



EMPLOYMENT TRIBUNALS

Claimant: Marina Dudding

Respondent: Gravesham Borough Council

Heard at: London South (by CVP)

On: 3, 4, 5 March 2026

Before: Employment Judge O'Neill
Ms Cook
Mr Dixon

REPRESENTATION:

Claimant: Mr Ilhangaratne, counsel

Respondent: Ms Cheng, counsel

RESERVED JUDGMENT

- 1) The complaint of unfair dismissal is well-founded. The claimant was unfairly dismissed.
- 2) At the relevant times the claimant was a disabled person as defined by section 6 Equality Act 2010 because of Generalised Anxiety Disorder, Moderate Depressive Episode and agoraphobia.
- 3) The complaint of failure to make reasonable adjustments for disability is well-founded and succeeds.
- 4) The complaint of unfavourable treatment because of something arising in consequence of disability is well-founded and succeeds.
- 5) The complaint of indirect disability discrimination is well-founded and succeeds.

REASONS

THE HEARING

1. The Tribunal dealt with the following procedural issues:
 - 1.1. The Claimant confirmed that there were no applications to amend the pleaded case; and
 - 1.2. The Claimant produced an updated Schedule of Loss and Appendix 6 and the Respondent confirmed that these were not new documents.
2. The Tribunal addressed the timetabling issue by explaining that although the hearing had originally been listed for four days, judicial availability constraints meant that the hearing could only be conducted over three days that week. It was noted that:
 - 2.1. the indicative timetable agreed at the case management hearing in July 2025 recorded that 'Day 4' was to reserved for Tribunal decision making in any event, and
 - 2.2. that if the matter were re-listed then it would likely be for October 2028.
3. On that basis neither party made an application to postpone the hearing. It was agreed that the three days would cover liability only, with remedy being reserved.
4. The Tribunal confirmed that the bundle comprised 513 pages and that there were no late documents to be admitted.
5. The Tribunal also clarified the List of Issues:
 - 5.1. The Respondent confirmed that it
 - 5.1.1. *agreed* that the Claimant was disabled within the meaning of s.6 Equality Act 2010 (EqA) in respect of her Generalised Anxiety Disorder (GAD) and Moderate Depressive Episode (MDE); but
 - 5.1.2. *disputed* that she was disabled for the purposes of Agoraphobia and that the Respondent knew or ought to have known about it at the relevant time.
 - 5.2. The Claimant indicated that the reference to a requirement to start work at 8:30am should read 9:00am and that she had sought an 11:30am start time at the material time.

- 5.2.1. The Respondent opposed any change to the List of Issues on the basis that the Claimant had been legally represented since 2025.
 - 5.2.2. The Tribunal determined that the matter concerned clarification of the List of Issues rather than amendment of the claim and considered that as that the respondent was not prejudiced by the changes, that the List of Issues was to be adjusted accordingly.
 - 5.3. The Tribunal sought clarification regarding the “relevant time” for the disability issues. The parties agreed that paragraph 1.4 of the List of Issues was to be read consistently with paragraph 1.6, and the Tribunal adopted that approach.
 - 5.4. There were no concessions or withdrawals beyond those recorded in the case management orders.
6. The List of Issues agreed at the Preliminary Hearing in July 2025 was adopted, subject to the clarifications made at the outset of the hearing as recorded above in paragraph 5.
 7. The Tribunal was conscious of the Claimant’s disability and agreed that adjustments were required. These included regular breaks, the option for the Claimant to indicate when she needed to pause, and a break every 45 minutes during cross-examination. The Tribunal also permitted her to join the hearing via an alternative device when technical difficulties arose.
 8. The parties were told that the Tribunal would only read documents in the Bundle that they were expressly taken to during the hearing.
 9. The Tribunal was provided with a bundle of 513 pages and heard evidence from:
 - 9.1. The Claimant;
 - 9.2. For the Respondent:
 - 9.2.1. Mr Nicholls;
 - 9.2.2. Ms Lowrey;
 - 9.2.3. Mr Dogan;
 - 9.2.4. Ms Arthur; and
 - 9.2.5. Ms May.
 10. The Tribunal considered all the evidence, both oral and documentary, together with the parties’ submissions. The Claimant gave evidence on Day 1 and the

morning of Day 2. The Respondent's witnesses gave evidence across the afternoon of Day 2 and the morning of Day 3. All witnesses were sworn, confirmed their statements, and were cross-examined.

11. The Tribunal had the benefit of written submissions and heard oral submissions from both parties.

LIST OF ISSUES

12. The List of Issues is replicated below using the same numbering as in the case management order of July 2025 and amended as agreed during the hearing:

1. Disability

- 1.1 Does the Claimant have a disability as defined in s. 6 of the EqA 2010?

The Tribunal will decide:

- 1.2 What is the alleged impairment?

– The Claimant relies on Agoraphobia, Generalized Anxiety Disorder and Moderate Depressive Episode as her disabilities.

– The Respondent ~~does not~~ accepts that the Claimant is disabled suffering from the conditions, Generalised Anxiety Disorder and Moderate Depressive Episode but does not accept Agoraphobia

- 1.3 Do the alleged impairments have a long term and substantial adverse effect on the Claimant's ability to carry out normal day to day activities?

- 1.4 Did the Claimant have the defined disabilities at the relevant time?

– The Respondent does not accept that the Claimant was suffering from the condition(s) at the relevant time

- 1.5 Did the Respondent have knowledge of each of the disabilities relied on?

– The Respondent does not accept that it had knowledge of the disabilities at the relevant times.

- 1.6 If not, could the Respondent reasonably have been expected to know that the claimant had the disability? From what date?

– The Claimant avers that Respondent was aware of the Claimant's disabilities following receipt of Occupational Health reports dated 12 May 2023, 7 July 2023 and 9 April 2024 and a Mental Health Care Plan dated 15 March 2024.

2. Time limits

- 2.1 Were the Claimant's disability discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
- 2.1.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
 - 2.1.2 If not, was there conduct extending over a period?
 - 2.1.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
 - 2.1.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
 - 2.1.4.1 Why were the complaints not made to the Tribunal in time?
 - 2.1.4.2 In any event, is it just and equitable in all the circumstances to extend time?

3. Unfair Dismissal (ss.94–98 Employment Rights Act 1996)

- 3.1 What was the reason for dismissal?
- The Claimant notes that it was for ill health Capability which is a potentially fair reason.*
- 3.2 Was the Claimant's dismissal for Capability within the range of reasonable responses available to Respondent at the time of dismissal, having regard to Respondent's administrative resources, equity, and the substantial merits of the case? In particular:
- 3.2.1 *Did R follow a fair Capability procedure?*
 - 3.2.2 *Did R rely on up to date medical evidence, or was such evidence unnecessary?*
 - 3.2.3 *Could R reasonably have been expected to wait any longer before dismissing C?*
 - 3.2.4 *Did R know the date on which C would or might be able to return to work and provide effective, reliable service?*

4. Duty to make adjustments and failure to comply with duty to make reasonable adjustments, s.20/21 EqA 2010

- 4.1 Did the Respondent fail in its duty to make (a) reasonable adjustment(s) towards the Claimant (contrary to s.39(5) EqA), having regard to the following:
- 4.2 Did R have the following alleged PCPs and if so was it a "PCP"?

a) Requirement to work from the office

b) Requirement to work from ~~8:30~~ 9.00am

4.3 If so, did the PCPs place C at a substantial disadvantage in comparison to non-disabled persons;

The Claimant asserts that:

a. *Due to her Generalized Anxiety Disorder and Moderate Depressive Episode, the Claimant experiences symptoms of agoraphobia which makes it difficult for her to leave her home. When having to leave the house, the Claimant finds it very stressful and becomes anxious, she has palpitations and abdominal pain on her way out to her destination. The Claimant also suffers from very low mood, poor concentration, poor memory, anhedonia, poor motivation and very poor appetite.*

b. *When working from the office, C is interrupted with the performance of her duties, as colleagues can come forward to interact with C to ask questions or raise concerns which would add further stress and anxiety to C. Having to work from the office causes C to feel chest pain or rapid heart rate, nausea, hyperventilation or trouble breathing.*

c. *Lack of sleep has a direct impact on the Claimant's overall concentration and productivity levels. The Claimant takes medication to help her have a good night's sleep and manage her symptoms. The medication causes a danger to the Claimant on her ability to safely drive to work the following day.*

d. *During her time in the office, the Claimant has found it increasingly difficult to concentrate due to the noisy environment. This distraction has contributed to a heightened level of anxiety, which can sometimes escalate to a point where the Claimant experiences anxiety attacks. This resulted in the Claimant often having to isolate in the rest rooms for up to 15 minutes in an attempt to reduce her anxiety. In contrast, when working from home, the Claimant is able to focus in a quiet environment free from any distractions, and manage her stress which in turn has a positive impact on her performance.*

e. *Because of the anxiety of having to work from the office, C takes Phenergan to her sleep the night before and this means that when she wakes up, C is still dizzy until lunchtime and this impacts on her cognitive functions. Therefore starting work later, at 11:30am would*

accommodate C's ability to work at a time when she is not suffering from any side effects of her sleep medication.

