



EMPLOYMENT TRIBUNALS

Claimant: Mr B King

Respondent: Thales DIS (UK) Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Heard at: Southampton

On: 27 April to 1 May 2026

Before: Employment Judge Gray **and Members:** Mr P English and Ms K Symonds

Appearances

For the Claimant: In person (assisted by Mr Zahra)

For the Respondent: Mr Adamu (Counsel)

RESERVED JUDGMENT

It is the unanimous Judgment of the Tribunal that the Claimant's claims of direct sex discrimination, harassment related to disability, direct disability discrimination, discrimination arising from disability and victimisation, all fail and are dismissed.

REASONS FOR THE DECISION

1. These are the reasons for the decision set out above.

This Hearing

2. This five-day final hearing was to decide whether Mr King (the Claimant) had been subjected to direct sex discrimination, harassment related to disability and if not that, then direct disability discrimination, discrimination arising from disability and victimisation.

3. For reference at this final hearing, the Tribunal was provided with:
 - a. Hearing bundle – parts A (196 pages) and B (492 pages) - to which during the hearing were added copies of the 2004 and 2011 site security policies
 - b. Chronology
 - c. Cast list
 - d. Witness statement of the Claimant
 - e. Five witness statements in support of the Respondent:
 - i. Luke Mercer
 - ii. Adam Pyke
 - iii. Angela Squires
 - iv. Scott Etherington
 - v. Jim Mann
4. The questions the Tribunal was being asked to decide at this final hearing (the issues) were confirmed at the start of this hearing as being those previously agreed in the process leading up to this hearing (as set out in the section below headed “What happened up to this Hearing”). It was confirmed that there was no reasonable adjustment complaint, Employment Judge Self having decided at a hearing on the 9 September 2025 that the issues should not be amended. The issues in this case are set out in Annex A below.
5. The hearing timetable was agreed, with matters of liability to be determined first. The timetable had planned for evidence and submissions to finish at the end of day 3, beginning of day 4, but in the end that finished in the morning of day 5. As the Tribunal could only begin its deliberations (thinking time) then, the Judgment in this case was reserved. This meant the parties would receive this written Judgment saying what had been decided and why.
6. When the evidence was presented at this hearing allowances were made for Mr King and Mr Zahra when they were asking questions of the Respondent’s witnesses. This was in recognition of what was noted by Employment Judge Cadney in his case management order from the hearing before him on the 10 March 2026. Mr King and Mr Zahra were both permitted to ask questions of each Respondent witness and on occasions to raise further questions they said they had forgotten to ask when undertaking the cross examination of a witness, even after panel questions and re-examination had taken place.

7. Neither party was required to shorten their questioning time, even when they exceeded original time estimates, which is why evidence did not conclude until the end of day 4.
8. Breaks were provided as requested in addition to usual comfort and lunch breaks.

What Happened up to this Hearing

9. This claim has had a long and complicated procedural history which has been set out in previous judgments and case management orders. A summary of that is set out below for ease of reference.
10. Mr King says that he first raised a grievance about Mr Mercer (his supervisor at work) in July 2017.
11. Mr King says that he brought another grievance about Mr Mercer in April 2018.
12. There was going to be a meeting about that on 20 June 2018.
13. An incident then took place on the 31 May 2018 with Mr Mercer. The meeting which had been planned for 20 June 2018 was cancelled by Gemalto (which is what the Respondent used to be called. It is now called Thales DIS (UK) Limited).
14. On 8 August 2018 Mr King was dismissed. He put an appeal in against the dismissal on 21 August 2018.
15. On 13 November 2018, Mr King made his first claim to the tribunal.
16. On 19 November 2018, Mr King was asked whether he was bringing a discrimination claim in his first claim and he replied with emails on 22 November 2018 and 28 November 2018. He talked about bullying and harassment at work but did not say he was bringing a claim because of his disability or his sex.
17. At work, on 21 November 2018, an appeal meeting took place in relation to the dismissal. On 3 December 2018 Mr King's appeal was rejected, and it was made clear that the grievance would not be going any further.
18. On 7 December 2018, Regional Employment Judge Pirani decided that because Mr King had not identified a protected characteristic, the claim would only be accepted as unfair dismissal. His Honour Judge Tayler has said that Regional Employment Judge Pirani was right about that.
19. Up to this point in the process Mr King had not been represented by lawyers.
20. On 17 June 2019 at a hearing about the unfair dismissal complaint, Employment Judge Gray decided that the claim for unfair dismissal had not been presented in time and Mr King's claim was dismissed. Part of Employment Judge Gray's reason was that the occupational health report that he had seen did not suggest that the Claimant had a disability. He also recorded that Mr King had accepted

that he had support from his union during his dismissal and appeal. He was represented by lawyers at that hearing.

21. Mr King appealed to the Employment Appeal Tribunal and his appeal was rejected. The appeal took place on 14 September 2020.
22. By then, Mr King had issued a second claim on 14 July 2020 (this one). Again, Mr King was not represented by lawyers.
23. The second claim form said it was about sex discrimination.
24. On 21 March 2021, Mr King sent a document called a Harassment Log which contained incidents from 20 July 2017 up to 20 April 2018 and referred to disability discrimination.
25. Employment Judge Dawson made a case management order on 25 March 2021 where he set out that it was necessary to decide three things. They were:
 - a. Whether Mr King needed permission to bring a claim of disability discrimination because he did not tick that box in his claim form/ET1 and, if he does, whether it should be given.
 - b. Whether the first case (1403950/2018) meant that this case cannot be brought and should be stopped.
 - c. Whether this case should be struck out because it was not brought within three months.
26. Employment Judge Dawson decided that questions a) and b) would be decided at the same time but c) would be decided separately.
27. On 2 August 2021, Employment Judge Reed decided that the Claimant should not have permission to amend his claim and the claim should be stopped because of the first claim. Mr King appealed and in March 2024, His Honour Judge Tayler decided that Judge Reed had not applied the correct legal test, and the questions should be decided again.
28. On 19 April 2022, Mr King was diagnosed with ADHD.
29. On 24 June 2022 Mr King was assessed as autistic.
30. At a hearing on the 4 October 2024, Employment Judge Dawson then decided that Mr King's claim would not be struck out and that he could add a claim of disability discrimination. The allegations added were those set out in the Claimant's harassment log document. The question of time limits was listed to be determined at a further preliminary hearing.
31. Also, at the hearing on the 4 October 2024 the Respondent (now called Thales DIS (UK) Limited) accepted that, at the times of his employment, Mr King was disabled because of:

- d. anxiety and depression
- e. dyslexia
- f. autism
- g. ADHD
- h. learning difficulties.

32. At a hearing on the 20 May 2025, Employment Judge Gray decided that it was just an equitable to extend time in this claim so that it could carry on and be decided at a further hearing.
33. Also, at the hearing on the 20 May 2025 the issues to be decided at a final hearing were confirmed. It was agreed that the focus needed to be on the complaints set out in the harassment log document. Having considered that document it was confirmed that the Claimant made complaints of direct sex discrimination, direct disability discrimination, harassment related to disability, arising from disability and victimisation. Complaints of a failure in the duty to make reasonable adjustments were not identifiable from the pages referred to nor from the Claimant's explanation which focused in the main on the conduct of Mr Mercer and that conduct being contrary to company policies and procedures and the role of a first aider.
34. At a hearing on the 9 September 2025, Employment Judge Self considered an amendment application by the Claimant. Employment Judge Self decided that the Claimant's application in relation to amending the issues arrived at by Employment Judge Gray at the last Case Management Hearing was refused. Employment Judge Self decided that the disability claims and the sex discrimination claims were properly considered by Employment Judge Gray taking into account the limitations outlined by Employment Judge Dawson when he granted the Claimant's original amendment application. The Claimant was unable to persuade Employment Judge Self that the issues should be changed. Those issues were set out in the Case Management Order and are repeated in Annex A below.
35. At a hearing on the 10 March 2026 to check the case was ready for the final hearing, Employment Judge Cadney confirmed that the issues remained as set out in the Case Management Order of Employment Judge Self.

The facts found at this hearing

36. The Tribunal found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after considering the factual and legal submissions made by and on behalf of the respective parties.

