# EMPLOYMENT TRIBUNALS

**Claimant:** Mx U Miah

**Respondent:** Synnovis Analytics LLP

**Heard at:** **Croydon** **On: 7 – 11 July 2025, 23 and 24 September 2025 (in chambers)**

**Before:** **Employment Judge Leith**
**Mrs Goldthorpe**
**Mr Newlyn**

**Representation**
Claimant: In person, assisted by Ms Patel (wife)
Respondent: Mr Gill (Counsel)

# JUDGMENT

1. The complaint of direct disability discrimination fails and is dismissed.
2. The complaint of discrimination arising from disability fails and is dismissed.
3. The complaint of failure to make reasonable adjustments fails and is dismissed.
4. The complaint of harassment related to race fails and is dismissed.
5. The complaint of harassment related to disability fails and is dismissed.
6. The complaint of victimisation fails and is dismissed.
7. The complaint of direct race discrimination is dismissed upon withdrawal.

# REASONS

Claims and Issues

1. We discussed the claims and issues with the parties at the start of the hearing. The starting point was the list of issues annexed to Employment Judge Heath's Case Management Order of 20 January 2025. EJ Heath descried it as a draft list of issues, but noted that there should be little if any change to it. He directed the parties to finalise the List of Issues by 14 March 2025, and to send an agreed final list of issues to the Tribunal by that date. The parties did not do so.

2. On the morning of the first day of the hearing, the Claimant produced an amended list of issues. We treated that as an application to amend EJ Heath's list of issues. We allowed that application in part, for the reasons we gave orally at the time. The Respondent also sought permission to amend its response to plead a legitimate aim in respect of the complaint of discrimination arising from disability. We did not allow that application, once again for the reasons we gave orally at the time.

3. The final list of issues is annexed to this judgment.

Adjustments to the hearing process

4. The Claimant applied for adjustments to be made to the hearing process. After hearing from the Claimant and from Mr Gill, we made the following adjustments to the hearing process, for the reasons we gave orally at the time:
    4.1. A written breakdown of the hearing process was provided to the parties.
    4.2. Breaks were to be taken after approximately every 45 minutes of hearing time.
    4.3. Questions to the Claimant to be asked one at a time, in plain English, without compound or abstract framing, and with questions presented in a non-confrontational manner insofar as that was consistent with Mr Gill's duty to put the Respondent's case to the Claimant.
    4.4. The Claimant may ask for questions to be repeated or rephrased (as, we remarked, would be the case for all witnesses). The Claimant may pause before answering questions, and no adverse inference would be drawn if they do so. We would also bear in mind the Claimant's conditions if they appeared to be giving irrelevant answers.
    4.5. Ms Patel and Ms White could assist the Claimant with all parts of the conduct of the case apart from the Claimant's own evidence, and also assist with emotional regulation. Either one of them may play an active role in the advocacy of the case, save that for each witness, only one of them may conduct cross-examination. They could discuss questions between themselves, and would be given time to do so.
    4.6. While giving their evidence, if the Claimant had difficulty understanding the questions being asked by Mr Gill, the Tribunal would assist in rephrasing or reframing the question.
    4.7. If the Claimant was still unable to understand the question, the Tribunal would consider asking Ms Patel for assistance in framing the question in a way that will assist the Claimant, albeit that control of the way the question was put to the Claimant would remain with the Tribunal.
    4.8. The Claimant could not be prompted in the answers that they give.

4.9. The Tribunal would keep the position under review, and if we had concerns that the Claimant was not understanding the questions or was unable to communicate answers to the questions they were being asked, we may consider whether to adjourn the hearing to allow for an intermediary assessment to take place.

5. During the course of cross-examination, we agreed that Mr Gill did not need to formally put all aspects of the Respondent's case to the Claimant, as being questioned in that way was clearly causing the Claimant some difficulty. Mr Gill properly ensured that the Claimant was given the opportunity to answer the key points that were factually in dispute.

Witnesses

6. On behalf of the Claimant, we heard evidence from:
   6.1. The Claimant themselves;
   6.2. Frank Wood, the Claimant's Trade Union representative;
   6.3. Sameera Patel, the Claimant's wife; and
   6.4. Jeniz White, who attended some meetings to support the Claimant.

7. On behalf of the Respondent, we heard evidence from:
   7.1. Nicholas Lea, Joint Laboratory Director for the Laboratory for Molecular Haemato-Oncology;
   7.2. Steven Best, Senior Clinical Scientist;
   7.3. Aytug Kizilors, Joint Laboratory Director for the Laboratory for Molecular Haemato-Oncology;
   7.4. Vicky Shah, Phlebotomy Service Delivery Manager;
   7.5. Barnaby Clark, Laboratory Lead for Precision Medicine; and
   7.6. Gareth Gray, HR Business Partner.

8. All of the witnesses gave their evidence by way of pre-prepared witness statements, on which they were cross-examined. The Respondent had prepared a witness statement bundle which included the statements of the Claimant, Mr Wood and Ms Patel (although not Ms White). There was, however, an issue with the way that the Claimant's witness statements had been reproduced within that bundle. The Claimant had produced their own witness statement bundle. With the agreement of the parties, we used the Claimant's witness statement bundle for the Claimant's witnesses, and the Respondent's witness statement bundle for the Respondent's witnesses.

9. During the course of cross-examination, the Claimant was taken to a number of "tweets" they had posted on the social media platform (then) called Twitter. Some of those appeared, on their face, to refer to the taking of illicit substances. Because of the nature of the points being put to the Claimant, we explained the privilege against self-incrimination to them. The Claimant nonetheless elected to answer all of the questions put to them.

Documents

10. We had before us at the start of the hearing:
    10.1. A core bundle of 1544 pages; and
    10.2. A supplementary bundle of 104 pages, prepared by the Claimant (to which the Respondent did not object).

11. We explained to the parties that we would only read documents to which we were specifically referred.

12. On the first day of the hearing, the Respondent indicated that they had a further six-page bundle of documents which they wished to rely upon. That was admitted by agreement.

13. On the second day of the hearing, the Claimant also sought to adduce a further bundle of medical evidence, which again was admitted by agreement.

14. Also on the second day of the hearing, we heard an application from the Claimant for a document to be admitted in respect of which the Respondent relied upon legal professional privilege and/or litigation privilege. The document in question was an email chain. During the course of submissions on the point, it became apparent that the Claimant's copy of the core bundle was different to the Tribunal's copy, in that it contained two pages from that email chain which had been omitted from the Tribunal's copy. As we noted at that time, it was surprising and unhelpful that the copy of the bundle which had been sent to the Claimant was not in identical terms to the copy sent to the Tribunal.

15. For the reasons we gave orally, we concluded that any privilege in the email chain had been waived. We therefore directed that an unredacted copy of the email chain should be sent to the Tribunal and disclosed to the Claimant. That was done; however on inspection, it became apparent that the version of the chain which had been sent to the Tribunal was not the full chain. When we drew that to the Respondent's attention, a further copy of the email chain was also disclosed and sent to the Tribunal.

16. On day 4 of the hearing, we were taken to a set of redacted minutes in the Claimant's supplementary bundle. The minutes were apparently of a meeting between a grievance investigator and Nicholas Lea, during an investigation of a grievance raised by the Claimant. We say "apparently", because the redactions meant that none of the names of the participants were displayed on the document. The Claimant had obtained the document by way of a Subject Access Request. It had not been disclosed within the proceedings. The subject matter covered within the minutes included Dr Lea's knowledge of the Claimant's conditions in the early part of their employment. Mr Gill very properly accepted that the document appeared, on the face of it, to be a relevant one given that knowledge of disability remained in dispute. Between the end of day 4 and the start of day 5, the Respondent disclosed unredacted copies of a number of sets of minutes which appeared in the Claimant's supplementary bundle.

17. During the afternoon of day 5, we were taken during cross-examination to an email dated 23 July 2021, from which the names of both the sender and the recipient (or recipients) were redacted. We asked to be addressed in submissions regarding why the document had been redacted in that way. This was not, in the event, addressed in the Respondent's submissions.

Submissions

18. We had before us at the start of the hearing a skeleton argument prepared by the Claimant.

19. We finished the evidence at 16:53 on the fifth (and final) day of the hearing. We directed the parties to produce and exchange written submissions, with the opportunity to then produce brief further submission in response.

20. We have taken careful account of the written submissions produced by both parties, as well as the additional emails that the Claimant sent to the Tribunal after the conclusion of the hearing. We do not repeat or summarise them here. We do not mean any discourtesy to the parties in not doing so; this judgment is already quite lengthy enough.

21. There are, however, two specific points which we must address.

22. The first is the issues that arose with documents during the hearing. There were various apparent issues with the disclosure process carried out by the Respondent (described above). We asked to be addressed in submissions on whether we should draw any adverse inference from these. Mr Gill's primary submission was that the documents in question were not relevant. We disagree. They included meeting notes which went to the question of whether the Respondent managers had knowledge of the Claimant's disability at the relevant times – something which remained firmly in dispute at the final hearing.

23. We bear in mind that, aside from the privilege issue (which required a decision from the Tribunal), the documents which the Respondent failed to disclose were ones which had already been disclosed to the Claimant via a Subject Access Request. Of course, that does not absolve the Respondent of its obligation to disclose them within the Tribunal proceedings. But neither is it suggestive of a deliberate suppression of evidence. The claim was a complex and relatively document-heavy one, and the issues did develop somewhat during the course of the litigation. Having carefully considered the point, we do not draw any adverse inferences from the issues with the Respondent's disclosure.

24. The second point we must address is the way that the Respondent's case was put during the final hearing. The Claimant's position as set out in their

closing submissions was that, in hindsight, they considered that Mr Gill had been cross-examining them on points which the Respondent had conceded and which were therefore no longer in dispute.

25. To consider that point, it is necessary to look at the background. The Respondent presented its response to the claim on 8 January 2024. At the final preliminary hearing before EJ Heath, the Respondent was given permission to amend its response to deal with the claim as it had been clarified and amended. The Respondent produced an amended grounds of resistance on 26 February 2025. The amended grounds of resistance explicitly only dealt with the amended or clarified parts of the claim. Paragraph 2 stated that it should be read alongside the original grounds of resistance. The amended grounds did not, therefore, deal with all parts of the Claimant's claim. But nor did the amended grounds abandon the Respondent's defence to the parts of the claim that were not dealt with therein. Rather, the Respondent continued to rely on the case set out in the original grounds of resistance.

26. In respect of the complaint of discrimination arising from disability, the Respondent's amended grounds of resistance denied that the Claimant had been subjected to unfavourable treatment because of something arising from their disability. The document then pleaded in the alternative that any such treatment was "appropriate, reasonable and necessary as a means of achieving a legitimate aim". The document was silent as to the legitimate aim said to be being pursued, or the basis on which it was asserted that the treatment was proportionate. As explained above, we did not allow the Respondent to amend its case on the first day of the hearing to plead a specific legitimate aim. But that did not affect the Respondent's pleaded denial of the other limbs of the test in section 15 of the Equality Act 2010.

27. On 19 February 2025 the Respondent had conceded that the Claimant had a disability within the meaning of section 6 of the Equality Act 2010 at the relevant times. That concession was not reiterated in the amended grounds of resistance (and we should say that that is an observation rather than a criticism – there was no need for that concession to be reiterated in in the amended Grounds). The Respondent did not concede that it had knowledge of disability, and knowledge remained in dispute at the final hearing.

28. The Claimant was cross-examined by Mr Gill on matters relating to the complaint of discrimination arising from disability, and on matters relevant to the Respondent's knowledge of disability. The Claimant was also cross-examined on the question of whether the PCPs and physical feature relied upon in the reasonable adjustments claim put them at a substantial disadvantage. All of those were points that remained in dispute.

29. During the course of Mr Gill's cross-examination, the Tribunal did ask Mr Gill to clarify the basis of one line of questioning; Mr Gill explained that it

went to the question of substantial disadvantage, and we allowed that line of questioning to continue.

30. In their submissions, the Claimant characterised some of Mr Gill's cross-examination as an attempt by the Respondent to have a "second bite of the cherry" on matters that had been conceded or were not in dispute. We can understand why the Claimant may have felt that Mr Gill's questions went to issues which had been conceded, such as disability. A question can very often be relevant to more than one issue. But having carefully considered the Claimant's submissions, and reviewed our notes of the Claimant's cross-examination, we are satisfied that all of Mr Gill's lines of questioning were relevant to the issues that remained in dispute, and were entirely proper.

31. The Claimant additionally criticised a question asked by Mr Gill regarding the purpose of the MPN test (one of the pieces of work they undertook during employment). The proposition Mr Gill put to the Claimant was that it was a test for cancer; the Claimant's evidence was that it was to detect pre-cancer. In submissions, the Claimant characterised the question as being aimed at casting doubt on their intellect, which they described as "irrelevant and offensive". We did not perceive the question in that way. Rather, we understood Mr Gill to be asking an establishing question at the start of a set of questions about the Claimant's work, which was relevant to the reasonable adjustments claim. We consider that Mr Gill asked the question in layman's terms so as to assist the Tribunal. We can understand why the Claimant, as a scientist, perceived the question to be based on an inaccurate premise or intended to trick them in some way. But in the context of the case, we are entirely satisfied that it was a proper question and we draw no adverse inference from the way it was put (nor indeed from the Claimant's answer to it).

32. The Claimant is a litigant in person. It is common ground that they have a number of disabilities which made it particularly challenging for them to prepare and present their case at Tribunal, and to give evidence and be cross-examined. We have carefully considered the medical evidence that was put in front of us, and we have borne it in mind in assessing the Claimant's evidence.

33. With that said, it is only right that we recognise that the Claimant presented their case throughout the hearing with care, courtesy, and considerable skill. The same was also true of Ms Patel, who assisted the Claimant and who undertook the cross-examination of some of the Respondent's witnesses.

<u>This judgment</u>

34. We have adopted the following convention for cross-referencing documents in this judgment:
    34.1. [XX] – page references in the main bundle.

34.2. [CXX] – page references in the Claimant's supplementary bundle.

34.3. [MXX] – page references in the Claimant's medical evidence bundle.

34.4. [RXX] – page references in the Respondent's supplementary bundle.

35. The Claimant uses the pronouns they/them. Those were not the pronouns used by the Claimant during the time that these events are about. The Claimant's pronouns were observed during the hearing, subject to occasional lapses from the Respondent's witnesses (which we are satisfied were, in each case, entirely accidental). Such lapses did, however, appear to cause the Claimant understandable distress. Within this judgment, where we quote from contemporaneous documents, we have amended them in [square brackets] to use the Claimant's correct pronouns. We are satisfied that doing so does not change or obscure the meaning of the quoted documents.

