EMPLOYMENT TRIBUNALS (SCOTLAND)

Judgment of the Employment Tribunal in Case No: 4100001/2025 Heard at Edinburgh on 25, 26, 27 and 28 August 2025

Employment Judge J G d'Inverno
Tribunal Member Mr S Cardownie
Tribunal Member J Smillie

Mr C Bradley-Meichan	**Claimant** **In Person**
Major Recruitment Limited	**Respondent** **Represented by:** **Ms K Nebard, Managing Director**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The unanimous judgment of the Employment Tribunal is that the claimant's claims fail and are dismissed.

REASONS

1. This case called for Final Hearing before a full Tribunal at Edinburgh on 25, 26, 27 and 28 August 2025.

2. The claimant, Mr C Bradley-Meichan appeared on his own behalf. The respondent company Major Recruitment Limited, was represented by its Managing Director Ms K Nebard.

The Issues

3. At the outset of the Hearing the Tribunal confirmed with the claimant and with the respondent's representative ("the parties") that the issues, numbered 1 to 8 inclusive, and recorded by Employment Judge Sangster, in the Schedule to the written Case Management Orders and Note issued by her on 23 April 2025 following the Closed Preliminary Hearing (Case Management Discussion) which proceeded before her on 22 April 2025, remained the issues before the Tribunal for its Determination at Final Hearing. Those recorded issues, as confirmed by parties, were:-

"**4100001/2025**

Schedule to Note of Preliminary Hearing held on 22 April 2025

List of Issues

---

1. Disability Status – s6 Equality Act 2010 (EqA)

1.1. Was the claimant a disabled person in accordance with the EqA, at all relevant times, because of Borderline Personality Disorder, also known as Emotionally Unstable Personality Disorder?

2. Direct Disability Discrimination – s13 EqA

2.1. Did the respondent subject the claimant to less favourable treatment (i.e. did the respondent treat the claimant less favourably than it treated or would have treated others ('comparators') in not materially different circumstances) by:

2.1.1. Margo McKinlay conducting excessive, unreasonable and intense day-to-day catch ups with the claimant (the claimant relies upon Barry McIntyre as a comparator);

2.1.2. Jo Lofts's comments to the claimant in August 2024, as stated in paragraph 12 of his amended Grounds of Claim (the claimant relies upon a hypothetical comparator);

2.1.3. Dawn Howe's comments to the claimant on 27 August 2024, as stated in paragraph 12 of his amended Grounds of Claim (the claimant relies upon a hypothetical comparator); and/or

2.1.4. The respondent failing to properly investigate or uphold the claimant's grievance (the claimant relies upon a hypothetical comparator); and/or

2.1.5. Constructively dismissing the claimant (the claimant relies upon a hypothetical comparator).

2.2. If so, was this because claimant is a disabled person?

3. Reasonable Adjustments - s20 & 21 EqA

3.1. The provision, criteria or practices 'PCPs' relied on by the claimant are:

3.2. Did the respondent have a PCPs of:

3.2.1. Micro management/excessive oversight, control and scrutiny; and/or

3.2.2. Mandated daily catch ups.

3.3. If so, did those PCPs put the claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled at any relevant time, in that they made it difficult for the claimant to manage his workload and work relationships effectively, increased his stress and anxiety levels, and exacerbated his symptoms of BPD/EUPD, such as emotional dysregulation. All of which impacted the claimant's performance and ultimately led to him being forced to resign?

3.4. If so, did the respondent know or could it reasonably have been expected to know the claimant was likely to be placed at any such disadvantage?

3.5. If so, would the steps identified by the claimant, namely:

3.5.1. Allowing autonomy, while providing collaborative support and clearly defined expectations;

3.5.2. Reducing the frequency of mandated catch ups; and/or

3.5.3. Permitting the claimant to provide live updates via a spreadsheet shared interactively with Margo McKinlay, meaning she would have the data she needed without having to request it from the claimant have alleviated the identified disadvantage?

3.6. If so, would it have been reasonable for the respondent to have taken that step at any relevant time and did they fail to do so?

4. Harassment related to Disability – s26(1) EqA

4.1. Did the respondent engage in the following conduct:

4.1.1. Margo McKinlay mandating excessive, unreasonable and intense day-to-day catch ups with the claimant;

4.1.2. Jo Lofts' comments to the claimant on 21/23/27 August 2024, as detailed at paragraph 12 of the claimant's amended Grounds of Claim; and/or

4.1.3. Dawn Howe's comments to the claimant on 27 August 2024, as detailed at paragraph 12 of the claimant's amended Grounds of Claim.

4.2. If so, was it unwanted conduct?

4.3. If so, was it related to disability?

4.4. If so, did the conduct have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

5. Direct Sexual Orientation Discrimination – s13 EqA

5.1. Did the respondent subject the claimant to less favourable treatment (i.e. did the respondent treat the claimant less favourably than it treated or would have treated others ('comparators') in not materially different circumstances) by:

5.1.1. Micro-management and mandated daily catch ups (the claimant relies on Ben McKenna and Roger Clifford as comparators)

5.1.2. Failing to promote the claimant (the claimant relies upon Barry McIntyre as a comparator) and/or

5.1.3. Constructively dismissing the claimant (the claimant relies upon a hypothetical comparator);

5.2. If so, was this because of sexual orientation?

6. Harassment related to Sexual Orientation – s26(1) EqA

6.1. Did the respondent engage in the following conduct:

6.1.1. Micro-management and mandated daily catch ups;

6.1.2. Overlooking the claimant for promotion; and/or

6.1.3. Constructively dismissing the claimant

6.2. If so, was it unwanted conduct?

6.3. If so, was it related to sexual orientation?

6.4. If so, did the conduct have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

7. Victimisation – s27 EqA

7.1. Did the claimant do a protected act(s)? The claimant relies upon his grievance dated 17 September 2024.

7.2. Was the claimant subjected to the following detriments?

7.2.1. The respondent not following their grievance procedure; and/or

7.2.2. Leaving the claimant no option but to resign.

7.3. If so, did the respondent subject the claimant to those detriments because of the protected act?

8. Remedy

8.1. If the claimant establishes any of their complaints, to what remedy are they entitled? Specifically:

8.1.1. What financial losses has the discrimination, harassment and/or victimisation caused the claimant?

8.1.2. What injury to feelings has the discrimination, harassment and/or victimisation caused the claimant and how much compensation should be awarded for that?"

4. All witnesses gave their evidence in chief orally, on affirmation or on oath, were cross examined by the other party and answered questions from the Tribunal.

5. The claimant gave evidence on his own behalf. In addition, he led evidence from a former colleague Ellena Clarke who, along with the respondent's Divisional Manager Margot McKinlay, had conducted the claimant's initial interview, and from his husband Mr Billie Bradley-Meichan.

6. For the respondents the Tribunal heard evidence from:-

    (a) Margot McKinlay, the respondent's Divisional Manager, along with Ellena Clarke had conducted the claimant's initial interview and who was the claimant's Line Manager in the eleven week period from the commencement of his employment on or about 19 June 2024, up until 18 September 2024, and on which latter date the claimant's line management transferred to Ms Nebard, the respondent's Managing Director, pending investigation of the claimant's grievance which he lodged with the respondents on 17 August 24, and in which he directed complaints against Ms McKinlay

    (b) Joanne Lofts, a Director of the respondent,

    (c) Dawn Howe, the respondent's Head of "People and Culture" (HR) and,

    (d) Barry McIntyre, a recruiter and fellow employee of the claimant who,

        (a) along with the claimant, was line managed by Margot McKinlay

        (b) with Margot Mckinlay attended the "West Lothian Networking Event" on Thursday 17 October 2024 in the course of their employment with the respondent, and,

        (c) at which networking event the claimant, having taken a day's leave for the purpose, was also in attendance in a personal behalf.

7. There was before the Tribunal, a Joint Bundle of Documents extending to some 413 pages, to some of which the Tribunal was referred in the course of evidence and or submission.

