



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr C. Williams

v

Clarion Housing Association Limited

Heard at: Norwich

On: 2, 3, 4, and 5 February 2026

Before: Employment Judge: Mr. A Spencer
Ms. S. Blunden (non-legal member)
Miss. N. Howard (non-legal member)

Appearances:

For the Claimant: In person

For the Respondent: Mr. J. Ratledge (counsel)

JUDGMENT having been sent to the parties on 16 April 2026 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

Introduction/Preliminary Issues

1. These reasons relate to the issues concerning liability only.
2. The respondent is a Housing Association. The claimant was employed by the respondent as a Tenancy Specialist from 5th September 2016 until 22nd February 2024. Early conciliation started on 20th May 2024 and ended on 1st July 2024. The claim form was presented on 20th December 2024.
3. The claimant was dismissed with effect from 22nd February 2024. The respondent says that the dismissal was due to capability (poor performance).
4. In his claim form, the claimant raised complaints of unfair dismissal, whistle blowing, disability discrimination and sex discrimination. However, the claim form gave no facts to confirm what these complaints were about.
5. There was a preliminary hearing for the purposes of case management on 26 September 2025. At that hearing it was confirmed that the claimant's complaints were:
 - (a) unfair dismissal;

- (b) detriments for making protected disclosures (i.e. whistle blowing);
 - (c) disability discrimination (direct discrimination); and
 - (d) sex discrimination (direct discrimination).
6. The issues for the tribunal to determine at this final hearing are set out in the case summary produced after the preliminary hearing. The Judge also made case management orders to set out the steps that both parties must take to prepare the case for this final hearing.
7. We noted at the outset of the hearing that the claimant's witness statement stated at the beginning "*I make this statement in support of my claim for unfair dismissal and disability discrimination and failure to make reasonable adjustments.*" This gave rise to two issues:
- (a) No mention was made in the witness statement of the complaints of whistle-blowing and sex discrimination. The claimant's statement contained no evidence relating to these complaints; and
 - (b) It appeared that the claimant intended to pursue a disability discrimination complaint based on an alleged failure to make reasonable adjustments. However, the case management summary and list of issues did not include that claim and included a claim for disability discrimination based on direct discrimination only.
8. We raised these issues with the claimant at the outset of the hearing. We confirmed that he would need to make an application for permission to amend his claim if he were to make a complaint for failure to make reasonable adjustments. After an adjournment to allow the claimant to consider his position, he confirmed that:
- (a) the whistle-blowing and sex discrimination complaints could be dismissed upon withdrawal; and
 - (b) he would not be seeking to amend his claim. He confirmed that he would proceed with the complaint of direct disability discrimination as per the case summary.
9. The claimant also made an application to postpone the hearing. He sought postponement to give him time to obtain a witness statement from a potential witness named Joseph Ogundemuren. Mr. Ogundemuren is a union representative, who accompanied the claimant to one of the performance review meetings before the dismissal. The claimant had not obtained a witness statement from the witness. He understood that the witness may be unwell and/or outside the jurisdiction. The claimant confirmed that the relevance of the further evidence would be to confirm:
- (a) what was said at the relevant meeting;
 - (b) the way the respondent had treated other disabled workers;
 - (c) the ways in which the respondent had failed to follow their own internal procedures.
10. This was not a case of merely delaying the start of the hearing as there was no realistic prospect of the claimant tracking down the witness and obtaining

a statement from him within the four-day hearing. The hearing would need to be postponed entirely to give the claimant an opportunity to try to obtain the statement.

11. The respondent opposed the application.
12. We took into account the overriding objective of dealing with cases fairly and justly and also took into account the applicable Presidential Guidance. We refused the claimant's application. We took into account the following:
 - (a) It was unlikely that granting a postponement would enable the claimant to secure the evidence. The claimant had yet to track down the witness who appeared to be uncooperative;
 - (b) The evidence was likely to be of limited value. For example:
 - (i) there is an extensive written record of the relevant meeting. The claimant accepted this was accurate and so there was no need for the witness to give evidence as to what was said at the meeting.
 - (ii) The claimant himself could give evidence or make submissions about any failures to follow internal procedures.
 - (iii) Any evidence that could be given about the treatment of others was not directly relevant but was potentially evidence from which the tribunal might draw an inference.
 - (c) The application was made late.
 - (d) If the application were granted, the final hearing would be lost and it was likely to lead to a delay of at least a year before the hearing took place.
 - (e) Postponing the hearing would cause significant wasted costs for the respondent.
 - (f) By the time the case was re listed for hearing it would be at least three years since the events concerned. The evidence would be somewhat stale. The recollections of witnesses were likely to be diminished.

Witnesses

13. For the claimant, we heard evidence from the claimant himself and no other witnesses.
14. For the respondent we heard evidence from:
 - (a) Lauren Mason-Mackay, who is employed by the respondent as a National Service Lead for Anti-Social Behaviour and Fraud. Ms Mason-Mackay was the claimant's line manager for some of the relevant period.
 - (b) Emily Batch, who is employed as by the respondent as a Tenancy Specialist Manager. She took over from Ms Mason-Mackay as the claimant's line manager
 - (c) Lewin Dumper, who was employed by the respondent as Head of Operations, Housing Management. Mr Dumper decided the claimant's appeal against dismissal.
15. The witnesses gave evidence under oath or affirmation. They confirmed the truth of their written statements. We had the benefit of seeing their evidence

tested under cross examination and the opportunity to put questions to them ourselves.

