Case No: 6002439/2024

EMPLOYMENT TRIBUNALS

Claimant: Ms Elisha Neavin

Respondent: London Borough of Southwark

Heard at: London South

On: 1, 2, 3, 4 December 2025 (in person) and 12 December (in chambers)

Before: Employment Judge Yardley
Ms C Edwards
Ms N Christofi

Representation

Claimant: In person, assisted by Ms Pauline Bonner

Respondent: Ms S Ahmad, Counsel

JUDGMENT

The unanimous judgment of the Tribunal is as follows:

1. The complaints which rely upon alleged settlement discussions dated 2 October 2023 and 25 March 2024 are struck out under Employment Tribunal Rule 38(1)(a) because they have no reasonable prospect of success.

2. The complaints of direct disability discrimination are not well-founded and are dismissed.

3. The complaints of unfavourable treatment because of something arising in consequence of disability are not well-founded and are dismissed.

4. The complaints of harassment related to disability are not well-founded and are dismissed.

5. The complaints of victimisation are not well-founded and are dismissed.

6. The complaints of failure to make reasonable adjustments for disability are not well-founded and are dismissed.

REASONS

Introduction

1. The Claimant was employed by the Respondent, a local authority, as a Practice Coordinator from 3 September 2010.

2. The Claimant has presented three claims against the Respondent.

    2.1. The first (**Case No. 6002439/2024**), concerning matters involving disability discrimination, discrimination arising from disability, harassment and victimisation was presented on 16 May 2024 following ACAS early conciliation between 30 March and 11 May 2024. (**First Claim**).

    2.2. The second (**Case No. 6004978/2025**), concerns alleged non-payment of wages between 24 October 2024 and 25 March 2025. This claim was originally joined with the First Claim but was later listed separately for hearing (**Second Claim**).

    2.3. The third claim (**Case No. 6014361/2025**), relating to unfair dismissal, following termination of the Claimant's employment, was struck out at a preliminary hearing on 10 June 2025 (**Third Claim**).

3. This judgment concerns only the First Claim. It arises from the Respondent's decision to place the Claimant on medical suspension in October 2023 following an Occupational Health assessment, and from the way in which her employment, grievance, capability and support processes were managed while she was absent from work.

4. The Respondent denies that its actions were discriminatory and contends that they were taken in good faith in reliance on medical advice, safeguarding considerations and its assessment of the Claimant's engagement and conduct during the relevant period.

<u>Preliminary Hearings</u>

5. This claim was the subject of two preliminary hearings:

    5.1. At a preliminary hearing on 10 June 2025, before EJ Fredericks-Bowyer, the Claimant's Third Claim was struck out and further directions were made in relation to the Second Claim.

    5.2. At a preliminary hearing on 3 September 2025, before EJ Hart, it was agreed to list the Second Claim for a final hearing before EJ Fredericks-Bowyer who had dealt with the Third Claim, as both claims shared common facts. It was also agreed that EJ Fredericks-Bowyer would hear the Respondent's costs application at the same time.

6. Following the hearing on 3 September 2025, EJ Hart produced a draft list of issues in respect of the First Claim to be finalised prior to this final hearing. This is addressed in further in paragraphs 14 and 15 below.

Final Hearing

7. The Tribunal had before it:

   7.1. a core bundle of 947 pages (references to **"[X]"**); and

   7.2. a medical bundle of 49 pages (references to **"[M/X]"**).

8. The bundles exceeded the page limit of 500 pages set at the case management hearing. Several documents were not indexed and some were irrelevant/duplicated. The Tribunal therefore directed that it would confine its reading to the core Tribunal documents, witness statements, the chronology in the Respondent's Opening Note, and documents identified in the 'Table of Relevant Pages', considering any other material only if strictly necessary or if referred to.

9. The Tribunal had before it witness statements from the Claimant and from Pauline Bonner in support of the Claimant. Ms Bonner both gave evidence and supported the Claimant in the presentation of her case. It was noted that Ms Bonner is the Claimant's mother and a former employee of the Respondent. The Tribunal has taken this dual role into account when assessing the credibility and weight of the evidence of both the Claimant and Ms Bonner, as addressed at paragraph 40.2 below

10. The Tribunal also had the benefit of witnesses' statements on behalf of the Respondent from:

    10.1. Alasdair Smith, Director of Children's Services;

    10.2. Claire Hope, the Claimant's Line Manager;

    10.3. Angel Gomez, Senior HR Business Partner; and

    10.4. Helen Woolgar, Deputy Director of Children's Social Care.

11. Ms Woolgar did not attend the hearing due to a family bereavement and therefore did not give live evidence in this matter. In those circumstances, the Tribunal has treated her written evidence with appropriate caution, given that it was not tested in cross-examination.

12. References to witness statements are "[**AB/WS/X**]", where AB are the initials of the witness, and X is the paragraph number to which is referred.

13. The Tribunal was also provided with an Opening Note from the Respondent's representative which had been served on the Claimant prior to the hearing.

List of Issues

14. EJ Hart had prepared a draft List of Issues following discussions with the parties at the case management hearing on 3 September 2025.

15. Following determination of the preliminary matters set out under the paragraph headed "Preliminary Issues" below, the List of Issues was revised and a final version agreed by the parties. The final agreed version

is appended to this Judgment at the Appendix and both parties confirmed that it accurately reflected the final list of issues to be determined at the hearing.

Timetable

16. Unfortunately, there was a delay in the commencement of the evidence due to the need to devote the majority of Day 1 to an outstanding strike out application and other applications raised by the parties. The progress of the hearing was also hindered by the Respondent's failure to bring the witness bundles to the hearing as previously directed. The Tribunal also needed reading time. As a result, the Claimant's evidence did not begin until Day 2.

17. On Day 3, the Claimant's evidence was completed and we also heard from the three witnesses for the Respondent.

18. On Day 4, the parties were permitted to provide written submissions and make further oral submissions. The Tribunal also spent some time making further directions in relation to the Second Claim that was due to be heard on 18 December 2025. Those directions are dealt with in a separate order.

19. The Tribunal required a further day of deliberations, which took place on 12 December 2025 in chambers.

Preliminary Issues

20. At the start of the hearing, the Tribunal addressed the outstanding matters from the preliminary hearing on 3 September 2025 and finalised the List of Issues.

<u>Disability Issue</u>

21. The Respondent accepted that the Claimant was disabled at the relevant time by reason of carpal tunnel syndrome, dyslexia, PTSD, anxiety and depression, but not in respect of essential tremor or any back condition. The Claimant confirmed she no longer wished to rely on those conditions. The Tribunal therefore removed them from the List of Issues.

<u>Application for Strike Out</u>

22. At the preliminary hearing on 3 September 2025, the Respondent's application to strike out certain complaints was partially granted. The application in so far as it related to references to alleged settlement discussions dated 2 October 2023 and 25 March 2024 was adjourned for written submissions. Those references appeared at issues 4.1.4, 4.1.12, 6.3.3 and 6.3.10 of EJ Hart's draft List of Issues.

23. The Respondent submitted that the communications relied upon were protected pre-termination negotiations within the scope of section 111A of the Employment Rights Act 1996, conducted in good faith and consistently with the ACAS Code. It contended that no facts had been pleaded that were capable of amounting to improper behaviour and that the statutory protection therefore applied.

24. The Claimant opposed the application on the basis that the discussions took place when the Respondent knew of her mental impairment and vulnerability, that she was not in a position to engage meaningfully, that she felt pressured to withdraw her claim and that insufficient time was allowed for consideration. She asserted that these matters amounted to discrimination arising from disability and victimisation.

25. Under Rule 38 of the Employment Tribunal Rules of Procedure 2024, the Tribunal may strike out all or part of a claim where it has no reasonable prospect of success. The power is to be exercised sparingly and only where it is clear, taking the Claimant's case at its highest, that the claim cannot succeed.

26. Taking the Claimant's case at its highest, the Tribunal was not satisfied that the pleaded facts were capable in law of amounting to unfavourable treatment arising from disability or a detriment by reason of a protected act. The making of settlement proposals, even if unsolicited, does not of itself constitute discrimination or victimisation. We found no pleaded or evidential basis capable of amounting to improper behaviour within the meaning of section 111A or the ACAS Code and the Respondent's conduct did not undermine the statutory purpose of protected settlement discussions.

27. The Tribunal therefore concluded that these allegations disclosed no reasonable prospect of success and they were struck out under Rule 38(1)(a).

<u>Unlawful deduction of wages claim</u>

28. The Respondent invited the Tribunal to determine the Second Claim relating to the unlawful deduction of wages, alongside the present claim for efficiency. The Tribunal refused. EJ Hart had previously directed that the wages claim be heard separately and the Claimant indicated that she was not prepared to proceed and the witness she wished to call was not available. Revisiting that order would have caused procedural unfairness.

<u>Additional Disclosure</u>

29. Both parties made applications for additional disclosure. In determining the applications, the Tribunal took into account the fact that the bundles already exceeded the agreed limits and were poorly prepared.

Fit Note dated 26 October 2023

30. The Respondent's unopposed application for the Claimant's fit note dated 26 October 2023 was granted and added at page 948.

Video of Teams Meeting on 25 October 2023

31. The Claimant's unopposed application to admit a video and transcript of the Teams meeting on 25 October 2023 was agreed. The transcript (18 pages) was added at pages 949–966. Due to the length of the video – around 90 minutes - the video was viewed by the Tribunal in chambers.

YouTube Videos re British Gas

32. The Respondent applied to admit two short publicly available videos featuring the Claimant in connection with a British Gas apprenticeship programme. The Respondent submitted that the videos were relevant because they showed the Claimant participating in the programme during the period when she was medically suspended by the Respondent.

33. While the Claimant opposed admission on grounds of timing and relevance, the Tribunal admitted the videos. It considered that the material was probative of the issues in dispute, including the Claimant's credibility, her engagement during suspension and the Respondent's case on motive and causation. The videos were short, publicly available and their admission did not cause prejudice to the Claimant. Viewing them outside court time ensured that hearing time was not unduly impacted.

Further application for disclosure

34. A late application by the Respondent for disclosure of another document bundle running to 51 pages was refused. Having regard to the excessive size of the existing bundles, the late stage at which the application was made and the absence of any satisfactory explanation as to why the material could not have been disclosed earlier, the Tribunal refused the application. The Tribunal further directed that no further documentary evidence would be admitted save in exceptional circumstances.

Disputed Version of October 2023 Meeting Notes

35. The Claimant asserted that the version of the meeting notes from October 2023 contained in the main bundle **[762 -768]** was inaccurate. She contended that the Respondent had subsequently amended the document and produced a later version marked to show amendments. That alternative version appeared in the bundle at page **[M/19 - 26]**. The Tribunal determined that any dispute as to accuracy or amendment was a matter for submissions.

Reasonable Adjustments

36. At the commencement of the hearing, the Tribunal discussed with the Claimant what reasonable adjustments were required, having regard to the fact that she was a litigant in person and in light of the disabilities identified in her claim. The Claimant requested additional time to process information, that questions be phrased simply and that all parties speak slowly and clearly. The Tribunal confirmed that regular breaks would be provided and that the Claimant could request further breaks as required. The Claimant was also permitted to use a fidget toy to assist in managing her essential tremor.

