EMPLOYMENT TRIBUNALS

Claimant: Mr G Normand

respondent: HMRC

Heard at: Newcastle **On:** 2 –9 February 2026

Before: Employment Judge Childe

REPRESENTATION:

Claimant: In person (represented by his wife Mrs Normand)

Respondent: Mr Tinnion (Counsel)

JUDGMENT

1. The claimant's claims for:

    a. discrimination arising from disability;

    b. failure to make reasonable adjustments;

    c. harassment related to disability;

    d. victimisation (s.27 EqA 2010);

    are not well founded and are dismissed.

REASONS

Introduction

2. The Claimant brings claims for:
    a. discrimination arising from disability contrary to sections 15 and 39(2)(d) Equality Act 2010 (EqA 2010);
    b. failure to make reasonable adjustments contrary to sections 20 and 39(5) EqA 2010;
    c. harassment related to disability (section 26 EqA 2010); and
    d. victimisation (s.27 EqA 2010).
3. I had access to an agreed tribunal bundle which ran to 919 pages.
4. Witness evidence was provided by the claimant himself and for the respondent; Mrs Tracy Fell, Front Line Manager and the claimant's line manager, Mrs Kath Gray, Senior officer Business Unit Head and appeal officer and Mrs Amanda Heron, Business Unit Head for command 7.

Brief summary of the case

5. The claimant's case is that the issuing of a first written warning under the respondent's absence management procedure after he had 47 days absence in 10 months, of which 9 related to his disability, was discrimination arising from disability and a failure to make reasonable adjustments. The claimant also alleges that the steps taken to manage the claimant's absence amounted to harassment related to disability, and victimisation.

Day one of the final hearing- reasonable adjustments for the hearing itself

6. I asked the parties at the outset of the hearing whether any reasonable adjustments were required to enable them to participate fully in the hearing. Mrs Normand informed me that there were two reasonable adjustments required. Firstly, she may need to stand up and move around from time to time and secondly, the claimant might need additional toilet breaks. Both of those adjustments were accommodated.
7. There was a preliminary issue raised by Mrs Normand at the outset of the hearing that the respondent had exchanged two sets of witness statements. It transpired that the only difference between the first and second set of witness statements was the word draft had been removed and there were signatures on the second set of witness statements. Mrs Normand was content to proceed once this reassurance was given.
8. There had been two preliminary case management hearings on this case prior to the final hearing. At the second of those, which took place on 30 June 2025 and for which the case management order been sent to the parties on 5 July 2025, a list of issues had been set out ("the June CMO"). The list of issues identified the legal claims, including the specific substantial disadvantage relied on by the claimant. However, because some of the claimant's allegations relating to specific incidents that were said to be harassment related to disability and victimisation did not have specific dates identified, the claimant had been asked to provide those dates to respondent after the preliminary hearing, to enable the list of issues to be finalised. The parties were informed in the June

CMO that if they thought the list of issues was wrong, they must tell the Tribunal and the other side by 25 July 2025. The claimant did not do so.

9. It became clear, again at the outset of the hearing, that the list of issues had not been finalised because the parties had not transposed dates that the claimant had given to the respondent, into the final list of issues.
10. Helpfully, Mr Tinnion agreed to work with the claimant, whilst I did the necessary reading on the first day of the case, to transpose those dates into the list of issues.

Day two of the final hearing- agreed list of issues

11. Unfortunately, the parties could not agree all the issues as anticipated, by the start of the second day of the hearing. The parties continued, again helpfully, to work together to narrow down the issues in dispute on the second day of the hearing.
12. Mr Tinnion helpfully explained which of the issues to be determined by the tribunal were agreed by the respondent, which had the effect of narrowing down the areas of enquiry for the tribunal and the questions that Mrs Normand needed to ask the respondent's witnesses in cross examination.
13. One of the issues in dispute was that the claimant wished to change the substantial disadvantage for their reasonable adjustments claim. This had been identified in the list of issues in the June CMO as follows:
    a. *13.Did it put the claimant to the substantial disadvantage compared to someone without the claimant's disability? The claimant said that this put him to a substantial disadvantage compared to a person without IBS in*

that he had increased periods of absence and the policy gave the manager no discretion to adjust or remove or reduce the impact of disability related absences was required to determine whether the reasonable adjustments.

14. The claimant wished to change it to:

    a. *13.Did it put the claimant to the substantial disadvantage compared to someone without the claimant's disability? The claimant said that this put him to a substantial disadvantage compared to a person without IBS in that he had increased periods of absence and the policy gave the manager a discretion to adjust or remove or reduce the impact of disability related absences.*

15. The respondent objected to this change, and I was required to make a case management decision on whether the change should be permitted. I decided to refuse the claimant's application to amend the wording, as set out in paragraph 14.a above, because as a principle of fairness the respondent was entitled to know the case against them when preparing for final hearing, which included understanding what the substantial disadvantage for the purposes of the reasonable adjustments claim was. There was an order in the June CMO that if the parties disagreed with the issues, they should write to the tribunal on or before 25 July 2025 to set out why. The claimant did not do so and did not have a good reason for not doing so. The first time the claimant raised the issue of the wording for the substantial disadvantage was on the first day of the final hearing. If the change were permitted, I was satisfied it would change the complexion of the reasonable adjustments case and would change the nature

of the enquiry the tribunal needed to make, and the approach the respondent needed to take to defend the claim. The change proposed was a disruptive change to the hearing.

16. I concluded that the balance of prejudice favoured the respondent, who had now fully prepared their case based on the agreed list of issues set out in the June CMO.

17. On the second day of the hearing, we discussed the disability relied on by the claimant and the claimant was clear that the only disability relied on in this case was irritable bowel syndrome (IBS). The claimant explained that stress and anxiety could exacerbate the symptoms of his IBS but was not relied on as a separate disability.

18. Throughout the second day of the hearing, in addition to Mr Tinnion, Mrs Gray, Mrs Heron and Mrs Fell were present in the hearing room. They were sat at the back of the room observing the case. The claimant did not once raise an issue with their presence.

19. During the second day of the hearing on three occasions Mrs Normand requested additional time, firstly to review a document, secondly to consider the claimant's position on the change to the reasonable adjustments claim set out in paragraphs 13 to 16 and thirdly to identify a part of the absence management policy which supported the amendment sought. This was permitted. After each break I was careful to check that the claimant was well enough to continue, and I was assured he was.

20. By the end of the second day of the final hearing the parties were able to agree the list of issues. Those issues are the issues set out in the June CMO, with the

addition of the dates in relation to specific allegations, provided by the claimant. Mr Tinnion helpfully summarised those dates in table format and provided this to the parties and to the tribunal on day three of the final hearing. Those issues are set out in the analysis and conclusion section of this judgment.

21. At the end of the second day of the hearing, I had a discussion with Mrs Normand about whether she had prepared questions for the respondent's witnesses, to enable me to effectively timetable the remaining parts of the final hearing. Mrs Normand said that she had prepared questions for all witnesses, but that she would refine those and reduce them where possible overnight, given the concessions Mr Tinnion had made about issues that were agreed, as set out in paragraph 12 above.

Day three of the final hearing- further adjustment to the hearing and claimant's evidence

22. At the start of the third day of the hearing Mrs Normand explained that both her and the claimant had not been well overnight and she had not had an opportunity to review and refine the questions for the respondent's witnesses as she had hoped. Mrs Normand assured me that she and the claimant were nonetheless well enough to proceed with the final hearing.
23. At the start of the third day of the hearing the claimant made a request for a further reasonable adjustment. The claimant said he objected to Mrs Gray, Mrs Heron and Mrs Fells' presence in the hearing room. He said their presence amounted to victimisation and harassment. The claimant also said he had been ill overnight and he felt stressed.

24. I was surprised by the claimant's request for several reasons.

    a. Firstly, this adjustment was only being made on the third day of the hearing when I had been careful to ask the parties at the outset whether any reasonable adjustments were required.

    b. Secondly, Mrs Gray, Mrs Heron and Mrs Fell were present in the hearing room all day on the second day of the hearing and the claimant had not once raised an issue about their presence nor had he asked for any additional toilet breaks. This suggested to me that their presence had not had a tangible impact on the claimant's IBS.

    c. Thirdly, Mrs Gray, Mrs Heron and Mrs Fell had done nothing wrong and it was reasonable of them, particularly given that the claimant remained employed by the respondent, to wish to observe proceedings.

    d. Fourthly, on any objective analysis, it could not be said that the mere presence of Mrs Gray, Mrs Heron and Mrs Fell in the tribunal hearing room could have violated the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment such to amount to harassment or alternatively amount to a detriment for the purposes of victimisation.

25. Having said all that, I was mindful that the claimant had explained to me that stress and anxiety exacerbated his IBS.

26. After making some enquiries, it was possible to allow Mrs Gray, Mrs Heron and Mrs Fell to join the hearing room remotely from another tribunal room. By making this adjustment they were able to hear the proceedings, but were not physically present in the room. This solution was agreed by both parties.

27. I therefore decided to allow the claimant's request to enable him to give the best possible evidence. In doing so, I emphasise that I do not agree with the claimant that this adjustment was a reasonable one to remove any substantial disadvantage due to his disability of IBS, for the reasons I have set out in paragraph 24 above.
28. The claimant was cross-examined for around three and a half hours on the third day of the final hearing. During that time the claimant required one toilet break between 1218 and 12:23, in addition to the usual breaks offered by the tribunal. Other than that, the claimant was able to respond to the questions put by Mr Tinnion and I checked after each break that the claimant and Mrs Normand were able to continue and they said they were.
29. The claimant's evidence was part heard at the end of day three and the claimant remained under oath overnight. Mr Tinnion said he had a maximum of three hours' worth of further questioning for the claimant, but that period could be less dependent on the claimant's answers.
30. At the end of the third day of the hearing, I informed Mrs Normand that we would discuss the number of questions she had prepared for the respondent's witnesses, at the outset of day four of the hearing.
31. The claimant presented as an honest witness, but one who was hypersensitive to anything that his manager did which he didn't like or which made him feel uncomfortable. As I have said at paragraph 23, this was demonstrated in the tribunal hearing itself where the claimant, who clearly didn't like his line manager and other colleagues being present in the tribunal hearing because it made him feel uncomfortable, interpreted their presence as unlawful

harassment or victimisation. It was also plain from answers the claimant gave when challenged under cross examination by Mr Tinnion to see his case from the respondent's perspective and from an objective perspective. Examples of this were the claimant suggesting that the respondent should simply have ignored his 47 days absence, and suggesting that entirely innocuous and appropriate absence management by the respondent was somehow harassment related to disability, as I have set out in paragraphs 117, 118, 137, 146, 161 and 165. The impression given from the claimant's answers was that day three of the final hearing was the first time the claimant had been forced to see his reaction from those perspectives.

