



EMPLOYMENT TRIBUNALS

Claimant: Ms A Brake

Respondent: HSBC Bank UK PLC

Heard at: Southampton (by CVP)

On: 20 February 2026

Before: Employment Judge Yallop

REPRESENTATION:

Claimant: Mr B Frew (counsel)

Respondent: Ms R Kight (counsel)

PRELIMINARY HEARING IN PUBLIC RESERVED JUDGMENT

The judgment of the Tribunal is as follows:

Time limits

1. The complaint of unfair dismissal was not presented within the applicable time limit. It was reasonably practicable to do so. The complaint is therefore dismissed.

Disability

2. In 2022, the Claimant was not a disabled person as defined by section 6 Equality Act 2010.
3. In the period 1 January 2023 to 10 March 2025 the Claimant was a disabled person as defined by section 6 Equality Act 2010 because of her menopause-related symptoms (which included migraine).

4. The complaints of unfavourable treatment because of something arising in consequence of disability, and failure to make reasonable adjustments, can therefore proceed.

REASONS

Introduction

1. The Claimant was employed by the Respondent as a Business Specialist from 9 October 2017 until her dismissal for gross misconduct on 25 November 2024. The Claimant claims that she was unfairly dismissed and discriminated against on the grounds of disability.

The hearing and issues

2. I conducted a preliminary hearing on 20 February 2026. The Claimant was represented by Mr Frew (counsel), who had been instructed on a direct access basis. The Respondent was represented by Ms Kight (counsel).
3. The purpose of the hearing was to consider:
 - a. Whether the Tribunal has jurisdiction to consider the Claimant's claim for unfair dismissal, as it was brought outside the primary time limit; and
 - b. Whether the Claimant was disabled in the period 2022 to 10 March 2025 due to suffering from migraines and menopause-related symptoms.
4. The Claimant gave sworn evidence. There were no other witnesses.

Preliminary matters

5. The Claimant applied for the admission of late evidence, being screenshots of her NHS records and an email chain between her and her trade union representative involving ACAS. She had sent the documents to the Tribunal and the Respondent's solicitors that morning, although it transpired that the documents had not been forwarded to Ms Kight before the hearing because her instructing solicitor was out of the office.
6. I decided to accept the late evidence. It was relevant to the matters that I needed to determine, and the reason it had been provided late was that the Claimant had instructed Mr Frew at very short notice and they had only had their first meeting at 4pm the night before. Before receiving legal advice, the Claimant had not realised she should provide additional medical evidence, as she had obtained a medical summary from her GP. She had also not realised that the email chain with her trade union representative would assist the tribunal in relation to the time point. Much of the evidence in the medical screenshots reflected information

already set out in the summary provided by the Claimant's GP, so did not come as a surprise to the Respondent. The new evidence was not lengthy, Ms Kight did not object to its admission, and I considered that admitting it would not prejudice the Respondent. I therefore decided it was in accordance with the overriding objective to accept the late evidence.

7. During the hearing, it became clear that some of the screenshots of the Claimant's medical records did not evidence when matters were raised with the Claimant's GP, as the way that the Claimant had taken the screenshots omitted the dates of some of the consultations. Ms Kight agreed to the Claimant providing additional evidence during the lunchbreak, to include those dates. I considered that this did not prejudice the Respondent and it was in accordance with the overriding objective to accept the additional evidence the Claimant provided, as it was important to clarify the dates to enable a fair decision to be reached in relation to the fact of disability.