Factual findings

36. We make the following findings on balance of probabilities. We have not dealt with every area canvassed before us; rather, we have focused on those necessary to reach a conclusion on the issues in the claim.

37. The Respondent provides pathology and research and development services to clients within the NHS. The Claimant commenced employment with Kings College Hospital NHS Foundation Trust ("KCH") in November 2019, as a Band 5 Genetic Technologist in the Laboratory for Molecular Haemato-Oncology ("LMH"). The reference to "Band 5" was to the grading of their role within the NHS grading structure. The Claimant's employment transferred to the Respondent in May 2021 (along with the rest of the LMH).

38. At the relevant times, the Respondent had in force a Sickness Absence policy [381]. The policy set out a process for managing long term sickness absence, which required one or more formal meetings with the employee at which options would be discussed to support the employee to return to work, or consider reasonable adjustments or redeployment. The policy then said this:

> "When all other options have been exhausted, and if the long term absence continues, unless the manager has reasonable grounds to believe that the employee will be returning to work in the near future, then the manager is likely to recommend that the employee be dismissed on grounds of capability. Each case will be judged on its particular circumstances, especially if there are health or disability problems of a serious or progressive nature."

39. That was the only use of the word "capability" within the policy.

40. The Respondent also had in force a separate Capability Procedure [367]. That policy dealt with failure to carry out duties in a satisfactory manner.

41. It is common ground that the Claimant had a disability within the meaning of the Equality Act 2010 at all relevant times, namely:

    41.1. Borderline Personality Disorder ("BPD")
    41.2. Autism Spectrum Disorder ("ASD")
    41.3. Attention Deficit Hyperactivity Disorder ("ADHD")

42. The Claimant was interviewed by a panel including Nicholas Lea. They were successful at interview, and were made a conditional offer of employment (subject to pre-employment checks).

43. The Respondent received a reference from the Claimant's previous employer. On 6 September 2019, Dr Lea emailed the Claimant to explain that their sickness absence record in their previous employment was causing concern. He noted that a similar level of sickness absence when employed by KCH would trigger further investigation and may lead to disciplinary action. He asked if the Claimant had any health issues [405].

44. The Claimant responded on the same day. They explained that they had General Anxiety Disorder ("GAD"), PTSD and BPD. They explained that their GAD manifested itself in physical symptoms. They explained that they had been on antidepressants since June which were controlling those symptoms, although they were having some side effects during the adjustment period. They explained that the BPD diagnosis was a recent one. They concluded the email by saying this [405]:

> "This is all very new and I understand your concerns. If you feel like having a person that suffers from mental health disorders may not be suitable for your team. I understand that also.
> I want to work at KCH because I feel like it's the start of a brand new me. I'm trying to heal and progress in my career at the same time. I hope this doesnt ruin my chances of working with you."

45. Dr Lea replied to the Claimant's email as follows [404]:

> "I really sorry to hear about your problems but heartened to hear that you are getting on top of things. I sympathise entirely and would never use this information as a reason to block your employment with us. However I would ask you to consider the following. My lab can be very busy at times and my staff can sometimes be under quite a bit of pressure to deliver. Do you think you will be able to cope in this sort of environment. The last thing we would want would be for our work to make your condition worse. Think about what I have said wrt the high stress environment. If you think you will be ok with this then get back to me and we will continue with your employment checks.

I would ask you to be very honest with our occupational health team when you are assessed by them, just as you have been with me. This should ensure that the Trust does what it can to support you when you are here (and maybe help me to support you too)."

46. The Claimant decided to continue with their appointment. They were assessed by the Respondent's Occupational Health provider, and commenced work in November 2019.

47. The Claimant's role involved a combination of practical laboratory work and computer-based data analysis/interpretation. The Claimant's evidence was that the split was 60% - 80% lab work and 20% - 40% analysis. Dr Lea, in his evidence, did not provide a specific percentage, but referred to the work being laboratory based with short stints of office working.

48. The Claimant predominantly carried out two types of test – Myeloproliferative Neoplasm ("MPN"), and BRC-ABL1. The Claimant worked alongside Beth Hearn, another Band 5 Genetic Technologist, who also undertook the same tests. There were other Band 5 staff within the lab who undertook different tests.

49. The LMH had a laboratory together with an open plan office. The office was designated as a hot-desking space, although the Claimant always worked from the same desk [1492]. The Claimant's evidence was that it was the only desk available when they started. The desk the Claimant used was situated near the door, where other colleagues would have to walk past in order to access the remaining desks or to enter and leave the office. The Respondent did not take any issue with the Claimant using the same desk space every day.

50. There was some dispute regarding the extent to which the Claimant was able to work from home during the COVID-19 pandemic:

    50.1. Dr Lea's evidence was that the Claimant was able to work from home sporadically during the COVID 19 lockdowns, and did so on some occasions. His evidence was that they did so predominantly when they were required to self-isolate, but that they did also do so on other occasions.

    50.2. The Claimant's evidence was that to the extent that they did do some tasks from home, it was while they were absent from work due to ill health, but they would carry out some work because they were guilty about being absent.

    50.3. We were taken to the following WhatsApp message exchange between the Claimant and Ms Kizilors on 7 August 2020:

> 07/08/2020, 09:33 - Aytug LMH: Hi Umairah, how are you today?
> 07/08/2020, 09:36 - umairah (dey/dem): hello
> 07/08/2020, 09:36 - umairah (dey/dem): im better but not great

07/08/2020, 09:36 - umairah (dey/dem): will be back next week. remember im AL as wel
07/08/2020, 09:36 - umairah (dey/dem): Happy to do wtf
07/08/2020, 09:37 - umairah (dey/dem): wfh

50.4. The Claimant's evidence was that that meant they were happy to report to Ms Kizilors while Ms Kiziolrs was working from home. We do not consider that explanation is consistent with what the messages say on their face. Rather, we consider that the most likely explanation for what is said in the messages is that the Claimant was saying they were unwell and would not be able to come to work, but that they could do some work from home. That is consistent with the Claimant's other evidence, which was that they would work from home when unwell.

51. Weighing all of that up, we find that the Claimant was able to work from home on occasion during COVID, but that this was generally only where Claimant was either self-isolating or unwell.

52. The Claimant's evidence was that other Band 5 colleagues were able to work from home. They gave examples in their witness statement, although they did not indicate how often or when working from home was permitted for the colleagues named. In some of the examples given, the Claimant referred to specific circumstances under which the Band 5 colleagues worked from home – one was permitted to work from home during a rail strike, and one was permitted to work from home while renovation works were carried out at home. They also referred to individuals who were promoted to a Band 6 role.

53. Dr Lea's evidence was that other Band 5 Genetic Technologists were unable to work from home save in exceptional circumstances, as it was simply inconsistent with the nature of the role.

54. Mr Best's evidence was that he was not aware of any Band 5 Genetic Technologist working from home, as the role did not allow for it. Mr Best's evidence was that the role is to set up diagnostic tests, run these on instruments and then interpret the results. His evidence was that interpreting results is computer-based, but it makes up only a limited and sporadic part of the role. His evidence was that Genetic Technologists would spend the majority of their time in the laboratory itself, and they would be required to assist with a variety of other laboratory tasks as well as their own role.

55. We deal with our findings on this in our conclusions.

56. From relatively early in their employment, the Claimant had issues with punctuality. The Claimant would often start work late but work later into the evening to make up their hours. Dr Lea's evidence, which we accept, was that he did not apply normal expectations around punctuality to the Claimant. Initially the Claimant would message Dr Lea or Ms Kizilors of

they were going to be late, but during late 2020 and early 2021 that practice tailed off.

57. On 22 April 2020, the Claimant tweeted as follows:

> "i think being late is innately part of my genetics (dont question im expert). i have the choice to be on time but im like nah cba. Like I even wake up early" [*sic*; the Claimant accepted in cross-examination that "cba" would usually mean "can't be arsed", although their evidence was that they used it to mean "can't be asked", which nonetheless had broadly the same meaning]

58. The Claimant's evidence was that although they had not at that point been diagnosed with ADHD, what they were describing was executive dysfunction, which was a symptom of their ADHD. So when they referred to "choice", they were not referring to a conscious choice that they made; rather, to their lateness being an unconscious effect of their executive dysfunction.

59. We accept the Claimant's evidence regarding what they meant at the time that the tweet was written (although equally, we can see that without the benefit of that explanation, it would have been reasonable for the Respondent to understand the Claimant to have been saying that they were making a conscious choice not to attend work on time).

60. On 1 September 2020, during a period of absence on the part of Ms Hearn, Ms Kizilors emailed the Claimant to ask them to let her know if they needed any help to complete the MPN workload. The Claimant responded that they would let Ms Kizilors or Isabel or Luke (two other Band 5 colleagues) know if they needed any help [RS1].

61. Ms Hearn had a further lengthy period of absence (there was a dispute about the exact dates, which we do not need to resolve). Dr Lea's evidence was that when Ms Hearn was absent, other colleagues helped the Claimant with the workload that Ms Hearn would ordinarily have carried out. The Claimant's evidence was that they were not helped, and had to carry out the entirety of the workload.

62. We prefer the evidence of Dr Lea, which was consistent with Ms Kizilors' email offering assistance. We find that when Ms Hearn was absent, other colleagues would assist the Claimant as required.

63. On 5 November 2020 the Claimant did not attend work. Dr Lea sent them a WhatsApp message at 14:29 asking where they were and if they were OK. The Claimant replied that they would not be in, and that they had told Ms Hearn. Mr Lee responded saying this [1381]:

> "I need to talk to you about  time keeping & sickness. You were very good about keeping me informed of you movements and I like

> to think I am good about giving you head space. You seem to be less good recently. certainly telling Beth is not enough. Please go back to informing me when you going to be late in or off sick. Hope your feeling better. Speak tomorrow."

64. In response, the Claimant said this:

> "I have definitely been lacking in keeping you in the loop with my MH as of late. I am sorry about that, you are right , telling Beth isn't enough."

65. On 26 November 2020, the Claimant emailed Dr Lea and Ms Kizilors explaining that they had been referred for an ADHD diagnostic test [432]. Within the email, the Claimant said that "bpd and adhd are known to go hand in hand when it comes to mental health in women". They attached a link to a website about ADHD in adult women.

66. On 5 March 2021, Dr Lea met the Claimant regarding their lateness and failure to report sickness absence.

67. On 10 March 2021, Dr Lea emailed the Claimant as follows [438]

> "I'm really disappointed after today. Last Friday we again discussed the importance of you informing me what time you will be at work if it is not within the normal working hours expected and agreed. Today I find that you have still not arrived in the lab at 13:00 and I have not received a message from you to explain why. This is exactly the behaviour we discussed, you agreed was wrong and agreed to improve on.
>
> I have said from the very outset when you came to King's that I understood the needs you have relating to your metal health. I have tried to be flexible and accommodating but I have concerns that your time keeping may be impacting on your output in the lab. If I don't know when you are starting or finishing work how can I evaluate this. As your manager it's my job to ensure your wellbeing, that you deliver for our organisation and that I treat you and the rest of the team equally."

68. Dr Lea's evidence was that his issue was not with the Claimant being late or absent, but rather with their failure to inform him if they were going to be late or absent. We accept his evidence in that regard (which is consistent with the contents of his email of 10 March 2021 as well as his earlier message of 5 November 2020).

69. The Claimant replied the following day (apparently following a meeting with Dr Lea and Ms Kizilors) [436]. They include links to three websites regarding the impact of BPD and ADHD. They described Dr Lea's email as feeling "condescending and gas lighting", and spent some time explaining why they perceived it in that way. They also said this:

> "I asked for a VPN because I know how my disorders affect me and I can be even more efficient if I have access. It was met with resistance."

This was a reference to a VPN token, which would allow the Claimant to connect to the Respondent's computer systems from home.

70. Dr Lea forwarded that email to Barnaby Clark. Dr Clark forwarded it to a Jane Matty, with the following comment upon it [439]:

> "Please read this email script below.
> An individual was recruited with previously diagnosed mental health issues that were not raised during OH assessment and on [their] first day [their] line manager (Nik Lea) was not made aware. Nik has been managing this individual, in a similar way to other members of staff and as a result the situation described below has arisen. None of us are experts in these conditions and we would need guidance on how to make workplace adjustments for [them]. I am questioning a lot of things here, for example, is a fast-paced laboratory environment the most suitable workplace for [them]? Have we offered a post to someone not suited to this type of work due to their mental health? Finally, could this work environment be a risk to [them]?
> I am concerned for [their] safety after the short read of the links provided and a discussion with Nik and Aytug.
>
> Can we have an emergency meeting this afternoon? I think we should act quite quickly."

71. Dr Clark's email was, of course, not entirely accurate about the state of Dr Lea's knowledge – the Claimant had informed Dr Lea about their BPD, GAD and PTSD after the conditional offer of employment was made but long before they had started work.

72. On 29 March 2021, the Claimant was provided with a "To whom it may concern" letter by the Lewisham Treatment Service [460]. The letter noted that the Claimant had been referred for a diagnostic assessment in respect of Adult Attention Deficit Hyperactivity Disorder and Autism Spectrum Disorder. The letter then went on to say this:

> "[They have] told us of [their] efforts to negotiate some flexibility in [their] timetable including starting [their] working day later in the morning, but then finishing later in the evening with the result that [they] complete the full working week (our impression is that [they are] very conscientious and may [REDACTED]). I understand [they are] also wanting to negotiate a day a week working from home.
>
> From my point of view, I think that if it is possible to agree the above with [them]. I Think it is much more likely to enhance [their]

sense of well being at work and therefore also [their] productivity than to do the opposite.

I would ask therefore, that [their] request for [their] work pattern to be adapted to take account of [their] mental health needs continues to be treated sympathetically including with respect to practical steps such as those outlined above."

73. The Claimant provided a copy of that letter to Dr Lea.

74. The Claimant was assessed by the Respondent's Occupational Health on 20 April 2021 [462]. The Occupational Health report noted that the Claimant was under investigation for ADHD. The report advised that the Claimant had been experiencing insomnia and had been struggling to get out of bed because of the lack of quality of sleep, and that the side effects of their current medication made them feel groggy which may reduce their ability to concentrate. The report advised that the Respondent should consider home working on a structured work activity or task (it noted that this would allow the Claimant to have focus and have control of their workability when lone working). The report also advised that a workplace risk assessment be carried out. The report noted that it was likely that the Equality Act would apply to the Claimant.

75. In May 2021, the Claimant was given a VPN token, which meant that they were able to access the Respondent's computer systems remotely.

