EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No. 8002401/2025

Held in Glasgow on 11, 12 & 14 May 2026

Employment Judge Campbell
Members Ms D McDougall
Mr S Singh

Mr D Murphy	**Claimant** **In Person**
City Facilities Management Limited	**Respondent** **Represented by** **Ms E Moncur,** **Solicitor**

JUDGMENT OF THE TRIBUNAL

The unanimous judgment of the tribunal is as follows:

1. The complaints of indirect discrimination and failure to make reasonable adjustments under the Equality Act 2010 are unsuccessful, and dismissed;
2. The complaint of breach of statutory provisions for dealing with employee contract change requests under the Employment Rights Act 1996 is successful; and
3. The claimant is awarded the sum of £2,038 being equivalent to four weeks' pay, which the respondent is ordered to pay to him.

WRITTEN REASONS

INTRODUCTION

1. The claimant made a number of complaints arising out of his employment with the respondent. He represented himself. The respondent was represented by Ms Moncur.

2. The hearing took place over three days in Glasgow. The claimant gave evidence and did not call further witnesses. The respondent called the following witnesses in this order:
    a. Ms Charlene McGowan, HR Business Partner, who supported the original decision maker, Emma McCrory; and
    b. Ms Roseanne Parkinson, Head of People Services, who supported the appeal chair, Mark McPeake.

3. Following evidence, each party provided closing submissions in writing which they supplemented orally. Those were noted and considered, albeit not reproduced in detail. The parties are thanked for the assistance this provided in reaching this judgment.

4. A joint hearing bundle was prepared, and where necessary pages within it are referred to below by the use of numbers in square brackets. A list of issues had been agreed. This is reproduced immediately below.

LEGAL ISSUES

It had been agreed that the issues in the claim were as follows:

Indirect Discrimination, Section 19 EqA 2010

Did the imposition of a requirement for employees to attend the office for 80% of their work week (i.e. 4 out of 5 working days per week) amount to a provision, criterion or practice (PCP)?

1.1 If so, did this PCP also apply to persons who did not share the claimant's disability?

1.2 If so, did the PCP put, or would put, those others at a particular disadvantage compared to others?

1.3 If so, was the claimant put to that disadvantage?

1.4 The disadvantage relied upon by the claimant is that his condition causes him pain and mobility issues and that he needs certain arrangements in place to help him manage the effects of the condition, which can be accommodated with a greater proportion of home working.

1.5 If so, can the respondent show that the PCP is a proportionate means of achieving a legitimate aim?

Failure to make Reasonable Adjustments, Section 20/21 EqA 2010

The respondent accepts that it applied a provision, criterion or practice (‘PCP’) of requiring employees to attend the office for 80% of their work week (i.e. 4 out of 5 working days per week):

1.6 Did the operation of the PCP put the claimant at a substantial disadvantage in relation to persons who are not disabled?

The disadvantage relied upon by the claimant is that his condition causes him pain and mobility issues and that he needs certain arrangements in place to help him manage the effects of the condition, which can be accommodated with a greater proportion of home working.

1.7 If so, did the respondent know or ought to have known that the claimant was put to such a disadvantage?

1.8 If so, did the respondent take such steps as were reasonable to alleviate that disadvantage by implementing adjustments?

The claimant says that a reasonable adjustment would be the continuation of the practice which existed before 30 June 2025, whereby the claimant would only need to work in the office two days per week. This may have resulted in him reducing his working time from five days per week to four, or working the same number of hours (or a majority of them) in a compressed arrangement over four days.

Flexible Working, Section 80H ERA 1996

1. Did the respondent fail in relation to the application to comply with or act in accordance with section 80G(1) of the ERA 1996? Specifically, did the respondent:

1.1. Deal with the application in a reasonable manner?

1.2. Notify the claimant of the decision within the decision period?

1.3. Refuse the application because it considered that of one or more of the statutory grounds applied?

2. Was the decision by the respondent to reject the claimant's application based upon incorrect facts?

FINDINGS OF FACT

The following facts were established on the balance of probability based on the evidence the parties led. Only facts necessary to determine the issues are recorded.

Background

1. The respondent is a company which provides facilities management services to commercial clients. Its headquarters are in the Gorbals area of Glasgow where approximately 400 employees are based. The claimant was employed as a Senior Purchase Ledger Clerk within a finance team. He worked for 37.5 hours per week over five days, Monday to Friday and had supervision responsibilities for four others in the team. His employment with the respondent began on 1 April 2019. He resigned with effect from the end of February 2026.