Disability Status

8. The issue of Disability Status, at the material time for the purposes of the claimant's complaints, was determined in the affirmative by judgment of Employment Judge O'Donnell, issued having heard parties at Open Preliminary Hearing on 4 June 2025.

9. The medical condition ("physical or mental impairment") relied upon by the claimant, as giving rise to his possession of the protected characteristic of disability at the material time, was that of "Borderline Personality Disorder", a matter confirmed by the claimant to the Tribunal at the outset of the Hearing.

Knowledge

10. The issue of knowledge, (whether the respondents knew or ought reasonably to have known, at the material time, that the claimant was so disabled, and or that he was likely to be placed, by reason of his impairment, at a substantial disadvantage in relation to any PCP found to have been being applied by the respondents to, amongst others, him), remained issues at large and in dispute between the parties at Hearing;

    (a) The respondents, for their part, asserting that at no time during the course of his employment, or in pre-employment communications including interview, had the claimant disclosed to them either the fact of his relied upon medical condition and asserted disability, or the impact of the asserted condition upon his ability to carry out normal day to day activity including the discharge of his duties as an employee,

    (b) Nor had he made disclosure of any anxiety or “mental health concerns” at any time prior to his submission and receipt by them, on 17 September 2024, of a first Fit Note of that date which disclosed, as the reason for the incorporated recommendation that the claimant be allowed to work from home for the succeeding fortnight, the presented condition of “anxiety with mental health concerns”,

    (c) The above being a position, reiterated in the second and last Fit Note submitted by the claimant on 30 September 2024 and covering the period to 28 October 2024 on which latter date the claimant resigned; and, for their part,

    (d) The claimant and the witness Ellena Clarke asserting variously that he had made a disclosure of his condition on a paper form, which was not produced and, or, orally in the course of his first interview.

Findings

11. The evidence presented ranged, in parts, beyond that which was relevant and necessary to the Determination of the Issues before it. Separately, there is no requirement on the Tribunal to make negative Findings in Fact. For the avoidance of doubt, however, in making its Findings, which are restricted to those which are relevant and necessary to the determination of the issues before it, the Tribunal makes clear that it has considered all of the documentary evidence to which it was referred and all of the oral evidence presented in the course of the Hearing.

12. On the oral and documentary evidence presented and upon the submissions of parties made, the Tribunal finds the following essential matters of fact established,

restricted to those relevant and necessary to the determination of the issues before it.

13. The respondent is a recruitment agency providing agency workers and permanent placements to various clients across the United Kingdom.

14. The claimant, who was an employee of the respondent, presents complaints, under the Equality Act 2010 ("EqA"), of; Direct Discrimination, Discrimination by reason of asserted Breach of Duty to Make Adjustments, of Harassment and Victimisation said to have occurred in the period 19 June 2024 until 23 October 2024 ("the material time") for the purposes of his complaints.

15. The claimant is a person who possesses the protected characteristic of Sexual Orientation and, as found by the Tribunal at Open Preliminary Hearing, at the material time also possessed the protected characteristic of Disability.

16. The medical condition (mental impairment) relied upon by the claimant as giving rise to his disability is that of Borderline Personality Disorder.

17. In the course of his oral evidence the claimant described the impact of his medical condition upon him, as at the time of the hearing, 25 August 2025, as one of "enhanced emotional experience", by which he explained he meant that; "when he was happy he felt ecstatic, when he was excited he felt elated and when he experienced failure, he felt as if he was "dying inside"."

18. The claimant was an employee of the respondents in the period 19 June to 23 October 2024, on which latter date he resigned.

19. The claimant was interviewed in person by Margot McKinlay, Divisional Manager, of Livingston Engineering and Ellena Clarke, Divisional Manager of Executive Search, both employees of the respondent at that time. On 22 May 2024 the claimant was offered a position of Senior Consultant in the IT and Digital Sector; to work in the Livingston team under the line management of Margot McKinlay, at an annual salary of £30,000 plus a commission scheme, and with the expectation that he work 4 days in the office and 1 day at home per week, which offer the claimant accepted.

20. The claimant signed a Contract of Employment with the respondents on 19 June 2024.

21. In accepting the offer of employment the claimant was aware that there were, at that time, no IT and digital clients in Scotland and that his role was to be that of developing his own desk and revenue by securing new clients.

22. In terms of his Contract of Employment the claimant undertook at paragraph 5.4 of the Contract, amongst other obligations, that he "*shall at all times and in all respects, conform to and comply with all lawful directions and instructions of the*

company,- shall use his best endeavours to develop and extend the business of the company and shall in all matters act faithfully to the company and shall not engage or be interested or concerned either directly or indirectly as shareholder, Director, Principal, advisor, agent, consultant, employee or otherwise in any other business which provides services the same as or similar to the kind provided by the company."

23. On his first day of employment the claimant was issued a link to complete his personnel file via an online portal, "Staffology". Within that portal the claimant was invited to provide information as to relevant medical conditions and any reasonable adjustments which he may require in consequence of any such condition. In completing his personal details the claimant deliberately left blank the section in relation to medical conditions and potential requirement of adjustments, and did not provide any details of the same.

24. At the commencement of his employment the claimant was provided with access to the "Working for Major-Hub which is the company intranet by way of an induction. The Hub provided the claimant with, amongst other matters; Team contact details, access to learning and training, access to mental health support and its policies and procedures, including the Disciplinary and Grievance Policy which set out as examples of gross misconduct:-

- Unauthorised use of disclosure of confidential information of business matters relating to the company, its clients, temporary workers, or applicants.

- Working for or assisting a competitor of the company or seeking to establish a business which is likely to compete with the company.

25. On 22 July 2024 the claimant was contacted by the respondent's "People and Culture Team" for their one month check. The claimant did not inform the respondent at that time that he was diagnosed with any medical condition or taking medication for any condition including in particular "Borderline Personality Disorder". Nor did he provide any information as to the severity of any such condition or make reference to any reasonable adjustments that he might require.

26. The responses made by the claimant on 22 July 2024, which are recorded on Staffology and the record of which was before the Tribunal, included, amongst others, confirmation by him that his Manager, (Margot McKinlay), "*allowed him time to learn and encouraged him to complete 2 modules of Recruitment Juice (an online learning platform) per week.* In the response he stated *'Margot checks in with me every single day, if anything is needed, I know I can go to her for support or need additional training. Training and on boarding support is great."*

27. Between 16 August and 20 August, Margot McKinlay had routine and formal discussions with the claimant in which she offered advice and guidance in her capacity as his Line Manager, in the managing of his placements. Those discussions were designed and intended by Margot McKinlay, and the respondent, to provide general support and training. The discussions which she also held, in the same way, with other Sales Consultants whom she line managed, were designed to provide general support and training. They also informed the discharge of her duties, as a Cost Centre Manager, in the forecasting of fees to her Director which was a requirement of her role.

28. On 21 August the claimant contacted Jo Lofts, the Director to whom Margot McKinlay reported seeking an informal discussion with her which took place over the telephone.

29. In the telephone conversation of 21 August 2024 the claimant informed Jo Lofts that he felt that there was a "*clash with his Manager*" and that he was struggling in the providing of daily updates on the progress of his fees. In response Jo Lofts offered general advice and guidance and explained that it was normal in the company, across the business, for Sales Consultants to have informal daily catch ups, covering such matters, with their Line Manager.

30. On 22 August, following his telephone conversation with Jo Lofts, the claimant sent a message, on Microsoft Teams thanking Jo Lofts and stating that he felt 'much better for our chat'.

31. Neither in the course of his telephone conversation of 21 August with Jo Lofts nor in his follow up message, did the claimant disclose that he had been diagnosed with any medical condition/was currently suffering from the effects of any medical condition and or considered that he had a disability. Nor did he make any complaint about discrimination based on sexual orientation.

