EMPLOYMENT TRIBUNALS

Claimant: S J Grey

Respondent: 700 Club

Heard at: Newcastle upon Tyne (remotely: by CVP) **On:** 21-23 October 2025

Before: Employment Judge Heather

REPRESENTATION:

Claimant: Mr P Ward (Counsel)
Respondent: Ms Z Hussain (lay representative)

JUDGMENT having been given orally at the hearing on 11 June 2024 and written reasons having been requested in accordance with Rule 62 (3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Preliminary matters

Timing of provision of these written reasons

1. Judgment and reasons were given orally in this matter on 23 October 2025 with the written judgment being prepared the same day. On 5 November 2025 the claimant made a written request (by email) for written reasons)). The written judgment was sent to the parties on 11 November 2025.

2. I was notified of the request for written reasons on 19 January 2026. I have prepared these written reasons at the earliest available opportunity having regard to pre-existing professional commitments.

Format of the hearing

3. The hearing took place remotely, by CVP, over 3 days.

Bundle and documentary evidence

4. I was provided with a hearing bundle which comprised 244 pages (inclusive of indices and cover sheets) and a supplementary disclosure bundle with 36 pages (including indices and cover sheets).

5. A further 3 pages of evidence were admitted during the hearing in the form of a document which included data to show when amendments to a previously disclosed document had been made.

The claim

6. The claimant was employed by the respondent as a Business Development Co-ordinator from 23 April 2024 until 18 September 2024.

7. Early conciliation commenced on 22 October 2024 and ended on 3 December 2024.

8. The claim was presented on 30 December 2024.

9. The claimant initially brought claims of unfair dismissal and disability and sex discrimination.

10. The complaint of unfair dismissal was withdrawn on 25 April 2025 and a dismissal judgment was issued.

11. The complaints that were pursued were:

    a. Discrimination arising from disability – being dismissed because of her sickness absence which arose in consequence of her dysmenorrhea;

    b. Failure to make reasonable adjustments – requiring the claimant to make up hours lost through sickness instead of allowing her to make up the lost hours the following week; requiring the claimant to be in the workplace rather than allowing her to work from home; refusing flexibility in working hours and days instead of providing flexibility in when hours could be worked;

    c. Indirect sex discrimination – requiring attendance at work during agreed hours; the PCP put women at a particular disadvantage when compared to men in that men do not suffer from dysmenorrhea;

The response

12. The response was received on 20 February 2025.

13. The respondent denied the claim in its entirety. Initially, the respondent reserved its position on disability. Subsequently, following provision of a disability impact statement and relevant medical records from the claimant, the respondent conceded that the claimant was disabled by the impairment dysmenorrhea. The respondent did not concede the issue of knowledge of the claimant's disability.

14. The respondent's position is that the claimant did not have sufficient service to bring a claim for ordinary unfair dismissal but in any event the respondent says that the claimant was fairly dismissed because of "some other substantial reason".

List of Issues

15. The List of Issues was discussed and amended at the beginning of the hearing before any oral evidence was heard. The amended List of Issues was circulated to the parties by the Tribunal.

The evidence

16. I received the following witness statements:

    a. Sarah Grey (claimant) – 3 pages;

    b. Emma McLaughlin (HR Manager, 700 Club) – 6 pages;

17. I heard oral evidence from both of the witnesses.

Assessment of the evidence

18. It is not necessary to reject a witness' evidence, in whole or in part, by regarding the witness as unreliable or as not telling the truth. The Tribunal naturally looks for the witness evidence to be internally consistent and consistent with the documentary evidence. Is the evidence credible? Is it corroborated by other witness evidence and/or by the contemporaneous records or documents? How does the evidence withstand cross-examination? How reliable is a witness' recollection? Is a witness speculating rather than testifying? What is the witness's motive for their account? How does the witness compare to other witnesses?

19. When considering witness evidence, it is appropriate to consider whether that evidence is corroborated by other witnesses or by relevant documentary evidence.

