



EMPLOYMENT TRIBUNALS

Claimant: Mr S Smith

Respondent: Addingtons Associates Limited

Heard at: Cambridge

On: 21, 22, 23 January 2026 and 13, 14 and 15 April 2026

Before: Employment Judge Davey

Representation

Claimant: In person

Respondent: Mr D Dillon-Redmile, Managing Director

JUDGMENT having been sent to the parties on **18 May 2026** and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

Request for reasons

1. Full oral reasons were delivered at the end of the liability hearing on 15 April 2026. I provided a copy of the 'bare judgment' (i.e. without reasons) to the administration team on 20 April 2026 to be sent to the parties. I was notified on 6 May 2026, by the administration team that by an email dated 15 April 2026, the claimant requested written reasons. I was also notified the bare judgment was not sent to the parties until 18 May 2026. I apologise to the parties for the delays in receiving the bare judgment and these full (and not summary) written reasons.

Introduction

2. The claimant was employed by the respondent, a small company that provides landscaping services as a landscaper between 21 May 2021 and 26 February 2024. The claimant gave notice of resignation from the respondent on 20 February 2024 though left before the expiry of his one month notice period.

3. ACAS early conciliation started on 5 October 2023 and ended on 9 October 2023. The claimant presented a claim on 3 December 2023. The respondent presented a response on 18 April 2024, defending all complaints.
4. There was a case management preliminary hearing on 1 May 2025 before Employment Judge Buckley. Case management orders were made and the issues in the case were agreed. The parties agreed to include issues that arose after the presentation of the claimant's claim form. The respondent was given the opportunity to provide an amended response. The case is about discrimination arising from disability, disability related harassment, unauthorised deductions from pay and failure to allow the claimant to exercise his right to a minimum period of annual leave under the Working Time Regulations. The respondent defended all complaints and disputed disability.

Preliminary and procedural issues

5. Orders were made about whether the claimant has disabilities which were complied with. The respondent did not concede disability. There were no further directions from the Tribunal. At the outset of the final hearing, the respondent confirmed disability was still not conceded. I told the parties disability would be determined as a preliminary issue on 20 January 2026. Following evidence from the claimant, I determined the claimant had disabilities within the meaning of s6 Equality Act 2010 (EqA) and he had these disabilities throughout his employment at the respondent. I gave oral reasons and following a request from the claimant, written reasons for my decision, which will not be repeated here.
6. The claimant did not produce a witness statement as he mistakenly thought that his impact statement was his witness statement. I explained he also needed to produce a witness statement that addressed the issues in his case and explained he should also provide key information (start date, end date, role) in that statement and should follow the guidance in the record of a case management hearing dated 1 May 2025.
7. I told Mr Dillon-Redmile he could raise an objection about this and whether the claimant should be allowed to provide a late witness statement on behalf of the respondent and this would then need to be formally dealt with. Mr Dillon-Redmile stated he did not want to formally make an application. As there was no application to consider and given the claimant's explanation he thought the impact statement was his statement and given both parties are not represented, I concluded this was an innocent mistake and that it was in the interests of justice and in accordance with the overriding objective to allow the claimant to provide a late witness statement.
8. I explained to the parties that the options were for me to adjourn the case to another date and provide case management orders or in the alternative, if the claimant could produce a statement and submit it on 21 January 2026, the case could continue. I explained to the respondent that I would provide some time for review and preparation of questions. Both parties were unanimous in their decision to continue with the listed hearing dates. I adjourned for the remainder of the day on 20 January 2026. The claimant provided the witness statement as ordered by 10am on 21 January 2026.

9. The respondent did not provide an amended response to address matters that postdated the claim form. However, these matters were addressed in the Tribunal file, a document called 'Timeline of Events' and the respondent's witness statements. I allowed this late evidence defending the complaints that postdated the claim form for the same reasons I allowed claimant's late witness statement.
10. There are restraining orders against the claimant with reference to Mr Dillon-Redmile and Mr Tommy Frost. Mr Dillon-Redmile was offered the opportunity to represent the respondent and give his evidence remotely if he preferred to do so. He opted to remain at the hearing centre. Mr Dillon-Redmile also referenced that Mr Frost was not giving evidence because he was concerned for his safety and could not do it for his own wellbeing. I explained that Mr Frost could give evidence remotely and would be protected from retaliation as interfering with a witness is contempt of court. However, this did not sway the respondent. I was told Mr Frost still works for the respondent.
11. Due to the requirement to determine disability as a preliminary matter, the other preliminary matters referenced above, the fact both parties were unrepresented and all witnesses, except two, required adjustments when giving evidence, there was not enough time to determine the issues in the three remaining days. The case was relisted to continue on 13, 14 and 15 April 2026. I made case management orders about remedy and with the consent of both parties, ordered further evidence about 'rained off' and holiday days and an agreed transcript relevant to one of the issues as the transcript provided was AI generated and made no sense in parts. I am grateful to the parties for complying with these orders.
12. There was a WhatsApp message from the claimant to the respondent in the tribunal file which was copied in a way so as to exclude the date (133). The respondent compiled the tribunal file. The claimant provided the same WhatsApp message after submissions that included the date the message was sent. The parties agreed to the late inclusion of this now dated document. I allowed the late inclusion as the date was key to the issues and neither party objected. I also noted both parties want an end to this matter and that this document had a material impact on my decision whereby not allowing it could have resulted in grounds for reconsideration. I offered the parties the opportunity to give further evidence about this now dated document, both chose not to exercise that option, having given evidence about the matter. It should be noted that the correct date of the document was set out in the list of issues in any event.
13. By mutual agreement of the parties, the dates of events on the list of issues (2.1.5 and 2.1.8) whereby on two occasions the claimant was said to have notified the respondent about difficulties with his supervisor were varied from 5 October 2023 and 3 November 2023 to the 12 June 2023 and 5 October 2023. The issues in this case to be determined at the liability hearing are set out in the conclusions section of this decision.

Evidence

14. I heard witness evidence from:

For the claimant

- 14.1 Mr Simon Smith, the claimant,
- 14.2 Mr Jack Treverton, former landscaper at the respondent,
- 14.3 Mr Danny Harris, former project manager at the respondent,
- 14.4 Ms Jessica Shelton, the claimant's partner,

For the respondent

- 14.5 Mr David Dillon-Redmile, managing director at the respondent, and
- 14.6 Mr Nicholas Fitzpatrick, trainee project manager at the respondent.

15. I had a tribunal file totalling 171 pages and 5 recordings. Further evidence (as set out above) was presented and permitted with the agreement of both parties on 22 January 2026, 13 and 15 April 2026.

Findings of fact

The respondent's business and working arrangements

- 16. I have only included key information and made findings about relevant facts below. Where I have had to resolve a conflict in the evidence, I have indicated how I have done so at the material point. Many of the facts in this case that are relevant to issues are not disputed.
- 17. The respondent is a small business that provides landscape gardening services and new/renovated bathrooms. The claimant worked as a landscaper as part of the landscape gardening section of the respondent. Mr Dillon-Redmile and the respondent's office management facility worked across both the landscape gardening and the bathroom sections.
- 18. At the commencement of the claimant's employment with the respondent, there were two landscape gardening teams with around eight or nine landscapers. The claimant was usually allocated to the same team though this could vary. For the first two years of his employment at the respondent, the claimant had management of one of the respondent's vans and was usually the allocated driver in his team. This changed in 2023, when the respondent removed the claimant from driving duties.
- 19. Mr Dillon-Redmile is the managing director of the respondent and had limited interaction with the claimant other than for management and HR purposes albeit the respondent is a small business so Mr Dillon-Redmile did know and saw his employees regularly, often at the commencement of work each day when the landscapers would converge at a meet point in the market square in Higham Ferrers to discuss and prepare for the day's work. Mr Dillon-Redmile was usually outside the respondent's business premises close to the Market Square with the plumbers (the bathroom wing of the business).

Working relationships at the respondent

- 20. It is sensible to say something about the working relationships at the respondent at the outset of these reasons. Mr Dillon-Redmile's position is that up until the claimant resigned, he and the claimant were friends, that he had been very

supportive of the claimant and that the claimant had attended personal events (e.g. Mr Dillon-Redmile's boxing matches) to show support. The claimant's evidence was this was a professional relationship only and whilst he 'loved' Mr Dillon-Redmile, this was on a professional basis and he was in fact 'terrified' of him.

21. The claimant was usually supervised initially by Mr Daley Pack and then when Mr Pack left, by Mr Danny Harris, who had worked at the respondent for over 10 years and was a project manager at the time of the claimant's employment. The claimant often worked with Mr Harris and when he did, was the driver in his team. Mr Harris left in early 2023. From around mid-2022, Mr Tommy Frost, who had worked at the respondent prior to the claimant's employment, returned as a project manager. Mr Fitzpatrick (a friend of Mr Frost's) started working at the respondent on the same day. The claimant would often be allocated to Mr Frost's team whereby Mr Frost was his supervisor. There was an overlap between Mr Harris leaving and Mr Frost returning to work for the respondent. Whilst the claimant was usually allocated to the same team, this could vary so his supervisor was not always the same person. However, following Mr Harris' departure, the claimant was usually allocated to Mr Frost's team.

Not working correctly

22. The claimant's evidence was that when Mr Frost supervised him, he was harsh and very critical of his work, and that he was also offensive and called him names such as retard. The claimant told the Tribunal there were multiple incidents of this nature and that he told Mr Dillon-Redmile about these matters on multiple occasions. Mr Treverton told the Tribunal that despite the claimant's work standard, which was impeccable, Mr Frost would find fault, for example, he would criticize the way the claimant lay paving slabs and he would always find fault before the claimant had the chance to finish the job. Mr Treverton further explained that if Mr Frost did not like you, you knew about it and that Mr Frost did not appreciate that the claimant was not a "yes man". Mr Treverton spoke about his different approach to guiding the 'lads' as being tactful though Mr Frost was direct and blunt. Mr Treverton's evidence was supported by Mr Harris who told the Tribunal he could tell Mr Frost did not like the claimant.
23. Mr Treverton told the Tribunal he heard Mr Frost calling the claimant names under his breath. This included drip and spastic or spaz. This was not every day but when Mr Frost was in a bad mood this would happen and he would say something like "Oh, I will have the spaz today" though this was not said to the claimant's face. This evidence was supported by Mr Harris who also said Mr Frost called the claimant names like stupid but not to his face. Mr Fitzpatrick told the Tribunal Mr Frost did directly call the claimant stupid and also did this to other workers.
24. Mr Harris told the Tribunal that Mr Frost and Mr Fitzpatrick (who usually worked together) did not like the claimant and this was obvious and wanted to put him in his place as he had learned a lot under him (Mr Harris) and was developing and they did not like this. Mr Harris told the Tribunal that Mr Frost was very toxic and Mr Dillon-Redmile had made a whole team redundant to get rid of him though Mr Dillon-Redmile, while not disputing this, stated Mr Frost took voluntary redundancy.

25. Mr Fitzpatrick told the Tribunal the claimant and Mr Frost “did not see eye to eye”, that Mr Frost was very strict with the claimant about his standard of work and had a different approach from Mr Harris. Mr Fitzpatrick went on to say Mr Frost was critical of the landscapers’ work generally and was critical of the claimant’s work at least once a week and that the claimant and Mr Frost would clash because the claimant would get agitated easily and Mr Frost had to manage him. Mr Dillon-Redmile did not dispute Mr Fitzpatrick’s evidence or that of the claimant’s witnesses in this regard.
26. I accepted the undisputed evidence that Mr Frost was critical of the claimant’s work, called him names such as spastic and stupid, did not adjust his approach to managing him and did not get on with him.

Walking to the meet point

27. Mr Dillon-Redmile told the Tribunal that all employees walked to the meet point unless they were given a lift by the driver because he happened to pass their house or because they met the van at a designated location. Mr Dillon-Redmile also stated the claimant chose to walk to the meet point because he wanted to clear his head. This was disputed by the claimant who told the Tribunal the driver would usually pick up colleagues and this is what he did when he was a driver. This was supported by the claimant’s other witnesses who said the claimant would drive out of his way to collect colleagues.
28. The claimant said Mr Frost told him he was not a “fucking taxi” and would not pick him up. He went on to say that he picked up Mr Fitzpatrick and Aiden whereas he had to walk and Mr Frost would often drive past him. Mr Fitzpatrick confirmed it was only the claimant that walked to the meet point and that he thought he recalled him saying he enjoyed the walk though when pressed on this point, Mr Fitzpatrick conceded this was not what the claimant had said but rather what Mr Frost told him. Mr Treverton’s evidence supported that it was only the claimant that walked to the meet point.
29. I prefer the claimant’s evidence, supported by two other witnesses, including the respondent’s witness Mr Fitzpatrick who is also friends with Mr Frost that more often than not, the claimant was the only one in his team walking to the meet point and Mr Frost picked up Mr Fitzpatrick and Aiden but not the claimant. With the exception of Mr Dillon-Redmile, the evidence of the other witnesses supported it was common practice for the driver to pick up colleagues, so I accept that evidence.
30. Turning to whether the claimant walked to the meet point by choice, this appears to have come from Mr Frost who did not like the claimant. Mr Frost did not give evidence. There is contemporaneous evidence sent by the claimant on 5 October 2023, where he complains about this. On balance I accept the claimant’s evidence that this was not by choice.

