EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8002234/2025

Final Hearing Held in Glasgow on 11, 12, 13 and 14 May 2026

Employment Judge M Robison

AB	**Claimant** **In person**
Sky Subscribers Services Limited	**Respondent** **Represented by** **Ms S Judge** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that:

1. The claimant was unfavourably treated because of something arising in consequence of her disability in breach of section 15 of the Equality Act 2010.

2. The claimant was indirectly discriminated against in breach of section 19 of the Equality Act 2010.

3. The claimant's claim that there has been a failure to make reasonable adjustments in contravention of section 21 of the Equality Act 2010 is not well-founded and is dismissed.

4. The respondent shall pay to the claimant the following sums:

   a. The sum of £1,421.08 for financial losses; and

   b. The sum of £5,000 for injury to feelings.

5. The identity of the claimant should not be disclosed to the public when this judgment is entered on the Register or otherwise forms part of the public record in terms of Rule 49 (2)(b) of the Employment Tribunals Procedure Rules 2024. In any publication of this judgment the claimant will be designed as "AB".

6. In terms of Rule 49(4), either party or other person with a legitimate interest, is entitled to apply to the Tribunal in writing requesting that the order be revoked or discharged.

REASONS

Introduction

1. The claimant lodged a claim in the Employment Tribunal on 15 September 2025 claiming disability discrimination and unlawful deduction from wages. The respondent resists the claims. The claimant remains employed with the respondent.

2. A preliminary hearing took place on 17 December 2025 at which case management orders were issued. The claimant confirmed at that preliminary hearing that she did not intend to pursue the complaint of unauthorised deductions from wages. EJ Sangster set out the list of issues for determination at this final hearing, which are considered in turn, as appropriate, in deliberations set out below. Broadly speaking the claims are for indirect discrimination, discrimination arising from disability and failure to make reasonable adjustments.

3. Following receipt of medical information the respondent conceded that the claimant was disabled at the relevant time in terms of section 6 of the Equality Act 2010 in respect of anxiety, depression and chronic sinusitis; but not leukopenia, CSF leak and/or lipoma. The claimant was content to proceed on the basis of this concession and did not rely on the other conditions as disabilities for the purposes of this claim.

4. At the outset of the hearing, Ms Judge sought clarification that in regard to the claimant's claim for discrimination arising from disability the reference to the payment of a bonus was an error. The respondent has a bonus scheme and an incentives scheme. The bonus scheme does not apply to the claimant, but the incentives scheme does. The necessary adjustment was therefore made to the list of issues.

5. The Tribunal heard evidence from the claimant and from her colleague, Ms A Buchan. For the respondent, the Tribunal heard evidence from Ms Charlotte Clayman, who investigated the grievance; Ms Sam Beaver, who considered the first grievance appeal; and Ms Sarah Fraser who considered the second grievance appeal.

6. A joint file of productions was lodged. The claimant lodged a supplementary bundle on the first day of the final hearing. Throughout the hearing it became clear that there was a good deal of additional relevant documents which required to be lodged, and which were accepted as relevant productions.

Findings in Fact

7. On the basis of the evidence heard and the productions lodged, the Tribunal finds the following relevant facts admitted or proved.

The respondent – relevant policies

8. The respondent is part of the Sky Group which is a group of companies providing news and broadcasting, on-demand streaming, broadband and telephone services to customers in the UK and Europe.

9. The respondent's managing absence policy sets out guidance to managers on deciding when to take informal or formal action. Version 13 was in place from 6 February to 30 October 2025. This was replaced by version 14 which was in place until 6 November 2025. Version 15 applied from 6 November 2025 until 31 December 2025. This was replaced by the current version which is version 16.

10. Version 13 (with similar wording in subsequent versions) states as follows under "where informal action might be appropriate": "the employee has a disability, which is likely to be covered by the Equality Act, and this has been the reason for some/all of the absences you are reviewing. In this situation, you should ensure that you have a workplace adjustment agreement in place and manage absence in line with the expectations that have been set".

11. Under "further action following an absence warning being issued", it states: "we would normally arrange a further absence meeting when the employee has had 2 absences after their warning was issued, and it's still live on their record. Remember that if you've adjusted the absence trigger for starting formal action for an employee with a disability, you should also adjust the trigger for further action after a warning is issued".

12. The respondent's workplace adjustments procedure version 21 has been in place since 1 July 2025. Version 14 was in place when the claimant originally requested reasonable adjustments. That version does not state in terms that an employee does not have to be diagnosed with a condition that might be considered a disability before making adjustments, and indeed suggests that a referral may be made to occupational health to help identify the correct adjustments. Version 14 stated that what was agreed would be included in a workplace adjustment agreement which would be placed on the claimant's personnel file called a "workday record".

13. The respondent's CSG incentives scheme applies to the claimant. The scheme rules include the following:

    1. Contractual limitations: "(1) The incentive schemes in operation across CSG sales do not form part of the contract of employment. Operation of these schemes and payments made under them are entirely at the company's discretion. As such they will not be treated as part of base salary (2) these schemes shall not constitute any basis for legal proceedings".

5. Eligibility: “(1) permanent and temporary advisers, CELs and SMs must be actively employed and meet the conditions of the relevant incentive scheme to qualify for any incentive payment….”

9. Payments: “(1) incentives will be paid monthly and are paid based on the incentives smoothing process whereby payments will be measured and calculated each month with payments from a fixed three-month period feeding into a pool. The pot will then be used to make three equal payments over the following three-month period e.g. data from August - October will generate three equal payments which will be paid November - January…”

12. Absence: “Incentives cannot be earned whilst an advisor/CEL is absent except in the following circumstances: (1) annual leave – the advisor will receive a payment based on an hourly rate…which will be calculated based on the average incentive payment over the last 13 weeks for that advisor; (ii) maternity/paternity/adoption leave…; (iii) jury service/other public duties (where required by statute to attend) – the employee will receive a payment based on a daily rate calculated based on the average incentive…”

14. The respondent operates an annual bonus plan which does not apply to the claimant but applies to senior managers. That scheme rewards performance over the previous year. The scheme rules at paragraph 3.2 state that “employees on long term sick leave, maternity, paternity, parental, secondary care and adoption leave are eligible for bonus. Sky do not pro-rate for the first 12 months of absence from the business. Employees on other types of unpaid leave such as unauthorised absence, sabbaticals and career breaks will not be eligible during their period of absence”.

The claimant - background

15. The claimant commenced employment as a customer service adviser (CSA) on 7 November 2022. The claimant works in a division called “retentions”.

16. The claimant was issued with a contract of employment on 26 October 2022 which includes a clause on sickness absence which sets out company sick pay, stating that “for absences due to sickness or injury you will be entitled to receive company sick pay as follows: no payment for less than three months service, between three months and one year, 4 weeks at full pay, 6 weeks at full pay for over one year but less than two years’ service and for more than 2 years, 12 weeks at full pay”. It states that “company sick pay is discretionary and will not be paid if you fail to meet the notification requirements.”

17. The claimant works thirty hours per week, from 9.30 am to 5.30, Sunday to Wednesday. Normally she would work two days in the office, that is Tuesday and Wednesday, and two days at home, that is each Sunday and Monday. Currently she is working at home each day as a reasonable adjustment.

18. The claimant has suffered from anxiety and depression for the last fifteen years, for which she receives medication. One of the symptoms of her condition is alopecia. The respondent was aware of this from the outset of her employment.

19. In or around October 2023, the claimant had a seizure and was subsequently diagnosed with chronic sinusitis with swelling on the brain. The respondent was made aware of this around that time.

20. From May 2024, the claimant had a number of issues with her pay. These problems related to the fact that in the office move from Uddingston to Glasgow the wrong job title had been recorded for the claimant which meant that her pay was incorrect. However, in addition the wrong data had been input about tech vouchers valued at £1,000 which she had been advanced and was to repay on a monthly basis, resulting in large deductions being made incorrectly from her pay. The claimant's pay was wrong so often that it became a standing joke in the office. The claimant lodged a grievance and understood by the end of 2024 that the problems had been resolved.

Request for referral to occupational health

21. In or around February 2025, the claimant was experiencing particular facial pain and headaches which were exacerbated by the bright lights in the office. She also experienced a painful lump on her neck. During a standard catch up meeting with her manager Jordan Carr she explained that she was struggling to get to the office and struggling while at work. She advised that the symptoms of her sinusitis were particularly severe, her headaches were getting worse and her hair was falling out and that this was due to the stress. She asked to be referred to occupational health (OH). Jordan Carr said that she could not be referred to OH without a diagnosis.

22. The claimant recalls requesting a referral to occupational health on several occasions during February and March 2025. She recalls that she was offered a referral to "posturite" but she did not believe that a different chair was required or would deal with the concerns she had.

23. In or around the first week in March 2025, the claimant experienced a panic attack in the office. The claimant was concerned about taking an unplanned break because advisors such as the claimant were only permitted 8 minutes of unplanned break per day and it would take her three minutes to get out of the office and three minutes to get back (due to the stairs). The claimant's colleagues raised concerns about her welfare and her manager John Hay allowed the claimant to take a break from her work by inputting the appropriate code into her computer, overruling the directions of Jordan Carr.

24. The claimant's colleague, Angela Buchan, suggested she should get a referral to OH. The claimant advised that she had asked but been told by Jordan Carr she could not get a referral until she had a diagnosis.

25. In or around 27 March 2025 the claimant's pay was wrong again, the respondent confirming that a deduction of £666.67 was made instead of £66.67. The claimant was "worried sick" about this especially after she was advised by payroll that while normally they could make an out-of-cycle payment, they had been instructed to delay corrections until April 6 due to the tax year end, asking if she could wait until then for the refund. This shocked the claimant as her wage only just covered her mortgage and she advised that this would mean that her other direct debits would bounce and she would be "left with absolutely nothing".

26. On or around 23 April 2025, the claimant again asked Jordan Carr for a referral to OH. The lump on her neck was enlarging and she believed that was contributing to more severe headaches. She thought that if she could work from home an additional day this would help because she would not require to drive that day; also she managed better in the office on Sundays because they were quieter so the office lighting WAS not so bright. She was again advised that she would require to have a diagnosis before being referred to occupational health.