76. On 24 May 2021, the Claimant met with Dr Lea and Ms Kizilors. On 26 May 2021, Ms Kizilors emailed the Claimant with a summary of the meeting [489]:

"I summarised the topics that we discussed and agreed in the meeting that took place on Monday 24th May following

Occupational Heath Report.
Below items are the immediate arrangements. If additional arrangements are required, these will be discussed during weekly regular catch up meeting.

1-Be able to work from home (WFH)- VPN has been set up and working. Arrange a screen that enable to work from more.
It was agreed that WFH option is more suitable during MPN rotation. During BCR-ABL1 rotation, this option is not very suitable.
Nik and Umairah to find/buy screen.
2- Changing working hours.
It was agreed to change working hours from 9am-5.30am to 11am-19.30am
It was agreed to set up Whatsapp group. This group will enable Umairah to inform Nik/Aytug when Umairah is in as well as if Umairah is require/need to change the agreed arrival time. This to be done before 11am.

Umairah already created the group.

3- Inform HR regarding these agreed changes
Nik to contact to HR and start the procedure

4- Set up weekly meeting to catch up and review the effectiveness of above arrangements.
Aytug arrange a data suitable for everyone and send calendar invite."

77. The Claimant was then absent from work from 10 June 2021 due to ill health

78. On 10 June 2021, the Claimant sent Mr Best a message explaining that they wanted to work from home on a regular basis. At that point, Mr Best was not part of the Claimant's line management structure. The Claimant accepted that they had a friendly relationship with Mr Best as friends and work colleagues. The message said this: [1398]:

> "you know that I have struggled with mental health, borderline personality disorder and more recently got an adhd diagnosis with potential ASD
>
> im fighting with nik, aytug, and now HR atm to give me allowances to WFH more , but they're concerned about my "duties" and are being difficult with. right now, beth and I rotate with mpns and bcrabl, 2 weeks each.
>
> they said when im on the bcrabl rotation that it's difficult to allow me to wfh
>
> I said, if you train me on more quality document stuff, more variant analysis, I will be able to WFH more
>
> they said it can't really work cow that means BCR abl will need to be share amongst more staff which isn't fair on them
>
> I said, it's only every 2 weeks, they would only need to help me 1 day, if more people learn bcrabl , then that means it could be share amongst multiple people , meaning 1 person (tas, Pete, luke, isabel) every 2 weeks, could help lessen the burden of my duties, because I am really struggling with life right now
>
> they said they don't want to, but I keep saying, surely, when it hurts me so much to function as a person, people wouldn't mind giving up some time, for only a couple pcrs, every month (as my rotation is 2weeks and there's more than 1 of you)
>
> right now I'm trying to get the support myself. I don't expect you to agree, you can say no,u can also opt for a trial period to oh wait,

only PCR btw, I could still do analysis  analysis (altho I would teach you analysis anyway)…"

79. The Claimant was assessed by Occupational Health on 2 July 2021. The subsequent report was dated 6 July 2021 [509]. The report noted that the Claimant had anxiety and depression, borderline personality disorder (diagnosed in 2018/2019), insomnia, and unconfirmed diagnoses of attention deficit hyperactivity disorder (ADHD) and autism spectrum disorder (ASD). It advised that the Claimant was medically fit for work, although a phased return should be put in place. The following adjustments were recommended:

    79.1. Continuing to allow the Claimant to work between 11am and 7pm.
    79.2. Allowing the Claimant to work from home as much as possible.
    79.3. Authorising absence for treatment or other forms of medical support outwith the normal sickness absence triggers.
    79.4. An informal workability meeting with the Claimant, their Line Manager and relevant co-workers, perhaps also with the Claimant's Mental Health Care Coordinator in attendance.
    79.5. A Career Coach.
    79.6. An workplace stress risk assessment
    79.7. Signposting the Claimant to welfare and/or psychological resources such as the Employee Assistance Programme.
    79.8. A work buddy or mentor.
    79.9. Increasing the frequency of supervision to provide more immediate feedback.
    79.10. Allowing equal amounts of workplace break time but in shorter, more frequent chunks.

80. Dr Lea received the report. On 14 July 2021, he forwarded it to Mr Kutar of HR, copied to Ms Kizilors [513]. He noted that the advice was that the Claimant was fit to work with adjustments. He then said this:

> "I don't think you are aware but the lab is investigating two adverse incidents wrt reporting patient samples. The analysis which at this stage in the investigation appears to be operator error are both related to Umairah so this may have an impact on what we can safely allow Umairah to do when [they] returns. The investigation is not complete yet and we are taking an unbiased look at all the work done for those assays (independent of scientist)  to see if other batches of analysis are impacted."

81. Also on 14 July 2021, Dr Lea emailed Barnaby Clark. He explained that the Occupational Health advice had been received, and also referred to the issue with the erroneous MPN Panel and QPCR Results. He explained that he had asked Mr Kutar for advice.

82. Mr Clark responded as follows [515]:

> "I agree with you. I think we should discuss the errors with Phil and consider the return to work.
> Does it say we need to make adjustments for [their] working day?
> Can we set limits and prevent loan [*sic*] working for [them] and others?"

83. There were further emails between Dr Lea and Mr Clark, who concluded that they needed to meet with Mr Kutar.

84. The reference to erroneous results was to an incident which occurred within the laboratory, which led to a Serious Incident Report being carried out. A set of patients had been given incorrect results. The samples in question had been processed by the Claimant. The decision was then taken by the Respondent to look back at all of the work the Claimant had performed while employed by the Respondent. No further errors were identified [CS22].

85. The Respondent also investigated work carried out by other scientists. At around the same time, errors were identified by other scientists. One of those was Mr Best. The report into that incident noted that Mr Best was performing data analysis and reporting in a "busy, noisy environment", and that his desk was situated near the door through which there was a frequent traffic of people coming in and out. Mr Best's desk was next to the one used by the Claimant. Mr Best accepted in cross-examination that the noise and distraction was a contributing factor in terms of the error that had been made.

86. The Serious Incident report dealing with the dealing with the Claimant's error suggested that it was possible that the test tubes had been manipulated by the operator (the Claimant) [CS37]. Dr Lea's evidence was that the initial investigation made it appear likely that samples in a rack had been incorrectly assembled. The Respondent concluded that there were systemic issues with its processes which had allowed the error to occur. In response to that, the Respondent introduced or reinforced second checks, so a second operator would check the order of the samples on the associated worksheet. The requirement to have samples checked by a second operator made lone working within the lab impossible (for all of the LMH staff).

87. There was in evidence before us an email dated 23 July 2021 with draft wording for a further Occupational Health referral. It mentioned the Claimant's role and the issues. It then included the following specific questions [1435]:

> In light of the discovery of these erroneous batches of work do you feel that it is safe for our diagnostic service for [Mx] Miah to return to work performing these tasks?
> In light of the discovery of these erroneous batches of work do you feel that it is safe for our diagnostic service for [Mx] Miah to work a

> flexible working pattern which necessitates [Mx] Miah working alone in the lab for long periods of time without supervision?
> [Mx] Miah's role is very much lab based interspersed with periods of data analysis. The job role does not really allow for anything other than ad hoc and isolated days working from home. The business case does not support any significant home working. Please can you comment on the importance or otherwise of the requirement for home working for [Mx] Miah's requirements to continue working in [their] current post?"

88. On 7 August 2021, Mr Best emailed Ms Kizilors, Dr Lea and Mr Kutar. He explained that that he had received a WhatsApp message from the Claimant, which he described as being a negative reaction to the plan for their return to work. He asked if he should respond or ignore it. Mr Kutar advised Mr Best to respond [535].

89. At some point during the Claimant's absence, the management structure within the LMH changed. The LMH was split into sections. Mr Best became the head of the "Next Generation Sequencing" section. The Claimant's work fell within the Next Generation Sequencing section, so Mr Best became the Claimant's line manager.

90. Discussions took place regarding the Claimant's return to work. On 28 September 2021, Mr Wood, the Claimant's Union representative, wrote to Mr Best regarding a return to work plan. In that letter, he requested that the Claimant be allowed to work from home for days per week. This was treated as a request for flexible working.

91. On 30 September 2021, the Claimant completed a stress risk assessment [596]. In response to the questions "Did you feel you could rely in your manager to help you with a work problem?" the Claimant answered "Aytug [Kizilors] – yes" [597].

92. On 6 October 2021, Dr Lea produced a draft response to the Claimant's flexible working request, which he sent to Mr Best. Mr Best added some comments [607]. The draft response noted that the Claimant would not be able to work from home in anything other than exceptional circumstances, and that laboratory work would have to be between 10am and 6pm. The initial draft suggested the Claimant switching to part time working, for example 3 days a week or short days worked over five days (although the reference to five short days had been struck through on the amended draft).

93. On 1 November 2021, the Claimant sent the following WhatsApp message to Mr Best [657]:

> "I will never forgive you, nik and aytug for what you have done to me. I hope that it weighs on your conscience that you have traumatised me for the 6 months of this ordeal, and the 6 months before, you can deflect and blame my disorders, but you are one of

> the abusers that made my disorders exist in the first place, you can share this with the rest of the team, and you can see my accusations worse than your actions, a disabled [person] of colour asked for help and you have made my life uninhabitable"

94. On 2 November 2021, Mr Wood emailed Mr Best and Mr Kutar a document entitled "Definitions and triggers for Umairah Miah for the use of a mental health risk assessment at Laboratory for Molecular Haem-Oncology at KCH" ("the Triggers Document"). Within that document, the Claimant referred to Mr Lee, Ms Kizilors, Mr Best and Mr Kutar as being triggers for them. They concluded the document by saying this [616]:

> "Nik, Aytug, Steve and Phil are all triggers. They have made me want to cease to exist because it felt like the easier option. This lasting so long has been incredibly damaging to my mental health. People with disabilities face ableism in all parts of their life. Having to defend yourself in this way would be incredibly triggering even for the most 'resilient' person. Being asked to justify things that will keep you well and sane, particularly after a very public breakdown at work, isn't a positive experience for anyone, especially me."

95. The Claimant explained in their evidence that they were not complaining about anything that Mr Best had done to them personally; rather, the issue was that they had had a friendly relationship with him, and they had not consented to him then becoming their manager. We observe that line management structures do not operate by consent. While an employee would ordinarily expect to be (at least) informed about a change in management structure, the bottom line is that any colleague may become a manager in future.

96. Dr Lea accepted in the course of cross-examination that the Claimant did not explicitly refer to him as an abuser within the Triggers Document, although his evidence was that he understood from the document that the Claimant was saying that he, Ms Kizilors and Mr Best were triggering the Claimant's mental health episodes. We consider that that that was not an unreasonable interpretation for him to have put on it, even without the added context of the WahtsApp message to Mr Best.

97. On 9 November 2021, Mr Best wrote to the Claimant to explain that the Triggers Document would be treated as a grievance. The Claimant was signposted to the Respondent's Employee Assistance Programme and the Mental Health First Aiders [620]. Also attached to that email was a letter giving the outcome of the Claimant's flexible working request [637]. The letter noted that the following adjustments could be made (among others):

    97.1. The Claimant's hours of work to be between 10am and 6pm.
    97.2. Weekly laboratory meeting to take place at 10.15am, so that the Claimant could attend.
    97.3. Time off during the working day for medical appointments.

97.4. Switching the Claimant's work to chimerism analysis, which could be done in smaller chunks with more regular breaks and with less pressure on the Claimant to complete it within a certain time.

98. The letter noted that the Claimant's request to work from home two days per week could not be accommodated, and that they could only work from home in exceptional circumstances. The reason given was that home working would have the following detrimental impacts on the service:

> "• Detrimental impact on the ability to meet service demands
> • Inability to reorganise work among existing employees
> • There is insufficient work during the period that is proposed, to work from home for a laboratory based Band 5 GT role
> • Detrimental impact on other team members due to required increased workload"

99. The letter also offered the option of reducing the Claimant's working hours to part time.

100. On 19 November 2021, Mr Wood wrote to Barnaby Clark appealing Mr Best's decision not to allow the Claimant to work from home 2 days per week [686].

101. The Claimant's appeal was heard by Barnaby Clark on 6 December 2021. Mr Wood attended the meeting with the Claimant. Mr Best attended to present the management statement of case.

102. Mr Clark's outcome letter was dated 15 December 2021 [711]. Mr Clark did not uphold the Claimant's appeal. He noted that the Claimant was fit for work but was absent on approved leave pending an agreed return to work plan. He noted that a system of two person checks had been introduced meaning that all laboratory work had to be carried out between 8am and 6pm, to ensure that there were always two people on site. He said this, regarding home working [713]:

> "The recommendation by Occupational Health to allow you to work from home as much as possible, was caveated by "as business case allows". In the outcome letter, management have outlined why they are unable to accommodate your request to work from home for two days per week. I agree with management's view that working from home for two days per week is not viable for the Band 5 Genetic Technologist role, and that accommodating your request would be detrimental to the service and business needs. The laboratory management team have to be able to assign Band 5 staff to different assays and build assay setup training into the Band 5 role. Flexing staff to meet the service needs is essential, setting up diagnostic assays, investigating laboratory incidents and delivering quality processes. Any Band 5 member of staff working from home for two days per week would inhibit flexible working, and shift workload to other members of staff."

103. Mr Clark further explained that, if the Claimant moved to the chimerism analysis work, 0.5 days per week of working from home could be accommodated, on a recurring afternoon.

104. Mr Wood later had a meeting with Mr Kutar, Mr Best and Mr Gray in January 2022. In that meeting, Mr Wood apparently indicated that he understood that Mr Clark's outcome was that the Claimant should reduce their hours to 30 hours per week, with one afternoon per week spent working from home. He explained that in response, the Claimant was willing to agree the reduction in working hours, but would like to work from home on two afternoons per week. Mr Kutar summarised the discussion in an email to Mr Wood on 20 January 2022 [729].

105. Mr Kutar asked Mr Clark for feedback on what the Claimant was proposing. Mr Clark emailed Mr Kutar as follows on the same day [728]:

> "As I remember it, in our meeting, we did not go into part time working, mostly as Aytug had suggested it and UM did not want reduced hours. I don't recall anything about reduced hours and my letter never alluded to this either.
>
> If UM would like reduced hours then I would withdraw the offer of 0.5 days WFH. I offered the 0.5 day as rest bite from the lab environment to support [their] mental health. I saw this as counter to the business needs of the lab but felt the lab could stretch to this. If UM now wants to work fewer days per week I would withdraw the offer of working from home, as [they] gets the break from the lab environment anyway."

106. Mr Best also emailed on the same day saying this [727]:

> "From my perspective, considering that we are very understaffed, it would not be possible to offer part-time working, and the work schedule and laboratory operation would not be compatible with this."