Day four- claimant's non-attendance

32. The claimant did not attend the tribunal on the fourth day of the hearing. The claimant sent an email at 9:15 AM to say that both he and Mrs Normand had become unwell. The claimant said *it has become clear during the course of the hearing that we have found the process increasingly overwhelming, both physically and mentally, which we raised with the judge. We have realised that continuing without legal representation is not manageable for either of us.* The claimant did not give an indication of when he would be in a position to resume the final hearing.
33. I heard representations from the respondent and decided to adjourn the final hearing until 9 AM the next day (the fifth day of the final hearing) to enable the claimant to recover and to give the claimant an opportunity to produce medical

evidence. The claimant was informed of the following in my case management order:

a. If the claimant remains unwell after today, they must, by 9 AM tomorrow morning (6 February 2026), produce medical evidence that the claimant is unfit to participate in the final hearing together with a further application to adjourn the final hearing, setting out clearly when they wish the final hearing to be adjourned until and why it is in the interests of justice to grant such an application. The medical evidence must identify with proper particularity the claimant's condition and explain why that condition prevents their participation in the remaining days of the final hearing (6 and 9 February 2026). Such evidence should identify the medical practitioner and give details of their familiarity with the claimant's medical condition (detailing all recent consultations), should identify with particularity what the claimant's medical condition is and the features of that condition which (in the medical practitioner's opinion) prevent participation in the trial process.

b. The reason for this decision is that the claimant has said in their application they are currently unwell but has not said when they are likely to recover to take part in the final hearing, nor have they supplied any medical information to support their application. Whilst it is in the interests of justice to adjourn the hearing today to enable the claimant to either recover or to obtain the necessary medical evidence to support a further application to adjourn, it is not in the interests of justice to adjourn the hearing indefinitely as proposed by the claimant.

c. Alternatively, if the claimant recovers today, they should attend the final hearing tomorrow as normal.

Day five- decision to refuse claimant's application to adjourn the hearing

34. The claimant made an application on 5 February 2026, timed at 20:31, by email, to adjourn the final hearing to a date not specified by the claimant ("the Application").

35. The Application was accompanied by a statement of fitness for work note issued by a doctor Emma Payne, which identified the claimant's condition as IBS and stated *"stress has caused a flareup of his IBS and he is housebound with his symptoms and is unable to continue to attend the tribunal currently (the "Fit Note").*" The Fit Note recorded that this would be the case for a period of 18 days from 5 February 2026 to 22 February 2026. The claimant explained in the Application that he had contacted an out of hours GP service to obtain the Fit Note.

36. I refused that application and gave brief written reasons for my refusal to the parties on 5 February 2026. I set out my full reasons in paragraphs 38 to 70 below.

37. I decided that the final hearing would continue on day five at 2PM and I converted the hearing to a hybrid hearing, to enable the claimant to join remotely. A separate CVP link was sent to enable the claimant to join.

Relevant law on postponement applications due to ill health

38. Rule 32 of the relevant parts of the Employment Tribunals Rules of Procedure 2024 ("the Rules") states the following:

32. Postponements

(1) An application by a party for a postponement must be received by the Tribunal as soon as possible after the need for a postponement becomes known.

(2) In the circumstances listed in paragraph (3) the Tribunal may only order a postponement where—

(a) all other parties consent, and—

i. it is practicable and appropriate for the purposes of giving the parties the opportunity to resolve their disputes by agreement, or

ii. it is otherwise in accordance with the overriding objective,

(b) the application was necessitated by an act or omission of another party or the Tribunal, or

(c) there are exceptional circumstances.

(3) The circumstances are—

(a) a party makes an application for a postponement less than 7 days before the date on which the hearing begins, or

(b) the Tribunal has ordered two or more postponements in the same proceedings on the application of the same party and that party makes an application for a further postponement.

(4) In this rule—

(a) "postponement" means a postponement of a hearing including any adjournment which causes the hearing to be held or continued at a later date;

(b) "exceptional circumstances" may include ill health relating to an existing long term health condition or disability.

39. The relevant part of rule 3 of the Rules states:

3. Overriding objective

(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.

(2) Dealing with a case fairly and justly includes, so far as practicable—

(a) ensuring that the parties are on an equal footing,

(b) dealing with cases in ways which are proportionate to the complexity and importance of the issues,

(c) avoiding unnecessary formality and seeking flexibility in the proceedings,

(d) avoiding delay, so far as compatible with proper consideration of the issues, and

(e) saving expense.

(3) The Tribunal must seek to give effect to the overriding objective when it—

(a) exercises any power under these Rules, or

(b) interprets any rule or practice direction.

(4) …

40. The relevant case law was extensively reviewed by HHJ Auerbach in **Phelan -v- Richardson Rogers Ltd 2021 ICR 1164**. The tribunal also had regard to the cases of **Teinaz v London Borough of Wandsworth 2002 ICR 1471, CA, O'Cathail v Transport for London 2013 ICR 614, CA and Andreou v Lord Chancellor's Department 2002 IRLR 728, CA** and the Presidential guidance.

41. Amongst the principles derived from the authorities the following are particularly relevant:-

a. Firstly, that the tribunal's discretion whilst a broad one must be exercised judicially with due regard to reason, relevance and fairness and subject to the overriding objective.

b. Secondly, fairness is fairness to both parties.

c. Thirdly, the tribunal had to have regard to Article 6 of the European Convention on Human Rights as embodied into domestic law under the Human Rights Act 1998. The right to a fair trial will normally point towards a postponement where a party is unable to attend through no fault of their own, even if that causes inconvenience to the other party and the tribunal.

d. Fourthly, the tribunal has to balance the adverse consequences of proceeding with the hearing in the absence of one party against the right of the other party to have a trial within a reasonable time, and the public interest in the prompt and efficient adjudication of cases. Proper weight must be given to an application where one party cannot attend due to ill

health, due to the likely serious implications for that party and those implications will usually outweigh the inconvenience and cost to the other party of granting the postponement.

e. Fifthly, if a postponement was granted when could the case come to an effective hearing, informed by the relevant medical evidence. Allied to this tribunal was likely to fall into error if it failed to properly and fairly appraise the medical evidence prior to determining whether or not to grant the claimant's application.
f. Sixthly, how the litigation had been conducted to date, including previous postponements/adjournments.
g. Seventhly, to some extent, the amount at stake and to what extent the claimant relied upon documentary evidence.
h. Eighthly, whereas where the claimant was a disabled person what reasonable adjustments had been made by the tribunal and what further reasonable adjustments, if any were required.
i. Ninthly, even once a party's unfitness to attend a particular hearing had been established, it did not automatically follow that the adjournment or postponement must be granted.
j. The overall task of the tribunal is to consider all relevant matters and to correctly balance the adverse consequences of proceeding with the hearing in the absence of one party against the right of another party to have a trial within a reasonable time and the public interest in the prompt and efficient adjudication of cases'.

42. The Court of Appeal has set out the "standard of medical evidence" required by a Court or Tribunal before considering the grant of any adjournment, **see GMC v. Hayat [2018] EWCA Civ 2796** at [37] onwards.

Analysis and conclusion regarding claimant's application to postpone the final hearing

43. My role was to decide where the balance of prejudice was in refusing or allowing the claimant's application to adjourn the hearing and to carry out that balancing exercise judicially with due regard to reason, relevance and fairness to both parties and subject to the overriding objective.
44. The claimant said in the Application *during the tribunal, my health deteriorated quickly and I was unable to continue*.

45. It was unclear from this statement whether the claimant was saying that his health deteriorated during the third day of the final hearing, or whether he meant his health had deteriorated on the fourth day of the hearing, when he said he was unable to attend.
46. As I have said at paragraphs 19 and 28 above, the claimant was able to attend the tribunal for the first three days of the hearing, with reasonable adjustments in place and without issue. As I have said at paragraph 28 above, on the third day the claimant was cross-examined for around 3 and a half hours and there were no visible signs of a deterioration in his health. The claimant was able to manage his IBS with the adjustments of regular toilet breaks given by the tribunal and the hearing concluded at 4pm as normal.
47. As I have said, the Fit Note says that *stress has caused a flareup of his IBS and he is housebound with his symptoms*. Whilst the Fit Note does say that *the claimant is unable to continue to attend the tribunal currently*, it does not address the issue of whether the claimant is able to attend the tribunal remotely from his home to complete the remaining maximum period of three hours of his evidence.
48. I decided to make an adjustment to the final hearing to convert it to a hybrid hearing to enable the claimant to join remotely. I understood from the respondent that the claimant was a home worker and therefore had IT equipment to join remotely. The disadvantage the claimant had in not being able to leave the house and attend the tribunal in person due to his IBS (the only disability relied on by the claimant in this case, as set out in paragraph 17 and the condition which was said to prevent him from attending the tribunal as set out in paragraph 35) would be removed by enabling the claimant to join to at least complete the remaining maximum period of three hours of his evidence via video. I explained that I would continue to offer the claimant regular breaks to go to the toilet, together with other adjustments already agreed, as has been done in the final hearing so far.
49. I reached the view that this adjustment would be effective as the claimant had been able to successfully attend the final hearing and participate, with the adjustments of regular toilet breaks and other adjustments, for the first three

days of the hearing and therefore I concluded he was able to attend remotely to complete the remaining maximum period of three hours of his evidence.

50. Whilst I took careful note of the Fit Note I decided to approach it with caution for several reasons.

a. Firstly, the Fit Note did not explain why the claimant's IBS prevented him from attending the remaining maximum period of three hours of his evidence, or the remaining days of the final hearing.
b. Secondly, whilst the Fit Note did identify the name of the medical practitioner, it did not give details of their familiarity with the claimant's medical condition (including all recent consultations).
c. Thirdly the Fit Note did not identify with particularity what features of the claimant's IBS prevented his participation the remaining maximum period of three hours of his evidence, or the remaining days of the final hearing.

51. In this sense the Fit Note was inadequate and did not meet the standard of medical evidence required by the tribunal before considering the grant of any adjournment as set out in **GMC v. Hayat [2018] EWCA Civ 2796** at [37] onwards.

52. The out of hours GP has not had the benefit of seeing the claimant in the tribunal for the first three days of this trial and did not appear to have given thought to whether adjustments could be made to the hearing to enable the claimant to attend remotely from home. If, as the Fit Note said, the claimant's IBS had flared up due to stress, him being in his own home whilst giving the remainder of his evidence to the tribunal would remove the obvious disadvantage to him of requiring to use the toilet more regularly because it would:

a. remove the need for him to travel to the Newcastle Employment Tribunal to give the remaining three hours of his evidence, during which period he might not have easy access to toilet; and

b. enable him to take a break at any point and use his toilet at home, during the maximum remaining three hours of his evidence at the final hearing.

53. I was also cautious, given the claimant had attended an out of hours GP and that GP had not set out their familiarity with the claimant's condition nor set out the reason why the claimant's IBS meant he could not take complete the remaining three hours of questioning in the final hearing, that the GP may simply be recording what the claimant had said to them rather than giving an independent medical opinion on this matter. I was also aware that one reason the claimant might be feeling more stressed was because for the first time, he had been confronted with a view of the case, other than his own, as I explain at paragraph 31.