Assessment of the Evidence

37. The Tribunal carefully considered all the evidence, both written and oral, the manner in which the witnesses gave their evidence, and the contemporaneous documentation in reaching its findings

38. As a general observation, the hearing was at times marked by tension between the parties. For example, the Tribunal was informed of a verbal altercation outside the hearing room and observed an incident in which Ms Bonner sought to change seats following an allegation that she was communicating with the Claimant during the Claimant's cross examination, which she disputed. On a number of occasions questioning became confrontational, at times taking the form of statements and witnesses engaging by asking questions rather than answering those put to them.

39. Difficulties with documentation also persisted throughout the hearing and new documents were often raised in a piecemeal way. These issues added to the overall challenge of managing the evidence but did not prevent the Tribunal from making findings on the core issues in dispute.

40. In relation to the individuals who gave evidence:

    40.1. The Claimant's disabilities did not impair her ability to give coherent evidence or the Tribunal's understanding of it. However, she frequently gave indirect or qualified answers to straightforward questions, requiring repetition. For example, when asked whether she continued to work for British Gas, she replied, "I think so," despite the question requiring a clear answer. These factors affected the weight attached to aspects of her oral evidence.

    40.2. Ms Bonner maintained that she was able to separate her role as a trade union representative from her role as the Claimant's mother. The Tribunal was not persuaded that such separation was consistently maintained and noted that at times those roles overlapped during her evidence. This was taken into account when assessing the weight to be attached to her evidence.

    40.3. The Tribunal heard evidence from Mr Smith, Ms Hope and Ms Gomez on behalf of the Respondent. Mr Smith gave his evidence in a calm and measured manner and answered questions directly. Ms Hope was at times verbose but sought to assist the Tribunal by giving a detailed account of events. Ms Gomez's evidence was likewise careful and consistent. Taken together, the Respondent's witnesses were broadly consistent with one another and with the contemporaneous documentation and the Tribunal found their evidence to be credible.

    40.4. We also had regard to the written statement of Ms Woolgar, who did not attend to give live evidence due to a family bereavement. The Tribunal placed limited weight on the statement on the basis that Ms Woolgar was not available for cross-examination.

41. The Tribunal viewed the two short YouTube videos in which the Claimant appeared in her role as an apprentice at British Gas, in which she stated that she had worked as a social worker for a local authority. The Tribunal also reviewed the recording of the Teams meeting of 25 October 2023 together with the transcript, which the Tribunal found to be consistent with the video. The Tribunal took the content of both the YouTube videos and

the meeting recording into account insofar as they were relevant to the matters in dispute.

Closing Submissions

42. The Tribunal heard closing submissions from both parties, which are summarised below.

Respondent

43. The Respondent submitted that the central issue in this case was not disability but dishonesty. It contended that the Claimant, while receiving full pay, undertook full-time employment elsewhere, thereby frustrating the Respondent's genuine attempts to facilitate the Claimant's return to work and implement reasonable adjustments. The Respondent argued that management acted transparently and creatively, going beyond policy requirements and ACAS guidance, yet the Claimant deliberately disengaged, declined meetings and failed to provide a fit note when requested.

44. The Respondent maintained that medical suspension was a neutral act taken to protect the Claimant's interests after she refused further engagement. It was said that the Claimant exploited an "off-policy" process for financial gain and litigation and that her conduct amounted to manipulation and obfuscation rather than disability-related non-engagement. Victimisation and discrimination claims were described as opportunistic, with no causal link between protected acts and alleged detriment.

45. The Respondent invited the Tribunal to make clear findings that its actions were fair, reasonable, and consistent with the spirit of equality obligations. It submitted that the Claimant's credibility was undermined by evasive answers and implausible denials regarding her second job. It was further submitted that the Respondent's approach should be commended as exceeding legal requirements and that the Claimant's conduct was dishonest and devious. These submissions were not all accepted by the Tribunal.

Claimant

46. The Claimant contended that the Respondent failed to apply its sickness absence policy and instead adopted an inconsistent "creative approach" that resulted in detriment and discrimination. Responsibility for risk and disability management was said to have been abdicated by senior management, with decisions discharged to lower levels without proper oversight. The Claimant argued that suspension was imposed prematurely, without appeal, stripping her of routine and identity and exacerbating her disability-related symptoms.

47. It was submitted that the Respondent failed to review the suspension decision or explore mediation. The Claimant maintained that taking another job was not fraudulent but a coping mechanism, consistent with her past practice and unrelated to financial gain. Failures identified

included lack of EAP access, disregard for her individual needs and prioritisation of service requirements over equality obligations, despite the Respondent's assertion that it is a disability-confident employer.

48. The Claimant asserted her credibility by emphasising her transparency around her outside employment and motivation and argued that the Respondent's actions reflected a punitive approach rather than support. She contended that the Respondent's handling of the matter caused significant detriment and failed to uphold the principles of fairness and consistency.

Findings of Fact

49. The Tribunal sets out its findings of fact based on the documentary evidence in the bundle, the witness statements and the oral testimony heard at the hearing. Where facts were disputed, the Tribunal has considered each party's position, the evidence relied upon and reached conclusions on the balance of probabilities.

50. The Tribunal notes that the Respondent invited it to make twelve specific findings of fact. Findings have been made where appropriate, but only insofar as necessary for the proper determination of the issues in this case.

Agreed Background Facts

51. The Claimant commenced employment with the London Borough of Southwark on 3 September 2010 as a Practice Coordinator within Children's Services. The Claimant's employment terminated on 25 March 2025 when the Claimant was summarily dismissed for gross misconduct.

52. The Claimant has long-term health conditions including PTSD, anxiety, depression, dyslexia and carpal tunnel syndrome. The Respondent concedes these conditions amount to disabilities under the Equality Act 2010 (**EqA**).

53. At the material time, the Claimant carried out her job description [**151 – 155**] entirely from home.

54. The Claimant admitted that she was engaged in secondary employment with British Gas from or around 11 December 2023.

Contract of Employment

55. At the material time, the Claimant was employed by the Respondent under a contract of employment which governed, among other things, her obligations in relation to outside employment and working time.

56. The parties disagreed as to which version of that contract applied. The Respondent relied on the version dated 14 September 2023 [**156 - 171**] which it said reflected changes in the Claimant's working hours. The Claimant contended that the operative contract is the version dated 3 September 2015 [**638 - 651**] and denied having agreed to any contractual variation.

57. The Tribunal did not need to determine which version was correct, as the provisions relied on by the parties as relevant to the claim were materially identical. In particular, both versions required the Claimant to notify the Respondent of outside employment to ensure compliance with the Working Time Regulations.

58. In both contracts, the relevant clause reads as follows:

> *"**Activities Outside Normal Working Hours***
>
> *Any outside employment, either paid or unpaid, must not in the view of this Council conflict with or act detrimentally to the Authority's interest or in any weaken public confidence in the conduct of this Council's business.*
>
> *It is a requirement of your employment that you notify your manager of any employment with another employer so that your average weekly working hours may be monitored in compliance with the Working Time Regulations 1998.*
>
> *Council procedure on outside activities can be found in the Code of Conduct which is held by your departmental HR Section or via the Council's intranet. You will be provided with the Code of Conduct on your first day of service."*

Relevant Policies

59. At the material time, the Company also had the following policies in place:

59.1. Sickness Absence Management Procedure [**404 - 451**];

59.2. Code of Conduct for Employees [**452 – 459**]; and

59.3. Disciplinary Policy [**460 – 497**].

60. The introduction to the Sickness Absence Policy includes the following statements:

> *"The Council is committed to providing high quality services by:*
>
> *...*
>
> - *Actively managing both short- and long-term sickness absence; and*
> - *Supporting those who are unfortunate enough to be absent through illness by making available welfare and occupational health services."*
>
> *...*
>
> *As employees, we need:*
>
> *...*
>
> - *To know our employer has a fair, flexible and where appropriate, sympathetic policy and procedure which address the real pressures and demands on our lives;*

…

As managers, we need:

…

- *To have the facility to take a flexible approach to implement creative and imaginative responses to different types of absence."*

Stage 1 Complaint – 5 April 2023 and June 2023

61. On 5 April 2023, the Claimant submitted a Stage 1 complaint. The Claimant then expanded this complaint in June 2023 which incorporated the existing complaint and further complaints [**559 – 562**].

62. The complaints by the Claimant included an allegation of victimisation following threats by HR to suspend the Claimant's pay and withholding an underpayment.

63. The complaints were acknowledged by the Respondent and were investigated. This was evidenced by:

    63.1. A note of the investigation meeting that took place on 7 September 2023 **[758 – 760]**, in which Mr Neil Gordon-Orr wrote:

    "*My understanding is that a Stage 1 Complaint was initially submitted by Elisha Neavin on 5 April 2023 regarding contract and payment issues, with a further written complaint raised in June 2023 alleging victimisation*."

    63.2. An email dated 20 October 2023 to the Claimant [**748 - 749]**, Ms Helen Woolgar communicating the outcome of the investigation to the Claimant.

First Occupational Health Assessment – 26 September 2023

64. On 26 September 2023, the Claimant attended an occupational health telephone assessment with Joanna Cahill.

65. The occupational health report [**264-268**] produced following the assessment, recommended that the Claimant was not fit for work and required a period of therapeutic intervention.

66. Its findings in the section headed 'Summary and Advice' included the following:

    *"**3.1 Capability***

    Overall, Ms Neavin [is] unfit for work at present. Given the severity of her anxiety and depression during today's phone call, and her commencing EMDR therapy, it is likely that Ms Neavin will experience worsening of symptoms as she progresses through her therapy. Severe anxiety and depression do affect cognition, resulting in impaired memory, attention, concentration, brain processing speed and decision making. I have

advised Ms Neavin to visit her GP to discuss today's assessment and obtain a sick note.

I have recommended that she will likely remain unfit for her full substantive role for the duration of her EMDR therapy and possibly some recovery time following this. Given the severity of her anxiety and depression, it is not likely that Ms Neavin will be able to successfully engage in EMDR therapy whilst working, given the sensitive nature of her position and her exposure to triggering information. There is also an increased risk in relation to safely handling confidential information when experiencing severely reduced psychological well-being. It is anticipated that following this therapy, Ms Neavin will experience improved overall psychological well-being and be enabled to return to her full substantive role."

...

3.2 Outlook

Ms Neavin is receiving specialist therapeutic input for her complex PTSD, and it is hoped that this will help her to experience improved overall psychological well-being. It is anticipated that following the completion of her intensive trauma therapy, Ms Neavin then will be fit to return to work.

...

3.4 Consent

I have discussed the content of this report with Miss Neavin who will have had prior sight of this report in advance of management, therefore full consent has been obtained for its release."

Teams Meeting on 25 October 2023

67. The Claimant was invited to attend a meeting on 25 October 2023 to discuss the occupational health report and next steps. The meeting took place via Teams.

68. The meeting was attended by the Claimant, Pauline Bonner, Joyce Patton, the Claimant's line manager at the time, Angel Gomez, and Oudrey Vincent, HR Generalist and notetaker. The meeting lasted approximately 90 minutes.

