and actively serving the respondent, and**

b. **Rewarding and recognising the contributions of those employees actively serving the respondent and who contribute to the achievement of the company performance metrics which trigger the company financial performance element of the Bonus Scheme.**

99. The answer to question 1 was yes, and accordingly we move on to determine questions 2 and 3.

100. Question 2, in its terms, confirms that the unfavourable treatment which we have determined to have been meted out to the claimant arose in consequence of the claimant's disability, namely his disability related absence from work. The respondent, correctly in our view, has accepted that this is the case.

101. We turned then to question 3., which considers whether or not the treatment of the claimant in these circumstances amounted to a proportionate means of achieving a legitimate aim.

102. The respondent's position is that there were two parts to the legitimate aim, namely encouraging and motivating the contributions of those employees of the respondent who are at work and actively serving the respondent, and recognising the contributions of those actively at work and making a contribution to the metrics upon which the company financial performance is based.

103. The claimant's position is that these are not legitimate aims. He maintains that the number of employees affected amounts to a very small proportion of the employees eligible for the bonus, and that there are occasions when staff who are absent are entitled to receive the bonus despite not

being in attendance at work (for example, those on maternity leave, or those, like the claimant, on short-term sickness absence). It also appeared to be his position that it would have been entirely affordable for the respondent to have granted him eligibility for the bonus.

104. We have considered these points carefully.

105. It is our judgment, on balance, that the respondent's aims are indeed legitimate aims. The bonus scheme is explicitly framed as an incentive plan, designed to allow those who contribute to the health of the company's finances in any given year to share in the profitability of the company. Incentivising staff. In order to amount to an incentive, an encouragement to work to the best of one's ability in the furtherance of the company's objectives, the bonus scheme requires to have meaning, and the respondent's focus upon that incentive is an entirely legitimate aim, both for the company and for the employees affected.

106. Motivating the contributions of those actively at work, as opposed to others who are, for whatever reason, inactive and therefore ineligible for the bonus, is, again, a legitimate aim for a company such as the respondent. There is a basic mutuality of obligation between an employer and employee, characterised by the employer providing work and remuneration for that work, and the employee, in exchange, supplying their time, skills and energy in the pursuit of the employer's aims.

107. The claimant's position is that work carried out in one year may not bear fruit until several years later, and therefore depriving staff of access to the bonus scheme because they are absent for part of a year is illogical. In our judgment, that does not undermine the legitimacy of the aims of the respondent in allowing employees to benefit financially from the overall performance of the company, to which all manner of contributions may be made, directly or indirectly, by different staff.

108. Accordingly, it is our conclusion that the aims put forward by the respondent were legitimate aims.

109. We then asked ourselves whether the unfavourable treatment of the claimant, namely his exclusion from the Fullstream Bonus Scheme, was a proportionate means of achieving the legitimate aims of the respondent.

110. At this point, the Tribunal diverged. We now set out the respective views taken, with the views of the majority first.

111. Before setting out our views, it is appropriate to refer to the authorities to which we were helpfully referred in this case.

112. In order to be proportionate, the unfavourable treatment has to be both (i) an appropriate means of achieving the legitimate aim, and (ii) a reasonably necessary means of doing so (**Homer v Chief Constable of West Yorkshire [2012] UKSC 15**).

113. When determining whether or not a measure is proportionate it is relevant for the Tribunal to consider whether or not a lesser measure could have achieved the employer's legitimate aim (**Naeem v Secretary of State for Justice [2017] UKSC 27**).

114. The Tribunal must undertake a fair and detailed assessment of the employer's business needs and working practices (**Hensman v Ministry of Defence UKEAT/0067/14)**, balancing the reasonable needs of the business against the alleged discriminatory effect of the employer's actions on the employee.

115. In the judgment of the majority, it was a proportionate means to achieve the legitimate aim. It is appropriate to consider, here, that the claimant was not excluded from the benefits of the Fullstream Scheme for the entirety of his sickness absence; he was entitled to a bonus payment pro-rated to the first 26 weeks of his absence. In addition, the majority take into consideration the fact that he was provided with full basic pay for that first 26 weeks period, and therefore that for that period, a considerable period of time, he was protected by the respondent from any financial loss he might otherwise have suffered. Further, his exclusion from the bonus scheme after 26 weeks is ameliorated by his access to the group income

protection scheme, which was granted to him by the arrangement put in place by the respondent with UNUM, to the effect that since he moved on to long-term sickness absence, the claimant has received income protection to the extent of 75% of his basic pay for a number of years, which has also allowed him to retain his employment with the respondent.