54. I concluded it was in both the claimant and the respondents' interest that the hearing continued and was concluded within the current listing window.

55. Having made enquiries of the listing team at the tribunal in Newcastle, if this case were to be adjourned, it could not be listed until January 2027 at the earliest.

56. The Fit Note also didn't say when the claimant would be fit to attend to complete his remaining evidence in the final hearing. The claimant said in their application *it is difficult to say with certainty when I will be fit to return, this will depend on recovery and medical review*.

57. It was also very relevant that the claimant was currently midway through his evidence and was under oath. He therefore could not speak to anyone about this case. It would be prejudicial to him if he were to remain under oath for a period of nearly 12 months and possibly longer, given neither the claimant nor his medical advisers could say when he would be fit to attend trial.

58. The claimant remained employed by the respondent and he raised complaints of disability discrimination, including complaints of victimisation and harassment related to disability, against his colleagues. These are important issues which the respondent was entitled to have determined within the current trial window. There was also the public interest in the prompt and efficient adjudication of cases to consider.

59. The second matter raised by the claimant was that his wife, who had been supporting him throughout these proceedings, had become unwell. The claimant said in the Application his wife's blood pressure had risen to dangerously high levels. The claimant said as a result he had no support and felt unable to properly present his case and fairly participate in the final hearing.
60. As I have said, the claimant remained under oath and was currently unable to speak to anyone, including his wife, about this case. The claimant's wife could therefore, be of very limited assistance during the time the claimant gave his evidence, which was likely to be for up to a maximum period of three hours.
61. I determined I would continue to manage the hearing in a way that was fair to both parties, which included managing the approach Mr Tinnion took to cross examination. I had no reason to intervene in Mr Tinnion's cross examination on day three of the final hearing as it had been fair and appropriate. I determined I would do so though if the need arose.
62. I therefore concluded there was no obvious disadvantage to the claimant in his wife not been present in the hearing on day 5 of the final hearing.
63. The next part of the tribunal proceedings, after cross examination of the claimant was complete, was the claimant's cross examination of the respondent's witnesses and then closing submissions.
64. As I have said at paragraphs 21 and 30, Mrs Normand, who was not the claimant's professional representative, told me that she was going to undertake cross examination (and not the claimant) and that questions for the respondent's witnesses had already been prepared.
65. If Mrs Normand continued to be unwell, I determined steps could be taken to ensure the claimant was properly able to present his case and participate fairly. The claimant could supply me with the preprepared written questions for the respondent's witnesses, and I would ask the questions of the respondent's witnesses. I determined the claimant may also produce written submissions. I determined that these matters could be discussed after the claimant had completed their cross examination.
66. I therefore concluded that any disadvantage to the claimant in the absence of Mrs Normand could be effectively mitigated.

67. I therefore concluded, balancing all the relevant factors, that the balance of prejudice favoured the respondent and the Application should be refused. I was satisfied that the reasonable adjustments I had proposed would enable the claimant to attend to present his case and participate fairly. It was important to all parties, for the reasons I've set out in paragraphs 43 to 66, that the claimant's case was concluded within the original trial window.
68. I provided the claimant with a brief set of written reasons for my decision, given the limited time available, which were intended to convey to the claimant the broad reasons for my decision and to explain to him what was required of him and how the tribunal was able to accommodate him for the remainder of this trial, to ensure that he was able to present his case and participate fairly. This document was provided to the claimant by the tribunal at noon by email.
69. The claimant responded by email at 1340 to say that they would not attend the hybrid final hearing due to illness.
70. I decided to adjourn the final hearing to Monday, 9 February 2026, to give the claimant and his wife a final opportunity to recover over the course of the weekend. This decision was communicated to the claimant by the tribunal at 1507 by email.

Day six of the final hearing

71. On the morning of day 6 of the hearing the claimant provided a further fit note from the same GP which now said *stress has caused a flareup of his IBS and he is housebound with his symptoms and is unable to continue to attend the tribunal currently* *in person or virtually* together with a renewed application to adjourn the final hearing on medical grounds.
72. I considered this fit note and decided that the concerns I had with the standard of medical evidence provided by the claimant, as set out in paragraphs 50 - 53

above remained, as other than the text underlined in paragraph 71 above, it remained identical to the Fit Note.

73. The point I make at paragraph 53 about the claimant's GP simply recording what he had said remained a concern, as the claimant's GP's note that the claimant could not attend the final hearing in person or virtually appeared to be in direct response to my case management order to the claimant that he could attend a hybrid hearing virtually as a reasonable adjustment.
74. I decided there was no reason to set aside my original case management order that the case would proceed in hybrid format.
75. The claimant did not attend day six of the final hearing.
76. The claimant's evidence concluded on day six of the final hearing.
77. The respondent's evidence was heard. As the claimant did not provide the list of pre-prepared question for me to ask their witnesses, no questions were put to their witnesses.
78. The respondent provided written submissions to the tribunal and to the claimant and made oral submissions. As the claimant did not provide any written submissions, I did not hear submissions from the claimant.
79. I then reserved my decision and began my deliberations.
80. The claimant made an application on 9 February 2026, after I had begun my deliberations, for permission to respond to the respondent's submissions *should our health improve before the tribunal's decision is made.*
81. I had already begun my deliberations when this application was received. I decided it was not in the interests of justice to delay making my decision to an indefinite period when the claimant and Mrs Normands' health may or may not

improve. This would not be in accordance with the overriding objective to avoid delay. The claimant had been given an opportunity to attend day six of the final hearing and produce either oral or written submissions and had chosen not to do so. I therefore considered the claimant had had a reasonable opportunity to make any submissions that they wished. For these reasons I decided that I would continue to make my decision and would issue judgment based on the information I had and would not grant the claimant's application.

Findings of fact

82. The relevant facts are as follows. Where I have had to resolve any conflict of evidence, I indicate how I have done so at the material point.
83. The claimant commenced employment with the respondent, the HMRC, on 12 January 2004 and initially worked as a band AO officer.
84. The claimant was promoted to a band O caseworker in the respondent's Command Seven division, on 25 October 2021.
85. At this point Mrs Fell became the claimant's line manager. The claimant agreed in evidence that he didn't know Mrs Fell prior to this, nor did Mrs Fell know the claimant.
86. On 21 December 2022 the claimant informed Mrs Fell that he had IBS. Mrs Fell referred the claimant to occupational health and in January 2023 Mrs Fell agreed that the claimant could work from home whenever he had an IBS flareup.
87. On 28 December 2022 Mrs Fell sent to the claimant by email a stress risk assessment and a wellness plan for him to complete if he wished.
88. Between 2 and 3 March 2023 the claimant had his first period of sickness absence for two days. The reason for this sickness absence was he had a head cold and it was recorded as a respiratory condition by the respondent. The claimant said in cross examination that this absence should be deemed to be because of his IBS, because he suggested that he was more prone to infection because of his IBS. I reject this analysis. I find that the reason for the claimant's absence was a head cold. This is what the claimant told the respondent at the

time. He was able to identify if the reason for absence was IBS (see paragraph 96 to 97) and he did not do so on this occasion. There was no medical evidence to suggest this absence related to IBS.

89. The claimant had a second period of sickness absence for 10 days between 20 and 31 March 2023. The reason for this sickness absence was that the claimant had a chest infection. Again, the claimant said in cross examination that this absence should be deemed to be because of his IBS, because he suggested that he was more prone to infection because of his IBS. Again, I reject this analysis. I find that the reason for the claimant's absence was a chest infection. This is what the claimant told the respondent at the time. He was able to identify if the reason for absence was IBS (see paragraph 96 to 97) and he did not do so on this occasion. There was no medical evidence to suggest this absence related to IBS.

90. Pausing here, it was put to the claimant during cross examination that his absence from work for more than 10 days in one month was a cause for concern for the respondent and was starting to have an impact on the service the respondent provided. Surprisingly, the claimant said that he didn't understand his absence would have such an impact. He did however agree that whilst he might not understand the impact, Mrs Fell and those that managed him were in a position to understand the impact of his absence on the respondent's business and were right to be concerned about the impact.

91. The claimant had a third period of sickness absence between 24 and 28 of April 2023. The claimant was absent for five days due to a chest infection. The reason for this sickness absence was that the claimant had a chest infection. I

repeat the observations I have made in paragraph 89 above regarding the reason why I have concluded the reason for the claimant's absence was a chest infection and not his IBS.

92. Pausing here, it was put to the claimant that his absence was now starting to become serious as he had been absent for 17 days over two months. Surprisingly, the claimant said he didn't know and had no opinion on whether his absence was serious. This suggested to the tribunal that the claimant had little idea of the impact of his absence on the respondent's organisation and their ability to provide an effective service to their service users.
93. The claimant did accept that Mrs Fell acted appropriately during this period by not taking any formal absence management steps of any kind, despite the claimant now having a significant period of absence of 17 days over two months.
94. Between 7 July and 31 December 2023, the claimant worked from home and was not required to work in the office.
95. By 12 July 2023 the claimant had completed a wellness plan and a stress management plan and Mrs Fell met with the claimant to discuss these on this day.
96. Between 7 August and 15 September 2023 the claimant had a further period of 29 days sickness absence. 9 of those days were IBS related and 20 of those days were not. The 9 days sickness absence were from 7 to 11 August 2023 and 12 to 15 September 2023. There were 20 days sickness absence due to non-work-related stress.

97. I find that only the 9 days sickness absence referred to in paragraph 96 above were IBS related. The remaining 20 days were due to nonwork related stress.

98. I've reached this finding because this is what the claimant told the respondent at the time and he was able to differentiate the two types of sickness absence.

99. The non-work-related stress reason for the 20 days sickness absence was recorded on two fit notes submitted by the claimant at the time (one on 15 August 2023 and one on 30 August 2023, which both identified the reason for absence as a stress related problem). There was no medical evidence whatsoever to suggest that the 20 days sickness absence was due to IBS.

100. The closest the claimant could come to linking the two was to say in cross examination that he always had IBS in the background. Of course this was true, but it did not mean that the 20 days sickness absence recorded as non-work-related stress was somehow actually due to IBS and I reject the claimant's evidence on this point.

101. Pausing there, the claimant had had 46 days absence between 1 March 2023 and 15 September 2023. The claimant agreed in cross examination that this was a very serious, long and sustained period of absence. The claimant agreed in cross examination that Mrs Fell could have initiated formal steps under the absence management procedure but did not do so. The claimant accepted in cross examination that he was receiving a high level of support and tolerance from Mrs Fell during this period.

102. The claimant's case is that on an unidentified date in August 2023 Mrs Fell stated to him *"I too have IBS and I can manage it fine"* and *"It is not a disability"*. Mrs Fell denies she said this to the claimant.