Documentary evidence/submissions

16. We considered the contents of a hearing bundle and written statements from each witness. The hearing bundle was supplemented by further documents that were provided to us in the morning of the second day.
17. We also heard oral closing submissions from the claimant and the respondent's counsel.

Findings of fact

18. There is much detail in the documents in this case. There are many issues upon which the parties disagree. However, our task is not to make findings about all such issues. We restrict our findings of fact to those required to determine the issues identified in the list of issues.
19. We reminded ourselves that the applicable standard of proof is the so-called "balance of probabilities." In other words, if the parties dispute a fact, we must consider which account of events is more likely to be correct. We do not need to be satisfied that something is 100% correct. We merely need to be satisfied that something is more likely than not to be the case.
20. The respondent is a Housing Association which employs approximately 4,000 staff, and manages a nationwide housing stock of some 250,000 properties. The respondent is a substantial organisation. It can draw on substantial resources in terms of administrative, legal and HR support.
21. The claimant was employed under the terms of a written contract of employment.
22. The claimant has depression and anxiety. The respondent has conceded that these conditions amount to a disability for the purposes of the Equality Act 2010 and that the claimant was a disabled person within the meaning of the Equality Act at all material times.
23. The claimant began working for the respondent in 2016 as a Right to Buy Officer. He moved into the role of Customer Support Specialist in November 2019. He was seconded to the role of Tenancy Specialist in November 2020. His appointment as a Tenancy Specialist was made permanent in May 2021. His line manager was Lauren Mason-MacKay (Tenancy Specialist Manager). The role of Tenancy Specialist involved dealing with issues of anti-social behaviour and social housing fraud. It included working with the neighbourhood teams to deal effectively with anti-social behaviour. It required collaborative work with other organisations and agencies and an ability to present legal cases at court.
24. The respondent has a number of relevant policies and procedures:
 - (a) a performance improvement policy. It is a short document which confirms that performance issues will initially be raised with an

- employee by their line manager as part of one to one meetings. It confirms that if there are significant concerns about performance, a manager may decide to proceed with a formal performance review in accordance with the respondent's Formal Procedure Policy.
- (b) The Formal Procedure Policy sets out the procedure applicable to all investigations, formal meetings and appeals held under any formal management process including performance and conduct related matters.
 - (c) An Equality Diversity and Inclusion Policy which sets out the respondent's commitments and principles in relation to these matters.
25. The claimant separated from his former partner in September 2018. The couple became embroiled in litigation in the family court concerning their children. The court proceedings began in February 2019. The claimant described the case as overwhelming, playing on his mind and causing him sleepless nights and anxiety. However, this did not have an immediate effect upon his performance at work. For example, in his annual performance review for the year ending 31st March 2020 Ms Mason-Mackay described the claimant as a "solid performer". This was the claimant's last performance review in his old role before he moved into the role of Tenancy Specialist.
26. The respondent provided the "Unum" support service for their staff. This is run by an external third party and is confidential. The claimant engaged with the service in 2020. The claimant's line managers were aware that the claimant was seeking this support. A note concerning a conversation between the claimant and a manager in December 2020 confirms that Unum had provided support to the claimant following issues in his personal life. At the time the claimant said that he was feeling a lot better and more settled. He referred to taking medication and no longer feeling overwhelmed. He considered his current role (Tenancy Specialist) to be much better than his previous role. The note describes him as "*settled and happy in role.*" It was agreed that support from Unum would end. The claimant made no reference to having any ongoing or specific mental health problems at the time.
27. The claimant had further performance reviews for the full year ending 31st March 2021, a mid-year review for the six months to 31st October 2021 and a review for the full year ending 31st March 2022. No particular issues or concerns with the claimant's performance were identified. The claimant made no mention of any medical issues or struggling at work. Clear objectives for the coming year were set by the claimant's line manager on each occasion.
28. A written record of a remote management well-being check undertaken on about 6th July 2021 records that the claimant raised no particular problems with his well-being at this stage and made no mention of anxiety and/or depression or taking medication. The claimant referred to his family court issues as being over.
29. The claimant had a one-to-one meeting with Lauren Mason-McKay on 2nd March 2022. He referred to his home life being "*all OK.*" He said that although he had a busy workload it was "*manageable*" The claimant made no mention of having anxiety, depression, or any mental health issues.