32. On 22 August Margot McKinlay and the claimant were both present at a networking event at the West Lothian Chamber of Commerce. Upon returning to their office premises after the networking event, Margot McKinlay considered that the claimant was being repeatedly offhand with her. She raised the issue with the claimant but he declined to discuss it. She therefore took the decision to ask the claimant to work from home for the rest of the day in hopes that the issue, whatever it was, would dissipate and could be resolved on the following day. The claimant complied with that request and worked from home for the remainder of the 22nd of August.

33. Margot McKinlay reported the incident to her Line Manager Jo Lofts who, at that point, made her aware of the informal complaint raised by the claimant about her on the previous day.

34. The respondent followed up the claimant's informal grievance with a mediation session held, the following day 23 August 2024. The mediation session was chaired by Jo Lofts on Teams. Both the claimant and Margot McKinlay participated. In the mediation session the claimant did not make any mention of a disabling medical condition or make any request for reasonable adjustments. Quite separately, however, and in response to the concerns that the claimant had expressed regarding the frequency of the daily updates, the respondents confirmed that those meetings would be reduced to a frequency of not more than twice a week from that point forward.

35. Following the mediation meeting of 23 August, the claimant contacted Dawn Howe, the respondent's Head of People and Culture by telephone. In the course of the telephone conversation the claimant amongst other matters, complained that his Manager, Margot McKinlay, was bullying him and suggested that he be allowed to work at home.

36. Upon being asked by Dawn Howe, in the course of his telephone conversation with her to provide specification and or examples of the bullying behaviour of which he was complaining, the claimant identified '*excessive questioning*', and what he believed to be an unnecessary level of contact (frequency of informal meetings/discussions with his Line Manager).

37. Dawn Howe, in her capacity of Head of People and Culture, advised the claimant that, in her view and experience, the actions described by him were usual and reasonable requests from a Manager and would not be normally considered as constituting bullying. In circumstances in which the claimant had opted to contact her and bring his concerns to her attention, she offered the claimant advice and guidance on how to potentially improve the relationship between himself and his Line Manager. She encouraged the claimant to attempt informal mediation. She also advised the claimant to take notes of occurrences and dates, so that should the internal process fail and he wished to raise a grievance in future, he would have a record of that detail.

38. In the course of his discussion with Dawn Howe, the claimant did not inform her of any disabling medical condition of which he was suffering, nor say anything to her relating to either the protected characteristic of Gender Orientation and or a protected characteristic of Disability. The claimant said nothing to Dawn Howe which caused her to consider that he was, or might be, being discriminated against at that point in relation to either protected characteristic.

39. In the period 23 August 2024 up to and including the date of his resignation the claimant was not required to attend catch up meetings with either his then present Line Manager Margot McKinlay, or his subsequent Line Manager, at a frequency in excess of 2 per week.

40. Part of the advice offered to the claimant with a view to addressing what he had described as conflict around the frequency of requests of information was that he prepare and provide to his Line Manager, and proactively regularly update, a Business Plan containing the relevant information thus avoiding the need for him to be asked to provide it in retrospect.

41. On 29 August 2024 Margot McKinlay emailed the claimant requesting that he provide such a Business Plan.

42. On 2 September the claimant attended a Teams call to discuss his Business Plan 'strategy' with Margot McKinlay and Jo Lofts. The Plan was designed to be implemented upon the claimant's return from holiday and to outline sales and marketing objectives to support the claimant. The claimant committed to the objectives moving forward.

43. In the period 21 August up to and including the date of his resignation on 28 October, the claimant had been in the respondent's offices, for the purposes of carrying out the normal duties of his post, during part of only 4 days these being; 28 August, 29 August, 2 September and 3 September.

44. In the period 23 August up to and including 3 September, the claimant was not required by the respondent to participate in catch up meetings at a rate of more than 2 per week In the period 5 September to 16 September the claimant was absent from the workplace on booked holiday leave.

45. On 17 September 2024 the claimant, having returned from holiday leave, commenced a period of sick leave upon which he remained absent from the workplace until the date of his resignation on 28 October.

46. In the period 4 September up to and including his resignation on 28 October 2024 the claimant was not required to attend catch up meetings with his Line Manager.

47. In the period from the commencement of his employment up until 22 August 2024, the respondent applied to its Sales Consultants, including the claimant, a practice of requiring them to participate in informal daily catch up meetings with their Line Managers.

48. The practice of requiring Sales Consultants to daily back brief their Line Managers was a usual and reasonable practice, both within the respondent's organisation of 400 employees, and generally within the industry; and was particularly so in circumstances of the start up of a "New Branch and Cost Centre". Such a practice and such a frequency was not, in the circumstances "excessive".

49. When the claimant was not in the workplace for the purposes of performing the normal duties associated with his role, the PCP relied upon was not applied to him. When the claimant was working from home the PCP was not applied to him.

50. The PCP relied upon by the claimant was not applied to him in the period 23 August up to and including the determination of his employment by his resignation on 28 October 2024.

51. On 17 September 2024, the claimant submitted a formal grievance to the respondent's "People and Culture" Department.

52. On 17 September 2024 the claimant submitted a first "Fit to Work" Note supplied by his General Practitioner, to Margot McKinlay. The Note recommended that the claimant be allowed to work from home for the 2 week period of its duration. The Fit Note identified the claimant as presenting with "*anxiety with mental health concerns*". The Note certified the claimant fit to work subject to the condition that he be allowed to work from home.

53. The respondents immediately agreed to the claimant working from home and which he began and continued to do with effect from 17 September 2024 up until date of his resignation 28 October 24.

54. The respondent's Katy Nebard agreed with the claimant's acceptance, on the respondent's behalf of the working from home condition for the 2 week period of the Fit Note and further, that the hearing into his formal grievance would be fixed for a period after the expiry of the Fit to Work Note, in order to allow the claimant a period within which to recover and adjust to the new working arrangements.

55. Katy Nebard confirmed to the claimant that she would take over the claimant's Line Management pending the investigation of his grievance into his previous line management by Margot McKinlay.

56. Katy Nebard issued a work in progress report document to the claimant asking that he complete it and indicating that they would thereafter arrange to meet remotely, or in person as was appropriate, on only one occasion each week, to review progress and a plan to support him and reduce his anxiety. Katy Nebard set the same out in a letter to the claimant of 20 September 2024 in response to which the claimant confirmed his agreement.

57. On the 18th of September 2024, Katy Nebard interviewed and recruited Barry McGuire, an individual with whom Margot McKinlay had previously worked and who was recommended to the company by Margot McKinlay. Barry McIntyre was recruited in the position of "Principal Consultant" to work in the engineering market alongside Margot McKinlay at an agreed salary of £38,000 per annum and with a start date of 30 September 2024.

58. On 30 September 2024 the claimant submitted an extended Fit to Work Note covering the period to 30 October 2024. The Note described the claimant as continuing to present with "*anxiety with mental health concerns*" and again certified

him ‘fit to work’ subject to the condition of his being allowed to work from home, a condition to which the respondent immediately agreed.

59. On 1 October 2024 the claimant registered a business “EQ Talent Limited” with himself as its Director using his home address as the business address. The claimant made no disclosure of that fact to the respondent by whom, as at 1 October 2024, he was still employed.

60. On 2 October 2024 the respondent’s Sophie Iveson of the People and Culture Team invited the claimant to attend and participate in a grievance hearing on 4 October. The grievance outcome was issued to the claimant on 10 October 2024.

61. In terms of the grievance outcome, the claimant’s grievance was partially upheld and partially held not established. In particular the Grievance Officer found that there was insufficient evidence of inconsistent or less favourable treatment, or of unreasonable management actions and that there was no evidence of any action by Margot McKinlay which might be regarded as constituting bullying. The outcome accepted that the workplace atmosphere had become strained, identifying this as having resulted from a breakdown in communication between and on the part of both the claimant and Margot McKinlay. The outcome contained a recommendation that both individuals participate in a mediation session prior to the expiry on 30 September of the then current Fit to Work Note, and reintroducing catch up calls at the already adjusted frequency in order to recommence communication, while also offering a phased return to work.