20. I am satisfied that Miss Grey gave her evidence in a straightforward manner and did her best to assist the Tribunal.

21. I am satisfied that Mrs McLaughlin was generally trying to assist the Tribunal, but her evidence was not straightforward and there was an occasion when she was not honest which I have set out in my findings of fact.

22. Mrs McLaughlin made some changes to her evidence during cross-examination. This happened both when she was asked direct questions (such as about when she commenced her current role) and more generally (such as when she was asked about why Miss Grey's condition was not considered to be a disability by the respondent). Mrs McLaughlin's notes of the meeting on 20 August say that the claimant's condition was not considered to be a disability because there was no diagnosis and nothing was found during the claimant's surgical procedure, whereas the oral evidence was that it was because the condition was not having a substantial effect on Miss Grey on a daily basis because it happened once per month.

23. Where there is a conflict between the evidence of Miss Grey and Mrs McLaughlin my approach has been to consider whether there is relevant documentary evidence that can assist and, if not, to prefer the evidence of Miss Grey. This is because Mrs McLaughlin's evidence has not been consistent and has not always been honest whereas Miss Grey has been consistent and honest throughout.

Chronology and findings of fact

24. There are a number of matters which are not in dispute. On the contrary, the essential facts are agreed so I can make findings of fact based on those agreements. I have limited the findings and chronology to the essential matters that are necessary to determine Miss Grey's claim.

25. Where there are disputes between the parties' positions and their evidence, I must decide matters on the balance of probabilities which means that I have to decide if something is more likely than not (it is a different test to the criminal standard of proof which is beyond all reasonable doubt). I have reminded myself that it is the party who seeks to establish a fact that has the burden of proving that fact.

26. The relevant chronology and findings of fact are as follows:

    a. Miss Grey completed a job application for a position with the respondent on 23 March 2024 (page 212 – 220). She was offered a role and commenced employment on 23 April 2024 (page 62). The contract of employment is signed on behalf of 700 Club on 23 April and by Miss Grey on 24 April 2024 (page 64);

    b. Miss Grey was contracted to work 20 hours per week with her working days being Tuesday, Wednesday and Friday;

    c. As part of her induction process on 23 April 2024 Miss Grey completed a form entitled "employee details and contact information form" (page 65). At the section with the statement "any medical conditions or medicines about

which we need to be aware for health and safety reasons" Miss Grey included 3 pieces of information, one of which was "bad periods" (page 65);

d. On 1 May 2024 Miss Grey was absent from work due to her bad periods;

e. On 17 May 2024 (page 105) Miss Grey emailed her line manager to request that during half term week she be allowed to change her working day from Wednesday to Thursday (which was agreed);

f. On 31 May Miss Grey was absent from work due to her bad periods;

g. On 7 June 2024 (page 106) Miss Grey emailed Mrs McLaughlin requesting some time to discuss an upcoming medical procedure that Miss Grey was to have on 29 July;

h. On 11 June (page 107) Miss Grey emailed Mrs McLaughlin at 08:17 to inform her that she would be late to work as she had arranged an emergency appointment with her Dr. The email stated that Miss Grey would be at work at about 10:15;

i. On 14 June 2024 a staff review meeting took place between Miss Grey and Mrs McLaughlin. The pro forma used (page 106) for the discussion has a section headed "general attendance and absences". The record states that a discussion took place about Miss Grey's sickness levels as she had a number of absences but that she was awaiting surgery which may help her situation;

j. On 18 June 2024 Miss Grey emailed Mrs McLaughlin (page 110 – 111) to say that she was unable to work that day. That email detailed the symptoms Miss Grey was experiencing at the time, her cycle day, the medication (including timings) that she had taken since the previous morning, that she hoped the symptoms would only last the rest of the day but that she had known them to last up to a week. On 19 June 2024 (page 110) Miss Grey emailed Mrs McLaughlin to say that she was still symptomatic and would not be able to work that day. Miss Grey was also absent on 21 June 2024;