30. By April 2022 Lauren Mason-Mackay had concerns about the claimant's performance in a number of specific areas including:
- (a) a refusal to take information and reports from residents to court. The claimant was considered to have disbelieved a resident;
 - (b) information was put in letters and statements that could not be founded or proven;
 - (c) inappropriate wording, inaccurate information, personal opinions and unconscious bias in written material concerning anti-social behaviour and domestic abuse cases;
 - (d) missed training and diary management;
 - (e) inappropriate correspondence to others in the organisation which resulted in staff feeling personally attacked;
 - (f) referring to a domestic abuse victim as "lying" and a tenant having "put on the waterworks."
31. Ms Mason-Mackay decided to address these issues informally with the claimant. She prepared an informal written performance plan in April 2022. This set out objectives for performance improvement for the period from April to October 2022. The document was shared with the claimant and identified the specific performance concerns, specific goals for improvement and provided for monthly reviews.
32. Ms Mason McKay had regular monthly one to one meetings with the claimant at which his performance was reviewed and discussed against the goals set.
33. Ms Mason-Mackay reviewed the claimant's performance and wrote to him on 9th November 2022 to commence a formal performance review process. She considered that the claimant's performance remained unsatisfactory. The letter confirmed the specific respects in which the claimant's performance was considered to be unsatisfactory. The claimant was invited to a formal performance hearing to review his performance. He was given the opportunity to be accompanied by a fellow worker or trade union official. He was informed that the outcome may be to give him a warning in line with the respondent's formal procedure policy and/or further performance improvement measures.
34. Also on 9th November 2022, the claimant was signed off sick by his GP. He was absent from 9th November to 7th December 2022. Statements of fitness for work were submitted to the respondent. They variously record the reason for absence as "*stress at home*" and "*anxiety and stress*."
35. Upon the claimant's return to return to work, a Personal Stress Assessment form was completed in discussion with Lauren Mason-Mackay. The claimant made no specific mention of suffering from anxiety and/or depression. However, he referred to experiencing stress and confirmed that he was seeking help through medication and counselling. The stress assessment informed the preparation of a written Wellness Action Plan dated 8th December 2022. This set out the steps that the claimant's manager could take to support him to stay mentally healthier work. This included keeping one to one meetings at a frequency of once every five weeks. During the discussions, the claimant referred to stress at home and his role being negative and challenging. He referred to feeling overloaded and mentioned that this was affecting his sleep and decision making. However, he said that he was happy

in his role and loved his job despite the demands.

36. In a file note prepared on 8th December 2022, the respondent referred to the claimant having informed them that he was having counselling and taking medication.
37. The clear picture given to the respondent by this time is that the claimant had mental health difficulties which may be affecting his performance. We consider that an occupational health referral should have been suggested at this point given the ongoing performance issues. The respondent did not suggest such a referral.
38. On 15th December 2022 Ms Mason-McKay wrote to the claimant to invite him to a further formal performance hearing on 4th January 2023. In her letter she confirmed that although the claimant had made progress, she considered his performance remained unsatisfactory. The letter set out the specific issues with the claimant's performance. The claimant was informed that the purpose of the hearing was to review his performance. He was given the opportunity to be accompanied by fellow worker or trade union official. He was told that the potential outcome may be to issue a warning or further performance improvement measures.
39. The claimant had a further one to one meeting with Lauren Mason-Mackay on 21st December 2022. He said that he was "*now feeling better*" after his sickness absence
40. The formal performance hearing took place on 4th January 2023. Lauren Mason McKay conducted it. The claimant attended with a work colleague. The performance concerns and examples were put to him one by one. He had a full opportunity to respond. The claimant did not accept that the issues with his performance were entirely down to him. For example, he raised concerns about an inadequate handover to him when he took over the work which he said put him at a disadvantage. He also referred to the high workload and confirmed that the area that he was responsible for was particularly challenging. He also considered that there were shortages of neighbourhood response officers (NROs) and that the NROs were not proactive enough which increased the claimant's workload. He referred to there being issues with the respondent's CRM computer system that he had to use and the consequences of a cyber-attack. The claimant did not deny that there were performance issues but largely put it down to such factors. He did not say that he was experiencing mental health issues which were impacting upon his performance. Ms Mason-McKay considered what the claimant had said but decided to issue a warning and to implement a further performance improvement plan giving the claimant a three-month period to improve his performance. The claimant was advised that he had the right to appeal against this decision.
41. A performance improvement review document was drawn up on 5th January 2023. The purpose of this document was to keep a record of the claimant's performance during the period of the performance improvement programme.
42. The claimant had a further one to one meeting with Lauren Mason McKay on 12th January 2023. He referred to experiencing a recent period of stress but

said he was “*back now and feeling better.*”