4.4 If so, did they amount to substantial disadvantage?

4.5 If the Respondent were under a duty to make reasonable adjustments, did they take such steps as were reasonable to avoid the disadvantage?

– The Claimant avers that the Respondent should have supported her with the provision of reasonable adjustments (as recommended in the Occupational Health report dated April 2024);

a) Phased return to work

b) Hybrid working pattern, namely, three days at home and two days in the office particularly as the Claimant's colleagues have been granted permission to work from home

c) Breaks during the working day to rest when needed

d) Individual stress risk assessment, to be reviewed every 6-8 weeks for 12 months

e) Attend outpatient appointments during working hours for her anxiety and depression

5. Discrimination arising from disability s.15 EqA 2010

5.1 The Claimant relies on her dismissal on 13 May 2024 as unfavourable treatment:

5.2 The Claimant relies on the following "something/s":

a. having to take time off sick in order to manage her disability symptoms

b. due to her disabilities, C requires reasonable adjustments (including working from home on a hybrid basis and starting at a later time) to facilitate a return to work.

5.3 Was the dismissal a proportionate means of achieving a legitimate aim, namely:

a. Ensuring that sickness absence is used appropriately and not misused in a way that might affect an employee's health

b. Ensuring adequate cover to meet the demands of the service.

c. Maintaining discipline and ensuring that disciplinary warnings remained effective

d. Managing and monitoring sickness absence was necessary to maintain satisfactory attendance.

6. Indirect Discrimination (s.19 Equality Act 2010)

6.1 Did the Respondent apply the following provision, condition or practice (PCP) to the Claimant, and if yes from what date:

a. Requirement to work from the office

b. Requirement to work from ~~8:30am~~ 9:00am

6.2 Did one or more PCP put or would put the Claimant to the following disadvantage:

(The Claimant avers the following:)

a. Due to her Generalized Anxiety Disorder and Moderate Depressive Episode, the Claimant experiences symptoms of agoraphobia which makes it difficult for her to leave her home...

b. When working from the office, C is interrupted...

c. Lack of sleep...

d. During her time in the office, the Claimant has found it increasingly difficult to concentrate...

e. Because of the anxiety of having to work from the office, C takes Phenergan...

6.3 Did or would the PCPs put those who shared C's disabilities to the same disadvantage?

6.4 Was the following a legitimate aim for R to have:

a. Maintaining discipline and ensuring that disciplinary warnings remain effective

b. To ensure adequate cover to meet the demands of the service.

6.5 If it was, was the relevant PCP a proportionate means of achieving that aim? In particular:

a) Was there a less discriminatory way R could have achieved the aim;

b) Was the relevant PCP reasonably necessary;

c) Did the relevant PCP strike a fair balance between C's right not to be subject to disability discrimination and R's need to achieve its legitimate aim?

7. Remedy

- 7.1 Is the Claimant entitled to compensation?
 - a. If so, is the Claimant entitled to an Injury to feelings award?
 - b. If so, in what amount?
 - c. Is the Claimant entitled to an uplift of up to 25% for any breaches of the ACAS Code?
 - d. If so, in what percentage?
 - e. Is the Claimant entitled to interest on any sums awarded?
 - f. If so, in what amount?
- 7.2 What financial loss (if any) was caused to C by any unlawful conduct on R's part?
- 7.3 What award (if any) should be made for injury to feelings?

FACTS

Assessment of evidence

13. The Tribunal has made its findings of fact on the balance of probabilities, based solely on the evidence before it. When facts were disputed the Tribunal records the competing accounts or conflicting evidence and makes a finding of fact and explains its reasons for doing so.
14. The Tribunal approaches recollection evidence with caution. Human memory is fallible and confidence is not a reliable proxy for accuracy. We therefore place primary weight on contemporaneous documents, objective probabilities and reliable inferences, using oral testimony chiefly to test the documentary record and the witnesses' working practices rather than as a standalone guide to historic conversations
15. The Tribunal heard a range of evidence but has restricted its findings to facts that were relevant to determining the agreed List of Issues.
16. The Tribunal found the Claimant to be a clear, careful and internally consistent witness. She gave evidence in a manner that was straightforward and reflective of her lived experience of the impairments relied upon. Her account of the functional impact of her conditions was coherent and aligned with contemporaneous

documents, including Occupational Health reports and her own earlier correspondence.

17. The Respondent's witnesses gave evidence to the best of their recollection; however, they were unable to provide detail on several key matters. Therefore they were not able to provide clarity on key decisions or events within the period under consideration. Much of their witness evidence was not supported by contemporaneous documents (such as meeting notes), and they were unable to clarify gaps or inconsistencies in the Respondent's records. While this was understandable, in part given the passage of time and changes in personnel, the Tribunal noted the absence of cogent explanations for a number of significant management decisions and an absence of clarity as to who held responsibility for several of them. As a result, their evidence did not materially strengthen the Respondent's case on any disputed issue.
18. Where we refer to the absence of contemporaneous documentation, we mean that no document within the agreed bundle (513 pages) was identified to us as supporting the Respondent's position, and no witness was able to direct us to any such material.
19. The Tribunal also notes that key Respondent witnesses who were involved in material decisions were unavailable to give evidence. Their absence meant that several aspects of the Respondent's decision-making process could not be explained or clarified. The contemporaneous documentation was incomplete and, in places, inconsistent.
20. In combination, the absence of witnesses and the lack of reliable contemporaneous notes left significant gaps in the Respondent's account of how and why decisions were taken at the relevant times.
21. The Tribunal received no cogent contrary evidence from the Respondent capable of undermining the medical or functional picture set out in the Occupational Health material and in the Claimant's contemporaneous accounts. No medical evidence was presented that contradicted or cast doubt upon the existence or effects of the impairments described in the OH reports. Likewise, no documentary or reliable testimonial evidence was advanced to suggest that the Claimant's practical difficulties in travel, early-morning functioning or office attendance were attributable to unrelated or non-disability-related causes.
22. Where evidence is hearsay, the Tribunal assesses its weight by considering, among other factors, why the direct participant is not called, whether the account is contemporaneous, corroborated or supported by documents, the degree of hearsay, whether the statement was made on oath, its completeness, any apparent motive to misrepresent, and the recency of the account.

Chronology

23. The Claimant was employed by the Respondent from **11 September 2000** until her dismissal on 5 August 2024. Her most recent post, held from October 2021, was that of Allocations Officer within the Housing Options Service. The role involved assessing and verifying housing applications, engaging with vulnerable service users, and providing advice in accordance with the Respondent's statutory duties and Allocations Scheme.
24. Her statement of particulars dated 4 February 2022 records that
 - 24.1. her contractual hours were 37 per week
 - 24.2. her normal place of work was the Civic Centre
 - 24.3. "You and your line manager will agree the details of your hours and working patterns".
25. Since **2021**, and continuing until 24 October 2023, the Claimant worked from home on Mondays and Wednesdays following the recommendations of a workplace stress risk assessment (SRA1) which had identified "*Excessive workload, failing IT equipment, insufficient support from line manager, and anxiety about how to respond to customers / other professionals following complaints alongside personal stressors due to the conviction of ex-partner*" as stressors that could be mitigated by R.
26. On **26 September 2022** the Claimant met with Mr Dogan and her line manager, Mr Bhupal, to discuss emerging health difficulties, including disrupted sleep. She requested the option of starting at 9:30am on days when these factors made early attendance difficult. Management agreed to consider the adjustment and to make an Occupational Health referral, which the Claimant accepted.

Health, sickness absence and early adjustments (2023)

27. From at least **24 March 2023** to **10 July 2023** the claimant was absent from work due to work-related stress, high blood pressure and anxiety.
28. At a meeting held on **21 April 2023** between HR, Mr Dogan and her line manager Mr Bhupal, the claimant explained that she had not been able to leave her home. She also explained that she was keen to return to work but she was not physically able to come to the office.
29. This is supported by the Claimant's contemporaneous emails of April–May 2023 describing her inability to leave home.
30. Following this she was referred to Occupational Health (OH) for assessment and the report was provided to her manager on **12 May 2023**. The report stated

“As you are aware Marina is currently away from work due to depression and anxiety.... Marina's personal stressors have caused symptoms of agoraphobia; this is a fear of being in situations where escape might be difficult all that help wouldn't be available if things go wrong.... Marina reports currently being unable to leave her home; She is spending most of her day in her bedroom.... Based on today's health assessment it is my opinion that the employee is not medically fit for work. Marina's GP is likely to extend her fitness statement for several more weeks. Therefore I have made a review appointment from arena on 23rd June 2023.”