69. The Tribunal had the benefit of being able to review a video recording and transcript of the meeting. The Tribunal was therefore able to objectively consider the mood of the meeting.

70. Ms Patton described the report as "very comprehensive" and said she did not know many people who "write such thorough reports". She also described the occupational health recommendations as "the strongest she had seen of that nature".

71. Throughout the meeting Ms Patton and Ms Gomez repeatedly expressed concern about the impact of continued working on the Claimant's health

and emphasised their duty of care. The Claimant despite accepting she was unfit for work, said that she was going to continue working as she did not trust the sickness absence process and was concerned about further pay errors based on past experience.

72. It is evident from the meeting transcript that both Ms Patton and Ms Gomez referred to "suspension" as a possible way forward. However, no final decision to suspend the Claimant was taken at the meeting and it concluded on the basis that the Respondent would give further consideration to the occupational health advice and the associated safeguarding issues.

73. The Tribunal finds that the meeting was emotionally charged and, at times, tense. The Claimant was visibly distressed at times and her presentation appeared consistent with the observations recorded in the occupational health report. While there was clear disagreement between the parties as to whether remaining at work was safe or appropriate, the discussion focused on wellbeing, medical advice and safeguarding considerations.

Exchange of private messages during the Teams Meeting

74. During the meeting, Ms Gomez and Ms Patton exchanged a number of private messages via the Teams chat function. These were discovered by Ms Bonner when the meeting recording was reviewed.

75. A screenshot taken by Ms Bonner demonstrated that the following messages had been shared:

AG: You have been trying she has made it difficult

JP: Yes I will word it differently. Just angry about only one side being played.

AG: OK put your point in.

Thank you and you are doing EXCELLENT

Abby-Gail owes you a coffee

What work she does

Talk about she has not attended meetings with you

In August you had the meeting and she refused to attend

Can you say that when you as for a meeting she has ask to have union attend

And have not attend the meeting.

76. The Tribunal's findings on the nature and context of these messages is discussed in the Conclusions section below.

Fit Note – 26 October 2023

77. On 26 October 2023, the Claimant received a fit note from Dr Kandasamy. It stated that The Claimant "*may be fit for work*" and in the comments section, the doctor added that:

"- patient may require some time off on day of her EMDR sessions (adjusted hours/ flexibility)

- stress risk assessment may be beneficial

- follow occupational health assessment recommendation"

78. The Claimant accepted that this fit note was not shared with the Respondent until around 12 months later (in September 2024), notwithstanding earlier requests by the Respondent to provide a copy.

Medical Suspension - 30 October 2023

79. On 30 October 2023, the Claimant was medically suspended by Mr Smith, as set out in the letter dated 30 October 2023 [**188-189**]. In reaching that decision, Mr Smith received information and advice from Ms Gomez, Mr Plant and Ms Zakowicz, but the ultimate decision was made by him. At that time, the Claimant had not provided the Respondent with the GP fit note dated 26 October 2023, despite having been advised to do so.

80. The Tribunal finds that Mr Smith genuinely believed, based on the occupational health report and the 25 October 2023 meeting, that continued working posed risks to the Claimant's wellbeing and to the safe handling of sensitive service-user information, and that medical suspension was required to remove workplace pressures while she undertook therapy. Even though Mr Smith did not have the benefit of the fit note when making this decision, it expressly referred to and endorsed the Occupational Health recommendations, and therefore did not contradict the basis on which the Respondent was acting.

81. The Tribunal is also satisfied that the Respondent relied on the flexibility provisions within the Sickness Absence Policy when deciding to place the Claimant on medical suspension. Mr Smith accepted that the use of medical suspension was an exceptional step, not expressly provided for within its policies and had not previously been used in relation to any other employee. He also accepted that he had used a checklist derived from the Disciplinary Policy documentation when forming his view to suspend the Claimant.

82. The letter suspending the Claimant stated as follows:

> *"**Length of suspension***
>
> *The period of suspension is likely to last until you complete your EMDR therapy and follow-up OH assessment is conducted declaring you fit for work. This will be kept under review. I will inform you if there are any changes to this.*
>
> ***Your obligations during your suspension***

You are required to attend weekly well-being checks with your line manager who will be accompanied by an HR colleague. You can be supported by your TU representative or a work colleague.

These meetings will be every Friday between 10 am 11:00 am. You will be required to turn your work mobile on to accept the call from your manager but you should not engage in any other work-related activities. Should you wish to contact your line manager on any other occasion you can use your work equipment. If you do so you are not to engage in any other work-related activities.

Unless you have my prior written consent, please do not at this stage, access the workplace, or contact any of our service users, suppliers, or your work colleagues on work-related matters.

If you have any questions about your suspension or the process to be followed, please let your line manager or Angel Gomez, HR business partner know."

Change of Line Manager and Notification

83. After being placed on medical suspension, Ms Hope was allocated as the Claimant's line manager because there had been a breakdown in the relationship between the Claimant and Ms Patton. The Claimant was notified of this change by letter on 13 November 2023 [**400 – 401**].

84. Attempts to deliver the letter advising the Claimant of the change were unsuccessful [**300**] because the Claimant did not accept or open postal correspondence and letters were returned to sender or not accepted.

Stage 1 Grievance – November 2023

85. The Claimant contended that she submitted a Stage 1 complaint on 27 November 2023. The Tribunal has not seen a complaint document dated exactly 27 November 2023 in the bundle and the Claimant has not produced it, however, there is an email from Ms Bonner to Mr Stephen Parker dated 24 November 2023 which contains a complaint from the Claimant **[563]**.

86. Parts of the document are illegible in the bundle; however, the legible portions are sufficient for the Tribunal to make findings as to its central allegations and their characterisation.

87. In the email of 24 November 2023, the Claimant set out a number of complaints arising from the meeting on 25 October 2023. The Claimant alleged that she was pressured to "falsify" sickness and told that, if she refused, she would be medically suspended, notwithstanding her GP assessment that she was fit to work.

88. The Claimant further alleged that she had been "victimised", that her medical suspension was without a policy basis, that she had been denied a right of appeal and not consulted about the change in line manager.

89. The Claimant said that she has been harassed due to her disabilities and that she had been treated less favourably than other employees with disabilities. She linked these matters to the occupational health report and the decision to medically suspend her and complained that management had failed to carry out a risk assessment while purporting to act under a duty of care.

90. Read fairly and in context, the Tribunal finds that the email contained express allegations of victimisation, harassment related to disability, disability discrimination and failure to make reasonable adjustments.

Grievance Hearing – 19 December 2023

91. The Claimant was invited to attend a Stage 2 hearing on 19 December 2023. The hearing did not proceed because the Claimant remained on medical suspension and did not confirm her availability to attend. It was not rescheduled thereafter.

IT Access and Payslips

92. On 12 January 2024, Dragon software was installed on the Claimant's laptop [**149**].

93. Following her medical suspension, the Claimant requested access to her payslips.

94. On 26 January 2024, Ms Hope informed the Claimant that she would ask HR to arrange access to the IT system to facilitate this [**208**].

95. On 16 February 2024, Ms Hope telephoned the Claimant and left a message stating that the Claimant should now be able to access the Employee Self-Service (ESS) system and that, if not, she should provide a screenshot [**210**].

96. The Claimant replied that she still could not log in and that a ticket would need to be raised via Hornbill to obtain a new password.

97. Ms Hope responded that payroll had confirmed the Claimant's account was not locked but that she would reconfirm and advised the Claimant to follow a link to reset her password.

98. In order to resolve the access issue, Ms Hope requested that the Claimant:

    98.1. provide a screenshot of the error message; and/or

    98.2. follow the password reset process [**211 – 212**].

99. The Claimant did not provide a screenshot of the access issue.

100. The Respondent's IT department confirmed that the Claimant's account remained active throughout her medical suspension and was not blocked.

101. At the Claimant's request, copies of payslips were sent to her union representative, Ms Bonner, on 23 February 2024 [**213**].

102. The Claimant continued to experience difficulty accessing the Respondent's IT systems on 16 February 2024. Despite being asked to provide a screenshot or to use the password reset process [**210–212**], she chose not to do so. The Tribunal finds that this refusal to engage reflected a distrust of the Respondent's processes rather than an inability to engage caused by her disabilities.

Medical Suspension Review Meeting - March 2024

103. On Monday, 11 March 2024, Ms Hope wrote to the Claimant inviting her to attend a review meeting via Teams on Friday 22 March 2024 at 12pm regarding her medical suspension [**273 - 274**]. The stated purpose of the meeting was to:

103.1. review the Occupational Health report dated 26 September 2023;

103.2. discuss the Claimant's wellbeing and plans for a potential return to work;

103.3. evaluate the support provided by the Respondent during the suspension period;

103.4. consider the Claimant's request for a change of line manager; and

103.5. assess past and future communication arrangements between the Claimant and the Respondent.

104. The letter further stated as follows:

> "*Kindly confirm your attendance by 15th of March 24 and notify us of any specific accommodations you may require for the meeting.*
>
> *You are advised that should you fail to attend the meeting and no satisfactory explanation for your absence is forthcoming from yourself or your representative then the meeting may proceed in your absence and you will be advised on the outcome from the meeting in writing."*

105. On the same day, Ms Hope sent a text message to the Claimant advising that she had sent a letter inviting the Claimant to a review and asked if she would like this sent to her email or union representative. Ms Hope attempted to send the letter to the Claimant four times by text but these were undelivered [**313**].

106. On Tuesday, 12 March 2024, Ms Hope attempted to send the letter again by text and also sent a copy by recorded delivery [**313 - 315**].

107. On 13 March 2024, Ms Bonner emailed Ms Hope [**316 – 318**]. Her email stated as follows:

> "*Elisha Neavin has informed me as her trade union representative that you have sent a letter by text to attend a formal medical suspension review meeting on Friday 22nd of March 2024 at 12:00*

PM, by Microsoft Teams.I have been informed that two texts were sent on a Monday and Tuesday this week outside of the prescribed time set out in the letter you have made reference to. I know this is a regular occurrence. I'll assume with the heavy contact this week that you will be reasonable enough not to contact on Friday, given that Alicia remains in therapy this is likely to set her back."

108. In the same email, Ms Bonner raised 15 detailed questions challenging the governance of the medical suspension process, including the absence of a clear policy, authority for the review, consent for sharing the Occupational Health report, and compliance with confidentiality and GDPR obligations

109. Ms Hope and Ms Bonner exchanged further emails between, 13 and 17 March 2024 [**318–337**] . The Tribunal finds that these exchanges demonstrate a significant lack of agreement on governance and process, with the Respondent maintaining that the review was a supportive measure and Ms Bonner asserting that it was procedurally flawed and discriminatory.