116. The majority accept the respondent's submission that to extend the eligibility for bonus beyond 26 weeks would undermine the stated aims of rewarding and incentivising the contributions of active employees, and potentially demotivate active employees by removing the incentive to remain active at work.

117. The claimant suggests that it would not cost the respondent a significant amount of money to make the payment to him, but in the majority's judgment, that does not undermine the proportionality of the eligibility requirements. The majority also consider that it is a false comparison to point to different requirements in relation to those on maternity leave, since specific statutory requirements are in place in relation to staff on maternity leave and therefore a fundamental legal difference between them and staff like the claimant. Such staff are absent for a defined period, unlike staff on long-term sickness absence like the claimant.

118. The claimant also made reference to the Statutory Code of Practice by pointing to an example at paragraph 6.33 of the Code, of allowing a disabled worker to take a period of disability leave. The example is specifically that *"A worker who has cancer needs to undergo treatment and rehabilitation. His employer allows a period of disability leave and permits him to return to his job at the end of this period."*

119. In the majority's judgment, the respondent, while not calling it "disability leave" did allow the claimant a period of time of absence from work due to his disability, an absence which remains in place even now, with the intention of allowing him to return to his job at the end of the period.

120. Finally, the claimant suggested that had he been granted the bonus, to which he was otherwise entitled, he would have been able to pay for

private treatment or therapies which could have assisted his recovery and enabled him to return to work. There is no medical evidence presented by the claimant in support of this contention, and accordingly the majority considered it to be speculative.

121. The majority recognised that it is necessary to consider the relevance of any lesser measures which the respondent might have taken in determining whether or not the actions the respondent took were proportionate. We understood that the claimant argued that lesser measures could have included not excluding staff on long-term sick leave, discounting disability leave in the calculation of absences to trigger long-term sick leave and giving a bonus to staff for up to a year's absence.

122. In the majority's view, these did not amount to "lesser measures" which would render what the respondent did as not being proportionate and reasonably necessary to achieve the legitimate aims. The majority was of the view that granting continued rights to the bonus as well as pay for the first six months of absence was, as the respondent submitted, a generous provision; that taking the long-term absence into consideration in determining when long-term sick leave began was reasonable and proportionate in light of the legitimate aims set out.

123. In a sense, these proposals were similar to the proposed reasonable adjustments, with which we deal below.

124. The majority accepted the respondent's submission that the fact that there may be more that can be done for an employee in these circumstances does not mean that what was actually done was not a proportionate, and reasonably necessary, means of achieving the legitimate aim. In any event, the majority concluded that the proposed measures would not have achieved the legitimate aims put forward; in particular, granting the claimant the right to a further bonus of a year despite being absent would be very likely to defeat the object of incentivising staff at work, and rewarding actual contributions at work, when balancing the interests of the claimant and the aims to be achieved

by the respondent. Granting the claimant access to the bonus scheme for 6 months while absent is proportionate, in the majority's view, but extending it beyond that period would be disproportionate in all the circumstances.

125. It is therefore the majority's conclusion that the claimant's exclusion from the Fullstream Bonus Scheme after 26 weeks' sickness absence amounted to a proportionate means of achieving legitimate aims on the part of the respondent.

126. The minority's view differed. The minority was of the view that, even if extending the period during which the bonus was still payable, for example up to a further year, was not proportionate, there was a "lesser measure" which would still have achieved the legitimate aim put forward by the respondent but in a less discriminatory way. The minority considered that the blanket exclusion of staff on long-term sick leave did not distinguish between those employees who are disabled and those who are not.

127. The minority noted that a discretion scheme operated whereby underperforming employees subject to a Performance Improvement Plan, or those whose conduct is the subject of disciplinary action, may still receive the bonus at the discretion of managers. In the minority's view, this indicated that management discretion was a workable element of the scheme. If such discretion applied to employees on long-term sick leave, the scheme could be designed to assess individual circumstances, including examples suggested by the Claimant as positive factors and factors identified by the Respondent as reasons to exclude employees on long-term sick leave. The minority was of the view that, in assessing the Claimant against such a management discretion scheme, the respondent could have extended the claimant's right to a bonus, indefinitely or not, while still achieving the legitimate aims they relied upon.

128. The minority was also persuaded that the Respondent's concerns for resentment on the part of employees not off-sick if he had received the

bonus despite being off work – could have been alleviated by the existence of a transparent discretion scheme, such as the one applied to underperforming colleagues still at work. The minority took the view that any resentment by colleagues at work about a disabled colleague off sick may also be felt about an underperforming colleague. This meant that it was not reasonably necessary wholly to deprive those on long-term sick leave of the right to a bonus under the scheme.