107. In the interim, Mr Wood informed the Respondent that the Claimant did not wish to raise a grievance in respect of the Triggers Document. The Respondent nonetheless decided to investigate the matters the Claimant had raised in the Triggers Document. On 8 December 2021, Mr Gray of the Respondent's HR wrote to the Claimant to inform them of that and ask them if they wished to participate in the investigation [698]. On 20 December 2021, Mr Gray sent a similar letter to the Claimant (because the intended investigator had changed) [723].

108. There was then a further change, in that Vicky Shah was appointed to investigate. On 24 January 2022, Mr Gray wrote to the Claimant again to invite them to an investigation meeting with Ms Shah on 26 January

2022 [730]. The meeting was then rearranged at the Claimant's request to 2 February 2022 [752].

109. In the interim, Ms Shah interviewed Steve Best on 27 January 2022 [754]. In that meeting, Mr Best described the Claimant as not competent. He also said this, when asked when he became the Claimant's manager [756]:

> "Whilst [they] was off, when [they] realised I was management and I became a part of conspiracy against [them]. It will be difficult to manage [them] effectively without something changing. As we were bombarded with accusations and FW didn't reign that in. FW let that past. We are [their] triggers. These accusation have gone too far, we need to protect ourselves, we are not in a position to defend ourselves, so decided we would need to be investigated. UM has never formally complained. We find ourselves in an impossible position. Hoping investigation will show we have tried to be sympathetic so that [they] can come back."

110. Mr Best's evidence was that he was surprised that Mr Wood had not filtered the more extreme accusations from the Claimant into a more constructive light in order to help the return to work plan. His evidence was that by "rein in" he meant moderate or control.

111. During the same meeting, Mr Best also said this about the Claimant [758]:

> "UM is unstable, takes recreational drugs, time keeping is awful, makes serious accusations."

112. Ms Shah also interviewed Nicholas Lea on 27 January 2022 [766]. The notes of that meeting recorded Dr Lea saying this, when asked if there was scope to work from home:

> "UM's job is a bench role. There is data analysis but only in short bouts. That process is semi-automated, doesn't take much time. More than 80% of UM's role is lab work. Even the time genetic technologists spend in the office is interspersed with lab work. The department is always running on the edge of staffing so rearranging staff at the start of the day to cover service is essential."
>
> "…The other part is it's impossible to run lab with a B5 working from home. If you wanted to give them a job working from home it would be have to be analytical, which is a band 6 or higher role. If we had a Band 5 doing that from home we would need to use a Band 6 or 7 dropping back to the bench in lab to fill the gap. That's the reason why home working can't be a substantial part of the solution for UM's mental health problems."

113. The minutes additionally recorded Dr Lea saying this, in response to a question about who had offered the Claimant their role:

> "Me, AK was in interview and possibly Steve Best, Clinical Scientist. This was done as King's College Hospital Trust. We recruited [them] in November 2019, interview in September 2019. Interview went well, no mental health issues raised, [they] was pretty good and we decided unanimously UM was good for role. UM worked in Royal London before. When references came back, only thing came back was a lot of sick leave, which was concerning. I asked UM if we could discuss with [them] and [they] was open about it, [they] told me about [their] mental health diagnosis which went back some time, that [they] was on medication and that [they] was getting better (have all of this in emails). [They] was seen by KCH Occupational Health in an upgraded capacity because of the medication [they] was taking. I was comfortable that [they] was being treated. Even though [they] had sick leave, [they] had a mental health problem, which UM was dealing with, no reason to discriminate against [them], not a reason not to employ [them], legally and morally. We continued with that recruitment. To start with [their] attendance was reasonable, a bit patchy. [They] would be late but make up time, I made allowances for a long time. This was working ok [they] went out of [their] way to make up time. [They] has Borderline Personality Disorder, ADHD, chronic insomnia, so mornings are difficult and we made allowances for it. The ways [they] communicates is through social media, texts and whatsapp."

114. Ms Shah also interviewed Aytug Kizilors [737] and Philip Kutar [760]

115. Ms Shah met the Claimant on 2 February 2022. She was accompanied by Gareth Gray of HR, who took minutes of the meeting. The Claimant was accompanied by Jeniz White. The Claimant's Union representative, Mr Wood, attended remotely (via Teams).

116. Mr Wood's evidence in cross-examination was that he did not stay for the whole of the meeting. He did not mention that in his witness statement. When that was put to him in cross-examination, his evidence was that he had drafted his witness statement based on his personal log notes, and that he may not have written in his log that he had not been present for the entire meeting. His evidence in cross-examination was that, if it was the meeting he recalled, he was in a domestic environment and was interrupted during the meeting and had to apologise. In re-examination, for the first time he explained that he recalled the meeting being a case of "hello, goodbye", and that he saw Ms Shah at the start then left because he had a plumber coming to the house, and that he was therefore effectively not there for any of the meeting. His evidence in re-examination was that he had not kept a log of the meeting

117. The evidence of Ms Shah and Mr Gray was that they were not aware that Mr Wood had left the meeting.

118. The minutes showed interjections from Mr Wood at lines 120, 124 and 141 (there were a total of 160 numbered lines within the minutes). The minutes did not record him leaving the meeting at any point.

119. Ms White did not indicate in her witness statement that Mr Wood had not been present for all of the meeting. When it was put to her in cross-examination that the minutes showed Mr Wood making interjections during the meeting, her evidence was that she did not consider that the minutes were accurate.

120. We conclude on balance that Mr Wood was present throughout the meeting, for the following reasons.

120.1. Mr Wood is an experienced Trade Unio representative (his evidence was that he had been a representative for 30 years prior to his retirement). We consider it is implausible that he would had have left almost the entirety of a meeting at which he was supposed to be representing a Union members – much less that he would have done so without telling the Chair or the member.

120.2. Mr Wood's evidence in respect of the meeting developed significantly between his witness statement, then cross-examination, then re-examination.

120.3. When Mr Wood was subsequently emailed a copy of the minutes to review, he did not reply to suggest that he would be unable to comment on them because he had not been present.

121. There was also a discrepancy in the evidence regarding whether Ms Patel was present at the meeting:

121.1. Ms Patel's evidence was that she was present.

121.2. Both Ms White's evidence and that of the Claimant was that Ms Patel was present (although the Claimant's evidence was, very fairly, that they could not recall many of the meetings that took place after their absence from work commenced).

121.3. Mr Wood, in his witness statement, did not refer to Ms Patel being present. In cross examination, his evidence was that he did not believe that she was there. But his evidence was that someone attending to assist the employee for mental health reasons, who was not acting as their representative, would not be a formal part of the meeting. His evidence was also that he could not see the whole of the room.

121.4. Ms Shah's and Mr Gray's evidence was that Ms Patel was not present at the meeting. Ms Shah, in her oral evidence, described the layout of the room and where the various participants were sitting. Mr Gray gave similar evidence regarding the layout of the room.

121.5. The minutes did not record Ms Patel being present.

122. We find on balance that Ms Patel was not there. It was common ground that Ms Patel was at the subsequent meeting between the Claimant and Ms Shah (which we will come on to in due course). And we consider that it is likely that the Claimant (and possibly also Ms White) would have described the 2 February meeting to Ms Patel in some detail after it occurred. We consider that the most likely explanation was that the minutes (and the recollection of Ms Shah and Mr Gray) were correct regarding who was in attendance at the meeting, and that Ms Patel had concatenated what she had been told about the meeting with her recollection of attending the subsequent meeting with Ms Shah.

123. Mr Gray sent the minutes of the meeting to the Claimant and Mr Wood on 4 February 2022 [771]. He asked the Claimant if they had any comments on the minutes. The Claimant responded that they would go over the minutes and would make any track changes if necessary [781]. The Claimant did not, in the event, request any changes. Their evidence wat has they felt unable to read the minutes at the time, so they did not open them.

124. Ms White's evidence was that she saw the minutes of the 2 February meeting at some point after the meeting, although she could not recall when. Her evidence in cross-examination was that she vaguely remembered telling the Claimant that they were inaccurate.

125. Mr Wood accepted in evidence that he did not suggest any amendment to the minutes of the meeting.

126. The evidence of Ms Shah and Mr Gray was that the minutes were accurate (albeit it was not suggested that they were verbatim).

127. We bear in mind that the minutes were produced contemporaneously. They were relatively detailed. They were sent to the Claimant and Mr Wood to review (although we accept that the Claimant did not look at them at the time). The fact they were sent to the Claimant and Mr Wood to review is strongly suggestive that Mr Gray believed them to be accurate – if he had produced deliberately inaccurate or partial minutes, it is implausible that he would have sent them to the Claimant and Mr Wood to comment on. And if the minutes were inaccurate, it would be surprising if Mr Wood had not taken issue with them at the time. We find that the minutes were broadly accurate (although not verbatim).

128. The Claimant's case is that during the meeting, Ms Shah said to the Claimant *"you keep saying [person] of colour and white privilege, I'm white and I'm not privileged, I grew up poor. I've got mixed race kids, I don't see colour".*

129. The minutes recorded the exchange as follows:

> "UM SB was the manager of the MGS service, now they have taken me off that. They are shirking responsibility of

> me. I have spoken to them of my trauma and now they are bringing in someone else. I need consistency and structure. You took that consent away from me and put me in a vulnerable situation without aftercare. Ruined one of my best relationships and made me explain myself to someone again. I accept people make mistakes. Their responsibility is to understand their biases, unconscious biases which I can name within my lab. As a disabled queer lady of colour things are going to affect me different to others.
>
> VS Since I have been involved, I have seen reference to you being a woman of colour, has that ever been a problem?
>
> UM You have heard of unconscious bias, we don't know what we are doing. If we experience them we can see it. There is a treatment of women of colour in that department. Every new hire since me has been white, every time we have had to deal with racism within workplace it has been denied. There is a big problem and every person of colour in department will see that.
>
> VS I have an issue with racism, I have biracial children. I don't see colour.
>
> UM They are going to be treated differently. I belong to loads of marginalised groups."

130. Ms Shah referred in her evidence to the Claimant mentioning white privilege during the meeting. Her evidence was that she explained that she did not understand the term, and that she had grown up poor and had never been privileged (this was not captured in the minutes).

131. Mr Wood's evidence was that he could not recall anything inappropriate or improper having been said to the Claimant during the meeting. He readily accepted in cross-examination that if am improper or inappropriate comment had been made, he would have challenged it at the time. Ms White's evidence was that if something which caused offence to the Claimant had been said, she would possibly have challenged it in the meeting. Having reviewed the minutes, we consider it is very likely that Ms White would have interjected if she had considered that something improper or offensive was being said.

132. On the afternoon of 2 February 2022, the Claimant tweeted the following [1329]:

> "my work meeting today was w a woman who mentioned that she saw in my paperwork that I had mentioned me being a "woc" [woman of colour].. she said she has a problem w white privilege n maybe she needs to learn more…. Cos she's got mixed race kids (ofc [of course] she fucking does)

> She said “how can you say I say privilege when I’ve gone through x y z” fyi [for your information] it weren’t defensive she was curious. I said to her “no ones denying your struggle, but all those things that effected you wasn’t because you are white, a poc [person of colour] can be richer than you..” [*sic*; explanatory notes in square brackets are the Tribunal’s]

133. We find that Ms Shah did say broadly make each of the remarks the Claimant alleged, although not all at exactly the same point in the meeting. We find that the Claimant did not, in the meeting, suggest that they had been offended or hurt by anything Ms Shah said (and nor did Ms White or Mr Wood).

134. Ms Shah completed her investigation. Her report was dated 14 March 2022. The title of her report was: [815]

> “MANAGEMENT STATEMENT OF CASE RELATING TO UMAIRAH MIAH’S ACCUSATION OF ABUSE BY THE LMH MANAGEMENT TEAM”

135. Ms Shah concluded that she did not believe that the LMH management team had abused the Claimant. She noted that management should have set boundaries around attendance and punctuality sooner, but that there was no malicious attempt in not doing so. She concluded also that there was no evidence of racist attitudes from the LMH management team. In the context of her conclusion regarding the failure to set boundaries at an earlier stage, she said this:

> “By the time management and Umairah were having conversations about [their] punctuality, management had become exasperated and were only then attempting to reign in Umairah’s punctuality, by which point rather than appear as being supportive, it came across to Umairah as being inconsiderate of [their] mental health and neurodiversity.”

136. Ms Shah also said this regarding recruitment into the LMH since the Claimant’s employment had started (in response to the Claimant having suggested that all new appointees since they had started at the LMH had been white):

> “Since Umairah’s appointment, there have been 6 recruits, 2 white British, 1 other mixed background, 1 Chinese, 1 Asian and another undeclared. Declared demographic data for LMH as a whole shows the department to be diverse in senior and junior roles.”

137. Ms Shah made the following recommendations:

> “Management

To consider accountability for how they have made Umairah feel, all be it unintentionally.
Support an Access to Work application by Umairah and take on board their recommendations.
Consider and investigate a Career Coach or Support Worker for Umairah if this is not a recommendation from Access to Work.
Focus on compromise – could additional days working from home be trialled? Could the number of working from home days increase if half a day a week works?
Support Umairah's career development.

Umairah Miah
Try to understand actions from a management perspective - as discussed there are always 2 sides.
Be open minded to the management recommendations.
Focus on compromise.
Take advantage of the offer of a Mentor.
Improve communication with management
Aim for final goal - learning, registration and career progression.

General
Mediation to be carried out by someone outside of Viapath, ideally by a trained mediator who has experience with ADHD and Personality Disorders.
HR to look at support available through our occupational health provider, Medigold.
Access to Work support and mediation will be required before Umairah can return to work.

138. It was put to Ms Shah in cross-examination that she had taken the phrase "rein in" from Mr Best, who used it in his investigation meeting. Ms Shah denied that. Her evidence was that when she used the phrase she was talking about managing a situation – specifically, the Claimant's punctuality and the fact that they were not calling in when they would be late or absent.

139. Ms Shah met with the Claimant on 25 April 2022 to present her conclusions and recommendations. Mr Gray attended with Ms Shah. The Claimant attended with Ms White and Ms Patel (with Mr Wood again attending via Teams). No minutes were kept of the meeting. Ms Shah's evidence, which we accept, is that the meeting became somewhat heated.

140. Ms Shah's recommendation regarding mediation was taken forward by the Respondent. An external company, TCM Group, was approached to mediate. The original proposal was that the mediation would involve Dr Lea, Ms Kizilors and Mr Best all being in the same room with the Claimant and the mediator at the same time. Dr Lea's evidence was that he told the mediator that he did not think that that was a good idea. The proposed format was then changed so that each of the managers would meet

separately with the Claimant, together with the mediator. The Claimant asked to take someone with her to the mediation for support.