k. On 2 July 2024 (page 113) Miss Grey sent a letter to a prospective funder. The respondent says that this letter was not checked by Miss Grey's line manager which contravened the procedure that had been agreed. The respondent says that the procedure that had been agreed was that all funding letters were to be checked and approved before being dispatched. Miss Grey's evidence is that this was a proforma letter and that the template

had been checked and agreed with her line manager, so it wasn't necessary for the specific letter to be checked before it was sent;

l. The email trail between Miss Grey and her line manager (pages 226 – 227) begins with Miss Grey alerting her line manager to two potential funders and enquiring whether she should apply to them. Her line manager replied that she should apply. Within a few hours Miss Grey updated her line manager that she had sent a written application to one prospective funder and some draft wording for the other. The response from her line manager was specifically in relation to the draft wording for the funder that had not been written to – and was complimentary. The line manager did not comment on the fact that Miss Grey had sent a written application to the other funder;

m. I have concluded that there was not a procedure in place which required every application to be approved by Miss Grey's line manager before it was sent. If it was then I would have expected Miss Grey's line manager to say so in response to her email informing him that the written application had been sent on 2 July 2024. It also seems to me to be inherently unlikely that it would be proportionate or cost effective to have every piece of work checked after an initial settling in period. It seems likely that the procedure evolved so that as time went on Miss Grey was given less direct supervision in relation to individual tasks but that there remained some oversight in relation to specific categories of work – such as the other application that she had prepared the same day;

n. On 17, 23, 24 and 26 July 2024 Miss Grey was absent from work because of her bad periods;

o. Miss Grey was absent from work because of her medical procedure from 29 July 2024 until 9 August 2024;

p. On 30 July 2024 Miss Grey and Mrs McLaughlin spoke by telephone following Miss Grey's surgery the previous day. A welfare meeting was scheduled for 20 August 2024 (which was after Mrs McLaughlin's annual leave);

q. The welfare meeting took place on 20 August 2024 (127) with Miss Grey providing Mrs McLaughlin with a three page document detailing the income she had lost over the period from 1 May 2024 to 20 August 2024, a history of her condition and medical interventions which included specific information for the period from April 2024 onwards, the surgery, outcome and prognosis; the document concluded with the statement "*I would like the 700 club charity*

to recognise my condition as a disability and implement a plan and agreement to make reasonable adjustments";

r. It is agreed that during the welfare meeting Mrs McLaughlin made a proposal about an adjustment that could be made to allow Miss Grey to work different days when her symptoms were at their worst. It was agreed that Miss Grey would provide Mrs McLaughlin with a copy of her period diary so that they could discuss the proposal further;

s. There is a dispute about whether the proposal from Mrs McLaughlin was that any adjustments to working days had to be made within the same working week or whether any changes to days could be carried forward to a different week. Mrs McLaughlin says that it was flexible and could include carry over to a different week. Miss Grey says that the proposal was rigid and any changes to days would have to be in the same week. She points to the fact that the minutes of the welfare meeting say, "swapping days for that week" (page 127);

t. Both Miss Grey and Mrs McLaughlin were clear and emphatic in their evidence on this point. I can derive little assistance from the minutes as the difference between the parties is one of interpretation. My finding, on the balance of probabilities, is that they have a different understanding of the same discussion which was incomplete and they both intended (at least initially) that the discussion would be continued after Miss Grey had shared her period diary with Mrs McLaughlin. For the avoidance of doubt, I have not found that either Miss Grey or Mrs McLaughlin has mis-remembered or misunderstood but specifically that they each had different understandings of the same discussion. Miss Grey believed that the proposal was a rigid one whereas Mrs McLaughlin believed that the proposal was more flexible;

u. Later in the day (20 August 2024) Mrs McLaughlin reverted to Miss Grey to say that the respondent would not recognise her condition as a disability. The minutes record that it was because there was no diagnosis and the surgery had not revealed anything. This accords with Miss Grey's clear and consistent evidence that she was told it was because she did not have a medical diagnosis. It seems inherently unlikely that that Mrs McLaughlin would record that reason if the actual reason was because of the lack of impact on Miss Grey's ability to carry out normal day-to-day activities. I am satisfied that the minutes accurately record the reason for Mrs McLaughlin's decision.