103. I prefer the evidence of Mrs Fell and I find that these words were not said to the claimant. The reason I have reached this decision is because firstly the claimant could not give a specific date when this allegation was said to have taken place. As I have said, the claimant was absent from work from 7 August 2023 until the end of August 2023, and the claimant could not even identify whether Mrs Fell had said these words to him whilst he was at work or whilst he was absent from work due to sickness. There was no evidence presented that corroborated in any way these words being said to the claimant. The claimant did not complain about this at the time either formally or informally.

104. By contrast, Mrs Fell was clear in her witness evidence that these words were not said, and I find that Mrs Fell has a better recollection of whether these words were said.

105. The claimant agreed that Mrs Fell further supported him on 16 October 2023 and 8 November 2023 when he was not feeling 100% well, by allowing him to work a half day so that he did not take a day's absence which would count towards any consideration of taking formal action under the absence management procedure.

106. On 27 November 2023 Mrs Fell and the claimant met to discuss and review the claimant's work performance. The claimant agreed in cross examination that he talked about difficult domestic family problems he was unfortunately having at the time. The claimant told Mrs Fell that his IBS was worsening as a result.

107. The claimant had no further period of sickness absence for the remainder of 2023.

108. On 2 January 2024 the claimant had a period of sickness absence for one day. The reason for the claimant's sickness absence was the flu. I find that this was not an IBS related absence because the claimant said at the time it was the flu.

109. The claimant and Mrs Fell had a return-to-work meeting on 3 January 2024. At this point, I find that the claimant had 47 days' absence of which 38 were none IBS related for the reasons I have set out in paragraphs 88,89,91,96 -98, 101 and 108 above.

110. The claimant agrees that he told Mrs Fell during this meeting that he was considering coming back to work one day a week because of his own mental health. Mrs Fell agreed that the claimant could do so and it was agreed the claimant would work one day per week in the office from then onwards, and this would be reviewed in four weeks' time.

111. On 12 January 2024 the claimant was invited to a formal meeting to discuss his sickness absence, because Mrs Fell had a concern that the claimant had had 47 days absence from work over 10 months.

112. On 26 January 2024 Mrs Fell met with the claimant and gave the claimant a first notification, which was in effect a first warning, about the claimant's attendance. The claimant's absence would be subject to review during a 6 month review period. The letter issued to the claimant said *"If you do not demonstrate an improvement in your attendance during this period, I may need to take further formal action. I do not need to wait until the end of the Review Period before doing so."* This was an entirely appropriate and normal message to expect an employer to give an employee whose attendance was

falling short of expectations and was in no way threatening towards the claimant. Whilst the claimant suggested in cross examination that this should have been worded differently, by saying individual circumstances should have been taken into account, he was unable to clearly identify what other part of the wording he took objection to. I find that this wording was entirely appropriate and if the claimant formed the view that this was harassment related to disability it was unreasonable of him to do so.

113. The claimant said in evidence that had his sickness absence been recorded in a different way, and had disability related sickness absences been identified separately, he might not have received a first written warning. The difficulty for the claimant in this argument is that the respondent was already recording the disability related sickness absences separately. They were recorded as IBS related. As I have found at paragraph 109 above, only 9 of the 47 days absence were IBS related.

114. Even if those 9 days had been discounted, I find that the respondent would still have issued a first written warning for the 38 days non-disability related absences. I have accepted Mrs Gray's evidence on this point.

115. The claimant accepted in evidence that the respondent's absence management procedure had no trigger points within it.

116. The claimant said that the respondent should have discounted his 47 days sickness absences in their totality, notwithstanding that 38 of those days were non-disability related absences, and should not have given him a warning at all under the absence management procedure.

117. Pausing here, the claimant gave some remarkable evidence about the effect of absence on the respondent's organisation and how the respondent should have managed his absence. The claimant said he *couldn't say* whether his absence of 47 days over 10 months should be a cause for concern for the respondent. The claimant couldn't say how high his absence should be before triggering a formal warning under the absence management procedure.

118. The claimant said that the respondent should have done nothing and taken no formal action regarding his absence. This was remarkable because it showed a lack of insight into the impact the claimant's absence was having on the respondent's organisation. Also, following the claimant's evidence to its logical conclusion, it would have meant that the respondent had no ability to manage the claimant's absence in any way. The claimant did not suggest that taking this approach would have led to an improvement in his attendance. Indeed, the respondent had taken this approach in 2023 because they had not initiated formal absence management of the claimant, and this had not led to an improvement in his attendance.

119. The claimant says that between 3 January and 31 May 2024 Mrs Fell contacted him on a daily basis to ask when he was to return to work. Mrs Fell denies that this occurred. I prefer the evidence of Mrs Fell as it was clear and logical. I accept Mrs Fell's evidence that she did not have time to ring the claimant every day, given she had a team of 10 staff and many other things to do throughout the day. I do find that Mrs Fell rang the claimant weekly as part of a duty of care, to understand whether the claimant was attending the office one day a week as agreed. By comparison the claimant's evidence was less

clear and not logical, as there would be no reason for Mrs Fell to ring the claimant on a daily basis as he suggested.

120. On 31 January 2024, the claimant emailed Mrs Fell and made a request for further reasonable adjustments as follows:

a. *It would be helpful if my disability absence were to be recorded separately from other sicknesses i.e. recorded as Disability Related or Disability Leave.*

b. *Perhaps not counting some of my absences related to my disability towards any trigger points, or increasing the number of absences that would usually trigger a formal review.*

121. With specific reference to the point at paragraph 120.b, the respondent's absence management policy had not contained trigger points since 2018. The claimant's request was based on a fundamental misunderstanding of the respondent's absence management policy in effect at the time. The claimant wrongly believed that the respondent still operated a trigger point at which levels of absence were considered unsustainable, when this was not the case and did not form part of the respondent's policy.

122. In fact, it was agreed that the absence management policy gave Mrs Fell and all other managers a broad discretion to adjust or remove or reduce the impact of any absence on formal action to be taken under the policy, including disability related absence.

123. On 1 February 2024 Mrs Fell emailed the claimant and said the following:

a. *I spoke to EAS today and the adviser confirmed it is a tribunal that would make the decision around what is a disability.*

b. And I can confirm the advice given is there is no provision on SAP to apply disability absence and, regardless of reason/s why, if you're not fit for work this absence is recorded as a sickness absence.

c. And I can confirm the advice given is there is no provision on SAP to apply disability absence and, regardless of reason/s why, if you're not fit for work this absence is recorded as a sickness absence.

124. I find Mrs Fell thought it was important that the claimant understood this information.

125. The claimant accepted in cross examination that:

a. What Mrs Fell was saying in her email was factually true.

b. Mrs Fell was simply explaining that there was no provision in the respondent's computerised absence management recording system known as SAP ("SAP") for recording disability related absences.

c. Mrs Fell was simply explaining to the claimant there were no trigger points within the respondent's absence management procedure.

d. The email was polite and respectful.

e. He could understand there was nothing about the email which violated his dignity or created an offensive environment.

126. In February 2024, the claimant attended the office 2 out of the 4 days he was expected to attend.

127. On 7 February 2024, the claimant appealed against the first written warning he had been issued due to his attendance.

128. On 7 March 2024, the respondent's chief executive issued a statement to all employees of the respondent that the expectation was they would attend the office for 60% of their working week, from 2 April 2024.

129. At the claimant's request a different appeal manager to the originally proposed appeal manager, Mrs Gray, was appointed to conduct the appeal.

130. The appeal hearing took place on 8 March 2024. The claimant was accompanied by his union representative at this meeting. The words set out in paragraph 133 below was said by Mrs Gray during the appeal meeting.

131. On 22 March 2024, Mrs Gray refused the claimant's appeal against the first written warning. The claimant agreed in cross examination that he was given an opportunity during the appeal meeting to explain why he should not be issued with a first written warning. Mrs Gray dismissed the claimant's appeal because there was no evidence that Mrs Fell had made a procedural error in issuing the claimant with the first warning, which was supported by the information and evidence available to Mrs Gray. The new evidence produced by the claimant in his appeal was not in fact new and was known to Mrs Fell at the time.

132. On 25 March 2024 Mrs Gray sent the claimant the decision in writing. The claimant was sent the appeal decision, the appeal decision template and the appeal note.

133. In the note enclosed with the claimant's appeal outcome letter Mrs Gray stated *"we support lots of people who are covered by the Equality Act, but that does not mean the appropriate processes are not followed if absences become unsustainable"* and *"We have several people working here with different*

disabilities, and it is our job to help them, but that does not give them "free rein" for absences because of them".

134. The claimant agreed neither he nor his union representative raised any concerns about these words at the time, either during the meeting or after the notes were received.

135. Under cross examination the claimant said that the only part of this note that he took issue with was the phrase *"free rein"*. The claimant accepted it was reasonable of Mrs Gray to say that just because someone is absent from work due to disability that doesn't mean that the disability can simply be ignored when considering absence management of that individual. The claimant accepted that Mrs Gray was not talking about him. The claimant said *in my head I thought it meant does she think I'm abusing it* (meaning the absence management process). The claimant agreed in cross examination that nowhere in that note does it say this and he accepted that the issue for him was that it was the way he reacted to this note and felt rather than what was actually said that he took issue with.

136. The claimant disagreed with the respondent that there was nothing wrong or unreasonable in what Mrs Gray said.

137. I reject the claimant's interpretation. I agree with the respondent that there was nothing wrong or unreasonable in what Mrs Gray was saying in her note to the claimant. It was important that the claimant understood that even if he had disability related absences, the respondent could still take action under the absence management procedure to manage those absences if they became unacceptably high.

138. In March 2024, the claimant agreed that he attended the office on 2 out of the 4 expected days of attendance.

139. On 25 March and 9 April 2024 Mrs Fell adjusted the respondent's electronic Office Attendance Toolkit to accommodate the claimant's request to work in the office 20% of his working week in June and July 2024 respectively.

140. Between 15 and 17 April 2024 the claimant was absent from work due to Covid. The claimant agreed in cross examination that this was a non-IBS related reason for absence.

141. On 17 April 2024, the claimant lodged a grievance with the respondent. The respondent agrees that this was a protected act for the purposes of victimisation under the Equality Act 2010.

142. The claimant first contacted ACAS under the early conciliation process on 18 April 2024.

143. On 18 April 2024, the claimant returned to work. The claimant had a telephone call with Mrs Fell to discuss his return to work. The claimant's evidence about what was discussed during this call was confused. The claimant suggested in cross examination that Mrs Fell had explained to him that he ***would*** receive a second warning due to his three days absence. The claimant's evidence then changed, and he said Mrs Fell said he ***could*** receive a second warning due to his absence. The claimant's own allegation of harassment, set out in paragraph 268 is that he was informed by Mrs Fell that he ***could*** receive a second written warning.