37. The Claimant commences employment with the Respondent (at a previous incarnation of it) on the 6 December 1999, and we were referred to a copy of his employment contract at pages 10 to 14.
38. That employment ends with the Claimant's dismissal on the 8 August 2018 for what the Respondent decided was the Claimant's gross misconduct (we were presented with a copy of the letter dated 13 August 2018 confirming the Claimant's dismissal at pages 264 to 266).
39. This claim is not about the dismissal; it is about matters that took place before that which the Claimant claims amount to disability and sex discrimination, and victimisation.
40. It is not in dispute that the Claimant is a disabled person by reason of:
- i. anxiety and depression
 - j. dyslexia
 - k. autism
 - l. ADHD
 - m. learning difficulties.
41. We accept this position.
42. It is in dispute though that the Respondent had relevant knowledge of the disability or that it was the cause for anything the Claimant alleges.
43. It is also in dispute that the things the Claimant alleges happened the way he alleges they did.
44. The main person complained about by the Claimant is Luke Mercer who at the time of the incidents complained about was a Senior Production Process Leader (senior PPL) and jointly with Martin Stray managed the Claimant as his line manager.
45. The Claimant refers negatively to Luke Mercer, inferring he did not have the experience to manage (paragraph 1 of his witness statement) and referring to him as being very arrogant especially to those with many years of work experience (paragraph 7). The Claimant places himself in that category referring several times to his length of service (which in the end was nearly 19 years).
46. As the Claimant tells us in paragraph 10 of his witness statement ... "The problems between myself and Luke Mercer started in late 2016 where he became senior cell leader after coming back from the Fareham site. It was a total disbelieve to the operators at the 'Nest' that this person was somehow now a senior PPL."

47. And at paragraph 11 ... "For some reason Luke started 'systematic undermining' my work and clearly trying to 'wind me up' of setting up 'impossible standards'."
48. The Claimant does not refer to the issues he has with Luke Mercer being related to or because of disability. In cross examination that Claimant explained that he considers the actions complained about aggravated his disability, rather than his disability being the cause for what happened.
49. Chronologically the first allegation is that on the 20 July 2017, Luke Mercer in an aggressive and rude way told the Claimant to get both machines going. This is claimed as disability related harassment or direct disability discrimination.
50. The Claimant refers to his lower back being an issue for him in respect of the 20 July 2017 incident (paragraph 13 of his witness statement) which is not a reason connected to the asserted disabilities... "I have had trouble with my 'lower back' for months and today it was no better, and Luke was making it worse."
51. The Claimant says he felt like clouting Luke Mercer but does not say this was due to his disability or medications (paragraph 14 of his witness statement).
52. Luke Mercer says about this incident (paragraph 6 of his witness statement) that ... "On 20 July 2017, during my usual walk around the bureau, I noticed that the Claimant, when the work came out of the vault, did not have either of his machines running and instead, was doing paperwork. For reference, the vault was the secure vault where the cards were stored, for security purposes. When a new shift begins, the relevant paperwork would be issued to the operators with the cards for that shift. I approached the Claimant and said words to the effect of "can you please get at least one of your machines running, you know the rules", referring to the general rule that Operators should start up at least one machine at the start of their shift, complete the paperwork and then start the second machine running if it is not already. I politely outlined the usual process to him asking him to get one of his machines running. The Claimant shouted back at me about his paperwork to which I calmly said that I could see he was doing his paperwork but that at least one of his machines should be running. The Claimant appeared to take umbrage to this and disappeared off the shop floor. I was not rude or aggressive towards the Claimant."
53. What Luke Mercer tells us is consistent with the images we saw on the CCTV footage played to the Tribunal.
54. It is not in dispute that the Claimant submits a grievance about this matter on the 29 July 2017 (pages 69 to 70). The Claimant's grievance letter does refer to harassment and bullying by Cell Leader Luke Mercer and the Respondent accepts this is a protected act within the meaning of the Equality Act. The grievance letter does not refer to any disability or health condition being a reason for what the Claimant alleges Luke Mercer has done. The Claimant says in the letter his relationship with Luke Mercer in the past has not been great as he finds him childish and inexperienced in being a PPL. The Claimant refers to himself working there for 17 years and gaining much experience.

55. It is clear from the evidence presented to this Tribunal that the Claimant does not consider Luke Mercer a worthy manager of him. This would also explain the dynamic between them, instead of anything to do with the disability conditions it is accepted the Claimant has or being related to any of those disabilities.
56. After the incident with Luke Mercer the Claimant leaves the shop floor and goes home. That was subsequently found through a disciplinary process to be the Claimant leaving without permission. The Claimant says he is then signed off work for 3 weeks for stress, depression and anxiety (paragraph 18 of his witness statement). The fit note at page 68 refers to Stress Reaction and Low Mood. There is no mention of depression, ADHD or medications. The Claimant refers to being on anti-depressant tablets (sertraline) from the 20 July 2017 (paragraph 20 of his witness statement). A further fit note is issued on the 3 August 2017 signing the Claimant off for a week due to stress reaction, low mood and back pain (page 238).
57. We also note from the minutes from the grievance hearing on 10 August 2017 with Adam Pyke (the Operational Resilience and Efficiency Manager) at page 87 that it is recorded the Claimant being asked the question how do you feel? The Claimant is recorded as replying ... "Not great, I need to loosen up my back and I need to get moving around a bit. I'm on tablets too, anti-depressants.". He is then asked whether that has started recently? The Claimant is recorded as replying ... "Yes they started on 20 July 2017.". The Claimant does not refer to being on medication at the time of the incident on the 20 July 2017.
58. The Claimant completes an Employee Absence Statement covering the period 20 July 2017 to 10 August 2017. It refers to ... "Stress – work (Luke Mercer) – Home (caring for my wife Been ill), muscle strain / stiffness in lower back all these things made me depressed" (page 89). This is consistent with what the Claimant confirmed in his oral evidence to this Tribunal, that things aggravated his disability, rather than his disability being the cause for what happened.
59. The Claimant alleges that the Respondent did not hear the Claimant's grievance dated 29 July 2017, which he chased up on the 25 August 2017, and it was then confirmed on the 25 September 2017 it would not be heard. This is claimed as disability related harassment or direct disability discrimination.
60. The Claimant clarified in cross examination that he asserted this because the outcome letter for his grievance was dated 22 September 2017 and he was presented a copy of that at the hearing on the 25 September 2017, so he was not given it in advance and he believed that the matter had been predetermined before the hearing on the 25 September 2017, which he considered the grievance hearing. The Claimant clarified that he felt that his grievance was not discussed and therefore not heard.
61. The Respondent's position is that by letter dated 4 August 2017 (page 78) the Claimant was invited to a grievance hearing. The Claimant is also informed of his right to bring a work colleague or union representative.

62. That hearing then took place on the 10 August 2017 (pages 79 to 87) and it is the Respondent's position that at the conclusion of that, the hearing is adjourned for Adam Pyke to consider his decision, which he then reaches as recorded in the letter dated 22 September 2017 and then verbally delivers on the 25 September 2027. Adam Pyke explained in cross examination that the usual process is they would have a grievance hearing and then issue an outcome letter, but they added a further step for the Claimant of a meeting to deliver the outcome because it was a lengthy grievance.
63. The minutes at pages 79 to 87 for the meeting on the 10 August 2017 are headed "Grievance Hearing Meeting with Bernie King". It is also recorded on page 87 it being said ... "We will go through the investigation and come back to you with an outcome".
64. The minutes of the meeting on the 25 September 2017 are headed "Grievance Outcome Meeting with Bernie King" and record it being said that the meeting was called to deliver the outcome following the hearing on the 10 August 2017 (pages 100 to 104).
65. The grievance outcome letter concludes (pages 96 to 99) ... "It is clear that you feel aggrieved by Luke's behaviour and your perception is that his behaviour towards you has been inappropriate. We have found no evidence to support this. I have therefore taken into consideration everything that was discussed at the hearing and the findings from our investigation. From all of this I can confirm that I do not uphold your grievance. Luke's manner towards you was professional and his request was reasonable and what we would expect as part of the role of a PPL."
66. This finding is consistent with the documentary evidence presented to this Tribunal and with what Luke Mercer tells us. We therefore do not find it factually proven that on the 20 July 2017, Luke Mercer in an aggressive and rude way told the Claimant to get both machines going.
67. Further, the documents presented and the evidence of Adam Pyke are consistent with the Respondent hearing the Claimant's grievance. That matter has therefore not been factually proven as the Claimant alleges. We note that the Claimant's grievance appeal letter dated 27 September 2017 (pages 105 to 106) does not assert that the grievance was not heard.
68. There is nothing based on the evidence presented to us to support that the process Adam Pyke followed was because of or related to the Claimant's disabilities.
69. As to the appeal process, it is not in dispute that the Claimant raises an appeal which is not then dealt with at an appeal hearing as it is considered by the Respondent to not raise any new points. In evidence to this Tribunal, the Claimant did not identify any new points that did require such consideration at the time. The appeal was the Claimant disagreeing with the outcome asserting it had not been fully investigated (page 105). Angela Squires (the Respondent's Personalisation Manager, UK) however does review the Claimant's grievance

appeal on the relevant papers (as confirmed in paragraph 5 of her witness statement).