27. On 25 April 2025 the claimant attended a medical appointment with Aviva. She was referred for an appointment with a physiotherapist, who referred her to hospital for an urgent scan.

Grievance about canteen incident

28. On 28 April 2025 Jordan Carr arranged to meet with the claimant to discuss an incident in the canteen when it was alleged that the claimant had been rude to the catering staff. The claimant was very upset about this accusation because she did not know what she was referring to. This accusation contributed to her stress and anxiety which exacerbated her headaches and caused her to have panic attacks.

29. On 29 April 2025 the claimant contacted Jordan Carr to advise that she believed the matter had not been handled well and it ought to have been investigated first before she was accused. She advised that she intended to take it further. Jordan Carr arranged for her line manager, Kerrie McGurk, to join the call. The claimant asked for the cameras in the canteen to be checked. She was advised by Kerrie McGurk that if she wanted the cameras checked she would have to raise a formal grievance.

30. On 29 April 2025, immediately after that call, the claimant lodged a grievance about the canteen incident. Later that day, the claimant was interviewed in connection with the incident by Scott Hicks.

31. On 29 April 2025 the claimant noted from her pay slip that her pay was wrong yet again.

Absence on sick leave and referral to OH

32. On 29 April 2025, after the interview with Scott Hicks, whilst on the telephone, “a large volume of clear fluid came out of her left nostril at great force”. She contacted Jordan Carr to say that she needed to sign off from the calls. However, as the claimant was not entitled any additional unplanned breaks or flexibility around when she took her lunch or other breaks, Jordan Car told her that she had to take TOIL. That was later updated to “sickness”.

33. On 1 May 2025 the claimant arranged a medical consultation through Aviva and spoke to a Dr Baig, who noted that the claimant advised that she had been referred for a scan due to the lump on her neck, fluid coming from one nostril and “unbelievable” headaches, made worse by sitting at a desk for 10 hours a day and not being permitted any unplanned breaks. He issued a fit note for 14 days “because of…ongoing headaches, neck pains and sinusitis symptoms, waiting to have a scan”. The claimant was therefore absent on sick leave for these reasons from 29 April to 14 May 2025.

34. On 10 May 2025 the claimant e-mailed Kerrie McGurk to set out her understanding of the canteen incident and express concern that she did not know whether she was still under investigation as she had not heard the outcome following the meeting with Scott Hicks. She said that she would be off sick until the matter was resolved and that “I would feel scared and worried coming back into an office where I have zero support”. She said that “being falsely accused with no support has had a massive impact”. She asked about progress with her grievance.

35. On 13 May 2025 Kerrie McGurk advised that they could discuss what support or adjustments might make it easier for her when she was due to return that she was not under investigation and that her concerns will be looked at as part of the grievance meeting. The claimant advised in response that she had been trying to get adjustments in place but she was advised by Jordan Carr that they needed to wait until she got her results before she could be referred to OH which she then knew to be incorrect. As she was due to return to work on 14 May 2025, she asked if she could work from home until the matter was resolved; and expressed concern about having direct dealings with Jordan Carr while she had made a grievance against her. She said she looked forward to hearing what support and adjustments would be put in place while the process was ongoing.

36. On 14 May 2025, Kerrie McGurk replied as follows: “Ideally for OH you would have a diagnosis in place before you are referred to occupational health to allow us to have the best outcome on recommendations, I can discuss this with ER and see if we can get a referral in place. Do you know roughly when you are due your results back?.... In terms of support, we can offer we would need to discuss this with you, I can ask another leader to be point of contact while you are off, the grievance wouldn’t be disclosed to them and would

purely be focused on your return and your well being if you would prefer this? Please let me know and I can arrange".

37. An alternative point of contact, Navasha McCafferty, was put in place for the claimant to liaise with while the grievance in regard to the canteen incident was ongoing.

38. On 14 May 2025, the claimant was due to return to work but did not. She was referred by Kerrie McGurk for an occupational health assessment.

39. On 15 May 2025 the claimant attended her GP who signed the claimant off with "localised swelling mass and lump neck" to 1 June 2025.

40. On 21 May 2025, the claimant attended an occupational health interview by telephone. Valerie Lawson, in-house occupational health nurse, stated that "I can confirm following consultation with [the claimant] that she has been absent from work for the last three weeks due to an exacerbation of her underlying anxiety and depression triggered by a combination of health and work stressors". She made the following recommendations:
    (i) Exclusive home working until such time as all investigations have been concluded, a substantive diagnosis reached and appropriate treatment commenced
    (ii) Phased return to work over a period of 4 weeks, 50% for two weeks, increasing to 75% for the second two weeks and full-time hours thereafter
    (iii) Workplace action plan upon her immediate return to work
    (iv) Manage with as much flexibility and sensitivity as is reasonably practicable
    (v) Line management support and monitoring
    (vi) Flexibility to attend medical reviews and further support appointments
    (vii) Evenly spaced breaks to assist in the effective management of her symptoms
    (viii) Degree of discretion towards her unplanned break usage and associated impact on productivity
    (ix) Regular 1-2-1s
    (x) Adjustment to absence triggers.

41. On 28 May 2025 the claimant attended her GP who recorded that she had ongoing issues with chronic sinusitis and was prescribed medication for those worsening issues. He noted that her main concern was headaches, but she also reported neck issues and hayfever symptoms.

42. On 29 May 2025 the claimant added a grievance against Jordan Carr, complaining about the way she had dealt with the canteen incident as a result of which she had created a hostile environment, which had had a "massive impact on [her] mental health" and she was currently off because of being falsely accused. She complained about her not following their policies and the Acas code as well as the failure to follow reasonable adjustment policy by advising that she needed a diagnosis to be referred to occupational health. She

expressed concern that this meant that she would require to join a different team temporarily in order for her to be able to return.

43. On 30 May 2025 the claimant updated Navasha McCafferty on the results of the scan and advised she intended to return to work on 1 June 2025. She requested confirmation that the adjustments recommended by OH would be implemented. Navasha McCafferty had not seen the OH report.

44. On 1 June 2025, Navasha McCafferty e-mailed to confirm the key points from their conversation, and she advised that a one-week phased return was reasonable, as was working from home in recognition of the ongoing grievance. With regard to the recommendations in the OH report, she said she needed to wait until the next day so that she could get further guidance (this being a Sunday).

45. On 1 June 2025 the claimant returned to work. After getting permission to see the OH report and asking for advice, Navasha McCafferty advised that the claimant was permitted to work from home and on a four-week phased return as recommended in the OH report.

46. On 13 June 2025, the claimant added a further grievance, relating to the issue with her wages being continually wrong and the fact that although she believed they had been sorted there were errors with her pay again in May. She felt that she was being singled out because it did not happen to others on her team.

47. On 15 June 2025 the claimant added a further grievance, complaining that she was excluded from “Time to Learn and valuable team time with my colleagues as Jordan refused to add me onto the training…which this feels like I'm being punished in retaliation for raising this grievance”.

48. On 16 June 2025 the claimant had a further OH interview, after which Valerie Lawson repeated the recommendations regarding reasonable adjustments.

Grievance

49. Charlotte Clayman, sales through service manager based in Leeds, was appointed to deal with the claimant’s grievances. This was the first grievance she had dealt with. She was assisted by a colleague from ER in line with standard practice, with whom she liaised closely to ensure that she was doing things by the book. It was also his first grievance and he had to check things with his supervisor as well.

50. On 23 June 2025, Charlotte Clayman invited the claimant to attend a grievance meeting to take place on 27 June 2025. She was advised that she had the right to be accompanied by a workplace colleague or a trade union representative. She summarised the claimant’s grievances as follows:

"1. You state that you have been falsely accused of an incident in the canteen. 2. You state that you have been discriminated against and have received unfair treatment in comparison to your peer. 3. You state there has been a confidentiality breach which has resulted in defamation of character. 4. You state there has been multiple issues relating to your pay and incentive. 5. You state that Sky has not followed the Reasonable Adjustment policy. 6. You state that there is a hostile working environment where you have been excluded from team activities which you believe is due to raising a grievance".

51. On 27 June 2025 the grievance meeting took place. The claimant was accompanied by a work colleague, Paul Watson. Notes were taken by Louis Furness. During the course of the investigation, the claimant advised that she was content not to pursue a number of matters.

52. On the matter of the failure to follow the reasonable adjustment's policy, the claimant advised that she had been asking to be referred since February/March to occupational health due to the headaches but was told she would need to wait for a diagnosis. She advised that she asked again on 28 April 2025 after her scan had been done and was told again that she would need to wait for a diagnosis. On her return from sick leave she was told again by Kerrie McGurk that they needed a diagnosis for a referral.

53. Charlotte Clayman interviewed Laura Fryer on 3 July 2025; on 4 July 2026 she interviewed Kerrie McGurk and Navasha McCafferty; and on 7 July 2025 she interviewed Angela Buchan, Belinda Watson and Jordan Carr.

54. When interviewed Jordan Carr stated, of the claimant's request to be referred to occupational health, that "she only asked me for it once and it was due to a lump on the back of her neck and I told her as she didn't have an official diagnosis we don't know fully what it is so wouldn't know what recommendations would be needed. We didn't know how to support her as a business as we didn't know what was causing the lump. I said to her that we can get posturite out to look at getting her a different chair to support the back of her neck or a stand up desk etc. I believe she spoke to Kerrie after this as I had said no to the occupational health referral…Kerrie [told me she]….had also declined due to her not having a full diagnosis so I was under the impression that I had done the right thing".

55. Charlotte Chapman is noted as replying: "If you look at the Skylife policy, there isn't anywhere on there that advises they need to be diagnosed before referring them. One of the reasons it gives as an example is where you've got concerns or the employee has expressed concerns that certain aspects of their work may be adversely impacting their health". She asked her why she believed a diagnosis was needed to which she replied that was based on previous experiences and that was what she had been told.