62. Katy Nebard wrote to the claimant on 14 October 2024 asking if he wished to ‘resource’ (seek to find a candidate for) a software engineer vacancy which Margot McKinlay had acquired from one of her clients. The claimant replied on 15 October asking to know who the client was, which information Katy Nebard provided. The claimant declined the proposal and on 18 October 2024 emailed the vacancy spec and client to his husband Billie Bradley-Meichan who as of 4 October was also registered with the claimant’s new business EQ Talent Limited.

63. On 15 October, Katy Nebard provided to the claimant by email, a “Mind Wellness Action Plan” which she suggested the claimant complete before his return to work date, and which was designed to support his feelings of anxiety.

64. Completion of the Mind Wellness Plan would have allowed the claimant to share any additional mental health issues with which he was contending and to make suggestions and have input into his own support plan while also providing an opportunity to him to suggest or request any reasonable adjustments, and to confidentially share any challenges which he considered his anxiety or any other mental health concerns were giving rise to.

65. Katy Nebard proposed that she and the claimant meet to review that Mind Wellness Action Plan once the claimant had provided his input to it as part of his

phased return to work. The claimant did not respond to the email nor did he provide input into the Mind Wellness Action Plan.

66. On 15 and 16 October the claimant made an internal request that 3 email accounts be set up on the respondent's system for, amongst others, "Jacques@EQTalent.io" and "Billie@EQTalent.io". On 17 October 2024 the claimant took a day's paid leave from the respondent in order to attend a speed networking event at the West Lothian Chamber of Commerce. He did not attend the event at the respondent's request.

67. Margot McKinlay and Barry McIntyre separately attended the speed networking event, in the course of their employment with the respondent, and on the respondent's behalf.

68. While at the speed networking event, an individual and potential customer, who was known to Barry McIntyre, advised Barry McIntyre that the claimant who was also at the event, was engaged in the process of issuing the respondent's business cards to potential customers, these being cards on which he had placed a sticker over his "Major Recruitment" contact details, replacing them with contact details for EQ Talent Limited, his new business.

69. The networking incident was reported, on 17 October 2024, to Katy Nebard who undertook some investigation which led to; the uncovering of the registration of the claimant's new business EQ Talent, of EQ Talent's marketing posts on LinkedIn which identified that it was a business in competition with the respondents, and a search of the claimant's email account.

70. The claimant was suspended by letter dated 17th of October 2024 and invited to an investigation hearing on the 21st of October 2024, to enquire into whether there had occurred:-

    (a) A breach of section 5 employee duties in particular clauses 5.1 and 5.4;

    (b) Working for or assisting a competitor of the company or seeking to establish a business which is likely to compete with a company or divulging confidential information concerning a company and its business;

    (c) Unauthorised use or disclosure of confidential information or business matters relating to the company, its clients, temporary workers or applicants.

71. On 18th of October, the claimant submitted an appeal, against the outcome of his grievance, in which he made, for the first time, a complaint that he was subject to discriminatory treatment because of his protected characteristic of Sexual

Orientation that being a matter to which he made no reference in his original grievance. His grievance appeal separately made no mention of a complaint of discrimination because of the protected characteristic of Disability.

72. On 22 October the respondent offered to include consideration of the new complaints in the internal appeal hearing, in order to support a quicker resolution of them, while also seeking further specification/detail of the complaints from the claimant, together with the identification of witnesses and any other supporting evidence that went to establish the new claims and upon which the claimant relied. The claimant did not respond to that request.

73. The claimant participated in the investigatory hearing and was represented by Gillian McGilly.

74. The Investigating Officer concluded that there was evidence of matters of conduct on the part of the claimant which, if established at a disciplinary hearing, might be considered to constitute gross misconduct.

75. The respondent wrote to the claimant on 22 October 2024 inviting him to a disciplinary hearing.

76. On 23 October 2024, the claimant determined his employment with the respondent by resigning, and was paid one week's salary in lieu of notice. In his letter of resignation, the claimant cited as his reason for resignation a '*hostile working environment*'.

77. The respondent accepted the claimant's resignation while at the same time confirming that they were still willing to investigate the new matters of grievance introduced in his appeal, if the claimant would respond to the letter previously sent to him asking that he provide evidence of the matters together with an additional statement.

78. The claimant did not respond to that correspondence.

79. The respondent wrote to the claimant confirming that, had the disciplinary investigation progressed and had no mitigating evidence been provided by the claimant, it was likely that the claimant would have been dismissed for reason of breach of contract constituting an offence of gross misconduct. The respondent also confirmed that due to the lack of cooperation with their requests for further specification and vouching evidence, the respondent was unable to progress the appeal against the outcome of the grievance further.

80. The lodging of his grievance, by the claimant, directed against Margot McKinlay and in which he nowhere made any complaint of discrimination or otherwise made reference to a matter that might amount to a breach of the Equality Act 2010, did

not, in the circumstances, constitute a protected act for the purposes of section 27 of the Equality Act 2010.

81. The requirement, that the claimant, in the period from commencement of his employment up to on or about the 23rd of August 2024, participate in daily catch up meetings with his Line Manager did not constitute unwanted conduct relating to either of the claimant's protected characteristics of sexual orientation and or of disability.

82. Separately, and in any event, let it be assumed that the conduct was so related, that conduct being usual both within the respondent's organisation and in the wider industry, it was not reasonable in the circumstances that the claimant perceive it as having a harassing effect, for the purposes of section 26 of the Equality Act 2010.

83. That in convening the claimant, firstly to an investigation process and thereafter, to a disciplinary hearing, in the apparent circumstances disclosed, the respondent was acting in a manner permitted under its Contract of Employment with the claimant and thus, was not acting in breach of contract.

84. The 17th of September 2024, a date from after which the PCP complained of by the claimant was not being applied by the respondent to him, was the first date upon which the respondent knew, or ought reasonably to have known, that the claimant was diagnosed/suffering from a medical condition which might give rise to disability and or to a requirement, in circumstances where the PCP was being applied to him, which it was not, of a duty to make adjustments.

85. Separately, and in any event, in so far as a duty to make further enquiry as to the claimant's medical condition and its potential to give rise to a duty to make adjustments may be said to have applied to the respondent as of the 17th of September 2024, the respondent discharged that duty by taking reasonable steps to inform themselves by providing the claimant with the opportunity and mechanism to provide such information which opportunity the claimant consciously declined.

86. The respondent's decision to convene the claimant to a disciplinary hearing arose, not out of the submission of, or of any element contained within his grievance, but rather, out of an investigation into his separately conducting himself in a way which, in the respondent's assessment raised a question of breach of contract on his part.

Submissions

87. There is no requirement upon the Tribunal to record at length the submissions made by parties and its normal practice is to outline these in summary. Notwithstanding, and with a view to doing justice to the claimant's submissions, he

being a person appearing on his own behalf, the Tribunal sets out in full below the submissions made by the claimant as noted at the Hearing:-

The Claimant's Submissions

88. "*I say that they did know about my condition. It was after Judge Cardownie's question that I remembered that I had subsequently mentioned to Margot McKinlay that I had previously felt suicidal but was all right now; but after that she continued to subject me to micro management. So why did she not probe further in the interview. Why did she phone Ben McKenna an employee based in another office asking for advice that she could have got from me. I say that's victimisation. Also her use of nicknames in describing other employees while in conversation about them, I ask the Tribunal to consider whether an individual who uses such nicknames "Roger the Dodger" and "Ben Tucker Mother F…..r" can say that they have applied a duty of care.*

> [sic Regarding] *sexual orientation, I rely on her use of those nicknames and the fact that she said she had phoned/would phone Ben McKenna for advice* [sic, a heterosexual man] *when she could have asked me for the same advice.*
>
> *Regarding* [sic, constructive] *unfair dismissal, I accept that I do not have the necessary period of service but say that the Tribunal should make an exception to that rule because I had no choice but to do something else for my mental health;"*