31. The Tribunal finds that the May 2023 Occupational Health report, which referred to *“symptoms of agoraphobia”*, would have alerted a reasonable employer to the presence of agoraphobic symptoms of significance that would have impacted on the Claimant's ability. Read together with the Claimant's contemporaneous emails explaining her inability to leave her home, the Respondent was, from this point, put on notice of a condition consistent with agoraphobia, irrespective of the precise diagnostic terminology deployed in the report.
32. The OH assessor also wrote to the Respondent's HR team on **15 May 2023** and said *“Marina is likely to be away from work for several more weeks. Currently she is not leaving her home and has yet to commence therapy. She is under the care of GP who continues to monitor her progress. You have asked what in the interim you can do to support Marina at this time. I would advise you maintain regular contact with her so she is able to update you on her condition and or progress. Send her a copy of your sickness absence policy, if you have not already done so.”*
33. **7 July 2023** – a new OH report confirms that C was medically fit and intending to return to work on 10 July 2023. The report recommended *a phased return to work over a period of 4-6 weeks, regular 1:1 meetings with management, and that an individual stress risk assessment be carried out and strategies to reduce stressors be implemented. It also suggested that she is able to sit by a window, has access to fan, changing facilities and a water cooler.*
34. On **10 July 2023** she returned to work on a phased basis and the recommended stress risk assessment (SRA2) was completed on **20 July 2023** with the claimant, HR and her line manager. During that meeting, the claimant was made aware she hit the trigger for a stage 1 sickness review under the respondent's sickness policy. The stage 1 review took place on **27 July 2023**. In a follow-up letter a month later, the claimant was reminded that failure to improve attendance could lead to Stage 2 of the respondent's managing sickness absence policy.
35. By **mid-August 2023**, managers recorded that her return to work plan had settled, and she was working under the Respondent's hybrid model.

The disciplinary

36. On **10 October 2023** the Claimant failed to attend an appraisal meeting. Management correspondence following this incident records concern about missed meetings and inconsistent explanations. On **24 October 2023** the Claimant was informed that a disciplinary investigation would be initiated following customer complaints about her telephone conduct.
37. From 24 October 2023 the Respondent imposed an office-only requirement on the Claimant by revoking her established hybrid working arrangement. This requirement remained in place thereafter and operated in practice as a continuing expectation that the Claimant attend the office daily, without any identified review mechanism or time limit.
38. The Tribunal further finds that from November 2023 onwards the Claimant sent a series of emails to multiple managers and colleagues explaining that the amended working pattern was having a severely negative effect on her health, particularly in relation to morning functioning. These messages, which were numerous and directed to different recipients, created a clear audit trail of the difficulties she was experiencing. The Respondent therefore had repeated and contemporaneous notice of the impact that the revised working arrangement was having on the Claimant's health.
39. On **29 November 2023** the Claimant attended the disciplinary investigation meeting. The investigating officer determined that certain allegations should proceed to a disciplinary hearing. The Tribunal finds, from the disciplinary investigation materials, that the Respondent originally raised multiple allegations against the Claimant. The investigation ultimately concluded that there was a case to answer in respect of three allegations: serious or deliberate failure to comply with the Code of Conduct, conduct causing loss of confidence, and professional negligence or grossly inadequate standards. Two further allegations, namely persistent refusal to follow management instruction and unauthorised or casual absence, were not pursued because the reviewer considered that the historical evidence did not justify taking them forward.
40. The claimants line manager Mr Bhupal left and Mr Nicholls became her new line manager. Two weeks after he became her manager, the claimant went on sick leave **26 January 2024** due to anxiety and high blood pressure.
41. A disciplinary hearing took place on **7 March 2024**, at which the Claimant was issued with a final written warning for conduct-related matters.
42. The Tribunal finds that the disciplinary outcome consisted of a final written warning, to remain live for twenty-four months. The outcome letter did not impose any

restrictions on the Claimant's duties or working pattern. In particular, it did not require early-morning attendance, did not restrict hybrid working, and did not recommend enhanced in-person oversight. The disciplinary process was thereby concluded without any instruction affecting the Claimant's future working arrangements.

43. The disciplinary investigation materials show that hybrid working had been suspended during the investigation, ostensibly to allow closer monitoring of customer interactions. No document in the bundle explains why this temporary measure was continued after the conclusion of the disciplinary process. Nor does any part of the disciplinary outcome indicate that the Claimant's post-disciplinary duties or supervision needs justified a continued office-only arrangement.
44. The Claimant attempted to appeal but this was rejected as out of time.

Return to work meeting & ultimate dismissal

45. A further Occupational Health assessment on **9 April 2024** recorded that she was fit to return to work from **15 April 2024** if adjustments were put in place. These included a phased return, consideration of reinstating hybrid working, regular breaks and a review of her existing stress risk assessment (SRA2). The Tribunal finds that without a reinstatement of hybrid working and without the ability to start work later in the day, the Claimant's impairments, including the effects of her morning medication, and her difficulty leaving her home unaccompanied, prevented her from attending work reliably or safely. The Occupational Health advice of 9 April 2024 expressly linked her fitness to return with the implementation of these adjustments.
46. The report was not received by the respondent until 16 April 2024.
47. On **22 April 2024** the Claimant attended a return to work meeting with Mr Nicholls, Mr Ziab (HR), and a workplace supporter. The claimant did not ask for the workplace supporter who she said she only knew vaguely. Mr Nicholls said in his evidence that the additional presence of the workplace supporter was considered appropriate because the claimant had previously objected to discussing menopausal issues with male colleagues. There was also a minute taker from HR present. The Claimant said she felt intimidated by this meeting and it was not what she expected.
48. Both Mr Nicolls and the Claimant agreed in evidence that the meeting did not go well.
49. A phased return plan for the first weeks was discussed, but the Claimant was informed that hybrid working would not be reinstated due to the recent disciplinary warning and management's view that in-office support and oversight were required.

50. This decision was at odds with the Occupational Health advice that a supported return was feasible if adjustments were implemented.
51. When questioned about this, the Respondent's witnesses in evidence explained that the Claimant would have "flexible" start times during the first two weeks of her phased return, however the Tribunal did not find that assertion plausible, taking into account the following:
 - 51.1. The timetable at bundle page 305 shows that, for Week 2 of the phased return plan, the Claimant was required to be "in office" and working a minimum of 5.5 hours per day within a stated 6 hour window of 9:00am–3:00pm.
 - 51.2. If the Respondent was correct and that the document should have been read as saying she could have started at any point in that 6 hour window, then if she started at (for example) 2pm, she would have been expected to work 5.5 hours from that point until at least 7.30 or 8pm. It was unclear whether the office would be open to facilitate this and whether there would be senior staff available to supervise/support the Claimant.
52. The Claimant became upset and said that she could not return without hybrid working, Mr Nicholls also said that if she was unable to return to work then they would consider the possibility of proceeding to a Stage 3 sickness review. The Tribunal accepts that the combination of office-only attendance and an early start requirement would foreseeably exacerbate the Claimant's agoraphobia, anxiety and morning medication effects. The Claimant's distress during the meeting was consistent with the evidence of her functional limitations and with the medical material already available to management. The Claimant's oral evidence described physiological symptoms consistent with the Occupational Health material, reinforcing this finding.
53. The claimant was distressed and left the meeting. As a result, the planned stress risk assessment review (SRA3) was not conducted. The SRA3 was not rescheduled notwithstanding the OH recommendation that such an assessment was necessary to facilitate a supported return to work.
54. The Tribunal notes that the Respondent produced no contemporaneous written record demonstrating how it discussed or balanced the Claimant's disability-related needs against the asserted operational reasons for refusing hybrid working or later start times. No documentary assessment was carried out at or after the 22 April 2024 meeting.
55. The Claimant did not attend work the following day, **23 April 2024**. During emails sent that day she referred to a medical report dated 15 March 2024, which she had

not previously disclosed. The report identified diagnoses of agoraphobia, generalised anxiety disorder and moderate depressive episode.