70. Angel Squires says (paragraph 6 of her witness statement) ... "During my review, I found that each of the points the Claimant had raised in his original grievance had already been addressed and that his letter of appeal (Bundle B: pages 105-106) did not raise any new points that had not already been investigated nor does it state that he had any new appeal grounds. I did, however, specifically notice that the Claimant had been signed off work with depression (Bundle B: page 70) and that he was having quite a difficult time at home (Bundle B: page 86). I believed that the Claimant had misunderstood what had and had not been investigated and so, to provide clarity for the Claimant and to close off each of the points, I decided to go through each of the initial grievance points, Mr Adam Pyke's ('Adam') investigation and outcome letter (Bundle B: page 96-99) in detail in my letter. I confirmed my decision to the Claimant in writing on 16 October 2017 (Bundle B: pages 108-110).".
71. The lack of an appeal hearing is because the Claimant's appeal does not raise any new points. There is though a review and a determination by Angela Squires. We do not find it proven that the Respondent did not hear the Claimant's grievance dated 29 July 2017 as the Claimant alleges.
72. The Claimant's conduct in connection with the incident on the 20 July 2017 is then questioned by the Respondent and a disciplinary process is undertaken.
73. At the conclusion of that disciplinary process the Claimant is given a 12-month warning for failing to follow a reasonable management instruction and not gaining permission before leaving on the 20 July 2017 (letter dated 26 February 2018, page 140). The Claimant is not given a warning for 24 months contrary to his allegation about that, and what he tells us in his witness statement at paragraph 19. In cross examination the Claimant recalled he may have been told about a 24-month warning by his union representative.
74. The Claimant may have misunderstood what he was told by his union representative at the time (there is a reference to warnings up to 2 year being issued in the past at the end of the disciplinary hearing meeting notes (page 138)), but the Claimant has not proven he was given such a warning at the time to then prove what he alleges. We would also note that the Claimant's letter of appeal dated 2 March 2018 against the warning refers to him appealing against a 12-month warning (page 141).
75. The 20 July 2017 incident and the consequential warning is also relied upon for the arising from disability complaint. It is alleged that the Claimant was given a 2-year written warning in 2017 for leaving the shop floor without authorisation. The Claimant's case is that because of his ADHD and medication it meant he gets angry, so he left the shop floor because he was worried about clouting Luke Mercer.
76. As already noted, the 12-month warning is the subject of an appeal, and this is dealt with by Angela Squires. By letter dated 15 May 2018 (pages 171 to 174)

she upholds the warning but reduces its duration to 6 months (page 173 and 174) ... "In conclusion, taking into consideration the Information provided at the appeal hearing and from the previous disciplinary meeting I have decided that the original decision made at the disciplinary hearing, namely that the decision to issue you with a written warning was appropriate both for failure to follow a reasonable instruction and for leaving the site without permission. I therefore do not uphold your appeal. However, I have also taken into account the mitigating circumstances relating to your mental health and state of mind at the time as you have described it and feel that a 12 month sanction may have been too harsh. I am therefore reducing that to 6 months. As 3 months have already passed since the disciplinary decision was made this reduces the effective time to 3 months."

77. Angela Squires states in her witness statement (paragraph 11) ... "I am also aware that the Claimant was referred to Occupational Health during this period due to his fit note mentioning depression, which he had mentioned before (Bundle B: page 143). We received an Occupational Health report at the end of April 2018 (Bundle B: pages 155-156). This document was shared with me by HR due to the relevance it may have to the disciplinary appeal process. I noticed that it mentioned that the Claimant had been suffering with anxiety and depression most of his life and that he was struggling both with stress and home life. I also noted that the medical specialist did not believe the Claimant was disabled (Bundle B: page 156)."

78. At paragraph 14 of Angela Squires' witness statement ... "I also decided that although the decision to give the Claimant a warning for his conduct was entirely appropriate, due to the difficulties he was having at home, I decided that 12 months was too long and so, reduced this to six months, with three months of this having already been 'served'."

79. As we were referred to in the agreed chronology the Claimant completes an Employee Absence Statement (page 119) relating to absence on the 17 to the 19 January 2018 which notes "Depression/medication problems". The medication problems are after the incident on the 20 July 2017 so cannot be said to be the cause of it.

80. Then in a fit note dated 23 March 2018 the Claimant is signed off work for 2 weeks for Stress and Depression (page 143).

81. There is then a further Employee Absence Statement completed by the Claimant relating to the period 23 March 2018 to 5 April 2018. It refers to "stress and depression due to work and home (wife)" (page 145).

82. There is then the Occupational Health Report dated 25 April 2018 (pages 155 to 156). It records:

"Bernie states that he has been suffering with anxiety and depression since childhood. He has had various treatments over the years. Bernie commenced anti-depressant medication (Sertraline 50mg) in June/July 2017. Bernie also has had intermittent back pain for the past 10 to 15 years and has undergone physiotherapy treatment and has home exercises to do. Bernie tells me that last

year he had a period of absence due to back pain and when he returned there was an issue with his team leader resulting in a grievance which I understand has not yet been resolved. In addition he tells me that he is subject to a current disciplinary. Bernie reports that recently this plus his back issues and his wife's illness has caused a downturn in his psychological health. He sought advice from his GP and was signed unfit for work for a short period. Also Bernie states that there has been an interest in him by a female member of staff for the past few months and he brought this to HR's attention 5 weeks ago but the company do not appear to have supported him with this.

Bernie tells me that his wife has not been taking her medication so he is addressing this with the appropriate support personnel.

I understand that 3 weeks ago Bernie's medication was increased to 100mg and since this time he has developed a decreased sense of smell and lost his taste of food. Also he feels very fatigued as his wife has disturbed nights and this is affecting his sleep. He often sleeps on the sofa. Lately Bernie's motivation has decreased and he is feeling very low. He intends to take some time away from work to try and deal with all his issues.

Bernie has been referred to Talking Change and has had a telephone assessment and commences face to face therapy in May 2018."

83. The report says the Claimant is fit to work and it is noted ... "It is my opinion that Bernie's condition would not be considered as a disability under the terms of the Equality Act 2010."
84. No evidence has been presented to show that because of the Claimant's ADHD and medication it means he gets angry. As already noted, the Claimant starts on medication after the incident on the 20 July 2017, so it cannot arise from that.
85. The medical evidence supports that the Claimant's anxiety and depression deteriorated after the incident on the 20 July 2017 rather than the incident arose from it.
86. In any event, we do not find that the Claimant was given a 2-year warning. This matter has therefore not been proven as the Claimant alleges. The Claimant is given the warning because of his conduct (failing to follow a reasonable management instruction and not gaining permission before leaving on the 20 July 2017). It has not been proven that what happened on the 20 July 2017 that led to the warning that was given was because of, related to or arising from the Claimant's disability, particularly that relied upon by the Claimant being his ADHD and medication.
87. It is alleged by the Claimant as an act of disability related harassment, direct disability discrimination and victimisation that on the 7 August 2017, Luke Mercer told the Claimant to stop talking when the Claimant was training an agency worker.