v. I find that when Mrs McLaughlin said in her evidence that the reason was because of the respondent's assessment of the impact on Miss Grey's daily

living that she was not being honest and was attempting to reframe the decision that she made in August 2024 to one which may have a sounder legal basis;

w. On 27 August 2024 (page 129) Miss Grey had a supervision meeting with the chief executive of the respondent. During the meeting the chief executive raised concerns with Miss Grey about the implications of feeling she had done all she could in one area and wanting to move on to something else. In response to Miss Grey's concern about being deskilled and working on smaller projects the chief executive said that as a new employee it was appropriate to work on smaller projects and to demonstrate a profile of success before moving on to larger projects;

x. The next review meeting was scheduled for November 2024;

y. It is agreed that Miss Grey provided the period diary to Mrs McLaughlin on 30 August 2024, and it is further agreed that the diary and proposal about working different days were not discussed again;

z. On 10 and 11 September 2024 Miss Grey was absent from work following a bereavement;

aa. On 17 September 2024 Miss Grey was absent with a sore throat and a cold;

bb. On 18 September 2024 (page 138) a probationary review meeting took place. The concerns raised by Mrs McLaughlin were:

i. the letter of 2 July 2024 wasn't checked by Miss Grey's line manager;

ii. the language in the letter was informal, not professional and had grammatical errors;

iii. saying to the chief executive that she felt deskilled (negative attitude);

iv. saying in her supervision that nobody would thrive under her line manager's "shadow" – (this is not set out explicitly in the note of the supervision on 27 August 2024)

cc. Miss Grey's responses were:

i. that she thought her line manager had seen the letter and had checked the template;

ii. she stood by the language she used in the letter as it hits a point and the application was successful;

iii. stated that she and her line manager have different writing styles and that hers is still a good style;

iv. she accepted there were some grammatical errors;

v. said that she found it difficult to raise the amount of funding that had been set for a specific project;

vi. agreed that she had said that she didn't think anyone would succeed in her line manager's shadow;

dd. During the probation meeting there was a discussion about Miss Grey's absence levels and Miss Grey said that she felt her condition was a disability;

ee. Mrs McLaughlin said that she needed to reflect and consider Miss Grey's probationary period and asked Miss Grey to go home whilst she did so. Miss Grey said that she thought the issue was her sickness levels rather than any other concern. Mrs McLaughllin responded that absence levels were a part of the probationary review and that she had other concerns which included the letter to the funder, attitude to her line manager and attitude to work assigned to her.

ff. Later, on 18 September 2024 Mrs McLaughlin sent a letter to Miss Grey setting out that her employment was being terminated with immediate effect because she had failed to demonstrate her suitability for the role during the probationary period. The specific reasons given were:

i. failing to follow procedures in place where each application would be checked before being sent;

ii. letter not being written professionally or in a way that the organisation would like to come across;

iii. negative attitude to line manager;

iv. negative attitude about work asked to complete;

gg. The dismissal letter does not mention absence levels;

hh. Miss Grey appealed the dismissal on 2 October 2024 stating that she considered that the real reason was her sickness record due to her disability as well as setting out her responses to the reasons given for Mrs McLaughlin's assessment that Miss Grey had not demonstrated her suitability for the role during the probationary period;

ii. The appeal hearing was held on 11 October 2024;

jj. The outcome of the appeal hearing was sent to Miss Grey on 18 October 2024 with the dismissal and reasons being upheld in their entirety;

Relevant law and legal principles

Discrimination arising from disability (section 15, Equality Act 2010)

28. Section 15(1) of the Equality Act 2010 provides that:

"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"

29. Limb (a) involves a two stage test:

i. Did the claimant's disability cause, have the consequence of, or result in, "something"?

ii. Did the employer treat the claimant unfavourably because of that "something"?