2. The claimant has the conditions rheumatoid arthritis and ankylosing spondylitis. He relied on them together as amounting to a disability within section 6 of the Equality Act 2010 (EqA). The respondent accepted that he was disabled in this way throughout his employment. The conditions reduced his mobility, especially at the beginning of each day and he would perform light exercises such as swimming or stretching to alleviate the issue. His range of movement around the neck and back was restricted. He has had one hip replaced and is awaiting an operation to replace the other. He could not sit for extended periods without experiencing stiffness and pain, and would require to stand up or move around at regular intervals to counter this. Again, stretching and mobility exercises helped. If these measures could not be taken, stiffness, fatigue and pain would increase.

3. In terms of normal day to day activities, travelling for longer periods by public transport became difficult although shorter journeys were more manageable. At work, since his role tended to be desk-based, he would need regular short breaks from his workstation as described above.

Shift to increased office working

4. Primarily in response to the Covid-19 pandemic, the respondent had allowed office-based employees to work a proportion of their time from home. Different departments each adopted their own approach. For employees in the claimant's team, up to three days working from home were permitted. Pre-Covid all employees were expected to be fully office-based.

5. In early 2025 the policy was reviewed by the respondent's senior management team. They considered that the business was not operating as optimally as it should, or had been in the past. They believed that team cohesion was suffering through a lack of interaction in person, that more junior employees were losing out on the opportunity to observe and learn from senior colleagues, and that in turn employees with management responsibility did not have adequate oversight of those in their charge. The respondent had a number of large nationwide clients who provide food to the public and had a practice of allowing representatives of some of them to base themselves in its offices. This was partly aimed at improving client interaction. At least one of those clients had commented on a lack of presence from the respondent's employees in the office. The respondent had customarily paid an annual performance bonus to staff, but the criteria for doing so in early 2025 had not been met and no bonus was paid.

6. A plan was formed to bring employees back into the office four days out of five per week. This was announced to staff around early May 2025 by way of a detailed briefing. It was to come into effect on 30 June 2025.

7. The respondent anticipated that a significant proportion of those affected would apply to change their working pattern and this is what transpired. 102 employees, a quarter of the head office population, requested a change. The respondent set up a dedicated team of four Human Resources individuals to deal with the requests.

8. The respondent had in place a policy and procedure for employees to follow when seeking a change to their working pattern or related terms [185-191].

   Flexible working request and initial consideration

9. The claimant made a request to change his working pattern by filling in the respondent's template on 21 May 2025 [74-75]. He described in some detail the medical issues he had experienced which had affected his spine and hips for some ten years. He described the surgery he had undertaken. He narrated the circumstances which caused him pain and discomfort and the steps he took to alleviate it. He requested a hybrid working arrangement of four days per week, two in the office and two at home. This entailed dropping a working

day and his weekly hours reducing to 30. He wished the arrangement to begin on 1 July 2025.

10. The claimant's manager, Emma McCrory, invited him to meet with her on 29 May 2025 to discuss his request. As well as being his manager, Ms McCrory was his cousin and had personal knowledge of him pre-dating his date of joining the respondent. Charlene McGowan, HR Business Partner also attended and took notes which were converted into a typed minute [77-79]. The claimant was sent a copy on or around 2 June 2025 and proposed some minor changes the following day which were accepted. Ms McGowan confirmed this and said she would send a copy to the claimant. This however did not happen until 16 July 2025. At the meeting the claimant discussed his conditions, their effect on him and his working routines, and why he wished to work fewer days from the office than the business was proposing. He mentioned that a 'secondary reason' for seeking the change was that his children needed to be collected from school and that he would wish to do so on Thursdays. He therefore wished this to be his non-working day.

11. Ms McCrory asked the claimant if he would be able to discuss alternatives to the arrangement he had requested. He said that he would be unable to work for four days in the office. He added that he would be prepared not to do the 'supervisor job' – i.e. to step down to a Purchase Ledger Clerk. It was explained that this would entail a reduction in pay.