Time limits

Findings of fact

8. My findings of fact in relation to time limits are as follows. Where I have had to resolve any conflict of evidence, I indicate how I have done so at the material point.
9. In October 2024, the Respondent carried out an investigation into the Claimant's conduct and then invited her to attend a disciplinary hearing. The disciplinary hearing took place on 30 October 2024. The Claimant attended with a companion from her trade union.
10. On 25 November 2024, the Claimant was summarily dismissed by the Respondent for gross misconduct.
11. After the disciplinary hearing, the Claimant complained about her first trade union representative, who had been late to one meeting and failed to turn up for another. As a result of her complaint, the Claimant was allocated a new trade union representative, Sarah Johnson, to assist with the ongoing process.
12. On 2 December 2024, the Claimant appealed against her dismissal. The appeal hearing took place on 29 January 2025, and the Claimant attended the hearing with Ms Johnson.
13. The Claimant was informed on 10 March 2025 that the disciplinary decision in relation to 3 out of the 4 allegations against her had been overturned. However, the appeal manager considered that the final allegation amounted to gross misconduct and justified the Claimant's dismissal, so the dismissal was upheld.

14. Although the Claimant had trade union representatives assisting her throughout the disciplinary process, she said in her oral evidence that she did not know about the possibility of bringing a claim for unfair dismissal, or about the time limit for doing so. She also asserted that Ms Johnson told her to focus on her appeal first and had said that if the appeal was unsuccessful, they would then contact ACAS.
15. I do not find the Claimant's evidence to be credible. The Claimant was clearly considering what would happen if her appeal was not successful, as she says Ms Johnson told her they would contact ACAS in that eventuality. Given that discussion, I do not believe that Ms Johnson gave the Claimant no advice about next steps. I therefore find that at around the time of the appeal hearing on 29 January 2025, Ms Johnson and the Claimant discussed the possibility of the Claimant bringing a claim for unfair dismissal if her appeal was unsuccessful.
16. The Claimant asserted that because of the Respondent's delay in completing the appeal process, she was unable to present her claim within the applicable time limit. However, the ACAS certificate shows that ACAS was first contacted about the prospective claim on 28 February 2025, which was 12 days before the Claimant received the outcome of her appeal. The Claimant therefore did not wait for the appeal outcome before furthering her potential claim.
17. The Claimant gave evidence that she contacted ACAS after receiving the appeal outcome, but was told at that point that her claim would be out of time. She said that she did not know before that about the relevant time limits. She provided an email chain showing that ACAS contacted Ms Johnson on 14 March 2025 asking for the date of the Claimant's dismissal, and on 18 March 2025 advising that the claim may be out of time. The Claimant then discussed with Ms Johnson whether to proceed with ACAS conciliation. The email chain does not evidence the first contact that was made with ACAS, or why ACAS was contacted on 28 February 2025.
18. The Claimant asserts that Ms Johnson contacted ACAS on 28 February 2025, and although the Claimant had agreed to Ms Johnson contacting ACAS on her behalf, the Claimant did not know why the contact was made on that date because she did not know about the tribunal process. Mr Frew suggested that Ms Johnson may have realised she had made a mistake allowing the time limit to pass and not been transparent with the Claimant. There is, however, no evidence that that is what occurred, and I consider it to be unlikely that Ms Johnson contacted ACAS without informing the Claimant about why she was doing it, i.e. they could not continue to wait until the outcome of the appeal process because of employment tribunal time limits, and contacting ACAS was the first step in bringing a claim for unfair dismissal.

19. I find that Ms Johnson knew about the time limit for the tribunal, and that an internal appeal does not stop that time limit from running, as otherwise she would have waited to receive the appeal outcome to make contact with ACAS. Given Ms Johnson's knowledge, I consider it unlikely that at around the time of the appeal hearing when Ms Johnson spoke to the Claimant about contacting ACAS if her appeal was unsuccessful, she did not mention the time limit. I therefore find that the Claimant knew about the time limit at the time Ms Johnson told her to focus on the appeal before contacting ACAS, on or around 29 January 2025.
20. The ACAS certificate was issued on 21 March 2025, and the Claimant lodged her claim on 25 March 2025.