129. As a result, the minority considered that the blanket exclusion of staff on long-term sick leave from the Fullstream Bonus Scheme was not a proportionate means of achieving the legitimate aims put forward by the respondent, and concluded in favour of the claimant.

130. However, given the conclusions reached by the majority, the claimant's complaint under section 15 of the 2010 Act therefore fails, and is dismissed.

Failure to make reasonable adjustments: Section 20, 21 and 39(2)(b) and (d) of the Act

4. **Does the eligibility requirement of the Bonus Scheme where employees upon commencing long-term sick leave become ineligible for the company financial performance element of the Bonus Scheme amount to a provision, criterion or practice?**

5. **If so, did this place the claimant at a substantial disadvantage as compared to an employee who does not share the claimant's disability?**

6. **If yes, did the respondent fail in its duty to take reasonable steps to avoid the disadvantage? The claimant suggested the following as a reasonable adjustment, for the respondent, which could have been taken to avoid the disadvantage:**

    a. **Excluding the claimant's disability related absences when determining his eligibility for the company financial performance element of the Bonus Scheme.**

131. The eligibility requirement of the Bonus Scheme where employees upon commencing long-term sick leave become ineligible for the company financial performance element of the Bonus Scheme does amount to a provision, criterion or practice (PCP). It is clear that this is a rule which is contained within the Fullstream Bonus Scheme, and that it is applied to all qualifying employees.

132. The claimant then seeks to argue that the application of the PCP placed him at a substantial disadvantage in comparison with an employee who did not share his disability. The respondent denies this.

133. In our judgment, the application of the PCP does not place the claimant at a substantial disadvantage in comparison with an employee who did not share his disability. An employee not suffering from a disability may be absent on long-term sickness absence (that is, absent for more than 26 weeks), on the basis that in order to meet the definition of disability within section 6 of the Equality Act 2010, an employee must have an impairment which has a “long-term”, substantial and adverse effect on his ability to carry out normal day-to-day activities. “Long-term” is defined in Schedule 1, paragraph 2(1) of the 2010 Act as being an effect which has lasted for at least 12 months, is likely to last for at least 12 months or is likely to last for the rest of the life of the person affected. Plainly, an employee absent for 6 months may qualify under these terms, but may well not, and accordingly, would be treated precisely the same as the claimant, a disabled person, when commencing long-term sickness absence after 26 weeks.

134. Accordingly, the PCP did not place the claimant at a substantial disadvantage in comparison with a non-disabled employee absent for the same length of time at the point when the scheme eligibility was withdrawn, as that employee would also be ineligible at that stage.

135. Even if the claimant had demonstrated that he was placed at such a substantial disadvantage, it is our judgment that the adjustment which he relies upon, to exclude his “disability-related” absences from

consideration, did not amount to a reasonable adjustment. In effect, the claimant is proposing that the respondent disregard his entire absence, which has now run for several years, without limit. We do not regard this as a reasonable adjustment for the respondent to have to take in these circumstances.

136. In any event, we note that the Court of Appeal, in **O'Hanlon v Commissioners for HM Revenue & Customs [2007] IRLR 404**, stated that the purpose of the legislation was to assist the disabled to obtain employment and integrate them into the workplace. The statutory examples given in the legislation (at that time the Disability Discrimination Act 1995) were not exhaustive, but, as the Court put it, none of them suggested that it would ever be necessary simply to put more money into the wage packet of the disabled.

137. Further, the Employment Appeal Tribunal in **Salford NHS Primary Care Trust v Smith UKEAT/0507/10** observed that the duty to make reasonable adjustments is primarily concerned with enabling the disabled person to remain in or return to work with the employer, and to play a full part in the world of work.

138. We do not consider that the adjustment proposed would have the effect of enabling the claimant to return to work with the employer; indeed, it may have had the opposite effect, of enabling the employee to continue to be absent from work without suffering any financial loss, and therefore having no incentive to return to work. In this case, that particular issue does not arise, since it is clear that the claimant's illness has been so serious as to discount any realistic possibility, to date, of returning to work.

139. However, as we have found, neither did the adjustment proposed achieve that effect nor would it have ameliorated any disadvantage experienced by the claimant, nor did the claimant suffer any substantial disadvantage by the application of the PCP.

140. It is therefore our conclusion that the claimant's claim that the respondent failed to make reasonable adjustments must fail, and is therefore dismissed.

141. We would wish to record our thanks to the parties for the manner in which they presented their respective cases to the Tribunal. Ms Byars presented her case in a clear and logical manner, and demonstrated courtesy towards her opponent. The claimant, as an unrepresented party whose health clearly remains a concern, conducted himself with great courtesy and respect, and handled a difficult legal case with skill and persistence, for which he must be commended.

Date sent to parties : 19 August 2025