And,

In exercise of a limited right of reply to the respondent's submissions:-

89. "*Regarding section 20 and section 21 adjustments and the respondent's submission that a duty did not arise, I ask the Tribunal to consider that reasonable adjustments were not put in place from the 17th of September. I say I was in the workplace and carrying out normal work duties on or for part of the 28th of August, the 29th of August, the 2nd September and the 3rd of September but that the adjustment to the frequency of the meetings which they say they made was not made until later.*

Regarding victimisation and the protected act, in addition to relying on the submission of my grievance on the 17th of September I say my pushing back to Margot McKinlay asking me if I had obtained information about when a candidate for a job liked to take his breaks during the day, was a protected act and [sic the detriment which] *I suffered in consequence* [was] *her asking me whether I could explain the smell of alcohol which she had detected when working beside me";*

And following a short break to allow the claimant to review his notes;

"*There is nothing further that I want to direct the Tribunal to.*"

Submissions for the Respondent

90. For the respondent, Ms Nebard invited the Tribunal to hold that the oral and documentary evidence which had been presented to it, was insufficient to support the making of such Findings in Fact as would be required to sustain any of the claimant's complaints. In short she submitted that the claimant had failed to discharge his onus of proof in respect of any of his claims and had separately failed, on the evidence, to establish any primary facts from which the Tribunal would be entitled to infer a discriminatory motive on the part of the respondent or its employees, such as to shift the burden of proof to the respondent on any relevant matter.

91. On the issue of Constructive Unfair Dismissal, in addition to relying upon the lack of qualifying service on the part of the claimant entitling him to make such a complaint she submitted,

    (a) in any event, that there was no evidence before the Tribunal sufficient to support a finding of material breach of contract on the part of the respondent, nor to support a finding that the claimant had resigned in response to any act or omission, whether material or not, of the respondent. Rather, she submitted, such evidence as was before the Tribunal went to show, on the balance of probabilities, that the claimant was in any event in prior breach of contract which, if established in internal disciplinary proceedings would have constituted gross misconduct, potentially leading to his dismissal,

    (b) that the claimant had resigned in order to devote time to the development of his own business which had been set up by him, in advance of his resignation, in direct competition with the respondents and in breach of his contractual obligations owed to the respondent; and,

    (c) with regards to the timing of his resignation, that he was prompted to resign and resigned, on 23 October 2024, in response, most proximately to his having been invited on the preceding day, 22 October 2024, to attend a disciplinary hearing.

92. In relation to section 27 complaint of Victimisation the respondent's representative submitted;

    (a) that of the two alleged protected acts relied upon by the claimant, the first, the lodging of his grievance against Margot McKinlay did not

constitute a protected act in terms of section 27 of the Equality Act because it nowhere contained any complaint of Discrimination or otherwise made reference to a matter which might amount to a breach of that Act and;

(b) in relation to the second which was set out at Issue 7.2.2, that there was no evidence before the Tribunal which could support a Finding in Fact that the respondent "*had left the claimant no option but to resign*"; and rather;

(c) such evidence as was before the Tribunal went to show, on the balance of probabilities, that the respondent continued to act towards the claimant in a manner consistent with his continuing employment, subject only to his being invited to attend a disciplinary hearing, a matter which arose, not out of his grievance but rather out of an investigation into his separately conducting himself in a way which in the respondent's assessment raised a question of breach of contract on his part.

93. In relation to the section 26 EqA complaint of Harassment the respondent's representative submitted;

(a) there was no evidence which went to support the making of a finding that the claimant was overlooked by the respondents for promotion (Issue 6.1.2) or,

(b) was constructively dismissed by the respondent (Issue 6.1.3) or,

(c) that the respondent had subjected the claimant to micro management (6.1.1).

94. While it was not disputed that the respondents did until, on or about 23 August 2024 conduct mandated daily catch ups with the claimant and while that may have been conduct which was unwanted by the claimant, the preponderance evidence before the Tribunal was to the effect that it was normal practice both within the respondents, an organisation employing around 400 individuals, and within the wider industry, given the nature of the business. Therefore she submitted whatever effect the claimant asserted it had upon him it was not reasonable, in the circumstances, for him to regard it as having that effect.

95. Separately, and in any event, Ms Nebard submitted there was no evidence, whatsoever, before the Tribunal including from the claimant's oral evidence, that went to show that such conduct, if it occurred and if it could be so categorised as unwanted in the circumstances, that it had been related to the claimant's sexual orientation, or to his protected characteristic of Disability.

96. Regarding the complaint of Direct Discrimination because of the protected characteristic of Sexual Orientation, in terms of section 13 of the Equality Act;

    (a) The comparators given notice of by the claimant as relied upon by him, Ben McKenna and Roger Clifford (Issue 5.1.1), being employees who were based in other offices and were not case managed by Margot McKinlay were not relevant comparators,

    (b) That there was no evidence before the Tribunal that went to establish that the respondents had failed to promote the claimant, or

    (c) That they had promoted Barry McIntyre, the named comparator (5.1.2) in relation to that asserted instance of alleged less favourable treatment

    (d) That there was no evidence before the Tribunal that went to support a finding that the respondent had constructively dismissed the claimant (5.1.3).

    (e) That there was no evidence before the Tribunal that went to support a causal connection between any of the above alleged treatment, let it be assumed that it had occurred and further let it be assumed that it constituted less favourable treatment, on the one hand, and the claimant's sexual orientation, on the other hand; and,

    (f) Neither was there evidence sufficient to establish primary facts from which the Tribunal might draw an inference of discriminatory motivation on the part of the respondent and thus, to shift the burden of proof to the respondent.

97. Regarding Harassment related to the protected characteristic of Disability (Issues 4.1 to 4.4),

    (a) That there was no evidence before the Tribunal such as would support a Finding in Fact that the daily catch up meetings which Margot McKinlay held with the claimant were either excessive, unreasonable and or overly intense and rather,

    (b) Such evidence as was before the Tribunal went to show that the information canvassed at such meetings was both necessary and reasonably required given the nature of the business and the start up circumstances of the particular Branch and Team; and further,

    (c) That the respondent's method of sourcing that information by holding daily catch up meetings with their employees, including the claimant, was both normal within the respondent's organisation and normal within the wider industry.

(d) In relation to the alleged comments of Jo Lofts to the claimant said to be made by her on 21st/23rd/27th August;

(i) Firstly that the evidence before the Tribunal was not sufficient to establish that Jo Lofts had spoken the particular words which the claimant alleges in his amended Grounds of Claim including, in particular, that she had told the claimant that "*Things you've said have really hurt Margot and she is very hurt that you didn't go to her in the first place to resolve this issue*".

(ii) The evidence of Jo Lofts herself was that what she had observed and what she had relayed to the claimant, wholly as a matter of fact, was that Margot McKinlay was "stressed" by what the claimant had said,

(iii) Separately that conveying that factual observation to the claimant, or observing that there appeared to have been a breakdown in the relationship between the two individuals and suggesting that a mediation meeting be arranged with them, in circumstances where the claimant had come to her raising the subject of his disagreement with his Manager, was not something which the claimant was reasonably entitled in the circumstances to construe as being harassing.

(e) In relation to Dawn Howe's alleged comments to the claimant on 27 August 2024;

(i) that, Dawn Howe, having asked the claimant to provide examples or evidence to support how he was characterising Margot McKinlay's conduct and the claimant having failed to provide any such evidence or examples, for her to observe that were the claimant to continue in the making of such allegations without providing any evidence or examples, might risk being perceived as "character assassination", was a wholly factual observation, and,

(ii) was one which, objectively viewed, could be seen as being made for the claimant's benefit and it was not reasonable, in the circumstances, for the claimant to have perceived it as harassing.