144. Whilst the claimant's case did change, he finally agreed in cross examination that he was told by Mrs Fell that he could receive a further written

warning. The claimant also agreed that he was in his six-month review period at this point; Mrs Fell was warning him of the consequences of his absence during this period; he already knew the consequences were that he might be issued with a second warning and he accepted that Mrs Fell was not telling him anything he didn't already know.

145. The claimant then tried to suggest that rather than there being nothing wrong with Mrs Fell politely telling him what he knew already (i.e. that is second period of absence in the review period could lead to a second warning) she had in fact made him feel as though he was going to get a second warning and he shouldn't have been told this.

146. I find that there was no reason for the claimant to draw this conclusion. Mrs Fell had not said that the claimant would receive a second written warning. The claimant's perception of what was said was not in accordance with the reality of what was said. Mrs Fell was doing nothing wrong by telling the claimant that he could receive a second warning because he had been absent during his six-month review period.

147. Mrs Fell also sent the claimant an email on the 18 April 2024. This email said, in the context of the claimant's three-day absence within the review period: *However, future absences may result in further action if attendance is deemed to be unsustainable.*

148. The claimant's objection to this comment was that Mrs Fell was now telling him a second time that he could face further action under the attendance management process due to his most recent three-day period of absence.

149. Again, I can find, objectively, nothing wrong with Mrs Fell providing this information to the claimant.

150. In April 2024 the claimant attended the office for 1 out of the 3 expected days of attendance.

151. The claimant alleges that on 30 April 2024 Mrs Fell made mocking oral comments to the claimant about an occupational health report namely:

a. quoting the word panicked in a mocking incredulous manner.

b. belittle the claimant's difficulty in commuting.

c. not accept the claimant's condition was a disability.

152. I find that the claimant is wrong that this was said. The claimant has presented no evidence to corroborate that these comments were made. There is no written record of the meeting. The claimant did not complain at the time these matters were said. If they were said, they would be completely out of character with all the other professional and appropriate communications Mrs Fell had had with the claimant and I find on the balance of probabilities the comments were not said at all.

153. The claimant was issued with an ACAS early conciliation certificate on 8 May 2024.

154. I accept the evidence of Mrs Fell, which was clear and consistent, that by the end of May 2024 she had formed a reasonable view that the claimant's work performance was below the required standard.

155. On 30 May 2024 the claimant met with Mrs Fell to discuss the claimant's work performance. The performance issue that Mrs Fell genuinely had with the claimant was his quality pass rate was 71% against the year-to-date target of

90% and in particular, in the months of March and April 2024 he had a pass rate of 29%.

156. Mrs Fell therefore put in place a performance improvement plan ("PIP") to assist the claimant to meet the standard of a 90% quality pass rate, and not for any other reason. Mrs Fell put in place different sources of support to enable the claimant to achieve the 90% quality pass rate such as providing him with help cards and a buddy to assist him. This was entirely appropriate and helpful to the claimant.

157. In May 2024 the claimant attended the office on none of the 4 expected days.

158. The claimant presented his ET1 to the employment tribunal on 5 June 2024. The respondent accepts that this document constitutes a protected act for the purposes of the claimant's victimisation claim.

159. On 16 July 2024 Mrs Fell emailed the claimant a "special working arrangements application form" along with a "hybrid toolkit policy" emphasising the expectation of meeting 60% of office attendance. The purpose of this email was to assist the claimant.

160. Under the claimant's contract he was required to attend the office for 60% of the working week, as I have set out in paragraph 128. The claimant was plainly not achieving this. As I have said in paragraph 157, the claimant didn't attend the office on any days in May 2024. Mrs Fell in her email was suggesting to the claimant that a special working arrangement ("SWA") may be more appropriate to the claimant's needs. Under the SWA the claimant could apply to work from home for more than 40% of the week. Alternatively, Mrs Fell sent

the claimant a hybrid toolkit which he could complete and which might lead to the 60% attendance in the office expectation being changed. Ultimately, Mrs Fell made it clear that the claimant should discuss with his union how we wanted to proceed and come back to Mrs Fell.

161. I find that there is nothing wrong with Mrs Fell taking this step. The landscape at the respondent had changed from April 2024 and Mrs Fell was doing everything she reasonably could to support the claimant in applying for the appropriate working pattern for him, to enable him to manage his disability and attend the office.

162. On 31 July 2024 Mrs Fell sent the claimant an email in which she congratulated the claimant on passing his six-month review period. Mrs Fell said in this email *It's important that I explain that if your time off pattern is unsustainable during the Maintain Attendance Period, formal action may move on to the next stage.*

163. The claimant could not accept in cross examination that there was nothing threatening about Mrs Fell telling him what might happen if his absence fell below the required standard, nor could he accept that Mrs Fell was simply telling him what he needed to know. The claimant said he felt this comment violated his dignity and created an of offensive and toxic environment for him. This was an unreasonable response from the claimant to an entirely appropriate and standard communication from Mrs Fell.

164. The claimant alleges on 7 August 2024, in a meeting and by email, Mrs Fell threatened to withdraw the claimant's adjustment of been allowed to work from home.

165. Turning firstly to deal with the email. The email does not, on any objective reading, threaten to withdraw the claimant's adjustment of being allowed to work from home. What the email does say is that if there is an impact on quality/performance on the claimant's work whilst he is working from home, he may be required to come into the office to improve quality and performance. The email also says there is an expectation that the claimant will be required to attend the office 20% of the time across the month and if he doesn't, that may lead to further review on completion of the hybrid toolkit form. This is not a threat to withdraw any adjustment the claimant might have had to work from home and if the claimant perceived it as such, such perception was unreasonable.

166. I further find that Mrs Fell made no such threat orally on 7 August 2024 as alleged by the claimant. The best evidence of what Mrs Fell said to the claimant is the email that was sent on the same day. I find that what Mrs Fell said orally to the claimant was consistent with what is set out in the email that I have described in paragraph 165 above. The claimant has presented no evidence to corroborate that these comments were said to have been made. There is no written record of the meeting. The claimant did not complain at the time these matters were said. If they were said, they would be completely out of character with all the other professional and appropriate communications Mrs Fell had had with the claimant and I find on the balance of probabilities the comments were not said at all.

167. The claimant alleges on 9 September 2024 Mrs Fell indicated the claimant could no longer wholly work from home. I find that the claimant is wrong that this was said. The claimant has presented no evidence to

corroborate that these comments were said to have been made. There is no written record of the meeting. The claimant did not complain at the time these matters were said. If they were said, they would be completely out of character with all the other professional and appropriate communications Mrs Fell had had with the claimant and I find on the balance of probabilities the comments were not said at all.

168. The claimant had a period of sickness absence from 13 November 2024 to 4 December 2024 due to a chest infection and not due to IBS.

169. On 16 December 2024 Mrs Fell invited the claimant to a Meet, Discuss, Decide meeting on 08 January 2025 to discuss the sickness absence referred to in paragraph 168. The invite to this meeting was entirely professional, polite and appropriate and in line with what one would expect to see when managing an employee's absence due to sickness.

170. The claimant was issued with a second warning due to his absence on 15 January 2025 by Mrs Fell. The reason for this was because the claimant had had two separate periods of absences, since 15 April 2024 (as referred to in paragraphs 140 and 168 above). Those absences were not due to IBS and were therefore for non-disability related reasons. Those additional absences came to a total of 19 days. The absence was unacceptable.

171. The claimant lodged a formal grievance on 20 March 2025 with the respondent. The respondent agrees this was a protected act.

Issues

172. The claimant confirmed, after some discussion, that the only disability he relied on for the purposes of his claim was IBS. The respondent agreed that the claimant was a disabled person, for the purposes of the EqA, because he had IBS at the relevant time.

173. The agreed issues in this case are as set out in the analysis and conclusion section below, following the same numbering as set out in the issues section of the June CMO, and have been updated to take into account the further issues agreed in this final hearing. The claimant agreed both to the tribunal (as I set out in paragraph 20) and under oath that these issues were agreed and I will refer to them as the List of Issues in this judgment.

Relevant Law

Time limits

174. The relevant section of the Equality Act 2010 is:

s123 Time limits

(1) proceedings on a complaint within section 120 may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable.

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

Burden of proof

175. The relevant parts of section 136 of the Equality Act 2010 ("the EqA 2010") provide as follows:

136 Burden of proof

(1) This section applies to any proceedings relating to a contravention of this Act.

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

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

176. The Claimant bears the initial burden of proof. The Court of Appeal held in **Ayodele v Citylink Limited and anor [2017] EWCA Civ. 1913** that *"there is nothing unfair about requiring that a claimant should bear the burden of proof at the first stage. If he or she can discharge that burden (which is one only of showing that there is a prima facie case that the reason for the respondent's act was a discriminatory one) then the claim will succeed unless the respondent can discharge the burden placed on it at the second stage".*

177. At the first stage, the tribunal does not have to reach a definitive determination that there are facts which would lead it to the conclusion that there was an unlawful act. Instead, it is looking at the primary facts to see what inferences of secondary fact could be drawn from them.

178. As was held in **Madarassy v Nomura International plc [2007] IRLR 246**, "could conclude" refers to what a reasonable tribunal could properly conclude from all of the evidence before it, including evidence as to whether the acts complained of occurred at all. In considering what inferences or conclusions can thus be drawn, the tribunal must assume that there is no adequate explanation for those facts.

179. If the burden of proof moves to the respondent, it is then for it to prove that it did not commit, or as the case may be, is not to be treated as having committed, the allegedly discriminatory act.

180. To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the prohibited ground. That would require that the explanation is adequate to discharge the burden of proof on the balance of probabilities, for which a tribunal would normally expect cogent evidence.

181. In a harassment case, the first stage of the burden of proof is particularly relevant to establishing that the unwanted conduct was related to the protected characteristic.

182. All of the above having been said, the courts have warned tribunals against getting bogged down in issues related to the burden of proof – **Hewage v Grampian Health Board [2012] ICR 1054**.

183. In some cases, it may be appropriate for the tribunal simply to focus on the reason given by the employer and if it is satisfied that this discloses no discrimination, then it need not go through the exercise of considering whether the other evidence, in the absence of a satisfactory explanation, would have been capable of amounting to a prima facie case of discrimination.

Discrimination arising from disability (section 15 Equality Act 2010)

184. Section 15 of the EqA 2010 provides as follows:

15 Discrimination arising from disability

(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.

185. As to what constitutes "unfavourable treatment", the Supreme Court in Williams v Trustees of Swansea University Pension and Assurance Scheme and anor [2019] ICR 230 held that it is first necessary to identify the relevant treatment and it must then be considered whether it was unfavourable to the claimant.

186. The Court said that little was likely to be gained by differentiating unfavourable treatment from analogous concepts such as "detriment" found elsewhere in the Act, referring to a relatively low threshold of disadvantage being needed. One could answer the question by asking whether the Claimant was in as good a position as others.