88. The Claimant addresses this allegation in paragraph 21 of his witness statement ... "There was a recently new agency worker 'Dan' who I would be working with me on the B&H 1 inserter. I had to explain the 'hot post' procedure to him and if he knew or been shown how to setup the inserter has he had worked last week on (late shift). Whiles waiting for the 'hot post' I was explaining and showing Dan how to setup the inserter sensors, when Luke Mercer came rushing over to tell why the machine is not going? I explained to Luke Mercer I was showing Dan how to setup the sensor on the machine that I thought was 'reasonable' in knowing how to run the inserter. Luke Mercer started getting angry by saying I need to get the machine going and getting 'numbers out'. As like in past and with the latest situation with Luke Mercer that happen on 20th July in me leaving shop floor, due to his 'repeated unreasonable behaviour' towards me. Once again telling me how to do my job 'systematic undermining' me. The argument of 'reasonable request' was in direct conflict with mine which saw them more as 'unreasonable demand'. Luke Mercer then started getting angry with me by telling me to get the machine going, and in words of affect, I said 'there's is B&H 2 lying idle and other colleagues standing around talking why don't you asked one of them to run B&H 2' Luke storms of and said he will be contacting Mr Adam Pyke."
89. Luke Mercer's evidence is in paragraph 12 of his witness statement ... "In respect of the Claimant's allegation that I had told him to stop talking when he was training an agency worker, on 7 August 2017, I have no recollection of this happened and do not believe this would have happened."
90. The Claimant has not presented evidence to this Tribunal that he was told by Luke Mercer to stop talking. This matter has therefore not been proven as alleged. We would also observe there is nothing in the matter as described by the Claimant that supports any connection to disability or the Claimant's grievance. This just seems to be a management interaction that the Claimant does not agree with.
91. Chronologically it is alleged that on the 5 January 2018, Luke Mercer says rudely he is not interested in the Claimant's condition, stops the Claimant from taking a break and from taking his medication for depression. This is alleged as an act of disability related harassment, direct disability discrimination and victimisation.
92. There is a dispute of fact in respect of this allegation.
93. The Claimant addresses it in paragraphs 28, 29 and 30 of his witness statement:
- "28. On 5th January 2018. I was feeling dizzy and tearful at my machine so I (reasonably) decided to take a 5 minute break and went for a cup of coffee and take my medication (could not find Martin Stray the other PPL's). Luke Mercer enters the staff canteen an see me, and he instantly got argumentative he challenged me in the staff canteen area. He said I was not entitled to take a break. I tried to explained my situation regards to my medication (anti depressing tablets sertraline) for my depression, stress and anxiety, and was not feeling good. I only wanted a 5 minute break. I was also a First Aider, as was he (we both done our first Aid course together) and I knew it was acceptable for

employees to take a short break if on medication or had a medical condition and the company or a first aider had been informed. It's called 'reasonable adjustments' (B.408-418)

29. Luke got aggressive and angry and storm out of the canteen and said he would contact Mr Adam Pyke. Mr Mercer's denial that any discussion regarding my medical / medication condition did not take place is that the 'company' had known of my condition and was functioning on my medication (sertraline). This is another example the company's dismissing my version of events, only backing Lukes' sore throat version (B-114)

30. My company's own HR/ and PPLs where aware that I was struggle to come in due to my mental health and that of my wife conditions early in 2016, see (performance review form with Mr Stray (B-67) and the 'employees absence statement' sign off by Miss Caril Oakey (B-87) stress, depression. Still no offer any 'reasonable adjustments' nor offer the company's occupational Nurse (Marley) (B-155,156)"

94. Luke Mercer refers to this interaction in paragraphs 16 to 22 of his witness statement.

95. Luke Mercer says the Claimant informed him he had a sore throat. Luke Mercer says the Claimant did not inform him of medical conditions or that he needed to take medication. Luke Mercer says he did not stop the Claimant taking a break but did email his management about the matter proximate to the incident. By email dated 5 January 2018 timed at 09:01 Luke Mercer writes ... "Before the morning meeting today I went to get my coffee as usual at about 08:27, when I entered the canteen Bernie was at the coffee machine getting himself a drink, when challenged about what he was doing he said he had a sore throat, I said in that case he should surly be having a cold drink, he then got very defensive and said that it was ok for me to have a drink but not him to which I replied that I had a meeting to go to he then said, well its ok for others to have a hot drink but not him so I said that he is the only person up here so how can I say anything to anyone else? He then told me to go away a few time so I said I would inform you two about this and he said, go on then go and squinny and I left for my meeting with Bernie still in the canteen enjoying his drink while the rest of the staff were working on the shop floor."

96. We accept the account of Luke Mercer about this matter which is consistent with the email written contemporaneously to it. The Claimant has not proven that Luke Mercer had knowledge of his medical conditions or that he knew the Claimant was on anti-depressants at that time.

97. It is next alleged that on the 20 April 2018, Luke Mercer says the Claimant can't have a break. This is alleged as an act of disability related harassment, direct disability discrimination and victimisation.

98. The Claimant has presented no evidence about this allegation. Luke Mercer tells us he has no recollection of it and does not believe it happened (paragraphs 23

to 27 of his witness statement). It is for the Claimant to prove that the matter happened as he alleges. He has not done so.

99. Chronologically there is then the allegation of direct sex discrimination that on the 23 April 2018, Luke Mercer tells the Claimant to go home and get work trousers.

100. During the hearing we were presented copies of the security policy from 2004 and 2011 that included details of the dress code. These were in addition to the dress code at page 27 issued in May 2018. The panel had asked for details of the dress code prior to the version in the bundle at page 27. This was because the dress code in the bundle referred to leggings not being appropriate work wear and in his oral evidence Luke Mercer explained that he believed that leggings were not expressly excluded in the dress code before that date. The Claimant did not agree with that.

101. The copy dress codes provided do not expressly state that leggings are not appropriate work wear. We therefore accept Luke Mercer's stated belief. However, we can also accept the Claimant had a different belief because he raises the matter in March 2018 as is recorded in an email from Martin Stray dated 23 March 2018 (page 227). The email records ... "About 13,35 this afternoon Bernie King come up to me saying that "Anna meaning (Anna Laba) has got leggings on and not her work trousers so I'll go and put mine on", I replied ok I'll find out why, so I approached Anna and asked why she never had her work trouser on, knowing at the moment she only has one pair, she told me that she had washed them, and that they wasn't dry in time she left for work, and the only thing she has black were her leggings, so I replied ok fine, but can you make sure you wear them in future, I'll see Carolyn about getting another pair, and left it at that."

102. It is then by email dated 12 April 2018 with the subject heading of uniform (page 161) that Adam Pyke sends to amongst others Martin Stray and Luke Mercer writing ... "Can you please keep on top of what staff are wearing on the shop floor, I have seen a few members of staff not wearing uniform. ... When I came in on night shift last night to do the staff meetings I saw a member of late shift in army combat trousers, if they have forgotten uniform they need to go home and get it."

103. Luke Mercer explained about this email that he believed they had printed copies off for staff to see, leaving them on the table or a copy on the notice board.

104. There is then the incident on the 23 April 2018.

105. The Claimant refers to this in paragraph 31 of his witness statement ... "There was another incident two months later on 23rd April 2018. I cycled from my home in Portsmouth to go to work at the 'Nest' in Havant, a journey of about 9 miles. I had forgotten my work trousers and told the security guard and he gave me the visitor's /employees blue overall to wear. Luke Mercer told me that I would have 'send him home' to change (B-152,162) The visitor's overall was perfectly satisfactory and was in line with company's 'Dress code policy' (B-27) To go home to change would have meant cycling from Havant to Portsmouth and

back (16 mile journey). There was another lady on the shift wearing leggings instead of work trousers. Her name was Mrs Jenny Howard (shift change over) and also an 'agency worker Miss Anna Luba' on my shift on many occasions she was allowed to not wearing her appropriate trouser. All right for her to wear 'tight sports legging with a pocket' and breaching the 'Employee Notice Dress Code' procedure. On yet another occasion I complained to a PPI leaders about Miss Anna Luba why she not wearing her company uniform trousers? I was told 'she has only one pair of trousers that are still wet after coming out of the washing machine' Still allowed not to wearing the appropriate blue company overalls. Note employees have at least 2 or 3 sets of trousers and tops. Agency workers (wear white agency overalls or the blue overalls) while waiting for the 'full-black employee uniform) (B-227)".