Law

21. Section 111(2) ERA 1996 provides that an employment tribunal shall not consider a complaint of unfair dismissal unless it is presented before the end of the period of three months beginning with the effective date of termination, or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.
22. 'Reasonably practicable' means 'reasonably feasible' (**Palmer v Southend on Sea Borough Council [1084] IRLR 119 (CA)**).
23. The strictness of this test was emphasised by Judge LJ in **London Underground Ltd v Noel [1999] IRLR 621** who said:
"By section 111(2)(b) this period may be extended when the tribunal is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period. The power to disapply the statutory period is therefore very restricted. In particular it is not available to be exercised, for example, 'in all the circumstances', nor when it is 'just and reasonable', nor even where the tribunal, 'considers that there is good reason' for doing so."
24. The onus of proving that presentation of the claim in time was not reasonably practicable rests with the Claimant.
25. The existence of an impending internal appeal is not in itself sufficient to justify a finding that it was not reasonably practicable to present a complaint to a tribunal within the time limit (**Bodha v Hampshire Area Health Authority 1982 ICR 200**, approved in **Palmer**).
26. In **John Lewis Partnership v Charman EAT 0079/11**, it was found to be reasonable for a lay person to be unaware of the time limits for a claim if they deferred investigating the possibility of litigation until the appeal process

concluded. This is a different situation to that which arose in **Bodha and Palmer**, as in those cases the issue was whether the pursuit of an internal appeal in itself made it not reasonably practicable to present a claim, not whether it was reasonable for a claimant to be unaware of the time limits.

27. In **Times Newspapers Ltd v O'Regan 1977 IRLR 101**, a trade union official advised the claimant incorrectly that the three-month time limit did not start to run while negotiations were taking place about her possible reinstatement. The Employment Appeal Tribunal (EAT) held that the claimant could not claim that it had not been reasonably practicable to claim in time because the trade union official's fault was attributable to her.
28. In **King v Gemalto UK Ltd 2022 EAT 29**, on the day of the Claimant's dismissal, his trade union representative told him to keep an eye on ACAS and give them a ring, but did not specify the period within which the Claimant needed to act. The Claimant presented his unfair dismissal claim a few days late. The EAT did not accept that absence of advice or incomplete advice can render it not reasonably practicable to comply with the time limit in circumstances where the time limit can easily be discovered on the internet.

Conclusions

29. The primary time limit for the Claimant's unfair dismissal claim was 24 February 2025. ACAS was contacted on 28 February 2025, so the law relating to early conciliation did not extend the time limit. The parties agree that the claim was lodged out of time. ACAS conciliation was still attempted, and a certificate was issued on 21 March 2025. The Claimant's ET1 was received by the Employment Tribunal on 25 March 2025.
30. I first need to decide whether it was reasonably practicable for the Claimant to have brought her claim within the primary time limit.
31. The outcome of the Claimant's appeal was received on 10 March 2025, which was after the Claimant's trade union representative contacted ACAS. I have found that whilst the appeal process was ongoing, Ms Johnson and the Claimant discussed the possibility of bringing a claim for unfair dismissal and the time limit for doing so, and that prior to the appeal outcome being provided, Ms Johnson informed the Claimant that she was contacting ACAS because of employment tribunal time limits. This is therefore not a case where the Claimant waited for the outcome of an internal appeal process before finding out about bringing an employment tribunal claim.

32. I have found that on or around 29 January 2025, the Claimant knew about the relevant time limits. It appears that the Claimant and Ms Johnson accidentally allowed the time limit to elapse. No reason has been provided as to why ACAS could not have been contacted on or before 24 February 2025, save for that the Claimant was not aware of the time limit (which I have not accepted) and her trade union representative was at fault.
33. Even if Ms Johnson had been at fault for not telling the Claimant about the time limits, or by advising the Claimant wrongly about when the time limit would expire, Ms Johnson's fault would be attributable to the Claimant.
34. The Claimant confirmed during oral evidence that she had access to the internet. As I have found that she knew of the time limit for bringing her claim, she could have found out herself how to contact ACAS. Alternatively, she could have asked Ms Johnson to contact ACAS before the time limit expired.
35. I am therefore satisfied that it was reasonably practicable for the Claimant to have brought her claim in time.