187. The approach to complaints of discrimination arising from disability was considered in detail by the Employment Appeal Tribunal in **Pnaiser v NHS England [2016] IRLR 170**:

"(a) A tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises.

(b) The tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be

more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a s.15 case. The "something" that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.

(c) Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A's motive in acting as he or they did is simply irrelevant: see ***Nagarajan v London Regional Transport [1999] IRLR 572****. A discriminatory motive is emphatically not (and never has been) a core consideration before any prima facie case of discrimination arises …*

(d) The tribunal must determine whether the reason/cause (or, if more than one), a reason or cause, is 'something arising in consequence of B's disability'. That expression 'arising in consequence of' could describe a range of causal links. Having regard to the legislative history of s.15 of the Act … the statutory purpose which appears from the wording of s.15, namely to provide protection in cases where the consequence or effects of a disability lead to unfavourable treatment, and the availability of a justification defence, the causal link between the something that causes unfavourable treatment and the disability may include more than one link. In other words, more than one relevant consequence of the disability may require consideration, and it will be a question of fact assessed robustly in each case whether something can properly be said to arise in consequence of disability.

…

(f) This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.

…

…

(i) As Langstaff P held in ***Weerasinghe****, it does not matter precisely in which order these questions are addressed. Depending on the facts, a tribunal might ask why A treated the claimant in the unfavourable way alleged in order to answer the question whether it was because of "something arising in consequence of the claimant's disability.*

……...

Alternatively, it might ask whether the disability has a particular consequence for a claimant that leads to "something" that caused the unfavourable treatment."

188. In paragraph 4.27 of the Equality And Human Rights Commission Equality Act 2010 Statutory Code of Practice ("the Code") considers the phrase "a proportionate means of achieving a legitimate aim" (albeit it in the context of justification of indirect discrimination) and suggested that the question should be approached in two stages:-

a. is the aim legal and non-discriminatory, and one that represents a real, objective consideration?
b. if so, is the means of achieving it proportionate – that is, appropriate and necessary in all the circumstances?

189. As to that second question, the Code goes on in paragraphs 4.30 – 4.32 to explain that this involves a balancing exercise between the discriminatory effect of the decision as against the reasons for applying it, taking into account all relevant facts.

190. The tribunal draws the following principles from the relevant case law, some of which concerned justification of indirect discrimination but the defence is the same for both types of discrimination:

a. The burden of establishing this defence is on the respondent.

b. The tribunal must undertake a fair and detailed assessment of the respondent's business needs and working practices, making clear findings on why the aims relied upon were legitimate, and whether the steps taken to achieve those aims were appropriate and necessary.

c. In Hardy & Hansons plc v Lax [2005] ICR 1565 it was said that part of the assessment of justification entails a comparison of the impact upon the affected person as against the importance of the aim to the employer. It is not enough that a reasonable employer might think the treatment justified. The tribunal itself has to weigh the real needs of the respondent, against the discriminatory effects of the aim. A measure may be appropriate to achieving the aim but go further than is (reasonably) necessary in order to do so and thus be disproportionate.

d. In summary, the respondent's aims must reflect a real business need; the respondent's actions must contribute to achieving it; and this must be assessed objectively, regardless of what the respondent considered at the time. Proportionality is about considering not whether the

respondent had no alternative course of action, but whether what it did was reasonably necessary to achieving the aim.

Failure to make reasonable adjustments

191. The relevant parts of section 20 and 21 of the EqA 2010 provides as far as relevant:

20 Duty to make adjustments

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

(2) The duty comprises the following three requirements.

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

(5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

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

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

(a) removing the physical feature in question,

(b) altering it, or

(c) providing a reasonable means of avoiding it.

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

21 Failure to comply with duty

(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

192. The duty to make reasonable adjustments is unique as it requires positive action by employers to avoid substantial disadvantage caused to disabled people by aspects of the workplace. To that extent it can require an employer to treat a disabled person more favourably than others are treated.

193. Turning now to substantial disadvantage. My task is to set out the nature, effects and extent of the alleged substantial disadvantage and assess it objectively. In other words, I must consider why the PCP puts the claimant at the alleged disadvantage and ask myself what specific thing it is about the PCP that puts the claimant at the alleged disadvantage.

194. There is no requirement in the EqA 2010 for a strict causation test linking the disadvantage caused by the PCP to the claimant's alleged disability. All that is necessary is that the Claimant prove facts from which a tribunal could infer that the PCP simply put the claimant at either:

a. a disadvantage compared to non -disabled people because they are a disabled person (rather than because of the disability); or

b. that because the claimant was a disabled person, the PCP, whilst causing a disadvantage to everyone whether disabled or not, put the Claimant at a more severe disadvantage because they were a disabled person when compared to non-disabled people **Sheikholeslami v University of Edinburgh UKEATS/0014/17 [2018] IRLR 1090.**

195. In Environment Agency v Rowan [2008] IRLR 20, the EAT restated guidance on how an employment tribunal should approach such a complaint, saying that tribunals must identify:

a. *the provision, criterion or practice applied by or on behalf of an employer, or;*
b. *the physical feature of premises occupied by the employer;*
c. *the identity of non-disabled comparators (where appropriate); and (d) the nature and extent of the substantial disadvantage suffered by the claimant."*

Harassment

196. Section 40 of the EqA 2010 renders harassment of an employee unlawful. Section 26 defines harassment as follows:

26 Harassment

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

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

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

(i) violating B's dignity, or

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

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

(a) the perception of B;

(b) the other circumstances of the case;

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

197. It is clear that the requirement for the conduct to be "related to" disability needs a broader enquiry than whether conduct is "because of disability" like direct discrimination **Bakkali v Greater Manchester Buses (South) Limited UKEAT/0176/17**.

198. What is needed is a link between the treatment and the protected characteristic, though comparisons with how others were or would have been treated may still be instructive. In assessing whether it was related to disability, the form of the conduct in question is more important than why the respondent engaged in it or even how either party perceived it.

199. The question of whether the respondent had either of the prohibited purposes – to violate the Claimant's dignity or create the requisite environment – requires consideration of each alleged perpetrator's mental processes, and thus the drawing of inferences from the evidence before the tribunal **GMB v Hennderson [2016] EWCA Civ 1049**.

200. As to whether the conduct had the requisite effect, there are clearly subjective considerations – the Claimant's perception of the impact on her (they must actually have felt or perceived the alleged impact) – but also objective considerations including whether it was reasonable for it to have the effect on this particular Claimant, the purpose of the remark, and all the surrounding context. That much is clear from section 26 and was confirmed by the Employment Appeal tribunal in **Richmond Pharmacology Ltd v Dhaliwal**

[2009] ICR 724. The words of section 26(1)(b) must be carefully considered. Conduct which is trivial or transitory is unlikely to be sufficient.

201. Mr. Justice Underhill, as he then was, said in that case:

a. *"A respondent should not be held liable merely because his conduct has had the effect of producing a proscribed consequence: it should be reasonable that that consequence has occurred. That…creates an objective standard … whether it was reasonable for a claimant to have felt her dignity to be violated is quintessentially a matter for the factual assessment of the tribunal. It will be important for it to have regard to all the relevant circumstances, including the context of the conduct in question. One question that may be material is whether it should reasonably have been apparent whether the conduct was, or was not, intended to cause offence (or, more precisely, to produce the proscribed consequences): the same remark may have a very different weight if it was evidently innocently intended than if it was evidently intended to hurt …"*

202. Similarly in the case of **Land registry v Grant [2011] EWCA Civ 769**, Elias LJ as he became said, when discussing the descriptive language of subparagraph 1:

a. *"tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment."*

203. Violating and intimidating are strong words, which will usually require evidence of serious and marked effects. An environment can be created by a

one-off comment, but the effects must be lasting. Who makes the comments, and whether others hear, can be relevant, as can whether an employee complained, though it must be recognised that is not always easy to do so. Where there are several instances of alleged harassment, the tribunal can take a cumulative approach in determining whether the statutory test is met **Driskel v Peninsula Business Services Ltd. [2000] IRLR 151**.

Victimisation

204. Section 27 of the EqA 2010 defines victimisations as follows:

27 Victimisation

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

(a) B does a protected act, or

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

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

(a) bringing proceedings under this Act;

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

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

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

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

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

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

205. Detriment is established if treatment is of a kind that a reasonable worker would or might take the view that in all the circumstances it was to their detriment: **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337 HL**. Therefore, for detriment to be proven, it is for the claimant to show that they were or would have been, in their subjective view, placed at a disadvantage and that it was objectively reasonable for them to have held that view.

206. The detriment relied upon by the Claimant, must be linked to the protected act. The same test for causation in direct discrimination, is therefore relevant to victimisation because the statutory wording is the same.

207. The tribunal should focus on the “real reason” why the alleged discriminator subjected the complainant to the treatment they allege was direct discrimination **Chief Constable of West Yorkshire Police v Khan [2001] UKHL 48**, which is a subjective rather than legal test.

Analysis and conclusion

208. The approach I take to the analysis and conclusion is to deal with each of the allegations in the List of Issues in turn.

Discrimination arising from disability (s.15 EqA 2010)

209. The respondent agrees that at the relevant time they knew the claimant was disabled because of his IBS.

5. Did the respondent treat the claimant unfavourably as follows:

a. On 26 January 2024, did the claimant's line manager Mrs Fell issue the claimant with a written warning for attendance?

210. The respondent agrees that the claimant was issued with a written warning for attendance on 26 January 2024, by Tracy Fell.

211. The respondent also agrees that this constituted unfavourable treatment.

7.Was the unfavourable treatment because of the following "something" namely disability - related absences

212. The respondent agrees that 9 of the claimant's 47 days absence which resulted in the claimant being issued with a first written warning were IBS and therefore disability related.

213. As I have found in paragraph 109 above, I agree with the respondent that 9 of the claimant's 47 days absence which resulted in the claimant being issued with a first written warning were IBS and therefore disability related and the remaining 38 days' absence were not due to the claimant's IBS and were therefore not disability related.

8.Did those 'something' arise in consequence of the claimant's IBS?

214. Yes, 9 of the claimant's 47 days absence arose in consequence of the claimant's IBS.

9.Was the treatment a proportionate means of achieving a legitimate aim? The respondent relies upon the following legitimate aims:

a. effectively managing staff attendance;

b. enabling the business to meet its service standards.

215. The claimant, fairly, agreed in cross examination that effectively managing staff absence was a legitimate aim of the respondent. I agree that this was a legitimate aim.

216. I find that enabling the respondent's business to meet its service standards to its customers, which in this case was broadly speaking UK based taxpayers, was also a legitimate aim of the respondent.

10.If yes, was the treatment a proportionate means of achieving one (or both) of these aims?

217. The starting point in carrying out this analysis is to acknowledge that the claimant had a significant period of absence over a relatively short period of time. As I have found at paragraph 109 above, over a 10 month, the claimant had five separate periods of absence totalling 47 days. That equates on average to just under 1 working week's absence per month worked.