110. On 20 March 2024, Ms Hope sent a further text to the Claimant to clarify her attendance at the meeting.

111. On 22 March 2024, the parties exchanged the following text messages:

EN – 09.18	*Hi Claire. Sadly I remain unheard by management and HR. Will you please allow me to engage in therapy without being constantly harassed bombarded. Alisdair's letter needs to be referred to. His letter gives clear direction to all parties involved including my line manager in regards to the times I should be contacted. This has been persistently ignored. Should you insist I intend the meeting during prayer time and the holy month of Ramadan whilst in therapy (which I'm sure you was made aware that I am a practising Muslim during your detailed handover)what about this request took that into consideration. Now you have proof I remain in therapy as I have been telling you each week please take this into consideration. Are you suggesting I don't attend therapy as your letter has threatened that should I not attend it will proceed and leave me still unheard. You are fully aware I have no access to my emails or teams. This week I am not great. Remain in therapy and still have PTSD*
EN – 09.22	*Screen shot* *New appointment time* *Dear Elisha* *I hope by the time you read this you had something to eat and are feeling at least a little better. Please come to see me on Friday 22nd of March (this Friday) at 13.00 I look forward to speaking with you then.* *Dr (names edited out)*

CH - 09:50	*Hello Alicia and thank you for contacting me. I have seen you have an appointment at 1pm today. Can you confirm if you are attending our meeting at 12pm. This is a review meeting to discuss your well-being and the current medical suspension arrangements. As a suspension is being ongoing for five months we will need to review progress today*
EN – 11:12	*Kindly confirm if you expect me to still attend the meeting clear so I can inform my therapist.*
CH – 11.42	*Hello Elisha. I notified you of this meeting a few weeks ago and so expect you to attend unless you say you are not going to.*

112. The review meeting went ahead at 2pm on Friday, 22 March 2024. Ms Hope and Stewart Aagaard were in attendance. The Claimant did not attend.

113. On 26 March 2024, Ms Hope wrote to the Claimant following the scheduled medical suspension review [**275 – 276**]. It stated that:

113.1. based on the existing OH report, the Claimant remained unfit for work and that the medical suspension would continue;

113.2. that the recommended reasonable adjustments would be implemented on the Claimant's return to work, including a DSE assessment and installation of the Read and Write Gold software (described as "talk, touch, drag" software) with associated training;

113.3. reiterated the conditions of suspension, including weekly wellbeing check-ins and restrictions on workplace access; and

113.4. advised that failure to engage could lead to formal capability proceedings; and

113.5. invited the Claimant to contact the Respondent to discuss any further support needs or adjustments.

114. Against that background, the Tribunal finds that, although the Claimant was experiencing significant mental distress, her repeated refusal to engage with meetings, Occupational Health referrals and management correspondence reflected a conscious distrust of the Respondent's processes rather than an inability to engage caused by her disabilities

<u>Adjourned Capability Meeting</u>

115. On 11 April 2024, Ms Hope notified the Claimant of the Respondent's intention to proceed with a formal capability hearing under the sickness absence policy [**277 – 278**].

116. On 12 April 2024, a capability notice was issued to the Claimant [**343 – 345**].

117. The first hearing was scheduled for 6 June 2024 but did not go ahead as the Claimant requested an adjournment to allow more time to read the papers due to her dyslexia [**349 – 350**].

118. The panel also felt it would be beneficial to be in receipt of a recent OH report in order to consider the Claimant's capability to work and an adjournment would provide time for the OH report to be completed [**286**]

119. The hearing was rescheduled for 5 September 2024, then moved to 12 September 2024 at the Claimant's request.

Second Occupational Health Assessment – 28 June 2024

120. In the interim, a further occupational health report was produced dated 28 June 2024 advising that the Claimant was now fit for work. A number of reasonable adjustments were recommended to be considered prior to the Claimant's return to work.

Capability Hearing - 12 September 2024

121. The capability hearing took place in or around 12 September 2024 via Teams.

122. During the capability hearing, Ms Hope asked the Claimant directly why she had not produced her fit to work certificate from the doctor in October 2023 and the Claimant replied that it was private and she was under no obligation to produce the certificate.

123. The outcome of the meeting was communicated to the Claimant in writing on 17 September 2024 and confirmed that the Claimant was fit for work [**290 -291**]. The panel made the following recommendations:

    123.1. That the medical suspension should be lifted;

    123.2. Management should take note of the recommendations in the 28 June 2024 OH report and take action on adjustments that are deemed reasonable;

    123.3. That the Claimant should engage with management and return to work on the date to be set by them and engage with reasonable adjustments.

124. On 20 September 2024, Mr Smith wrote to the Claimant to confirm that the medical suspension had been lifted with "immediate effect". The Claimant was asked to meet with her manager to discuss the recommendations in the OH report and plan next steps for a phased return to work [**381**].

Return to Work

125. The Respondent attempted to arrange a return-to-work meeting for 25 September 2024 and confirmed the details by email [**292–297**]. The purpose of the meeting was to discuss reintegration and adjustments.

126. On 23 September 2024, Ms Harrison emailed the Respondent raising concerns about the planned return-to-work meeting. While framed as

raising concerns about the Claimant's wellbeing, the email adopted an adversarial tone and questioned the legitimacy of the process. It repeated issues previously raised, including access to IT, and suggested that the meeting could be "triggering" for the Claimant. The email requested extensive assurances and adjustments before the meeting could proceed, including confirmation of union attendance and clarification of its purpose, despite the Respondent having already explained that the meeting was intended to support reintegration and discuss adjustments. The Tribunal finds that these responses went beyond reasonable clarification and contributed to delay in the return-to-work process.

127. The Respondent attempted to reassure the Claimant that the meeting was standard procedure to support her return and offered flexibility, including union attendance and adjustments.

128. Despite these assurances, the meeting scheduled for 25 September 2024 did not proceed. As a result, the return-to-work process stalled, and the Claimant did not resume work during September or October 2024.

Sickness Absence

129. On 21 October 2024, the Claimant submitted a fit note citing "panic attacks and anxiety disorder" covering the period until 16 December 2024. For this reason, the Claimant never resumed work following the capability outcome.

Disciplinary Suspension and Dismissal

130. On 24 October 2024, the Claimant was suspended pending investigation into allegations that she had undertaken work for another employer during the period of medical suspension and subsequent sick leave [**382 – 383**].

131. Following the conclusion of that investigation and subsequent disciplinary hearing, the Claimant was dismissed for gross misconduct on 25 March 2025 [**396 – 398**].

Law

Direct disability discrimination

132. Employees are protected from discrimination by s39 EqA:

> "(2) An employer (A) must not discriminate against an employee of A's (B) -
>
> …
>
> (d) by subjecting B to any other detriment."

133. Direct discrimination is set out in s13 EqA:

> "(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."

134. There are two parts of direct discrimination: (a) the less favourable treatment and (b) the reason for that treatment. Sometimes, however, it is difficult to separate these two issues so neatly. The Tribunal can decide what the reason for any treatment was first: if the reason is the protected characteristic, then it is likely that the claim will succeed – **Shamoon v Constable of the Royal Ulster Constabulary [2003] UKHL 11**.

"Because of": reason for less favourable treatment

135. The correct approach to the issue of causation under s13 EqA is to determine whether the protected characteristic, here disability, had a "significant influence" on the treatment – **Nagarajan v London Regional Transport [1999] IRLR 572**. The ultimate question to ask is "what was the reason why the alleged perpetrator acted as they did? What, consciously or unconsciously, was the reason?" - **Chief Constable of West Yorkshire Police v Khan [2001] UKHL 48**. This is a question of fact for the Tribunal to determine, and is a different question to the question of motivation, which is irrelevant. The Tribunal can draw inferences from the behaviour of the alleged perpetrator as well as taking surrounding circumstances into account.

136. If there is more than one reason for the treatment complained of, the question is whether the protected characteristic (in this case, disability) was an effective cause of the treatment – **O'Neill v Governors of ST Thomas More Roman Catholic Voluntary Aided Upper School [1996] IRLR 372**.

Burden of proof under the Equality Act 2010

137. The burden of proof for discrimination claims is set out in s136 EqA:

> "(1) This section applies to any proceedings relating to a contravention of this Act.
>
> (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
>
> (3) But subsection (2) does not apply if A shows that A did not contravene the provision".

138. In **Laing v Manchester City Council and anor [2006] ICR 1519**, Mr Justice Elias held that:

> "the onus lies on the employee to show potentially less favourable treatment from which an inference of discrimination could properly be drawn".

139. It is not enough for the claimant to show that there has been a difference in treatment between him and a comparator, there must be something more. In **Madarassy v Nomura International plc 2007 ICR 867**, Lord Justice Mummery held:

> "56. The court in *Igen Ltd v Wong [2005] ICR 931* expressly rejected the argument that it was sufficient for the complainant simply to prove facts from which the tribunal could conclude that the respondent "could have" committed an unlawful act of discrimination. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination".

140. At this first stage, the Tribunal is required to consider all the material facts without considering the respondent's explanation. However, this does not mean that evidence from the respondent undermining the claimant's case can be ignored at stage one – **Efobi v Royal Mail Group Ltd 2021 ICR 1263**. The case of **Efobi** also upheld the approach of the decisions set out above, that it is for the claimant to prove, on the balance of probabilities, facts from which, in the absence of any other explanation, the Tribunal could infer discrimination. Although the Tribunal may consider all the evidence before it (not just that of the claimant) the burden rests firmly with the claimant at this first stage – see discussion at paragraphs 21 to 34 of **Efobi**.

141. In terms of comparators, the definition is at s23 EqA:

> "(1) On a comparison of cases for the purposes of section 13, 14, 19 or 19A there must be no material difference between the circumstances relating to each case".

142. Regarding a hypothetical comparator, the claimant must show that the comparator would have been treated more favourably. This requires the Tribunal to be able to draw inferences of likely treatment of a hypothetical comparator from the evidence before it.

143. It is only if the initial burden of proof is reached that the burden shifts to the respondent to prove to the Tribunal that the conduct in question was in no sense whatsoever based on the protected characteristic – **Igen Ltd (formerly Leeds Careers Guidance) and ors v Wong and other cases 2005 ICR 931**.

144. Overall however, the courts caution against placing too much emphasis on the burden of proof provisions. This was emphasised in **Martin v Devonshires Solicitors [2011] ICR 352** when the EAT held that:

> "39. …[The burden of proof] provisions are important in circumstances where there is room for doubt as to the facts necessary to establish discrimination – generally, that is, facts about the respondent's motivation (…) because of the notorious difficulty of knowing what goes on inside someone else's' head (…). But they have no bearing where the tribunal is in a position to make positive findings on the evidence one way or another, and still less where there is no real dispute about the respondent's motivation and what is in issue is its correct characterisation in law".

Discrimination arising from disability

145. S15 EqA provides:

> "(1) A person (A) discriminates against a disabled person (B) if—
>
> (a) A treats B unfavourably because of something arising in consequence of B's disability, and
>
> (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
>
> (2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability."

Respondent's knowledge

146. Under s15, the sole requirement of knowledge on the part of the respondent is knowledge of the claimant's disability. It is not necessary for the respondent to know that the "something" arose from that disability.

Unfavourable treatment

147. Under this section, no comparator is required. The question is simply whether unfavourable treatment was suffered by the claimant. In this context, unfavourable treatment requires the tribunal to consider whether a claimant has been disadvantaged. This requires an assessment against "an objective sense of that which is adverse as compared to that which is beneficial" - **T-System Ltd v Lewis UKEAT/0042/15**.