30. It does not matter which way round these questions are approached.

31. According to subsection 15(2), subsection 15(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. It is not necessary, however, for A to be aware that the "something" arises in consequence of B's disability (*City of York Council v Grosset* [2018] EWCA Civ 1105).

32. The concept of unfavourable treatment is unique to section 15. In the case of *Williams v Trustees of Swansea University Pension and Assurance Scheme and another* [2018] UKSC 65, the Supreme Court said it was a similar to a detriment. In particular, there is a requirement that the disabled person "must have been put at a disadvantage." No comparator or comparison is required.

33. Known as the test of objective justification, the leading case on limb (b) is *Bilka-Kaufhaus GmbH v Weber von Hartz* [1987] ICR 110, ECJ. The Court held that, to justify an objective which has a discriminatory effect, an employer must show that the means chosen for achieving that objective:

    i. correspond to a real need on the part of the undertaking;

    ii. are appropriate with a view to achieving the objective in question; and

    iii. are necessary to that end;

34. A balancing act is required. The discriminatory effect of the treatment has to be balanced against the employer's reasons for it. To be proportionate, the unfavourable treatment has to be both an appropriate means of achieving the legitimate aim and a reasonably necessary means of doing so (*Homer v Chief Constable of West Yorkshire* [2012] UKSC 15).

35. When determining whether or not a measure is proportionate it is relevant for the tribunal to consider whether or not a lesser measure could have achieved the employer's legitimate aim (*Naeem v Secretary of State for Justice* [2017] UKSC 27). The tribunal should consider whether the measure taken was proportionate at the time the unfavourable treatment was applied (*The Trustees of Swansea University Pension & Assurance Scheme and another v Williams* UKEAT/0415/14).

36. The tribunal is required to make an objective assessment which does not depend on the subjective thought processes of the employer. This question is not to be decided by reference to an analysis of the employer's thoughts and actions. The question is whether the treatment, objectively assessed, at the time it occurred, was a proportionate means to achieve a legitimate aim irrespective of the process adopted by the employer.

37. The Tribunal must also consider the guidance contained in the EHRC Statutory Code of Practice that is relevant to this question. This is contained, in particular at paragraph 5.12 which states that: "*It is for the employer to justify the treatment. They must produce evidence to support their assertion that it is justified and not rely on mere generalisations*."

Indirect sex discrimination (section 19, Equality Act 2010)

38. Indirect discrimination is defined at section 19 of the Equality Act 2010, as follows:

    "(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."

39. The effect of section 136 of the Equality Act 2010 is that it is for the claimant to show prima facie the existence of a provision, criterion or practice (PCP), and that such PCP placed the claimant's group sharing her protected characteristic at a disadvantage as compared to another group that does not share her protected characteristic and that the PCP was applied to the claimant which resulted in her being subjected to that disadvantage. These are primary facts which the tribunal has to find before the burden of proof shifts to the respondent, see *Project Management Institute v Latif* [2007] IRLR 579 and *Bethnal Green and Shoreditch Education Trust v Jeanne Dippenaar* UKEAT/0064/15/JOJ.

40. The obligation is on the employer to show that the PCP complained of is a proportionate means of achieving a legitimate aim, ("objective justification"). The employer must establish that it was pursuing a legitimate aim and that the measures it was taking were appropriate and legitimate. In the context of indirect discrimination the Tribunal considers the effect on a group of people, not on an individual.

Failure to make reasonable adjustments (sections 20 and 21, Equality Act 2010)

41. Section 20 of the Equality Act 2010 defines the duty to make reasonable adjustments, which comprises three possible requirements, the first of which might apply in this case set out at subsection (3) as follows:- *"(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".*

42. Section 21 provides that a failure to comply with such requirements is a failure to make a reasonable adjustment, which amounts to discrimination.