141. On 5 December 2022 Ms Nuckowska, the mediator, emailed Philip Kutar with an update. Within that, she referred to Mr Kutar having told her that the Claimant had a history of changing their mind after meetings once they had spoken to their partner [977]. Dr Lea accepted in cross-examination that that suggestion may have come from the Claimant's management team.

142. On the same day, Mr Best emailed the mediator regarding the date for the mediation. He indicated that he was happy for the Claimant to take support to the meeting [999].

143. On 6 December 2022, Dr Lea emailed Mr Kutar, Mr Clark, Analie Booth, Mr Best and Ms Kizilors as follows [978]:

> "Thanks you all for your time this morning. It is reassuring to hear that our HR and senior team are supportive and have the interests of all parties in mind. I have now spoke to the Elizabeth the mediator from TCM. I expressed my anxieties regarding having the companion in the room that could hear our entire mediation conversation and Elizabeth was sympathetic. I have pointed out that the companion, not limited by the Synnovis code of conduct will be at liberty to divulge and or publish the content of our discussions with their own interpretation on social media with little or no recompense from us. I have told her that I am very uneasy with this because I feel the risk is quite high since we are already aware that UM and [their] following have posted material relating to this situation on Twitter in the past.
>
> From my research into the mediation process I have found out that it is very unusual indeed to have companion accompanying in the mediation room. Also that its advised this should be avoided if at all possible as it is likely to have a negative impact on the mediation process. 3rd parties stifle frank and open conversation. I feel that a companion should accompany Umairah to the sessions but should not be allowed in the mediation meeting room. They could wait outside and provide support should it be required. I feel this is a compromise solution which takes into account both Umairah's safety and ours equally. I have offered this as an alternative solution to TCM. Elizabeth has agreed to take this back to Umairah and will let us know how this is received.
>
> My view is that if Umairah is unable to engage with mediation without this support, it holds little hope for [their] eventual return to work. One needs to question whether the risk associated with this process is even worth the potential outcomes. I have also been advised that we as managers and Synnovis as an organisation ought to seek the advice of employment law specialists at the

earliest opportunity. Clearly this is a decision for the senior management and HR team."

144. On the same day, Mr Best emailed the mediator as follows [998]:

> "I have a further question regarding the 3rd person who will be with Umairah at the meeting.
>
> I need to be sure that no recording of the meeting will take place, as I assume [their] companion, or Umairah [themselves], could do this. Given [their] very manipulative personality disorder and given their social media history, if for some reason the mediation does not have the desired outcome, it would be quite likely that that conversations would go onto social media and potentially name me.
>
> Is this a scenario which you have taken into account?
>
> Thank you for your thoughts."

145. Dr Lea and Ms Kizilors thereafter indicated that they were no longer willing to participate in mediation. Mr Best remained willing to do so. However on 13 January 2023, the mediator, Ms Nuckowska, emailed Mr Kutar as follows [1021]:

> "Further to our conversation, I confirm that at this present time, and partly due to Umairah's position of wanting individual mediation sessions with Nik and Aytug first, despite them not being willing for safety reasons, to enter into a mediation session with [their] requirement for [their] own safety needs that [their] companion being present, I do not believe that a mediation between Steve and Umairah is appropriate, for the wellbeing and safety of either party. I also confirm, that given that mediation is voluntary [their] position cannot be agreed to.
>
> For mediation to be successful parties need to be in a mental state where they have the capacity to talk openly and be willing to understand the needs and perspectives of others, and be willing to explore a win:win outcome.
>
> I do have concerns about whether Umairah has that capacity at present. I am not a medical professional so cannot make a judgement, I would however recommend a thorough specialist OCH assessment to not only review [their] capacity to enter into a mediation process but also [their] capability to do [their] role, given the triggers [they] has identified.
>
> If we were to proceed with Mediation at the moment, I fear it would make the relationships worse, and quite possibly worsen the parties personal mental wellbeing.

I have not notified either of the parties about the above.

I hope the above makes sense, and wishing you a lovely weekend."

146. In 20 July 2023, the Claimant raised a grievance [1029]. With the grievance, they complained about discrimination on the basis of [their] disabilities and race. The grievance referred to the Vicky Shah investigation, but did not make any allegations regarding any comments made by Ms Shah during the investigation meeting [1032]. The Claimant's evidence was that they had paid someone to produce the grievance document on their behalf, and that neither they nor Ms Patel had read it in great detail before it was submitted.

147. The grievance letter was long and relatively detailed. We consider it is inherently implausible that the (unnamed) author would have been able to put a document of that nature together without taking detailed instructions from the Claimant, and also implausible that the Claimant would have allowed a grievance to be submitted on their behalf without having carefully reviewed it.

148. On 24 July 2023 the Claimant made a Subject Access Request. The documents requested were sent to the Claimant on 30 October 2023, but to an email address that the Claimant was not using and did not check regularly. The Claimant did not, therefore, receive them at that time. The Claimant emailed the Respondent on 27 November 2023 asking when they would receive the SAR documents. The Respondent replied on the same day informing them that the documents had been sent on 30 October 2023. It was therefore on 27 November 2023 that the Claimant first saw the documents. The SAR disclosure response was the first time that the Claimant was sent any of the minutes of the meetings Ms Shah carried out with the LMH management team.

149. In the interim, on 1 September 2023 Colin Stone, Service Delivery Manager, wrote to the Claimant to invite them to discuss a return to work, based on the original return to work plan that had been discussed with Mr Best previously [1049]. The Claimant, at that point, had been absent since June 2021. That meeting was rescheduled due to the Claimant's availability to 21 September 2023. The invitation letter referred to the meeting as being to discuss the Claimant's continued absence. The letter referred to the Sickness Absence policy (and a copy of that policy was attached).

150. The Claimant did not attend the meeting. On 22 September 2023, Dr Stone wrote to the Claimant to invite them to a further meeting, to take place on 29 September [1066].

151. Dr Stone emailed the Claimant on 27 September 2023. Once again, he indicated that the purpose of the meeting was to discuss the Claimant's return to work. In the email, he described the meeting as a "capability

meeting". He indicated that the Claimant could bring a friend to the meeting with them, as Mr Wood would be attending remotely, but that the accompanying person could not be legally qualified.

152. The Claimant responded indicating that that was the first time that a "capability meeting" had been mentioned. They explained that they understood that a capability meeting would have "different procedural intentions and outcomes".

153. On 4 Octboer 2023, Ms Gilbert of HR wrote to the Claimant. She said this regarding the process:

> "Capability Meeting – Colin has had to handover to another manager to lead on meetings due to operational pressures with Beaker go-live. I am currently working to source a replacement, and it is likely to be either Karon Campbell from the L&D Team or Michelle Plange from the Talent Team. To ensure impartiality and to allow you to be as comfortable as possible (as you have listed Phil Kutar as a trigger), I will be supporting these meetings from an HR capacity and an invitation to reschedule will be sent to you in due course.
>
> Thank you for confirming that you will be bringing a colleague to the capability meeting. Please can you confirm the name of this colleague?
>
> Policy - We are following the sickness absence policy as we understand that your continued absence is due to concerns relating to health. If you consider that the capability process is more applicable, then you are welcome to make those representations at the capability meeting."

154. The Claimant replied as follows [1073]:

> "I have reviewed the sickness absence policy and it does not appear to reference a capability meeting in procedure. I believe that the combining of these policies is an act of victimisation and I am being subjected to unfair treatment for raising my grievance in which I complained about my discrimination. I mentioned that Phil was a trigger in 2021, it is now 2023, it should have been a priority to ask me whether my feelings remained the same considering I was ignored in the first place. I respect Robert's decision to recuse himself with concerns of impartiality, I'm questioning why impartiality wasn't primary deciding factor of the appointed investigator role in the first place? As a Bangladeshi disabled person, I feel concerned about who is investigating my claims of discrimination on the basis of my race and disability. I have not been absent, I have been kept away and my career has been stolen. Please can I receive the minutes ASAP, I or Frank can brief

> Warren as Rob himself wasn't aware of my case at my hearing and I doubt he is aware now.
>
> I would like to bring along my colleague Beth or Martina, or my wife."

155. Ms Gilbert emailed the Claimant on 10 October 2023 [1522]. She said this:

> "Although not directly referred to in the policy as a "medical capability meeting" this is another term for the long term sickness meetings which are mentioned in the policy. The absence from work was not only related to reaching an impasse with regard to the conditions for mediation but also health concerns that you made known to us. We have named these meetings "capability meetings" as it is to assess your capability to return to work and this purpose is the same purpose for the meetings referred to in the long term sickness policy. The meeting will cover (as per the invitation sent to you, and the definition in the policy) the status of your health and wellbeing currently, and to discuss any ways in which the business can facilitate a return to work for you.
>
> We are not combining this with the capability policy. If you believe that your case should be considered under this policy then you and your union rep are welcome to make representation for this at the meeting."

156. The meeting went ahead on 18 October 2023. It was chaired by Karon Campbell, L&D Manager. The first sentence of the minutes of the meeting said this:

> "KC Opened the meeting as a capability meeting and made introductions."

157. The Claimant was, at the relevant times, an active user of Twitter (as it was then called). In addition to the tweets we have already quoted, our attention was drawn to a number of screenshots of the Claimant's tweets. Of particular relevance:

157.1. "having insomnia is lame and no amount of weed will change that" – 6.54am, 22 November 2021 [1361]. The Claimant accepted in evidence that this was a reference to taking cannabis for insomnia.

157.2. "haven't had any alcohol or cocaine in a few days actually did someone call me reformed" – 6.39pm, 6 December 2021 [1362]. The Claimant accepted in evidence that this inferred that they had previously used cocaine, but had not done so for a couple of days.

157.3. “i take propranolol when i wanna go sleep after taking coke but don't do this I don't fear death” – 2.40pm, 17 August 2022 [1343]. The Claimant accepted that this was a reference to cocaine.

157.4. “im being Indirectly discriminated against… again. ive been signed off for 5 months whilst my managers make life uninhabitable for anyone who has a disability. It became worse after 51% got bought by a private company. but clap for the nhs right?”” – 1 November 2022.

157.5. “what if I accidentally email all the Haemato-Oncology consultants how their pathology managers have been discriminating against their staff” – 10.14pm, 26 November 2021.

157.6. “according to King’s hospital, I have not faced any discrimination because of my race, gender, sexuality or disability. this is apparently because Kings is very good at not being discriminatory against their staff or their patients” – 12:42pm, 25 April 2022.

158. It was put to the Claimant in cross-examination that cocaine is an addictive stimulant drug which can impact sleep. The Claimant’s evidence was that it did not have that effect for them. There was no objective evidence before us regarding the medical effects of cocaine in general terms; nor was there any medical evidence specifically regarding its effect on the Claimant. We accept the Claimant’s evidence regarding their own experiences.

159. Mr Best was aware, during the Claimant’s employment, of their social media postings. He referred to them during his investigation interview with Ms Shah. It was put to Ms Kizilors in cross-examination that she was the person who had shown the Claimant’s twitter posts to Mr Best. Ms Kizilors denied doing so. Her evidence was that she does not use Twitter. We accept Ms Kizilors’ evidence in that regard.

Medical evidence

160. The Claimant put a bundle of medical document in evidence before us. As disability is not in dispute, we do not need to recite that evidence in any great detail. The following points are of particular relevance to the issues we must determine.

161. The Claimant was assessed by Dr Rao, Consultant Psychiatrist, on 31 March 2022 [CM 2]. Dr Rao’s report referred to the Claimant describing attention and concentration difficulties and being easily distracted, as well as impulsivity. The report note that the Claimant’s symptoms were consistent with the diagnosis of ADHD. Regarding insomnia, it said this:

> "[Their] sleep has been extremely disturbed since [their] childhood and has phases of insomnia."

162. Under the heading "Plan" it set out a number of bullet points regarding the Claimant's treatment, one of which was this:

> "Umairah was advised to be abstinent from illicit substances for a period of at least three months. I have now referred [them] to the nurse titration service. [They] is aware that there is a waiting list of up to six months, to start medication."

163. The then concluded as follows:

> "Do not drink alcohol while taking stimulant medicines. Alcohol may make the side effects of stimulants worse. Remember that some foods and medicines contain alcohol, please discuss this further with your consultant, if required. Also, it is potentially fatally dangerous to use illicit drugs, such as cocaine and amphetamines, when prescribed ADHD medication."

164. The Claimant was assessed by Dr Carboni, Consultant Psychiatrist, on 31 July 2024 [CM 12]. Dr Carboni diagnosed the Claimant with Autism Spectrum Disorder. The report said this, regarding sensory stimuli:

> "Umairah reported lifelong sensitivity to sensory stimuli (in particular, auditory stimuli)."

165. The report described the Claimant's difficulties as:

> "including inattention, distractibility, inner restlessness, some sensory hypersensitivity, emotional dysregulation"

166. The Claimant notified ACAS under the early conciliation process of a potential claim on 20 September 2023 and the ACAS Early Conciliation Certificate was issued on 1 November 2023. The claim was presented on 24 November 2023.

Law

167. Section 39(2) of the Equality Act 2010 provides that an employer must not discriminate against an employee:
    - 167.1. In the terms of employment;
    - 167.2. In the provision of opportunities for promotion, training, or other benefits;
    - 167.3. By dismissing the employee;
    - 167.4. By subjecting the employee to any other detriment.

168. In order to be subjected to a detriment, an employee must reasonably understand that they had been disadvantaged. An unjustified

sense of grievance will not constitute a detriment (*Shamoon v Royal Ulster Constabulary* [2003] UKHL 11).

Protected characteristics

169. Disability is a protected characteristic. It is defined in section 6 of the Act.

170. Race is also a protected characteristic (per section 9 of the Act).

Direct discrimination

171. The definition of direct discrimination is contained in section 13(1) of the Equality Act 2010:

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

172. The comparison may be to an actual or a hypothetical comparator. In either case, there must be no material difference between the circumstances relating to each case (s.23(1)). That is, the comparator must be in the same position in all material respects save only that he or she is not a member of the protected class *(Shamoon v Chief Constable of the RUC* [2003] ICR 337).

173. Where considering the treatment of a claimant compared to that of a hypothetical comparator, the Tribunal may draw inferences from the treatment of other people whose circumstances are not sufficiently similar for them to be treated as an actual comparator (*Chief Constable of West Yorkshire Police v Vento* [2001] IRLR 124).

174. In considering whether a claimant was treated less favourably because of a protected characteristic, the tribunal generally have to look at the "mental processes" of the alleged discriminator (*Nagarajan v London Regional Transport* [1999] IRLR 572). The protected characteristic need not be the only reason for the less favourable treatment. However the decision in question must be significantly (that is, more than trivially) influence by the protected characteristic.

Discrimination arising from disability

175. The definition of discrimination arising from disability is set out in s.15 of the Equality Act 2010:

> "(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."