43. Lauren Mason McKay wrote to the claimant on 17th January 2023 to confirm the outcome of the performance management hearing on 4th January 2023. She had clearly considered the points that the claimant had raised. However, she concluded that his performance remained below an acceptable standard. She confirmed that the claimant was to be given a written warning concerning his performance. This would remain in effect for 12 months from the date of the letter. Clear objectives were set for a performance plan to bring the claimant’s performance up to the required standard. These are set out in the letter. There was to be a review within three months. The claimant was warned that if he failed to improve to the required standard within this timescale the respondent may proceed to the next stage of the procedure. The letter confirmed the claimant’s right to appeal against the decision.
44. The claimant did not appeal against the decision.
45. Emily Batch took over as the claimant’s line manager on 24th April 2023. She took over management of the performance review process. The claimant continued to have regular one to one meetings with Ms Batch at which his performance was discussed and reviewed.
46. The ongoing review of the claimant’s performance ran to May 2023 which gave the claimant a five-month period to improve as opposed to original three months. The review identified areas where the claimant’s performance had improved. However, in many areas there was little or no improvement. When this was discussed with the claimant he made no mention of mental health problems being the cause of his issues. He mentioned stress from matters outside work including a new baby.
47. Emily Batch wrote to the claimant on 18th May 2023 to confirm that the claimant’s performance was still considered to be unsatisfactory. In her letter, she set out the specific respects in which the claimant’s performance was considered to be unsatisfactory. The claimant was invited to attend a formal performance hearing on 25th May 2023 to discuss his performance. Again, he was given the opportunity to be represented by a fellow worker or trade union official. He was informed that the outcome may be a final written warning and/or further performance improvement measures.
48. The hearing was put back to 30th May 2023 at the claimant’s request due to ill health. It was conducted by Emily Batch. The claimant attended alone. Ms Batch went through each of the performance objectives set for the claimant, identifying improvements and ongoing issues. The claimant was given a full opportunity to respond. Again, the claimant did not identify any mental health issues that impacted upon his performance. He referred to having a busy workload and a high caseload in comparison with his colleagues in London. He also referred to having to pick up some of the work of the neighbourhood response officers. He referred to having ongoing difficulties outside work. For example, he referred to his family court case going back to court. He said he was finding things difficult to juggle. Ms Batch adjourned to consider the position. She then confirmed to the claimant that she considered that his performance was still below the required standard and that she had decided to issue him with a final warning. Objectives were set which would need to be

met if the claimant were to avoid further action. The claimant was asked if he needed further support in meeting these objectives or any support in respect of the personal matters outside work. The claimant did not identify any support required.

49. Emily Batch wrote to the claimant on 8th June 2023 to inform him of the outcome of the hearing held on 30th May. She confirmed that the claimant's performance remained below the minimum standard required of him despite the performance improvement plan. She confirmed that in her view there was nothing more that the organisation could reasonably be expected to do to further assist him. She confirmed the claimant was issued with a final written warning to remain in effect for 18 months from 30th May 2023. The claimant was warned that if he failed to improve to the required standard within a further six weeks the respondent would proceed to the next stage of the procedure which could result in dismissal. The claimant was informed of his right to appeal.
50. The claimant did not appeal.
51. The claimant continued to attend regular one to one meetings with Emily Batch at which his performance was discussed.
52. The ongoing review of the claimant's performance was documented in a performance improvement review document. This was reviewed and added to in June and July 2023. Ms Batch concluded that the claimant had improved his performance in some areas. However, overall his performance had not improved significantly and she was concerned about the sustainability of the progress made. The document incorporates the claimant's response. Again, he referred to similar issues as before and did not seek to explain the performance issues by reference to his mental health issues.
53. The claimant continued to attend monthly one to one meetings with Ms Batch in June and July 2023.
54. On 3rd August 2023 Ms. Batch wrote to the claimant to invite him to a formal performance hearing. Once again, her letter identified the specific ongoing performance issues. The claimant was given the opportunity to be accompanied by a fellow worker or trade union official. He was told that the possible outcome may be the termination of his employment.
55. The meeting was delayed at the claimant's request to enable his trade union representative to attend. It eventually took place on 6th October 2023. The claimant attended with his trade union representative, Joseph Ogundemuren. It was a lengthy meeting. Once again, all the performance concerns were put to the claimant and he was given a full opportunity to respond. The claimant and his union representative took a different approach to that taken by the claimant at the previous meetings. They accepted that the claimant was overwhelmed and struggling and was not coping with the demands of the job. This was said to be the result of his mental health issues. It was suggested that the appropriate way forward was to refer the claimant for an occupational health assessment and to consider redeployment to another role. After this, the meeting was adjourned and it was agreed that it would reconvene on 13th October 2023.