218. As I find at paragraph 101, the respondent gave the claimant a significant degree of leeway during the first four episodes of absence. No formal absence management warnings were issued to the claimant at all in 2023. I have accepted the evidence of Mrs Heron that formal absence management warnings can generally be issued after a period of 9 days absence from work but was not done in this case.

219. The fact that Mrs Fell did not issue a formal absence management warning until the claimant had 47 days absence demonstrates that the respondent was taking a proportionate means of achieving their legitimate aim of effectively managing staff absence and meeting the respondent's business service standards.

220. I reject the claimant's case, set out in paragraph 118, that Mrs Fell should simply have ignored all his absences and taken no formal action under the absence management process.

a. Firstly, as I say at paragraph 218, this is what the respondent had done during the first four episodes of the claimant's absence and this had not

led to an improvement in the claimant's attendance and was therefore not effective in managing the claimant's absence.

b. Secondly, it would in effect have meant that the respondent what have no way of managing the claimant's absence as they would simply be required to ignore all the claimant's absences and would have no way of managing the impact of the claimant's sickness absence on the ability to meet the respondent's business service standards.

c. Thirdly, whilst the claimant did not seem to appreciate, as I say at paragraph 92, that his absence from the respondent would have a detrimental impact on the respondent's ability to meet its service standards as there was one less person to do the work the claimant was employed to do, I find that the claimant's absence clearly had such an impact as there were less people to do the work the claimant was employed to do. Ignoring the claimant's absence would therefore in my view have meant that the respondent would find it more difficult to meet its service standards.

221. I agree with the respondent's submission that:

a. the first formal warning under the respondent's absence management process was the lowest formal step the respondent could take at the time.

b. The claimant had the right of appeal against the first formal warning and he exercised this right.

c. Even if the 9 disability related days absence for IBS had been discounted, the respondent was still entitled to issue a first formal warning for the remaining 38 days non-disability related absence.

222. I therefore conclude that the respondent acted proportionately in issuing the claimant with a first written warning, due to his high level of absence and the fact that a first written warning was the lowest formal step the respondent could take at the time to manage the claimant's absence.

b. On 22 March 2024, did Mrs Gray reject the claimant's appeal against the issuance of a written warning for attendance?

223. The respondent agrees that Mrs Gray rejected the claimant's appeal against the written warning for attendance.

224. The respondent agrees this constitutes unfavourable treatment.

7.Was the unfavourable treatment because of the following "something" namely disability - related absences

8.Did those 'something' arise in consequence of the claimant's IBS?

225. No, I find the rejection of the claimant's appeal was not unfavourable treatment because of disability related absences.

226. Rather, as I have found at paragraph 131 Mrs Gray dismissed the claimant's appeal because there was no evidence that Mrs Fell had made a procedural error in issuing the claimant with the first warning which was supported by the information and evidence available to Mrs Gray. The new

evidence produced by the claimant was not in fact new and was known to Mrs Fell at the time.

9.Was the treatment a proportionate means of achieving a legitimate aim?

a. The respondent relies upon the following legitimate aims: effectively managing staff attendance;

b. enabling the business to meet its service standards.

227. If I am wrong in my conclusion at paragraph 225 above, and the decision of Mrs Gray to reject the claimant's appeal against the issuance of a written warning for attendance was because of the disability related absences which arose in consequence of the claimant's IBS, I conclude that the decision to not uphold the claimant's appeal was a proportionate means of achieving a legitimate aim for the same reasons that I have given for why it was a proportionate means of achieving a legitimate aim to issue the claimant with a first written warning in the first place, as set out in paragraphs 216 to 222 above.

5 c On 1 February 2024, did Mrs Fell reject the request the claimant submitted on 31 January 2024 namely:

i. to consider separating his disability-related absences from other absences?

228. No, Mrs Fell did not reject the claimant's request submitted on 31 January 2024 to consider separating his disability related absences from other absences. Rather, as I have found at paragraph 125.b above, Mrs Fell did not

refuse this request. Instead, Mrs Fell simply explained to the claimant that it was not possible to separate the claimant's disability related absences from other absences on SAP.

7.Was the unfavourable treatment because of the following "something" namely disability - related absences

8.Did those 'something' arise in consequence of the claimant's IBS?

229. No, it was not. Rather, Mrs Fell's reason for explaining to the claimant that it was not possible to separate the claimant's disability related absences from other absences on SAP was because this was true (as I find at paragraph 125.a) and Mrs Fell thought it was important that the claimant understand this, as I have set out in paragraph 124.

230. Having reached this conclusion, it is not necessary for me to consider the question of whether the treatment was a proportionate means of achieving a legitimate aim.

5 c On 1 February 2024, did Mrs Fell reject the request the claimant submitted on 31 January 2024 namely:

ii. to increase his triggers or levels of absences considered unsustainable?

231. Yes, as I found at paragraphs 123.b and 125.c, Mrs Fell rejected the claimant's request to increase his trigger or levels of absence considered unsustainable.

7.Was the unfavourable treatment because of the following "something" namely disability - related absences

232. This was not unfavourable treatment as, as I have found at paragraph 121 above, the claimant's request was based on a fundamental misunderstanding of the respondent's absence management policy in effect at the time. The claimant wrongly believed that the respondent still operated a trigger point at which levels of absence were considered unsustainable, when this was not the case and did not form part of the respondent's policy.

8.Did those 'something' arise in consequence of the claimant's IBS?

233. No, it was not. Rather, it was because the claimant had fundamentally misunderstood the respondent's absence management policy in effect at the time for the reasons set out in paragraph 232 above.

234. Having reached this conclusion, it is not necessary for me to consider the question of whether the treatment was a proportionate means of achieving a legitimate aim.

5 d. Between January to August 2024

In an email on 26 January 2024

In a phone call on 18 April 2024

In an email on 18 April 2024 and 31 July 2024

did Mrs Fell threaten the claimant with further warnings if he had any further absences?

235. As I have found at paragraphs 112, 146, 149 and 163:

a. None of the emails identified by the claimant contain a threat that the claimant would receive further warnings if he had any further absences. Rather, they appropriately and reasonably informed the claimant that if he did have any further absences he may be subjected to further formal action under the absence management procedure which could include a further warning.

b. Mrs Fell did not threaten the claimant on 18 April 2024 that he would receive further warnings if he had any further absences. Rather, she appropriately and reasonably informed the claimant that if he did have any further absences he may be subjected to further formal action under the absence management procedure which could include a further warning.

7.Was the unfavourable treatment because of the following "something" namely disability - related absences

8.Did those 'something' arise in consequence of the claimant's IBS?

236. No, Mrs Fell informing the claimant about the possibility of further written warnings if he had further absences was about future absences for any reason and was not because of the claimant's historic IBS related absence or disability or the claimant's IBS or disability in general.

9.Was the treatment a proportionate means of achieving a legitimate aim?

The respondent relies upon the following legitimate aims:

a. effectively managing staff attendance;

b. enabling the business to meet its service standards.

237. If I am wrong in my conclusion at paragraph 236 above, I conclude that the decision to warn the claimant about the possibility of further written warnings if he had further absences was a proportionate means of achieving a legitimate aim for the reasons set out in paragraphs 216 to 222 above. This was a neutral and effective step in effectively managing the claimant's attendance as he was aware that any future absence may lead to further absence management under the respondent's absence management procedure. In managing the claimant's absence effectively, it enabled the respondent to meet its service standards as the claimant was more likely to not be absent from work, knowing that if he was

absent from work, this might result in further formal action under the respondent's absence management procedure.

5. e. On 7 August 2024 in an email and during a meeting did Mrs Fell threaten to withdraw the claimant's adjustment of being allowed to work from home for the foreseeable future?

238. As I have found at paragraphs 165 and 166 above, Mrs Fell did not threaten to withdraw the claimant's adjustment of being allowed to work from home for the foreseeable future in an email on 7 August 2023 or in a meeting on that same day.

239. As I have concluded this conduct did not occur, I do not need to consider further the remaining parts of the test that must be satisfied to determine whether discrimination arising from disability has arisen.

Failure to make reasonable adjustments (s.21 EqA 2010)

240. The respondent agrees they knew the claimant had the disability of IBS at all material times.

12.A "PCP" is a provision, criterion or practice. Did the respondent have the following PCP namely an absence management policy that it applied to all staff?

241. The respondent agrees that at all relevant times in 2023 and 2024 it had an absence management policy which applied to all staff.

13.Did it put the claimant to the substantial disadvantage compared to someone without the claimant's disability?

The claimant said that this put him to a substantial disadvantage compared to a person without IBS in that he had increased periods of absence and the policy gave the manager no discretion to adjust or remove or reduce the impact of disability related absences.

The substantial disadvantage is the issuing of the first written warning.

242. The claimant was not put at the substantial disadvantage that he had increased periods of absence, and the policy gave the manager no discretion to adjust or remove or reduce the impact of disability related absences because:

a. As I have found at paragraph 122, the absence management policy gave Mrs Fell and all other managers a broad discretion to adjust or remove or reduce the impact of any absence on formal action to be taken under the policy, including disability related absence.

b. I therefore conclude, because of this discretion, that the claimant was at no greater risk than non-disabled staff of being subject to formal steps under the attendance management policy, including a written warning for attendance.

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

243. The claimant has presented no evidence that the respondent was aware of this substantial disadvantage, and I find the claimant has failed to shift the burden of proof on this point.

15.What steps could have been taken to avoid the disadvantage? The claimant suggested:

15.1.the separate recording of disability absences to other absences

15.2.the discounting or giving less weight in determining whether to take formal steps under the respondent's absence management policy to disability -related absences.

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

244. If I am wrong on the conclusions I have reached at paragraphs 242 and 243 above, the reasonable adjustments identified in the list of issues (or any other adjustment) would not have removed the substantial disadvantage for the following reasons:

a. As I have found at paragraph 113, the respondent did separately record the reason for the claimant's absences including when it was for a reason connected to the claimant's IBS. I agree with the respondent that separately recording this absence as disability related would achieve no practical purpose as the claimant's IBS related absence was clearly identified on SAP. Those managing the claimant could easily identify from looking at SAP which of the absences were due to IBS and which therefore might be disability related.

b. As I have found at paragraph 122 the absence management policy gave Mrs Fell and all other managers a broad discretion to adjust or remove or reduce the impact of any absence on formal action to be taken under the policy, including disability related absence. The discounting or giving less weight in determining whether to take formal steps under the respondent's absence management policy to disability-related absences would have made no difference to the claimant being issued with a first written warning because, as I have found at paragraph 221.c above, even if the 9 disability related days' absences for IBS had been discounted, the respondent was still entitled to issue a first formal warning for the remaining 38 days' absence.

245. I therefore conclude that it was not reasonable for the respondent to have taken those steps to remove the alleged disadvantage as they would have had no practical impact on the claimant being issued with a first written warning due to the number of his non-disability related absences (being 38 days within 10 months).