176. "Unfavourable" is not defined in the statute. The EHRC Statutory Code of Practice provides that it means that the disabled person "must have been put at a disadvantage".

177. Guidance for Tribunals on how to approach the test in s.15 was set out by the EAT in *Pnaiser v NHS England* [2016] IRLR 170.

178. The Respondent does not need to have knowledge that the "something" leading to the unfavourable treatment was a consequence of the claimant's disability (*City of York Council v Grosset* [2018] ICR 1492).

Failure to make reasonable adjustments

179. The duty to make reasonable adjustments is set out in section 20 of the Equality Act 2010:

**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.

180. Paragraph 8 of Schedule 20 of the Act provides that an employer is not subject to the duty to make reasonable adjustments if he or she does not know, and could not be reasonably be expected to know that the claimant:

a. Has a disability; and
b. Is likely to be placed at a disadvantage by the employer's provision, criterion or practice, the physical features of the workplace or a failure to provide an auxiliary aid.

181. The Tribunal must therefore ask itself two questions:

c. Did the employer both know that the employee was disabled and that the disability was liable to put the employee at a substantial disadvantage?
d. If not, ought the employee to have known both of those thing?

182. If the answer to both questions is “no”, the duty to make reasonable adjustments is not triggered.

183. The EHRC Code provides that employers must “do all they can reasonably be expected to do” to find out whether an employee has a disability. If an employer’s agent or employee knows in that capacity that an employee is disabled, the employer will have imputed knowledge of that disability.

184. The ECHR Code of Practice provides that the phrase “provision, criterion or practice” should be construed widely.

185. When considering whether the duty to make reasonable adjustments is engaged, the Tribunal must consider the PCP identified by the claimant. The PCP must be properly identified (*Secretary of State for Justice v Prospere* [2015] 3 WLUK 676).

186. In order to find that an employer has breached the duty to make reasonable adjustments, the tribunal must identify the step or steps that it would have been reasonable for the employer to take. The adjustment must be a practical step or action as opposed to a mental process (*General Dynamics Information Technology Ltd v Carranza* [2015] ICR 169).

187. It is inherent in the statutory language that the step or steps must be reasonable ones for the employer to have to take. The test of whether a step is reasonable is an objective one. The EHRC Code of Practice notes that the following factors may be relevant:

> “· whether taking any particular steps would be effective in preventing the substantial disadvantage;
> · the practicability of the step;
> · the financial and other costs of making the adjustment and the extent of any disruption caused;
> · the extent of the employer’s financial or other resources;
> · the availability to the employer of financial or other assistance to help make an adjustment (such as advice through Access to Work); and
> · the type and size of the employer.”

188. In considering whether a step would have been reasonable, one factor the Tribunal must consider is whether it would have been effective in alleviating the disadvantage to the employee. However an adjustment may still be reasonable even there is no guarantee that it would have been successful (*Griffiths v Secretary of State for Work and Pensions* [2017] ICR 160).

<u>Harassment</u>

189. Harassment is defined in section 26 of the Equality Act 2010 as follows:

> **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.
> (4)In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
> (a)the perception of B;
> (b)the other circumstances of the case;
> (c)whether it is reasonable for the conduct to have that effect.
> (5)The relevant protected characteristics are—
> age;
> disability;
> gender reassignment;
> race;
> religion or belief;
> sex;
> sexual orientation.

190. “Unwanted” is essentially the same as “unwelcome” or “uninvited”. Where conduct is offensive or obviously violates a Claimant’s dignity, that will automatically be regarded as unwanted (*Reed and anor v Stedman* [1999] IRLR 299). A failure to complain at the time is unlikely to undermine a claim based on inherently unwanted conduct. The test is whether the conduct was unwanted by the employee (*Thomas Sanderson Blinds Ltd v English* EAT 0316/10).

191. Comments and behaviour must be looked at in context in order to determine whether they were unwanted (*Evans v Xactly Corporation Ltd* (EAT 0128/18). Where an employer has chosen to put facts about their private life into the public domain, other employees referring to those facts will not necessarily constitute unwanted conduct (*Land Registry v Grant* [2011] ICR 1390)

192. The test for whether the treatment had the proscribed effect has both a subjective and an objective element. That is, the Tribunal must consider the subject effect the conduct had on the Claimant, and must also consider whether it was objectively reasonable for the conduct to have had that effect.

193. When considering whether treatment had the proscribed effect, we must look at the effect of the incidents in the round (*Reed*). Tribunals must not "cheapen the significance" of the meaning of the words used in the statute (*Grant*).

194. In considering whether conduct is "related to" the relevant protected characteristic, a finding about the motivation of the putative harasser is not the necessary or only possible route to the conclusion that the conduct related to the characteristic in question. However, there must be some feature or features of the factual matrix which leads the Tribunal to the conclusion that the conduct in question is related to the particular characteristic in question (*Tees Esk and Wear Valleys NHS Foundation Trust v Aslam & Heads* (UKEAT/0039/19).

Victimisation

195. Section 27 of the Equality Act 2010 provides as follows:

"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."

196. The claimant must have done a protected act (or the employer must believe that the claimant has done, or may do, a protected act).

197. A detriment means being put under a disadvantage. In order to be subjected to a detriment, an employee must reasonably understand that they have been disadvantaged. An unjustified sense of grievance will not constitute a detriment (*Shamoon v Royal Ulster Constabulary* [2003] UKHL 11). It is not, however, necessary to establish any physical or economic consequence (*Warburton v Chief Constable of Northamptonshire Police* [2022] ICR 925).

198. The test in terms of causation is "reason why", rather than "but for". That requires the Tribunal to consider the alleged victimiser's reasons (whether conscious or subconscious) for acting as he or she did.

199. It is not necessary for the protected act to be the main motivation for the detriment, as long as it was a significant factor (*Pathan v South London Islamic Centre* [2014] 5 WLUK 441).

200. Self-evidently, the reason for the conduct must be that the claimant had made a complaint which was a protected act for the purposes of section 27 of the 2010 Act; not merely that a complaint had been made in general terms.

Burden of proof

201. Section 136 of the Equality Act deals with the burden of proof:

> "(2) If there are facts from which the [tribunal] could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the [tribunal] must hold that the contravention occurred.
> (3) But subsection (2) does not apply if A shows that A did not contravene that provision"

202. The section therefore prescribes a two-stage process. At the first stage, there must be primary facts from which the tribunal could decide, in the absence of any other explanation, the discrimination took place. All that is required to shift the burden of proof is at primary facts from which "a reasonable tribunal could properly conclude" on balance of probabilities that there was discrimination. It must, however, be something more than merely a difference in protected characteristic and the difference in treatment (*Madarassy v Nomura International PLC* [2007] EWCA Civ 33.

203. The burden of proof at that stage is on the Claimant (*Royal Mail Group v Efobi* [2021] UKSC 22). The employer's explanation is disregarded.

204. If the claimant satisfies that initial burden, the burden shifts to the employer at stage 2 to prove one balance of probabilities that the treatment was not for the prescribed reason.

205. Section 136 only applies to the discriminatory element of the cause of action. In a complaint of failure to make reasonable adjustments, the burden of proof only shifts to the respondent once the claimant has established that the duty to make reasonable adjustments had arisen and identified an allegedly reasonable adjustment that could have, but had not been, made (*Project Management Institute v Latif* [2007] IRLR 579).

Conclusions

206. We deal with the complaints in the order they appear in the final list of issues.

Harassment related to Race

*11.1 Referring to the claimant's drug history on social media, in that On 27 January 2022 Steve Best state: "From [their] social media posts, [they] take recreational drugs […] is unstable, takes recreational drugs, time keeping is awful, makes serious accusations"?*

207. We allowed this amendment to the list of issues, on the basis that referring to the Claimant's social media posts about their drug history was something that had been captured in the original ET1, and had not been abandoned (notwithstanding the fact that it was not captured in EJ Heath's list of issues).

208. Now that we have heard the evidence, it is apparent that what the Claimant has captured in the clarified version of the allegations is something that they did not have knowledge of at the point that the claim was presented. That is because the first time the Claimant received the minutes of Steve Best's interview with Ms Shah was when they received the SAR documents on 27 November 2023. Even if it had been one of the first documents from the within the SAR paperwork that the Claimant looked at, they cannot have seen it until three days after the claim was issued. This is not an allegation in respect of which the Claimant has sought and been granted permission to amend their claim. Although we had given permission for the List of Issues to be amended to include the allegation, that was on the basis that it was an allegation that was pleaded in the ET1. The granular detail of the allegation as it appeared in the list of issues was not pleaded within the ET1 (which is neither unusual in cases involving a litigant in person, nor in any way a criticism of Mx Miah). With the benefit of having heard the evidence, the allegation as clarified simply cannot have been what was in the Claimant's mind when the ET1 was

drafted. The earliest the cause of action could have accrued was the day that the Claimant read the minutes.

209. Even had that not been the case, we would have concluded that the allegation did not succeed, for the following reasons:

209.1. The context of Mr Best's remarks was that he was being interviewed by Ms Shah as part of her investigation into the Claimant's Triggers Document; a document that described him as having been one of the Claimant's triggers. He had also been directly described, by the Claimant, as an abuser via WhatsApp. That is, on any account, a serious accusation.

209.2. The Claimant had made the remarks regarding their drug-taking on a public social media platform. While they did not use their own name as a "handle", they nonetheless referred to the identity of their employer. On a number of the tweets in evidence before us, the Claimant's avatar was a recognisable picture of them. In the context, we do not consider that Mr Best subsequently referring to the information in those tweets could properly be characterised as unwanted conduct. The Claimant had chosen to put that information in the public domain. And in respect of the information regarding drug taking, it is a matter which would be of some potential concern to an employer; particularly one involved in specialised and skilled scientific work like the Respondent.

209.3. Nor, in the circumstances, do we consider that Mr Best's remarks were objectively capable of having the prescribed effect. The Claimant chose to make the remarks they did on social media. In their closing remarks, the Claimant referred to social medial as "an outlet where [they] spoke candidly to friends and followers, not for the consumption of [their] employer". That may have been the Claimant's intention; but of course, the remarks were made in a public forum. In our judgment, the consequence of talking about drug use as the Claimant did on social media, and describing Mr Best as an abuser via WhatsApp, was that it was not objectively reasonable for them to take umbrage at Mr Best for referring to those comments when interviewed by Ms Shah.

209.4. Finally, and for completeness, we are not satisfied that Mr Best's comments were related to the Claimant's race. The Claimant's claim suggested that the reference to the drug use was racially coded. We see no evidence of that at all. On the contrary, we consider it is far more likely that the reason Mr Best referred to the Claimant's social media posts when interviewed by Ms Shah was because he felt stung by the allegation that they had made about him.

210. So the allegation fails.

*11.2 Ms Shah on 2 February 2022 say the following: "you keep saying [person] of colour and white privilege, I'm white and I'm not privileged, grew up poor. I've got mixed race kids; I don't see colour".*

211. We have found that this happened, in that remarks to that effect were made by Ms Shah during the meeting on 2 February 2022.

212. The context of Ms Shah's remarks were that the Claimant had referred in the meeting to the fact that they are a person of colour, and to white privilege. That is to say, Ms Shah was responding to a topic or matter raised by the Claimant. We bear in mind also that the Claimant did nothing during the meeting to suggest that Ms Shah's comment was unwanted. Neither did either Ms White or Mr Wood take issue during the meeting. And it is, we consider, telling that the Claimant did not complain about it in their subsequent grievance.

213. We do not consider that Ms Shah's remarks were so obviously offensive or improper as to be inherently unwanted. In their contemporaneous tweet, the Claimant explicitly described Ms Shah as being not being defensive but curious. And importantly, they were made in response to the Claimant raising the issue of race and of privilege. With that in mind, we conclude that the remarks were not unwanted in the circumstances.

214. It follows then that this cannot succeed as an allegation of harassment.

Direct disability discrimination

*22.1. Ms Shah produced a grievance investigation and outcome that was:*
*22.1.1. Flawed because of the investigation methodology (she did not interview all relevant witnesses; the claimant was questioned as though they were the wrongdoer).*

215. Firstly, of course, Ms Shah was not conducting a grievance investigation. The Claimant explicitly said they did not want the Triggers Document to be investigated as a grievance. The Respondent took the decision to have an investigation into the Triggers Document because of the concerns it raised – but the investigation was not a formal grievance.

216. We do not consider Ms Shah's investigation methodology could properly be described as flawed. What she was investigating was the Triggers Document, and specifically the suggestion that the managers and Mr Kutar had triggered the Claimant. Ms Shah interviewed each of the four alleged triggers. In the context, we consider that that was entirely appropriate. Furthermore, the minutes do not suggest that the Claimant was questioned as a wrongdoer. And importantly, neither Ms White nor Mr Wood took any issue with the questions asked of the Claimant during the meeting. The Claimant had attended the meeting voluntarily, having been asked if they wanted to participate. So we conclude that the allegation is not made out on the facts.

217. For completeness, we can see nothing to suggest that a non-disabled employee who had raised similar issues would have had those investigated in a different way.

218. So that aspect of the allegation fails.

*22.1.2. Flawed in its conclusion that the claimant had not suffered harm.*

219. Ms Shah's report did not conclude that the Claimant had not suffered harm. On the contrary, one of Ms Shah's recommendations was that the managers consider accountability for how they had made the Claimant feel. We read that as a recognition that the way the Claimant had been treated had caused them harm (albeit that Ms Shah concluded that it was unintentional on the part of the managers). Ms Shah also referred to management actions coming across to the Claimant as being inconsiderate of their mental health and neurodiversity. Again, that is, in our judgment, a recognition of the harm the Claimant had suffered.

220. We therefore conclude that the allegation is not made out on the facts.

221. Furthermore, once again there is nothing to suggest that a non-disabled employee would have been treated any differently in terms of the conclusion reached.

222. So the allegation fails.

*22.1.3. Used terminology such as that management had tried to "rein in" the claimant.*

223. The report referred to the management team having attempted to rein in the Claimant's punctuality (rather than rein in the Claimant personally). The Claimant's case was that it was inappropriate terminology. We do not consider that the phrase is objectively inappropriate or inherently linked to any of the Claimant's disabilities, on its own terms. The comment was made by Ms Shah in the context of a criticism of the managers for not dealing with the Claimant's punctuality more promptly; once again, she was recognising the impact that failure had had on the Claimant.

224. Notwithstanding that, we cannot see anything at all to suggest that Ms Shah would have used different terminology in respect of an employee in the same situation who did not share the Claimant's disabilities. It was simply, in our judgment, a relatively innocuous turn of phrase.