106. Luke Mercer confirms in his witness statement (paragraph 31) that it was not him that told the Claimant to go home and get work trousers ... "On 23 April 2018, I was nearing the end of my morning shift and was completing a handover of duties with Martin, as the PPL for the afternoon shift. During this process and as the Claimant entered the HSE, Martin drew my attention to the fact that the Claimant had turned up to work with his normal clothes on underneath his coat, rather than his work uniform. Martin went over to the Claimant to inform him of Adam's email (Bundle B: page 161) and he later confirmed to me, Adam and Carli, by email that he had told the Claimant that he would need to send him home to get his work clothes (Bundle B: page 226). It was not therefore me that said the Claimant would have to go home.". It was confirmed in oral evidence that reference to the Claimant's coat was the blue overall or blue coat issued by Security.
107. We have been presented an email from Martin Stray to Adam Pyke dated 23 April 2018 timed at 13:18 (page 226) in which Martin Stray writes ... "This morning Bernie come onto the shop floor wearing a blue coat, me and Luke noticed he had his normal clothes on underneath, so I went to him, showed him the Email you sent us about uniforms and told him I would have to send him home, which he replied (oh yeh right) took the Email off of me., he then walked off the shop floor went up to see Keith Easton, about 25 minutes, he then come back on the shop Floor wearing a uniform, I can only think he had one in his bag or Keith lent him a spare one."
108. The Claimant raises a grievance about the matter on the 24 April 2018 (pages 153 to 154). It is a complaint about Luke Mercer. He says that Luke Mercer sent Martin Stray to give him the email.
109. Luke Mercer could not recall directing Martin Stray to do this, believing that Martin Stray said that he would go and tell the Claimant. The email from Martin Stray contemporaneous to the incident does not suggest that it was Luke Mercer directing Martin Stray to do it.
110. What Luke Mercer tells us about the Respondent's uniform policy is consistent with the documents we have been presented including an email from Adam Pyke dated 23 April 2018 timed at 19:51 (page 162), which includes a reference to leggings not being uniform:

"I sent a mail a week or so ago about making sure staff are wearing the correct uniform, today we had two ops not wearing correct uniform. One was asked to go home the other not, we must be consistent with all.

Leggings are not uniform so are not to be worn.

If an operator comes in without the correct uniform then they should go home and get it but if a one off they can wear an overall.

I know this is different to my last email but it was more to stop operators from just wearing anything they like. In my last email I mentioned army cargo trousers.

If the trousers provided don't fit then the operator can purchase their own and sew up the pockets but leggings are not an option."

111. Adam Pyke confirmed in his oral evidence to this Tribunal that he did not believe there was a policy about leggings before that which is why there are then discussions between management, security and HR to remove variance. This is also consistent with what Angela Squires tells us in paragraph 17 of her witness statement, which says a revised statement was issued to confirm the Respondent's expectations around uniform. This was the document we were provided at page 27 dated May 2018.

112. The Claimant compares himself to Anna Luba in his direct sex discrimination complaint. It is not in dispute that Anna Luba is an agency staff member. That is a material difference to the Claimant. Further, the situation with Anna Luba is before the updated management instructions and uniform policy.

113. The Claimant also says he was treated worse than Jenny Howe.

114. As is recorded in the Claimant's grievance about the incident on the 23 April 2018 (page 153) ... "During the shift change over I notice that Jenny Howe came in wearing black leggings. I informed Luke he needed to give Jenny the same email as me and tell her to go home and get her work clothes. His replied back to me was 'she can wear her legging has they have no pockets and that they are black' I replied back to him that they are not allowed as they are not trousers."

115. Luke Mercer confirms about Jenny Howe in paragraph 33 of his witness statement ... "At the time, the size of the issued uniform was particularly an issue for women as they typically found it too big. Ms Jenny Howe ('Jenny') was one of many women that had tried multiple sizes of the Respondent issued uniform but did not find anything that fit. I am aware that Jenny was looking to purchase her own pocketless trousers to wear at work. This was an issue that some of the PPLs knew about. In comparison, the PPLs were aware that the Claimant had his full uniform as he had been wearing it on previous shifts which I imagine is why Martin asked him to retrieve it, in line with the guidance we had received from Adam. I cannot say for certain but I imagine the Claimant would only have

become aware of Jenny's dress at shift handover (where the early and late shift overlap for around five minutes).".

116. In oral evidence Luke Mercer was asked about the details the Claimant had set out in the last paragraph of his grievance at page 153. Luke Mercer confirmed that it was unlikely he angrily responded but they probably would have said about what she was wearing and that there may be other reasons for that (being her not having uniform that fit). Luke Mercer also explained that he would have been leaving his shift at that time and it would have been a matter for the PPL managing the next shift.

117. It is not in dispute that the Claimant had sufficient uniform at this time, he had just forgotten his work trousers. This is therefore different to the circumstances of Jenny Howe.

118. Luke Mercer further explained in his oral evidence that as the Claimant had started his shift in the blue coat/overall he was more noticeable above desk height as being without uniform. This was also at the time that the email of Adam Pyke dated 12 April 2018 had been sent and the written uniform policy at page 27 was not yet in place.

119. These are all material differences between the circumstances of the Claimant and Jenny Howe.

120. We also note that the allegation of direct sex discrimination is against Luke Mercer. The Claimant appeared to accept in his oral evidence that Luke Mercer did not directly ask him to go home and get work trousers, asserting instead that he had done so indirectly through Martin Stray. This though has not been proven to be the case. Further, the Claimant did not go home to get his work trousers confirming in his oral evidence to this Tribunal that he would have just sat in the canteen for the duration of his shift had his colleague not been able to provide him with some work trousers to use. This matter has therefore not been proven as the Claimant alleges.

121. The final allegation is that on the 31 May 2018, Luke Mercer complains about the Claimant and calls him a retard. This is alleged as an act of disability related harassment, direct disability discrimination and victimisation.

122. The Claimant addresses this matter in paragraphs 44 to 52 of his witness statement. The Claimant refers to Luke Mercer raising a work issue with him about a card being left in the hopper at change over. The Claimant does not agree with what Luke Mercer is raising with him, and matters then escalate, in particular, paragraphs 50 to 52 of the Claimant's witness statement:

"50. Normally, the cards are counted in and out, but I was not able to do this. It was nonsense for Luke Mercer to tell me to count them by hand. He says I should have stayed behind after my shift to physically count the cards. I believe Luke Mercer was intent on winding me up. He knew the pressures I was under. I said to him that I have a sick wife at home who is mentally ill and needs me to give her medication, plus I have to cycle home from Havant to Portsmouth.

51. To this Luke Mercer said to me "I don't care about Your wife". At this point Luke Mercer's voice was raised and so was mine. I said to him it is common knowledge that cards are supposed to be counted out of the vault because the machine operators don't have the time to count thousands of cards. I said to him it is ludicrous to count the cards by hand. I said to the best of my knowledge I had checked the hoppers at the time of my shift. Luke Mercer accused me of not checking the hopper and I said I had. In any case, I had been in a hurry to sort out the missing card on DC4. Luke Mercer kept saying over and over I should have stayed behind and I kept saying "no, I do not have to" and that my shift finishes at 20.55pm.

52. By this stage, we were having a loud argument. Luke Mercer was standing no more than a foot or two from me. Dee Watts and Juliette Green were both close by. They could see and hear what was going on. Then Luke Mercer said (words to the effect) "don't get close to me, get out of my space". I thought that was a typically childish remark for him to make. I said to him, "what, are you a 5 year old?" He kept on saying I should have stayed on after my last shift and I kept saying I had authorisation from the Cell Manager Darren Young to go home, and that I had finish my shift. I said to Luke Mercer "You weren't even there yesterday". Luke Mercer kept saying to me "get out of my space .., then he called me a 'retard'. I got agitated. I, for some reason said "don't be silly, and felt sorry for him, and gave him a hug". I intended this to diffuse the situation. I gave him a hug for a couple seconds and then parted. I did not do this maliciously or in a threatening way. After that, Luke Mercer said he is going to phone the Production Adam Pyke."