Because of something arising in consequence

148. First, it is necessary for the tribunal to identify the "something" that is said to be the cause of the alleged unfavourable treatment. Second, it is necessary for that "something" to have arisen in consequence of the claimant's disability. These are the two causal steps that are required by s15 EqA.

149. In terms of the first step, the Tribunal must determine what, consciously or unconsciously, acted on the mind of the alleged perpetrator. The relevant test is whether the "something" had a significant influence, or was an effective cause, of the unfavourable treatment – **Pnaiser v NHS England [2016] IRLR 70**. The prohibited factor need only be a significant influence, not the sole cause.

Justification

150. If discrimination is established, then a respondent can still defend a s15 claim on the basis that the unfavourable treatment was a proportionate means of achieving a legitimate aim.

151. In **Hensman v Ministry of Defence UKEAT/0067/14**, Singh J held that:

> "the Employment Tribunal must reach its own judgment upon a fair and detailed analysis of the working practices and business considerations involved. In particular, it must have regard to the business needs of the employer."

Harassment relating to disability

152. The definition of harassment is set out at s26 EqA:

> "(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) 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 to have had the effect."

Unwanted conduct

153. It is for the individual to set the parameters as to what they find acceptable, and what is unwanted: "it is for each person to define their own levels of acceptable" – **Reed v Stedman [1999] IRLR 299**, and more recently **Smith v Ideal Shopping Direct Ltd UKEAT/0590/12**.

Purpose or effect

154. S26 makes it clear that it is sufficient for the unwanted conduct to have the effect set out in s26(1)(b): it is not necessary for that to be the purpose of the alleged perpetrator.

155. In terms of effect, the alleged perpetrator's motive is irrelevant. The test is both subjective and objective. First, it is necessary to consider what the effect of the conduct was from the claimant's perspective (subjective element). If it is found that the claimant did suffer the necessary effect set out in s26(1)(b), the next stage is to consider whether it was reasonable for the claimant to feel that way – s26(4)(c).

156. The Respondent referred in closing submissions to **Grant v HM Land Registry [2011] ICR 1390** and **Richmond Pharmacology v Dhaliwal [2009] ICR 724**, submitting that employees are expected to demonstrate a degree of robustness and that reasonableness must be assessed in context when determining whether conduct had the effect required by section 26.

Related to the protected characteristic

157. The causal link required for harassment is much broader than that for direct discrimination. The requirement is that the conduct must be related to the protected characteristic, in this case disability.

158. There is limited guidance from the appellate courts as to what is meant by "related to". Some guidance has been given by the Court of Appeal in the case of **UNITE the Union v Nailard [2018] EWCA Civ 1203**. The facts of this case were that the respondent had failed to deal with the claimant's sexual harassment complaint. The Employment Tribunal found that, because the failure related to a grievance regarding harassment, that was sufficient to find that the failure was itself an act of sexual harassment. The Court of Appeal found the tribunal had got it wrong. The tribunal had not made findings as to the thought processes of the individuals who failed to deal with the grievance; therefore, it could not be found that the failure itself was an act of sexual harassment. A finding would have to be made that those who failed to deal with the grievance were guilty of sexual harassment. The tribunal had, in effect, used the "but for" test; in other words, they found liability on the basis that, but for the grievance, there would have been no failure. This is not the correct legal test under section 26.

159. In **Tees Esk and Wear Valleys NHS Foundation Trust v Aslam [2020] IRLR 495**, HHJ Auerbach reminded tribunals that they must:

> "articulate distinctly, and with sufficient clarity, what feature or features of the evidence or facts found have led it to the conclusion that the conduct is related to the characteristic as alleged".

160. A claimant's understanding and a respondent's intention are not strictly relevant to the issue of causation. The context in which the alleged harassment occurs is a key factor in determining whether the conduct was related to the relevant protected characteristic – **Warby v Wunda Group plc EAT 0434/11**.

Victimisation

161. S27 EqA sets out:

> "(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."

Detriment

162. A detriment has been held to exist "*if a reasonable worker would or might take the view that [the action of the employer] was in all the circumstances to his detriment*" – **Ministry of Defence v Jeremiah [1980] ICR 13**. In other words, if the claimant has suffered a disadvantage compared to other employees (whether real or hypothetical), they will have suffered a detriment. Despite this, there is no strict need for a comparator in cases of detriment.

163. For a detriment to be because of a protected act, it is necessary that it had a significant influence on the perpetrator. It is not necessary for the Tribunal to identify conscious or subconscious motivation – **Nagarajan v London Regional Transport [2000] 1 AC 501** at p512-513. The meaning of "significant" has been held to mean "more than trivial" – **Igen Ltd (formerly Leeds Careers Guidance) and ors v Wong and other cases [2005] ICR 931**.

Reasonable adjustments

164. The provisions regarding reasonable adjustments are set out at ss20 and 21 EqA:

> "20(2) The duty [to make reasonable adjustments] 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.
>
> ...
>
> 21(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.
>
> (2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.
>
> ...."

Provision, criterion or practice ("PCP")

165. The first requirement of this claim is that there be a provision, criterion or practice ("**PCP**"). The terms "provision, criterion or practice" are not defined within the legislation, and are to be given their ordinary meaning; they are broad and overlapping terms and should not be narrowly construed – **Ishola v Transport for London [2020] EWCA Civ 112**. A PCP can cover informal as well as formal arrangements. Simler LJ held that the function of a PCP "is to identify what it is about the employer's

management of the employee or its operation" that causes the substantial disadvantage - paragraph 36 **Ishola**.

166. The finding of a PCP is a matter of fact for the Tribunal – **Jones v University of Manchester [1993] IRLR 218**.

Substantial disadvantage

167. "Substantial" means no more than minor or trivial – s212(1) EqA.

168. The Tribunal must consider the identification and consideration of the actual functional effects of the disability. In **Thompson v Vale of Glamorgan Council EAT 0065/20**, the EAT set out:

> "The Tribunal should identify the nature and extent of the "substantial disadvantage" caused by a PCP before considering whether any proposed step was a reasonable one to have to take...There must obviously be some causative nexus between disabilities relied on and the "substantial disadvantage"; the tribunal should look at the overall picture" when considering the effects of any disabilities".

169. The Tribunal's analysis must be based on the evidence regarding the claimant's actual disability as opposed to any general assumptions. The position must be judged on the true facts, not on any assumptions made by either party, or the Tribunal – **Copal Castings Ltd v Hinton EAT 0903/04**.

170. The question of disadvantage must focus on the disadvantage allegedly caused by the PCP.

171. The test is whether the claimant suffered a substantial disadvantage compared to others who do not share his disability. This is not a comparison with the population at large, but with those with a class or group of non- disabled comparators. The Employment Appeal Tribunal ("EST") has held that it may not always be necessary to identify actual comparators, but that the nature of those non-disabled comparators will be self-evident from the PCP found to have been put in place – **Fareham College Corporation v Walters 2009 IRLR 991 (EAT).**

172. The EAT's decision in the above case is reflected in the Equality and Human Rights Commission's Code of Practice on Employment, which states at paragraph 6.16:

> "The purpose of the comparison with people who are not disabled is to establish whether it is because of disability that a particular [PCP] or physical feature or the absence of an auxiliary aid disadvantages the disabled person in question. Accordingly — and unlike direct or indirect discrimination — under the duty to make adjustments there is no requirement to identify a comparator or comparator group whose circumstances are the same or nearly the same as the disabled person's".

173. In **Sheikholeslami v University of Edinburgh 2018 IRLR 1090 (EAT)** the EAT held that the comparative exercise required it to establish whether the

PCP has the effect of disadvantaging the disabled person more than trivially in comparison with others who do not have any disability.

Reasonable adjustment

174. The Tribunal will need to identify the "step" or "steps", if any, the employer could reasonably have taken to reduce the disadvantage.

175. The burden is on the claimant to identify in broad terms the nature of the adjustments. At that point the burden then shifts to the employer to show that the adjustment in question either would not have reduced or prevented the disadvantage, or would not have been reasonable.

176. Ultimately it is a matter for the Tribunal to determine what is reasonable – **Smith v Churchills Stairlifts plc 2006 ICR 524**. In other words, the Tribunal can substitute its view for that of the employer in terms of whether it considers the adjustment to be reasonable. The question of reasonableness must focus on the practical result of the implementation of any measures: in other words, it is the efficacy of the proposed measures that are key.

177. The Tribunal also has the ability to conclude that a different adjustment from the one that the claimant proposed or preferred was reasonable – **Garrett v LIDL Ltd EAT 0541/08.**

178. The EHCR Code of Practice on Employment (2011) sets out various factors that may be relevant when considering the reasonableness of any proposed adjustments:

- "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."

179. There is no requirement that adjustments suggested by a claimant should remove the substantial disadvantage in its entirety – **Noor v Foreign and Commonwealth Office [2011] ICR 695**. The statute states that the reasonable adjustment should "avoid" the disadvantage. Therefore, a respondent will not avoid liability solely by demonstrating that the disadvantage would have been suffered even with the adjustment. If the adjustment would have acted to avoid or alleviate the disadvantage, that is sufficient for liability to attach under ss20/21.

Conclusion

Direct disability discrimination (Equality Act 2010 section 13)

Issue 2.1.1 - On 26 October 2023 Ms Gomez mock the claimant's disability in a screenshot to Ms Patton?

180. The Claimant contended that the private messages exchanged by Ms Gomez and Ms Patton amounted to mocking of her disability, particularly because they were sent at a point when her health and capability were under discussion. She says the tone and timing reinforced her perception of being treated unfairly and felt belittling [**EN/WS/2.9–3.0**]. She maintained this position in oral evidence.

181. Ms Bonner interpreted the messages as Ms Gomez coaching Ms Patton during the meeting and considered the exchange inappropriate and undermining of the Claimant. She described the tone as demeaning and inconsistent with HR's role [**PB/WS/2–3**].

182. Ms Gomez says the messages were intended as procedural prompts and managerial support during a difficult meeting. She denies any mocking or discriminatory intent. In particular, she explained that the reference to "Abby-Gail owes you a coffee" related to taking a break after a challenging discussion and had no connection to the Claimant's disability [**AG/WS/14–16**]. In oral evidence, she reiterated that she would never mock anyone and expressed disappointment that the messages were interpreted as discriminatory.

183. The Tribunal carefully considered both the wording of the messages and the context in which they were sent. While it understands, from the Claimant's perspective, the discovery of private messages exchanged during a sensitive meeting was upsetting, we accept Ms Gomez's explanation as to the purpose and meaning of the messages.

184. On their natural and ordinary meaning, the messages do not refer to the Claimant's disability, health condition or any protected characteristic. This is supported by the contemporaneous transcript and screenshot of the Teams meeting, which show the messages contained no reference to disability

185. The offer of a coffee, in this context, is understood as an acknowledgement that Ms Patton had dealt with a difficult task and as a gesture of support following what all parties accepted was a challenging meeting, rather than making light of the Claimant or her disability.