56. The claimant subsequently provided a new fit note extending her sickness absence to 9 May 2024. Management continued to maintain that hybrid working could not be granted in light of performance, conduct concerns and operational requirements.
57. The claimant did not return to work thereafter and provided fit notes for the period.
58. The Tribunal finds that, throughout the relevant period, hybrid working remained available to other officers in the Allocations Team and was routinely used by them.
59. The Respondent's hybrid working policy was a general policy for office-based staff, with discretion for line managers. HR witness Ms Lowrey accepted that other team members continued to work from home and could be managed and supervised remotely. The Claimant's evidence was that she alone was required to attend the office five days a week and this was not contradicted by any Respondent witness. The Respondent's own evidence established that hybrid working had been withdrawn from the Claimant individually and solely as a consequence of the disciplinary investigation, not because of any service-wide requirement for office-based attendance.
60. The Tribunal finds that no review mechanism existed, and the restriction remained in force after the disciplinary outcome, despite the Final Written Warning containing no provision authorising the continued withdrawal of hybrid working. The Tribunal is satisfied that other officers could and did work remotely, that the Claimant's duties (particularly allocations assessments) were capable of being performed from home, and that the full-time office-attendance requirement was imposed uniquely upon her.
61. Further communications took place in **late April** and **early May 2024** in which the Claimant repeated that she was willing to return to work but only if hybrid working and reduced hours were permitted.
62. Management reiterated that hybrid working could not be agreed. The Tribunal again notes that in the further exchanges of late April and early May 2024, the Respondent did not generate any written evaluation explaining why the Claimant's requested adjustments could not be accommodated in light of her updated OH evidence and care plan. The Respondent confirmed that no contemporaneous document evidencing any balancing of disability related needs against operational considerations existed.

63. There was also a separate request to reduced her weekly hours to 30 and management said that reduced hours would likely not be sustainable for the business, but she was invited to make a formal flexible-working request.
64. The Respondent maintained that in office monitoring was needed to provide the Claimant with support in person because she was sometimes difficult to get hold of online and they had concerns about her conduct, even though there was nothing in the disciplinary outcome letter that would explain why she was needed in the office. Mr Nicholls repeatedly stated in evidence that in person oversight was required following the disciplinary process. However, Mr Nicholls was unable to explain convincingly why the oversight he considered necessary could only be delivered through the Claimant's physical presence in the office, rather than through the same remote supervision arrangements used for other members of the team.
65. On the evidence as a whole, the Tribunal finds as fact that the refusal to reinstate hybrid working was maintained primarily because managers believed that the Claimant required in-person oversight following the recent disciplinary process. This operational rationale was applied notwithstanding contemporaneous medical evidence supporting a return to work on a hybrid basis.
66. The Tribunal notes that assessment work could be monitored remotely through CRM audit trails, a point confirmed by both the Claimant and Mr Nicholls. By the relevant period, the majority of the Claimant's duties consisted of assessment-based tasks rather than customer-facing work.
67. The Tribunal finds that the Claimant sought hybrid working only. She did not request to work exclusively from home. Her proposal was that she would complete the assessment-based elements of her role remotely while attending the office for in-person duties as required, a pattern that aligned with the post-disciplinary composition of her workload and with Occupational Health recommendations.
68. The Tribunal further finds that the Claimant indicated she was willing to attend the office on two days each week. This represented a balanced working pattern combining in-person attendance with remote working. The Respondent did not meaningfully engage with this proposal, and no evidence was produced to show that adopting such a pattern would have undermined service delivery or oversight.
69. The Tribunal also records that the Respondent asserted several aims in support of requiring the Claimant to attend the office early in the morning and on a full-time basis. These included maintaining service delivery, ensuring managerial oversight at the start of the day, preventing misuse of sickness absence, and preserving the effectiveness of the earlier disciplinary outcome. These were the aims it relied upon when refusing to reinstate hybrid working or allow later start times.

70. The Tribunal finds that supervised hybrid working was operationally feasible. The Respondent's own evidence confirmed that assessment work which was the bulk of the Claimant's duties, could be monitored through CRM systems, email oversight, or staged quality checks, and that other team members routinely worked from home under similar arrangements.
71. The Respondent offered no evidence to show that the straightforward adjustments identified (supervised hybrid working; later starts; and the updated SRA) had not been trialled prior to escalation.
72. The respondent's sickness policy has a three stage process. The claimant had already reached Stage 1. The respondent elected to 'skip' stage 2 which was permissible under their sickness policy which stated "*An exception to this would be where medical advice indicates that the employee will not be able to return to their role or a suitable alternative role, and where there are no reasonable adjustments that would enable them to return. A Final Review meeting will be convened*".
73. The Tribunal finds that the Respondent departed from its own sickness-absence policy by progressing the Claimant directly from Stage 1 to Stage 3 without undertaking Stage 2. The policy, as reproduced at bundle page 339 (paragraph 12.8.2), anticipates sequential escalation unless specified criteria are met. No contemporaneous document identified any such criteria as having been satisfied, and no witness was able to explain why Stage 2 was omitted. The Tribunal therefore finds that the Respondent bypassed Stage 2 contrary to the usual operation of its policy.
74. A stage 3, which was the final stage, capability hearing was scheduled. The Tribunal finds that the evidence as to who decided to escalate directly to Stage 3 of the sickness-absence procedure, and when that decision was taken, was inconsistent and unclear.
 - 74.1. Mr Nicholls accepted that Stage 3 was raised at the return-to-work meeting on 22 April 2024 and said the escalation decision was made by him "guided by HR", yet elsewhere maintained he merely "presented the facts" and did not recommend dismissal.
 - 74.2. Ms Lowrey's evidence was that the Stage-3 route was justified by the policy's "no identified resolution" exception, but she was not the decision-maker and suggested HR adviser ZM guided the process; she also indicated that the Claimant would likely have been told Stage 3 was a possibility.
 - 74.3. Mr Dogan stated he played no part in capability escalation and had only high-level awareness, while Ms May said the Stage-3 process was

handled by Mr Killian and HR, an account that conflicted with Mr Dogan's stance and was not corroborated by documentary records.

- 74.4. Mr Killian, identified in documents as chair of the Stage 3 hearing, did not give evidence, and no contemporaneous document was produced identifying the individual who decided to convene Stage 3 or the date of that decision.
75. The Tribunal therefore finds that responsibility for, and timing of, the decision to move directly to Stage 3 were not established on the Respondent's evidence, which contributes to the procedural shortcomings identified elsewhere.
76. On **13 May 2024** the Claimant attended the final stage sickness absence review meeting, accompanied by her union representative. Management concluded that the Claimant had experienced two episodes of long-term sickness within twelve months, that earlier adjustments had not resulted in sustained attendance, and that the Claimant was unwilling to return to work under the arrangements they considered operationally necessary.
77. When the question of ill-health early retirement was raised, Mr Nicholls stated that the Respondent could not pursue ill-health retirement because "*Marina is fit for work*", and further confirmed that redeployment had "*not [been] looked into at the moment.*" The Tribunal records this as the Respondent's contemporaneous position on both ill-health retirement and redeployment at the time of dismissal.
78. It was determined that there was no sustainable resolution allowing her to return to work. Her employment was terminated on grounds of ill-health capability with twelve weeks' notice.
79. The Tribunal finds that although the Claimant was referred to the redeployment register, the steps taken were limited.
80. A redeployment form was sent to her, but no evidence was produced that suitable roles were proactively identified, nor that the Respondent undertook any structured search or support. No redeployment logs, search records or interview notes were produced.
81. The Claimant's evidence that she missed an interview because the invitation was sent to her work email while she was on sick leave was not contradicted. The Tribunal accepts the Claimant's evidence that the interview invitation was sent to her work email while she was on sick leave and that she therefore did not receive it. No contrary evidence was produced.
82. The Claimant appealed the decision. A Members' Appeal Panel heard the matter on **19 June 2024** and upheld the dismissal.

83. Early conciliation started on **20 May 2024** and ended on **20 June 2024**. The claim form was presented on **11 July 2024**.

THE LAW

Disability – Equality Act 2010

84. Section 6 of the Equality Act 2010 (EqA) provides that a person has a disability if they have a physical or mental impairment and that impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

*“(1) A person (P) has a disability if—
(a) P has a physical or mental impairment, and
(b) the impairment has a substantial and long-term adverse effect on P’s ability to carry out normal day-to-day activities.

(2) A reference to a disabled person is a reference to a person who has a disability.

(3) In relation to the protected characteristic of disability—
(a) a reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability;
(b) a reference to persons who share a protected characteristic is a reference to persons who have the same disability.”*

85. Paragraph 2 of Schedule 1:

*“(1) The effect of an impairment is long-term if—
(a) it has lasted for at least 12 months,
(b) it is likely to last for at least 12 months, or
(c) it is likely to last for the rest of the life of the person affected.