12. It was agreed that a referral would be made to the respondent's external occupational health (OH) provider so that a consultant could meet the claimant and make any recommendations. The claimant pressed Ms McGowan for an update on 19 June 2025, not having heard further. She explained that a number of referrals were being made at that time, and suggested that he may wish to visit his GP and ask for a fit note recommending that he continue working under the previous arrangement.

13. The consultation took place on 30 June 2025 with an occupational physician. The claimant provided information about his conditions, his circumstances and his daily routines. The physician prepared a report on 30 June 2025 which was shared with the claimant and, with his consent, the respondent [94-96].

14. The physician answered a number of specific questions which the respondent had asked. He said that the claimant was fit for his substantive role and there was no medical reason to preclude him from attending the office. He reported that the claimant had raised no concerns about his workstation, but that this could be assessed in the future if the claimant did experience difficulties. He

also recommended that a referral could be made to the government Access to Work scheme should the claimant's conditions impact him more than they did at the time of the consultation. The consultant expressed the view that the claimant was disabled under the terms of EqA but that no phased return was required.

15. When asked whether there was a medical reason why the claimant could not spend 80% of his working time in the office, and whether any adjustments could be made to assist, the consultant referred back to an answer he had given to a previous question, which was to say that no issues or concerns had been identified. No additional advice or recommendations were therefore offered.

16. Ms McCrory and Ms McGowan discussed the OH report and the former took the decision to refuse his flexible working request based on its contents. This was confirmed by letter dated 11 July 2025 [99-100].

17. The letter stated that 'All options have been reviewed fully with yourself with follow up conversations taking place.' This did not reflect the process which had been followed. Some options had been considered. There had been no follow-up conversations after the initial meeting. Ms McCrory said that the request was being refused because it would 'lead to a detrimental impact on quality and our ability to meet our customer needs or demands.' Further detail to support those reasons was provided. Ms McCrory referred to the respondent's values, a perceived need to increase team collaboration, an expected improvement in performance by more in-person working, better delivery of coaching and feedback, and enhanced interpersonal relationship and sense of belonging. She said that by not being fully part of that the claimant's requested arrangement would have an adverse effect on his team and be a barrier to communication. She provided specific further thoughts on how his role as a manager in particular would be impaired by being less present in the office than those in his team. She said that the business would be prepared to review the situation after 12 months of its operation. A right of appeal against her decision was offered.

Appeal

18. In the course of preparing his appeal grounds the claimant emailed Ms McCrory and Ms McGowan on 15 July 2025, seeking further information. Ms McGowan replied to him the following day to provide details and advice on how to set out his grounds of appeal [102-103]. He submitted them in detail and at some length on 18 July 2025 [109-117]. On 22 July 2025 he intimated that he planned to commence an employment tribunal claim.

19. Mark McPeake, Finance Director was identified to consider the claimant's appeal. A meeting was arranged for 29 July 2025. It was minuted by Roseann Parkinson, Head of People Services. The minutes [124-131] are accepted as a suitably accurate summary of the discussion. The meeting lasted over an hour. The claimant confirmed he had covered all of the points he wished to raise.

20. After the meeting Mr McPeake spoke to Ms McCrory and Ms McGowan about some aspects of the original process and their responses were noted. He then telephoned the claimant on 31 July 2025 to discuss some proposed options. He followed this up with an email setting these out in detail [137] and the claimant replied [135-136]. The outcome was that the claimant agreed to move to working 4 days per week, with each Thursday off and a further day working from home, hence three days per week in the office. For each fourth week he would work four days per week in the office, which would begin after three months, during which the situation would be monitored and further discussed.

21. Mr McPeake issued a comprehensive letter to the claimant on 26 August 2025, providing the details of his decision in the appeal and the agreed changes to the claimant's working pattern [138-144]. He accepted some, but not all, of the claimant's criticisms of the original process for considering his request. For example, he accepted that the claimant could have been given more detail in support of its rejection, but not that the decision itself was flawed. Similarly, he recognised that it could have been made clearer who made the decision to refuse his request. A number of other concerns he raised about the process were addressed and clarified.

22. The claimant began working to the agreed new working pattern on 8 September 2025. He did not view it as a longer-term solution and began seeking job opportunities outside of the respondent. He gave four weeks' notice around early February 2026 and left the respondent's employment at the end of that month.

23. During the above telephone call Mr McPeake had offered the claimant the use of an office to exercise or stretch, and provided a key. The claimant made use of it but found at times as more people returned to the building that it could be occupied by others. He did not go back to report this to Mr McPeake. By this point he was focussed on leaving his role.