56. On 8 July 2025 the claimant met with Navasha McCafferty who asked the claimant to confirm agreement with the following in order to complete the workplace assessment that: the phased return had been completed; she could work from home until surgery; she would

remain her point of contact until further notice; she would get time off for medical appointments which could not be scheduled outwith working hours; documentation was to be to be put on workday records; flexible breaks would be available to the claimant; unplanned break adjustment would 15 minutes per day; and there would be further OH review after neurology surgery. There was no reference to adjusting absence triggers.

57. On 1 August 2025 the claimant e-mailed Charlotte Clayman to advise that she had contacted Acas because of her concerns about unreasonable delay in receiving the outcome of the grievance which she had raised 13 weeks ago and expressing concern about how difficult it was to work in such horrible working conditions.

58. Charolotte Clayman responded that same day, apologising for the delay and advising that due to combination of factors including annual leave, shift patterns and business commitments abroad, she had experienced some unavoidable delays in speaking with key individuals. She said that she had completed the investigation the previous day and that she was now in a position to finalise the outcome which would be provided to her within the next week.

59. On 2 August 2025 the claimant advised Charlotte Clayman she had met with Acas officials who had advised her that she should confirm what outcome she was seeking from the grievance. She said that she was seeking training for Jordan Carr; an apology from Kerrie McGurk for giving the wrong information about reasonable adjustments; and financial compensation to acknowledge all the issues with her pay. In regard to the latter, she requested in particular “to receive the same incentive payment that I have been getting for the last 3 months for August, September and October due to having to take time off because of how things were handled then having to wait for the grievance to be held for 12 weeks. I don’t believe I should be financially impacted.”

60. On 13 August 2025, the claimant messaged her temporary manager, Eddie Green, to advise that due to a massive gush of fluid from her nose and an excruciating headache she was having to sign off, requesting TOIL. He replied advising that if she was unfit it would be recorded as an absence because TOIL was not an option. The claimant was subsequently absent on sick leave 17 and 18 August 2025 (the next days she was due to work, after which she took annual leave).

61. On 21 August 2025 Charlotte Clayman issued the outcome letter from the grievance investigation. She did not uphold the first second and third points of the grievance. She upheld point six and partially upheld point seven.

62. She upheld point four, which related to issues regarding pay and incentive, advising that the earlier issue with her pay was because her job title had been wrongly recorded. Regarding the issues involving tech vouchers and incentives, she said

63. others had also been affected by this and she found no evidence of discrimination because the errors were on the payroll side rather than with management. She did however uphold the grievance because she recognised the financial and emotional impact that it had. She recommended that the management team request a full investigation from both the payroll and incentive teams.

64. With regard to point five, this was also upheld. Although Jordan Carr had failed to refer her to occupational health, her decision was based on previous experience and advice received from HR and OH. Having reviewed their guidance, she noted that a referral can be made in cases where support is needed to better understand an employee's health condition or disability, or where health concerns may be impacting their ability to work effectively or safely. She believed a referral would have been appropriate even without a formal diagnosis based on the concerns the claimant was experiencing and the impact her wellbeing at work to help the business understand whether any adjustments could support her. She upheld this aspect of her grievance because she was of the view that the OH review could have been arranged sooner in light of her health challenges, and because any decisions about adjustments should have been made after a full review of the report.

Grievance appeal

65. On 22 August 2025 the claimant lodged an appeal advising that "despite admitting to disability discrimination" by upholding her grievance, no solution had been offered. She said that left her with no option but to appeal and go to a Tribunal. She complained that she had lost bonus as a result of being absent on sick leave due to her disability, and that no compensation had been offered as an outcome of her grievance. She said she was raising a further grievance about that, the canteen incident and the fact that the grievance took 17 weeks to complete. She added that "compensation in the form of a bonus should have been awarded during this time regardless of the outcome of point 1, during that time off I had still been refused reasonable adjustments, had these been made and the Grievance not took so long to hear, I could have returned sooner".

66. On 24 August 2024 the claimant wrote to advise that having taken advice she wanted to change the reasons for her appeal, confirming that her appeal was based solely on not having an adequate resolution on the points upheld, particularly on discrimination and pay issues.

67. On 24 August 2025 Andrew Frost, a temporary manager, contacted the claimant's team to advise that "unplanned is looking pretty high across the whole team – can we make this a major focus for the rest of the day please". He attached a table which highlighted (to the whole team) by marking in red where the claimant had breached the standard unplanned breaks rules. As a temporary manager, he was not made aware of the claimant's

reasonable adjustments and these had not in any event yet been recorded on the claimant's personnel file as they ought to have been.

68. On 24 September 2025 the claimant met with Kerrie McGurk to review the recommendations following the grievance. This included a recommendation to discuss the OH referrals and reasonable adjustments with Jordan Carr, the latter not being made until the full OH report had been received and reviewed.

69. On 7 October 2025 the claimant was invited by Sam Beaver to attend a grievance appeal meeting on 13 October 2025. The claimant was advised that she had a right to be accompanied at the grievance appeal meeting. It was noted that the grounds of appeal included, "disability discrimination: you were refused an OH referral and adjustments as well as losing bonus while off sick due to disability which you feel is unfair"; carers leave refusal, consistent pay errors, hostile environment and lack of resolution despite grievance points being upheld there were no tangible outcomes or compensation.

70. On 7 October 2025 the claimant wrote to Sam Beaver to summarise the points for her appeal. This included:

"Indirect discrimination: automatic exclusion of bonus for disabled people. There is no pathway in the current bonus scheme to determine whether someone is off with a cold or cancer. I asked for my average bonus as an outcome to all my upheld issues, this was refused…sky have admitted to disability discrimination, yet I continue to be at a financial loss. On my OH report, it states I would be better back at work for my own mental health during the period of 1 month when I was off, however due to the delay in even hearing the grievance and hoping it would all be resolved for me coming back after the initial two weeks to then be told they still hadn't appointed someone to hear my grievance, it was eventually heard 2 months later. The delay in the grievance is what delayed my return and because of this I went from £1,100 bonus a month to £358, I had to return to what was a hostile environment-excluded from my team and all team times and meetings, I had no option but to return to this environment or risk losing more bonus. Whilst off during this 2 week period is when I was refused to be referred to OH and also when I was advised I needed a diagnosis first, these actions and direct discrimination caused my delay in returning as I needed adjustments in place first which were also all refused without even reading the report….

Hostile issues: these hostile issues were created simply through skys delay in dealing with my grievance as the longer it went on the longer I was excluded from my team, these issues could have been avoided had sky complied with the law on hearing grievances and appeals. I've received an apology from Kerrie McGurk. Sky contributed to my worsening mental health and caused me to start pulling my hair out due to the sheer stress, emotionally and financially. I feel Sky have created this environment and continue to do so with their delays and refusal to provide an average bonus and exclude ALL disabled employees from their bonus…

Lack of resolution the reason why we are here: I shouldn't need to appeal upheld points to get a resolution being the average bonus. Because of Skys failure to allow this resolution, it left me no choice but to take to the Tribunal because after speaking with Acas I realised this was also indirect discrimination, I should be getting paid an average bonus if I'm off due to my disability without having to fight for it. Looking for my bonus to be back paid as a resolution. All other matters were addressed just not the one causing me severe financial loss due to Skys delays and continued lack of resolution to the bonus issue".

71. The grievance appeal meeting took place on 13 October 2025, chaired by Sam Beaver with Vicky Lang taking notes.

72. On 15 October 2025, the claimant was contacted by Rebekah Humphries, a temporary manager, advising her that her unplanned breaks were quite high that day, and asking if everything was alright. The claimant advised that she had extra as a reasonable adjustment and queried why she had not been informed about that.

73. On 4 November 2025 the claimant was signed off by her GP with "sinusitis, stress/anxiety" until 16 November 2025.

74. On 13 November 2025 Sam Beaver advised the claimant about the outcome of her appeal. The letter noted that the claimant had stated that she did not wish to rely on her appeal regarding carer's leave, consistent pay errors and hostile work environment. With regard to the issue of "lack of resolution", Sam Beaver stated that she considered the fact that the claimant did not wish to pursue the above appeal points to be a resolution. She advised that they do not award compensation as part of the grievance outcome, and that she was addressing the incentive point separately because it had not been raised as part of her original grievance.

75. On 21 November 2025 Sam Beaver advised that her grievance on the issue of the failure to pay an incentive payment while absent on sick leave was not upheld. On the claimant's complaint that the failure to pay bonus while off sick due to disability was unfair and indirect disability discrimination, she advised that she had reviewed the CSG sales incentive scheme rules, and confirmed that incentive payments are discretionary and subject to specific eligibility criteria, referenced in particular at section 12, which means that sickness absence, including disability-related absence, is not listed among the exceptions where incentive payments may still be earned. The scheme is designed to reward active contribution to sales performance, which is inherently linked to presence and participation in role-specific activities. She relied also on section 5, and advised that the term "actively employed" in that context implies being present and performing duties that contribute to incentive-qualifying metrics. Absence due to sickness, regardless of the reason, interrupts this active participation and therefore disqualifies the employee from earning incentives during that period. She confirmed by reference to section 1 that incentive payments do not form part of the contract of employment and are entirely at the company's discretion. She

advised that: this discretionary nature allows the scheme to maintain fairness and consistency in rewarding performance that directly contributes to business outcomes; that the company considers the potential impact these rules have on employees with disabilities, and believes this approach is a proportionate means of achieving a legitimate aim, namely, ensuring fairness and consistency in how incentives are awarded, and maintaining the integrity of performance-based rewards. She mentioned that in August 2022, they had introduced pay smoothing for incentive payments. Rather than being paid different amounts every month, and to reduce income volatility, what agents earned over a 3-month period was then added up and divided by 3 to give equal amounts to reduce the impact of any specific month, making monthly pay more predictable and easier to manage financially.

Second grievance appeal

76. This response to the incentive pay point was treated as a first grievance outcome, which the claimant was entitled to appeal. The claimant stated that her appeal was based on the fact that she had met and exceeded all targets that year and still been excluded from bonus. She asked why it was that if she was absent for a week, but still met her monthly target, she would be excluded from bonus simply for being off. She queried whether that was a legitimate aim, when it promoted "presenteeism" and reprimanded employees for being absent due to their disability. She asserted that the respondent was automatically excluding her from bonus based on her disability, and allowing for no discretion, unlike maternity. She asserted that this amounted to discrimination arising from disability under the Equality Act.