Harassment related to disability (s.26 EqA 2010)

246. The claimant has not shifted the burden because he has not established primary facts from which the tribunal could draw inferences of secondary facts, to conclude that Mrs Fell conducted herself with the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. Whilst the claimant may perceive that conduct to have had that effect, such a perception was

unreasonable. I agree with the respondent that the claimant's objections to Mrs Fell's conduct are unreasonable objections on his part to routine absence management.

247. I deal with each of the allegations raised by the claimant in his harassment related to disability claim in turn.

20. Did the following conduct by the respondent occur:

a. In August 2023, did Mrs Fell verbally stated to the claimant "I too have IBS and I can manage it fine"?

b. on same date, did Mrs Fell verbally stated to the claimant (referring to IBS) "It is not a disability"?

248. For the reasons set out in paragraphs 103 and 104, I find that these verbal comments were not made to the claimant.

249. I therefore do not need to consider the remaining components of the legal test for harassment, in connection with these allegations.

c. between 3 January and 31 May 2024 did Mrs Fell contact the claimant on a daily basis to ask when he was to return to work?

250. For the reasons set out in paragraph 119, I find that Mrs Fell did not contact the claimant on a daily basis to ask when he was to return to work.

251. I therefore do not need to consider the remaining components of the legal test for harassment, in connection with these allegations.

d. On 01 February 2024 did Mrs Fell email the claimant and state there were no trigger points under the respondent's managerial absence policy, sickness was recorded irrespective of whether it was disability related, occupational health recommendations were only advisory and the decision rested with a manager and finally the disability could only be determined by an employment tribunal?

252. Yes, Mrs Fell did.

21.If so, was that unwanted conduct?

253. Yes, it was.

22 Did it relate to disability?

254. In part yes it did as the email refers to the claimant's IBS.

23.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?

24.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.

255. The claimant has presented no evidence from which the tribunal could draw an inference that Mrs Fell's conduct in sending this email had the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

256. On an objective analysis this email could not have had that effect, and it was not reasonable for the conduct to have that effect. The email simply informs the claimant, as I find at paragraphs 123 to 125, that there is no provision on SAP to apply disability absence and explains that there are no attendance trigger points under the respondent's absence management procedure.

257. This email was simply, in a professional and appropriate way, Mrs Fell giving the claimant important information he needed to know, in her capacity as his line manager.

258. It cannot be said, objectively, that the contents of this email created an intimidating, hostile, degrading, humiliating or offensive environment for the claimant for a reason related to disability.

e. On 25 March 2024 did the notes of Mrs Kathleen Gray enclosed with the claimant's appeal outcome letter state "we support lots of people who are covered by the Equality Act, but that does not mean the appropriate processes are not followed if absences become unsustainable" and "We have several people working here with different disabilities, and it is our job to help them, but that does not give them "free rein" for absences because of them"?

259. Yes, Mrs Gray's notes did record this text.

21.If so, was that unwanted conduct?

260. Yes, it was.

22. Did it relate to disability?

261. Yes, Mrs Gray's notes did relate to disability as they referred to several people working for the respondent with different disabilities.

23.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?

24.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.

262. The claimant has presented no evidence from which the tribunal could draw an inference that Mrs Gray's conduct in producing these parts of the notes had the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

263. The note simply informs the claimant, as I find at paragraphs 133 to 137 above, that the respondent supports staff with disabilities, but must follow appropriate processes if absences become unsustainable.

264. This email was simply, in a professional and appropriate way, Mrs Gray explaining to the claimant, in her capacity as a senior manager, that the respondent supported those with disabilities but that did not mean that it was not appropriate to consider managing their disability related absences formally under their absence management procedures, even if the reason for that absence was disability related.

265. It cannot be said, objectively, that the contents of this note created an intimidating, hostile, degrading, humiliating or offensive environment for the claimant for a reason related to disability.

f. On or about the 30 April 2024 did Mrs Fell make mocking comments to the claimant about the occupational health report namely

• quoting the word panicked in a mocking incredulous manner

• belittle the claimant's difficulty in commuting

• not accept the claimant's condition was a disability?

266. For the reasons given in paragraph 152, I find that these comments were not made as alleged by the claimant.

267. I therefore do not need to consider the remaining components of the legal test for harassment, in connection with these allegations.

g. Did Mrs Fell on 18 April 2024 in a phone call inform the claimant after being absent for three days with a non- IBS condition that he could receive a second warning in respect of his non-attendance?

268. Yes, Mrs Fell did, for the reasons set out in paragraphs 144 to 146.

21. If so, was that unwanted conduct?

269. Yes, it was.

22. Did it relate to disability?

270. No, it did not. As I find paragraph 140 above, the reason for the claimant's absence on 18 April 2024 was Covid related, not IBS related.

23.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?

24.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.

271. If I am wrong on point 270, the claimant has presented no facts from which the tribunal could draw an inference that Mrs Fell's conduct in making these comments had the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

272. It cannot be said, objectively, that the comments created an intimidating, hostile, degrading, humiliating or offensive environment for the claimant for a reason related to disability. The comments simply inform the claimant something that he needed to know, which was if he was absent again from work during his review period, further formal action might be taken.

h. On or about a date on 30 May 2024 did Mrs Fell put the claimant on a personal improvement plan?

273. Yes, Mrs Fell did.

21. If so, was that unwanted conduct?

274. Yes, it was.

22. Did it relate to disability?

275. No, it was not. As I find at paragraphs 154 and 156, the claimant was placed on a PIP because of concerns regarding his work performance at the time and because she wanted to help him improve his performance, not because of anything related to his IBS.

23.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?

24.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.

276. No. Putting an employee on a PIP when there are legitimate concerns about workplace performance is a standard, modern management tool.

277. The claimant has presented no evidence to suggest this particular PIP was unusual or non-standard and I accept the respondent's submission that a PIP is intended to be a supportive step.

278. I reject the claimant's claim that putting him on this PIP violated his dignity or created a 'toxic' work environment for the claimant. Any perception to that effect was unreasonable.

i. On 16 July 2024 July 2024 did Mrs Fell send the claimant a "special working arrangements application form" along with a "hybrid toolkit policy" emphasising the expectation of meeting 60% of office attendance?

279. Yes, Mrs Fell did.

21. If so, was that unwanted conduct?

280. Yes, it was.

22. Did it relate to disability?

281. No, the claimant has presented no evidence to suggest that the expectation that he attend the office for 60% of the time was due to disability or that these two documents were sent for a reason related to disability. The respondent had taken a decision on 7 March 2024, as I find at paragraph 128 that all staff should attend the office at least 60% of the time. The claimant was not attending the office for at least 60% of the time in May 2024, as I explain in paragraph 157 and this communication was sent to the claimant to support him

in apply for the appropriate work pattern for him, to enable him to choose an appropriate work pattern for him, for the reasons I set out in paragraph 159 to 161.

23.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?

24.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.

282. No, it did not for the reasons set out in paragraph 161. On an objective analysis, nothing about the content or tone of this email and its attachments had the effect of violating the claimant's dignity nor did it a 'toxic' work environment for the claimant. Any perception to that effect was unreasonable.

j. On 9 September 2024 did Mrs Fell indicate the claimant could no longer wholly work from home?

283. No, as I find at paragraph 167 above Mrs Fell did not indicate to the claimant he could no longer work wholly from home on 9 September 2024.

22. Did it relate to disability?

284. If I am wrong on this point, the claimant has failed to establish that this comment was related to disability.

23.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?

24.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.

285. Such a comment, even if it was said, on an objective analysis, cannot have had the effect of violating the claimant's dignity nor did it a 'toxic' work environment for the claimant. Any perception to that effect was unreasonable.

k. On or about 16 December 2024 did Mrs Fell call the claimant to a "supporting your attendance meeting"?

286. Yes, Mrs Fell did.

21. If so, was that unwanted conduct?

287. Yes, it was.

22. Did it relate to disability?

288. The claimant has failed to present evidence that inviting him to a *supporting your attendance* meeting on 8 January 2025 was related to disability. As I find at paragraphs 168 and 169, the reason Mrs Fell asked the claimant to attend this meeting was because of his sickness absence due to a chest infection and not for IBS (and therefore not disability related).

23.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?

24.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.

289. No, it did not. Inviting the claimant to a further attendance review meeting was a normal step under the respondent's absence management procedure. Inviting the claimant to that meeting did not have the effect of violating the claimant's dignity or creating a 'toxic' work environment for the claimant. Any perception to that effect was unreasonable.

Victimisation

24. Did the claimant do the following acts:

lodge a grievance on 17 April 2024

lodge a grievance on 20 March 2025

present a tribunal claim on 05 June 2026

290. Yes, he did.

25. If he did, was that a protected act or acts?

291. The respondent agrees that the three acts referred to above were all protected acts and I find they were protected acts.

26.Did the respondent do the following things:

a Between January to August 2024, in a phone call on 18 April 2024, email on 18 April 2024 and an e-mail on 31 July 2024, did Mrs Fell threatened the claimant with further warnings if he had any further absences?

292. No, Mrs Fell did not, for the reasons I have set out at paragraph 235 above.

b On 7 August 2024 in a meeting and in an email did Mrs Fell threaten to withdraw the claimant's adjustment of being allowed to work from home for the foreseeable future?

293. No, Mrs Fell did not, for the reasons set out in paragraph 238 above.

c On 9 September 2024, did Mrs Fell remove the claimant's concession of being allowed to work wholly from home?

294. No Mrs Fell did not, for the reason set out in paragraph 283 above.

d On 30 May 2024 did Mrs Fell place the claimant on a personal improvement plan?

295. Yes, Mrs Fell did.

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

296. The claimant perceived the PIP to be a detriment, albeit as I find at paragraph 156 above it was intended to be supportive to the claimant.

297. I find it was not subjecting the claimant to a detriment to put him on a PIP.

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

298. If I am wrong on my finding at paragraph 297, as I find at paragraphs 154 and 156, the reason the claimant was placed on a PIP was because he was underperforming and Mrs Fell wanted to put in place a plan to assist the claimant to meet the standards required.

299. The claimant has presented no factual evidence to shift the burden of proof to suggest that Mrs Fell placed the claimant on a PIP because he had done a protected act.

d On 15 January 2025 was the claimant issued with a second warning?

300. Yes, the claimant was.

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

301. Yes, this was a detriment.

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

302. No, it was not. As I find at paragraph 170 the reason the claimant was issued with a second warning was because his attendance was unacceptable and not because he did a protected act. The claimant has presented no evidence to suggest otherwise.

303. The claimant has presented no evidence to shift the burden of proof to suggest that Mrs Fell issued the claimant with a second written warning because he had done a protected act.

304. Given that I have found none of the claimant's complaints are well-founded on their merits, I need not consider the issue of time limits.

Approved by:

Employment Judge Childe

13 February 2026

Note

Public access to employment tribunal decisions

Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s)