Sage

31. In early 2023, the respondent switched from a paper system for logging employees’ hours to an online system called Sage. On 29 March 2023, the

claimant told Ms Spence he was struggling with the Sage App. Mr Fitzpatrick told the Tribunal that imputing hours and days on the app was a problem and 'a lot of us struggled with the app'. Mr Dillon-Redmile initially stated training was provided by Ms Spence, though conceded no formal training was provided to employees when the respondent switched to Sage and that rather instructions on how to use Sage were included on the app itself and the training he referred to was that on 1 February 2023, Ms Spence provided instructions to employees via text message, about how to use the Sage App after employees complained they were having problems using it.

32. I accept the system change was implemented with no formal training on how to use the app and that text message instructions were not training. Further, this was to a workforce of manual labourers, some of whom, including the claimant, were uncomfortable with online and written procedures.

Time off for a medical assessment

33. The claimant's evidence was that on 28 February 2023 and not 6 March 2023, he put in a request to take annual leave on 13 March 2023, for a mental health assessment but Mr Frost told him he was needed on site that day so he could not take that time off, so he cancelled the request. The claimant then said Mr Frost told him to rebook it. He then put the request in again on the same day but for three days which included 13 March and this was refused so he put in the request again on the same day, but only for 13 March and this was accepted. The claimant's position was this was only accepted because he made a fuss and "this was a serious appointment and it meant a lot". This evidence was not disputed by the respondent.

Appraisal

34. On 16 January 2023 claimant asked to book a meeting with Ms Spence and Mr Dillon-Redmile with reference to his development within the respondent. The claimant had an appraisal on 14 March 2023. The outcome was positive and the claimant received a pay rise. The appraisal sets out that the claimant considered the new management, i.e. under Mr Frost, to be positive. The claimant disputed this and said he had no notice of the appraisal, he had no choice with reference to his companion (listed as Mr Frost) and did not write or read the notes from the appraisal when he signed it. The claimant scored well, received a pay rise and Mr Dillon-Redmile's position was that there had been an overall improvement stating the respondent was 'so proud of the changes [the claimant] has made personally and within the company'. I accept the claimant had no notice of the appraisal as there is nothing to confirm otherwise and this was not disputed. In the circumstances, he would not have been in a position to choose a companion at such short notice. I also accept he did not write the notes (which was not disputed). The fact he did not read the notes before he signed them is, in fairness to the respondent, a problem for the claimant, he should have read the notes before he signed them. In any event, the notes are not negative and it was common ground that overall, the claimant had a good standard of work.

First disciplinary meeting

35. On 9 June 2023, the claimant attended a disciplinary meeting because he had been late on four occasions and failed to call in sick again on 1 June 2023 (he had called in sick the previous day). The claimant acknowledged this was an error on his part and he did not realise he had to call in sick everyday. Turning to the claimant's lateness, his position was he had been prescribed new medication which had caused drowsiness, anger and agitation and caused lateness, that he had since stopped taking this medication because of this and that he was seeing his psychiatrist the following week. Mr Dillon-Redmile's response was that "he could not comment on what was best for Simon medically and can only comment on what is acceptable and unacceptable in the work setting and that in this instance that the performances was unacceptable". Mr Dillon-Redmile acknowledged the claimant's difficulties in the context of the need to provide an urgent outcome. By a letter dated 9 June 2023, the claimant was issued with a 'verbal warning' for lateness and failure to follow the respondent's sickness absence reporting procedure.
36. The respondent suggested the punctuality problems predated medication though I accepted the claimant's evidence that overall, his punctuality was good as he was only disciplined for being late on four occasions and he was on medication for much of 2023.
37. At the same disciplinary meeting, the claimant mentioned an issue that had arisen earlier that day between himself and Mr Frost and he felt like he was being 'constructively dismissed' by Mr Frost. Mr Dillon-Redmile stated this matter could not be discussed at the disciplinary meeting as it needed to be investigated.
38. Mr Dillon-Redmile told the Tribunal that after the disciplinary meeting, they discussed the issue about Mr Frost with the claimant and then separately with Mr Frost and told Mr Frost the claimant needed clear instructions about his work. Mr Dillon-Redmile could not recall if he ever fed this information back to the claimant.

Mr Frost

39. On 12 June 2023, the claimant sent Ms Spence a message stating he had a discussion with Mr Frost and understood he is going to be called into a meeting and wondered when. He says:
- "I was just wondering if we could have the meeting before Thursday, I'm really struggling I cannot explain how much and don't want to dwell over the weekend. I had my family over at the weekend trying to get me to go with them to the crisis team but I'm more worried about my job then my home life. I don't want things to turn sour at my workplace and if I have outstayed my welcome here at addingtons [sic] I will walk away I don't have any fight left I hope we can resolve this and I can bounce back as I enjoy and love my job".
40. Ms Spence acknowledged this and asked for the claimant to provide a written statement of events so it could be investigated. She went on to say the respondent would then have to obtain a written statement from Mr Frost and

other witnesses and these could be “viewed by anyone else involved”. The claimant did not provide a statement as he was concerned about putting his concerns in writing and knew Ms Spence was friends with Ms Gemma Eade who had worked at the respondent in the past and was Mr Frost’s partner. This was not challenged by the respondent. Mr Dillon-Redmile’s position was that the respondent was unable to follow up because it needed the statement in writing first. The claimant’s position was that the respondent’s policy allowed for an informal grievance and meeting and this is what he had wanted.

41. The respondent’s policy about ‘grievances’ is that if there is a grievance it should be dealt with informally first, either to the line manager or general manager as it may be possible to agree a solution informally. Alternatively, if the matter is serious and an employee wishes to set the matter out formally, it should be done in writing and sent to Mr Dillon-Redmile or Mr Sam Stenson. The policy suggests the complainant has a choice.
42. I accepted the claimant’s evidence there was an informal grievance procedure, which was in accordance with the claimant’s choice and this allowed for an informal investigation and meeting.

Requests for annual leave on 6 September 2023

43. The respondent refused the claimant’s request for time off on 6 September 2023, his birthday. This was initially requested on 29 August 2023 and then cancelled and requested again on 3 September 2023.
44. The claimant’s evidence was that requests always go back to Mr Frost. The respondent did not challenge this when questioning the claimant but in his own evidence, Mr Dillon-Redmile’s position was that Mr Frost only had authority to decline time off if it was requested at short notice, otherwise this was done by Ms Spence.
45. In my finding, while Mr Frost was not formally authorised to approve or decline leave, he did have a say and that this was not limited to short notice leave. I make this finding because the respondent’s evidence was conflicting and it is clear Ms Spence discussed leave requests with Mr Frost given the references to ‘confirmed with Tommy’ on the record of leave. However, I noted there was limited evidence about other occasions when the respondent, particularly Mr Frost, refused other holiday requests.

The second disciplinary meeting invite

46. On 29 September 2023, the claimant was invited to a disciplinary meeting to take place on 12 October 2023, for imputing hours that he worked on the respondent’s Sage system on 5 April 2023, 6 July 2023, 31 August 2023 and 25 September 2023. The respondent’s position was that the claimant had been on sick leave on these occasions and had not worked so was not entitled to contractual pay.

Sick leave

47. At 11.03, on 5 October 2023, the claimant sent a WhatsApp message to Ms Spence asking for a meeting with Mr Dillon-Redmile. The message reads as follows:

“Morning please can I have a meeting with David I have something important to speak to him about. I don't feel comfortable at work anymore my mental health has gone through the roof due to how I'm spoken to and treated on site. My manager drives past my house and makes me walk every morning and then after overtime most days I then have to pick his dog up before I go home seeing my kids for an hour before bed every evening. 90% of my holidays have been declined because someone was off including mental health assessment birthdays for my kids etc but they can go together whenever they like leaving just me and Aiden. I'm made to feel like I'm not capable of my job when I'm more than capable and do the majority of work on site. I'm never included in conversations when Tommy and Fitz go through the poa [sic] for each day I just get told to set the mixer up being told I'm a disappointment etc didn't give me any confidence or motivation when I have been loyal to David for 2 and a half years. I didn't purposely try and steel hours that's stupid to even think I'd do something like that I'd just rushed my timesheet and one of those days I was at work.”

48. The respondent's initial position about this message was that it was sent on 3 December 2023, which was a Sunday, was never read by the respondent, despite two blue ticks appearing under the message (indicating it had been read) and despite the top left corner of the message detailing that the recipient was 'typing', suggesting a response was being drafted. The original version of this message did not detail the date. The respondent produced a screenshot dated 3 December 2023, showing that a message sent at 11.03 (presumably by the claimant though this detail was not included) was deleted by the claimant and never read.
49. On 15 April 2026, the claimant provided a further version of this message showing the message had been sent on 5 October 2023, as detailed in the list of issues. I put this document to the parties for comment before I decided whether to allow it as late evidence, there was mutual agreement to the late inclusion of this document, which I allowed (for the reasons set out in paragraph 12 above). I noted Mr Dillon-Redmile's change in position, following the late inclusion of this document, whereby he acknowledged its receipt by the respondent.
50. The claimant told the Tribunal he put the sicknote on the ground chat because he did not want his team to wait for him at the meet point. Mr Dillon-Redmile replied complaining because the message was only sent on Monday. The claimant then deleted the message because he realised it should not have been put on ground chat. Aside from the above, neither party provided any further evidence about his incident. Between 6 and 20 October 2023, the claimant was on sick leave for stress related problems.

Welfare meeting

51. There was a message exchange between the claimant and Ms Spence between 1 and 13 October 2023. A welfare meeting was scheduled for 12 October 2023. The claimant stated he was returning to work and wanted his meeting as soon as possible. Ms Spence confirmed the meeting was on 24 October 2023. The messages do not state whether this meeting is the welfare meeting, as the claimant says he thought it was, or the disciplinary meeting, as the respondent planned it to be.
52. The respondent told the Tribunal that prior to the claimant's return to work, there was a welfare meeting and this took place on 12 October 2023 and was at the respondent's offices. This meeting is later referred to in the disciplinary meeting minutes. The claimant disputes there was a welfare meeting on 12 October and stated he told the respondent he could not attend as he was on sick leave at the time and he thought he would have the welfare meeting when he returned to work though instead was called into the disciplinary meeting.
53. The respondent did not minute this welfare meeting it alleges occurred and Mr Dillon-Redmile provided no evidence about what was discussed at the meeting, only stating it was at the respondent's offices in a room upstairs.
54. I prefer the claimant's evidence that there was never a welfare meeting and he was signed off sick so did not attend the meeting that was suggested by Ms Spence on 12 October 2023 and what he thought would be his welfare meeting following his return to work on Monday 23 October 2023, was in fact the disciplinary meeting. Further and given the nature of the complaint on 5 October 2023, it is hard to reconcile the respondent's position that the meeting was informal and therefore there was no record of the meeting (either through minutes or on the claimant's HR file).
55. I accept that the respondent suggested a welfare meeting on 12 October 2023 and this was to discuss the claimant's health as confirmed by Ms Spence and no further arrangements were made about this meeting following the claimant's return to work.
56. It follows from my findings above, that following the claimant's request on 5 October 2023 for a meeting to discuss the problems with Mr Frost, nothing further was arranged. This finding is supported by the fact that the respondent initially denied ever receiving this message on 5 October, so in the circumstances, it could not have arranged a meeting, or planned to arrange a meeting, to discuss Mr Frost.

Second disciplinary meeting

57. The claimant attended the disciplinary meeting on 24 October 2023, the day after he returned from sick leave. The minutes state Mr Frost was there as his representative though the claimant's evidence was that he had no say in this and Mr Frost invited himself and he did not even know Mr Frost was attending as his representative until he saw the minutes. Mr Dillon-Redmile challenged this and suggested Mr Frost's presence at the meeting was the claimant's choice. The claimant's position at the meeting was that he acknowledged he

had claimed for four days pay whilst off sick though stated he did it in error and that he rushed the time sheets and on one occasion, he spotted his error and called Ms Spence and told her. Mr Dillon-Redmile stated in the meeting he appreciated that the claimant stating it was an honest mistake. Mr Frost stated that “for the record, I do think it was a mistake”. The claimant’s evidence was these were genuine errors, that he rushed his time sheets, it was not sensible to claim for hours not worked deliberately as it would invariably be spotted and that he needed training on the Sage app which was never provided. The claimant went on to say he only bought his first laptop in 2025 so he could deal with his case.