56. When the meeting reconvened on 13th October 2023, Ms Batch confirmed that an occupational health referral would be made if the claimant consented to this. She also confirmed that the claimant would be put on the respondent's redeployment list and would be provided with a list of all vacancies within the organisation. Ms Batch would meet with the claimant on a weekly basis to discuss the alternative roles that he might seek.
57. After this, the claimant was provided with the list of job vacancies within the entire organisation and had weekly meetings with Ms Batch to discuss vacancies. The claimant did not apply for any vacancies at this point but we have no evidence before us to suggest that suitable vacancies arose.
58. An occupational health report was prepared on 16th November 2023. This confirmed to the respondent that the claimant had been diagnosed with anxiety and depression and was taking medication for this. The report recorded the claimant had become increasingly worn down, leading him to feeling exhausted, weepy, emotional, irritable, and restless. It also recorded that he suffered from poor sleep and had suicidal thoughts at times. The advice given by the occupational health practitioner presented something of a mixed message. When asked what advice could be given with regard to possible adjustments and support from the respondent the advice was:
- "unfortunately, at present, I do not feel that management could consider any adjustments to support the employees return to work as his symptoms are ongoing and significant."*
59. However, the report went on to identify a number of steps that the respondent might take which "*may be useful.*" They included:
- (a) providing psychological therapy through the respondent's employee assistance programme;
 - (b) regular proactive easy access to the claimant's line manager with checks on his well-being, positive feedback and constructive criticism given in a non-confrontational way;
 - (c) good communication with his line manager;
 - (d) consideration of redeployment;
 - (e) adjusting the claimant's absence triggers or authorising absence.
60. The report also recommended a repeat occupational health assessment after three months to assess the claimant's fitness for work after he had hopefully responded to further treatment.
61. We accept Ms Batch's evidence before us in which she went through each of the recommendations and confirmed that (with the exception of adjusting absence triggers and authorising absence and a repeat occupational health report) these steps had already been implemented during the extensive performance improvement process.
62. The claimant was signed off sick by his GP from 2nd November 2023 to 10th January 2024. His sick notes give the reason as "*stress*" and "*stress and low mood*" respectively. The process was delayed by the claimant's absence.
63. The claimant applied for two other roles within the respondent on 26th Jan

2024 (Neighbourhood Response Officer) and 15th Feb 2024 (Sustainment Officer). Both applications were unsuccessful.

64. A further meeting was held on 22nd February 2024. It was conducted by Ms. Batch. It was a short meeting and was clearly not intended to give the claimant an opportunity to discuss or respond to matters. By this time, Ms. Batch had already decided to dismiss the claimant. The purpose of the meeting was to confirm this to the claimant. He was informed that his employment would end with immediate effect on grounds that his performance had not sufficiently improved despite the performance improvement plans put in place and the support and opportunities given to improve. Ms Batch also considered that the claimant had had enough time to seek redeployment. By this stage he had four months to seek redeployment in comparison to the original proposed four weeks. He was told that his employment would end with immediate effect and that he would receive one month's pay in lieu of notice. He was also informed of his right to appeal.
65. In her outcome letter confirming dismissal. Ms. Batch confirmed the four areas in which the claimant's performance was still considered to be below the required standard. They were:
- (a) not progressing legal action in appropriate timeframes;
 - (b) ensuring that he was not applying unconscious bias to cases and practised reflective writing to ensure all notes are factual in communication and on internal systems;
 - (c) issues with prioritisation of workload and issues in maintaining and expanding good working relationships internally and externally;
 - (d) not using the respondent's computer system (the CRM system) correctly.
66. The letter set out the respects in which the claimant's performance was considered to be inadequate. The conclusion was that the claimant's performance had not improved satisfactorily despite the lengthy process, the support provided and opportunities to improve. The claimant was informed that his employment ended with effect from 22nd February 2024. His right to appeal against the dismissal was confirmed.
67. The claimant submitted a written appeal against dismissal on 7th March 2024. He had support and advice from his union representative, John Gray of Unison, at the time. The appeal was a comprehensive and well written letter in which the claimant raised extensive grounds of appeal under three headings:
- (a) procedural irregularities/unfairness;
 - (b) new evidence;
 - (c) overly harsh outcome
68. Mr Lewin Dumper was appointed to hear the claimant's appeal against dismissal.
69. The claimant was invited to an appeal meeting. The meeting was rescheduled from 9th April 2024 to 30th April 2024 to enable the claimants' trade union representative to attend. The claimant submitted additional information to

support his appeal on 8th April 2024.

70. The appeal hearing took place on 30th April 2024. Mr Dumper conducted it. The claimant attended with his trade union representative John Gray. The claimant was given a full opportunity to present his case.
71. After the appeal hearing, Mr Dumper considered the available evidence and concluded that the decision to dismiss would be upheld. He wrote a lengthy letter to the claimant on 16th May 2024 which records his conclusions.
72. The claimant had applied for alternative employment and started a new job as a Housing Officer for another social landlord in late May 2024. In his role the claimant was largely dealing with new applicants and setting up new tenancies. He described it as a "*less admin-based role*." The claimant was able to hold down the new job and remains in the same role. He had no time off sick from his new job in the period from May to December 2024 when he presented his claim form.
73. The claimant gave no evidence in his witness statement about the reasons for delay in referring his complaints to ACAS for early conciliation and the delay in presenting his claim form to the tribunal.
74. He referred the dispute to ACAS for early conciliation on 20th May 2024. This was just after his appeal against dismissal had failed and just before the applicable time limit expired.
75. Early conciliation ended on 1st July 2024. The deadline to present his claim form to the tribunal expired one month after this.
76. The claim form was not submitted to the tribunal until 20th December 2024 (a delay of nearly five months).
77. When giving evidence, the claimant was asked why there was a delay in submitting his referral to ACAS and a delay in presenting his claim form. His response was vague and unsatisfactory. Despite being given opportunities to give a clear explanation he failed to do so. He said that there was "some confusion" between himself and his union as to who was responsible for making the referral to ACAS and for submitting the claim form but did not explain what this confusion was despite being given an opportunity to do so. The wording in the claim form suggests that only the day before presenting the claim form did the claimant or his representative realise that the deadline had been missed. The claim form was then presented in a rush without giving any detail about the claims. This was to try to protect the claimant's position. We received no clear explanation from the claimant as to the reasons for the delay.
78. The claimant also sought to explain the delay by reference to side effects that he was suffering from medication. Again the tribunal had to press him on the issue to try to get a clear explanation as to what medication he was taking at the time, what side effects he was experiencing and how they impacted him. The claimant confirmed that in the period from his dismissal to late December 2024 he was taking Diazepam and Mirtazapine. He said that this had some side effects including having some impact upon his cognitive skills and