Disability

Findings of fact

36. My findings of fact in relation to disability are as follows. Where I have had to resolve any conflict of evidence, I indicate how I have done so at the material point.
37. The Claimant produced a letter dated 27 January 2026 from her GP, which sets out a list of her medical problems, details of her Hormone Replacement Therapy (HRT) medication, and a summary of her GP consultations. Attached to the letter is a patient symptom history. In addition to this medical evidence from her GP, the Claimant provided screenshots from the NHS app. From all of those documents, I find that the following consultations potentially relating to migraines and menopause occurred:
 - a. **7 June 2022** – The GP letter says: 'Symptoms of hair loss - blood tests done, but normal.' There is a screenshot to support this. The screenshot does not mention menopause. It says: 'Stressful job. (works 3 jobs and studying)'.
 - b. **12 October 2022** – The GP letter says: 'Describes other physical symptoms not discussed - joint pains (wrists, elbows, shoulders, ankles), heart palpitations, similar to previous Covid infection. Affecting sleep, pain in bones, occasional nocturnal palpitations, waking with this and the pains. Tiredness, loss of motivation, wondered if this might be perimenopausal. Periods

- changing slightly. Further blood tests requested to rule out other possible causes.' There is a screenshot supporting that this is what was discussed.
- c. **26 October 2022** – The GP letter says: 'follow up appointment, discussed HRT and ECG arranged too. Signposted information about menopause and support.' The content of this consultation is supported by screenshot evidence. The screenshot of the appointment says: 'Pt asking about hormone blood tests. Explained why unnecessary;...Arrange ECG....Send details about menopause/HRT. Consider therapeutic trial if remaining results come back normal.'
- d. **29 September 2023** – The GP summary says: 'Different GP consultation – patient feels she is going through perimenopause – Keen for blood testing. Describes aching joints, brain fog and fatigue amongst most problematic symptoms. Counselling again and set up further blood tests.' The screenshot for this consultation supports this summary and says: 'Diagnosis: Menopausal symptoms' and 'We discussed bloods not definitive but may help her decide on whether to start treatment or not'. The screenshot and GP summary do not mention headaches, but this is mentioned on the patient symptom history attached to the GP summary letter. This says in 2023 'clear menopause symptom cluster appears' and records the following symptoms on 29 September 2023: brain fog, migraines, fatigue, aching joints, emotional instability and sleep disturbance.
- e. **24 October 2023** – There is a screenshot on this date, which appears only to be recording a test result as opposed to a consultation, as there is no detail about anything being discussed with the Claimant and an appointment on this date does not appear on the GP summary. The screenshot shows the Claimant's serum follicle stimulating hormone (FSH) level report as normal and says: 'No Further Action. Review not applicable'. There is also a note saying that in women over 45 years old diagnosis of menopause should be without laboratory testing. The Claimant was 48 years old at the time.
- f. **30 November 2023** – There was some confusion in the evidence over when this appointment took place. The most recent GP summary shows that the appointment occurred on 30 November 2023, but the mirroring screenshot is dated 30 November 2024. There is also an older GP summary dated 10 August 2025 that shows the date of the appointment as 30 November 2024, but despite listing all other appointments in date order, it shows the 30 November 2024 consultation as having fallen between appointments on 29 September 2023 and 2 July 2024 (i.e. in the position it would have appeared if the appointment had taken place in 2023). The summary of symptoms attached to the GP summary notes that there was a date error in the previous summary letter and states that 30 November 2023 is the correct date, 2024 being described as a 'typo'. Having considered this evidence together with the content of the consultation on 2 July 2024 which records that the Claimant had been given HRT in November (so this clearly means November 2023), I find that the correct date of the consultation was 30 November 2023. This also accords with the Claimant's oral evidence that she started taking HRT in late 2023 and stopped in early 2024 because of side effects (the side effects