98. Separately, and in any event, in relation to the whole complaint, let it be assumed that all which the claimant alleges at paragraph 12 of his amended Grounds of Claim had been said respectively by Jo Lofts and or by Margot McKinlay, which was not admitted, those remarks contained no evidence giving rise to an inference, nor was there anything in the claimant's oral evidence that went to show that such remarks as had been made to the claimant had related to his protected characteristic of Disability.

99. In relation to the section 20 and section 21 EqA complaints of Breach of Duty to Make Adjustments, the respondent's representative submitted;

    (a) that there was no evidence before the Tribunal that would support a Finding in Fact that the respondents had, at the material time, subjected their employees to a PCP of "micro management/excessive oversight control and scrutiny" (Issue 3.2.1)

    (b) that while the respondent accepted that, at the material times, they did apply a PCP to employees of conducting mandated daily catch ups, that no such PCP was applied to the claimant during periods when he was:-

        (a) Working from home;

        (b) In office but for the purposes of attending training or for purposes other than the normal discharge of his day to day duties;

        (c) That as soon as the claimant had raised that issue of the frequency of the meetings with Jo Lofts, the respondents had, in any event, disapplied that PCP to the claimant, by reducing the number of catch up meetings to no more than 2 in any week and subsequently, on the change of his Line Manager to the Managing Director Katy Nebard, to 1 per week;

        (d) That in the period from 21 August up to and including the date of his resignation on 28 October, the claimant, on his own evidence, had been in office for the purposes of carrying out his normal duties during part of only 4 days, namely 28 August, 29 August, 2 September and 3 September and that in that period the claimant had not been required to participate in catch up meetings at a rate of more than 2 per week;

        (e) That, separately and in any event, no such duty to make adjustments could be said to have arisen in

terms of section 20 prior to 17 September 2024 that being, in the respondent's representative's submission, the date upon which, on the evidence presented, the Tribunal should hold on the balance of probabilities that the respondent's first became aware of any medical condition impacting upon the claimant that being one of "*anxiety with mental health concerns*" as stated on the Fit Note submitted by the claimant on that date;

(f) That even on the claimant's own evidence and that of his witness Ellena Clarke, albeit that their respective evidences on the matter were in conflict and mutually inconsistent, the most that the claimant says that he had disclosed was that he suffered from "*Borderline Personality Disorder*".

(g) He had not offered to prove that he had at any point went on to disclose the impact that that condition had upon his ability to carry out normal day to day activities such that it placed him at a substantial disadvantage in comparison to fellow employees when required to participate in daily catch up meetings sufficient to give rise to a duty on the part of the respondents to make adjustments such as it would be reasonable to have to take to avoid such disadvantage, for example by reducing the frequency of the catch up meetings, something which, quite separately, they had, of their own initiative done as soon as the claimant had raised a concern about their frequency albeit, in so raising a concern the claimant at no time made reference to any mental health issue or disability.

(h) That from 17 September 2024, the date upon which, in the respondent's representative's submission, the respondents first had notice of any mental health issue associated with anxiety, or of his anxiety, the PCP was not being applied to the claimant.

(i) Insofar as a duty on the part of the respondent to make further enquiry may be said to have arisen as at 17 September, the respondents had sought to make that enquiry of the claimant forwarding to him

electronically the relevant documentation which, if completed by him would have provided them with fair disclosure of his condition and the impacts that it may have upon him, the claimant had declined to provide that information and did not complete a return form at any point prior to his resignation.

(j) Separately, and in any event, let it be assumed the Tribunal were to find in fact on the evidence of the claimant's witness, Ellena Clarke, that the claimant had stated, in the course of his first interview that he suffered from "Borderline Personality Disorder" such as to give rise to a duty on the part of the respondent to make further reasonable enquiry, she invited the Tribunal to hold that the respondents had discharged that duty in Ms Clarke, again let it be assumed that her evidence rather than Margot McKinlay's was to be preferred, asking the claimant in response to that alleged disclosure whether any reasonable adjustments were likely to be required and the claimant responding emphatically "*No none*".

(k) To have continued to have pressed the claimant for further information in the face of such an unequivocal response, let it be assumed that the Tribunal were to find that it had been made, other than providing him with the opportunity to make such disclosure in the normal way through the respondent's portal which they did and which the claimant accepted he declined to do, might, of itself, have constituted harassment.

100. For all of the above reasons she invited the Tribunal to hold that the claimant had failed to discharge his onus of proof in respect of establishing any breach, on the part of the respondent of a duty to make adjustments arising in terms of section 20 of the EqA.

101. Regarding Direct Discrimination, in terms of section 13 of the EqA, because of the protected characteristic of Disability (Issues 2.1 to 2.2) for which the claimant relied upon the same alleged less favourable treatment as he did on the grounds of sexual orientation, the respondent's representative, praying in aid all that she had said earlier in relation to the particular conduct relied upon, submitted:-

(a) That there was insufficient evidence to sustain a Finding in Fact that the catch up meetings which the claimant was required to participate in prior to his raising the issue with Jo Lofts on 21 August were,

excessive or unreasonably intense but rather, that the evidence supported a finding that they were normal in content and frequency both within the respondent's organisation and within the wider industry.

(b) Secondly, that the identified comparator relied upon by the claimant, namely Barry McIntyre had confirmed in his evidence that within the respondent's organisation he was required to participate in the same such meetings, further that this was the normal practice within the wider industry and in particular, within his immediately previous employer where he had required, in addition to participating in daily catch up meetings with his immediate Line Manager, to meet twice weekly with his Director. (Paragraph 2.1.1 of the Issue).

(c) In relation to paragraphs (2.1.2 and 2.1.3) the alleged comments respectively of Jo Lofts and Dawn Howe in August of 2024 as given notice of at paragraph 12 of the amended Grounds of Claim, under reference to her earlier submissions, she invited the Tribunal to hold,

(i) that there was insufficient evidence to establish that such comments, in the circumstances, constituted less favourable treatment, or indeed,

(ii) to support a Finding in Fact that the particular words relied upon were spoken by either individual.

(iii) Nor was there evidence that went to show, on the balance of probabilities, that the respondent's employees would not have reacted to another employee (a hypothetical comparator) in the same way.

(d) In relation to Issue (2.1.4), the allegation that the respondents had failed to properly investigate or uphold the claimant's grievance the respondent's representative submitted;

(i) that there was no evidence before the Tribunal which would support a finding that they had failed to properly investigate the claimant's grievance,

(ii) nor had that allegation been particularised by the claimant in the course of his oral evidence other than in suggesting, for the first time in the history of the case, that certain passages which he was unable to specify, of the grievance findings had been edited out.

(iii) That was not a matter that he had ever raised before. Materially, he had not raised it as part of his grounds for internal appeal at a time when there would have been opportunity for any such omission to have been corrected within the internal procedure on appeal.

(iv) It was an unsubstantiated assertion which the Tribunal was not entitled, in the circumstances to take account of even, let it be assumed that there was evidence to support a Finding in Fact that it had occurred, which in her submission there was not.

(v) Separately, there was no evidence before the Tribunal that went to support a finding that the Determination of the claimant's grievance, being a Determination in terms of which the grounds of grievance were, in part, upheld and, in part, found not to be established, was a Determination that no reasonable employer was entitled to reach in the circumstances.

(vi) Nor was there any evidence placed before the Tribunal upon which it would be entitled to conclude that the respondents in investigating the grievance, had it been at the instance of another employee (the hypothetical comparator), would not have reached the same conclusion and Determination, such as to constitute the Determination an instance of less favourable treatment.

102. In relation to (2.1.5) of the Issues, constructively dismissing the claimant, the respondent's representative reiterated and relied upon her earlier submissions.

103. Separately, and in any event, she submitted that there was no evidence before the Tribunal upon which it might hold established, on the balance of probabilities, that there was a causal connection between any of the alleged instances of less favourable treatment set out at paragraphs 2.1.1 to 2.1.5 inclusive, on the one hand, and the claimant's protected characteristic of Disability on the other, nor was there any evidence sufficient to establish primary facts from which the Tribunal could draw an inference of discriminatory motivation, thus switching the burden of proof to the respondents.