186. There is insufficient evidence for the Tribunal to conclude that the messages were sent with a discriminatory purpose or intent. Accordingly, the Tribunal does not find that Ms Gomez mocked the Claimant's disability in the messages exchanged with Ms Patton.

187. Although the Tribunal did not find that Ms Gomez intended to mock the Claimant, it nevertheless considered whether the exchange of messages amounted to less favourable treatment because of disability.

188. The Tribunal was not satisfied that a comparator without the Claimant's disabilities would have been treated more favourably in materially identical circumstances, and finds that the Respondent's actions were explained by operational, safeguarding or engagement-related considerations rather than disability.

189. This complaint is therefore not well-founded.

Discrimination arising from disability (Equality Act 2010 section 15)

Issue 3.1.1 - On 26 October 2023 Ms Gomez mocking the claimant's disability in a screenshot to Ms Patton (with reference to having a congratulatory drink)?

190. For the reasons set out at paragraphs 183 to 189 above, the Tribunal has found that the screenshot was not mocking in nature and did not relate to the Claimant's disability. It follows that the alleged conduct does not constitute unfavourable treatment arising in consequence of the Claimant's disability.

191. This complaint is therefore not well-founded.

Issue 3.1.2 - On 30 October 2023 Mr Smith and Ms Gomez, Ms Forester-Brown, Mr Plant, Ms Tsang and / or Ms Zakowicz medically suspending the claimant?

192. The Tribunal has found that the decision to medically suspend rested solely with Mr Smith.

193. The Claimant contended that the decision to place her on medical suspension on 30 October 2023 amounted to unfavourable treatment. She submitted that:

    193.1. The Claimant's GP had certified her as fit for work after the occupational health assessment and that, in her view, there were benefits to her remaining in the workplace. She pointed out that she had in fact worked without incident for approximately 40 days following the occupational health report and, in any event, up to 26 October 2023.

    193.2. The absence of any formal policy providing for medical suspension. meant that the use of the word "suspension" suggested a disciplinary process rather than one grounded in sickness management and that her absence should instead have been managed under the Sickness Absence Policy.

    193.3. She had told the Respondent that she feared being placed on medical suspension because of previous experiences of reduced pay during sickness absence and found the process itself triggering.

    193.4. The Respondent could and should have exercised discretion to extend the provisions of the existing sickness absence policy rather than placing her on suspension.

194. The Respondent accepted that the decision to place the Claimant on medical suspension was an exceptional step, not expressly provided for

within its policies and not one that had previously been taken in relation to other members of staff.

195. It relied, however, on those provisions of the Sickness Absence Policy which, it submitted, afforded flexibility to adopt a creative approach in appropriate cases [**404**].

196. The Respondent maintained that the matter was not dealt with under the disciplinary policy. Mr Smith accepted that he had used a checklist drawn from the suspension documentation but denied that the process was disciplinary in nature and maintained that any disciplinary references had been struck through. The Respondent's case was that the suspension was a good-faith attempt to support the Claimant's wellbeing in light of the occupational health recommendations and safeguarding concerns.

197. It was further submitted that, given the strength of the occupational health recommendations, which Ms Patton described as the strongest she had seen of that nature, it would have been reckless or even negligent not to take action. Mr Smith emphasised in his evidence that he regarded the suspension as a "humane and compassionate" step intended to give the Claimant time to recover.

198. The Tribunal finds that being placed on medical suspension, even on full pay, constituted unfavourable treatment for the purposes of section 15 EqA because it removed the Claimant from work and normal workplace participation. The "something" relied upon by the Respondent as the reason for that treatment was the Claimant's continued attendance at work in circumstances where the Occupational Health report advised that she was unfit for work and required a period of therapeutic intervention, together with the associated safeguarding concerns.

199. The Tribunal further finds that this "something" arose in consequence of the Claimant's disabilities. The Occupational Health report of 26 September 2023 stated that the Claimant was unfit for work due to the severity of her anxiety and depression, that her cognition and decision-making were impaired, and that continuing to work created risks both to her wellbeing and to the safe handling of sensitive information **[266].**

200. The Tribunal therefore considered whether the Respondent had shown that the medical suspension was a proportionate means of achieving a legitimate aim.

201. The Tribunal finds that the Respondent's aims were to promote the Claimant's wellbeing, to enable her to focus on her therapy and to give her time and space to recover, and to address safeguarding concerns. This was the clear recommendation in the OH report dated 26 September 2023 and in the subsequent Teams meeting

202. The Tribunal accepts that policies provide a framework for decision-making but do not preclude the exercise of managerial discretion. That was accepted by the Claimant in principle, as she contended that Mr Smith could have exercised discretion to extend her entitlement to full pay under

the sickness absence policy. The Respondent also drew attention to express provisions within the policy which envisage a flexible approach.

203. With the benefit of hindsight, Mr Smith accepted that the term "suspension" was an unfortunate choice of language given its disciplinary connotations, and the Tribunal agrees. The checklist used contained references to disciplinary suspension struck through. However, no bespoke template existed for these circumstances and this documentation was used as the closest available framework. In practice, the Claimant's absence was managed in accordance with the sickness procedures rather than any disciplinary process, including ongoing contact, reviews and the provision of medical certificates.

204. The practical effect of the arrangement was that the Claimant remained on full pay with benefits for the duration of her absence and that the period did not count towards her contractual sick pay entitlement. That was financially more favourable than the position which would ordinarily have applied under the sickness absence policy and was intended to remove work-related pressures while she focused on recovery.

205. The Tribunal considered the Claimant's submission that she derived benefit from working, including the routine, structure and sense of purpose it provided and that she had worked for approximately 40 days without incident. However, the clear recommendation in the Occupational Health report was that she was not fit for work at that time and required a period of therapeutic intervention [**266**]. The Tribunal accepts that it would have been reckless to disregard that advice, particularly given Ms Patton's evidence that these were the strongest recommendations of this nature she had encountered.

206. Although the Respondent accepted that the medical suspension fell outside the usual policy framework, the video evidence of the occupational health follow-up meeting demonstrates that the decision was taken in reliance on medical advice, with safeguarding considerations in mind and with the intention of supporting the Claimant. Properly characterised, the step taken was protective rather than punitive.

207. In those circumstances, the Tribunal finds that the medical suspension was a proportionate means of achieving legitimate aims and was justified for the purposes of section 15 EqA.

208. The complaint is therefore not well-founded.

<u>Issue 3.1.3 - On 16 February 2024 Ms Hope refusing to get the claimant's access to IT reinstated?</u>

209. The Claimant contends that on 16 February 2024 Ms Hope refused to reinstate her access to the Respondent's IT systems, which she says caused her distress and a sense of exclusion. She also maintained that, at the material time, she was not permitted to contact IT directly under the terms of her medical suspension.

210. The Respondent denies that there was any refusal to reinstate access. It maintains that the Claimant's IT account remained active throughout and that IT confirmed it was not locked. Any access difficulty was said to be due to password expiry. Ms Hope's position is that she sought to assist by liaising with payroll and IT, requesting a screenshot and advising on password reset steps. The Respondent further notes that, at the Claimant's request, copies of payslips were provided to Ms Bonner.

211. The Tribunal finds that any difficulty the Claimant experienced in accessing the IT system on 16 February 2024 constituted unfavourable treatment for the purposes of section 15 EqA, in the sense that it placed her at a disadvantage compared with employees who were able to access the system without difficulty.

212. The "something" relied upon by the Respondent as the reason for that situation was not any decision to exclude the Claimant from the IT system, but the existence of a technical access problem (most likely a password issue), together with the Claimant's failure to engage with the troubleshooting steps reasonably requested, including the provision of a screenshot or use of the password reset process.

213. The Tribunal further finds that this "something" did not arise in consequence of the Claimant's disabilities. The evidence shows that the Claimant's account remained active and that Ms Hope sought to resolve the issue through HR and IT. Resolution was prevented by the Claimant's refusal to provide the information necessary to diagnose and fix the technical problem.

214. This is corroborated by text exchanges and emails dated 26 January and 16 February 2024 which show Ms Hope liaising with HR and requesting screenshots to resolve the issue. The Tribunal is unable to determine the precise technical cause of the access difficulty but is satisfied that it was not the result of any refusal by the Respondent to reinstate access.

215. The Tribunal was not persuaded that the Claimant was prohibited under the terms of her medical suspension from contacting IT directly. In any event, the issue could have been raised with Mr Smith or through Ms Bonner.

216. In those circumstances, although the Claimant experienced difficulty accessing the system and found this distressing, the Tribunal does not find that this amounted to unfavourable treatment because of something arising in consequence of disability.

217. The allegation is therefore not well-founded.

<u>Issue 3.1.4 - From 27 November 2023 , Stephen Parker delaying in hearing the claimant stage 1 grievance?</u>

218. The Claimant contends that Mr Parker delayed in hearing her Stage 1 grievance submitted on 27 November 2023.

219. The Respondent denies that there was any improper delay and submits that, in any event, the Claimant has failed to demonstrate any causal connection between the alleged delay and her disability.

220. On the evidence before us, a hearing was schedule for 19 December 2023. That hearing did not proceed due to the Claimant's medical suspension, and there is no evidence that it was subsequently rescheduled or concluded. The non-progression was not the result of any refusal on the Respondent's part, but because the Claimant was not available to engage with the process while suspended and did not later return to enable a hearing to take place.

221. In any event, even if the non-progression of the grievance amounted to unfavourable treatment, the 'something' relied upon by the Respondent was the Claimant's unavailability and non-engagement while on medical suspension, rather than anything arising in consequence of her disabilities.

222. The Tribunal therefore does not find that any unfavourable treatment was because of something arising in consequence of disability

223. This allegation is not well-founded.

Issue 3.1.5 - Between December 2023 to March 2024 Ms Beckford sharing the claimant's OH reports with 13 members of staff without her consent?

224. The Claimant maintains that the disclosure of her occupational health report to 13 members of staff without consent, was excessive and a breach of confidentiality, particularly while she was on medical suspension.

225. In evidence, the Claimant was unable to identify 13 individuals and could only name five: Francis Harriet, Tosin (no surname provided), Pauline Bonner, April Ashley and Samantha Beckford together with unnamed members of the Stage 2 appeal panel. She accepted that she could not presently recall any others but maintained that even disclosure to five people was inappropriate.

226. The Respondent denies any improper or wider circulation of the occupational health report. It said that the report was shared only with HR and managers directly involved in the Claimant's case and (where applicable) with panel members on a need-to-know basis. Ms Gomez gave evidence that such reports properly form part of the management/decision making pack where relevant and that all such individuals are contractually bound by obligations of confidentiality. The Respondent denies any discriminatory motive.

227. The Tribunal does not accept the Claimant's allegation that the occupational health report was shared with 13 members of staff. The Claimant was unable to substantiate that figure and could only name five individuals. The Tribunal accepts the Respondent's evidence that disclosure of the report was confined to those with a legitimate management or panel function and subject to confidentiality obligations.

There is no evidence of dissemination beyond those properly involved in the Claimant's case.