- being noted in the appointment on 2 July 2024). In relation to the Claimant's symptoms discussed at the November 2023 appointment, the mis-dated screenshot says: 'brain fog, fatigue, emotional. Impacting relationship and work; LPM last wk, prev 6m prior to that; ...; Sleep disturbance – waking occasionally with anxiety; Headaches – started getting migraines this yr; MSK / joint – yes; Palpitations – yes, in night;...Skin or hair changes – hair thinning...' The screenshot goes on to mention diet, exercise and vitamin supplements and says: 'Aware of risks & benefits of HRT'. There is then a separate screenshot that is undated but clearly shows the end of the same consultation, as the words at the end of the dated screenshot are repeated at the beginning of the undated one. The undated screenshot records that the Claimant was happy with the risks and would like HRT. There is then information about her prescription.
- g. **2 July 2024** – The GP summary says: 'Review. Had stopped HRT after 6 months of use, felt a lot of side effects of progesterone – forgetfulness, depressed mood, swollen abdomen, joint pains. Alternative routes discussed.' There is no dated screenshot of this consultation. However, there is an undated screenshot that says: 'Note – History: Stopped HRT. Felt better on O but worse on P; Forgetful. Depressed. Swollen abdo. No period for months. Joint pains; Given HRT Nov, took about 6m; Felt better with 1 pump O, didn't need to increase to 2 pumps. When took P – sleep worse, emotional, brain fog worse. Affecting work and relationship; Even worse now stopped HRT...Plan: Long discussion about options. O seemed to help but P seemed to cause probs. Importance of P. Restart O...Decided to try P vaginally to see if better tolerated..'. The information in the screenshot matches the GP summary, so I consider that the screenshot is from the consultation on 2 July 2024.

38. From this medical evidence and the Claimant's oral evidence, I have noted the following key points:
- a. There is an entry on the patient symptom history saying that the Claimant had suffered from various symptoms between 2018 and 2020 including headaches and photophobia, and that the clinical relevance of this was that they were 'early hormonal, migraine and mental health markers'. However, there is very little information about these symptoms and they are not mentioned in the GP's summary. Lower down in the patient symptom history, there is text that suggests the headaches occurred in 2019 and were linked with urinary tract infections. The patient symptom history does not record migraine or headaches affecting the Claimant in the period 2021 to 2022.
 - b. It is not clear that the appointment in June 2022 relates to menopause-related symptoms, as nothing was discussed about menopause at that time and it appears the Claimant's hair loss may have been being caused by stress.

- c. In October 2022, the Claimant first raised with her GP that she was suffering from symptoms that she believed to be connected with perimenopause. At that point tests were done to rule out other causes and the GP made a note to consider a therapeutic trial of HRT if no other cause of the symptoms was established.
- d. There was then a gap of around 11 months where no further action was taken by the Claimant. The Claimant says she was not sure whether she wanted to go on HRT because there is a history of cancer in her family. This history is noted in the screenshot of the consultation of 24 November 2023, which also states that the Claimant is 'potentially at increased risk'. I accept the Claimant's evidence that she continued to have menopause-type symptoms, despite the fact that she did not seek further advice from her GP until September 2023. I find that balancing the risks and benefits of HRT, the Claimant decided she did not want to increase her risk of getting cancer.
- e. Although the blood test conducted on October 2023 came back normal, I find that that does not mean the Claimant was not suffering from menopause-related symptoms. Her medical records make it clear that any blood test would not be definitive and that the diagnosis of menopause in a woman her age is usually made without testing. The Claimant started HRT shortly after this test, which she would not have done if her GP had considered the test proved her symptoms were not menopause-related.
- f. The Claimant started HRT in November 2023, and took it for about 6 months, so until around May 2024.
- g. I accept that the Claimant's report to her GP of her symptoms during that period is accurate, i.e. that when the Claimant took progesterone, her sleep worsened, she was emotional and forgetful, and her brain fog became worse. That is supported by the fact that the Claimant decided to stop taking the medication.
- h. The Claimant stopped HRT in around May 2024, and I accept that her condition then worsened. She saw her GP on 2 July 2024 and explained her symptoms, saying they were affecting her work and relationship. She then restarted HRT, but trying a different type of progesterone, as evidenced by her medical records.
- i. There is no evidence of the Claimant mentioning persistent migraines to her GP until 29 September 2023. The screenshot of the appointment on 30 November 2023 also suggests the Claimant started getting migraines in 2023.
- j. There is no evidence of the Claimant being formally diagnosed with migraines. The medical summary from the Claimant's GP mentions migraines as a symptom in the midst of a list of other symptoms potentially related to