77. On 27 November 2025 the claimant added an addendum to the appeal which related to the fact that although there was an agreement in May that reasonable adjustments should be provided, they were not approved on the workday record until 25 November 2025 (sic). She believed that the respondent had admitted to failing in their duties to provide reasonable adjustments, but continued to cause her financial loss by withholding the bonus for the period when the discrimination happened.

78. Around the start of December 2025 a new manager called Rory Watts was allocated to the claimant's team. During a one to one with her (and separately with Angela Buchan) it was established that their adjustments had not been recorded on workday as they ought to have been.

79. On 16 December 2025 it was noted that the following adjustments were put in place on that date, namely: ability to work from home until surgery; extra unplanned breaks (12 minutes); evenly spaced breaks – sticking with current flexibility; adjustment to absence triggers (5 instances and 8%); and medical appointments – 4 hours per month.

80. The grievance appeal was referred to Sarah Fraser. The claimant confirmed to her on 28 December 2026 that she did not require a formal meeting and would accept a written

response to her appeal. On 13 January 2026, Sarah Fraser e-mailed the claimant requesting some points of clarity for her appeal.

81. On 19 January 2026, Sarah Fraser advised the claimant that her grievance was not upheld for the following reasons:

"The incentive policy is clear that incentive payments are designed to reward performance that directly contributes to business outcome (section 1). To achieve this, colleagues must be actively working and contributing within the business. Section 5 of the policy confirms that employees must be actively employed and meet the conditions of the relevant incentive scheme to qualify for payment. The incentive scheme you are eligible for provides rewards where colleagues support the protection, retention and stabilisation of the customer base, including selling to customers. During the period in question, you were absent from work and therefore not actively contributing to these activities. Your absence is not covered under the exceptions outlined within the incentives scheme (section 12) which confirms that incentives cannot be earned whilst an Advisor or CEL is absent from work, except in specified circumstances, which do not apply in this case….I would like to acknowledge that your performance while you were at work during the relevant period met the required standards. However, incentive payments are determined by overall eligibility under the scheme and not solely by performance achieved during periods of attendance. This approach has been applied consistently in line with the incentive policy and reflects how similar cases have been treated across the business. I would also like to confirm that raising a grievance and subsequent appeal has not resulted in any detriment to you…."

82. The incentives policy is intended to serve the purpose of "driving commercial outcomes and performance". Unlike absences for annual leave and maternity leave etc, there is no exception for disability related sickness absence. All sickness absences are treated the same. This is because the aim of the customer advisor role is to retain customers and to "stabilise their base". Customer advisors require to be in work to contribute to "those metrics" and to the business KPIs to receive incentive payments. The scheme states that advisors need to be "actively employed".

83. The scheme requires advisors to meet certain targets in order to receive a reward. The main role of the customer advisor is to encourage customers to stay on their current package, or to retain as many of the products on the current package as possible and to add an additional package if possible, all to retain or ensure as much revenue for the business as possible. Different targets are set for these different goals based on the number of retentions or value of products sold or retained each week. Incentive pay will be paid where the actual number is above or below the target, with a lower and higher limit.

84. With regard to the exceptions listed in the incentive scheme, annual leave is an exception to comply with the laws on holiday pay. Bonus is calculated as an average over 12 months. There is a local core budget designated for incentive payments, 20% of which is allocated to pay bonus during annual leave.

85. The budget for maternity pay sits in a more centralised budget based on the average over the previous 12 months. Such leave is administered centrally by HR. For jury duty etc, payments are made based on a daily average.

Claimant's incentive payments during 2025

86. The claimant received the following incentive bonus payments during 2025: £452.66 (January); £751.28 (February); £759.35 (March and April); £978.92 (May); £1075.78 (June and July); £343.61 (August and September); £1093.61 (October); and £749.44 (November and December).

Tribunal's deliberations and conclusion

Observations on the witnesses

87. I accepted that the evidence given by all of the witnesses in this case, both the claimants and respondents, was credible and reliable, with all witnesses seeking to assist the Tribunal to the best of their ability. Indeed there were few if any relevant facts which were in dispute in this case.

88. One fact which was raised which appeared to be in dispute was whether or not the claimant had made on or more requests for an occupational health referral in February/March of 2025. That was the claimant's evidence and that was the claimant's response to the investigation meeting in June 2025, which was much closer in time. Although I thought Ms Buchan may have been somewhat confused about the timings, I accepted that she had been told in or around March 2025 by the claimant that she had requested an occupational health referral but she had been told that she could not be referred until she had a diagnosis. The claimant was concerned that the respondent did not call Ms Carr to give evidence about this, as she would have wished to cross examine on her recollection.

89. I have accepted the claimant's recollection of this because I considered her evidence to be otherwise credible and also because Ms Carr was a new manager who was dealing with managing a whole team at that time. It was accepted that she had misunderstood the circumstances due to her lack of experience in the role of manager. Given the outcome, this of course was not ultimately material in any event.

90. In one respect, I did not find the claimant's evidence to be reliable. This related to her assertion that she was not paid a bonus although she had otherwise met her performance targets on a monthly or indeed annual basis. It may have been that she misunderstood Ms Fraser's confirmation that her performance met required standards for the relevant period. However, no evidence was produced by the claimant to support that contention, and the respondent's witnesses explained that the bonus was calculated on a weekly basis.

91. The issues for determination were set out in a list of issues attached as a schedule to the PH note prepared by EJ Sangster. I consider each of these issues in turn below. I have retained the numbering for ease of reference. The first issue was disability status, which as noted above was conceded in regard to anxiety, depression and chronic sinusitis. It should be noted too that the respondent no longer insists on their time bar plea, which was recorded as the fifth issue.

2. Discrimination Arising from Disability – s15 Equality Act 2010 (EqA)

92. The claimant in this case argued that she had been unfavourably treated for a reason relating to her disability contrary to section 15 EqA. That states that a disabled person will be discriminated against by their employer if their employer treats them "unfavourably because of something in consequence of" their disability, where the employer cannot show that the treatment is a proportionate means of achieving a legitimate aim. That provision does not apply if the respondent does not know, or could not reasonably be expected to know, that the claimant had the disability.

2.1. Has the respondent shown that it did not know, and could not reasonably have been expected to know, that the claimant had the disability?

93. This point was also conceded at the outset of this hearing.

2.2. Was the claimant treated unfavourably by not paying her a bonus?

94. Following evidence, the respondent was able to concede that the failure to pay the claimant a bonus when she was absent on sick leave was unfavourable treatment.

2.3. If so, was this due to something arising in consequence of disability? Namely her absence.

95. The respondent was also able to concede that the claimant's absences, to the extent that they were related to disability, arose in consequence of her conceded disabilities.

2.4. If so, was the treatment pursuant to a legitimate aim, namely: to ensure that employees are fairly remunerated and rewarded for completing sales to customers and/or helping the respondent to deliver its ambitions and business outcomes and achieve revenue targets.

96. I understand this issue to be whether the respondent can show that their treatment of the claimant was a proportionate means of achieving this stated legitimate aim. The respondent argues that any potential discrimination is objectively justified, that is the incentive scheme is a proportionate means of achieving a legitimate aim.

97. The established test for determining objective justification (considered in relation to indirect discrimination) is derived from the decision of *Bilka-Kaufaus v Weber Von Hartz* 1987 ICR 110, where the ECJ held that, to justify an objective which has a discriminatory effect, an employer must show that the means chosen for achieving that objective: correspond to a

real need on the part of the undertaking; are appropriate with a view to achieving the objective in question; and are necessary to that end.

98. This was developed at the domestic level, and the Court of Appeal in the case of *Hampson v Department of Education* 1989 ICR 179 stated that the test involves the need to strike "an objective balance between the discriminatory effect of the condition and the reasonable needs of the party who applies the condition".

99. The EAT (HHJ Eady) summarised the main principles established by these and subsequent authorities in *City of Oxford Bus Services Ltd v Harvey* EAT 2018 WL 07575009 as follows: the objective justification test requires (at a minimum) a critical evaluation of whether the employer's reasons demonstrated a real need to take the action in question; if there was such a need, there must be consideration of the seriousness of a disparate impact of the PCP on those sharing the relevant protected characteristic, including the complainant, and an evaluation of whether the former was sufficient to outweigh the latter; in performing this balancing exercise, the tribunal must assess not only the needs of the employer but also the discriminatory effect on those who share the relevant protected characteristic. Proportionality requires the importance of the legitimate aim to be weighed against the discriminatory effect of the treatment. To be proportionate, a measure must be both an appropriate means of achieving the legitimate aim and reasonably necessary in order to do so; the caveat imported by the word reasonably in the phrase reasonably necessary means that an employer is not required to prove there was no other way of achieving its objectives.

100. There is no question that the burden of proof sits with the employer. At paragraph 4.26 of the EHRC Employment Code of Practice, it is stated that an employer must produce evidence to support their position and that generalisations will not be sufficient. That does not mean that there requires to be concrete evidence but objective justification may be established in an appropriate case by reasoned and rational judgement, but not by subjective impression or stereotyped assumptions. In assessing any justification put forward, tribunals are under a duty to conduct a rigorous assessment of the organisation's requirements or rationale for imposing the treatment.

101. In this case, there was a good deal of evidence heard from both Ms Beaver but primarily from Ms Fraser regarding the respondent's rationale for the scope of the incentive scheme. In evidence, Ms Fraser said that she is very familiar with the loyalty stay incentive scheme which applied to the work the claimant was doing. This was because she was heavily involved in re-writing it around two years ago with a view to ensuring that it would serve the purpose of "driving commercial outcomes and performance". She confirmed that, unlike absences for annual leave and maternity leave etc, there is no exception for disability related sickness absence, meaning all sickness absences are treated the same.