43. There are five steps to establishing a failure to make reasonable adjustments (as identified in the pre-Equality Act 2010 cases of *Environment Agency v Rowan* [2008] IRLR 20 *and HM Prison Service v Johnson* [2007] IRLR 951). The Tribunal must identify:

i. The relevant provision criterion or practice applied by or on behalf of the employer;

ii. The identity of non-disabled comparators, (where appropriate);

iii. The nature and extent of the substantial disadvantage suffered by the disabled employee;

iv. The steps the employer is said to have failed to take, and

v. Whether it was reasonable to take that step.

44. Claimants are not required to prove that they were disadvantaged, it is not a test of causation. It is a comparative exercise to test whether the PCP has the effect of disadvantaging the disabled Claimant more than trivially in comparison with others who are not disabled, see *Sheikholeslami v University of Edinburgh* 2018 IRLR 1090.

45. The duty is to make "reasonable" adjustments, to take such steps as it is reasonable for the employer to take to avoid the disadvantage. The test is objective. The Tribunal's focus should be not on the process followed by the employer to reach its decision but on practical outcomes and whether there is an adjustment that should be considered reasonable. It is for the tribunal to determine, objectively, what is reasonable. It is not a matter of what the employer reasonably believed. Unusually, the tribunal may substitute its view for that of the employer and it is permissible for the tribunal to conclude that different adjustments would have been reasonable from those contended for by the Claimant: see *Smith v Churchills Stairlifts Plc* [2006] ICR 524 CA; *Royal Bank of Scotland v Ashton* [2011] ICR 632 EAT; *Garrett v LIDL Ltd* UKEAT 0541/08; *Southampton City College v Randal* IRLR 2006 18; *Project Management Institute v Latiff* [2007] IRLR 579.

46. The test of reasonableness when considering an adjustment imports an objective standard. The tribunal must examine the issue not just from the perspective of the claimant but also take into account wider implications including the operational objectives of the employer.

47. The burden of proof was explained by Elias J in *Project Management Institute v Latif* UKEAT/0028/07CEA at [54]: the Claimant must establish that a duty to make reasonable adjustments has arisen and that there are facts from which it could reasonably be inferred, absent an explanation, that it has been breached. Once that is established, the burden is reversed to the Respondent to show that the proposed adjustment is not reasonable. Section 20(3) provides that where a provision, criterion or practice (a PCP) applied by or on behalf of an employer, places a disabled person at a substantial disadvantage in comparison with

persons who are not disabled, it is the duty of the employer to take such steps as it is reasonable to have to take in order to avoid the disadvantage.

48. An essential issue is whether the respondent know or could reasonably have been expected to know that the claimant was disabled and, if so, from what date and whether the respondent knew that the claimant was placed at a disadvantage. This means that the employer's knowledge can be constructive or implied.

49. Under s15(4) of the Equality Act 2006, a Court or Tribunal must also consider the Equality and Human Rights Code of Practice on Employment (2011) ("the Code") in any case where it appears to be relevant.

50. The Code sets out that employers must do all they can reasonably be expected to do to find out whether a claimant has a disability.

51. An employee is also expected to co-operate with the employers' attempts to establish whether there is a disability (*Cox v Essex County Fire and Rescue Service* [2013] UKEAT/0162/13).

Discussion and conclusions

52. I will deal with the issues in dispute applying the relevant legal principles to the facts as we have found them to be. I am following closely the list of issues that was agreed at the outset of the first day of proceedings on 21 October 2025.

Discrimination arising from disability (section 15, Equality Act 2010)

Did the respondent treat the claimant unfavourably by dismissing her?

53. It is agreed that the claimant was dismissed. The respondent says that this was not unfavourable treatment.

54. Dismissing an employee is one of the most unfavourable actions that an employer can take against an employee. I am satisfied for the purposes of this complaint that the dismissal was unfavourable treatment which put the claimant at the disadvantage of no longer having her job.

Did the claimant's sickness absence arise in consequence of her disability?