225. So the allegation fails.

*22.1.4. Deliberately to deny the claimant's experience.*

226. For substantially the same reasons as we have already explained in respect of allegation 22.1.2, this allegation is simply not made out. The report explicitly acknowledged the Claimant's experience.

227. And once again we can see nothing to suggest that a non-disabled employee in the same circumstances would have been treated any differently in terms of the way that their experiences were treated within the report.

228. So the allegation fails.

*22.1.5. Designed to justify refusing adjustments.*

229. The recommendation that Ms Shah made was that the LMH management consider trialling additional days working from home, and increasing the working from home days if a half day worked. The report also recommended other adjustments. Far from being designed to justify refusing amendments, what Ms Shah did was to recommend that adjustments should be made. So the allegation is simply not made out on the facts.

230. And once again we can see nothing to suggest that a non-disabled employee in the same circumstances would have been treated any differently in terms of the recommendations made by Ms Shah.

231. So the allegation fails.

*22.1.6. Designed to justify bringing back in someone (Mr Best & Mr Kutar) who was a trigger to the claimant*

232. Ms Shah's report did not suggest that either Mr Best or Mr Kutar should be removed from the Claimant's line management chain. Nor did it say, in terms, that they should continue to be involved in the management of the Claimant. Of course Dr Lea and Ms Kizilors were the two managers responsible for the LMH, and Mr Best was also in a management position within the lab. It is hard to see how the Claimant could have returned to work and continued in their role without interacting with any of them. What Ms Shah recommended was that mediation be carried out by a trained mediator.

233. We do not consider that the report could be properly characterised as being designed to justify "bringing back" Mr Best and Mr Kutar. Rather, it recognised the status quo in terms of the management structure of the lab, and recommended a way forward to try to rebuild relationships via mediation.

234. And we can see nothing at all to suggest that a non-disabled employee who had raised a similar concern, and had had that concern investigated by Ms Shah, would have received a final report which was any different.

235. So the allegation fails.

236. Stepping back to look at the report as a whole, whilst the Claimant found it unsatisfactory, we consider that it was broadly even-handed. It made recommendations to both the Claimant and the LMH management team, and encouraged both sides to focus on compromise and try to see matters from the other's point of view. And for the reasons we have already explained we see nothing discriminatory in either Ms Shah's investigation process or her ultimate conclusions.

Harassment related to disability

*27.1. Ms Shah produced a grievance investigation and outcome that was:*
*27.1.1. Flawed because of the investigation methodology (she did not interview all relevant witnesses; the claimant was questioned as though they were the wrongdoer).*

237. We have already concluded that this allegation is not made out on the facts. So it fails.

*27.1.2. Flawed in its conclusion that the claimant had not suffered harm.*

238. Again, we have already concluded that this allegation is not made out on the facts. So it fails.

*27.1.3. Used terminology such as that management had tried to "rein in" the claimant.*

239. As we have already said, the phrase "rein in" was used about the Claimant's punctuality rather than about the Claimant themselves; and in the context of Ms Shah criticising the managers for not dealing with punctuality at an earlier stage.

240. We do not consider that the use of the phrase "rein in", in the context in which it was used regarding the Claimant's punctuality and the initial failure to deal with it by management, could properly be said to be unwanted. It was simply a turn of phrase regarding what had been done. We consider that it was not, in the context, an objectively inappropriate or loaded one.

241. Nor for the same reasons do we consider that the use of the phrase "rein in" was objectively capable of having the proscribed effect.

242. So the allegation fails.

*27.1.4. Deliberately to deny the claimant's experience.*

243. Again, we have already concluded that this allegation is not made out on the facts. So it fails.

*27.1.5. Designed to justify refusing adjustments.*

244. Once again, we have already concluded that this allegation is not made out on the facts. So it fails.

*27.1.6. Designed to justify bringing back in someone (Mr Best & Mr Kutar) who was a trigger to the claimant*

245. Again, we have found that this allegation is not made out on the facts. The most that could be said is that the report did not explicitly recommend removing Mr Best and Mr Kutar from having anything further to do with the Claimant. In the context, we do not consider that that was, in and of itself, objectively capable of having the proscribed effect.

246. So the allegation fails.

Victimisation

247. The amended list of issues split the complaint of victimisation into two different parts; victimisation related to disability and victimisation related to race. We had not allowed the list of issues to be amended to include the detriments relied upon for the complaint of victimisation related to race. For the purposes of our deliberations, we have consolidated the victimisation complaints (and the protected acts relied upon were broadly the same for both parts of the victimisation claim).

Protected acts

*18. On 1-2 November 2021:*
*18.1. Send WhatsApp message including:*
*18.1.1. "a disabled [person] of colour asked for help"?*

248. We consider that this message was a protected act. The Claimant referred to being a disabled [person] of colour, and referred to asking for help and in return their life being made "uninhabitable" by Mr Best, Dr Lea and Ms Kizilors (who the message described as "abusers"). We consider that that is an allegation on the Claimant's part that Mr Best, Dr Lea and Ms Kizilors discriminated against the Claimant related to their disability and race.

*32.1. Submit a "sickness Triggers" document and WhatsApp message to management on alleging, among other things, failure to make reasonable adjustments on 1-2 November 2021?*

249. With the Triggers Document, the Claimant made the following allegations:
    249.1. That Dr Lea failed to make adjustments to start times because he was motivated by concerns about how it would be perceived by others; and
    249.2. That Dr Lea failed to recognise the Claimant's sensory disorder; and
    249.3. That the managers demonstrated ableism.

250. We consider that each of those are allegations of breaches of the Equality Act. So again, we conclude that the Triggers Document was a protected act.

Detriments

*33.1. Ms Shah produced a grievance investigation and outcome that was:*
*33.1.1. Flawed because of the investigation methodology (she did not interview all relevant witnesses; the claimant was questioned as though they were the wrongdoer).*

251. We have already concluded that this allegation is not made out on the facts. So it fails.

*33.1.2. Flawed in its conclusion that the claimant had not suffered harm.*

252. We have already concluded that this allegation is not made out on the facts. So it fails.

*33.1.3. Used terminology such as that management had tried to "rein in" the claimant.*

253. We do not need to repeat what we have already said about the use of the phrase "rein in". What we cannot see is anything to suggest that the terminology was used because the Claimant had made a complaint about a breach of the Equality Act. So the allegation fails.

*33.1.4. Deliberately to deny the claimant's experience.*

254. We have already concluded that this allegation is not made out on the facts. So it fails.

*33.1.5. Designed to justify refusing adjustments.*

255. We have already concluded that this allegation is not made out on the facts. So it fails.

*33.1.6. Designed to justify bringing back in someone (Mr Best & Mr Kutar) who was a trigger to the claimant*

256. We do not repeat what we have already said about this allegation. We can see nothing to suggest that the way that Ms Shah approached the recommendations that she made was because the Claimant had done a protected act. Putting it another way, we can see absolutely nothing to suggest that the Claimant's complaint would have been treated any differently had the Claimant not been complaining of a breach of the Equality Act.

257. So the victimisation complaint fails.

Discrimination arising from disability

*37.1. On or around 23 September 2023 reframing a return-to-work meeting as a capability meeting?*

258. This relates to the Respondents' attempt to meet with the Claimant regarding what had been, by that stage, a lengthy period away from work. The initial invitation letter referred to the claimant being invited to a "return to work meeting" to discuss what was described as the Claimant's "continued absence". The letter referred to the Sickness Absence policy (and a copy of that policy was attached).

259. The two subsequent invitation letters were in similar terms. The first time the phrase "capability meeting" was used was in Dr Stone's email of 27 September 2023. When the Claimant raised this, Hannah Gilbert explained that the meeting remained a meeting under the sickness absence policy rather than under the Capability Policy.

260. We find that the underlying purpose of the meeting never changed. The purpose of the meeting was always to discuss the Claimant's absence, not their job performance. There is no way that the Claimant's performance in role could have been discussed through the framework of the capability process, given that they had not been in work for over two years at that point. And the Claimant was never given the information prescribed to be set out before a formal capability review under the Capability Policy. In reaching that conclusion, we bear in mind that in legal terms, capability is one of the fair reasons for dismissal set out in the Employment Right Act 1996 – and in that context, "capability" covers both dismissals for ill health, and dismissals for poor performance. The sickness management policy captured that, by making it clear that a dismissal for long term ill health would be a dismissal for "capability" (the only time we could see that word used within the policy).

261. We consider that the use of the phrase "capability meeting" in correspondence to describe the meeting the Claimant had been invited to attend was unhelpful and confusing. And Ms Gilbert's suggestion that the meeting could be considered under the Capability Policy if the Claimant wanted it to was unnecessary and came across as somewhat snide in the circumstances. But for the reasons we have explained, we have concluded that the Respondent never reframed the underlying purpose of the meeting. So the allegation is not made out on the facts.

262. To the extent that the confusing labelling constituted unfavourable treatment, we do not consider in any event that it happened because the Claimant had missed a meeting. Of course, Dr Stone's email of 27 September would not have been sent had the Claimant attended the first meeting. But the Respondent's underlying view of the meeting had never changed, so the labelling of the meeting as a "capability meeting" would, we consider, have happened in any event. That was the Respondent's

short-hand term for the meeting. Indeed, that is how the minutes recorded Karon Gilbert opened the meeting when it was eventually held.

263. We therefore consider that it would be unrealistic to say that, simply because Dr Stone would not have had to send the email of 27 September 2023, the meeting would never have been described as a "capability meeting". The Respondent's view of the purpose of the meeting never changed. So we would have concluded that the causal link was not made out in any event.

264. So the complaint of discrimination arising from disability fails.

Reasonable adjustments
Knowledge of disability

265. We find that the Respondent had knowledge of the Claimant's Borderline Personality Disorder since before their employment commencement. The Claimant declared it to Dr Lea, and from the emails that followed there can have been no doubt that Dr Lea was aware in broad terms that it would meet the functional test within the Act.

266. In respect of the ADHD, the Claimant was not diagnosed until March 2022. But they had informed Dr Lea and Ms Kizilors that they had been referred for a diagnostic test by their doctor on 26 November 2020.

267. It was apparent from the totality of the evidence before us that the effect of the Claimant's three conditions overlapped. Dr Lea was clear, in the meeting with Ms Shah, that he was aware of the effect the Claimant's conditions had on them. In the context, we consider that it is artificial to look at knowledge of the three conditions separately. We proceed on the basis that the Respondent had knowledge that the Claimant had a disability within the meaning of the Equality Act 2010 at all relevant times.

PCPs
*42.1. a requirement to be punctual/work certain hours.*

268. We consider that the first PCP was not, in reality, applied prior to May 2021. Prior to that point, while there was a general expectation about hours, the Claimant was allowed a significant degree of leeway. They were told they had to tell Dr Lea or Ms Kizilors when they would be late or absent; but that is not the same thing as saying that they were required to be punctual or to work certain hours (beyond the obvious requirement to work their contracted hours).

269. During March and April 2021, there were some efforts on the part of the managers to improve the Claimant's timekeeping. But even at that point, the Claimant was not being told that they must work the normal hours of 9am to 5.30pm. Rather, they were simply told that they must tell Dr Lea if they were going to be arriving later in the day, or be absent. And

with effect from 24 May 2021, it was agreed that the Claimant's "normal" hours of work were adjusted to 11am to 7.30pm (from the previous normal working hours of 9am to 5.30 pm, which as we have found had not really been enforced).

270. We consider that from that point on, the PCP was applied to the Claimant that they would work the hours of 11am to 7.30pm.

271. Thereafter, the Respondent then changed the practice in the laboratory to mean that no lone working would be permitted. This meant that the Claimant's working hours would have to change to be 10am to 6pm, as no work would be permitted after 6pm. It was not entirely clear when that decision was made; but it was formally notified to the Claimant in the letter dismissing their flexible working request on 9 November 2021. The Claimant was away from work at that point. They were not absent by reason of ill health; rather, they were on leave awaiting a discussion about the plan for their return work. But it meant that the change did not immediately impact on the Claimant.

272. The Claimant's case is that the substantial disadvantage was that their conditions caused insomnia which made it difficult to keep to the starting hours.

273. The Respondent put to the Claimant in cross-examination that the disadvantages to which they said they were put were by virtue of their drug use, not their disabilities. We bear in mind that:

273.1. The Dr Rao report referred to Claimant having issues with insomnia throughout their life, from childhood onwards. So the Claimant's insomnia long pre-dated any drug-taking.

273.2. The Claimant's evidence was that their drug-taking did not lead to inability to sleep. There was no objective or specific medical evidence before us to contradict that, and we accepted the Claimant's evidence in that regards.

273.3. The Respondent suggested that the Dr Rao report was inconsistent with the Claimant having disclosed their history of drug taking to Dr Rao. We do not think that can be right. If the Claimant had not done so, we do not consider Dr Rao would have said what they did regarding not taking any drugs for 3 months – there would simply have been no need to make that comment. Rather, we consider that that is consistent with the Claimant having been up-front with Dr Rao.

274. We conclude that the Claimant's insomnia was caused predominantly by the effect of their BPD, ADHD and ASD.

275. We conclude also that that the Claimant was therefore put at a substantial disadvantage by the PCP, because their insomnia made it more difficult for them to start work at the required time.

276. We conclude that the Respondent also had knowledge of the disadvantage. Dr Lea told Ms Shah that that was why he initially took such a flexible approach to the Claimant's working hours.

277. So the duty to make adjustments is engaged in respect of the first PCP.

*42.2. a practice of not allowing non-workplace companions at mediation meetings.*

278. We do not consider that this was a PCP which was applied. The Respondent did not set a rule that the Claimant could not bring an external companion to the mediation meetings. There were to be three separate mediation meetings, one each with Ms Kizilors, Dr Lea and Mr Best. The advice from the (external) mediator was that taking a companion was discouraged. Dr Lea expressed significant concerns about having a third party present, and ultimately he and Ms Kizilors declined take part. Mr Best also expressed some concerns, but ultimately indicated that he was willing to go ahead with the meeting. So it was not that the Respondent had applied a PCP. Rather, the participants to the mediation were given the opportunity to express a view on the Claimant's request to be accompanied (consistent with the voluntary nature of mediation).

279. And in any event, and for completeness, that is not why the mediation did not go ahead. Rather, the reason the mediation was abandoned appeared to be because the mediator had taken the view that the Claimant was not in a mental state to talk openly and be willing to understand the needs and perspectives of otherwise, which was a prerequisite for a successful mediation.

280. So it follows that the duty to make reasonable adjustments was not engaged in respect of the second PCP.

*42.3. a requirement to work in a noisy and over-stimulating office/lab.*

281. We find that the LMH open plan office was a busy and relatively noisy environment, full of distractions. Dr Lea identified that during the emails with the Claimant in the process of carrying out the pre-employment checks. And the noisy and distracting environment was given within the Serious Incident report as a factor contributing to the error made by Mr Best.