58. Most of facts about what happened at the meeting are not disputed. I accept the claimant genuinely thought this meeting was a welfare meeting and I note the respondent did not send a further formal invite following the disciplinary meeting being re-arranged due to the claimant’s sick leave. I also accept the respondent’s evidence that this meeting was arranged as a disciplinary meeting and not a welfare meeting and the misunderstanding was caused by vague correspondence on the part of the respondent and a failure to issue a further formal invite. I accept the claimant’s evidence that he did not ask Mr Frost to be his representative at the meeting as this simply does not follow that he would have done this given his correspondence with the respondent on 5 October 2023, about Mr Frost.

59. The claimant mentioned his mental state a lot during this meeting, stating he has felt terrible for the last year. Mr Dillon-Redmile’s evidence was that he did not think it was necessary to refer the claimant for an occupational health assessment or obtain any other medical evidence about the claimant’s conditions before the disciplinary meeting or following the meeting but before a decision was taken. He went on to say he had spoken to Ms Spence about this and her advice was an occupational health assessment would only be appropriate if the claimant had taken extended sick leave, which he had not. Mr Dillon-Redmile further opined that the respondent was a small company.

Final written warning

60. By a letter dated 25 October 2023, the claimant is issued with a final written warning for “submitting timesheets for incorrect hours which state you were working whilst off sick”. The letter goes on to say the respondent appreciates the claimant’s comments that this was done in error and that it could have taken more serious action, such as dismissal.

61. Mr Dillon-Redmile’s evidence was that he believed the entries were deliberate and with the intention of falsely claiming for work not done for financial gain. When asked why he had not been more explicit about this in the meeting and outcome, he said he was being polite and conciliatory and with a view to moving forward.

62. The respondent’s contemporaneous evidence (i.e. at the time of the incident) supports the claimant claimed for these days in error. I have concluded Mr Dillon-Redmile’s position about this has changed over time and following the claimant submitting his claim. On balance, I accept the claimant’s evidence that he claimed for four days pay, in error, and rushed his time sheets, albeit, I also

find that with reference to the last sick day on 25 September (claimed very shortly after taking that leave), there was also a degree of recklessness caused by a combination of the claimant's deteriorating health and relationships at the respondent.

63. The claimant's position was that only he was disciplined and others made errors and putting him on a final written warning was Mr Dillon-Redmile's way of keeping him on a leash and Mr Dillon-Redmile said this to him and that Mr Dillon-Redmile was angry when he resigned. Mr Dillon-Redmile denied saying he wanted to keep the claimant on a leash and said this was the claimant's position but did acknowledge he was livid when the claimant handed in his notice because of all the support he had given him. In my finding, it is more likely than not that Mr Dillon-Redmile did say words to the effect he wanted to keep the claimant on a leash, supported by the fact he was angry when the claimant later handed in his notice. This finding is further supported by the fact the respondent's evidence about events around this period has on balance, been unreliable, as set out above.
64. I also accept this comment was made with reference to the claimant's behaviour at the respondent. The claimant would not always have been easy to work with. Mr Fitzpatrick's evidence was that you could see what mood the claimant was in by his body language and how he walked to the meet point at the beginning of each day. Mr Fitzpatrick also said that some of the more junior employees were intimidated by the claimant. I found Mr Fitzpatrick to be a reliable witness, giving evidence both in favour of and against his own employer, so have no reason not to accept this evidence. Further, the claimant's own evidence about his disabilities supports this. The claimant's evidence was that he had difficulty regulating his emotions, has a temper, becomes frustrated easily, takes issue with things, overthinks things and his moods fluctuate and these symptoms impacted on his employment at the respondent. I accept they did.
65. The claimant did not appeal the final written warning because he did not realise he could do this until it was too late. He told the Tribunal he is not good with letters. I accepted this.

The video messages on 8 November 2023

66. On 8 November 2023, the claimant arrived at the meet place early, it was raining and he sent two videos on the ground chat. He said in the first "morning everyone, anyone want a coffee, to be fair, it might be a bit cold when you actually do get in" and in the second "Good day today lads, init [sic]. Where are, where are you lads, oh, I must have beat you here". The claimant's evidence was he did this to show he was usually early whereas Mr Frost was not. Shortly after the claimant posted the videos, Mr Dillon-Redmile responded with a video where he says "Oh Simon, did you not get the message, everybody stayed in bed because it's raining" with an emphasis on the word raining, said slowly. This was followed by Mr Fitzpatrick posting a laughing emoji and then the claimant posting a Mr Bean GIF.
67. The claimant's evidence was that these videos were between him and Mr Fitzpatrick and that Mr Dillon-Redmile's intervention with his video and message was intended to humiliate him by talking in a slow patronising tone.

The claimant acknowledged he did not complaint about this but said he lost respect after that. Mr Dillon-Redmile's position was he thought the claimant had posted on the group chat in a humorous way and his response, also posted on the group chat, was humorous.

The alleged nonce and spastic comments

68. The claimant's evidence was that on 9 November, he and Mr Frost were in the van and Mr Frost made inappropriate comments of a sexual nature about school-aged girls to which the claimant called him "a nonce" and in response, Mr Frost stated "it was only banter, you spastic" and reminded the claimant he was on a final written warning.
69. There were no other witnesses to this incident and Mr Frost did not attend the Tribunal to give evidence. Given that there is a restraining order, I accepted he had grounds not to attend. There is evidence that Mr Frost has called the claimant names such as retard and spastic but none of the witnesses have given evidence to suggest Mr Frost has made sexualized comments about schoolchildren. The claimant did not explicitly complain about this incident at the time it is alleged to have occurred so there is no contemporaneous evidence. I will return to this alleged incident in the conclusions section below.

The drill piece incident

70. The claimant's evidence was that on 10 November 2023, Mr Frost called him into the office and threatened him with his job for not putting a drill piece back properly, reminded him he was on a final written warning and called him a spastic and a retard. The claimant's evidence was that it was Aiden who had failed to put the drill piece away. The incident about Mr Frost blaming the claimant for not putting the drill piece away, threatening him with his job and reminding him he was on a further written warning was not disputed by the respondent so I accept it happened. Further, it was common ground Mr Frost frequently criticised the claimant for the way he did his work. Turning to whether Mr Frost used words like retard and spastic to the claimant. Mr Harris' and Mr Treverton's evidence was that Mr Frost frequently called the claimant names such as spastic and retard, but they never heard this said directly to the claimant. Both had left the company by the time of this incident. Mr Fitzpatrick's evidence was that Mr Frost did use this type of terminology and used it directly but not just to the claimant. Mr Fitzpatrick was working at the respondent at the time of this incident. Further, by this time and following the final written warning and the complaints made by the claimant about Mr Frost, relationships between the claimant and the respondent had deteriorated. On balance, I accept it was more likely than not that Mr Frost called the claimant a spastic and a retard.

Aiden

71. At some time following the claimant being issued with a final written warning, he learned that another employee, Aiden, has also made an error with inputting his hours on Sage and was not disciplined and this had happened when Aiden was off sick. The claimant raised this with Ms Spence on 13 December 2023. Ms Spence responded and told the claimant she checked the system and Aiden had not claimed for hours worked during sickness. There was a conversation

about this issue between the claimant and Aiden. The claimant covertly recorded the conversation. Mr Dillon-Redmile's evidence was that Aiden had in fact claimed for holiday pay on a single occasion but was already on holiday at the time so would not have financially benefited from this error and that it was his only error on Sage so following the investigation, he was not disciplined.

72. The claimant's evidence was that he also raised this with Ms Spence in another message. The respondent says the message was sent on 3 December which was a Sunday, was not read and was later deleted. The respondent produced a list of messages (assumed to be from the claimant) that were sent and deleted on 3 December 2023, reading as 'this message was deleted'. One of those messages match the times this message was sent by the claimant. The claimant probably did delete this message, though as there are numerous other messages between Ms Spence and the claimant about this same issue, it is immaterial as the issue is not in dispute.
73. The claimant told the tribunal that on 14 December 2023, he was reprimanded for recording the conversation he had with Aiden about him making an error with his time recording. Ms Spence told him he could not do this on 13 December and the next day he was reprimanded by Mr Dillon-Redmile and Mr Frost and was told he could lose his job because he was on a final written warning. This incident was not in dispute and Mr Dillon-Redmile confirmed in his evidence it was unacceptable for the claimant to record Aiden.

Rained off days and holiday leave/pay

74. By a letter dated 12 December 2023, the respondent informed employees it was implementing a welfare fund to supplement income lost due to 'rained off' days. The scheme would ensure employees were paid a minimum of 160 hours per 4 week period with an adjustment for a five week month. Rained off days (i.e. days where landscapers could not reasonable work due to weather conditions) would have to be agreed with Mr Dillon-Redmile first. The claimant's contract of employment details his working hours are 40-48 per week. The contract goes on to state that the respondent 'may vary the pattern of your working hours if required on a temporary or permanent basis should the needs of the post require this or due to the level of work available however in this period you may be entitled to guarantee pay'.
75. The claimant's position is the welfare fund was introduced, at least in part, because he complained about not being paid on rained off days and being forced to take annual leave to supplement his income.
76. It was common ground that if the weather was bad there were rained off days and the landscapers did not work. Mr Dillon-Redmile's evidence was this was different from work not being available and did not qualify for guarantee pay. Mr Dillon-Redmile did not put this to the claimant in evidence despite being reminded to ensure he covered all the issues in his cross examination. Mr Dillon-Redmile's evidence was that the team would collectively decide if they could not work because the weather was too bad to work, that he did not input into this decision, that this would then be authorised unpaid leave and the landscapers could ask for holiday pay to top up their income on rained off days if they wanted to. The claimant told the Tribunal that it was Mr Frost who decided

if the team were rained off and not a joint decision. Mr Harris was a project manager and his evidence was that it was down to the project manager to decide if it was a rained off day.

77. I preferred the claimant's and Mr Harris' evidence that the project manager decided if it was a rained off day and not the team collectively. It is not realistic to suggest this was a collective decision and even if it was discussed, there would invariably be disagreement at times so ultimately, the project manager would have had the final say.

78. Mr Dillon-Redmile also told the Tribunal the respondent allowed its employees, including the claimant, to ask for paid holiday to 'top up' salary, even when the employee had not taken annual leave. Mr Dillon-Redmile's position in this regard was that employees were paid their minimum 28 days for holiday whether they took that as leave or used it to top up their income. The claimant topped up his income in this way, with reference to both rained off days and just to top up his income on other occasions.

79. Mr Dillon-Redmile's evidence was that the respondent does not keep a record of rained off days and it is not always clear when annual leave had been taken or when it was just paid to supplement income.

80. Despite Mr Dillon-Redmile's assertions that rained off days were not recorded, I can see from the time off history that the claimant was paid holiday pay for rained off days on 9 and 10 March 2023, 20 June 2023 and despite the above referenced welfare fund being implemented by this time, on 8 and 13 February 2024. I can also see from the further evidence provided there were four rained off days recorded in 2022, being in February, August, October and December. These all appear to have been supplemented with holiday pay. I note the rained off day on 8 November 2023 (referred to in paragraph 66 above) was not recorded anywhere so I accept the respondent's position, in part, that rained off days were generally not recorded unless they were linked to a request for holiday pay. Mr Harris told the Tribunal in an average month there were 1-2 rained off days and on a bad month, up to 4 rained off days and this was seasonal. I accept that evidence, not disputed by the respondent.

81. In early January 2024, the claimant asked for reimbursement for two days (on 9 and 10 March 2023) he had to take as annual leave when he was rained off. He was not paid for these.

Mr Dillon-Redmile's visits to the claimant's home

82. There was a work Christmas party around mid-December 2023 and Mr Treverton attended (albeit he had left the respondent by this time) along with other staff, including the claimant who was described as 'not in a good way', according to Mr Dillon-Redmile he was drinking and taking cocaine and had issues with this. Mr Treverton told the Tribunal that Mr Dillon-Redmile put him in a car and he was taken to his home. The claimant's evidence was he was close to breaking down. Around this period, the claimant had to be removed, by Ms Sheldon, from a bridge above the A45, where there was a suggestion of suicide, due to his very poor mental health.