55. The claimant's absences up to and including her return to work on 9 August 2024 were all arising from her disability as they were because of her bad periods or the related surgery.

56. The absences in September 2024 were not related to Miss Grey's disability as that sickness absence was because of a sore throat and cold.

57. The bereavement absence was not a sickness absence.

Did the respondent dismiss the claimant because of her sickness absence?

58. This requires an analysis of the thought process of the employer or more specifically Mrs McLaughlin as the decision maker.

59. The sickness absence doesn't have to be the only or main reason for the dismissal but there needs to be at least a connection between the two.

60. Miss Grey's position is that the concerns that Mrs McLaughlin had weren't genuine or at least that they would have been more appropriately resolved by giving her time to address those issues. Miss Grey points to the fact that the relevant letter was written in July 2024 and was not raised as an issue until September 2024.

61. Mrs McLaughlin's evidence was that the sickness absence was not a factor in her decision making because she had already proposed adjustments to assist Miss Grey which would hopefully reduce her absences. She was emphatic that her decision was based on her concerns about Miss Grey's suitability for the role because of the language used in the finding letter, failing to have the letter approved by a line manager, having a negative attitude to work and negative attitude to her line manager. In response to a direct question from me, Mrs McLaughlin explained that the letter was brought to her attention by another member of staff on 10 September 2024 when the payment for the funding was received. That was Mrs McLaughlin's explanation for why that matter had not been raised earlier.

62. I note that it was almost a month prior to the probation meeting that the welfare meeting took place. At the welfare meeting there was no suggestion that sickness absence was a disciplinary matter or something that would result in dismissal. Mrs McLaughlin didn't deny that absence levels were part of the probationary review process but said explicitly that she did not consider sickness to be a factor when making her decision to dismiss. I note that attendance levels were an issue on the pro-forma supervision forms that take place quarterly. I am satisfied that the respondent generally kept absence under review as part of its supervision processes but that absence levels were not a factor in Mrs McLaughlin's decision to dismiss Miss Grey.

Failure to make reasonable adjustments (sections 20 and 21, Equality Act 2010)

Did the respondent know or could it reasonably be expected to know that the claimant had a disability? If so, from what date?

63. This is a significant area of contention between the parties.

64. Miss Grey says that the respondent was on notice of her disability from when she filled in her employee details form on 23 April 2024 and that at best the respondent knew or ought to have known from 20 August 2024. Miss Grey says that the respondent should have made enquiries and asked her appropriate questions to establish if she had a disability. She accepts she did not share her diagnosis with

her employer and did not explicitly refer to disability or adjustments until 20 August 2024.

65. The respondent says that Miss Grey did not say that she was disabled or ask for any adjustments. It accepts that she was disabled at the time and says that the date of knowledge or constructive knowledge ought to be 20 August 2024.

66. Mrs McLaughlin's evidence is that she had various conversations with Miss Grey from the date of the induction onwards and that she was told by Miss Grey that she had bad periods and was awaiting exploratory surgery to try to establish a cause. She accepts that she never asked Miss Grey if she was disabled or required any adjustments. There is a tension between an employer doing all that it reasonably can and an individual's right to privacy and to make a choice not to share certain information.

67. Miss Hussain made various assertions her cross examination of Miss Grey and repeated them to a lesser extent in her written submissions about the effects of periods on women. I have not made any findings about that and will only say that each woman's experience is different and cannot be generalised. What I am concerned with is the specific experience that Miss Grey has.

68. In my judgment it was reasonable at the induction for Mrs McLaughlin to ask Miss Grey questions about her disclosed medical conditions but there is nothing inherent in the phrase "bad periods" that would put an employer on notice that it may be a specific medical condition or that there may be such a significant impact on the individual that it amounts to a disability.