causing some problems with drowsiness and concentration. However, these side effects were plainly not severe enough to prevent the claimant from appealing against dismissal, conducting his appeal, engaging in early conciliation via ACAS and holding down his new job. He was also permitted to drive from May 2024 onwards.

Conclusions and applicable law

79. Taking each claim and issue in turn, we set out our conclusions.

Time Limits

80. There are time limits within which a claimant must present their claim form to the tribunal. Subject to a limited discretion to entertain late claims, the tribunal has no jurisdiction to consider a claim that is presented after the applicable time limit.

81. The claimant was dismissed with effect from 22nd February 2024. He presented his claim form on 20th December 2024.

82. The applicable time limits are set out in sections 111 Employment Rights Act 1996 (ERA) (unfair dismissal) and section 123 Equality Act 2010 (EQA) (discrimination). The two sections read as follows:

s111 ERA Complaints to employment tribunal.

(1) A complaint may be presented to an employment tribunal against an employer by any person that he was unfairly dismissed by the employer.

(2) Subject to the following provisions of this section, an employment tribunal shall not consider a complaint under this section unless it is presented to the tribunal—

(a) before the end of the period of three months beginning with the effective date of termination, or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(2A) Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2)(a).

s123 EQA Time limits

(1) Subject to section 140B 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.

(2).....

(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.*

83. Both sections provide for a time limit of 3 months. In both cases, this is extended by the ACAS Early Conciliation provisions. Under both sections the tribunal has a discretion to consider a claim which is presented late. However, different legal tests apply as to how that discretion may be exercised. The claimant invites us to exercise that discretion in his favour.

84. Taking the two tests and complaints in turn:

Unfair Dismissal: Out of Time?

85. The time limit under s111 ERA for the claimant to present his complaint of unfair dismissal ran from 22nd February 2024 and expired on about 1st August 2024 taking into account the extension for ACAS early conciliation. The claim form was presented on 20th December 2024, nearly 5 months after the time limit expired.

86. In those circumstances, the tribunal must consider whether to exercise the limited discretion given by section 111 ERA by asking itself:

(a) Was it reasonably practicable for the claimant to have presented the claim form in time? ; and

(b) If not, was the claim form presented within such further time as was reasonable?

87. For these purposes:

(a) S.111(2)(b) ERA should be given a 'liberal construction in favour of the employee' — *Dedman v British Building and Engineering Appliances Ltd 1974 ICR 53, CA*; and

(b) What is reasonably practicable is a question of fact and a matter for the tribunal to decide;

(c) The claimant bears the burden of proving was not reasonably practicable to present his claim form in time. That imposes a duty upon him to show why he did not present his claim form in time.

(d) the statutory language might be paraphrased as whether it was 'reasonably feasible' to present the claim in time.

88. We conclude that it was reasonably practicable for the claimant to have presented the claim form in time.

89. The reasons given by the claimant for the delay (i.e. confusion between him and his union and the effects of his medication) are weak. They may have made it more difficult to present the claim form in time but it was still reasonably practicable to have done so.

90. The claimant is an articulate and literate man who worked in roles which require effective administrative and communication skills . He had support from his union throughout. He was able to submit a detailed and articulate appeal and to conduct his appeal hearing with support from his union. The was not a case where the appeal outcome was delayed and he was awaiting the outcome before presenting a claim form. In the period of delay he was able to successfully apply for another job and then hold it down. It was reasonably practicable for the claimant to have presented his claim form in time.
91. In the circumstances, the second question is irrelevant and the tribunal has no jurisdiction to hear the unfair dismissal claim. The claim is dismissed.

Direct Disability Discrimination: Out of time?

92. First, it is necessary to determine the date of the act(s) complained of, as this starts the time limit running. Where the act complained of is a single act of discrimination, this is usually straightforward. In this case, the claimant relies on two acts:
- (a) Placing the claimant on a performance improvement plan on 4th January 2023; and
 - (b) Dismissing the claimant on 22nd February 2024.
93. Each act took place on the date concerned. The respondent says that the three-month time limit ran separately from each date. They say that although this means that both complaints are out of time, the first claim is more significantly out of time than the second.
94. However, s123(3) EQA requires us to consider whether an act is part of conduct extending over a period.
95. Following the decision in *Hale v Brighton and Sussex University Hospitals NHS Trust EAT 0342/16* we find that the instigation of a performance improvement procedure which leads to dismissal on grounds of performance is not a one-off act of discrimination. It is part of an act extending over a period which leads to dismissal. The substance of the claimant's complaint is that he was subjected to performance improvement procedures and was dismissed at the culmination of such procedures. By taking the decision to instigate performance improvement procedures, the respondent created a state of affairs that continued until the end of the process. This was not merely a one-off act with continuing consequences. Once the process was initiated, the respondent would subject the claimant to further steps under it from time to time.
96. Consequently, date on which time began to run in respect of both complaints is 22nd February 2024 (i.e. the date of the culmination of the performance improvement process).
97. However, the claim form was still presented outside the time limit under s123 EQA. The claim form was presented almost 5 months after the time limit expired.