(2) If an impairment ceases to have a substantial adverse effect on a person’s ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.”*

86. Paragraph 5 of Schedule 1 provides that an impairment is to be treated as having a substantial adverse effect if measures are being taken to treat or correct it and, but for that, it would be likely to have that effect. “Measures” includes medical treatment and aids.

87. “Likely” means “could well happen”. The Tribunal takes into account the statutory Guidance and the EHRC Code. The relevant point in time for assessment is the time of the alleged discriminatory act.

88. A disability assessment requires the Tribunal to determine the existence of an impairment, its effects on day-to-day activities, the substantiality of those effects, and whether they are long-term. Goodwin v Patent Office [1999] ICR 302 (EAT)

89. The existence of an impairment does not depend on medical diagnosis and is determined by examining its functional effects as a matter of fact. McNicol v Balfour Beatty Rail Maintenance Ltd [2002] ICR 1498 (CA).
90. Equality Act Guidance (cited in Claimant's submissions as propositions)
91. When assessing substantial adverse effect, the impact of treatment must be disregarded and fluctuating conditions evaluated over their whole course. J v DLA Piper UK LLP [2010] ICR 1052 (EAT)

Section 15EqA – Discrimination arising from disability

92. Section 15 EqA provides that discrimination occurs if a disabled person is treated unfavourably because of something arising in consequence of their disability and the employer cannot show that the treatment is a proportionate means of achieving a legitimate aim.

*“(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.”*

93. Unfavourable treatment occurs where a reasonable worker would or might view themselves as having been disadvantaged. Motive is irrelevant. The Tribunal must identify the unfavourable treatment, determine why it occurred, and assess whether the reason was something arising from disability. The “something” need not be the sole or main reason but must have a significant influence. The employer need not be aware of the causal link, only of the disability.
94. For justification, the treatment must be both appropriate and reasonably necessary. The Tribunal undertakes an objective balancing exercise between the employer’s needs and the discriminatory impact on the claimant. Failure to make reasonable adjustments makes justification very difficult. Cost alone cannot justify the treatment.
95. Unfavourable treatment under s.15 EqA is a low threshold, met where the employee is placed in a worse position because of something arising from disability. Williams v The Trustees of Swansea University PAS [2019] ICR 230 (SC);
96. Causation under s.15 EqA requires that the “something arising” from disability is a significant influence on the treatment; motive is irrelevant and the focus is on the true reason. Pnaiser v NHS England [2016] IRLR 170 (EAT).

97. Motive is irrelevant. The Tribunal must identify the real reason for the treatment, whether conscious or unconscious; an employer acting in good faith may still act unlawfully. Nagarajan v London Regional Transport [1999] IRLR 572 (HL).
98. For justification under s.15, the Tribunal applies the standard domestic proportionality test, as articulated in the authorities cited below in respect of s.19.

Section 19 – Indirect discrimination

99. Section 19 provides that a person discriminates if they apply a provision, criterion or practice that is applied generally, puts those who share the protected characteristic at a particular disadvantage, puts the claimant at that disadvantage, and cannot be justified as a proportionate means of achieving a legitimate aim.

“(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B’s.

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B’s if—

(a) A applies, or would apply, it to persons with whom B does not share the characteristic,

(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c) it puts, or would put, B at that disadvantage, and

(d) A cannot show it to be a proportionate means of achieving a legitimate aim.

(3) The relevant protected characteristics are— ... disability; ...”

100. The concept of a “provision, criterion or practice” (PCP) is broad. It does not require a formal written policy. It is well established that, given the protective purpose of the statute, it should be construed broadly rather than in an overly technical way. For example, in Carreras v United First Partners Research UKEAT/0266/15, the EAT held that an *expectation* that the claimant would work late constituted a PCP, notwithstanding the absence of any express requirement to do so.
101. A single decision might amount to a PCP if it reflects how the employer generally operates or would operate in similar circumstances. In British Airways plc v Starmer [2005] IRLR 862, the refusal of a flexible working request, although discretionary and made on one occasion, was held capable of amounting to a PCP because it represented how such requests would ordinarily be determined.
102. A PCP must reflect a state of affairs or a continuing way of operating, rather than a purely isolated act. While the concept of a PCP is broad, it connotes something more than a one-off occurrence and requires evidence of how the employer

generally does or would do things in comparable circumstances. Ishola v Transport for London [2020] EWCA Civ 112.

103. By contrast, a one-off procedural irregularity, without more, will not constitute a PCP. In Nottingham City Transport Ltd v Harvey UKEAT/0032/12, a flawed disciplinary process was not a PCP because the error did not evidence any broader pattern, recurring method of operation or way of doing things.
104. An unusual or one-off situation can still give rise to a PCP as it can be based on how an employer *would* respond in a given situation. In Pendleton v Derbyshire County Council and The Governing Body of Glebe Junior School UKEAT/0238/15, the employer's internal policy that resulted for the dismissal of a teacher was a PCP, notwithstanding that the claimant was the only employee to whom it had been applied, because the evidence showed that it would be applied to any other employee in comparable circumstances.
105. The test under s.19(2) is whether a PCP places those sharing the claimant's protected characteristic at a particular disadvantage compared with others, and whether the claimant is similarly affected. In Pendleton HHJ Eady made clear that equal application is not determinative; the tribunal must examine the rule's comparative impact by assessing groups in materially similar circumstances and identifying any additional burden on the protected group.
106. Disadvantage is construed broadly and may include denial of opportunity, deterrence, exclusion or rejection, without requiring measurable loss. The relevant pool comprises those to whom the PCP applies in comparable circumstances, while the subgroup consists of those sharing the protected characteristic. The claimant must experience the same kind of disadvantage, after which the burden shifts to the respondent to justify the PCP.
107. For indirect discrimination, a claimant need not show why a PCP disadvantages the group; it is sufficient to show that it does so. Essop v Home Office (UK Border Agency) [2017] UKSC 27.
108. Justification in indirect discrimination requires showing a legitimate aim, a rational connection, a lack of less intrusive means, and a proportionate overall balance. Homer v Chief Constable of West Yorkshire Police [2012] UKSC 15;
109. Proportionality is an objective assessment requiring evidence that the PCP was reasonably necessary to achieve a real business need. Hardy & Hansons plc v Lax [2005] ICR 1565 (CA);
110. A structured four-stage proportionality analysis must be applied: legitimacy of aim, rational connection, necessity, and overall balance. Bank Mellat v HM Treasury (No 2) [2013] UKSC 39;

111. An employer seeking to justify a PCP must provide cogent evidence; assertions of business need alone are insufficient. Hockenjos v Secretary of State for Social Security [2005] ICR 1086 (CA).

Sections 20–21 – Duty to make reasonable adjustments

112. Section 20 EqA:

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

(2) The duty comprises the following three requirements.

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

(4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage ... 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 ... to take such steps as it is reasonable to have to take to provide the auxiliary aid.”

113. Section 21 EqA 2010 (failure to comply)

“(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.”

114. A disabled employee must show that a PCP or the absence of an auxiliary aid put them at a substantial disadvantage compared with non-disabled persons. The employer must take such steps as are reasonable to avoid that disadvantage. The employer must know, or could reasonably have been expected to know, of the disability and the disadvantage. The disadvantage must be more than minor or trivial.

115. Reasonableness depends on the effectiveness of the step, practicability, and financial or other cost.

116. Elements the Tribunal must identify (PCP/feature/aid; disadvantage; putative adjustments):

117. A reasonable-adjustments claim requires identification of the PCP (or feature), the substantial disadvantage, and the step which could reasonably have been taken;

failure to identify these elements is an error of law. Environment Agency v Rowan UKEAT/0060/07 (EAT).

118. Knowledge and reasonableness: orthodox propositions as advanced in the parties' submissions (with OH recommendations relevant but not determinative).

Section 123 – Time limits

119. S.123 EqA:

“(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.”

120. Claims must be brought within three months of the act complained of, subject to the Early Conciliation extension. Conduct extending over a period is treated as occurring at the end of the period. A claim may be allowed out of time if it is just and equitable to do so. Extensions are exceptional. The Tribunal considers the reason for delay, length of delay, prejudice to each party, and, where evidence has been heard, the merits of the claim.
121. The just-and-equitable extension of time is exceptional; the burden lies on the claimant, and the tribunal must weigh the prejudice to both parties. Robertson v Bexley Community Centre t/a Leisure Link [2003] IRLR 434 (CA);
122. The just-and-equitable discretion requires a judicial balancing exercise considering the length of and reasons for delay. Southwark LBC v Afolabi [2003] ICR 800 (CA);
123. Delay may cause forensic prejudice through faded memories or unavailable witnesses, which must be taken into account in any extension-of-time analysis. Miller v Ministry of Justice UKEAT/0003/15 (EAT).