83. It was common ground that Mr Dillon-Redmile attended the claimant's house on a number of occasions when he was on sick leave. Mr Dillon-Redmile's position was this was mostly in the morning and was to collect the keys for the van and these keys were needed because there were no spares and even if there were, the van was parked outside the claimant's house.
84. The claimant's position was that on these occasions he was sick, Ms Sheldon answered the door and there were spare van keys on the day visits. Ms Sheldon's evidence was not all the day visits were to collect the van keys and sometime he was just asking why the claimant was not at work and these visits started around the end of 2022 but were primarily in 2023 and 2024 and that a lot of the time, Ms Sheldon did not answer the door and neither did the claimant.
85. Mr Harris' evidence was that the claimant was the only person whom Mr Dillon-Redmile visited unannounced at his house if he was off due to sickness. However, I note Mr Harris left the respondent in early 2023, so whilst I accept his evidence, these visits would have preceded his departure.
86. The claimant has not presented sufficient evidence for me to make detailed findings about Mr Dillon-Redmile's daytime visits. I accept there were visits and that on occasion, Mr Dillon-Redmile would have needed to pick up the van and keys though given the claimant did not have a van from early 2023 onwards, these events must have occurred before or in early 2023. If further daytime visits to the claimant's house occurred in 2023 (when the claimant did not have the van), these have not been sufficiently evidenced. With reference to the daytime visits in general, no dates (or approximate dates) have been provided, I have not been told what was said or done and by whom, whether there were witnesses and what was the outcome.
87. Mr Dillon-Redmile told the Tribunal that there were only two occasions when he visited in the evening, one around the Christmas holiday period in early January 2024 and the other visit postdated employment with the respondent. I also note Mr Dillon-Redmile's witness statement details he spent 'several personal evenings visiting the claimant in his home to ensure he was safe and getting help'.
88. It was common ground that Mr Dillon-Redmile went to the claimant's house in the evening after the Christmas party (in early January 2024) and this visit was unannounced. Mr Dillon-Redmile's position was he was being supportive though the claimant stated he was not welcome in his home and Ms Sheldon said that Mr Dillon-Redmile invited himself in, pushed past her and made her feel she was not doing enough to support the claimant.
89. Mr Fitzpatrick told the Tribunal that he recalled Mr Dillon-Redmile visiting the claimant unannounced and that the claimant was unhappy about Mr Dillon-Redmile going to his house. He went on to say that if a manager visits you at home when you have been off sick, it is not unreasonable for an employee to think the reason for that is to establish when you are returning to work and perhaps Mr Dillon-Redmile did not realise this.

90. I do accept the evidence about the visit in early January 2023 and I also accept that Mr Dillon-Redmile was not welcome on this unannounced visit and it was bothering him enough to discuss how he felt about Mr Dillon-Redmile's visits with Mr Fitzpatrick. Whilst Mr Dillon-Redmile may have been labouring under the assumption he was being supportive, he was the claimant's manager and by this time a number of incidents had occurred in the workplace as set out above.

Conversation on the street on 15 January 2024

91. On 15 January 2024, there was a conversation on the street between Mr Dillon-Redmile, Mr Frost and the claimant which the claimant recorded. I have reviewed the transcript, mostly agreed by the parties. In summary, Mr Dillon-Redmile and Mr Frost are telling the claimant they have no intention of dismissing him and if they did, the claimant would have been dismissed for gross misconduct following the disciplinary hearing in October 2023 rather than being issued with a final written warning. Mr Dillon-Redmile and Mr Frost are talking to the claimant about this affecting his work (and not just his personal life). Around midway through the conversation the claimant becomes upset, acknowledged by Mr Dillon-Redmile ('listen, you're getting upset'). The claimant asks them to stop talking about his personal life and states he is fine at work. Mr Dillon-Redmile and Mr Frost continue the conversation. This conversation is happening on a public pavement.
92. Mr Dillon-Redmile's evidence was that this was because the claimant asked to have a word with him while he was with the plumbers at the time at their (the plumbers') meet point and that is why it was outside and this is not disputed by the claimant. Mr Dillon-Redmile's position was that he was trying to be supportive. The claimant's position was it was not supportive and the communication in this way was inappropriate and he did not feel supported.
93. I accept that whilst matters deteriorated during the conversation, the fact of it being on the street and happening at all was at the claimant's request. Whilst the conversation may have become distressing for the claimant, acknowledged by the respondent, it is hard to see what Mr Dillon-Redmile could have done given the circumstances. I am also alive to the fact that this conversation was recorded by the claimant.

Resignation

94. On 20 February 2024, the claimant resigned with notice. It was common ground that following his resignation, the claimant only worked for part of his notice period and left on 26 February 2024.

Disability

95. The Tribunal found that the claimant had the disabilities of autism and presented with impairments of inattention, anger outbursts, restlessness, poor time management, poor organisation skills and emotional dysregulation, potentially secondary to ADHD and consistent with ADHD. The Tribunal accepted these impairments were present throughout the claimant's employment with the respondent and if ADHD is not diagnosed at assessment

these recognised impairments are none the less disabilities consistent with the existing diagnoses of autism and emotional dysregulation.

96. I heard from Ms Sheldon that the claimant has now been formally diagnosed with ADHD as part of the ongoing assessment. I explained to the parties this has no impact on my findings which predate the formal diagnosis.
97. It should be noted that the parties often referred to the claimant's disabilities as his 'mental health problems'. In my finding, this term has been used loosely to describe all the claimant's mental health issues including his ASD, emotional dysregulation, symptoms of ADHD and other mental health issues such as anxiety, recognized to be co-concurring with his disabilities.
98. The respondent disputed knowledge of the claimant's disabilities. Mr Dillon-Redmile's position was that the claimant had never formally disclosed these disabilities and argued that disclosing having a mental health condition was not sufficient as 'everyone has mental health' and the claimant had never formally requested reasonable adjustments.
99. The claimant's position was that he discussed his autism with Mr Dillon-Redmile at interview for his role with Mr Dillon-Redmile and Mr Toby Brennan and it was Mr Brennan who mentioned the autism and that Mr Danny Harris had recommended the claimant to the respondent and was aware of his disabilities.
100. The claimant told the Tribunal that he discussed his health issues with Mr Dillon-Redmile on multiple occasions albeit there was never a formal meeting specifically held to discuss disability as there were no return to work meetings, no occupational health assessments (OHA) and the only time he was called into a meeting after sickness absence was to a disciplinary meeting.
101. The claimant told the Tribunal he discussed his disabilities on his return to work in the disciplinary meeting and that Mr Dillon-Redmile would never have accepted he had ADHD unless a formal diagnosis was 'forced down your throat'.
102. Mr Harris, who was a project manager at the respondent and often the claimant's supervisor and worked there for over 10 years, told the Tribunal he was aware of the claimant's disabilities.
103. Mr Fitzpatrick told the Tribunal the claimant disclosed he had ADHD to him personally in 2023 and whilst he never told Mr Dillon-Redmile, he stated that Mr Frost, who is and was a project manager at respondent and often the claimant's supervisor, was aware of the ADHD. Mr Fitzpatrick further stated it was obvious when the claimant was agitated and you could see the mood he was in when he walked to the meet point.
104. Mr Treverton, who worked with the claimant until November 2022, told the Tribunal that the claimant told him about his autism in 2021. Turning to the ADHD, Mr Treverton said he has ADHD and he and the claimant are similar. Mr Treverton stated 'in all honesty, it doesn't take a genius to notice it', he went on to describe the claimant's body language, short fuse and other behaviours. He also stated you could not 'overload' the claimant and it was better for him to

work through a few tasks and not many and that he spoke to Mr Frost and told him he should change his approach with the claimant and not to overload him. Mr Treverton went on to say that he discussed the claimant's difficulties with Mr Dillon-Redmile at the work Christmas party in 2023 which he was invited to post employment. Mr Treverton told the Tribunal the claimant was not the only employee with ADHD at the respondent.

105. References to the claimant's difficulties are made in multiple documents in the bundle, for example on 12 June 2023 the claimant tells Ms Spence that he is 'really struggling and cannot explain how much' and that his family tried to get him to go to the crisis team. Ms Spence responded by saying he should prioritise his mental health, get help and work will always be there. During the disciplinary meeting on 9 June 2023, Mr Dillon-Redmile acknowledges that he had conversations with the claimant about his mental health issues in the past and had advised him to see a counsellor.

106. Mr Dillon-Redmile told the Tribunal the respondent made adjustments for the claimant and would allocate one or two tasks and would write lists, that the claimant had a short fuse and that he supported the claimant in 2023 when his mental health got worse by sending text messages and talking to him. Mr Dillon-Redmile conceded he never made a referral for an OHA and he did not think it was necessary but then stated he was not aware of occupation health's role as the respondent is a small business. He also stated in evidence 'Simon, I always knew you suffered' and when asked if this was significantly, he said 'yes'. Mr Dillon-Redmile also conceded he was aware of the symptoms of the claimant's health issues as described above. Mr Dillon-Redmile also told the Tribunal he believed a lot of the claimant's health issues were exacerbated by drug use, particularly in 2023. He went on to tell the Tribunal he was 'livid' when the claimant resigned because he had done so much to help and support the claimant.

Submissions

107. Both parties gave oral submissions. While I have not referred to the content in detail, I can assure the parties their submissions have been considered when determining the issues in his case.

Law

108. The parties should refer to the disability judgment for the relevant law and statutory guidance about the definition of disability.

Relevant statutes and regulations

109. Section 15 EqA - 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.

110. Section 26 EqA– Harassment (the relevant subsections)

(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.

111. Section 123, EqA, time limits (relevant subsections)

(1) proceedings on a complaint within section 120 may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable.

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

112. Section 136 EqA - Burden of proof

- (1) This section applies to any proceedings relating to a contravention of this Act.
- (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
- (3) But subsection (2) does not apply if A shows that A did not contravene the provision.

113. Part 2 of the Employment Rights Act 1996 (ERA) provides for the protection of wages. Section 13 provides the right for a worker not to suffer unauthorised deductions:

Section 13(1) An employer shall not make a deduction from wages of a worker employed by him unless—

- (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or
- (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

114. Section 28 ERA Right to guarantee payment (relevance subsections)

(1) Where throughout a day during any part of which an employee would normally be required to work in accordance with his contract of employment the employee is not provided with work by his employer by reason of—

(a) a diminution in the requirements of the employer's business for work of the kind which the employee is employed to do, or

(b) any other occurrence affecting the normal working of the employer's business in relation to work of the kind which the employee is employed to do,

the employee is entitled to be paid by his employer an amount in respect of that day.

(2) In this Act a payment to which an employee is entitled under subsection (1) is referred to as a guarantee payment.

115. Working Time Regulations 1998 (WTR), Reg 13 Entitlement to annual leave (relevant sub clauses only)

(1) Subject to paragraph (5), a worker is entitled to four weeks' annual leave in each leave year

(9) Leave to which a worker is entitled under this regulation may be taken in instalments, but—

(a) subject to the exceptions in paragraphs (14), (15) and (17) it may only be taken in the leave year in respect of which it is due, and

(b) it may not be replaced by a payment in lieu except where the worker's employment is terminated.

(16) Paragraph (17) applies where, in any leave year, an employer fails to—

(a) recognise a worker's right to annual leave under this regulation or to payment for that leave in accordance with regulation 16;

(b) give the worker a reasonable opportunity to take the leave to which the worker is entitled under this regulation or encourage them to do so; or

(c) inform the worker that any leave not taken by the end of the leave year, which cannot be carried forward, will be lost.

116. Reg 13A WTR provides that in respect of any leave years beginning before 1st April 2024, and in any leave year beginning on or after 1st April 2009, a worker is entitled to an additional 1.6 weeks leave.

117. Reg 15. WTR Dates on which leave is taken

(1) A worker may take leave to which he is entitled under regulations 13, 13A and 15B on such days as he may elect by giving notice to his employer in accordance with paragraph (3), subject to any requirement imposed on him by his employer under paragraph (2).

(2) A worker's employer may require the worker—

(a) to take leave to which the worker is entitled under regulation 13, 13A or 15B; or

(b) not to take such leave

on particular days, by giving notice to the worker in accordance with paragraph (3).

(3) A notice under paragraph (1) or (2)—

(a) may relate to all or part of the leave to which a worker is entitled in a leave year;

(b) shall specify the days on which leave is or (as the case may be) is not to be taken and, where the leave on a particular day is to be in respect of only part of the day, its duration; and

(c) shall be given to the employer or, as the case may be, the worker before the relevant date.

118. Section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992 allows for an Employment Tribunal to uplift or

reduce compensation by up to 25% where an employer or employee has unreasonably refused to follow a relevant ACAS code.

Knowledge of disability

119. Equality and Human Rights Commission, statutory code of practice

Knowledge of disability

5.14 It is not enough for the employer to show that they did not know that the disabled person had the disability. They must also show that they could not reasonably have been expected to know about it. Employers should consider whether a worker has a disability even where one has not been formally disclosed.