24. In his evidence the claimant said that he was content with the way Mr McPeake had handled his appeal, and had the original request been dealt with in that way he would have accepted it as fair.

Discussion and decision

Section 19 EqA – indirect discrimination

25. The relevant part of section 19 of EqA reads as follows:

> “***19 Indirect discrimination***
> *(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.*
>
> *(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—*
>
> > *(a) A applies, or would apply, it to persons with whom B does not share the characteristic,*
> >
> > *(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,*
> >
> > *(c) it puts, or would put, B at that disadvantage, and*
> >
> > *(d) A cannot show it to be a proportionate means of achieving a legitimate aim.*”

26. Judicially, the term ‘provision, criterion or practice' has been interpreted widely. For example, it can refer to something less formal than a written policy such as a general expectation, if clear and sufficiently consistently applied. In certain cases a one-off decision can qualify as a ‘provision’ even if not a ‘practice’, which implies a degree of repeated application. Some individual decisions may not be provisions, for example when taken quicky, in isolation or without ongoing consequences.

27. For the claimant to go on to show indirect discrimination had occurred, he needed to prove that the PCP:

    a. Was or would be applied to employees who shared his protected characteristic and those who did not;
    b. Put or would put persons sharing his protected characteristic at a particular disadvantage compared to others not sharing it – i.e. a ‘group’ disadvantage; and

c. Put or would put the claimant himself to that disadvantage – i.e. a ‘personal’ or ‘individual’ disadvantage.

28. What is a ‘disadvantage’ is not defined in EqA but has been held to be similar to a detriment – ***Williams v Trustees of Swansea University Pension and Assurance Scheme [2018] UKSC 65***. Therefore, it is largely objectively tested but the individual circumstances of the employee should be taken into account so far as relevant, and an unjustified sense of grievance will not qualify.

29. A group disadvantage need not affect everyone with the claimant’s protected characteristic. It should ‘disproportionately’ affect that group.

30. The respondent accepted that it applied a PCP to the claimant which it also applied, or would apply to both others sharing his disability and people who did not. The PCP was applied to some 400 employees based at head office. This was the requirement for full time employees to spend four out of five working days per week in the office.

31. The next part of the test is whether the respondent ‘*puts, or would put, persons with whom [the claimant] shares the characteristic at a particular disadvantage when compared with persons with whom [the claimant] does not share it.*’

32. The respondent relied on section 6(3) of EqA which makes clear that the word ‘characteristic’ in the above test, whenever a disability is relied on, should mean the same disability as the claimant and not any other condition, or disability generally. It argued that the claimant had not identified specific individuals who shared his disability, as the two former colleagues he nominated had other conditions, namely migraines and asthma. That is correct. The claimant therefore had to show that other employees who shared his disability – a combination of the conditions rheumatoid arthritis and ankylosing spondylitis – were or would be put at a disadvantage. If he did not know of such individuals by name, which was likely, hypothetical comparators would be considered.

33. The respondent did not accept that the claimant had managed to prove a ‘group disadvantage’ in this way. It said that he had not shown that others with the same disability as him would have experienced pain, fatigue or any other adverse effect by working for a larger proportion of their time in the office rather than at home, specifically 80% rather than 40% as before.

34. The tribunal found that the claimant had provided enough evidence to establish group disadvantage. Although the focus of his evidence was on himself, the characteristics of the two conditions he relied on as a disability were sufficiently clear and universal that the tribunal was satisfied that others affected by them would also have been at a disadvantage by the increased amount of office working. As noted above, section 19 does not require that every person sharing the disadvantage would be affected in the same way, or even at all. The impact must merely be disproportionate.

35. The claimant next had to prove that the group disadvantage he had identified was one which he suffered himself. Given the above findings the tribunal accepted that he had done. The respondent did not accept the claimant was put to a specific disadvantage. It argued that the OH report had said that there was ‘no definitive medical reason to preclude [him] from attending the office’ and did not identify any workplace adjustments. It said that he had a full opportunity to discuss these matters with the OH consultant and it should be assumed he had done so. The claimant’s counter-argument was that the consultant had ‘shut down’ the discussion about his functionality and coping strategies and focussed on whether he could attend the office in the narrow sense of travelling to and from it and spending some time there performing his duties, which he accepted he could do and was already doing. The claimant said that this overlooked the other adjustments he needed in order to complete a typical working day, whether working at home or in the office, and the cumulative fatigue and pain which would be caused by more office working than before.