123. Luke Mercer addresses this matter in paragraphs 40 to 46 of his witness statement. Luke Mercer refers to it being reported to him about an issue with a machine having a card left in it. Upon investigation he identifies the Claimant as the relevant operator and decides to address this with him informally. Luke Mercer says when he raised it with the Claimant the Claimant became aggressive towards him, telling him that he wasn't hanging around the night before because his shift had finished and he wanted to get home. Luke Mercer says he said to the Claimant that ideally he should make sure that he had finished all of his duties before he went home as it is part of the procedure. As to the escalation of the matter:

"43. The Claimant began to move towards me and I told him that I felt he was getting too close to me. He then took another step towards me to the point where his feet were touching mine. I told the Claimant that he was invading my personal space and asked him to please take a step back. I also took a step back. The Claimant continued to try to argue with me and I tried to remind him that it was procedure to make sure the machines were empty at the end of a shift and to check this as there were four cards in the reject hopper (where rejected cards are dispensed by the machine) of one machine and another card in the other machine. The Claimant was still angry and continued to move towards me and even Ms Juliet Green said something to him to ask him to stop.

44. I asked the Claimant to stop getting close to me and he said he wanted a hug and asked me "what are you going to do about it?". The Claimant then lunged forward and grabbed me with both arms (with my arms being by my side so I couldn't move my arms), squeezed me and lifted me up.

45. I felt undermined as a manager, humiliated and embarrassed. The Claimant's demeanour was intimidating and I wasn't sure what he was going to do at the time. I was concerned that he was going to punch me, as I said to Adam on 15 June 2018 in the course of the investigation process that followed (Bundle B: page 203).

46. I had earlier attended an investigation meeting with Adam on the day that the incident occurred (31 May 2018) to discuss the incident (Bundle B: pages 179-181). I had no further involvement with the disciplinary process and have had no contact with the Claimant since the date of the incident. I understand that as part of the claim before the Tribunal that the Claimant says that on the 31 May 2018, I called him a 'retard'. I certainly did not say this, and I can only assume that at the time of this incident the Claimant did not allege that I had done so, as I was never at any stage of the investigation asked whether I had said this."

124. Within the minutes of the investigation meeting with Luke Mercer on the 31 May 2018, he is recorded as saying (page 180) ... "I can't remember, I don't think he did. I said about the other one, he got aggressive and he definitely said he wasn't hanging around, his shift had finished and he wanted to get home. I said he should make sure he finished before he goes home, it is part of procedure. He started stepping towards me, I said you're getting too close. Then he took another step, to the point where his feet were touching mine. I said you are invading my personal space, take a step back. I moved back and then he continued to argue. I said It's procedure to make sure you check, one way or the other there were still 4 cards in the reject hopper. He was still angry and still walking towards me. I think JG said something, but I can't remember exactly what she said. I said stop getting so close. He said "what are you gonna do about it?" Then his arms fully grabbed me so I couldn't move my arms."

125. It is not in dispute that Luke Mercer complains about the Claimant. From Luke Mercer's account which was subsequently upheld through the disciplinary process it is the actions of the Claimant towards him that lead Luke Mercer to complain about him. Luke Mercer denies calling the Claimant a retard.

126. The Claimant has not proven that Luke Mercer did call him a retard. This is not an allegation that was raised by the Claimant at the time. As Scott Etherington (who was the Security and Operations Manager for one of the Respondent's subsidiaries, MULTOS at the time and dismissed the Claimant) and Jim Mann (who was the Operations Manager for the Respondent's site in Fareham at the time and heard the Claimant's appeal) confirmed in their evidence it was not something raised as having happened by any witness to the event, not even the Claimant at the time. The Claimant has not proven this element of the allegation.

127. As to Luke Mercer complaining about the Claimant there is nothing to suggest it is because of disability.
128. As to it being an act of harassment, we need to consider if Luke Mercer complaining is related to the Claimant's disability. The interaction between the Claimant and Luke Mercer is in the context of Luke Mercer managing the Claimant as the PPL and there does appear to be a legitimate issue to be managed. The Claimant says he then did what he did by giving Luke Mercer a hug because he felt sorry for him. This action is not evidenced as being related to the Claimant's disability. Luke Mercer perceives the Claimant's actions as causing him to feel undermined as a manager, humiliated and embarrassed. He found the Claimant's demeanour intimidating. Luke Mercer asks the Claimant to stop getting close to him and he says the Claimant said he wanted a hug and asked him "what are you going to do about it?". Luke Mercer says the Claimant then lunged forward and grabbed him with both arms, squeezed him and lifted him up. Luke Mercer says he was not sure what the Claimant was going to do at the time and was concerned he was going to punch him. It is the way Luke Mercer felt that prompts him to complain. The way he felt is related to the Claimant's actions as Luke Mercer perceives them. This perception has not been shown to be related to the Claimant's disabilities.
129. There is also nothing to prove that Luke Mercer's complaint about the Claimant is because of or materially influenced by the Claimant's protected act.

The Law that applies to this decision

130. **Discrimination**
131. The Claimant is alleging discrimination on the grounds of protected characteristics (disability and sex) under the provisions of the Equality Act 2010 ("the EqA").
132. The Claimant complains that the Respondent has contravened a provision of part 5 (work) of the EqA. The Claimant alleges direct discrimination, harassment, something arising from disability and victimisation.
133. The protected characteristics relied upon are disability and sex as set out in sections 4, 6 and 11 of the EqA.
134. The Claimant's disability reason is not in dispute, and it is accepted that he is a disabled person within the meaning of section 6 of the EqA for the times material to this claim.
135. Some of the Claimant's complaints relating to disability are presented as both harassment and/or direct discrimination. The allegations will be considered first as allegations of harassment. If any specific factual allegation is not proven, then it will be dismissed as an allegation of both harassment and direct discrimination. If the factual allegation is proven, then the tribunal will apply the statutory test for harassment under s. 26 Equality Act. If that allegation of harassment is made out, then it will be dismissed as an allegation of direct

discrimination because under s. 212 (1) Equality Act the definition of detriment does not include conduct which amounts to harassment. If the factual allegation is proven, but the statutory test for harassment is not made out, the tribunal then considers whether that allegation amounts to direct discrimination under the relevant statutory test.

136. In respect of the burden of proof, there is a two-stage process for analysing the complaints. At the first stage, the Claimant must prove facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the Respondent had committed an unlawful act of discrimination against the Claimant. At the second stage, if the Claimant is able to raise a prima facie case of discrimination following an assessment of all the evidence, the burden shifts to the Respondent to show the reasons for the alleged discriminatory treatment and to satisfy the tribunal that the protected characteristic played no part in those reasons (Igen -v- Wong [2005] EWCA Civ 142 as affirmed in Ayodele -v- CityLink Ltd [2018] ICR 748).

137. We also note the decision of Efobi v Royal Mail Group Ltd (2021) ICR 1263 which confirmed that the reverse burden of proof remains good law under the EqA.

138. Also, considering Madarassy v Nomura International Plc [2007] ICR 867, Mummery LJ stated: “The Court in Igen v Wong expressly rejected the argument that it was sufficient for the claimant simply to prove facts from which the tribunal could conclude that the respondent “could have” committed an unlawful act of discrimination. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal “could conclude” that, on the balance of probabilities, the respondent had committed an act of discrimination”.

139. The burden of proof does not shift to the Respondent simply on the Claimant establishing a difference in status and a difference in treatment. Those bare facts only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal “could conclude” that the Respondent had committed an unlawful act of discrimination (Madarassy). “Could conclude” must mean that “a reasonable Tribunal could properly conclude” from all the evidence before it. This would include evidence adduced by the Claimant in support of the allegations of discrimination. It would also include evidence adduced by the Respondent contesting the complaint.

140. In Igen the Court of Appeal cautioned tribunals ‘against too readily inferring unlawful discrimination on a prohibited ground merely from unreasonable conduct where there is no evidence of other discriminatory behaviour on such ground’ but made it clear that a finding of ‘unexplained unreasonable conduct’ is a primary fact from which an inference can properly be drawn to shift the burden.

141. **Direct discrimination – section 13 Equality Act 2010**

142. For a claim for direct discrimination, under section 13(1) of the EqA a person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

143. Direct discrimination claims require a comparison as between the treatment of different individuals i.e., individuals who do not share the protected characteristic in issue. In doing so there must be no material difference between the circumstances relating to each individual (section 23 EqA). The Tribunal therefore must compare 'like with like'.