Section 136 – Burden of proof

124. Direct proof of discrimination is uncommon; the Tribunal may draw proper inferences from primary facts viewed in the round. Any inference must have an evidential basis and cannot rest on intuition or labels. Once primary facts are

established from which, absent any other explanation, discrimination could be inferred, the burden of proof framework in s.136 EqA is engaged.

125. The claimant must establish facts from which the Tribunal could conclude, in the absence of an explanation, that discrimination occurred. If that burden is met, the respondent must show that the treatment was in no sense whatsoever because of the protected ground. The claimant's burden is not onerous; they need only make out a prima facie case. Inferences may be drawn from primary facts, but they must have a factual basis.
126. By section 136 EqA, if there are facts from which the Tribunal could decide, in the absence of any other explanation, that the Respondent contravened the provision, we must so find unless the Respondent shows that it did not. The Claimant's stage-one burden is not onerous but requires more than assertion; if discharged, the burden shifts to the Respondent to prove that the treatment was in no sense on the proscribed ground.

Unfair Dismissal – Employment Rights Act 1996 (ERA)

127. S.94(1) ERA grants the fundamental legislative principle that “*An employee has the right not to be unfairly dismissed by his employer.*”
128. If the employee was dismissed with notice then the effective date of termination is the date on which notice expires – s.97(1)(a) ERA.
129. S. 98(1) ERA says that 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.*
130. S.98(2) ERA says that a reason will be potentially fair 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.*
131. S.98(4) provides that if the employer has shown a potentially fair reason then whether the dismissal was fair or unfair:

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 shall be determined in accordance with equity and the substantial merits of the case."

132. Range of reasonable responses:
 - 132.1. The Tribunal must assess whether the employer's decision fell within the spectrum of responses open to a reasonable employer. In doing so the Tribunal must not to substitute its own view. Iceland Frozen Foods Ltd v Jones [1982] IRLR 439.
 - 132.2. The range of reasonable responses test applies to both the fairness of the dismissal decision and to the adequacy of the procedure followed, and the assessment must be anchored to the employer's position at the time. Foley v Post Office [2000] IRLR 827 (CA).
 - 132.3. A workplace investigation will be fair if it meets the standard a reasonable employer could adopt; the Tribunal's role is not to insist on a perfect or exhaustive investigation. Sainsburys Supermarkets Ltd v Hitt [2003] ICR 111 (CA).
133. In an ill-health capability dismissal the Tribunal must evaluate the nature of the illness, the medical evidence, the likely duration, and whether the employer could reasonably have been expected to wait longer before acting. BS v Dundee City Council [2014] IRLR 131 (ScCt).
134. An employer considering an ill-health dismissal must consult adequately, obtain and consider medical evidence, and engage with the employee before making a decision. Spencer v Paragon Wallpapers Ltd [1977] ICR 301 (EAT).
135. Where a dismissal is procedurally unfair, the Tribunal should consider whether a fair procedure would have led to the same outcome, and if so may reduce compensation accordingly. Polkey v A E Dayton Services Ltd [1988] ICR 142 (HL).
136. Compensation comprises the basic award and the compensatory award. The claimant must mitigate their loss. Compensation may be reduced for contributory conduct or failure to comply with the ACAS Code. Contributory conduct requires culpable or blameworthy behaviour which caused or contributed to the dismissal. Any reduction must be just and equitable.

APPLICATION OF THE LAW TO THE FACTS

Disability (s.6 Equality Act 2010)

Was the claimant disabled?

137. The Tribunal is satisfied that, at all material times, the Claimant had mental impairments of generalised anxiety disorder (GAD) and Moderate Depressive Episode (MDE), and additionally agoraphobia.
138. The Tribunal finds that each impairment, namely GAD, MDE and agoraphobia, had a substantial adverse effect on the Claimant's ability to carry out normal day-to-day activities throughout the material period. This conclusion follows from the OH evidence of March–May 2023, the 2024 care plan, and the Claimant's credible evidence of impaired morning functioning, inability to leave home, and cognitive effects of medication.
139. The May 2023 Occupational Health report expressly referred to "symptoms of agoraphobia" and recorded that the Claimant was unable to leave her home; the Tribunal interprets that wording, especially when viewed with the Claimant's contemporaneous emails, as alerting a reasonable employer to agoraphobic symptomatology of functional significance.
140. The March 2024 care plan then identified agoraphobia explicitly. The Tribunal's credibility findings support that the Claimant's description of the functional impact (difficulty leaving home unaccompanied; morning medication effects) was clear, internally consistent and aligned with the contemporaneous documentation.
141. The Tribunal finds that all three impairments were present and had substantial and long-term adverse effects at each material point identified in the List of Issues, including the 2023 absence period, the hybrid-withdrawal period from October 2023, the April 2024 return to work meeting, and the May 2024 dismissal process.
142. The Tribunal finds that, at all material times, the Claimant was disabled for the purposes of s.6 Equality Act 2010.

Did the respondent know about the disability?

143. The Respondent knew, or in any event ought reasonably to have known, of the Claimant's agoraphobia from May 2023 upon receipt of Occupational Health advice and the Claimant's emails.
144. The argument that the words "symptoms of" did not convey sufficient knowledge is rejected given the functional picture described at the time and the further medical information provided in March/April 2024.

145. The effects were substantial and long-term. The inability to leave home without support, the difficulty attending the office, and the morning cognitive and physical effects of medication, plainly affected normal day-to-day activities, including the ordinary work tasks of attendance and concentration. Those effects persisted across the material period and, in any event, were likely to recur.
146. In reaching this conclusion the Tribunal has applied the functional approach required by *McNicol* and *Goodwin*, and has disregarded the ameliorating effects of treatment in accordance with Schedule 1 paragraph 5 and *J v DLA Piper*.
147. The Tribunal therefore finds that the Respondent had actual or constructive knowledge of the Claimant's agoraphobia no later than 12 May 2023. This conclusion is supported by the Claimant's emails of November 2023 and February 2024 and by the care plan dated 15 March 2024.
148. The Tribunal applies *Donelien v Liberata*, recognising that an employer must take reasonable steps to ascertain disability and may acquire constructive knowledge by failing to do so.
149. Mental health conditions such as depression, anxiety and agoraphobia are often not overtly visible, and employers are expected to take reasonable steps to identify such impairments where workplace behaviour or absence patterns indicate a potential disability.

Reasonable Adjustments (ss.20–21 EqA)

PCPs & Disadvantage

150. The Tribunal finds expressly that the two relevant PCPs were applied.
 - 150.1. Firstly from 24 October 2023 the Respondent revoked and thereafter maintained an office-only requirement, removing the Claimant's longstanding hybrid arrangement.
 - 150.2. Secondly, in April 2024 the "flex 9:00–13:00" provision in the return-to-work plan operated in practice as an early-start requirement because the Respondent insisted upon in-person oversight at the start of the working day.
151. Both operated as PCPs during the material period.
152. The Tribunal therefore finds that both the office-only requirement and the early start requirement constituted provisions, criteria or practices for the purposes of s.20(3) EqA. Applying *Environment Agency v Rowan*, the Tribunal identifies each PCP, the substantial disadvantage caused, and the reasonable adjustments that could have

avoided it. For clarity, the terms ‘office-only requirement’ and ‘withdrawal of hybrid working’ refer to the same PCP.

153. Those PCPs placed the Claimant at a substantial disadvantage compared with non-disabled employees. Without hybrid working and later starts, her agoraphobia and morning medication effects prevented reliable or safe office attendance; the OH advice of 9 April 2024 expressly linked fitness to return with reinstating hybrid working and reviewing the stress risk assessment. Accordingly, the Tribunal finds that both PCPs placed the Claimant at a substantial disadvantage compared with non disabled employees. This disadvantage was expressly recognised in the Occupational Health report of 9 April 2024.
154. The Respondent knew, or ought reasonably to have known, of that disadvantage from the medical material and the content of the April 2024 meeting.

Were reasonable steps taken?

155. The relevant pool is the set of employees to whom the practices applied or would be applied; the sub-group comprises disabled employees affected by agoraphobia/anxiety and morning medication effects; the Claimant was herself put at the same particular disadvantage as that sub-group. For s.20 EqA, the ‘pool’ comprises those subject to the PCP, not a comparator group.
156. The Respondent’s earlier Stress Risk Assessment in 2023 had already identified that the Claimant’s functional impairment was most acute in the mornings. That finding made the need to consider later start times, hybrid working and other adjustments more obvious. A reasonable employer would have taken this into account when assessing what adjustments were required.
157. The Tribunal finds that reasonable steps were available. They included:
 - 157.1. reinstating hybrid working on a structured, supervised trial, with proportionate monitoring (for example, email/CRM oversight and staged quality checks on assessment work), and
 - 157.2. allowing later start times aligned with the known morning effects of medication. Those steps were practicable in the allocations environment, where assessment work predominated and other staff were already working from home. The Respondent’s own evidence acknowledged the feasibility of remote monitoring tools, yet no such trial was implemented.
158. We reject the Respondent’s contention that in-person supervision was required following the disciplinary process. That contention is not supported by any contemporaneous document; the disciplinary outcome imposed no such

requirement; and the Respondent's own evidence confirmed that equivalent supervision of assessment work was routinely undertaken remotely for other staff. We therefore do not accept that office-only attendance was required to achieve supervision.