36. The claimant’s perspective is the one which the tribunal accepted as most appropriate. Attending the office was only part of the picture. Working there for a full day, without the full range of coping mechanisms he could rely on when at home, was more tiring and caused pain. Doing so more days per week compounded those effects. Provisionally therefore, the claimant had been indirectly discriminated against.

37. The tribunal therefore considered whether the respondent’s PCP was justified under section 19(2)(d).

38. The respondent argued that it had the legitimate aim of ‘ensur[ing] effective and timely collaboration and team management to ensure that work deadlines and customer demands are met.’

39. The tribunal accepted that such an aim was established on the evidence and that it was a legitimate one. There was not merely the perception of team cohesion and customer service suffering, but also evidence. Atypically, the

respondent had representatives of some of its larger clients based in its own office. Their perception was important to the respondent. They indicated that there was less of a presence and that they believed face-to-face collaboration was hampered. Performance across the business had dropped, signified by the non-payment of a company-wide annual bonus for the first time in a number of years. It was noted that newer members of staff were losing out on learning opportunities by not being able to observe, or be guided by, more experienced colleagues. When a small number of teams trialled the new arrangements there was positive feedback from their members and also clients. There was a 'real business need' (***Bilka-Kaufhaus GmbH v Karin Weber von Hartz***) to encourage employees to spend more time working together in person.

40. The claimant suggested in submissions that the respondent had not done enough to demonstrate it had a legitimate aim. He said there was no substantial evidence that more office time brought about the benefits sought. He expected to see some empirical data in relation to customer satisfaction, increased output, better call handling times or performance against other key indicators. Such evidence may have helped the respondent's case but that degree of proof was not required. The tribunal operates on the balance of probabilities. The respondent had led enough evidence such that it was more probable than not that it held and pursued the aim that it claimed, and that it was legitimate.

41. The tribunal therefore turned to whether the respondent's approach, and specifically the PCP applied, was a proportionate way of achieving that aim. The respondent need not show that there was no other way to achieve its aim, merely that the method chosen – the PCP – was 'reasonably necessary' - ***Barry v Midland Bank [1999] ICR 859 (HL).*** This does however imply that there was not a less discriminatory way to achieve the aim.

42. The respondent is required to justify the PCP itself rather than the specific effect or disadvantage to the claimant. Assessing whether it has done so requires that the effects of the PCP on the identified group sharing the protected characteristic in question are relevant as well as those for the claimant personally. A balancing exercise is necessary – it is recognised that the claimant is, and others would be, worse off by the application of the PCP but the question is whether the needs of the business make it reasonable for that to be so.

43. The tribunal considered both parties' submissions on this point, as well as the relevant evidence. It reached the view that, although this question was finely

balanced (as it often is), the respondent had discharged the burden of proof on this issue. In particular, the tribunal noted that:

a. The PCP involved a shift from two to four days out of five in the office. This was enough to be material but it was not excessive and still afforded one day of homeworking;
b. The homeworking day could be flexible, allowing office days to be arranged into blocks which were most suited to the individual;
c. The respondent still operated core hours each day, meaning that individuals could start earlier in order to finish sooner, or begin later, or take longer or more frequent breaks during the day; and
d. There was availability of private spaces to take breaks for stretching or other alleviative exercises.

44. In addition to the above factors, which applied to the claimant's group, he was given the option, and agreed, to reduce his working days to four per week, meaning that he would only attend the office on three days, one more than previously. He could if he wished ensure that he did not have to work two office days in a row.

45. The consequence of all of these matters for the claimant was that the impact of the change was minimised – if not completely then significantly and as far as was reasonably possible whilst the legitimate aim was still being pursued. In that sense the respondent had struck an acceptable balance between furthering its legitimate business objectives and mitigating the discriminatory effects.