104. For the above reasons the respondent's representative invited the Tribunal to find that the claimant had failed to discharge his onus of proof in respect of the complaint of Direct Discrimination because of the protected characteristic of Disability.

105. The respondent's representative concluded by inviting the Tribunal to hold on the oral and documentary evidence presented, that the claimant had failed to discharge his burden of proof in respect of all or any of the complaints advanced by him before the Tribunal, and that all of the complaints should, accordingly, be dismissed.

The Applicable Law

106. The applicable statutory law in relation to the merits of the claimant's complaints is to be found variously, in relation to:-

    (a) The complaint advanced of "Constructive Dismissal" sections 95(3) and 98 of the Employment Rights Act 1996 ("ERA");

    (b) The complaint of Direct Discrimination because of the protected characteristic of Disability and or of Sexual Orientation, within section 13 of the Equality Act 2010 ("EqA");

    (c) In relation to the complaint of alleged Breach of Duty to Make Adjustments, in sections 20 and 21 of the EqA;

    (d) In relation to Harassment related to the protected characteristic of Disability and or to the protected characteristic of Sexual Orientation, in section 26 of the EqA;

    (e) In relation to the complaint of Victimisation in section 27 of the EqA.

107. Those statutory provisions are in the following terms:-

"**Employment Rights Act 1996**

95 Circumstances in which an employee is dismissed.

(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2), only if)—

    (a) the contract under which he is employed is terminated by the employer (whether with or without notice),

    (b) he is employed under a limited-term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract, or

    (c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

(2) An employee shall be taken to be dismissed by his employer for the purposes of this Part if—

(a) the employer gives notice to the employee to terminate his contract of employment, and

(b) at a time within the period of that notice the employee gives notice to the employer to terminate the contract of employment on a date earlier than the date on which the employer's notice is due to expire;

and the reason for the dismissal is to be taken to be the reason for which the employer's notice is given.

98 General.

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—

(a) the reason (or, if more than one, the principal reason) for the dismissal, and

(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(3) A reason falls within this subsection if it—

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,

(b) relates to the conduct of the employee,

(ba) is retirement of the employee,

(c) is that the employee was redundant, or

(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

(2A) Subsections (1) and (2) are subject to sections 98ZA to 98ZF.

(3) In subsection (2)(a)—

(a) "capability", in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and

(b) "qualifications", in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.

(3A) In any case where the employer has fulfilled the requirements of subsection (1) by showing that the reason (or the principal reason) for the dismissal is retirement of the employee, the question whether the dismissal is fair or unfair shall be determined in accordance with section 98ZG.

(4) In any other case where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and

(b) shall be determined in accordance with equity and the substantial merits of the case.

(5). . . . . .

(6) Subsection (4) **i**s subject to—

(a) sections 98A to 107 of this Act, and

(b) sections 152, 153, 238 and 238A of the Trade Union and Labour Relations (Consolidation) Act 1992 (dismissal on ground of trade union membership or activities or in connection with industrial action).

Equality Act 2010

13. Right not to suffer unauthorised deductions

(1) An employer shall not make a deduction from wages of a worker employed by him unless –

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract or

(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

20 Duty to make adjustments

(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(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.

(4) The second requirement is a requirement, where a physical feature 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.

(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.

(6) Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.

(7) A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty.

(8) A reference in section 21 or 22 or an applicable Schedule to the first, second or third requirement is to be construed in accordance with this section.

(9) In relation to the second requirement, a reference in this section or an applicable Schedule to avoiding a substantial disadvantage includes a reference to—

(a) removing the physical feature in question,

(b) altering it, or

(c) providing a reasonable means of avoiding it.

(10) A reference in this section, section 21 or 22 or an applicable Schedule (apart from paragraphs 2 to 4 of Schedule 4) to a physical feature is a reference to—

(a) a feature arising from the design or construction of a building,

(b) a feature of an approach to, exit from or access to a building,

(c) a fixture or fitting, or furniture, furnishings, materials, equipment or other chattels, in or on premises, or

(d) any other physical element or quality.

(11) A reference in this section, section 21 or 22 or an applicable Schedule to an auxiliary aid includes a reference to an auxiliary service.

(12) A reference in this section or an applicable Schedule to chattels is to be read, in relation to Scotland, as a reference to moveable property.

(13) The applicable Schedule is, in relation to the Part of this Act specified in the first column of the Table, the Schedule specified in the second column.

21 Failure to comply with duty

(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.

(3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.

26 Harassment

(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) A also harasses B if—

(a) A engages in unwanted conduct of a sexual nature, and

(b) the conduct has the purpose or effect referred to in subsection (1)(b).

(3) A also harasses B if—

(a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,

(b) the conduct has the purpose or effect referred to in subsection (1)(b), and

(c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

(3) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

(5) The relevant protected characteristics are—

- age;
- disability;
- gender reassignment;
- race;
- religion or belief;
- sex;
- sexual orientation.”

27 Victimisation

(1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act—

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

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

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule."

Essential Matters of Fact that must be established

108. As can be seen from the terms of those provisions, within each of the above sections there is set out the essential matters of fact which must be established (by a claimant) and found in fact by the Tribunal to have occurred, if a complaint under the particular section is to succeed.

109. In respect of the apparent complaint of "Constructive Dismissal", as was established at the Closed Preliminary Hearing before Judge Sangster and as was acknowledged by the claimant at the outset of the Final Hearing, the claimant lacks the requisite 2 year period of continuous employment such as to confer upon him the right (title in law) to complain of Unfair Dismissal and, upon the Tribunal, the Jurisdiction to consider such a complaint at his instance.

Burden of Proof

110. In relation to the issue of whether the respondent "constructively dismissed" the claimant, insofar as that may be perceived as constituting a relevant instance of less favourable treatment and or a detriment to which the claimant was subjected at the hands of the respondent, the onus of proof rests with the claimant that is to say it is for the claimant to show on the balance of probabilities and on the preponderance of the evidence that it is more likely than less likely that that occurred.

111. In relation to the complaints of Discrimination, of Harassment, and of Victimisation the onus of proof in establishing that the treatment or other alleged occurrences upon which the claimant relies occurred, sits with the claimant.

112. In relation to the complaints of Discrimination the onus of proof with regards to establishing discriminatory motivation on the part of the respondents, that is to say that the respondents treated the claimant in the way complained of because of his protected characteristic of Disability and or Sexual Orientation or subjected the claimant to conduct "related to" his protected characteristics, sits with the claimant at first instance, but is subject to the provisions of section 136 of the EqA (burden of proof) which, if satisfied can have the effect of switching the burden of proof in relation to motivation to the respondents who then require to show, on the balance of probabilities, that the reason for the treatment complained of is a reason wholly unconnected with the claimant's relevant protected characteristic.

113. In order to engage section 136 there must be established before the Tribunal on the evidence, primary facts from which the Court or Tribunal could decide, in the absence of any other explanation, that the motivation of the respondent in so treating the claimant was a discriminatory motivation.

114. The onus of proof in establishing such primary facts sits with the claimant. That onus will not be discharged if all that is established is that the claimant was subjected to less favourable treatment/to a detriment/unwanted conduct on the one hand and was, at the material time, a person possessing a particular protected characteristic. It is settled law, in terms of the decisions of the Higher Courts which are binding upon the Tribunal at first instance, that there must be established before the Tribunal "*something more*" before the burden of proof can be said to have switched to the respondents.

115. The complaints of Discrimination under sections 13, 20 and 21 and section 26 cannot succeed unless the claimant establishes, on the evidence, a causal connection between the treatment complained of on the one hand and the protected characteristic relied upon, on the other, or, in the case of section 26 Harassment that the treatment was related to a relevant protected characteristic, or

establishes primary facts sufficient to switch the onus of proof to the respondent which onus the respondent is subsequently unable to discharge.