5.15 An employer must do all they can reasonably be expected to do to find out if a worker has a disability. What is reasonable will depend on the circumstances. This is an objective assessment.

Discrimination arising from disability – relevant cases

120. **Bennet v Mitac Europe Limited** UKEAT/0185/20/LA: although diagnosis is likely to be necessary evidence and may be relevant to knowledge, a deemed disability exists as soon as the person has the condition irrespective of whether it has at that point been diagnosed.
121. **Pnaiser v NHS England and anor** [2016] IRLR 170 EAT - The 'something' that causes the unfavourable treatment need not be the main or sole reason but must have at least a significant (or more than a trivial) influence on the unfavourable treatment and so amount to an effective reason for or cause of it.
122. **Basildon and Thurrock NHS Foundation Trust v Weerasinghe** [2016] ICR 305. Langstaff P explained the two-step test required for a s.15 claim to establish the causal link between the claimant's disability and the unfavourable treatment. He said it did not matter in which order the Tribunal approaches these two steps. "It might ask first what the consequence, result or outcome of the disability is, in order to answer the question posed by "in consequence of", and thus find out what the "something" is, and then proceed to ask if it is "because of" that that A treated B unfavourably. It might equally ask why it was that A treated B unfavourably, and having identified that, ask whether that was something that arose in consequence of B's disability."
123. **City of York Council v Grosset** [2018] ICR 1492, the Court of Appeal confirmed that misconduct caused by disability could amount to

s.15 discrimination even if the employer did not know that the disability caused the misconduct.

Harassment – relevant cases

124. With reference to harassment under section 26 EqA, in **Richmond Pharmacology Ltd v. Dhaliwal** [2009] IRLR confirmed that while it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct related to other protected characteristics), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.

125. Most harassment complaints are brought on the basis that the unwanted conduct had the **effect** of creating the relevant adverse environment. **Pemberton v Inwood** [2018] EWCA Civ 564 confirmed that tribunals must follow the two distinct stages when determining whether unwanted conduct constitutes unlawful harassment under section 26 has been interpreted as creating a two-step test for determining whether conduct had such an effect. The steps are:

1. Did the claimant genuinely perceive the conduct as having that effect?
2. In all the circumstances, was that perception reasonable?

Both steps of the test must be satisfied before the tribunal can find that conduct had the proscribed effect.

126. **Thomas Sanderson Blinds Ltd v English** EAT 0316/10 - the EAT pointed out that *unwanted conduct* means conduct that is unwanted *by the employee*.

Burden of proof in discrimination cases

127. **Igen v Wong** [2005] ICR 931, CA 9 provided guidelines regarding the burden of proof (at paragraph 76). The Tribunal must follow a two-stage process. At stage one the claimant must prove facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination against the claimant. The outcome of the stage one analysis will usually depend on what inferences, if any, can be drawn from the primary facts. If the claimant gets past stage one, the burden of proof shifts to the respondent who must prove s/he did not discriminate against the claimant. Although there are two stages, Tribunals usually hear all the evidence in one sitting, including the respondent's explanation before deciding whether the requirements of each stage are satisfied.

128. In **Bahl v The Law Society** [2004] IRLR 799, the Supreme Court confirmed that unfair treatment will not in and of itself be enough to shift the burden of proof.

Conclusions

129. As knowledge of disability is material to all the discrimination complaints, I have dealt with this first. I will then go on to determine each of the complaints with reference to the issues.

Knowledge of disability

130. The respondent denies knowledge of disability. the respondent's position appears to be that the diagnosis of ASD, ADHD and emotional dysregulation were never formally confirmed and evidence was never provided.
131. The *EHRC statutory code of practice* says at paragraph 5.14 that it is not enough for the employer to show that they did not know that the disabled person had the disability. They must also show that they could not reasonably have been expected to know about it. Employers should consider whether a worker has a disability even where one has not been formally disclosed. The code goes on to use an example of an employee whose performance and timekeeping had been good and then he starts to be late and makes mistakes. The code suggests that the employer should make reasonable enquiries about why, before issuing a warning. This approach ensures an employer cannot benefit from a failure to make reasonable enquiries about an employee's health.
132. An employer's knowledge of disability extends to supervisors and line managers so if a manager/supervisor was aware of a health issue, that knowledge extends to the respondent.
133. I prefer the claimant's position that the respondent had knowledge of disability, namely his autism from the commencement of employment because it was told about it and that it had knowledge about the symptoms of ADHD and emotional dysregulation (as described above) shortly after the commencement of employment (i.e. from the time he was supervised by Mr Harris), this would have been sometime in 2021 and before the issues in this case arise. I accept the claimant told Mr Dillon-Redmile he had autism at the beginning of employment because it is supported by Mr Dillon-Redmile's own evidence that he 'always knew [he] suffered'. Mr Harris and Mr Frost, both responsible for supervising the claimant during his employment, were aware of his symptoms of ADHD and were aware of his emotional outbursts. If Mr Dillon-Redmile did not explicitly know the claimant had symptoms of ADHD and emotional dysregulation then he ought reasonable to have known and cannot benefit from his own failings with reference to not making an OHA referral, not asking for medical evidence, not having return to work meetings or making other reasonable enquiries or from making comments such as he 'could not comment on what was best for Simon medically and can only state was is acceptable and unacceptable in a work setting'.
134. Mr Dillon-Redmile's own evidence is contrary because on the one hand he has told the Tribunal he supported the claimant with his health throughout his employment and on the other that he did not have knowledge of the claimant's disabilities. In common parlance, Mr Dillon-Redmile cannot have his cake and eat it.

135. Turning to Mr Dillon-Redmile's oral evidence that in 2023, the claimant's problems were exacerbated by drug use. The claimant did not dispute taking drugs though argued it was recreational and not excessive. The Tribunal acknowledges that drug addiction is excluded as a disability. However, Mr Dillon-Redmile did not argue the claimant's health issue was one of addiction and that rather his disabilities were exacerbated by drug use, which is different. The Tribunal's findings are that the disabilities themselves predate any drug use on the part of the claimant, are still disabilities irrespective of drug use and the respondent had knowledge of the claimant's disabilities or ought reasonable to have had knowledge of disability at the relevant time. Further, the Tribunal has already made findings about disability and the parties should read that judgment in conjunction with this one.

The discrimination complaints

136. I reference the issues in accordance with the paragraph numbering system used in the case management order dated 1 May 2025 and I have grouped some of the issues due to overlap. All the claimant's discrimination complaints are pleaded as s15 EqA, or in the alternative, s26 EqA. The parties should note that a finding of harassment cannot also lead to a finding of discrimination, it is one or the other, or neither, but not both. It follows that where I have found in favour of the claimant with reference to either harassment or discrimination arising from disability, I have not gone on to determine the other discrimination/harassment complaint relating to the same issue.

137. With reference to s15 EqA, I have determined that the respondent knew the claimant was disabled throughout the relevant period so I will not repeat this part of the test with reference to the issues, all of which, with reference to knowledge of disability, should be read in the affirmative.

138. On 6 March 2023, the claimant requested time off for a mental health assessment and Thomas Frost refused and said they were too busy. When the claimant objected, Mr Frost said he should cancel the appointment, rebook it and ask again (2.1.3.1/3.1.1).

139. The claimant made an annual leave request on 28 February 2023 (and not 6 March 2023), which was initially refused informally by Mr Frost so he cancelled it and then, following further requests, one for three days which was refused by Mr Frost, his request for a single day's leave to attend the assessment was agreed. This happened on the same day. The request was for a mental health assessment.

140. With reference to the request for time off for a mental health assessment, I have concluded this was not unfavorable treatment because the claimant's request was eventually agreed on the same day as the initial request. Further, the respondent is entitled to manage leave requests for business reasons. This claim under s15 EqA is dismissed.

141. Turning to s26 EqA and whether this was unwanted conduct. It is not in dispute that the respondent initially turned down the request for leave and then changed its position. The claimant was clearly upset about the fact his request was initially refused (both informally and formally) and would no doubt have

been concerned, albeit for a short period, about missing this assessment so from his perspective, it was unwanted conduct.

142. Turning to whether this related to disability. This was an appointment for a psychiatric assessment that appears to have encompassed the claimant's ASD, emotional dysregulation and ADHD. However, it does not follow that the respondent's conduct, in initially turning down the request related to disability and I heard no evidence to support the initial refusal of this request was related to the claimant's disability. In my finding, the initial refusal was related to business need and when the claimant pressed the point about the importance of this assessment, the request was granted. The complaint under s26 EqA is dismissed.

143. Thomas Frost frequently refuse the claimant's requests of holiday (2.1.1.3/3.1.1).

144. The claimant referred to other requests being rejected though could only identify a request for leave on his birthday on 6 September 2023 in his evidence, so I have only made a determination about that request. It is not disputed that the claimant's request for annual leave was rejected on 3 September 2023.

145. I will deal with s15 EqA first. Refusing time off on a birthday is unfavourable treatment. I have no doubt the claimant would have preferred to do something other than work on his birthday. However, there is no evidence this refusal arose in consequence of the claimant's disability and rather it was a short notice request and refused due to business need. Even if I am wrong about that and the refusal was to spite the claimant (and I have determined Mr Frost did not get along with the claimant), it does not follow that the refusal was discriminatory or arose from any of the issues as set out in paragraph 2.2 of the list of issues. What might be unfair treatment will not always be discriminatory treatment. This s15 EqA complaint is dismissed.

146. Turning to s26 EqA. The refusal was unwanted for the reasons stated in the above paragraph, though again, there is no evidence the refusal was related to disability, rather it was related to the claimant's birthday and the respondent's business need. This s26 EqA complaint is dismissed.

147. On 9 June 2023, the claimant was given a verbal warning due to lateness due to starting new medication which made him drowsy (2.1.4.1/3.1.1)?

148. It is not disputed that following a disciplinary meeting on 9 June 2023, the claimant was issued with a 'verbal' warning. It should be noted this warning was termed a formal verbal warning and confirmed in writing.

149. A verbal warning, particularly one confirmed in writing, is unfavourable treatment. This is because the letter confirming the warning detailed this would be recorded on the claimant's personnel file for 6 months and may influence future disciplinary decisions.

150. The verbal warning was for lateness and not following the respondent's sickness reporting procedure. I have concluded that both failings on the part of the claimant arise from disability though as the issue refers to lateness only, I

have focused on that with reference to my determination. The claimant was late on four occasions due to new medication prescribed for his disability and to assist with his mood. Two of the things that arise is an inability to regulate emotions and an inability to concentrate. The unfavourable treatment arose in consequence of medication prescribed to regulate mood and one of the side effects was drowsiness, causing lateness. There can be more than one causal link and more than one reason for unfavourable treatment as there is here. The respondent issued the warning because of lateness and a failure to follow the sickness absence reporting procedure and for no other reason and its motive for doing so is not relevant to this finding.

151. Having concluded the claimant was treated unfavourably and that unfavourable treatment arose in consequence of the claimant's disability, I must now go on to determine whether the respondent's treatment was a proportionate means of achieving a legitimate aim.

152. The respondent did not provide an adequate reason for its decision and failed to consider the claimant's position in the disciplinary meeting. Mr Dillon-Redmile's position in the meeting was that the respondent "could not comment on what was best for Simon medically and can only comment on what is acceptable and unacceptable in the work setting and that in this instance that the performances was unacceptable". The respondent did not make a referral for an occupational health assessment (OHA) or seek to obtain any other medical evidence to evaluate whether the lateness was in any way linked to health. Finally, whilst the respondent classified this as a 'formal verbal warning', it was confirmed in writing and recorded on the claimant's personnel file for six months. It has all the features of a written warning. The respondent has not demonstrated the decision was proportionate.

153. This treatment occurred on 9 June 2023, the claimant did not contact ACAS until 5 October 2023, so this complaint was presented 28 days late. I have concluded it is just and equitable to extend time because the claimant's mental health deteriorated significantly from around this time until the end of 2023, which required involvement from the mental health and the crisis teams. There was also an occasion following the verbal warning when the claimant stood on a bridge overlooking the motorway. The claimant was encouraged off the bridge by Ms Sheldon. The respondent was aware of this incident. Further, the claimant did attempt to resolve his growing concerns about his employment at the respondent via its internal grievance procedure and these concerns were never investigated. In the circumstances, I have concluded it is just and equitable to extend time. This s15 EqA complaint is allowed.

154. On 12 June 2023, the claimant asked for a meeting with David Redmile to discuss his problems with Thomas Frost and mental health but a meeting was not arranged (2.1.5.1/3.1.1) and on 5 October 2023, the claimant again requesting a meeting to discuss his concerns about Thomas Frost and mental health and a meeting was not arranged (2.1.8.1/3.1.1).