menopause. It is not mentioned in the 'Medical Problems' section of the letter and the Claimant was not prescribed any drugs to assist with migraines.

- k. In the patient symptom history, the entry for late 2024 to mid-2025 includes the following description: 'migraines associated with hormonal fluctuation'.
39. The Claimant stated in her witness statement for the Preliminary Hearing that she has suffered from chronic migraine symptoms for over five years, with a formal diagnosis confirmed by her GP. I do not accept that evidence. The Claimant's medical records indicate that she only mentioned persistent migraines to her GP in September 2023, and that in November 2023 she confirmed that they had started in 2023.
40. The Claimant discussed her health with the Respondent during the disciplinary process. The first allegation against the Claimant was that she had breached the Respondent's Hybrid Working Framework by not attending the Southgate branch (where she was based) on 40 out of 55 required days between April and July 2024. The dismissal letter says she was supposed to work at the branch three days a week, and from home two days a week. However, the Claimant had only been attending the branch one or two days a week. The Claimant explained that she worked from different branches, or from home due to migraines, and that she contacted her manager on several occasions, though these contacts were not always formally recorded.
41. In the dismissal letter dated 25 November 2024, it is recorded that the Claimant had sent the disciplinary hearing manager screenshots from WhatsApp chats with her Area Manager which showed four occasions for requesting work from home, two of which related to migraines. When asked about the other times that she was not working in the branch, she stated that she had permission to work from home or from other branches. When asked if all communication with her manager was recorded, the Claimant said sometimes she spoke to her manager on the phone.
42. In the appeal hearing on 29 January 2025, the appeal hearing notes indicate that the Claimant said she had had migraines on and off for a year. She had seen doctors, and some thought it was pre-menopausal so she had started HRT to see if that would help. She said she had called her line manager a few times to say she had a migraine. Her line manager had said the Claimant could work from home, or turn her laptop off if it was bad. The Claimant explained that sometimes her headaches were continuous, but sometimes they got better during the day and she could work. She said that the office had a lot of lights and people, and it was easier for her to work from home because her home was quieter, and she could turn the lights off and work on a tablet. She said she took painkillers for her migraines.