228. Further paragraph 3.4 of the occupational health report confirms that the Claimant gave consent for its release to management. The Claimant did not point to any subsequent withdrawal of that consent before the disclosure relied upon, nor to any use outside legitimate management or panel purposes. In those circumstances, the Tribunal is satisfied that the handling of the occupational health report did not amount to unfavourable treatment.

229. This allegation is therefore not well-founded.

Issue 3.1.6 - On February 2024 Ms Hope sending the claimant notice of a capability hearing?

230. The Claimant stated in oral evidence that this allegation was likely to have arisen from a typographical error in the original list of issues and that it duplicated issue 3.1.8.

231. In any event, there is no evidence that Ms Hope sent the Claimant a notice of a capability hearing in February 2024. This allegation is therefore not well-founded.

Issue 3.1.7 - In March 2024 Ms Woolgar failing to ensure that the claimant had a substantive post to go back to following her medical suspension

232. The Claimant alleges that her substantive post was no longer available following her medical suspension. The Claimant maintains that the structure chart [**222]** demonstrated that her role had effectively been removed or was at risk during her absence. She further relied on evidence that the return of Lorna Scott, who she said was on secondment would displace her from the role. The Claimant said this reinforced the perception that her employment position was insecure as a result of her medical suspension and amounted to unfavourable treatment arising from disability

233. Ms Hope gave evidence that the Claimant's substantive post remained hers throughout the period of medical suspension. She explained that the organisational chart showing another name alongside the Claimant reflected temporary operational arrangements and inaccuracies in SAP, not any contractual change. Ms Hope confirmed that Lorna Scott had been on long-term secondment and was not due to return to displace the Claimant. She reiterated that the Claimant continued to be treated as the substantive post-holder for all HR and payroll purposes and that any confusion arose from an IT workaround introduced to the system that caused administrative errors.

234. The Tribunal accepts Ms Hope's evidence that the Claimant's substantive post remained available to her throughout her medical suspension. We accept that the inclusion of another individual on the structure chart reflected temporary operational arrangements and that there were acknowledged difficulties with the accuracy of the chart which the Respondent was seeking to rectify.

235. The Tribunal finds that the mere fact that the Claimant continued to appear on the chart as the substantive post-holder supports the Respondent's position that her role remained hers. We also note that this evidence was supported by the written statement of Ms Woolgar although the Tribunal has placed limited weight on the statement on the basis that Ms Woolgar was not available for cross-examination. We were also satisfied that Ms Hope was genuine in her belief that there was no intention for the named secondee to return to the team and that she would not displace the Claimant's substantive contractual role.

236. In those circumstances, the Tribunal does not find that the matters complained of amounted to unfavourable treatment arising from disability and this allegation is therefore not well-founded.

Issue 3.1.8 - On April 2024 Ms Hope sending the claimant notice of a capability hearing?

237. The Claimant alleges that the initiation of a capability process in April 2024, including the sending of a notice of hearing, amounted to unfavourable treatment arising from disability and was punitive and insensitive during a period of therapy.

238. The "something" relied upon by the Respondent as the reason for that treatment was the Claimant's prolonged non-engagement with return-to-work planning, including her failure to attend the medical suspension review meeting on 22 March 2024 and her refusal to consent to a further Occupational Health referral.

239. The Tribunal has therefore considered whether that "something" arose in consequence of the Claimant's disabilities, within the meaning of section 15. The Tribunal finds that they did not.

240. The Tribunal finds as a fact that throughout the period of medical suspension, the Claimant repeatedly declined to engage with reasonable management requests, including weekly well-being calls, attendance at review meetings, and consent for an updated Occupational Health referral. Communication was limited to sporadic text messages and several letters sent by recorded delivery were returned unopened. These matters created significant barriers to any meaningful review her fitness for work or implement of adjustments.

241. The Tribunal further finds that this non-engagement arose from the Claimant's distrust of the Respondent's processes, her insistence on communicating only by text, and her conscious decisions not to engage with review meetings or further Occupational Health assessment, rather than any functional effect of her disabilities.

242. It follows that the "something" relied upon by the Respondent did not arise in consequence of the Claimant's disabilities for the purposes of section 15 EqA.

243. In any event, the Tribunal finds that the Respondent was pursuing the legitimate aims of safeguarding the Claimant's health, enabling a safe and

supported return to work, and managing prolonged operational uncertainty arising from extended medical suspension. The initiation of a capability process in April 2024 was a proportionate means of achieving those aims after repeated attempts at engagement had failed.

244. The Tribunal does not accept that the mere issuing of correspondence or holding of an administrative meeting in these circumstances amounted to unfavourable treatment of the kind prohibited by section 15. The Claimant remained on full pay and the process was paused to accommodate the request for a further Occupational Health review.

245. While the Tribunal acknowledges that the Claimant found the process stressful, the evidence does not support a conclusion that the capability process was because of her disabilities, rather than because of non-engagement and operational necessity.

246. This allegation is therefore not well-founded.

Harassment related to disability (Equality Act 2010 section 26)

Issue 4.1.1 - Between December 2023 to March 2024 Ms Beckford sharing the claimant's OH reports with 13 members of staff without her consent?

247. For the reasons set out at at issue 3.1.5 above, the Tribunal has found as a fact that the occupational health report was disclosed only to those with a legitimate management or panel function and subject to contractual duties of confidentiality. The Tribunal has rejected the Claimant's allegation of wider circulation.

248. In those circumstances, the Tribunal is not satisfied that the disclosure constituted unwanted conduct related to the Claimant's disability. Nor is the Tribunal satisfied that the disclosure had the purpose or effect of violating the Claimant's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment.

249. Accordingly, the harassment complaint in respect of this allegation is not well-founded.

Victimisation (Equality Act 2010 section 27)

Issue 5.1 - Did the claimant do a protected act on 5 April 2023 by submitting a stage 2 appeal?

250. The Tribunal found that the Claimant submitted a Stage 1 complaint on 5 April 2023 and a further complaint in June 2023 which included allegations of victimisation. Those complaints amounted to protected acts for the purposes of s.27 EqA.

Issue 5.2 - Did the claimant do a protected act as follows On 27 November 2023 submitting a stage 1 grievance?

251. The Tribunal has further found that, although the precise wording of any complaint dated exactly 27 November 2023 cannot be determined, the legible parts of the email dated 24 November 2023 and the Respondent's

own admissions establish that a further Stage 1 grievance alleging victimisation and disability-related mistreatment was submitted in late November 2023. That also constituted a protected act for the purposes of section 27 EqA.

Issue 5.3.1 - On 16 February 2024 Ms Hope refused to get the claimant's access to IT reinstated?

252. The Tribunal has already found in relation to issue 3.1.3 that Ms Hope did not refuse to get the Claimant's access to IT reinstated and that any access difficulty arose from a technical issue and lack of engagement rather than any act or decision of the Respondent. There was therefore no detriment of the kind alleged, still less one because of any protected act.

253. The allegation is not well-founded and fails.

Issue 5.3.2 - After 25 October 2023 disciplining the claimant's trade union representative thereby denying her the right to trade union representation

254. The Tribunal has not been provided with any evidence that the Claimant's trade union representative was disciplined after 25 October 2023, nor any evidence that the Claimant was denied the right to trade union representation as a result. No detriment is established.

255. The allegation is not well-founded and fails.

Issue 5.3.3 - From 27 November 2023, Stephen Parker delaying in hearing the claimant stage 1 grievance?

256. The Tribunal has already found under issue 3.1.4, that any grievance hearing did not proceed because the Claimant was on medical suspension and did not return to work to enable a hearing to take place, rather than because of any refusal or obstructive conduct by the Respondent. Even if that amounted to a detriment, the Tribunal does not find that it was because of the Claimant's protected acts.

257. This allegation is not well-founded.

Issue 5.3.4 - Between December 2023 to March 2024 Ms Beckford sharing the claimant's OH reports with 13 members of staff without her consent?

258. The Tribunal found under issue 3.1.5 that the occupational health report was disclosed only to individuals with a legitimate HR or managerial function or to panel members, all subject to confidentiality obligations. The asserted wider dissemination to 13 members of staff was not made out. No unlawful disclosure or detriment is established and there is no basis for inferring any causal link to the protected acts.

259. This allegation is not well-founded.

Issue 5.3.5 - On February 2024 Ms Hope sending the claimant notice of a capability hearing?

260. The Claimant stated in oral evidence that this allegation was likely to have arisen from a typographical error in the original list of issues and that it duplicated issue 5.3.7.

261. In any event, there is no evidence that Ms Hope sent the Claimant a notice of a capability hearing in February 2024. This allegation is therefore not well-founded

Issue 5.3.6 - In March 2024 Ms Woolgar failing to ensure that the claimant had a substantive post to go back to following her medical suspension?

262. Under issue 3.1.7 the Tribunal found that the Claimant's substantive post remained available throughout her medical suspension and that any apparent anomalies were attributable to temporary operational arrangements and administrative inaccuracies in the structure chart. No detriment is established and there is no causal link to the protected acts.

263. This allegation is not well-founded.

Issue 5.3.7 - On April 2024 Ms Hope sending the claimant notice of a capability hearing?

264. Under issue 3.1.8 the Tribunal has found that the notices were issued because of prolonged non-engagement and the need to manage ongoing absence, not because of any grievances or complaints made by the Claimant. Even if the correspondence constituted a detriment, it was not materially influenced by any protected act.

265. This allegation is not well-founded.

Conclusion

266. Taking the evidence as a whole, the Tribunal is not satisfied that any of the alleged detriments were materially influenced by the fact that the Claimant had made complaints or allegations under the Equality Act.

267. The Respondent's actions were instead driven by operational considerations, safeguarding concerns and the Claimant's non-engagement with sickness and return-to-work processes.

268. Accordingly, the Tribunal finds that the Claimant was not subjected to any detriment because of a protected act within the meaning of section 27 EqA.

269. The victimisation claims are therefore not well-founded.

Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

270. The Claimant's pleaded case on when the Respondent failed in its duty to make reasonable adjustments is unclear. The Claimant's claim refers broadly to equipment that was due to be provided following her return to work in September 2021 and also to adjustments recommended by Occupational Health in June 2023.

271. In oral evidence the Claimant accepted that she received various items of equipment to enable to work from home post Covid in 2021, but complained that it was delayed. The Tribunal was therefore primarily concerned with those concerns that arose in June 2023 onwards following the occupational health report.

272. In addition, the Tribunal notes that the claim form was presented on 16 May 2024. In principle, any alleged failure occurring before is prima facie out of time unless the Tribunal exercises its discretion to extend time.

273. Accordingly, the Tribunal approached the reasonable adjustments claim on the basis that it relates to the period June 2023 onwards and the Respondent accepts that the Claimant was disabled at this time.