155. By consent, the parties agreed the correct dates for the claimant's complaints were 12 June 2023 and 5 October 2023 (whereas the list of issues records these dates as 5 October 2023 and 3 November 2023).

156. At the first disciplinary meeting on 9 June 2023, the claimant mentioned an issue had arisen earlier that day between himself and Mr Frost. The respondent's position was that it could not be discussed at the disciplinary meeting as it needed to be investigated and the claimant was assured these issues would be discussed with Mr Frost.
157. The claimant followed this up on 12 June 2023, stating he had a discussion with Mr Frost and understood he was going to be called into a meeting and wondered when this would happen because the issue was distressing him. Ms Spence asked the claimant to provide a written statement of events and when this was not provided, the respondent took no further steps. The respondent's grievance policy allows for, and indeed encourages, an informal resolution in the first instance. The respondent should have utilised its own policy in this regard and managed the claimant's concerns informally.
158. The claimant raised this in the disciplinary meeting and then followed it up, he told the respondent this impacted on his mental health. The respondent could have utilised its policy and informally investigated the claimant's concerns, it failed to do so. In my finding, this was unfavourable treatment.
159. By a message dated 5 October 2023, the claimant requested a meeting with Mr Dillon-Redmile about the problems he was having with Mr Frost. The details of the message are set out in paragraph 47 above. The respondent initially denied it ever received this message, stating it was deleted before it was read though when the correct date for the message was confirmed by the claimant, Mr Dillon-Redmile brushed this off, initially stating he was not referring to this message and then stating it was an error. The respondent told the Tribunal there was a welfare meeting though I found there was never a meeting arranged by the respondent to discuss the claimant's welfare. Given the respondent denying it ever received the message dated 5 October 2023 (though I found it did), it follows it never arranged a meeting to discuss the claimant's issues about Mr Frost. I have concluded it knew it should have arranged this meeting and simply chose to dispute ever receiving this message to excuse itself from this omission. The failure to do this was unfavourable treatment.
160. The claimant's concerns about Mr Frost arose from the claimant struggling with his emotions and coping at work and he wanted a resolution to help manage those things. However, I have concluded that the respondent's failure to investigate the claimant's concerns, i.e. its omission to do anything, following both the claimant's verbal concerns raised on 9 June 2023, followed up by the written message of 12 June and then the detailed message of 5 October 2023, did not arise from those things, it arose because the respondent did not want to investigate a complaint against one of its project managers and also, whilst the respondent had a grievance policy that was reasonable, it failed to follow this policy correctly. Whilst these omissions (following both complaints) were unfair, neither were discriminatory. There is a difference between discriminatory treatment and unfair treatment and in this instance, the treatment was unfair but not discriminatory.
161. The unfavourable treatment did not arise in consequence of the claimant's disability. These s15 complaints are dismissed.

162. Turning to s26, whilst this was unwanted conduct as the claimant wanted a resolution, albeit informally (and unwanted conduct is conduct unwanted by the employee), my findings are as above, the respondent's conduct was not related to disability, with reference to its failure to do anything following both requests for meetings from the claimant, it was related to not wanting to investigate a complaint against one of its project managers and because it failed to follow its own grievance policy correctly and on the second occasion, simply disregarded the message altogether. These s26 EqA complaints are dismissed.
163. On 6 October 2023, the claimant was signed off work for mental health illness. He had put his sicknote on the ground chat for the firm so that his manager was aware. David Dillon-Redmile challenged the claimant's sick certificate publicly on the ground chat saying something along the lines of 'you decide to tell me at this time in the morning' (2.1.6.1/3.1.1).
164. The claimant went on sick leave on 6 October and posted his sicknote on ground chat (the company's messaging system). Mr Dillon-Redmile commented with words to the effect 'you decide to tell me at this time in the morning'. The claimant subsequently removed the certificate which he put there to notify his colleagues not to wait for him. None of this was in dispute.
165. Turning to whether this was unfavourable treatment. This term is not defined in the EqA but the Equality and Human Rights Commission's Code of Practice on Employment (2011) ('the EHRC Employment Code') states that it means that the disabled person 'must have been put at a disadvantage' (see para 5.7). It is hard to see how the claimant was placed at a disadvantage by the respondent's response to his own post, inappropriately placed on ground chat by the claimant and then, by his own admission, removed when he realized this was an error. This was not unfavourable treatment. This s15 complaint is dismissed.
166. Turning to the s26 EqA complaint. This was unwanted conduct (unwanted conduct is conduct unwanted by the employee). This unwanted conduct was linked to the claimant's sickness absence which is related to disability. Mr Dillon-Redmile's response 'you decide to tell me at this time in the morning' may have been abrupt. However, the comment arose out of frustration at the claimant's absence from work and having to arrange cover. It follows that he did not intend to either violate the claimant's dignity (which is a serious matter and should not be taken lightly). Whilst the comment was posted on ground chat, accessible by the claimant's team so there was an 'environment', it was in response to the claimant's own post, also posted on ground chat. The comment was transitory and not intended to create a hostile degrading, humiliating or offensive environment for the claimant.
167. Turning to the effect, I must consider the perception of the claimant, the other circumstances of the case and whether it was reasonable for the conduct to have that effect.
168. The claimant had just gone on sick leave with a 'stress related problem' and ongoing assessments related to his disabilities, there was a deteriorating

relationship between him and Mr Frost as confirmed by concerns he had raised as set out above and he was facing a further disciplinary investigation and meeting. I accept that in the circumstances, the comment made by Mr Dillon-Redmile, posted on the company's ground chat, would have violated his dignity, which was fragile at the time. Inasmuch as the ground chat posts would have been seen by Mr Frost, I accept that from the claimant's perspective, it would have created a hostile environment for him.

169. Turning to the other circumstances of the case, while those circumstances include the claimant's health, they also include the fact the claimant should not have posted his sicknote on the ground chat (and he acknowledged this was an error and later removed it) and that the comment, as set out in the above paragraph, whilst abrupt was transitory. In those circumstances, I do not find that it was reasonable for the comment made by Mr Dillon-Redmile to have that effect. i.e. it was not reasonable for it to violate the claimant's dignity and create a hostile environment for him. Whilst I accept the claimant may have been personally distressed by the comment, as stated in *Richmond* (at paragraph 124 above) 'it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase'. The s26 complaint is dismissed.

170. On 25 October 2023, the claimant was given a final written warning for imputing hours when he was off sick and no action was taken against others who had done the same. The claimant says this was done because the respondent wanted to be able to use that fact he was on a final written warning to control him because of how he reacted sometimes as a result of his disability. The claimant says the final written warning was a way of keeping him on a leash (2.1.7.1/3.1.1).

171. This issue was very long and on discussion with the parties, it was clear the issue was ostensibly about being issued with a final written warning for imputing hours and the rest of the issue is about the consequences of that decision.

172. The claimant was invited to a disciplinary meeting on 12 October 2023, for imputing hours that he worked on the respondent's Sage system on 5 April 2023, 6 July 2023, 31 August 2023 and 25 September 2023 when he was on sick leave. This was not disputed by the claimant. This meeting was postponed because the claimant went on sick leave on 6 October 2023. The claimant had set out his concerns about Mr Frost and the impact on his mental health the day before on 5 October. There were parallel conversations by text between Ms Spence and the claimant about arranging a welfare meeting and separately, the disciplinary meeting. The welfare meeting scheduled for 12 October 2023 was postponed because the claimant did not want to attend before he returned from sick leave. Contrary to the respondent's position, I accepted the claimant's evidence that the welfare meeting was never re-arranged and that he genuinely thought the meeting he was scheduled to attend on 24 October 2023, one day after he returned from sick leave, was the rescheduled welfare meeting and not the disciplinary meeting. I also accept this was a genuine misunderstanding given that both the claimant and Ms Spence refer to the 'meeting' rather than the welfare or disciplinary meeting and the respondent's failure to provide a further disciplinary meeting invite after the meeting scheduled for 12 October

2023 was postponed. The claimant was issued with the final written warning on 25 October 2023. I also found that after this meeting, the claimant was told by Mr Dillon-Redmile the final written warning would assist the respondent to 'keep him on a leash' or words to that effect and this was with reference to managing the claimant's behaviour.

173. Turning to s15 EqA. It is common ground the claimant was issued with a final written warning. The purpose of a final written warning is to formally put an employee on notice that their conduct and/or performance is unacceptable and further unacceptable conduct or poor performance will result in dismissal. In this instance, the final written warning was issued for misconduct. I accept the motive was at least in part to control the claimant and his behaviour (in his words, keep him on a leash) and this is because Mr Dillon-Redmile's own evidence was that he 'was livid' when the claimant handed in his notice because of everything he had done for him so despite having a final written warning and unresolved complaints against his supervisor, the claimant was expected to remain at the respondent. It was also common ground the claimant was a hard worker and there were no issues with his work and that it was other matters such as the claimant's communication skills, moodiness, emotional lability, poor concentration, forgetfulness and inability to multitask that caused difficulties for the respondent.
174. A final written warning is unfavourable treatment as this placed the claimant on notice that his employment with the respondent could potentially be terminated fairly if there was any further misconduct, including minor misdemeanors and that would be the case for a period of twelve months.
175. Mr Dillon-Redmile's position was that one of the entries was the day after sick leave (on 25 September 2023) so could not have been in error. I accept this was an overriding concern and not an unreasonable one and was a significant reason for calling the disciplinary meeting and issuing the final written warning.
176. The claimant's position was that he imputed hours on four occasions when he was on sick leave. His position was this was done in error, he struggled with Sage, he was not organised and had rushed to time sheets. This was supported by Mr Frost, who commented in the disciplinary meeting that he did not think the claimant did this deliberately. I have already found Mr frost did not get along with the claimant so accept he genuinely believed this to be the case.
177. Mr Dillon-Redmile, at the time he took the decision to issue the final written warning was aware of the claimant's disability (as was Mr Frost who accepted this was an error) and difficulties he had with his concentration and forgetfulness. This was also a time when the claimant was having significant difficulties regulating his emotions and was undergoing mental health assessments. All these things arise in consequence of the claimant's disabilities.
178. Whilst I have found that the claimant did input these entries in error, I have qualified that the last entry, on 25 September, included a degree of recklessness due to the deteriorating relationships at the respondent and the claimant's own deteriorating mental health.

179. I also found that following the final written warning, Mr Dillon-Redmile did make a comment to the effect the final written warning would keep him on a leash and this was at least in part with reference to the claimant's behaviour as set out in paragraph 177 above.
180. I have concluded that the unfavourable treatment arose because of these things and the respondent's motive for issuing the final written warning is irrelevant.
181. Turning to whether the treatment was a proportionate means of achieving a legitimate aim. It was not. I do accept there was a proportionality issue here as the claimant claimed for work he had not done, irrespective of whether it was deliberate or not and I note the respondent's position that it could have dismissed the claimant for gross misconduct so the final written warning was proportionate. However, the respondent's decision to conclude the disciplinary investigation should not have been taken before either a referral to occupational health or obtaining other medical evidence.
182. Mr Dillon-Redmile commented the respondent was a small employer and not aware of when to use occupational health. That still does not change the fact the respondent took its decision prematurely. The respondent cannot benefit from its own failure to act and further, Mr Dillon-Redmile could have asked for medical evidence directly from the claimant or made other enquiries about the claimant's health, he did not do this despite the claimant having just returned from sick leave and also raising concerns he was struggling with Sage earlier in the year. It is of note that the respondent took no steps to offer training on Sage or offer any other structured support following the disciplinary outcome and instead chose to treat it entirely as a conduct issue. It is highly likely that the outcome of an occupational health assessment (OHA) would have included an overview of how the claimant's disabilities impacted on him in the workplace and potential support and training that could be offered. This advice would have assisted the respondent to take a more holistic approach before deciding the disciplinary outcome. The respondent's failure to take these steps made the outcome decision premature. I further conclude that without the support of advice from an OHA the parties were unable to manage the fall-out from the disciplinary outcome with reference to the impact it had on the claimant's disabilities and associated mental health problems. This s15 EqA complaint is allowed.
183. On 8 November 2023, David Dillon-Redmile sent a video to the claimant speaking to him very slowly as if he was stupid and because he had not realised that the work had been cancelled (2.1.9.1/3.1.1)
184. It was common ground that on 8 November 2023, the claimant arrived at the meet point, no-one else was there, it was raining and so he sent two videos on the respondent's ground chat. He said in the first "morning everyone, anyone want a coffee, to be fair, it might be a bit cold when you actually do get in" and in the second "Good day today lads, init. Where are, where are you lads, oh, I must have beat you here". This was followed with Mr Dillon-Redmile responded with a video saying "Oh Simon, did you not get the message, everybody stayed in bed because it's raining" with the word raining said very

slowly. Mr Fitzpatrick then posted a laughing emoji and finally, the claimant posted a Mr Bean GIF.