43. In her oral evidence, the Claimant said that she started suffering from migraines either towards the end of 2022 or in early 2023. She accepted that there was no reference in her medical records to frequent migraines before 2023. The Claimant's evidence as to when her migraines started was inconsistent, and she said at the hearing that she is not good with dates. The medical records make it clear that she was suffering with migraine before 29 September 2023. I consider that if she had been suffering in 2022, she would have mentioned migraines in the appointment on 12 October 2022. The GP would also not have recorded in November 2023 that the Claimant's migraines started in 2023. I therefore find that it was the start of 2023 when the Claimant began suffering from frequent from migraines.
44. The Claimant stated in her Disability Impact Statement that her migraines were persistent and fluctuating but continued to affect her regularly throughout her employment, and she gave an estimate of experiencing them 'typically several times per month'. In her oral evidence, she said that they were very irregular, so might occur once a week, or once in two weeks, and that they could last a short time or for days. I accept that during the relevant period, the Claimant experienced frequent migraines from 1 January 2023 until 10 March 2025, and that based on the Claimant's evidence they occurred at least twice a month. That the Claimant's migraines continued into 2025, is supported by the evidence from the Claimant's GP, including the patient symptom history which records that to mid-2025 the Claimant continued to experience 'migraines associated with hormonal fluctuation'. Whilst the Claimant has not managed to produce evidence showing that she frequently worked from home due to migraines, some support for this has been provided through the disciplinary process. One of the grounds upon which the Claimant was initially dismissed was that in the period April to July 2024 she had failed to comply with the requirement to work in the office three days a week. The Claimant explained during the disciplinary and appeal hearings that some of the missed days were because of migraines, and it is recorded in the dismissal letter that she produced two WhatsApp messages about the Claimant's need to work from home on those days due to migraines.
45. I do not consider that the fact the Claimant was not prescribed specific drugs to assist with migraines means she was not suffering frequently or significantly with them. I find that the Claimant's migraines were viewed by her GP as connected with hormonal fluctuations and that HRT was therefore proposed as the appropriate treatment, so from 2023 attempts were being made to help the Claimant with her migraines.
46. I accept the Claimant's oral evidence that her migraines were painful and when she was suffering from them, she had to be in a dark, quiet room and use a tablet rather than her laptop. I also accept that she took over-the-counter pain medication to help with her migraines. There is nothing in the GP records to support the Claimant's contention that her migraines made her vomit or that she was unable to interact with anyone during migraines. However, her interaction

with others would have been limited by the fact that she needed to remain in a dark and quiet environment. The Claimant has also not produced any evidence that there were times when she could not work at all due to migraines. The evidence before the tribunal suggests that the Claimant was able to work, but would do so from home.

Law

47. Section 6 of the Equality Act 2010 provides that a person has a disability if they have a physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. The burden of proof is on the Claimant to show that he or she satisfies this definition. 'Substantial' means 'more than minor or trivial'.
48. In **Goodwin v Patent Office [1999] I.C.R. 302**, Morison J, provided some guidance on the proper approach for the Tribunal to adopt when applying the provisions of the Disability Discrimination Act 1995. He set out four questions to be answered by the Tribunal in order. This four-stage approach was approved more recently by the Court of Appeal in **Sullivan v Bury Street Capital Limited [2021] EWCA Civ 1694** where Singh LJ listed the questions as:
 - (a) Was there an impairment?;
 - (b) What were its adverse effects [on normal day-to-day activities]?;
 - (c) Were they more than minor or trivial?;
 - (d) Was there a real possibility that they would continue for more than 12 months?.
49. In **Goodwin**, Morison J warned of the risk of "disaggregating" the 4 questions - i.e. whilst they can be addressed separately, it is important not to forget the purpose of the legislation, and to look at the overall picture. This warning was emphasised more recently in **Mr A Elliot v Dorset County Council, UKEAT/0197/20/LA**.
50. The relevant point in time to be looked at by the Tribunal when evaluating whether the Claimant is disabled under section 6 is not the date of the hearing, but the time of the alleged discriminatory act (**Cruickshank v Vaw Motorcast Ltd [2002] I.C.R. 729**).
51. Paragraph 5 of Schedule 1 to the Equality Act 2010 provides as follows:

(1) An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if:

- (a) measures are being taken to correct it, and*
- (b) but for that, it would be likely to have that effect.*

(2) 'Measures' includes, in particular, medical treatment and the use of a prosthesis or other aid.

52. Paragraph 12 of Schedule 1 of the Equality Act 2010 provides that when determining whether a person is disabled, the Tribunal "must take account of such guidance as it thinks is relevant." The "Equality Act 2010 Guidance: Guidance on matters to be taken into account in determining questions relating to the definition of disability" (May 2011) (the 'Equality Act Guidance') was issued by the Secretary of State pursuant to section 6(5) of the Equality Act 2010. The Equality Act Guidance confirms at D3 that normal day-to-day activities can include general work-related activities, such as interacting with colleagues and using a computer.