102. This she said is because the aim of the customer advisor role is to retain customers and to "stabilise their base". Customer advisors require to be in work to contribute to "those metrics" and to the business KPIs to receive incentive payments. The scheme states that advisors need to be "actively employed" and this she said means that they need to be present and doing the role.

103. The scheme requires advisors to meet certain targets in order to receive a reward and that, she stated, cannot be done if advisors are not present. The main role of the customer advisor is to encourage customers to stay on their current package, or to retain as many of the products on the current package as possible and to add an additional package if possible, all to retain or ensure as much revenue for the business as possible. Different targets are set for these different goals based on the number of retentions or value of products sold or retained each week. Incentive pay will be paid where the actual number is above or below the target, with a lower and higher limit. Customer service advisers can log onto the portal and ascertain what their targets are and to check their performance whether or to what extent they have achieved them (although the claimant did not appear to appreciate that).

104. Relying on this evidence, in submissions Ms Judge argued that the objective of maintaining a commercially effective performance-based incentive scheme which rewards actual measurable contribution to sales, retention and customer stabilisation outcomes is a legitimate one. It is not simply for the avoidance of costs. The CSG is a sales incentive scheme which is discretionary and not contractual as confirmed in the contract of employment, and payments are discretionary and do not form part of base salary.

105. In support of her submissions, Ms Judge relies on the fact that the claimant accepted in evidence that she has no contractual entitlement to incentive payments as confirmed in the outcome letters. (She did however accept when questioned that the fact that the scheme was discretionary and not contractual was not fatal to a finding of disability discrimination).

106. Ms Judge also relies on the evidence of Ms Fraser who has a thorough understanding of how the scheme operates and its intended purpose which is to drive commercial performance in regard to the loyalty stay scheme which is to incentivise customers. The scheme is to reward performance when in work, for which employees must be present and contributing to performance so inherently linked to presence. She submitted that Ms Beaver's evidence is consistent with that of Ms Fraser.

107. I had no difficulty in accepting that the aims of the scheme, as articulated by the witnesses and Ms Judge, are legitimate. While the objective is linked to budget, I accept that it does not relate solely to saving costs. As is often the case, the focus of deliberations is on whether or not the means of achieving those legitimate aims are proportionate.

108. When assessing proportionality, the Tribunal took account of the evidence of the respondent's witnesses, and in particular that of Ms Fraser.

109. In Ms Fraser's view it would be difficult to make payment when a customer advisor is absent on sick leave. This is because the budget is unknown, since a manager cannot know how long an advisor will be absent. If those absent were to receive an incentive payment, then the payments which would be made to those in work would require to be reduced because incentive payments come out of a limited pot which must be adhered to.

110. She gave evidence that around five years ago, the incentive budget had been reduced and base pay was increased, so the incentive scheme is not as lucrative as it once was. This was because the respondent looked across different industries and decided to increase base pay in order to encourage more people to work for them. Further the respondent pays generous contractual sick pay of up to 12 weeks for those who have been employed for more than two years.

111. Customer service advisers also have an annual personal development plan meeting, when advisers are given a score or a rating based on their overall contribution, not simply whether they have met their targets, but taking account of feedback from customers, as well as the number of first time resolutions, which is where a CSA can persuade a customer to stay on the first call. This scheme is not used to calculate incentive payments.

112. In contrast, the annual bonus plan applies to a very much smaller number of senior managers and is based on their contribution throughout the year.

113. With regard to the current exceptions, she explained that annual leave is an exception because of the requirement to comply with the laws on holiday pay. Accordingly, bonus is calculated as an average over 12 months. While there is a local core budget designated for incentive payments, 20% of that is allocated to pay bonus during annual leave, which is a known fixed cost.

114. With regard to maternity leave, again this is a legal requirement but it does not come out of the local core budget for incentive payments, but rather from a more centralised budget again based on the average over the previous 12 months. Such leave is administered centrally by HR. For jury duty etc, payments are made based on a daily average.

115. To support her submissions that such an aim is proportionate, Ms Judge argued that it is necessary for the respondent to operate within fixed budgets which must be adhered to. According to documents lodged subsequent to the hearing, these confirmed that the respondent has 1535 employees in the customer sales team, and of them, 274 have declared a disability which is 17.5% of the workforce.

116. For the respondent to pay incentive bonuses to those on disability related absence would therefore have a significant financial impact on the respondent, because bonuses are funded from the same fixed budget. She relied on the evidence of Ms Fraser that the respondent would have to reduce incentive payments to employees who are not absent but performing as normal. Ms Judge urged the Tribunal to consider the effect on the wider workforce, because there would be a direct impact on payments available to those employees who are present and completing sales, and helping the respondent to deliver its ambitions and business outcomes and contributing to the achievement of the revenue target. She argued that the respondent operates in the competitive telecoms market and it would be difficult to maintain, motivate and attract employees without a lucrative and properly funded incentive scheme.

117. With regard to the exceptions, Ms Judge submitted that sickness absence cannot be budgeted for in the same way that other absences can. In support of that submission, she relied on the evidence of Ms Fraser about how each category of exceptions is accounted for in the budget. Annual leave is planned and a calculable budget which is ring fenced; because the business knows how many days of annual eave each year. Maternity pay is from a centralised not a local budget. However, sickness absence is unpredictable, and it is impossible for the business to know how long employees will be absent on sick leave or associated cost. There is a clear rationale for the distinction between the different types of absence: annual leave absences are planned and budgeted for whereas the sick leave budget is not. There is no mechanism for the business to provide a reliable forecast and budget for sickness related absence payments.

118. Ms Judge submitted that a comparison of the two bonus schemes shows they are fundamentally different. The claimant's reliance on the treatment under the annual bonus plan as compared with CSG is misconceived. The two schemes reward entirely different things. The bonus scheme is retrospective where managers consider overall contribution combined with company performance. The incentive scheme is based on actual individual sales activity measured weekly in real time and driven by the data and not by managerial discretion. The two can be distinguished because the annual bonus scheme looks at overall contribution compared with an assessment of sales week by week. If no work has been undertaken, then there can have been no sales and no data to support that calculation of any bonus.

119. Ms Judge argued that even if the Tribunal considers that some form of payment is appropriate, there is a requirement to distinguish between sickness and disability. As Ms Beaver said in evidence, managers are not GPs but would be being asked to make value judgment about an employee's disability related absence or sickness. This would put an unreasonable burden on the operational manager; and will introduce inconsistency and subjectivity into the scheme, which has been designed with clear objectives and universally applicable rules.

120. When asked who identifies when absence triggers should be adjusted for those with declared disabilities, Ms Judge said that this comes from the HR department rather than an individual manager. Ms Beaver said that managers would have to make the decision on disability because they are the ones making the decisions based on their budgets. She urged the Tribunal to consider the broader context in terms of payments available. In particular employees receive enhanced company sick leave and the company has a generous payment scheme for sick pay. It can be seen from the claimant's payslips, which show that the claimant received company sick pay and the claimant's evidence was that she received full pay on her phased return to work. The respondent thus provides meaningful and generous financial support to employees throughout their absence; taken together the respondent is a fair and responsible employer who goes beyond its statutory duties to support the workforce.

121. Ms Judge submitted that, in order to be eligible, employees must meet the conditions of the incentive scheme. Payments are not guaranteed and only potentially earned if targets are met. She explained that targets are weekly and that if an employee is absent then incentive payments cannot be earned. In response to the claimant's assertion that, even where she was absent for one week but still made her monthly and year end target, she did not earn a bonus, Ms Judge explained, relying on the evidence of Ms Fraser, that end of year rating and incentive schemes are separate, the end of year rating taking into account an employee's wider contribution to the business.

122. I have given careful consideration to the evidence and these submissions on the proportionality question. As noted above, Tribunals are enjoined in particular to balance the employer's needs with the discriminatory effect on the claimant.

123. In summary, the evidence in this case to support a "real need" on the part of the respondent for a blanket rule that all those on sickness absence would not be entitled to bonus with no exceptions for disability related sickness, because:
    i. Given the aim was to give an incentive to CSAs to retain customers, this could only be done when the CSAs were at work;
    ii. It would not be fair to other members of the team who are at work and because of limited budgets would have to have their bonuses reduced;
    iii. The scheme rewards actual measurable contribution to sales and retention, and if a CSA is absent there is no data to calculate any bonus;
    iv. It is discretionary and not contractual and does not form part of base salary;
    v. It is difficult for managers to budget for such bonuses because the length of sickness absence is unknown and unknowable;
    vi. The incentive scheme is not as lucrative as it once was because the budget was reduced and base pay increased, a move introduced to encourage more people to come to work for the respondent;

vii. it would be difficult to maintain, motivate and attract employees without a lucrative and properly funded incentive scheme;

viii. The respondent pays generous contractual sick pay up to 12 weeks for those with more than two years' service;

ix. The claimant received contractual sick pay while absent and full pay during her phased return to work;

x. Although the respondent's bonus scheme for senior managers discounts sick leave, this applies to a very much smaller number of senior managers and is calculated retrospectively by reference to the previous 12 months and based on their contribution throughout the previous year;

xi. The impact on what are fixed budgets would be significant where 17.5% of the workforce have a declared disability;

xii. It would not be appropriate or even possible for managers, who calculate bonuses and set budgets locally based of varying metrics, to distinguish between sickness which is disability related and that which is not;

xiii. It would not be appropriate to ask manager, who are not medically trained, to make such value judgements;

xiv. This will place an unreasonable burden on operational managers which will introduce inconsistency and subjectivity into the scheme which has been designed with clear objectives and universally applicable rules.

124. The evidence about the discriminatory effect on the claimant (and therefore on other disabled employees) was that the policy has a significant financial impact on her when she was absent on sick leave. The claimant asserted that she could earn bonus of around £1,000 per month but when she was absent on disability related sick leave that would reduce to around £350. The pay slips lodged tended to back that up, for example for July 2025, the claimant's bonus was £1075.78 and for August and September (when account was taken of her absence on sick leave) was £343.61. The claimant asserted that the financial impact on her, while off with conditions which included anxiety and depression, actually exacerbated her conditions, both mental and physical. Further, the respondent's statistics tend to show, as would be expected, that those with disabilities tend to be off sick more frequently, and therefore a blanket policy which treats all off on sick leave in the same way, without any exception for absences which are disability related, will have a greater impact on disabled people such as the claimant.