185. The claimant's position was this was between him and Mr Fitzpatrick and he found Mr Dillon-Redmile's response humiliating whereas Mr Dillon-Redmile's position was that it was posted on the group chat and meant to be humorous.

186. The video trail is not disputed. I do not find Mr Dillon-Redmile's video message was unfavourable treatment towards the claimant. I accept the respondent's position it was a humorous exchange, supported by the claimant posting a Mr Bean emoji after Mr Dillon Redmile's post. Even if I was wrong about that, neither the claimant's two videos nor Mr Dillon-Redmile's response were in any way connected with anything arising from the claimant's disability. In summary, the claimant attended the meet point in error and Mr Dillon-Redmile told him this. That is not unfavourable treatment. This s15 EqA complaint is dismissed.

187. Turning to s26, even if this was unwanted conduct, and I accept the claimant was very sensitive about matters at the respondent by this time, Mr Dillon-Redmile's video was not related to disability, it was in response to the claimant's two videos, on the ground chat, about why nobody was at the meet point due to the rain. This s26 EqA complaint is dismissed.

188. On 9 November 2023, the claimant complained to Thomas Frost about him making inappropriate comments about school children they passed in the van because he had a child that age. Thomas Frost called the claimant a spastic and threatened him with his final written warning (2.1.10.1/3.1.1).

189. For the complaints I have determined so far, the incidents are either not in dispute and/or the claimant's evidence has been corroborated by other witnesses or the documentary evidence. This is one of the few complaints where there is only the claimant's evidence so I will say something about the 'burden of proof' in discrimination claims and how it operates.

190. The initial burden (stage 1) is on the claimant to prove facts from which the Tribunal could decide, in the absence of any other explanation, that discrimination took place. The claimant does not have to prove discrimination itself. Examples of the type of evidence that may assist with potentially discriminatory comments to consider are matters like whether they were reported, does the alleged perpetrator have a history of making such remarks, are there witnesses and so on. Unfair or unreasonable treatment on its own is not enough to shift the burden of proof.

191. If there is enough evidence from which the Tribunal can infer that discrimination may have occurred, the burden shifts to the respondent to provide a non-discriminatory explanation. The respondent must prove, on the balance of probabilities, that the treatment was not for the proscribed reason. The respondent must prove that the less favourable treatment was "in no sense whatsoever" because of the protected characteristic. Because the evidence in support of the explanation will usually be in the possession of the respondent,

tribunals should expect “cogent evidence” for the employer’s burden to be discharged.

192. It should be noted that whilst this is a two stage test, tribunals hear all the evidence together. It should also be noted that in a plain and obvious case, there is nothing wrong with making a positive finding without recourse to the burden of proof provisions one way or the other.

193. For the two complaints upheld under s15 EqA above, the burden of proof shifted to the respondent after the claimant proved he was a disabled person, that he was subject to unfavourable treatment and that treatment was because of something arising from his disabilities. The respondent was unable to provide a non-discriminatory reason for the treatment (proportionate means of achieving a legitimate aim) or that it did not know and could not reasonably be expected to know the claimant had a disability. For the complaints under s15 EqA that I dismissed, the claimant was unable to prove either unfavourable treatment or that the treatment arose because of something arising from his disability so the burden did not shift to the respondent.

194. Turning back to this allegation that Mr Frost called the claimant a spastic and threatened him (in relation to his final written warning). This was in response to the claimant complaining about Mr Frost making inappropriate sexual comments about a schoolgirl and he called him a nonce to which Mr Frost is alleged to have responded by saying “it was only banter you spastic”.

195. There were no other witnesses to this incident and Mr Frost did not attend the Tribunal to give evidence. There is a restraining order against the claimant with reference to Mr Frost for alleged incidents that occurred after the claimant left the respondent. I heard from Mr Dillon-Redmile that Mr Frost felt too intimidated by the claimant to give evidence. I accepted that whilst Mr Frost could have provided evidence remotely and there is a restraining order to protect him, that he had grounds not to attend. I have also considered that the claimant raised concerns about Mr Frost that were never investigated by the respondent and that witnesses gave evidence about Mr Frost’s harsh approach to supervising the claimant and confirming he had called the claimant names such as retard and spastic.

196. There was simply not enough evidence for me to make a finding that Mr Frost did make inappropriate remarks of a sexual nature about a school aged girl. This is a very serious allegation preceding the alleged response from Mr Frost and I would require at least some corroborative evidence (e.g. Mr Frost making similar remarks to other witnesses or the claimant complaining about this to the respondent).

197. In any event, even if Mr Frost did make these remarks and the claimant called him a ‘nonce’ in response and the claimant should be clear that I have not made a finding in his favour in this regard. Threatening the claimant with the final written warning and calling him a spastic would have been in response to being called a nonce so the comments did not arise from something related to disability (s15 EqA) and the effect could not be said to violate the claimant’s dignity or create the proscribed environment because of the wider

circumstances, it would have been in a response to being called a nonce (s26 EqA).

198. Both complaints under s15 and s26 are dismissed.

199. Throughout 2023 - Thomas Frost on a daily [basis] told the claimant that he could not do his work correctly (or words to that effect) or picked faults with the claimant's work (2.1.1.2/3.1.1) and on 10 November 2023, the claimant was called into the office by Thomas Frost and threatened with his job for not putting the drill piece back in its place. Tommy called the claimant a 'retard'. He reminded the claimant he was on a final written warning (2.1.11.1/3.1.1).

200. There is an overlap with these complaints. I will deal with not working correctly (2.1.1.2/3.1.1) first.

201. I accepted the claimant's evidence, supported by Mr Harris, Mr Treverton and Mr Fitzpatrick, that when Mr Frost supervised the claimant's work, he was harsh and very critical of his work. Mr Treverton's evidence was that despite the claimant's work standard, which was impeccable, Mr Frost would find fault (for example with the way the claimant lay paving slabs) and he would always find fault before the claimant had the chance to finish the job. There was also evidence that the respondent had discussed Mr Frost's approach to supervising the claimant with him, albeit the respondent did not follow up on this (as set out above with reference to the concerns raised by the claimant). It was common ground Mr Frost did not like the claimant.

202. There was frequent criticism of the claimant's work, which I accept happened. This is unfavourable treatment. However, I have concluded this was not for reasons related to disability. Indeed, all witnesses were unanimous that the claimant's standard of work was very high and it was other factors, such as his relationships with colleagues, paperwork, timekeeping, attendance and IT, arising from his disability, that caused him difficulties. I do not find the unfavorable treatment was for reasons arising from disability. This s15 EqA complaint is dismissed.

203. Turning to harassment. The frequent criticisms were clearly unwanted conduct though criticising the claimant's work (as opposed to name calling) is not, in my finding, related to disability and this is for the same reasons as above, i.e. the criticism of the claimant's work was not related to disability, he worked to a high standard, it was related to Mr Frost being a hard taskmaster and not liking the claimant, as confirmed by Mr Fitzpatrick, Mr Harris and Mr Treverton. This s26 complaint is dismissed.

204. Turning to the events of 10 November 2023 (2.1.11.1/3.1.1). I have also determined that Mr Frost had called the claimant names such as spastic and retard. This was supported by Mr Treverton's evidence. Mr Treverton told the Tribunal that he heard Mr Frost calling the claimant names under his breath, including drip and spastic or spaz. He would say things such as 'Oh, I will have the spaz today' though this was not to the claimant's face. This was supported by Mr Harris who also said Mr Frost called the claimant names like stupid but not to his face whereas Mr Fitzpatrick told the Tribunal that Mr Frost did this

directly to the claimant and would say something like “what did you do that for you idiot”.

205. Mr Treverton and Mr Harris had both left the respondent by the time many of the issues that arise in this case intensified. I have concluded that whilst the criticism of the claimant may have initially been name calling behind the claimant’s back, in time, Mr Frost was name calling directly to the claimant. Whilst the respondent’s evidence was that Mr Frost and the claimant had a positive relationship, not supported by any witnesses other than Mr Dillon-Redmile, so not accepted, it did not explicitly deny the name calling. Further, the respondent did nothing to manage or intervene in the deteriorating relationship between Mr Frost and the claimant despite the claimant raising written concerns on at least two occasions as set out above.
206. On 10 November 2023, the claimant stated Mr Frost called him into the office and threatened him with his job for not putting a drill piece back properly and reminded him he was on a final written warning. The claimant told the Tribunal it was Aiden who had failed to put the drill piece away. Further, he called the claimant a spastic.
207. For the reasons stated above, on balance, I accept the claimant was called a spastic as there is a history of name calling, corroborated by other witnesses. It was also common ground Mr Frost frequently criticised the claimant’s work, as confirmed above, so I accept he reprimanded the claimant for not putting the drill piece back. I also accept that given the deteriorating relationship between Mr Frost and the claimant and the fact he was on a final written warning, this would have been used against the claimant. I note the claimant did not make a direct complaint to the respondent about this incident though given that his previous two complaints about Mr Frost were ignored, this is understandable. Despite not having the benefit of Mr Frost’s evidence, for the reasons stated above, I have concluded this incident occurred.
208. I will deal with s26 EqA first. This was unwanted conduct. I accept the claimant would have found threats to his job security and being called names upsetting and this is about how the employee feels about the conduct.
209. I have already found the respondent was aware of the claimant’s disabilities and how these impacted on him, this knowledge extends to Mr Frost, who had limited patience for the claimant despite being asked by the respondent to modify his approach. It follows that this limited patience and general dislike was at least in part, related to the claimant’s behaviours that manifested from his disability. I have concluded that calling the claimant a spastic (a reference to people with disabilities) was related to the claimant’s disability. Turning to the threat of being on a final written warning because of a perceived issue with the claimant not putting the drill piece back, I do not find this was ‘related to disability’ for the same reasons as stated under issue 2.1.1.2. I accept the claimant was called both a retard and a spastic, though only ‘spastic’ is referenced in the list of issues so my finding is limited to Mr Frost calling the claimant a spastic. Whilst only part of the conversation is upheld as related to disability, given the cumulative impact of frequent name calling and deteriorating relationship, calling the claimant a ‘spastic’ is enough to take this complaint forward to the next stage.

210. It was common ground Mr Frost did not like the claimant and given the wider context of threatening his job security and calling him a spastic, I have concluded that calling the claimant a spastic had the purpose of violating the claimant's dignity and creating the proscribed environment. The s26 EqA complaint is allowed.
211. Throughout 2023, Mr Frost gave other workers a lift to the meet point but drove past the claimant each morning and did not pick him up, so he had to walk to meet point (2.1.1.1/3.1.1).
212. I will deal with this complaint next starting with s26 EqA due to an overlap of evidence with the above complaint.
213. Mr Treverton's and Mr Fitzpatrick's corroborated the claimant's evidence he was the only one who walked to the meet point and Mr Frost did not give him a lift whereas he gave Mr Fitzpatrick and Aiden a lift. This was accepted.
214. Turning to whether this was unwanted conduct, Mr Dillon-Redmile's evidence was this was the claimant's preference. Mr Frost told Mr Fitzpatrick this though Mr Fitzpatrick conceded the claimant never told him this directly. Mr Dillon-Redmile also tried to argue employees walked to the meet point generally, I did not accept this and found it was custom and practice for colleagues to collect each other (at least part way through the journey to the meet point) in the work van. I concluded that with reference to this incident, Mr Dillon-Redmile's evidence is not reliable. Mr Frost did not attend though I have concluded he chose not to pick up the claimant and explained this to colleagues as the claimant's preference when it was not. I make this finding for the same reasons as set out elsewhere about the relationship between Mr Frost and the claimant. I have also taken into consideration the fact the claimant complained about this matter to the respondent 5 October 2023 and the respondent failed to investigate it. I accept this was unwanted conduct and the claimant would like to have been given a lift with his colleagues, which I also accept was common practice and what the claimant did when he was in charge of a van.
215. Turning to whether this related to disability. My findings made elsewhere and with reference to the above complaint will not be repeated in detail. The claimant's disability sometimes manifested itself in his behaviour and Mr Frost had been asked to modify his approach with reference to supervising the claimant. Mr Frost had limited patience for the claimant (at least in part linked to his disability) and often called him names (both directly and behind his back) such as idiot, retard and spastic, which I find was related to disability. I find that the reason he did not offer him a lift (despite driving past him) was at least in part related to disability.
216. An employer is liable for the acts of their employees in the course of employment. Mr Frost was an employee and the claimant's supervisor. Refusing to give the claimant a lift each morning to the meet point preceded the start of the working day. However, I have concluded this was still 'in the course of employment' because Mr Frost was using a work van, the purpose of the journey was to go the meet point, in the market square at Higham Ferrers, all other members of the team were given a lift by Mr Frost to the meet point and

it appeared to be the respondent's custom and practice for whoever drove the van to give team members a lift if required and this was something the claimant did when he had a work van.