Conclusions

53. I am satisfied that during the relevant period from 2022 until 10 March 2025 the Claimant was going through the initial stages of menopause and that this amounted to a physical impairment. The medical evidence shows that in October 2022 the Claimant was experiencing symptoms suspected to be connected with perimenopause. I am also satisfied that the Claimant suffered from migraines from the start of 2023. I consider that the medical evidence suggests the Claimant's migraines were linked with menopause.
54. I accept the Claimant's evidence that her menopause-related symptoms (including her migraines) caused:
- a. Brain fog, making it difficult for her to remember things and to focus on complex tasks.
 - b. Pain and light sensitivity, meaning that there were occasions during migraines when she could only work at home with the lights off.
 - c. Fatigue and sleep disruption, impacting on her energy levels.
55. These impacts are detailed in the Claimant's statement for the Preliminary Hearing and in her Disability Impact Statement dated 18 July 2025. The medical evidence shows that she complained of all of these symptoms to her GP in September 2023 and that she specifically reported in November 2023 that they were affecting her work. I conclude that the Claimant experienced brain fog, pain and light sensitivity and fatigue, and there were occasions when this impacted on her ability to attend her workplace and carry out general work-related tasks, including using her laptop and interacting with colleagues. There were therefore adverse effects on the Claimant's normal day-to-day activities.

56. The Claimant did not provide any specific instances where brain fog or sleep deprivation affected her, or how often and substantially she was impacted by these symptoms before she started getting frequent migraines in 2023. It is clear that the Claimant was suffering from sleep disturbance in 2022, as she mentioned this to her GP, but I consider there to be insufficient evidence that this had more than a minor or trivial impact on her ability to carry out day to day activities. Brain fog is also not mentioned in 2022. From the start of 2023, when the Claimant was experiencing frequent migraines, I conclude that that there was a substantial adverse effect on her ability to carry out day to day activities. The Equality Act Guidance explains at paragraph B3 that when assessing whether an impairment is substantial, one factor to take into account is the way in which the person with the impairment carries out a normal day-to-day activity. Although the Claimant was able to work on days when she had a migraine, a person without the Claimant's impairment would not have needed to work in the dark at home, or use a tablet instead of a laptop.
57. I have found that the Claimant's migraines occurred at least twice a month, that they were painful, and that the Claimant took pain medication. The migraines meant she had to work from home, which reduced the opportunities for her to interact with colleagues at the Branch, and was partly the cause of her being disciplined for breaching the Respondent's hybrid working policy. Without the pain medication, I consider it to be likely that the Claimant would not have been able to work at all for those two days a month. 24 days a year would be a significant amount of time to be away from work on sick leave. In my view, the Claimant's impairment therefore had a substantial adverse impact on her ability to carry out normal day to day activities.
58. In relation to whether the impairment was long-term, at the point at which the symptoms began to have a substantial adverse effect on the Claimant (from 1 January 2023), the effect had not already lasted for at least 12 months and was not likely to last for the rest of the Claimant's life. However, at that point I consider there was a real possibility the effect would continue for more than 12 months. This is because the symptoms were related to menopause, and it is well-known that menopause-related symptoms often last for more than a year. By the end of the relevant period (10 March 2025), the symptoms had actually lasted for more than 12 months. I therefore conclude that throughout the period 1 January 2023 to 10 March 2025, the Claimant satisfied the long-term requirement.
59. Overall, having considered all elements of the test, I conclude that the Claimant was disabled in the period 1 January 2023 to 10 March 2025 by reason of her menopause-related symptoms (which included migraine).

**Employment Judge Yallop
7 April 2026**

Judgment sent to the parties on
29 April 2026

Jade Lobb
For the Tribunal

Note

Reasons for the judgment were given orally at the hearing. Written reasons will not be provided unless a party asked for them at the hearing or a party makes a written request within 14 days of the sending of this written record of the decision.

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