46. The claim of indirect discrimination was therefore not successful.

Sections 20/21 EqA - failure to make reasonable adjustments

47. This complaint was approached as follows, applying the principles of ***Royal Bank of Scotland v Ashton [2011] ICR 632:***
    a. Was the alleged PCP genuinely a provision, criterion or practice?
    b. If so, did it put the claimant at a substantial disadvantage in comparison with those who are not disabled? Who are the comparators and what was that disadvantage?
    c. If so, what adjustment(s) if any could have been made and when? How would the adjustment been likely to have helped? This will involve consideration of when the respondent had (or ought to have had) knowledge of both the disability and the substantial disadvantage caused - ***Newham Sixth Form College v Sanders [2014] EWCA Civ 734***.

48. As with complaints under section 19, what amounts to a PCP should be 'construed broadly, having regard to the statute's purpose of eliminating discrimination against those who suffer disadvantage from a disability. It includes formal and informal practices, policies and arrangements and may in certain cases include one-off decisions.' - ***Lamb v The Business Academy Bexley UKEAT/0226/15***.

49. The provision, criterion or practice relied upon by the claimant was the same as for his section 19 complaint, i.e. a requirement to work from the office four out of five days per week.

50. Similarly, the alleged disadvantage to which he was put was the same. He could not work four days each week in the office, with both what that entailed while he was there and also the travelling he needed to undertake, without pain, fatigue and mobility issues increasing to problematic levels. That was a substantial disadvantage which was not experienced by other employees without the conditions he had.

51. The next question to consider was knowledge – did the respondent have (or ought it to have had) knowledge of both the disability and the substantial disadvantage caused by the PCP? The relevant time to apply the question would have been when it was confirmed that the PCP would be introduced – i.e. April 2025. The claimant's manager at the time was Ms McCrory, who had detailed knowledge of his condition and its effects. She was also the claimant's cousin and her closeness to him went beyond merely that of a manager and colleague. She had sufficient knowledge of both necessary elements, and by extension therefor so did the respondent itself. Were there any doubt about this, the requisite knowledge was certainly gained on 21 May 2025 when the claimant submitted his flexible working request. The detail he provided on the form was clearly adequate to convey the necessary information. Finally, the information was discussed at the meeting on 29 May 2025.

52. The respondent did not accept that it had knowledge of the substantial disadvantage caused to the claimant. It cited the OH report which said that there was no medical reason to prevent the claimant attending the office. As discussed above, this was a narrow interpretation of the claimant's circumstances. The respondent, with its existing knowledge, should have recognised it as such (and to a degree did, when Ms McGowan said in evidence that she was surprised the report did not recommend any adjustments at all). At the very least the report should have prompted further discussion with the claimant in order to resolve the differences between his

perceived needs, clearly expressed by him, and those the consultant was prepared to recognise. The respondent's answer to that appeared to be that he could have asked for advance sight of the report and withdrawn consent for it to be shared with the respondent. This was insufficient to allow it to deny knowledge, whether actual or constructive.

53. The tribunal next considered whether the respondent ought to have made any reasonable adjustments. More specifically, were there reasonable adjustments beyond those which it did make or offer. Those were:

    a. Allowing the claimant to move to working four days per week;
    b. Flexibility in relation to both the choice of non-working day and home working day each week;
    c. Flexibility around start and finish times;
    d. Additional micro-breaks;
    e. The use of a private office to carry out exercises or stretching;
    f. Specialist equipment, such as a chair or desk, if required; and
    g. Assistance with claiming travel costs under the Access to Work scheme.

54. The claimant argued that the reasonable adjustment not made was to permit him to continue working only two days per week in the office. This could be by way of him continuing to work five days in total, or four.

55. He suggested in evidence that the adjustment of providing access to a private room within the office was welcome, but that in reality it became difficult to make use of because other people would often be working in the room when he sought access. However, he never raised this with anyone, and accepted in evidence that he should have done. Ms Parkinson confirmed in her evidence that a number of other colleagues use offices or meeting rooms for personal purposes, such as when experiencing migraines or for prayers. Often they simply located one of a number of bookable rooms and blocked it out for however long they needed. They had permission to do so. It was likely that a clearer solution could have been found for the claimant had he raised this. As far as was known by Mr McPeake, who sanctioned the option at the appeal stage, it was effective and sufficient.

56. As well as noting what adjustments had been made, the tribunal considered the following:
    a. That the respondent had a legitimate aim of encouraging employees to work together in the office more;
    b. That the claimant was part of a team;

c. That he was a more senior and experienced part of his team, and as such was expected to both manage and help develop his colleagues;
d. That others in his team would be attending the office four days per week; and
e. That colleagues the claimant's team worked alongside would be moving to the same pattern.