125. I considered the question whether the scheme was "reasonably necessary" for the respondent to achieve their objective of "ensuring that employees are fairly remunerated and rewarded for completing sales to customers and/or helping the respondent to deliver its ambitions and business outcomes and achieve revenue targets".

126. It is telling that there are exceptions to the rule where the law requires it, including for annual leave and for maternity absences. The respondent justifies this not only because

the law requires it but also because the budget for annual leave can be accurately calculated and although the same could not be said of maternity leave, that is dealt with by a central budget, not a local one. I heard evidence about a large variety of variables which must be taken into account when determining the local budget for the incentive bonus so this would be another factor to take into account when determining a local budget. Further, the respondent was able when it suited them to make a change to the scheme which increased base pay and reduced the incentive bonus scheme.

127. Further, given that the respondent relies on their managing absence policy which allows for adjustments to be made to the standard rules for triggering absence, it appears that the respondent must have a mechanism for identifying when an adjustment to triggers should be made, which would be made only in relation to those who have a disability. Ms Judge suggested that it would be HR that would make such decisions, but there was no evidence to support that from any HR member of staff. Otherwise the evidence indicated, by reference to the workplace adjustments procedure, that it was the claimant’s line manager who identified adjustments which would include making a decision about adjusting the absence triggers.

128. The claimant submitted that less discriminatory alternatives were available which would have reduced the financial disadvantage experienced without materially increasing cost to the respondent. She suggests for example, disability-related absence could have been excluded from the monthly sales calculation splitting the pot by two instead of three which she suggests would result in no cost to the respondent, or alternatively a pro rata incentive approach could have been applied in relation to disability-related leave similar to maternity and annual leave.

129. The claimant asserted in evidence that she had her bonus reduced when she was absent for a week even when she met her monthly target, or indeed annual target. She offered no evidence to support that, but the respondent’s witnesses’ position was that bonuses were calculated on weekly sales targets, that no account was taken of the monthly position, and that the scoring at the annual performance review was not linked to the scheme. However, it may be that an alternative way of calculating bonus for those who disability related sick leave would be to look at performance over a period of a month or alternative period. Indeed, she argued that while the respondent argues that she was not actively working during periods of absence, they relied upon those same periods of absence to reduce or remove incentive entitlement connected to sales performance achieved whilst actively working diluting the pot she had built up.

130. Further, I noted that when concerns were expressed about calculating and paying bonus on a month to month basis, an “incentives smoothing process” was introduced, whereby payments from a three month period fed into a pool to calculate bonus over the next

two/three months. It would appear that that change may have had an adverse effect on those taking disability related sickness absence so could be revisited.

131. Balancing the employer's needs with the discriminatory effect on the claimant, I have concluded that the former is not sufficient to outweigh the latter, and therefore that it cannot be said that the scheme is objectively justifiable.

132. Accordingly, I have concluded that the failure to pay incentive bonus to disabled employees while absent on sick leave for a disability related reason is unfavourable treatment which arises in consequences of disability and which has not been objectively justified. The claimant's claim that there has been a breach of section 15 of the Equality Act 2010 therefore succeeds.

3. Indirect Discrimination – s19 EqA

133. The claimant also relies on section 19 of the Equality Act 2010. This in essence states that a respondent will discriminate against a claimant where the respondent applies a PCP which is applied equally to those who do not share the claimant's protected characteristic; puts or would put those who share the claimant's protected characteristic at a particular disadvantage; puts the claimant at that disadvantage; and the respondent cannot show that the PCP is a proportionate means of achieving a legitimate aim.

134. In terms of the burden of proof, while it is for the respondent to show that any PCP is objectively justifiable, it is for the claimant to first establish the other elements of the test, set out at 3.1 to 3.5.

135. However, in this case the respondent accepts that they operated a PCP that incentives cannot be earned when an advisor is absent on sick leave which was applied to the claimant and to people who are not disabled. They accept too that such a PCP puts or would put people with disabilities at one or more particular disadvantages, when compared with those who are not disabled, specifically that they are more likely to not earn bonus; and that the claimant was put at that disadvantage at the relevant time. Accordingly, the focus is on issue 3.6, that is the matter of objective justification.

136. However, because the respondent concedes that the scheme disproportionately disadvantages disabled people, the claim of indirect discrimination would appear to simply be another way of articulating the claim under section 15.

137. Indeed, the respondent relies on the same legitimate aims described above and the arguments supporting the respondent's defence that any potential indirect discrimination resulting from the application of the PCP to the claimant is a proportionate means of achieving a legitimate aim and therefore justifiable.

138. Accordingly, for the reasons set out in detail above, I conclude that the respondent has failed to establish that the PCP is a proportionate means of achieving a legitimate aim.

4. Reasonable Adjustments - s20 & 21 EqA

139. The claimant argues there has been a failure to make reasonable adjustments contrary to section 20 and 21 EqA. Section 20 EqA sets out the employer's positive duty to make reasonable adjustments to address disadvantages suffered by disabled people. The relevant requirement is set out at section 20(3) which states that "the first requirement is a requirement, where a PCP [of the employer] puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage". A failure to comply with the duty amounts to discrimination under section 21(2).

140. The duty arises only in respect of those steps that it is reasonable for the employer to take to avoid the disadvantage experienced by the disabled person. What is reasonable in any given case will depend on the individual circumstances of the disabled person. The test of reasonableness in this context is an objective one (*Smith v Churchill Stairlifts plc* 2006 ICR 524 CA). An adjustment from which the disabled person does not benefit is unlikely to be a reasonable one *(Romec Ltd v Rudham* EAT/0069/07). The question is whether the adjustment would be effective in removing or reducing the disadvantage the claimant is experiencing as a result of their disability, not whether it would advantage the claimant generally. To assess the effectiveness of a proposed adjustment, it is best practice to consult the disabled employee, who is most likely to know whether the adjustment would make a difference. Alternatively, or additionally, expert opinion, such as medical or occupational health advice, could be obtained on the probable effect of any proposed adjustment.

4.1.1 Did the respondent have a PCP of: requiring employees to have a diagnosis before referring them to occupational health.

141. The respondent does not accept that this is a PCP. Ms Judge pointed out that the respondent's policy at the time (which was lodged during the course of the hearing) did not expressly state that employees required to have a diagnosis before being referred to OH.

142. That was not the general approach adopted or required or applied in relation to all employees. Ms Chapman accepted that the policy in force at that time was vague but the decision of Ms Carr not to refer the claimant to OH was due to lack of experience and human error not malice. Ms Judge submitted that an error cannot be a PCP without more. She argued that it is not possible on the facts to categorise the refusal as a "practice". For the refusal to refer an employee to OH without a diagnosis to be a practice there must be some element of repetition, or a state of affairs, but this was not something that was generally applied. She argued that a one-off decision could not amount to a PCP. She

pointed out that both the claimant and Ms Buchan identified colleagues who had been referred to OH without a diagnosis. She pointed out that there was no prospect of a repeat since the policy has been updated and the updated version of the policy confirms that you do not need a diagnosis before OH referral (or adjustments).

143. She argued that, even if the Tribunal were to find that there is a PCP, that the respondent took prompt and effective action to meet the needs of the claimant. While there is a dispute about when the claimant first asked for an occupational health referral, the first written request was 14 May 2025 and then it was done on 21 May 2025. Following the OH assessment, the adjustments recommended were implemented including the phased return offered beyond what is usually provided and the claimant received full pay for this period and was permitted to work from home.

144. There was a dispute in this case regarding when and how frequently the claimant had made a request of her line manager, Ms Carr, for a referral to occupational health. Ms Carr indicated in the investigation that the claimant had only asked once to be referred. She explained that her understanding was that without an official diagnosis they would not know what the problem was or what recommendations would be needed or how the business could support her if they did not know what was causing the problems.

145. As Ms Chapman stated in response during the investigation, looking at the relevant policy which was in force at the time, it did not state in terms that there needed to be a diagnosis before there was a referral to occupational health.

146. The policy has since been amended to make clear that no diagnosis is required, but I accept that the policy did not require a diagnosis before there could be a referral and the amendment simply makes that clear.

147. Further and in any event, the evidence of the claimant's witness, Ms Buchan, was that she herself had in fact been referred to occupational health without a diagnosis. While the failure to refer was unfortunate, and, as recognised by Ms Chapman, the claimant should have been referred sooner, it is clear that this was a one-off decision in relation to the claimant only which is not capable of amounting to a PCP applied across the board.

148. I therefore accept that there was no such PCP in this case; and I accept that the delay in making the referral to occupational health was a mistake made by an inexperienced manager which is unlikely to happen again given that the policy now makes the position clear.

149. There was accordingly no requirement to consider the subsequent questions.

150. However, the claimant's case, as articulated in the list of issues, was that the PCP of requiring employees to have a diagnosis before referring them to occupational health put

the claimant at a substantial disadvantage, compared with the situation with those who were not disabled, by the failure to put adjustments in place, namely to refer the claimant to occupational health sooner than took place in this case. As I understand it, the claimant complained that the failure, or rather the delay, in referring her to occupational health, meant that there was a failure, or rather delay, in implementing reasonable adjustments identified in the occupational health report, resulting in her having to take time off and lose bonus. She relied on the fact that the respondent accepted (in the grievance) that the occupational health referrals should have been made sooner and that a diagnosis was not required before such referrals could be made. Once the OH report was obtained and reasonable adjustments were proposed these were accepted by the respondent. However, she argues that the policies and procedures were not followed and the delay in the referral, had a severe impact on her health.

151. I have however, taken the view that the proposed PCP as articulated is not a PCP at all. In this respect, the claimant cannot therefore succeed in her claim for a failure to make reasonable adjustments.