144. Harassment – section 26 Equality Act 2010

145. Section 26 provides:

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

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

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

(i) violating B's dignity, or

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

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

(a) the perception of B;

(b) the other circumstances of the case;

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

146. The Claimant needs to establish, under section 26 EqA, unwanted conduct relating to disability, which had the effect of violating his dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for him ((1)(b)).

147. In deciding whether the conduct had the effect set out in (1)(b), the Tribunal must take into account the Claimant's perception, other circumstances, and whether it was reasonable for the conduct to have that effect ((4)). The section (1)(b) test, as a result of section (4), has an objective element.

148. In **Tees Esk and Wear Valleys NHS Foundation Trust v Aslam and anor 2020 IRLR 495, EAT**, the Employment Appeal Tribunal decided that the question of whether conduct is 'related to' a protected characteristic is a matter for the appreciation of the tribunal, making a finding of fact drawing on all the evidence before it. The fact that the complainant considers that the conduct

related to a particular characteristic is not necessarily determinative, nor is a finding about the motivation of the alleged harasser. Nevertheless, in any given case there must still be some feature or features of the factual matrix identified by the tribunal which properly leads it to the conclusion that the conduct in question is related to the particular characteristic in question, and in the manner alleged in the claim. S.26 does not bite on conduct which, though it may be unwanted and have the proscribed purpose or effect, is not properly found for some identifiable reason also to have been related to the protected characteristic relied upon.

149. Discrimination arising from disability (Section 15 Equality Act 2010)

150. Section 15 of the Equality Act states:

15 Discrimination arising from disability

(1) A person (A) discriminates against a disabled person (B) if—

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

151. The Tribunal reminds itself that the correct approach to the operation of section 15 was set out at paragraph 31 by Simler P in the case of **Pnaiser v NHS England [2016] IRLR 170**. In essence, as summarised by Harvey at Q [1468], the position is:

(1) Was there unfavourable treatment and by whom?

(2) What caused the impugned treatment, or what was the reason for it?

(3) Motive is irrelevant.

(4) Was the cause/reason 'something' arising in consequence of the claimant's disability?

(5) The more links in the chain of causation, the harder it will be to establish the necessary connection.

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

(7) The knowledge requirement is as to the disability itself, not extending to the 'something' that led to unfavourable treatment.

(8) It does not matter in which order these matters are considered by the tribunal.

152. At paragraph 31(b) of ***Pnaiser***, Simler P emphasised the focus of the analysis to be on the state of mind of the alleged discriminator as to the underlying reason for the allegedly unfavourable treatment. The 'something' that causes the unfavourable treatment need not be the main or sole reason, but it must have at least a significant (or more than trivial) influence on the mind of the person alleged to have caused the unfavourable treatment.

153. In terms of knowledge, there need only be actual or constructive knowledge as to the disabilities themselves, not to the causal link between the disability and its consequent effects which led to the unfavourable treatment.

154. Further, when determining whether there was unfavourable treatment arising from, or in consequence of an employee's disability, it requires an investigation of two distinct causative issues (***City of York Council v Grosset [2015] IRLR 746***):

- a. first, did the employer treat the employee unfavourably because of an identified 'something'?
- b. Secondly, did that 'something' arise in consequence of the employee's disability?

155. It is noted that it is for the employer to prove justification. They must do so with evidence which is more than mere generalisations. ***EHRC Employment Code of Practice*** (paragraph 5.12).

156. Victimisation – section 27 Equality Act 2010

157. Victimisation occurs where one person subjects another to a detriment because that person has done a protected act or the former believes that that person has done, or may do, a protected act (section 27(1) EqA).

158. The following are protected acts under section 27(2) EqA: (a) bringing proceedings under EqA; (b) giving evidence or information in connection with proceedings under EqA, regardless of who brought these proceedings; (c) doing any other thing for the purposes of or in connection with EqA; and (d) alleging, whether expressly or otherwise, that the respondent or another person has contravened the EqA.

159. The reversal of the burden of proof applies to a claim for victimisation in the same way it does to the discrimination claim. The claimant must establish sufficient facts, which in the absence of any other explanation, point to victimisation having occurred, in order for the burden to shift to the respondent. The burden of proof is not shifted simply by showing that the claimant has suffered a detriment and that he has a protected characteristic or has done a protected act. (***Greater Manchester Police v Bailey [2017] EWCA Civ 425***).

160. As to whether the protected act is the cause of an alleged detriment the test is whether the alleged detriment was to a material degree influenced by the protected act. Importantly this is not a 'but for' test (**Chief Constable of West Yorkshire Police v Khan [2001] ICR 1065**).

What has been decided at this final hearing

161. The Claimant's disability is not in dispute, and it is accepted that he is a disabled person within the meaning of section 6 of the Equality Act for the times material to this claim.
162. The Respondent does not dispute that the Claimant's grievance dated 29 July 2017 is a protected act. We accept that it meets the definition of section 27(2)(d) of the Equality Act.
163. In respect of each of the complaints alleged, these have not been proven as the Claimant alleges:
164. On the 20 July 2017, that Luke Mercer in an aggressive and rude way tells the Claimant to get both machines going. We do not find that Luke Mercer was aggressive and rude to the Claimant as alleged on the 20 July 2017. This has not been proven as alleged.
165. Not hear the Claimant's grievance dated 29 July 2017, which he chased up on the 25 August 2017, and it was then confirmed on the 25 September 2017 it would not be heard. The documents presented and the evidence of Adam Pyke are consistent with the Respondent hearing the Claimant's grievance. That matter has therefore not been factually proven as the Claimant alleges. There is nothing based on the evidence presented to us to support that the process Adam Pyke followed was because of or related to the Claimant's disabilities. We note that the Claimant's grievance appeal letter dated 27 September 2017 does not assert that the grievance was not heard. The lack of an appeal hearing is because the Claimant's appeal does not raise any new points. There is though a review and a determination by Angela Squires. We do not find it proven that the Respondent did not hear the Claimant's grievance dated 29 July 2017 as the Claimant alleges.
166. Give the Claimant a 2-year written warning in 2017 for leaving the shop floor without authorisation. This has not been proven as alleged. The Claimant was given a 12-month warning that was then reduced to 6 months on appeal.
167. In respect of the arising from disability complaint, giving the Claimant a 2-year written warning in 2017 for leaving the shop floor without authorisation. The Claimant's case is that because of his ADHD and medication it meant he gets angry, so he left the shop floor because he was worried about clouting Luke Mercer. The Claimant was not given a 2-year written warning. Further, there is nothing to suggest that what happened on the 20 July 2017 that led to the warning that was given was because of, related to or arising from the Claimant's ADHD or medication as asserted by the Claimant.

168. 7 August 2017, Luke Mercer tell the Claimant to stop talking when the Claimant was training an agency worker. This has not been proven as alleged.
169. 5 January 2018, Luke Mercer say rudely he is not interested in the Claimant's condition, stops the Claimant from taking a break and from taking his medication for depression. We accept the account of Luke Mercer about this matter which is consistent with the email written contemporaneously to it. The Claimant has not proven that Luke Mercer had knowledge of his medical conditions or that he knew the Claimant was on anti-depressants at that time. This matter has not been proven as alleged.
170. 20 April 2018, Luke Mercer says the Claimant can't have a break. This has not been proven as alleged.
171. On the 23 April 2018, Luke Mercer tell the Claimant to go home and get work trousers. It has not been proven that Luke Mercer told the Claimant to go home and get work trousers, either directly or indirectly. In any event there are material differences between the Claimant and his comparators.
172. 31 May 2018, Luke Mercer complains about the Claimant and calls him a retard. It has not been proven that Luke Mercer called the Claimant a retard. Luke Mercer did complain about the Claimant. There is nothing to suggest it is because of disability. There is no relationship for what happened to disability. The interaction between the Claimant and Luke Mercer is in the context of Luke Mercer managing the Claimant as the PPL. There does appear to be a legitimate issue to be managed. The Claimant says he then did what he did by giving Luke Mercer a hug because he felt sorry for him. This action is not evidenced as being related to the Claimant's disability. Luke Mercer perceives the Claimant's actions as causing him to feel undermined as a manager, humiliated and embarrassed. He found the Claimant's demeanour intimidating. It is the way Luke Mercer felt that prompts him to complain. The way he felt is related to the Claimant's actions as Luke Mercer perceives them. This perception has not been shown to be related to the Claimant's disabilities. It has not been proven the complaint is because of or materially influenced by the Claimant's protected act either.
173. It is therefore the unanimous Judgment of the Tribunal that the Claimant's claims of direct sex discrimination, harassment related to disability, direct disability discrimination, discrimination arising from disability and victimisation, all fail and are dismissed.