98. The discretion under s123(1)(b) EQA for tribunals to hear out-of-time claims within whatever period they consider to be 'just and equitable' is broader than the discretion to allow late claims to proceed where it was not 'reasonably practicable' to present the claim in time.
99. However, a tribunal cannot hear a complaint unless the claimant convinces it that it is just and equitable to extend time. The onus is on the claimant to convince the tribunal that it is just and equitable to extend the time limit.
100. A useful summary of the principles governing the exercise of the 'just and equitable' discretion was set out by Mrs Justice Elisabeth Laing (as she then was) in Miller and ors v Ministry of Justice and ors and another case EAT 0003/15. That summary includes a reminder that:
- (a) the discretion to extend time is a wide one;
 - (b) time limits are to be observed strictly. There is no presumption that time will be extended. It must be justified. The exercise of discretion is the exception rather than the rule;
 - (c) what factors are relevant to the exercise of the discretion, and how they should be balanced, are a matter for the tribunal. All relevant circumstances may be considered. However:
 - (i) The balance of prejudice is normally relevant (i.e. balancing the prejudice to the claimant in refusing a late claim against the prejudice that a respondent will suffer from facing a claim which would otherwise be time-barred); and
 - (ii) the tribunal may find the checklist of factors in section 33 of the Limitation Act 1980 helpful but this is not a requirement.
101. We do not find it to be just and equitable to extend time in the claimant's favour. We recognise that this decision prejudices the claimant as it prevents him from pursuing his discrimination complaints. However, allowing the claims to proceed would have prejudiced the respondent by exposing them to claims that were presented considerably out of time. All the factors we have identified above in considering the time limit for the unfair dismissal claim have been taken into account and we need not repeat them again. There is no suggestion that any actions on the part of the respondent or any failure to cooperate has contributed toward any delay. The claimant has failed to demonstrate on the evidence that it would be just and equitable to extend time.
102. For these reasons, the discrimination complaints are out of time and the tribunal has no jurisdiction to determine them. They are dismissed.
103. Pausing there, the complaints brought by the claimant have either been withdrawn or we have determined that the tribunal has no jurisdiction to hear them. We might have ended this judgment at this point. However, we heard all the evidence and consider that it would be constructive to set out the conclusions that we would have reached had we decided differently on the timing issues. These conclusions are set out below with reference to each complaint.

Unfair Dismissal: Substantive Claim

104. The statutory test for unfair dismissal appears in section 98 Employment Rights Act 1998 (“ERA”) which states:

98 General.

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

*(a) the reason (or, if more than one, the principal reason) for the dismissal, and
(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*

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

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

(b) relates to the conduct of the employee,

(c) is that the employee was redundant, or

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

(3) In subsection (2)(a)—

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

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

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

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

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

Reason for Dismissal

105. The first issue to consider is - what was the reason (or principal reason) for dismissal?
106. The respondent bears the burden of proving the reason for dismissal and of proving that the reason is one of the potentially fair reasons set out in section 98(2) or that it is “some other substantial reason” within section 98(1)(b).
107. The respondent says the reason related to the capability (performance) of the claimant.
108. The specific reasons for dismissal were given by Ms. Batch at the end of the capability procedure in her outcome letter. These were the reasons given at time. The claimant did not advance any alternative reason for dismissal. He initially asserted that the reason for dismissal was because he had made a protected disclosure (i.e. dismissal for whistleblowing). However, this complaint was withdrawn. We accept Ms. Batch’s evidence. The reason for

dismissal related to the claimant's capability (poor performance). The specific performance issues are those set out in the letter of dismissal. The respondent has shown that there was a potentially fair reason for dismissal namely capability.