282. We therefore have no difficulty in concluding that that was a PCP applied to the Claimant.

283. We conclude also that this put the Claimant at a substantial disadvantage by reason of their conditions. The medical evidence described the Claimant as experiencing difficulty concentrating, being easily distracted, and being hypersensitive to stimuli. We therefore

conclude that working in the office environment would necessarily put the Claimant at a substantial disadvantage.

284. We consider that the Respondent was on knowledge of the substantial disadvantage. Dr Lea noted the busy nature of the Respondent's laboratory pre-employment, and explicitly asked the Claimant to consider whether it would be an appropriate environment for them. While at that point the Claimant had not been diagnosed with either ADHD or ASD, we have already found that the effect of their conditions overlapped. We therefore conclude that Dr Lea was well aware that an environment such as the LMH office might cause the Claimant some difficulty (although we observe of course that he was in no way trying to dissuade the Claimant from taking up the role).

285. So the duty to make adjustments is engaged in respect of the third PCP.

Physical feature

*44. Did a physical feature, namely the noise and over-stimulating nature of the office/lab, put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that, as a person with ASD they found it uncomfortable and stressful?*

286. For the same reasons we have explained in respect of the third PCP, we conclude that the physical feature identified put the Claimant at a substantial disadvantage, and the Respondent had knowledge of that. So the duty to make adjustments is also engaged in respect of the claimed physical feature.

Adjustments

*Adjusting working hours*

287. In the period that the Claimant's working hours were set from 11am to 7pm, the medical evidence was that that was the adjustment the Claimant was looking for. We do not consider that it would have been reasonable to allow a completely open-ended start and finish time; fundamentally, the Respondent had to know (broadly) who would be at work and when, so that they could provide the service they needed to provide. So allowing flexibility beyond what had already been allowed would not, in the circumstances, have been reasonable. But in any event, during that period the Claimant's working hours were the ones they had sought.

288. In respect of the period from July 2021 onwards, the Respondent's decision to change the Claimant's working hours to 10am to 6pm was as a result of the decision to prevent lone working. That decision was made following the identification of errors made by the Claimant and others. We

accept that the decision to prevent lone working was not unique to or targeted at the Claimant. That is consistent with Mr Clark's email of 14 July 2021.

289. The LMH tested samples in respect of patients who were under investigation for potential leukemia. The Claimant's evidence was that the MPN test was to identify the stage before cancer. While we appreciate that the difference is scientifically important, in broad terms the effect of an error on the patient would, we consider, be much the same. In short, the accuracy of the results produced was paramount, because an erroneous result (in either direction) could have a significant effect on the patient in question. In the circumstances, we consider that the Respondent's decision to tighten up its processes after the errors were identified, and not to permit lone working, was a reasonable one in the circumstances.

290. The decision to prevent lone working meant that all staff had to work between 8am and 6pm. That affected both those who wished to start work very early, and those who wished to work later in the day. We do not consider that it would have been reasonable to require other colleagues to work later in the evening (after 6pm) simply to allow the Claimant to work later hours.

291. It follows then that from July 2021, it would have not have been reasonable to adjust the Claimant's working hours beyond the adjustment that had already been made (to work 10am to 6pm). So we conclude that there was no failure to make reasonable adjustments to the Claimant's working hours.

*To allow home working, and the provision of structured work, activities or tasks*

292. Dr Lea acquired a VPN token for the Claimant. We consider that that is evidence that there must have been some work the Claimant could productively do from outside the laboratory and office environment, and that Dr Lea was open to the Claimant doing so where appropriate – otherwise there would simply have been no reason to provide them with the VPN token.

293. Ms Kizilors and Dr Lea, in the meeting on 24 May 2021, agreed that the Claimant could work from home during the MPN rotation (although there was no fixed agreement regarding how much of the Claimant's time could be spent at home).

294. In response to the flexible working request in September 2021, Mr Best's decision was that the Claimant could only work from home in exceptional circumstances. Dr Clark's position in response to the flexible work request appeal was initially that the Respondent could accommodate half a day per week working from home. When the Claimant then asked to reduce their hours, Dr Clark's position shifted to be that no home working would be permitted.

295. We find that the role of Band 5 Genetic Technologist was a heavily laboratory-based role. We find that insofar as other Band 5 Genetic Technologists were permitted to work from home, that permission was given in exceptional or one-off circumstances rather than being a regular part of their working week. We reach that conclusion because:

295.1. The evidence of Dr Lea and Mr Best on the point was clear and consistent.

295.2. The Claimant's evidence regarding other Band 5 staff home working was somewhat vague. Where the Claimant did gave concrete examples, they were of permission being granted in exceptional or unusual circumstances rather than on, for example, a recurring weekly basis.

296. That is, of course, what the Claimant was able to do on occasion during COVID, and what they were permitted to do by Ms Kizilors and Dr Lea at the meeting on 24 May 2021. It is also what Mr Best indicated the Claimant would be able to do in the flexible working request outcome letter.

297. Bearing in mind the totality of the evidence, we find that somewhere in the region of 80% of the Claimant's working time was spent in the laboratory, with the balance spent doing computer-based analysis tasks. That is the towards the upper end of the Claimant's estimate in their evidence, and the lower end of the estimate that Dr Lea gave in his meeting with Ms Shah. It is also broadly consistent with the evidence of Mr Best, and is consistent with what was discussed in the meeting on 24 May 2021.

298. We find, however, that across the course of a week the computer-based analysis work could not always be consolidated into one block. Instead, on a typical day there would be a mixture of tasks to be done in the laboratory and computer-based tasks (although when undertaking MPN work it was easier to divide the work up). Once again, that was the thrust of Mr Best's evidence, and it was consistent with what was discussed in the meeting on 24 May 2021.

299. We also accept Mr Best's evidence that on top of their own tests, Band 5 Genetic Technologists would be required to carry out other work within the laboratory and to help colleagues. That is consistent with the evidence that other colleagues assisted the Claimant with their workload when Ms Hearn was absent.

300. Bearing all of that in mind, we consider that allowing the Claimant to work from home for two days per week would not have been a reasonable adjustment in the circumstances. The Claimant's role was a practical, laboratory-based one. They were required to work as a member of a team. Rearranging the workload to allow the Claimant to work from home for two days per week would have require the Respondent to reallocate the Claimant's practical work to other colleagues, and to give the Claimant

instead work that was in reality part of a higher graded member of staff's role. That would have gone far beyond merely reallocating some work within the cohort of staff at the Claimant's level. In the circumstances, we conclude that that would not be reasonable.

301. We find it would have been reasonable to allow the Claimant to regularly work from home half a day per week while working full time – which was what was offered by Mr Clark.

302. So we conclude that there was no failure to make reasonable adjustments in respect of home working.

303. The reference to structured work, activities or tasks appeared to be drawn from the 20 April 2021 Occupational Health report. The recommendation was that the Claimant be given structured work activities or tasks specifically when working from home. In light of our conclusion regarding working from home, we do not consider that the question of structured work activities or tasks arises. But in any event, in the flexible working outcome letter, the Claimant was offered the Chimerism work on the basis that it would allow for their work to be more structured. So insofar as this was intended to be a separate adjustment, we conclude that the Respondent made the adjustment by offering the Chimerism work (albeit that the Claimant never reached the position of returning to work).

304. It follows then that the complaint of failure to make reasonable adjustments fails and is dismissed.

Approved by:

Employment Judge Leith

Date: 3 October 2025

**Case No: 2306450/2023**

**BETWEEN:**

**MX. UMAIRAH MIAH**

**Claimant**

**-and-**

**SYNNOVIS ANALYTICS LLP**

**Respondent**

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**LIST OF ISSUES**

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**The Complaints**

The claimant is making the following complaints:

1. Failure to make reasonable adjustments.
2. Discrimination arising from disability.
3. Direct race discrimination or alternatively race-related harassment.
4. Direct disability discrimination, or alternatively disability-related harassment, and/or victimisation.

**The Issues**

The issues the Tribunal will decide are set out below.

**Time limits**

1. Given the date the claim form was presented (24 November 2023) and the dates of early conciliation (20 September 2023 & 01 November 2023) any complaint about something that happened before **13 July 2023** may not have been brought in time.

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

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

   2.2. If not, was there conduct extending over a period?

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

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

   3.1.1. Why were the complaints not made to the Tribunal in time?
   3.1.2. In any event, is it just and equitable in all the circumstances to extend time?

**Disability**

**4.** [No longer in dispute]

**Direct Race Discrimination (EqA 2010 s.13)**

**5.** [Withdrawn]

**Harassment Related to Race (EqA 2010 s. 26)**

11. Did the respondent do the following things:

    11.1. Referring to the claimant's drug history on social media, in that

        11.1.1. On 27 January 2022 Steve Best state: *"From [their] social media posts, [they] take recreational drugs […] is unstable, takes recreational drugs, time keeping is awful, makes serious accusations"*?

    11.2. Ms Shah on 2 February 2022 say the following: *"you keep saying [person] of colour and white privilege, I'm white and I'm not privileged, grew up poor. I've got mixed race kids; I don't see colour".*

12. If so, was that unwanted conduct?

13. Did it relate to race?

14. Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

15. If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

16. This claim is in the alternative to the claimant's claim of direct race discrimination.

**Victimisation Related to Race (EqA 2010 s.27)**

17. [Permission not granted]

18. On 1-2 November 2021:

    18.1. Send WhatsApp message including:

        18.1.1. *"a disabled [person] of colour asked for help"?*

    18.2. Submit "Definitions and Triggers" document disclosing:

        18.2.1. Nik, Aytug, Steve and Phil as triggers?

19. [Permission not granted]

**Direct Disability Discrimination (EqA 2010 s.13)**

21. The claimant says they are disabled because of the following conditions:

    21.1. Borderline Personality Disorder (BPD).

    21.2. Autism Spectrum Disorder (ASD).

    21.3. Attention Deficit Hyperactivity Disorder (ADHD).

22. Did the respondent do the following things:

22.1. Ms Shah produced a grievance investigation and outcome that was:

22.1.1. Flawed because of the investigation methodology (she did not interview all relevant witnesses; the claimant was questioned as though they were the wrongdoer).

22.1.2. Flawed in its conclusion that the claimant had not suffered harm.

22.1.3. Used terminology such as that management had tried to "rein in" the claimant.

22.1.4. Deliberately to deny the claimant's experience.

22.1.5. Designed to justify refusing adjustments.

22.1.6. Designed to justify bringing back in someone (Mr Best & Mr Kutar) who was a trigger to the claimant

23. Was that less favourable treatment?

24. The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's. If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether they were treated worse than someone else would have been treated.

25. If so, was it because of disability.

26. Did the respondent's treatment amount to a detriment?

**Harassment Related to Disability (EqA 2010 s.26)**

27. Did the respondent do the following things:

27.1. Ms Shah produced a grievance investigation and outcome that was:

27.1.1. Flawed because of the investigation methodology (the grievance was not raised by the claimant or consented; the claimant was questioned as though they were the wrongdoer).

27.1.2. Flawed in its conclusion that the claimant had not suffered harm.

27.1.3. Used terminology such as that management had tried to "rein in" the claimant.

27.1.4. Deliberately to deny the claimant's experience.

27.1.5. Designed to justify refusing adjustments.

27.1.6. Designed to justify bringing [back] in someone (Mr Best and Kutar) who was a trigger to the claimant.

28. If so, was that unwanted conduct?

29. Did it relate to disability?

30. Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

31. If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect. This claim is in the alternative to the claimant's direct disability discrimination claim.

**Victimisation Related to Disability (EqA 2010 s.27)**

32. Did the claimant do a protected act as follows:

    32.1. Submit a "sickness Triggers" document and WhatsApp message to management on alleging, among other things, failure to make reasonable adjustments on 1-2 November 2021?

33. Did the respondent do the following things:

    33.1. Did Ms Shah produced a grievance investigation and outcome that was:

        33.1.1. Flawed because of the investigation methodology (she did not interview all relevant witnesses; the claimant was questioned as though they were the wrongdoer).

        33.1.2. Flawed in its conclusion that the claimant had not suffered harm.

        33.1.3. Used terminology such as that management had tried to "rein in" the claimant.

        33.1.4. Deliberately to deny the claimant's experience.

        33.1.5. Designed to justify refusing adjustments.

        33.1.6. Designed to justify bringing someone back in (Mr Best & Kutar) who was a trigger to the claimant

34. By doing so, did it subject the claimant to detriment?

35. If so, was it because the claimant did a protected act?

36. Was it because the respondent believed the claimant had done, or might do, a protected act?

**Discrimination Arising from Disability (EqA 2010 s.15)**

37. Did the respondent treat the claimant unfavourably by:

    37.1. On or around 23 September 2023 reframing a return-to-work meeting as a capability meeting?

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

    38.1. The claimant having missed a previous meeting due to their disability?

    38.2. Was the unfavourable treatment because of any of those things?

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

    39.1. [Permission not granted]

40. The Tribunal will decide in particular:

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

    40.2. could something less discriminatory have been done instead;

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

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

**Reasonable Adjustments (EqA 2010 ss.20 & 21)**

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

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

    42.1. a requirement to be punctual/work certain hours.

    42.2. a practice of not allowing non-workplace companions at mediation meetings.

    42.3. a requirement to work in a noisy and over-stimulating office/lab.

43. Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that:

    43.1. Work hours: the claimant's insomnia arising from their disabilities meant that their poor sleep made it difficult to keep to the starting hours;

    43.2. Companions: the claimant felt unsafe; struggled with comprehension/processing delay and cognitive awareness related to disabilities

    43.3. Noise etc: the claimant found the environment uncomfortable and stressful.

44. Did a physical feature, namely the noise and over-stimulating nature of the office/lab, put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that, as a person with ASD they found it uncomfortable and stressful?

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

46. What steps could have been taken to avoid the disadvantage?

    46.1. The claimant suggests:

        46.1.1. Work hours: to adjust working hours. To allow home working;

46.1.2. Companions: to allow a non-workplace companion;

46.1.3. Noise etc: to allow home-working, and the provision of structured work, activities or tasks.

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

48. Did the respondent fail to take those steps?

**Remedy for Discrimination or Victimisation**

49. Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

50. What financial losses has the discrimination caused the claimant?

51. Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

52. If not, for what period of loss should the claimant be compensated?

53. What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

54. Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?

55. Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?

56. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

57. Did the respondent or the claimant unreasonably fail to comply with it by [specify breach]?

58. If so is it just and equitable to increase or decrease any award payable

59. to the claimant? By what proportion, up to 25%?

60. Should interest be awarded? How much?