57. Whether an adjustment would be reasonable is to be objectively determined by the tribunal. In light of the adjustments which were made, or available, it was not objectively reasonable to allow the claimant to go back to working only two days per week in the office. It became unclear how working in the office was more difficult than working from home, especially since he was moving to a four-day working week and therefore gaining a day of rest from his duties. Save the travelling element, the claimant did not establish what the difference was between his way of working at home and how he performed the role in the office – with adjustments in place – in the context of being put at the disadvantage he relied on.

58. When balanced against the reasons for encouraging employees to spend more time working together in person, it would not have been reasonable to give the claimant the specific adjustment he sought. The reasons the respondent successfully relied on in justifying the indirectly discriminatory effect of its practice under section 19 EqA apply similarly in this context.

Flexible working request/contract change request – section 80H(1) ERA

59. The relevant provisions dealing with how workers should make a flexible working request and how employers should deal with them, are found in sections 80F to 80I of ERA.

60. It was not in issue that the claimant was entitled to make a request, or did so validly by way of his request letter.

61. Section 80G focusses on what an employer must do when a request is made. Section 80H provides the right to make a claim to an employment tribunal on limited grounds if the employee is dissatisfied. The claimant alleged that the respondent had not done the following:
    a. Dealt with the request in a reasonable manner, including in particular by relying on incorrect facts – section 80H(1)(a);
    b. Notified him of the decision in relation to his appeal within the 'decision period' – s80H(1)(aa); and
    c. Reasonably considered at least one of the permitted statutory grounds applied – s80H(1)(c).

62. This part of ERA gives little further guidance as to whether and how an employer has fulfilled these requirements. ACAS published a Code of Practice on requests for flexible working on 6 April 2024 which is advisory but not mandatory for employers to follow.

63. Through a body of case law it has been established that an employment tribunal can only scrutinise the employer's process so far. It may assess whether the statutory process was properly followed in good faith and whether the evidence relied on to deny a request was adequate, but it cannot second guess the employer's belief about the effect of granting the request on the business. As in other areas of employment law, those who own and run a business are deemed best placed to make operational and economic decisions affecting it.

64. Neither the statutory rules nor the ACAS Code requires an employer to find an alternative which the employee considers suitable to them come what may, only (in the case of the Code) to make reasonable attempts to identify modifications or alternatives and offer them to the individual.

65. If a right of appeal is offered against refusal of a decision initially, the employer is to be judged on the process as a whole. By the same token, any appeal process must be undertaken within the prescribed two-month period unless an extension is agreed. This need not be in writing – the ACAS Code recommends that it should be but falls short of saying that it must – but should involve explicit consent as to the terms of the extension if not.

66. The claimant voiced various concerns about the reasonableness of the process followed and the information relied upon by the respondent. In particular he raised that:
    a. Notes from the meeting on 29 May 2025 were not returned to him with his alterations incorporated until 16 July 2025, by which time his request had been refused;
    b. There was apparent confusion over how the request was being treated – was it a request for reasonable adjustments in line with sections 20 and 21 of EqA or a contractual change (flexible working) request under section 80F ERA;
    c. There was an unexplained delay in referring the claimant to occupational health;
    d. Ms McGowan appeared to disclose prematurely Ms McCrory's decision to refuse the claimant's request;
    e. The initial rejection letter of 12 July 2025 stated that 'all options' had been reviewed with the claimant, when this was not the case.

67. The tribunal's conclusions in relation to those criticisms are immediately below, followed by its analysis of the process as a whole.

68. The late return of the initial meeting notes was a very minor procedural lapse. It caused him no prejudice. It clearly made no difference to the decision Ms McCrory made. The claimant's proposed changes were accepted at the time he submitted them, as confirmed by Ms McGowan. The version the claimant had approved was the version relied on when Ms McCrory took her decision. In any event, the claimant had the notes by the time of his appeal.