69. On 1 May and 30 May 2024 Miss Grey was absent from work for one day on each occasion because of bad periods. Miss Grey says that a back-to-work interview should have been held and if the question had been asked whether the absence was because of disability then she would have disclosed that it was. Mrs McLaughlin says that in the context of a single day of absence and knowing that Miss Grey had an underlying medical investigation upcoming she did not consider a back-to-work interview to be appropriate. That seems to me to be a rational and appropriate conclusion for Mrs McLaughlin to come to and an appropriate exercise of her HR discretion.

70. The email on 18 June 2024 is the only time that I have seen that more detailed information is given which includes information about Miss Grey's current symptoms, medication diary, anticipated recovery time and previous experience. The email explicitly states that this condition is the subject of the forthcoming surgery. I must consider whether this email was sufficient to put the respondent on notice to make further enquiries. I think that it was. Miss Grey had given graphic detail of the pain she was experiencing, the emotional impact on her, the amount of pain medication that she was taking, that she would not be able to drive because of the medication she was taking and that sometimes these symptoms

have lasted up to one week. Albeit the respondent was aware that Miss Grey was awaiting surgery, that additional information was sufficient and significant enough, in my view, that a reasonable employer would have held a return to work interview with Miss Grey and asked more questions about the impact on her, her ability to work and what if any adjustments could be made to support her in her work.

71. The respondent would have been reasonably expected to have such a meeting with the claimant within 1 week of her returning to work. Given that Miss Grey returned to work on 21 June 2024, then the meeting ought to have occurred by 28 June 2024 and that is the date from which the respondent ought to have known that the claimant was disabled. I find that the respondent had implied knowledge that Miss Grey was disabled on 28 June 2024.

Did the respondent have the following PCPs:

- *Not allowing staff to make up hours lost through sickness;*
- *Requiring staff to be in the workplace;*
- *Refusing flexibility in working hours and days;*

72. The respondent accepts that it had these PCPs in place.

Did the PCP put the claimant at a substantial disadvantage compared to someone without the claimant's disability in the she could not make the time up and had to take sick leave?

73. I understand this to be a complaint that the claimant had a loss of earnings because she received statutory sick pay when she was absent due to sickness.

74. I do not accept that the claimant was put at a substantial disadvantage compared to someone without her disability. This is not a case where the employer offered enhanced sickness absence benefits, and the claimant reached a trigger point to reduce benefits because of her disability. The SSP policy applied to all staff and any member of staff who was absent through ill health would have a loss of income regardless of whether they were disabled. The claimant was not in a worse position as a disabled person than someone who was not disabled. Arguably the claimant was treated better than others in that, at the respondent's discretion, she received full pay for the time that she was absent for her operation.

Indirect sex discrimination (section 19, Equality Act 2010)

Did the respondent have the PCP of requiring attendance at work at agreed hours?

75. The respondent accepts that this PCP was in place.

Did the respondent apply the PCP to the claimant?

76. The claimant says that the PCP was applied to her. The respondent says that it was not applied to the claimant because adjustments were put in place for the claimant.

77. Whilst adjustments were discussed at the welfare meeting on 20 August, they were never finalised or put in place.

78. I am satisfied that the PCP was applied to the claimant because the discussions that were had on 20 August 2024 were never finalised or implemented.

Did the PCP apply to men or would it have done so?

79. The respondent accepts that the PCP applied generally and that it employs men. Accordingly, it is agreed that the PCP applied to men.

Did the PCP put women at a disadvantage compared to men in that men do not suffer from dysmenorrhea?

80. My conclusion is that the PCP did not put women at a disadvantage compared to men.

81. Not all women suffer from dysmenorrhea.

82. Not all women need to take time off work because of symptoms arising from menstruation or associated cramping.

83. Accordingly, the claimant cannot satisfy the requirement of group disadvantage for the indirect sex discrimination claim.

Conclusion

84. The complaint of disability arising from discrimination is not well founded and is dismissed.

85. The complaint of failure to make reasonable adjustments is not well founded and is dismissed.

86. The complaint of indirect sex discrimination is not well founded and is dismissed.

Approved by:
Employment Judge Heather
26 February 2026