Fairness of the Dismissal

109. Section 98(4) ERA sets out the applicable test of fairness. This requires us to consider whether the respondent acted reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating that conduct as sufficient reason to dismiss the claimant. In determining this we must consider equity and the substantial merits of the case.
110. We must not substitute our own view. Merely because we may have dealt with matters differently or reached a different conclusion does not justify a finding of unfair dismissal. The law requires us to approach the test of fairness using the, so called, "band (or range) of reasonable responses" test to answer the key question – was it reasonable to dismiss?
111. Employers often have a range of reasonable responses open to them. Different employers may legitimately choose different options. There is a band of reasonableness, within which one employer might reasonably take one view and another quite reasonably take a different view. This requires tribunals to ask: did the employer's action fall within the band (or range) of reasonable responses open to an employer? If no reasonable employer would have dismissed the employee, then the dismissal is unfair. But if a reasonable employer might reasonably have dismissed him/her, then the dismissal is fair.
112. In applying the test of fairness (with reference to the list of issues) we determined that the respondent:
 - (a) adequately warned the claimant and gave the claimant sufficient chance to improve;
 - (b) genuinely believed the claimant was no longer capable of performing his duties and had reasonable grounds for that belief;
 - (c) adequately consulted the claimant;
 - (d) conducted a reasonable investigation including finding out about the up-to-date medical position;
 - (e) adequately considered redeployment as an alternative to dismissal;
 - (f) could not reasonably be expected to wait longer before dismissing the claimant;
 - (g) made a decision which was within the range of reasonable responses.
113. The respondent's conduct was not perfect. We have identified some matters which, could have been dealt with differently. For example, we consider that:
 - (a) an earlier occupational health referral should have been made;
 - (b) the respondent should have made a repeat occupational health referral before dismissing the claimant;
 - (c) the responsibility for finding an alternative role was largely shifted to the claimant (albeit he was supported in this).

114. However, the range of reasonable responses test does not require perfection from an employer. Notwithstanding these issues, the respondent's decision was well within the range of reasonable responses. We would have found that this was a fair dismissal.

Direct Disability Discrimination (s13 EQA): Substantive Claim

115. The respondent concedes that the claimant was a disabled person at the material times within the meaning of section 6 Equality Act 2010 because he had depression and anxiety. The respondent also knew that the claimant was a disabled person by the time they dismissed the claimant.
116. The claimant's disability is a protected characteristic under section 6 EQA.
117. Section 39 of the Equality Act 2010 prohibits the discrimination of employees by their employer. This includes a prohibition on dismissing an employee (section 39(2)(c) EQA) .
118. The claimant bears the burden of proving his case. Discrimination is often difficult to prove. For this reason, claimants in discrimination cases benefit from a more favourable burden of proof than in other cases. That burden of proof is found in section 136 EQA which states:

S136 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.*

119. Section 13 of the EQA states:

13 Direct discrimination

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

120. This requires the tribunal to undertake a comparison exercise – to consider how the respondent treated or would treat an appropriate comparator who is in the same circumstances as the claimant but who does not share the relevant protected characteristic. There must be no material difference between the circumstances of the of the claimant and the comparator.
121. In relation to this claim, the Claimant relies on Emily Batch as an actual comparator.
122. We considered whether Ms Batch is an appropriate comparator for the purposes of s13 EQA. Section 23 EQA states that:

s23 Comparison by reference to circumstances

On a comparison of cases for the purposes of section 13, 14, there must be no material difference between the circumstances relating to each case.

123. To be an appropriate comparator, Ms Batch must not share the Claimant's protected characteristic (i.e. his disability) but she must otherwise be in materially the same circumstances as the claimant.
124. In the case of *Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 ICR 337, HL*, Lord Scott explained that this means that 'the comparator required for the purpose of the statutory definition of discrimination must be a comparator in the same position in all material respects as the victim save only that he, or she, is not a member of the protected class'.
125. The Equality and Human Rights Commission (EHRC) Employment Code (at paragraph 3.23) states that the circumstances of the claimant and the comparator need not be identical in every way. Rather, '*what matters is that the circumstances which are relevant to the [claimant's treatment] are the same or nearly the same for the [claimant] and the comparator*'
126. It cannot be said that Ms Batch's circumstances were "*the same or nearly the same*" as the Claimant's. They were plainly not. Ms Batch was not subject to a performance improvement plan and she was not performing similarly to the claimant. Ms Batch is not an appropriate comparator for the purposes of section 13 EQA.
127. Consequently, there is no actual comparator for the purposes of section 13 EQA (i.e. no real person who was in materially the same circumstances as the claimant but who has not suffered the same treatment). In such circumstances the question of less favourable treatment must be determined by reference to a hypothetical comparator.
128. The question is then – would the respondent have treated such a hypothetical comparator more favourably than the claimant by not placing such a person on a performance improvement plan and by not dismissing them?
129. For these purposes, the hypothetical comparator would be a person without the claimant's disability who was :
 - (a) (in relation to the decision to implement a performance improvement plan) in the same role as the claimant and who was performing to the same standard as the claimant;
 - (b) (in relation to dismissal) subject to the same performance improvement process and who had not improved their performance during that process in substantially the same way as the claimant.
130. The claimant has not met the first part of the section 136 burden of proof – there are no facts from which the tribunal could decide, in the absence of any other explanation, that the respondent would have treated the hypothetical comparator any differently. The claim fails for this reason.
131. Had we decided differently on this point – the second part of section 136 required the respondent to show on the evidence that the claimant's protected characteristics were in no sense whatsoever a factor in their decision. The respondent would have overcome this hurdle. On the evidence before us it is clear that the respondent dismissed the claimant for his capability. This was not a case where the respondent's decision was in any way influenced or

motivated (either consciously or unconsciously) by the claimant's protected characteristic.

Approved by Employment Judge:
Mr. A Spencer on 12th March 2026

Written Reasons sent to the parties on
16 April 2026

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For the Tribunal office