Approved by:
Employment Judge Gray
Dated 11 May 2026

Sent to the parties on
11 June 2026

Recording and Transcription

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. 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 here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>

ANNEX A

The questions the Tribunal is being asked to decide (the issues)

1. Having discussed the issues with the parties it is recorded that the matters between the parties which will fall to be determined by the Tribunal are as follows (subject to the case management direction made above):

1. **Disability**

- 1.1 It is not in dispute that the Claimant has a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about by reason of:

- 1.1.1 anxiety and depression

- 1.1.2 dyslexia

- 1.1.3 autism

- 1.1.4 ADHD

- 1.1.5 learning difficulties

Knowledge of disability remains in dispute.

2. **Direct sex discrimination (Equality Act 2010 section 13)**

- 2.1 Did the Respondent do the following things:

- 2.1.1 On the 23 April 2018, Luke Mercer tell the Claimant to go home and get work trousers.

- 2.2 Was that less favourable treatment? The Tribunal will have to decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and those of the Claimant. If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether they treated worse than someone else would have been treated. The Claimant says they were treated worse than Jenny Howe and Anna Luba (in that they were allowed to wear leggings at work).

- 2.3 If so, was it because of sex?

- 2.4 Is the Respondent able to prove a reason for the treatment occurred for a non-discriminatory reason not connected to sex?

3. **Harassment related to disability, (Equality Act 2010 s. 26)**

- 3.1 Did the Respondent do the following things:

- 3.1.1 20 July 2017, Luke Mercer in an aggressive and rude way tell the Claimant to get both machines going.
- 3.1.2 Not hear the Claimant's grievance dated 29 July 2017, which he chased up on the 25 August 2017 and it was then confirmed on the 25 September 2017 it would not be heard.
- 3.1.3 Give the Claimant a 2-year written warning in 2017 for leaving the shop floor without authorisation.
- 3.1.4 7 August 2017, Luke Mercer tell the Claimant to stop talking when the Claimant was training an agency worker.
- 3.1.5 5 January 2018, Luke Mercer say rudely he is not interested in the Claimant's condition, stops the Claimant from taking a break and from taking his medication for depression.
- 3.1.6 20 April 2018, Luke Mercer says the Claimant can't have a break.
- 3.1.7 31 May 2018, Luke Mercer complains about the Claimant and calls him a retard.
- 3.2 If so, was that unwanted conduct?
- 3.3 Did it relate to the Claimant's protected characteristic, namely disability?
- 3.4 Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?
- 3.5 If not, did it have that effect? The Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

4. Direct disability discrimination (Equality Act 2010 section 13)

- 4.1 The Claimant describes themselves as a disabled person.
- 4.2 Did the Respondent do the following things:
 - 4.2.1 20 July 2017, Luke Mercer in an aggressive and rude way tell the Claimant to get both machines going.
 - 4.2.2 Not hear the Claimant's grievance dated 29 July 2017, which he chased up on the 25 August 2017 and it was then confirmed on the 25 September 2017 it would not be heard.
 - 4.2.3 Give the Claimant a 2-year written warning in 2017 for leaving the shop floor without authorisation.

- 4.2.4 7 August 2017, Luke Mercer tell the Claimant to stop talking when the Claimant was training an agency worker.
- 4.2.5 5 January 2018, Luke Mercer say rudely he is not interested in the Claimant's condition, stops the Claimant from taking a break and from taking his medication for depression.
- 4.2.6 20 April 2018, Luke Mercer says the Claimant can't have a break.
- 4.2.7 31 May 2018, Luke Mercer complains about the Claimant and calls him a retard.
- 4.3 Was that less favourable treatment? The Tribunal will have to decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and those of the Claimant. If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether they treated worse than someone else would have been treated. The Claimant has not named anyone in particular who they say was treated better than they were and therefore relies upon a hypothetical comparator.
- 4.4 If so, was it because of disability?
- 4.5 Is the Respondent able to prove a reason for the treatment occurred for a non-discriminatory reason not connected to disability?
- 5. **Duplication of Harassment and Direct Discrimination**
 - 5.1 The Claimant's complaints relating to disability are presented as both harassment and/or direct discrimination. The tribunal will determine these allegations in the following manner.
 - 5.2 In the first place the allegations will be considered as allegations of harassment. If any specific factual allegation is not proven, then it will be dismissed as an allegation of both harassment and direct discrimination.
 - 5.3 If the factual allegation is proven, then the tribunal will apply the statutory test for harassment under section 26 Equality Act. If that allegation of harassment is made out, then it will be dismissed as an allegation of direct discrimination because under section 212(1) Equality Act the definition of detriment does not include conduct which amounts to harassment.
 - 5.4 If the factual allegation is proven, but the statutory test for harassment is not made out, the tribunal will then consider whether that allegation amounts to direct discrimination under the relevant statutory test.
- 6. **Discrimination arising from disability (Equality Act 2010 section 15)**

- 6.1 Did the Respondent treat the Claimant unfavourably by:
 - 6.1.1 Giving the Claimant a 2-year written warning in 2017 for leaving the shop floor without authorisation.
- 6.2 Did the following things arise in consequence of the Claimant's disability? The Claimant's case is that because of his ADHD and medication it meant he gets angry, so he left the shop floor because he was worried about clouting Luke Mercer.
- 6.3 Was the unfavourable treatment because of any of those things?
- 6.4 Was the treatment a proportionate means of achieving a legitimate aim? The Respondent says that its aims were:
 - 6.4.1 The Respondent will confirm this in its amended response if it relies upon this defence. *[this has been set out in paragraph 38 of the amended Response (page 178 of bundle A) ... "The Respondent must be able to ensure that its staff members attend work as contracted to ensure it is able to fulfil its production requirements and must also be able to expect employees to follow reasonable management instructions from their managers to ensure the workplace continues to function. Further, it requires to know where its employees are for health and safety purposes, such as in the case of a fire. When employees leave without permission, this becomes far more difficult to keep track of."]*
- 6.5 The Tribunal will decide in particular:
 - 6.5.1 Was the treatment an appropriate and reasonably necessary way to achieve those aims;
 - 6.5.2 Could something less discriminatory have been done instead;
 - 6.5.3 How should the needs of the Claimant and the Respondent be balanced?
- 6.6 Did the Respondent know, or could it reasonably have been expected to know that the Claimant had the disability? From what date?

7. **Victimisation (Equality Act 2010 s. 27)**

- 7.1 Did the Claimant do a protected act as follows:
 - 7.1.1 By submitting a grievance dated 29 July 2017.
- 7.2 Did the Respondent do the following things:

- 7.2.1 7 August 2017, Luke Mercer tell the Claimant to stop talking when the Claimant was training an agency worker.
- 7.2.2 5 January 2018, Luke Mercer say rudely he is not interested in the Claimant's condition, stops the Claimant from taking a break and from taking his medication for depression.
- 7.2.3 20 April 2018, Luke Mercer says the Claimant can't have a break.
- 7.2.4 31 May 2018, Luke Mercer complains about the Claimant and calls him a retard.

- 7.3 By doing so, did the Respondent subject the Claimant to detriment?
- 7.4 If so, was it because the Claimant had done the protected acts?

8. Remedy

Discrimination or victimisation

- 8.1 What financial losses has the discrimination caused the Claimant?
- 8.2 What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?
- 8.3 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply? If so, did either party unreasonably fail to comply with it (the Claimant argues that the Respondent did not hear his grievance)? If so, is it just and equitable to increase or decrease any award payable to the Claimant and, if so, by what proportion up to 25%?
- 8.4 Should interest be awarded? How much?