116. A complaint of Victimisation in terms of section 27 cannot succeed where a claimant fails to establish a causal connection between the protected act upon which he or she relies, on the one hand, and the alleged detrimental treatment suffered at the hands of a respondent, on the other.

117. The necessary causal connection and or relationship with the protected characteristic cannot be established in circumstances where the claimant does not show, on the balance of probabilities that, at the material time, the respondent knew in fact of the claimant's possession of the protected characteristic and of its likely effect upon him, or, in the circumstances, ought reasonably to have known.

118. An employer may be held to reasonably ought to have known in circumstances where they can be said to have been put on their warning as to the likelihood of the possession of a protected characteristic and failed to make any, or, in the particular circumstances, sufficiently reasonable, enquiry to inform themselves.

119. The terms of section 136 of the EqA are set out below: viz,

> "**136 Burden of proof**
>
> (1) This section applies to any proceedings relating to a contravention of this Act.
>
> (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.
>
> (4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.
>
> (5) This section does not apply to proceedings for an offence under this Act.
>
> (6) A reference to the court includes a reference to—
>
> (a) an employment tribunal;
>
> (b) the Asylum and Immigration Tribunal;
>
> (c) the Special Immigration Appeals Commission;
>
> (d) the First-tier Tribunal;
>
> (e) the Special Educational Needs Tribunal for Wales;

(f) the First-tier Tribunal for Scotland Health and Education Chamber."

Consideration, Determination and Disposal of the Issues

120. The Tribunal unanimously preferred the submissions of the respondent's representative to those of the claimant and with, a view to avoiding unnecessary repetition refers to the record of those submissions as set out above and holds them incorporated within its reasoning here, for the purposes of brevity.

121. The Tribunal considered that each of the witnesses who gave evidence before it endeavoured to do so, in relation to matters of fact, to the best of their recollection.

122. On the question of whether and in what terms and by what means and when, if at all, there had been disclosure by the claimant either of any mental health issue on his part and, if so of the impact of such a mental health issue or condition upon his ability to carry out normal day to day activities including his normal work duties, at any time prior to the submission by him on 17 September 2024 of the first Fit Note which is cited "Anxiety with mental health concerns", the Tribunal preferred and accepted;

    (a) the reliability of the evidence of the witnesses for the respondent which was consistent on the issue one with the other,

    (b) to that of the claimant which contained inconsistencies as between the oral evidence given by him before the Tribunal and the written statement submitted by him on 28 March 2025 in compliance with the Tribunal's Case Management Orders; and again, in part, as between his own oral evidence and that of his witness Ellena Clarke.

123. Had the Tribunal considered the evidence of the claimant and his witness to be more reliable than that presented by the witnesses for the respondent and preferred it on the grounds of reliability, which it has not, that evidence at its highest would extend to establishing only that the claimant had stated, in the course of his first interview that he suffered from Borderline Personality Disorder but in answer to enquiry by the respondent, (per Ellena Clarke), as to whether its impact upon him was such that any reasonable adjustments would need to be made, that he had unequovically responded in the negative thus closing down the topic and had thereafter consciously decided not to reiterate that disclosure or provide the respondents any further information about his condition or its potential impact upon him through the vehicle of the respondent's onboarding process, when invited to do so.

124. For the avoidance of doubt the Tribunal did not consider that the claimant's remark, made in the course of informal conversation with one of the respondent's

Managers about another person, that he the claimant, at some unspecified past time, had also experienced "*suicidal ideation*" and, in response to the Manager's immediately made enquiry had stated only "*I'm all right now*", was sufficient, in the circumstances, to give rise to any continuing duty on the part of the respondents to press the claimant for further information beyond that point and that response.

125. The Tribunal considered that the claimant had failed to discharge his burden of proof on the issue of the respondent's knowledge and had failed to prove on the balance of probabilities and on the preponderance of the evidence, that, at the material time for the purposes of his complaints, the respondent knew or ought reasonably to have known of the claimant's now relied upon medical condition, or of its impact upon him, such as give rise to a duty to make adjustments in terms of section 20 of the Act, and or to allow for the attribution to the respondents of a discriminatory motive, in relation to the protected characteristic of Disability with regard to any treatment complained of.

126. In relation to complaints of section 13, Direct Discrimination, section 21 Breach of Duty to Make Adjustments and section 26 Harassment respectively because of or related to the claimant's protected characteristic of Sexual Orientation or of Disability, the Tribunal considered that there was no evidence placed before it upon which it might make Findings in Fact sufficient to sustain those complaints, or to sustain the making of findings of primary facts which would have the effect of engaging the terms of section 136 of the EqA and switching the burden of proof to the respondent. Separately, and in any event, had the Tribunal considered, on the evidence presented, that the burden of proof had been switched to the respondent, which it did not, it would have found that the respondent had discharged that burden of proof and had established, on the preponderance of the evidence and on the balance of probabilities, that the reason for any such treatment complained of as suffered by the claimant, was a reason which was wholly unconnected with his protected characteristic of Sexual Orientation and separately wholly unconnected with his protected characteristic of Disability.

Disposal of the Issues

127. The issue of the claimant's Disability Status (paragraph 1.1) on the List of Issues having been earlier determined at Open Preliminary Hearing, was not before the Tribunal for Determination at the Final Hearing.

128. On the evidence presented and the submissions that parties made, the Tribunal unanimously disposes of the Issues before it as follows below:-

Direct Disability Discrimination – section 13 EqA (paragraphs 2.1 to 2.5 of the List of Issues inclusive)

129. The Tribunal unanimously considered that the claimant had failed to discharge the burden of proof in respect of the complaint of Direct Discrimination because of the protected characteristic of Disability and that the claim falls to be dismissed.

"Reasonable Adjustments" – section 20 and 21 EqA (paragraphs 3.1 to 3.6 of the List of Issues)

130. The Tribunal unanimously considered that the claimant had failed to discharge the burden of proof in establishing the complaint of Breach of Duty to Make Adjustments and that the complaints accordingly fall to be dismissed.

Harassment related to Disability – section 26(1) EqA (paragraphs 4.1 to 4.4 inclusive of the List of Issues)

131. The Tribunal unanimously held that the claimant had failed to discharge his burden of proof in relation to the complaint of Harassment related to Disability and that the complaint falls to be dismissed.

Direct Sexual Orientation Discrimination – section 13 EqA (paragraphs 5.1 to 5.2 inclusive)

132. The Tribunal unanimously held that the claimant had failed to discharge the burden of proof in respect of the complaint of Direct Discrimination because of the protected characteristic of Sexual Discrimination and that the complaints fall to be dismissed.

Harassment related to Sexual Orientation – section 26(1) EqA (paragraphs 6.1 to 6.4 of the List of Issues)

133. The Tribunal unanimously held that the claimant had failed to discharge the burden of proof in relation to the complaint of Harassment related to Sexual Orientation and that the complaints fall to be dismissed.

Victimisation – section 27 EqA (paragraphs 7.1 to 7.3 of the List of Issues)

134. The Tribunal unanimously considered that the claimant had failed to discharge the burden of proof in relation to the complaints of Victimisation and that the complaints fall to be dismissed.

135. Insofar as the claimant's complaint of Constructive Dismissal may fall to be regarded as a common law complaint of Breach of Contract arising on dismissal, the Tribunal considered that the claimant had failed to discharge his burden of proof and had not established any material breach of contract on the part of the respondent, such as would amount to a repudiation of the Contract of Employment

entitling him, upon its acceptance, to resile and advance a claim for damages. The Tribunal separately considered, in any event, that such evidence as was placed before it tended to show that the claimant at the material time, was himself in prior material breach of contract and, in light of the same, that the step taken by the respondents, following investigation, to invite him to attend a disciplinary hearing was, in the circumstances, a step which they were entitled to take in contract and thus did not constitute a breach of contract.

136. None of the complaints advanced having been established on their merits, the issue of remedy (**paragraph 8 of the List of Issues**) falls away.

137. The Tribunal accordingly dismisses the claimant's complaints.

Date sent to parties **01 October 2025**