159. The Tribunal finds that breaks and outpatient appointments were not refused and were not central to the dispute; the core adjustments concerned hybrid working, later start times and the SRA review. Each element is supported by the factual findings.
160. A supervised hybrid trial could have delivered the same oversight through live sampling of assessment output, CRM audit trails, and pre-issue quality checks, while reducing the disability-related impact of daily office attendance. Later starts would have preserved same-day supervision windows while accommodating the known morning medication effects, and SRA3 was the structured means to review and adjust these measures.
161. The Tribunal also finds that the Respondent failed to complete or promptly reschedule the planned stress-risk assessment review (SRA3) following the disrupted meeting of 22 April 2024, notwithstanding Occupational Health's recommendation that the SRA be revisited to facilitate a supported return. This was a further reasonable step that could and should have been taken.
162. In addition, the Respondent produced no contemporaneous written balancing analysis explaining why hybrid working or later starts could not be accommodated in light of the updated medical picture, either at the meeting of 22 April 2024 or in the late April/early May exchanges. The absence of such analysis is inconsistent with the assertion that the adjustments were carefully considered and reasonably rejected.
163. For those reasons, the duty to make reasonable adjustments was breached.

Discrimination arising from disability (s.15 EqA)

164. The relevant unfavourable treatment was
 - 164.1. the refusal to reinstate hybrid working,
 - 164.2. the insistence on office-only return
 - 164.3. the early-start requirement,
 - 164.4. the escalation to a Stage 3 capability review (skipping Stage 2), and
 - 164.5. the ultimate dismissal.

165. Each element constitutes unfavourable treatment under s.15 EqA. As set out in the Findings of Fact (paras 22 -79), the refusal of hybrid working, the office-only requirement, the early start requirement, the escalation to Stage 3, and the dismissal each placed the Claimant at a material disadvantage arising from her disability-related impairments.
166. The Tribunal is satisfied that the treatment occurred because of “something arising in consequence of” the Claimant’s disabilities, that is, her need for hybrid working and later start times in order to manage agoraphobia and medication effects. The Tribunal identifies the relevant ‘something arising in consequence of’ the Claimant’s disabilities as her impaired ability to leave her home in the mornings and the cognitive and physical side-effects of her prescribed medication, which together prevented early-morning office attendance. In particular, the early start requirement consisted of the expectation of attendance at 9am.
167. The causal link is supported by the Occupational Health advice and the Claimant’s consistent evidence, which the Tribunal accepted. The Tribunal applies the principles in *Pnaiser* (significant influence), *Nagarajan* (motive irrelevant), *Grosset* (employer need not understand full causal chain), and *IPC Media v Millar* (knowledge of disability, not its consequences, is required).
168. In accordance with *Williams v Swansea*, the Tribunal identifies the treatment and assesses whether it was unfavourable before turning to causation. The Tribunal also applies *Pilkington UK Ltd v Jones*, confirming that the required causal link is broad and requires only a real connection.
169. The Tribunal also takes into account that, from November 2023 onwards, the Claimant sent numerous emails to multiple managers explaining that the amended working pattern was severely worsening her morning functioning and overall health. Those communications provided a clear and contemporaneous audit trail of the difficulties she was experiencing. The Respondent therefore had repeated notice, well before dismissal, that the Claimant’s inability to attend early in the morning arose in consequence of her disabilities. The Tribunal finds that this supports the causal link required by s.15: the unfavourable treatment occurred because of the very difficulties highlighted in those communications.
170. The Tribunal also takes into account that the Respondent had been aware since the 2023 Stress Risk Assessment that the Claimant struggled in the mornings. That assessment, together with the subsequent Occupational Health report, demonstrated a consistent pattern of disability related morning impairment. This strengthens the causal link required by s.15 and confirms that the Respondent knew, or ought reasonably to have known, that the difficulties encountered by the Claimant in attending early in the day arose in consequence of her disabilities.

171. The Tribunal also takes into account that the disciplinary outcome did not impose any requirement affecting the Claimant's working pattern and did not identify any concern that would necessitate early morning in person attendance. The Respondent relied on the disciplinary process as part of its rationale for refusing hybrid working and later starts. However, the investigation had not pursued the two conduct related allegations most directly connected with workplace behaviour, and the outcome letter imposed no restrictions of the kind now said to justify the treatment in issue. The Tribunal therefore finds that the disciplinary process did not supply a legitimate or factual basis for the Respondent's refusal to accommodate the Claimant's disability related morning impairment.
172. We therefore reject the Respondent's reliance on the disciplinary outcome as a basis for refusing hybrid working or later start times. The documentary record does not support that reliance, and no witness provided a coherent explanation linking the disciplinary findings to the working pattern requirements imposed.
173. In assessing justification, we apply the structured proportionality test:
 - 173.1. Legitimate aim: The Respondent relies on aims including service delivery, managerial oversight, and maintaining the effectiveness of disciplinary outcomes. These are capable of being legitimate in principle.
 - 173.2. Rational connection: We are not satisfied that requiring full-time office attendance and early start times was rationally connected to those aims, given the evidence that supervision could be achieved through remote monitoring tools and that other staff were supervised in that way.
 - 173.3. Less intrusive measures: Less discriminatory alternatives were available, including a structured hybrid working arrangement, later start times, and completion of the recommended stress risk assessment. These measures were not trialled or meaningfully evaluated.
 - 173.4. Fair balance: The impact on the Claimant was severe, preventing her return to work, whereas the Respondent's aims were not supported by cogent evidence. The balance therefore falls in favour of the Claimant.
174. The Respondent has not shown that the treatment was a proportionate means of achieving legitimate aims. While the stated aims are capable of being legitimate in principle, we are not satisfied that they were in fact being pursued on the evidence before us.
 - 174.1. Even if the aims of ensuring service delivery and securing appropriate oversight are accepted as legitimate in principle, materially less discriminatory alternatives were available and obvious. For example, a

short supervised hybrid trial with proportionate monitoring and later start times, but nothing was implemented.

- 174.2. The Respondent did not complete or reschedule the stress-risk assessment review and produced no contemporaneous balancing analysis to justify refusal of the identified adjustments. The absence of a contemporaneous balancing note is not, of itself, determinative. The problem is that, despite the stated operational concerns, practicable and less discriminatory measures were identified and not tested.
175. As the EHRC Code (para 5.21) notes, an employer will find it difficult to justify unfavourable treatment where reasonable adjustments were not implemented.
176. The Tribunal has considered each asserted aim separately. Ensuring service delivery is legitimate in principle. Managerial oversight is likewise capable of being legitimate. The aim of maintaining disciplinary warnings as 'effective' carries limited weight because the warning did not restrict working arrangements. The aim of preventing misuse of sickness absence is not supported by the evidence. Having considered each aim independently, none justified the unfavourable treatment adopted.
177. Having considered the evidence, the Tribunal finds that the Respondent did not demonstrate that the aims it relied upon were in fact being pursued at the material time or that they were grounded in any contemporaneous evidence. No document identified any service-delivery difficulties arising from hybrid working; no record showed that the Claimant's post-disciplinary work required early in-person oversight; and there was no evidence of any performance concerns that would justify heightened supervision. The disciplinary outcome letter contained no restrictions on working patterns and did not link office attendance to the sanction imposed. The Tribunal therefore finds that, although the aims relied on were capable of being legitimate in principle, they were not made out on the evidence and cannot be treated as the actual basis for the unfavourable treatment adopted.
178. The Respondent provided no documentary evidence of any performance issues requiring continuous in-person oversight.
179. We have weighed the Respondent's concerns about real-time supervision and customer impact; however, those considerations do not explain why proportionate monitoring tools for assessment work (email/CRM/quality checks) were not trialled, nor why start-time adjustments could not have been accommodated pending review under SRA3.
180. The question for the Tribunal is not whether the Respondent's decision fell within a range of reasonable responses, but whether the treatment adopted was both

appropriate and reasonably necessary to achieve the aims in issue, and whether a fair balance was struck between those aims and the discriminatory impact on the Claimant. On the evidence and alternatives identified, it was not.