217. It is hard to argue this behaviour had the purpose without more cogent evidence. However, I have concluded it had the effect of violating the claimant's dignity and creating a humiliating environment. It would have been very upsetting and humiliating to be the only person in your team, seen walking to the meet point, while your colleagues are provided with a lift every day and everyone passes you. The claimant lives in Higham Ferrers so the route would have overlapped. Further, the relationship was compromised as detailed elsewhere, the claimant raised this specific concern with the respondent who ignored it and the evidence from the claimant's witnesses supported that Mr Frost wanted to demonstrate his superiority over the claimant and this was a way of doing that. This s26 EqA complaint is allowed.
218. On 13 December 2023, the conversation with Katherine Spence about Aiden not being disciplined for the same conduct with reference to Sage (2.1.13/3.1.1) and on 14 December 2023, the claimant being called into the office and told by Thomas Frost and David Dillon-Redmile that he would lose his job if he recorded conversations because he was on a final written warning (2.1.14/3.1.1).
219. On 13 December 2023 (and on other dates) there was a conversation between the claimant and Mr Spence about Aiden not getting disciplined when he imputed incorrect information about work on Sage whereas the claimant did. The respondent's position, which I have accepted, was that Aiden made a single error that did not make a difference to his pay.
220. Turning to s15 EqA. The respondent did not discipline Aiden for Sage errors though disciplined the claimant for Sage errors. This is not disputed. However, in my finding this was not unfavourable treatment, I have accepted the respondent's reasons for not pursuing disciplinary action against Aiden (being a one off occurrence). It is hard to see how Aiden being investigated (which I find he has) and not being disciplined was unfavourable to the claimant. Further, not investigating Aiden did not arise in consequence of the claimant's disability. This complaint looks more like the claimant is arguing he was treated 'less favourably' than Aiden. However, I do not have a direct discrimination complaint before me. The s15 EqA complaint is dismissed.
221. Turning to s26 EqA. The claimant perceived this to be unwanted conduct and he was clearly distressed about what he considered to be unfair treatment. Turning to whether it was related to disability. For the same reasons as above, the respondent's decision not to discipline Aiden had nothing to do with the claimant's disability, that decision, following an investigation, was because Aiden's Sage error was a one-off act and there was no financial benefit. That is not related to the claimant's disability. The s26 complaint is dismissed.
222. Turning to the threat about the claimant losing his job if he recorded conversations being made with reference to him being on a final written warning, which occurred on the 14 December 2023. This arose from the claimant covertly recording Aiden discussing with him how he had made an

error using Sage. There was very limited evidence about this presented to the Tribunal albeit the above was not disputed by Mr Dillon-Redmile who confirmed it was unacceptable for the claimant to record Aiden.

223. Being threatened with your job is unfavourable treatment (s15) and unwanted conduct (s26). The reason why Mr Dillon-Redmile and Mr Frost told the claimant he would lose his job is because he covertly recorded a colleague. He is not permitted to do this for data protection reasons which is something neither arising from disability nor related to disability so these complaints are dismissed.

224. On a number of occasions Mr Dillon-Redmile came to the claimant's house demanding to know why the claimant was not at work, banging on the door, shouting and asking where the claimant was. The claimant says he would not have done this with other workers (2.1.4.1)

225. It was common ground that Mr Dillon-Redmile attended the claimant's house on a number of occasions when he was on sick leave. Mr Dillon-Redmile's position was this was mostly in the morning and was to collect the keys for the van and these keys were needed because there were no spares and even if there were, the van was parked outside the claimant's house. The claimant's position was that he was sick, the respondent attended uninvited and the respondent had spare van keys so there was no need to disturb him. However, I concluded that as most of these day time visits were with reference to collecting the van they must have occurred no later than early 2023 and if there were visits when the claimant no longer had the van, he has not provided enough evidence for me to make findings, by way of example, I have no dates or approximate dates and I do not have the detail of the visits (what happened, who was involved, who did and said what to whom and who else was there). As set out above, the initial burden to prove facts from which I may infer that discrimination occurred has not been discharged.

226. I was presented with sufficient evidence about two evening visits to the claimant's house. Mr Dillon-Redmile acknowledged these visits in his evidence, where he details that he spent "several personal evenings visiting the claimant in his home to ensure he was safe and getting help". One of those visits postdated the claimant's employment and is not included in the issues as a post-employment complaint, so I will make no findings about that.

227. The other visit occurred following the Christmas party and during the Christmas break (so either very late in 2023 or very early in 2024). The parties think it was early January 2024 and have acknowledged some errors with dates in the issues and agreed for those dates to be varied.

228. Mr Dillon-Redmile went to the claimant's house in the evening in early January 2024 and this visit was unannounced. Mr Dillon-Redmile's reason for the visit was to 'be supportive' and this was with direct reference to having concern's about the claimant's health. The claimant's position was that Mr Dillon-Redmile attended uninvited and was not welcome. Ms Sheldon's position was he invited himself in and made her feel she was not doing enough to support the claimant.

229. Whilst Mr Dillon-Redmile may have been labouring under the assumption he was being supportive, he was the claimant's manager and it was not appropriate to visit the claimant to enquire about his health, at home, in the evening, unannounced. Mr Fitzpatrick summed it up when he said that if a manager visits you at home when you have been off sick, it is not unreasonable for an employee to think the reason for that is to establish when you are returning to work and perhaps Mr Dillon-Redmile did not realise this.

230. I will deal with s26 first. I have already found that the visit in early January was unwanted by the claimant. I have concluded it was unwanted conduct.

231. It was related to disability as the visit was a 'welfare check' by Mr Dillon-Redmile. I have taken into consideration the other factors such as the claimant's drug use at the Christmas party though ostensibly, the drug and alcohol use were not the only reason for the visit, it was because of the manifestation of the claimant's disabilities, particularly the emotional dysregulation (at the time suspected but now confirmed to stem from his ADHD). The claimant's difficulties regulating his emotions following the final written warning and around the Christmas period were enough for events to escalate during the party and for him to leave the party early.

232. Mr Dillon-Redmile's conduct was not intended to violate the claimant's dignity. I accept his evidence that he was trying to be helpful so I will look at the effect of his conduct. Whilst Mr Dillon-Redmile did not intend to cause distress, attending the claimant's house uninvited and then inviting himself into the claimant's home, his safe space and insisting on having a conversation with the claimant about his 'welfare', in my finding did violate the claimant's dignity and create a hostile environment for him, in his own home. Looking at the wider circumstances of the verbal warning, the final written warning and the unaddressed concerns made by the claimant about Mr Frost, it was reasonable for it to have this effect.

233. Turning to whether this was in the course of the claimant's employment. Mr Dillon-Redmile is the managing director and has overall control of the respondent, the visit was a 'welfare check', it follows escalating concerns about the claimant's behaviour at work, culminating in his distress at the work organised Christmas party. Ostensibly, the visit was to establish the impact of the claimant's ill-health on his work at the respondent. In my finding, this conduct occurred in the course of the claimant's employment. The s26 EqA complaint is upheld.

234. On 15 January 2024, David Redmile and Mr Frost told the claimant off in the street. They said to the claimant he was on a final written warning and that if they wanted to make an excuse to get rid of him they would. Mr Frost said that he could have just 'snaked' the claimant (2.1.2.1/3.1.1).

235. I was provided with a largely agreed transcript of a covert recording by the claimant of this conversation that confirms the conversation was initiated by the claimant and that respondent did say these things. I have also reviewed the whole conversation and in my finding Mr Dillon-Redmile and Mr Frost are telling the claimant they have no intention of dismissing him and if they did intend to

do this, could have dismissed him for gross misconduct in October 2023 and the claimant's distress about the final written warning was affecting his work. The claimant became upset mid-way through the conversation and asked for it to stop and said that he was fine. Mr Frost and Mr Dillon-Redmile ignore this request and continue the conversation.

236. Turning to s26 EqA, I accept that while the claimant initiated the conversation, he became upset enough for Mr Dillon-Redmile to comment that 'you are getting upset'. It became unwanted conduct.

237. Based on the content of the conversation, it is at least related to disability as much of the conversation was about the impact of the final written warning and according to the respondent, the claimant's perceived fear of losing his job, with reference to the claimant's disabilities, particularly his emotional dysregulation, it is related to disability.

238. I do not find that the respondent intended to cause the claimant distress as the conversation was requested by him and the respondent was trying to address his concerns. Turning to the effect, whilst the conversation may have distressed the claimant, taking into consideration the context, the conversation was requested, the parties met outside each day and the parties went away from the meet point to have the conversation and the fact the claimant was unwell at the time so very sensitive to criticism, objectively, I do not find this incident to have had the effect of violating the claimant's dignity or creating the proscribed environment. Whilst I do not diminish the impact on the claimant, the courts and tribunals must not encourage a culture of hypersensitivity.

239. Turning to s15. I do not find this to be unfavorable treatment arising from disability as the claimant requested the conversation, in the street to which the respondent agreed and the purpose was to try to address the claimant's concerns that he raised. The s15 EqA complaint is dismissed.

240. Did the respondent make unauthorized deductions from the claimant's pay. The claimant says the respondent wrongly made him take annual leave on days when there was rain, and that he should have been paid a guarantee payment (6.1 and 6.2).

241. It was common ground that the weather was bad and the landscapers could not work they were not paid. These days were called 'rained off days'. I found that the decision about whether it was a 'rained off' day was taken by management and not the landscapers and this was supported by Mr Harris' evidence, who was himself a manager at the respondent.

242. The claimant's contract of employment provides that his working hours are 40-48. The contract goes on to state that the respondent 'may vary the pattern (my emphasis) of your working hours if required on a temporary or permanent basis should the needs of the post require this'. The contract goes on to say the claimant may be entitled to guarantee pay.

243. Given the minimum guaranteed hours of 40 in his contract of employment, in my finding, the claimant is either entitled to full pay on rained off days or guarantee pay as he was ready and able to work and that work was

not provided. The respondent stated guarantee pay did not apply to 'rained off' days though did not explain why. In my finding, it does. This is because s28 of the ERA states that if an employee would normally be required to work in accordance with his contract of employment and is not provided with work by his employer by reason of a diminution in the requirements of the employer's business for work or any other occurrence affecting the normal working of the employer's business in relation to work of the kind which the employee is employed to do he is entitled to be paid by his employer an amount in respect of that day.

244. Rained off days are 'any other occurrence affecting the normal working of the employer's business in relation to work of the kind which the employee is employed to do' so covered by the statute. This complaint is upheld. The respondent did not keep a record of rained off days (unless landscapers offset the lack of payment with holiday pay). I have concluded from Mr Harris' evidence that there were around 1-2 rained off days in good weather and that on a bad month, there were up to 4 rained off days. This will be used as the basis for assessing compensation at the remedy hearing.

245. Did the respondent refuse to permit the claimant to exercise his right to a minimum period of annual leave under the Working Time Regulations 1988 (WTR) by requiring the claimant to book a days annual leave in order to receive any pay on days when they were unable to work due to the rain (5.1).

246. Following from my finding above, the respondent did provide landscapers with the option of claiming a days annual leave when they were rained off. As set out above, the claimant should have been paid a guarantee payment as provided for in his contract of employment. The claimant utilized this option on a number of occasions, sometimes already having attended the workplace only to learn he was rained off. The respondent failed to keep a record of rained off days except where landscapers claimed holiday to compensate for not being paid. The respondent also allowed landscapers to top up their pay with holiday pay and Mr Dillon-Redmile's position was that is okay provided the landscapers were paid the minimum 28 days leave.

247. I have concluded that the respondent's way of managing holiday pay was contrary to the WTR as it's employees, including the claimant, were not able to exercise their right to the statutory minimum of 28 days leave and that the respondent is incorrect when claiming it complied by paying 28 days pay. The entitlement is to paid leave and not holiday pay as a top up. However, I accept that the claimant was paid for holiday (that he did not take) and that there was some element of choice about this which will be considered when assessing compensation at the remedy hearing.

Remedy hearing

248. Compensation for the complaints that succeed will be determined at the forthcoming remedy hearing at Cambridge Employment Tribunal on 17 July 2026. Case management orders about remedy have already been provided to the parties.

Approved by:

Employment Judge E Davey

22 June 2026

JUDGMENT SENT TO THE PARTIES ON

22 June 2026

FOR THE TRIBUNAL OFFICE