152. Further, it should be noted in any event that the reasonable adjustments which the claimant alleged would alleviate the disadvantage, namely allowing the claimant to work from home, allowing the claimant to take extra unplanned breaks (over and above the 8 minutes per day permitted) and/or ensuring evenly spaced breaks throughout the day, were in fact implemented, albeit that there was a delay first in them being accepted as reasonable adjustments, and then in them being recorded in the claimant's workday record, which would have alerted other temporary managers to them. I accept that the delay in the referral and the subsequent implementation of the reasonable adjustments agreed may have had consequences for the claimant, but as articulated the claimant cannot succeed with this claim.

4.1.2. Counting all absences towards triggers for warning purposes

153. The respondent argues with regard to this second PCP that while the respondent operated a general absence management policy with triggers, it was not as rigid or inflexible as to be categorised as a PCP.

154. Ms Judge submitted by reference to the respondent's guidance on managing absence (in place January to December 2025) that reviewing managers must take account of related information and disability and whether employees are covered or likely to be covered by the Equality Act. The guidance states that where the employee has a disability which is likely to be covered by EqA that the manager should ensure a workplace agreement is in place. Ms Judge argued that the PCP as characterised, that all absences were counted, does not accurately reflect the respondent's practice, where discretion is integral to the decision making process. If the absence triggers are adjusted, then they can be adjusted

again for further action after absence. Relying on *Griffiths v Secretary of State for Work and Pensions* 2017 IRLR 160 [65] she argued that any modification is capable of amounting to a relevant step. The policy gives flexibility to discount or adjust for disability and include steps to remove the substantial disadvantage.

155. The claimant asserts that in her case that her absences were counted towards triggers for warning purposes. She relies in particular on the fact that although a reasonable adjustment to adjust absence triggers in her case was recommended by the OH nurse in May, that adjustment was not added to her workday record until December. That would appear to be correct, that is that there was a delay in that particular adjustment being agreed and implemented, because it is not otherwise recorded as having been agreed. In particular it is not referenced following the meeting on 8 July with Ms McCafferty (although I do note from the e-mail that the claimant was invited to raise any concerns about that agreement) or with Ms McGurk on 25 September.

156. The claimant argues that she suffered substantial disadvantage as a result, and that disadvantage would have been alleviated by increasing permitted absence percentage, before warnings are triggered and/or discounting time off related to disabilities, including time off when required to attend medical appointments.

157. That would appear to be a complaint about how she as an individual was treated in this case (and not a policy applied across the board).

158. That is because I accept, by reference to the respondent's absence management policy, together with the workplace adjustments policy, that it cannot be said that the respondent has a policy, amounting to a PCP, of counting all absences towards triggers for warning purposes.

159. Ms Judge argued that even if it could be said that this PCP was applied to the claimant, there was no evidence that the claimant was subjected to any formal absence management procedures prior to the adjustments being recorded into workday on 16 December 2025.

160. I consider it is important to note that, despite the apparent failure to agree or include adjustments to triggers until December, no absence warning was issued in this case under the standard managing absence policy. That is despite the fact that, if the claimant's sickness absence in August is included, by the time the claimant went on sick leave in November, she would have been absent on three occasions in a twelve month period, that is on more than two occasions which would otherwise have triggered an absence warning. I accordingly do not accept the claimant's submissions that any failures directly affected how absences were treated under the policy.

161. It follows that I did not accept the claimant's submissions that appointments and absences were used against her to count towards trigger points, even hypothetically, and the concerns about the operation of the company sick pay policy are likewise hypothetical.

162. Beyond that, the claimant's complaint relates to the failure or delay in recording the other agreed adjustments into her workday record, such that the temporary managers, including Mr Frost and Ms Humphries, were not made aware of them and resulting in them e-mailing their concerns regarding unplanned breaks.

163. The claimant appears to have believed that the agreed adjustments would not be implemented (or recorded) while the grievance was ongoing. However, I did not hear any evidence which would support the position that was the decision or intention of the respondent. Certainly, there is nothing in writing to support such a conclusion. Indeed, at the meeting with Ms McCafferty on 8 July 2025 which was to allow her to complete the workplace assessment, that included time off for medical appointments, flexible breaks and unplanned break adjustments, as well as an indication that the documentation was to be put on workday records.

164. It seems that was not done until December, but it was clearly the intention to do that before then. It seems that the failure to do that was another error on the part of the respondents. As it seems that the claimant's temporary managers were not aware of that, the failure to include this on the workday record meant that issues were raised with the claimant about breaks. In particular because the claimant became aware that the information was not on her workday record she continued to have concerns about taking breaks beyond those permitted as standard. It was apparently not until the claimant got a new line manager that the error was rectified in December 2025 (for both the claimant and Ms Buchan). At that time, the adjustments which were recorded on the workday record stated to be put in place from 16 December 2025 (although apparently recording what had already been agreed) were: ability to work from home until surgery; extra unplanned breaks (12 minutes); evenly spaced breaks – sticking with current flexibility; adjustment to absence triggers (5 instances and 8%); and medical appointments – 4 hours per month.

165. I did take note of the fact that prior to that the claimant, in response to Ms Humphries at least, pointed out that she had adjustments in place which allowed her to have more frequent unplanned breaks. It would seem that, had there been any formal adverse consequences for the claimant, then the error in failing to record the adjustments in the workday record would have been identified earlier.

166. I do recognise that the claimant argues that she was placed at a substantial disadvantage because the delay in including the adjustments in the workday record caused her additional stress, anxiety and absence, leading to loss of bonus. She asserts further that because she was aware that her adjustments had not been properly implemented that she was at

least wary of being absent or taking her unplanned breaks etc and that too caused her stress and anxiety. The medical evidence to support that connection was limited.

167. In any event, it could not be said however, given the way that the claimant's claim was articulated, that there was any breach of section 21 of the Equality Act 2010.

6. Remedy

168. I have conclude that the claimant succeeds in her claims under section 15 of the Equality Act 2010, that is discrimination arising from disability and section 19, that is indirect discrimination, although based on the same factual basis, the failure to pay the claimant an incentive bonus in respect of period when she was on disability related sickness absence. As it has been articulated, I had to conclude that the claimant's claim that there has been a failure to make reasonable adjustments is not well-founded. I then turned to remedy based on these outcomes.

6.1.1. What financial losses has the discrimination caused the claimant?

169. With regard to the financial losses suffered as a result of the failure to pay bonus while on disability related sickness absence, Ms Judge argued that it was not possible to determine exactly how much bonus would have been earned had the claimant been at work. The respondent accordingly proposed to calculate the sums due using an average incentive pay over the previous 12 months when the claimant was not absent, which is how annual leave is calculated (that is holiday pay which is unaffected by any days of sick). The respondent's incentive team had calculated the sums which would have been due to the claimant on that basis was £1,421.08 and a spreadsheet was lodged to support their calculations. The claimant was not in a position to dispute the calculations.

170. While this includes incentive pay for the phased return which is sought by the claimant, the respondent argues that because the claimant was on full pay the incentive payment should not be paid. That amounts to £257.25 so the sum due would be £1,163.83.

171. It was not clear to me why the phased return period should not be included. While the claimant was in receipt of full pay at that time, likewise when the claimant was absent she was in receipt of full contractual sick pay. I did not accept that there should be a reduction for when the claimant was on a phased return, not least because it was a disability related reasonable adjustment.

172. Accordingly, the sum which I understand it is agreed is due to be paid to the claimant is £1,42.08.

173. As I understood it, that calculation of what the claimant was due related only to the periods when she was absent for disability related reasons. In this case the calculation is based on absences in May and in November in respect of which there is medical evidence which

indicates that the absences were related to the conceded disabilities. While the sick note for the second two weeks in May does not appear to reference the claimant's conceded disabilities, I accept that period is disability related because: it follows on from two weeks of disability related sick leave; the claimant believed she could not return to work without reasonable adjustments in place; the occupational health nurse stated, as at 21 May 2025, that over the past three weeks there had been an exacerbation of her underlying anxiety and depression; and the claimant attended her GP on 28 May 2025, when reference was made to "ongoing issues" with chronic sinusitis causing severe headaches.

174. As I understand it, in regard to the periods in August in respect of which there are no sick notes the respondent's position is that they are not disability related. Although the claimant's evidence is that she was suffering from stress and anxiety as she waited for the outcome of her grievance, without medical evidence, there is no evidence to support any submission that they were disability related. The periods of sick leave in August are however not included in the computation.

6.1.2. What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

175. Section 119 of the Equality Act 2010 states that the employment tribunal has the same powers as a sheriff to make awards for contravention of the Act and section 119(4) states that an award of damages may include compensation for injured feelings.

176. The EAT summarised the principles to be applied when making an award to injury to feelings in *Prison Service v Johnson* 1997 ICR 275, and stated in particular that: awards for injury to feelings are designed to compensate the injured party fully but not to punish the guilty party; an award should not be inflated by feelings of indignation at the guilty party's conduct; awards should not be so low as to diminish respect for the policy of the discrimination legislation; nor should awards should be so excessive that they might be regarded as untaxed riches; awards should be broadly similar to the range of awards in personal injury cases; tribunals should bear in mind the value in everyday life of the sum they are contemplating; and tribunals should bear in mind the need for public respect for the level of the awards made.

177. Subsequent to *Johnson*, the seminal decision of the Court of Appeal in *Vento v Chief Constable of West Yorkshire Police* 2003 ICR 318 gave assistance on determining the level of the award by delineating three bands: a top band to be applied only in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment; a middle band for cases which do not merit an award in the highest band and a lower band for less serious cases, such as where the act of discrimination is an isolated or one-off occurrence. That case also confirmed that injury to feelings encompasses

"subjective feelings of upset, frustration, worry, anxiety, mental distress, fear, grief, anguish, humiliation, unhappiness, stress, depression and so on".

178. More recently, the EAT issued guidance on injury to feelings awards in *Eddie Stobart Ltd v Graham* 2025 EAT 14, confirming that there had to be evidence to support any award, the burden being on the claimant to show that her feelings have been injured and to what extent; recognising that a claimant would invariably suffer some injury to feeling if they were discriminated against; with tribunals taking claimants as they find them, including taking account of any pre-existing mental health condition as in this case which might mean that they are more prone to suffering a degree of injury greater than others. The frequency and duration of the claimant's exposure to the discriminatory conduct will be relevant as well as the duration of the consequences and its effect on personal life or quality of life.