Provision, criterion or practice

274. The Claimant identified three alleged PCPs as follows:

    274.1. Attend group supervision three times per week without any supervision meetings (**PCP 1**)

    274.2. Attend meetings (**PCP 2**)

    274.3. Attend work during working hours (**PCP 3**)

275. The Respondent denies that any of the PCPs are PCPs under the EqA.

276. PCPs 1–3 are capable in law of amounting to PCPs within the meaning of section 20 EqA. However, for the reasons that follow, the Tribunal finds that none of those PCPs were applied during the relevant period in a way that placed the Claimant at a substantial disadvantage because of her disabilities:

    276.1. **PCP 1** - The arrangement complained of concerns how supervision was ordinarily organised when the Claimant was working. From 30 October 2023, the Claimant was on medical suspension, so the practice did not apply at all. There was no requirement imposed upon her to attend group meetings. Between June and October 2023, the Claimant was working fully from home and attending meetings remotely. There is no evidence that she was required to attend group supervision in person or that the absence of 1:1 supervision was applied as a rigid practice. In fact, the Respondent had already implemented remote working as an adjustment. On that basis, PCP 1 was not applied in a way giving rise to a disadvantage.

    276.2. **PCP 2** - The expectation to attend meetings is a general workplace norm. During medical suspension, it did not operate. Between June and October 2023, the Claimant attended meetings remotely, which was an agreed adjustment. There is no evidence that she was required to attend meetings in a way that placed her at a disadvantage or that any alternative arrangements were refused. Accordingly, PCP 2 was not applied in a way giving rise to a disadvantage.

276.3. **PCP 3** - The expectation to perform duties during set hours attaches to performing work. While medically suspended, the Claimant was not required to perform duties and therefore no working-hours provision was applied. Between June and October 2023, the Claimant worked from home and had flexibility to attend therapy sessions. There is no evidence that the Respondent enforced rigid hours or refused adjustments for therapy. On that basis, PCP 3 was not applied a way giving rise to a disadvantage.

277. In short, each alleged PCP either did not operate during medical suspension or had already been varied in practice before suspension. The Claimant's complaint is directed at the decision to suspend and the lack of alternatives, rather than at a provision, criterion or practice applied to her during the relevant time.

278. Further, even before medical suspension, the Claimant was already working fully from home and attending meetings remotely. These arrangements were implemented as reasonable adjustments and were undisputedly in place. In that context, the alleged PCPs were not being applied to the Claimant in practice.

279. On that basis, no PCP is established for the purposes of s.20 EqA and the allegation is not well-founded.

280. If the Tribunal is wrong in the foregoing analysis and any of PCP 1–3 do amount to PCPs, the reasonable adjustments claim would in any event fail for the reasons set out below.

Substantial disadvantage

281. The Claimant alleged the following substantial disadvantages arising from the PCPs:

281.1. PCP 1 – because of PTSD and anxiety she needed protected time and 1:1 space to discuss the impact of issues raised in group sessions;

281.2. PCP 2 – in meetings the Claimant was at risk of being misunderstood due to her symptoms

281.3. PCP 3 – the Claimant was told she would need to take annual leave to attend therapy which clashed with standard hours

282. The Claimant further alleged that:

282.1. the use of a computer placed the Claimant at a substantial disadvantage because she had carpal tunnel syndrome and back issues; and

282.2. the lack of a dual screen and Read and Write software placed the Claimant at a substantial disadvantage because she had difficulty reading and writing due to her dyslexia.

283. The Claimant has not demonstrated that the identified PCP(s) placed her, as a person with the relevant disabilities, at a substantial disadvantage compared with persons who are not disabled, during the material period (the medical suspension), when the PCPs did not operate. Before suspension, remote working and remote meetings were already in place, materially mitigating any alleged disadvantage.

Reasonable Adjustments

284. The Claimant contends that reasonable steps which should have been taken instead of medical suspension included

284.1. provision of a dual screen;

284.2. provision of Read and Write software;

284.3. regular postural breaks;

284.4. a safe space to talk;

284.5. time after therapy to process memories;

284.6. time to attend medical appointments; and

284.7. training for her line manager to understand the Claimant's conditions and how to support her.

285. The Tribunal finds that the Respondent did take reasonable steps in the circumstances and that any further steps were not reasonably required or could not be implemented because of non-engagement and absence from work, as set out below:

285.1. **IT and ergonomic adjustments**. Dragon software had already been installed on 12 January 2024 and a referral was made for Read & Write Gold. A DSE assessment and delivery of ergonomic equipment (including desk and chair, with scope to support dual screen use) were pursued, but multiple delivery attempts failed **[674]** and screenshots or office attendance to troubleshoot were not provided. The Claimant declined to attend the office and equipment was returned to sender. On the balance of probabilities these adjustments could not be implemented because the Claimant did not engage with the troubleshooting and delivery process.

285.2. **Adjustments linked to therapy and wellbeing**. The Respondent decided to medically suspend the Claimant on full pay following occupational health advice that the Claimant was not fit to work while engaging in EMDR therapy. It put in place weekly well-being checks with flexibility around format and union attendance. Those arrangements were intended to avoid exposure to triggering material and to provide time for therapy. The Claimant declined in-person discussions and insisted on text-only contact, which limited the Respondent's ability to identify and implement further tailored measures. There is no evidence she was prevented from

attending therapy or GP appointments. On the contrary the suspension facilitated it.

285.3. **Postural breaks.** These were accepted in principle but could not be put into effect because the Claimant did not return to duties during the period when breaks would have operated

285.4. **Manager training.** Ms Hope had completed mandatory modules including neurodiversity, performance management and anti-discriminatory practice before assuming line management. She remained open to further training but credibly explained that without engagement it was not possible to ascertain the Claimant's specific needs. The Tribunal accepted that evidence.

286. We therefore find that the duty to make reasonable adjustments was discharged. The Respondent took steps that were reasonable in the light of the occupational health advice, the safeguarding context and the Claimant's expressed preference to avoid work during therapy. Additional steps proposed by the Claimant either could not reasonably have been implemented until she re-engaged with return-to-work planning, accepted deliveries or attended meetings, or were rendered unnecessary by the full-pay suspension which already afforded time for therapy and medical appointments.

287. For those reasons, the reasonable-adjustments claim is not well-founded.

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Employment Judge Yardley

Date: 13 January 2026

Appendix - List of Issues

The issues the Tribunal will decide are set out below.

1. **Time limits**

    1.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 31 December 2023 may not have been brought in time.

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

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

2. **Direct disability discrimination (Equality Act 2010 section 13)**

    2.1 Did the respondent do the following things:

        2.1.1 On 26 October 2023 Ms Gomez mock the claimant's disability in a screenshot to Ms Patton?

    2.2 Was that less favourable treatment?

        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.

        The claimant has not named anyone in particular who they say was treated better than they were.

    2.3 If so, was it because of disability?

3. **Discrimination arising from disability (Equality Act 2010 section 15)**

    3.1 Did the respondent treat the claimant unfavourably by:

3.1.1 Ms Gomez mocking the claimant's disability in a screenshot to Ms Patton (with reference to having a congratulatory drink)?

3.1.2 On 30 October 2023 Mr Smith and Ms Gomez, Ms Forester-Brown, Mr Plant, Ms Tsang and / or Ms Zakowicz medically suspending the claimant?

3.1.3 On 16 February 2024 Ms Hope refusing to get the claimant's access to IT reinstated?

3.1.4 From 27 November 2023 , Stephen Parker delaying in hearing the claimant stage 1 grievance?

3.1.5 Between December 2023 to March 2024 Ms Beckford sharing the claimant's OH reports with 13 members of staff without her consent?

3.1.6 On February 2024 Ms Hope sending the claimant notice of a capability hearing?

3.1.7 In March 2024 Ms Woolgar failing to ensure that the claimant had a substantive post to go back to following her medical suspension?

3.1.8 On April 2024 Ms Hope sending the claimant notice of a capability hearing?

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

3.2.1 due to OH recommendations, the need to manage the claimant disability and / or put in place reasonable adjustments
3.2.2 due to the claimant being on medical suspension
3.2.3 the claimant attending treatment and /or therapy
3.2.4 the claimant being vulnerable because she was attending therapy

3.3 Was the unfavourable treatment because of any of those things?

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

3.4.1 Safeguarding, operational continuity and employee welfare.

3.5 The Tribunal will decide in particular:

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

3.5.2 could something less discriminatory have been done instead;

3.5.3 how should the needs of the claimant and the respondent be balanced?

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

4. **Harassment related to disability (Equality Act 2010 section 26)**

4.1 Did the respondent do the following things:

4.1.1 Between Dec 2023 to March 2024 Ms Beckford sharing the claimant's OH reports with 13 members of staff without her consent?

4.2 If so, was that unwanted conduct?

4.3 Did it relate to disability?

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

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

5. **Victimisation (Equality Act 2010 section 27)**

5.1 Did the claimant do a protected act as follows:

5.1.1 From 5 April 2023 submitting a stage 2 appeal?

5.1.2 On 27 November 2023 submitting a stage 1 grievance?

5.2 Did the respondent believe that the claimant had done or might do a protected act?

5.3 Did the respondent do the following things:

5.3.1 On 16 February 2024 Ms Hope refused to get the claimant's access to IT reinstated?

5.3.2 After 25 October 2023 disciplining the claimant's trade union representative thereby denying her the right to trade union representation

5.3.3 From 27 November 2023 , Stephen Parker delaying in hearing the claimant stage 1 grievance?

5.3.4 Between December 2023 to March 2024 Ms Beckford sharing the claimant's OH reports with 13 members of staff without her consent?

5.3.5 On February 2024 Ms Hope sending the claimant notice of a capability hearing?

5.3.6 In March 2024 Ms Woolgar failing to ensure that the claimant had a substantive post to go back to following her medical suspension?

5.3.7 On April 2024 Ms Hope sending the claimant notice of a capability hearing?

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

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

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

6. **Reasonable Adjustments (Equality Act 2010 sections 20 & 21)**

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

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

6.2.1 Attend group supervision three times per week without any supervision meetings
6.2.2 Attend meetings
6.2.3 Attend work during working hours

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

6.3.1 PCP 1 – due to her PTSD and anxiety she needed space to discuss with her manager the impact on her of issues raised in the group meetings
6.3.2 PCP 2 – The claimant was often wrongly perceived in these meetings due to lack of understanding of her condition and symptoms
6.3.3 PCP 3 – the claimant was informed that she would need to take annual leave in order to attend therapy

6.4 Did a physical feature, namely use of a computer put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that she had carpal tunnel syndrome and back issues?

6.5 Did the lack of an auxiliary aid, namely a dual screen and Read and Write, put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that she had difficulty reading and writing due to her dyslexia.

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

6.7 What steps could have been taken to avoid the disadvantage? The claimant suggests:
6.7.1 Provide a dual screen
6.7.2 Provide Read and Write
6.7.3 Provide regular postural breaks
6.7.4 Provide a safe space to talk

6.7.5 Provide time after therapy to process my memories
6.7.6 Provide time to attend medical appointments
6.7.7 Line manger to attend training to understand her conditions and how to support her

6.8 Was it reasonable for the respondent to have to take those steps following receipt of the OH report dated 26 September 2023? The claimant's case is that these steps should have been taken instead of medically suspending her.

6.9 Did the respondent fail to take those steps?

7. **Remedy for discrimination or victimisation**

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

7.2 What financial losses has the discrimination caused the claimant?

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

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

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

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

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

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

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

7.10 If so is it just and equitable to increase or decrease any award payable to the claimant?

7.11 By what proportion, up to 25%?

7.12 Should interest be awarded? How much?