69. Ms McGowan explained in evidence whether and in what way the claimant's flexible working request had been treated as a request for reasonable adjustments also. She said that, during the processing of the numerous requests for flexible working which were made by colleagues, the approach taken was to scan each for signs that the applicant was suggesting they were a disabled person and were asking for changes relating to such a disability. In each of those cases, a referral was made to occupational health for a report and, if identified, any recommendations. Those would be reviewed with a view to implementing them where practicable. If the consultant was of the view that the individual was not disabled or (as in the claimant's case) was disabled but did not need further adjustments, the application would be treated merely as one for a contract change under section 80F of ERA. There is absolutely nothing wrong with that approach in general. The tribunal did not agree with the claimant that Ms McGowan had contradicted herself in describing this process. Nor, again, could it see any prejudice to the claimant in it being adopted. The claimant had separate criticisms of the OH report itself and how it was relied upon, but those are distinct, and were recognised by the tribunal as partly valid. However, they relate more to the complaints made under the EqA, dealt with above.

70. The tribunal had more sympathy with the claimant in viewing the delay between submitting his request on 21 May 2025 and the OH referral being made on 20 June 2025. As such, half of the statutory decision period for consideration of the request had passed without any action seemingly being taken. The respondent's answer to this was that it had to deal with a large number of flexible working requests made at the same time, a proportion of which also prompted OH referrals. Technically speaking the system used to liaise with OH involved a portal and uploading documents in a particular format. There was no organised queueing system based on the date when the employee's original request was made – referrals were uploaded in random order it seemed. The knock-on effect of this was that the claimant attended a consultation on 20 June, a report was issued on 30 June and the

decision on his request was reached on 11 July 2025. This left little time for an appeal, without an extension to the statutory period being agreed at least. No such extension was discussed or agreed. The appeal outcome was delivered on 26 August 2025. The claimant had no issue with Mr McPeake's recommendations, save that they could have been made earlier. The tribunal's view on the duration of the process is discussed below. Other than that, the process was not unreasonable. By offering the option of an appeal, the respondent is entitled to the benefit of any improvements or remedying of earlier procedural defects that it brought about. Mr McPeake reviewed the circumstances afresh and issued a detailed decision with further adjustments outlined. The claimant confirmed in evidence that had this been the outcome of his request initially rather than by appeal, he would have been satisfied.

71. The claimant took Ms McGowan's email of 11 July 2025 as disclosing the outcome to his application before that was officially confirmed. The wording in question read 'I was going to type up your letter today, as I received the [OH] report this week and this will allow you to appeal against the decision.' The OH report was received on 30 June 2025. It was explained by Ms McGowan in evidence, and accepted by the tribunal, that she was referring to an option to challenge the original content of the OH report and not any decision by Ms McCrory to refuse his flexible working request. This is supported by her text immediately following: 'I am unsure of how the appeal process works if it is against the GP report but [will] get some details for you on this.' She would not have been 'unsure' of the respondent's own appeal process within its flexible working policy, but was unfamiliar with how the OH provider dealt with challenges to its own consultants' reports.

72. The claimant was correct, and Ms McGowan conceded in evidence, that the wording in Ms McCrory's letter of 11 July 2025 was wrong to say 'All options have been reviewed fully with yourself with follow up conversations taking place.' This was another error effectively cured by the appeal process. By its conclusion, all realistic options had been reviewed and the claimant had further engaged in that process.

73. Save, therefore, in respect of the duration of the process, the respondent did deal with the claimant's request 'in a reasonable manner'. He was consulted. Within the relatively narrow scope of the tribunal's powers to evaluate the respondent's reasoning, the grounds for refusing the request were permissible on the evidence and the tribunal saw no lack of genuineness in the belief of those who took decisions. The grounds of refusal were provided. The decision was not based on incorrect facts in any material way.

74. As regards the length of the process, the respondent conceded that the statutory period had been exceeded and that no extension had been agreed. In this respect it did not comply with its obligations under section 80G.

CONCLUSIONS

75. The complaints of indirect discrimination and failure to make reasonable adjustments were unsuccessful. The respondent did not however fully comply with the requirements of section 80G of ERA. The financial remedy for such a failure can be up to eight weeks' pay. The tribunal considers that an award of four weeks' pay is appropriate. This equates to £2,038. The respondent's breach was not minor but nor was it grossly excessive in terms of delay, and there was little prejudice to the claimant.

76. A tribunal also has the power to order the employer to reconsider its decision to refuse the individual's request. Given the reasoning above it is not appropriate to exercise that power. In short, a permissible outcome was reached, albeit later than would have been ideal. No purpose would be served in ordering the respondent to repeat the process.

Date sent to Parties **16 June 2026**