179. The focus is on the effect of the discriminatory act on the claimant, not on the gravity of the discriminatory act of the respondent. It is also necessary to show that the harm is causally connected to the discriminatory act. However, in most cases it will be apparent that some degree of injury to feelings will result simply from being discriminated against, whether deliberate or inadvertent. It may be that a tribunal will require to consider whether the harm suffered by the claimant resulted from or was exacerbated by the discrimination and any suffering that pre-existed or was not caused or affected by the wrongful actions of the respondent.

180. With regard to the claimant's claim for injury to feelings, the respondent submits that the circumstances fall within the lower end of the lower Vento band; and that the claimant's suggestion that it is appropriate to make an award in the middle band is disproportionate. Ms Judge argued that the Tribunal should look at the broader context, that is the claimant remained employed; that she received contractual sick pay; that she was allowed a phased return beyond the norm; allowed to work from home; and got substantive support from the respondent.

181. While I accept that there were delays in identifying and implementing the reasonable adjustments, and while I accept that this had an impact on the claimant health, both mental and physical, as noted above I have had to come to the conclusion that there was no failure to made reasonable adjustments in this case as the claimant's claim has been articulated.

182. Although the claims under section 15 and section 19 succeed, they relate to the same facts, that is the only claim which succeeds therefore is the claim relating to the failure to pay incentive bonus for the claimant's absences related to disability.

183. When considering the level of injury to feelings which it is appropriate to award, I take account of the following: that it was not a one-off act; that the claimant raised a grievance about that (at the grievance appeal stage) but that was not upheld; that the reduction in earnings is quite significant; that the claimant already suffered from anxiety and depression;

that while absent for disability related reasons, including anxiety, the reduction in her earnings would exacerbate the stress and anxiety she was feeling; and that these feelings of stress and anxiety would have a knock on impact on her other physical conditions, including chronic sinusitis, which exacerbated her headaches, and alopecia when meant it was more likely that she would suffer hair loss.

184. For the avoidance of doubt, although the Tribunal heard evidence about the impact of the mistakes made by payroll, the claimant had accepted that the errors had been rectified and she made no claim in that regard. Although it is difficult if not impossible to be clear about which actions could be attributed to the effect on the claimant, I am aware that account could not be taken of any additional stress which this caused. Nor could account be taken of any distress caused to the claimant by the misunderstandings around the canteen incident, or indeed the delay in dealing with the grievance which the claimant said in evidence had at least contributed to her being absent from work on sick leave.

185. The claimant argues now that had she been referred earlier to occupational health, and had the reasonable adjustments been implemented sooner, then she may not have been absent with disability related illnesses and so she would not have lost any bonus or not as much bonus. It might be said that is too remote to be attributed to the respondent, but in any event without any medical evidence to support that I was of the view that could not be taken into account.

186. While in this case the claimant has succeeded in her claims under section 15 and section 19, where discriminatory acts overlap in the sense of arising entirely from the same facts, then injury to feelings will relate only to the impact of that act. I was conscious however that in cases of indirect discrimination contrary to s.19 where the Tribunal is satisfied that the PCP was not applied with the intention of discriminating against the claimant, then the Tribunal should consider other remedies (including a declaration or recommendation, see s.124(4) and (5)) before awarding compensation. I do accept that although the respondent was or is aware that the incentive scheme will particularly disadvantage disabled people, there was no particular intention to single out the claimant with the intention of discriminating against her. I discuss below considerations about whether any discrimination can be alleviated by a recommendation.

187. Relatively speaking I consider this to be a less serious case, and accordingly I conclude that the award for injury to feelings should be at the lowest Vento band. This claim was lodged in September 2025. The Presidential Guidance in place at that time included the eighth addendum which set the lower band at between £1,200 and £12,100 for less serious cases. In this case, I consider that, given the evidence I heard from the claimant regarding the effect that the respondent’s conduct had on her mental and physical health, an award in the lower to mid-point of the lowest band to be appropriate, and accordingly I award £5,000.

6.1.3. Is it appropriate to adjust any award due to unreasonable failure to follow the Acas Code

188. The respondent argues that there has been no breach of the Acas code and there should be no uplift. Since the claimant was given the right to be accompanied and to appeal, the only arguable breach was in respect of the delay in issuing the grievance outcome.

189. Ms Judge however argued that any delay was not sufficient to support a conclusion that there was an unreasonable failure to comply with the Acas code. She submitted that Ms Clayman was dealing with the claimant's substantive grievance, which included four amendments and six separate heads. She required to check policies and procedures and she had to plan and prepare for interviews with seven witnesses while undertaking her day job. She gave evidence that she was also dealing with another grievance and that she had even logged on to deal with the grievance on her days off to ensure progress. There were unavoidable delays due to annual leave, which included the claimant's annual leave. The need to seek advice from ER contributed to the delay but this was common practice and essential to check everything she was doing was accurate, and Ms Chapman had kept her informed throughout. Further, Ms Beaver said that the suggestion that such a grievance would take five days to complete is completely unrealistic given the substance and volume.

190. The relevant provisions of the Acas code under the heading "grievance" state that "employers should arrange for a formal meeting to be held without unreasonable delay after a grievance is received" and "consideration should be given to adjourning the meeting for any investigation that may be necessary". The code states that the employee should be permitted to be accompanied and that following the meeting "decisions should be communicated to the employee, in writing, without unreasonable delay…the employee should be informed that they can appeal…."

191. I accept that there was some delay in issuing the grievance however I do not consider, given the factual background set out by Ms Judge, that there was any breach of or failure to comply with the Acas code. I could not say the delays in this case were "unreasonable" given that Ms Chapman was dealing diligently with the grievance, given the need to take advice from HR, and given the explanation for the delays including scheduling interviews.

192. I did note that it was Ms Chapman's first grievance and while it was standard practice to have support from ER, she said that it was the first time her ER support had dealt with a grievance as well, and he had to get his work checked by a supervisor. This combination was perhaps not wise because it contributed towards delays, but I could not say that it meant that any delays were "unreasonable".

193. I noted too that the claimant's grievance evolved from an initial complaint about the handling of the canteen incident, which she made on 29 April 2025, to which she added a complaint about the failure to refer her to occupational health on 29 May 2025. She added

further complaints on 13 and 15 June 2025. The grievance hearing took place on 27 June 2025.

194. Taking these factors into account, I conclude that there was no failure to follow the Acas code in regard to the way that the grievance was conducted. Accordingly, I find that there should be no uplift.

6.1.4. Is it appropriate to make a recommendation?

195. The claimant submits that there should be a recommendation that the respondent should make the incentive scheme less discriminatory so that disabled employees are treated the same as those on annual leave, or on a pro rata bas where performance has been met.

196. Ms Judge argued that this matter is not suitable for a recommendation to amend the incentive scheme. She argued that given the scheme is for a legitimate and commercial purpose, the fact that the scheme cannot accommodate sickness absence and the interplay with the contractual sick pay scheme, a recommendation to amend the scheme would not be proportionate.

197. While the claimant is still employed, I accept that a recommendation could in principle obviate or reduce the adverse effect on the complainant of any matter to which the proceedings relate, in terms of sections 124(2)(c) and 124(3).

198. However, I note that an "appropriate recommendation" is one that the respondent should take certain specified steps within a specified period.

199. I have decided that, in this case, it is not possible to make an appropriate recommendation for the reasons which Ms Judge advances, including the interplay between the incentive scheme and other policies and procedures including the contractual sick pay scheme. However, I came to that view in particular because of the submissions relating to the complicated allocations of budget in respect of the incentive scheme. While I heard evidence from Ms Beaver and Ms Fraser regarding that, I do not consider that I had sufficient detail to allow me properly to make an order about what specified steps should be taken to obviate or reduce the adverse effect of the schemes on the claimant. Clearly, the respondent will require to consider their position if they are to avoid another complaint from the claimant or other members of staff but I accept that the respondent will wish to look at all options to enable them to address any discrimination inherent in their current incentive scheme.

Application for an order under rule 49 of the Employment Tribunal Procedure Rules 2024

200. Following the conclusion of the hearing, the claimant made a request by e-mail dated 20 May 2026 for an anonymisation order. She explained that she is still currently employed by the respondent and is concerned that the publication of the final judgment on the public

register would expose her private medical condition to the general public and wider workplace. She explained this was causing severe anxiety, distress and hair loss. She asked in particular for an order anonymising her name on the public judgment register to protect her right to privacy under Article 8 ECHR.

201. The respondent confirmed that they did not object to the privacy order. Notwithstanding, even if there is no objection, I require to consider the competing considerations of the principle of open justice and freedom of expression and the claimant's right to privacy following the guidance setout by HHJ Eady in *Ameyaw v Pricewaterhousecoopers Service Ltd 2019 IRLR 611.*

202. That decision confirms that the employment tribunal has power to prevent or restrict the public disclosure of any aspect of proceedings so far as is considered necessary in the interests of justice or in order to protect the Convention rights of any person. Rule 49 of the 2024 Rules permits the employment tribunal to make certain redactions from the judgment and written reasons (including the anonymisation of the parties).

203. In the circumstances of this case, the Tribunal heard detailed evidence about the claimant's mental and physical health. There has been a requirement, in coming to the decision, to discuss the claimant's mental and physical health, medical history and resulting conditions in some detail. This is an aspect of her private life. Given what I have heard of the claimant's health, including the medical evidence lodged, I am satisfied that is sufficient to prove that harm may be done to her if the application is not granted.

204. I therefore came to the view that the claimant's right to privacy outweighed the open justice principle. I decided that the claimant's interests should be protected by an anonymisation order in respect of the claimant and her identity. Thus she will not be named in the public register.

205. In these circumstances therefore I grant the claimant's application under Rule 49(3)(b) for anonymisation of her name, and its replacement with the abbreviation AB, in any documents entered on the Register or otherwise forming part of the public record.

03 July 2026
Date of Judgment

Date sent to parties **07 July 2026**