181. On that basis, the justification defence fails.

Indirect discrimination (s.19 EqA)

182. The Claimant contends that the Respondent applied two provisions, criteria or practices (“PCPs”), namely:

182.1. a requirement to work full-time from the office; and

182.2. an expectation of early-morning attendance at 9:00am with in-person supervision at the start of the working day.

183. She maintains that these PCPs placed her, and would place employees sharing her disabilities, at a particular disadvantage.

184. The Tribunal is satisfied that each of these requirements constituted a PCP for the purposes of s.19. A PCP need not be established by reference to a long-standing or formally recorded policy, nor by evidence of prior application to multiple employees. A practice may arise where an employer has imposed, asserted, or adopted a requirement which it would apply to any employee in comparable circumstances. Here, although no evidence was produced of any historical example in which the Respondent had withdrawn hybrid working or restricted start-time flexibility in response to conduct concerns, the absence of such examples does not preclude a finding that the Respondent operated the requirements as PCPs. The Respondent maintained repeatedly that, following the disciplinary process, in-person oversight, daily office attendance, and early-morning presence were operationally necessary for an employee returning from a live warning. That rationale was advanced in general terms, without reference to any characteristic personal to the Claimant. The Tribunal is therefore satisfied that these were requirements that the Respondent would apply to employees in materially similar circumstances and thus constitute PCPs.

185. The Tribunal further finds that these PCPs put persons sharing the Claimant’s disabilities at a particular disadvantage. The Claimant’s impairments involved significant difficulty leaving home, particularly in the mornings, and pronounced functional limitations arising from anxiety, agoraphobia and medication side-effects. The requirement to attend the office daily and at an early hour therefore placed her at a heightened disadvantage when compared with non-disabled employees who do not experience these effects. The Claimant herself was placed at that same disadvantage.

186. The Tribunal next considers justification. The Respondent relied on the aims of ensuring effective oversight, maintaining service delivery, and preserving the effectiveness of disciplinary outcomes. Those aims are capable, in principle, of being legitimate. However, the Tribunal is not satisfied that they were made out on the evidence. The disciplinary outcome letter imposed no restrictions on working patterns, and the Respondent produced no contemporaneous assessment evidencing that early-morning in-person oversight or full-time office attendance were in fact needed in the Claimant's case. Nor did it demonstrate why less discriminatory alternatives (which were both available and practicable) could not have achieved those aims. These included reinstating hybrid working on a structured and supervised basis; adjusting start times in line with the Claimant's known morning impairment; and completing the stress-risk assessment recommended by Occupational Health. Each of those steps would have provided meaningful oversight without imposing disproportionate disadvantage.
187. Further, the Respondent's insistence upon office-only working had no clear evidential foundation. Hybrid working remained available to other members of the team, and the Claimant's duties, which we have found to be largely assessment-based, were capable of remote supervision through CRM systems and staged quality checks. No explanation was supplied as to why such methods could not be deployed in this case. In the absence of contemporaneous evidence identifying a genuine operational need for early-morning and full-time office attendance, the Tribunal is not satisfied that the PCPs were reasonably necessary or proportionate.
188. For these reasons, the Tribunal finds that the Respondent has failed to demonstrate that the PCPs were a proportionate means of achieving a legitimate aim.
189. The complaint of indirect discrimination under s.19 Equality Act 2010 therefore succeeds.

Unfair dismissal (ss.94–98 ERA 1996)

190. The Respondent's reason for dismissal was capability (ill-health), which is a potentially fair reason.
191. The question is whether, in all the circumstances, dismissal fell within the range of reasonable responses open to a reasonable employer. For clarity, the range of reasonable responses test applies only to the unfair dismissal analysis and not to the discrimination claims.
192. The tribunal finds that the dismissal fell outside the range for three principal reasons. The Tribunal applies the principles in *East Lindsey DC v Daubney* and *BS*

v Dundee City Council, requiring the employer to ascertain the true medical position and consider whether it was reasonable to wait longer before dismissing.

- 192.1. Up-to-date OH evidence supported an imminent return subject to reasonable adjustments, yet those adjustments (hybrid working and later starts) were refused without a recorded balancing analysis. The Tribunal has considered the GP fit notes relied on by the Respondent. They simply said that she was not fit for work and did not suggest any potentially suitable adjustments. As such they do not expressly contradict the Occupational Health assessment that the Claimant was fit to return with adjustments. The Tribunal therefore places primary weight on the OH opinion as the more detailed and contemporaneous assessment.
 - 192.2. Straightforward adjustments were available and practicable (including a short supervised hybrid trial and completion of the SRA review) but were not implemented.
 - 192.3. The refusal was maintained primarily for in-person oversight reasons, notwithstanding the feasibility of proportionate remote monitoring of assessment work. The Tribunal considered the Respondent's reliance on the disciplinary process to justify its insistence on full-time office attendance and early morning presence. The documentary record does not support that reliance. The disciplinary outcome did not impose any working pattern restrictions and did not identify any performance or conduct concerns that would require enhanced in-person oversight. The continuation of the office-only arrangement after the disciplinary process therefore lacked an evidential foundation. A reasonable employer, applying its own policy and relying on contemporaneous findings, would not have treated that disciplinary process as supporting the working pattern requirements that were later imposed.
193. In those circumstances, it was not reasonable to treat dismissal as a sufficient response at that stage.
194. In reaching these conclusions the Tribunal does not substitute its own view for that of the employer, but determines whether the actions taken fell within the range of reasonable responses open to a reasonable employer.
195. The procedure was procedurally unfair for the following reasons:
- 195.1. The stress risk assessment review identified by OH was not completed or rescheduled;

- 195.2. The Tribunal also finds that the Respondent's decision to move directly from Stage 1 to Stage 3 of its sickness absence procedure, without undertaking Stage 2, materially undermined the fairness of the process. A reasonable employer, applying its own policy, would have followed the sequential stages unless there was clear evidence that Stage 2 was inappropriate or impracticable. No such evidence was presented. The unexplained omission of Stage 2 deprived the Claimant of an intermediate review stage and fell outside the range of reasonable responses in the circumstances.
- 195.3. There was no contemporaneous written evaluation balancing disability-related needs against operational considerations when refusing the adjustments; and
- 195.4. The redeployment steps were cursory.
196. The unfair dismissal claim therefore succeeds on both substantive and procedural grounds.
197. The Tribunal notes that only the Claimant addressed the question of any *Polkey* reduction in written submissions, correctly identifying that procedural unfairness may reduce compensation where dismissal would have occurred in any event. The Respondent did not advance any *Polkey* submissions, nor did it identify any counterfactual timeline or percentage reduction. In circumstances where the Tribunal has found that (i) the Claimant was medically fit to return with adjustments; (ii) straightforward adjustments (hybrid working, later starts, and a rescheduled stress risk assessment) were available and practicable; and (iii) those adjustments were not trialled before escalation to Stage 3, it cannot presently conclude that dismissal was inevitable or that it would have occurred at the same time. The Tribunal therefore reserves the question of any *Polkey* adjustment.

Time extension

198. The Tribunal is satisfied that all of the Claimant's complaints were presented within the primary limitation period prescribed by section 123 Equality Act 2010.
199. The Claimant did not rely on any allegations predating the statutory deadline arising from Early Conciliation (20 May–20 June 2024) and the presentation of the ET1 on 11 July 2024. On the Tribunal's findings, the pleaded acts and omissions on which the claims rest all occurred within the three-month period (as extended by Early Conciliation), and there is therefore no requirement to consider whether it would be just and equitable to extend time.

REMEDY DIRECTIONS

200. The Tribunal reserves the question of remedy.

201. The parties are encouraged to use their best endeavours to reach agreement on remedy. To facilitate that process, the Tribunal gives the following directions.

201.1. The Claimant shall send the Respondent an updated Schedule of Loss together with any supporting evidence relied upon within **21 days** of receipt of this judgment.

201.2. The parties shall thereafter engage in without-prejudice discussions. If the parties cannot reach agreement within **90 days** of the day of this judgment either party may apply for the matter to be listed for a remedy hearing.

201.3. In the event that a remedy hearing is listed, the parties shall file and serve any written submissions on

201.3.1. any ACAS Code uplift, and

201.3.2. any Polkey adjustment (to the extent sought),

no later than **14 days** before the remedy hearing.

201.4. Any party intending to rely on medical or occupational-health evidence in support of future-loss arguments must file and serve that evidence **28 days** before the remedy hearing.

201.5. The Tribunal will issue further case-management directions, including the listing of a one-day remedy hearing, if requested.

Approved by:

Employment Judge O'Neill

7th April 2026

Judgment sent to the parties on:
23rd April 2026

For the Tribunal Office

Notes

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are

published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found at www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/