



EMPLOYMENT TRIBUNALS

Claimant: Ms J Loren

Respondent: Capita Business Services Limited

Heard at: Leicester Hearing Centre, 5a New Walk, Leicester, LE1 6TE

On: 14 July 2026

Before: Employment Judge Adkinson sitting alone

REASONS

FOLLOWING a request for written reasons on 14 July 2026

THESE ARE THE FULL WRITTEN REASONS for the judgment dated 14 July 2026

Introduction

1. The claimant says she was dismissed because she is a lesbian. The respondent says it was because she failed her probationary period. The latter is correct. In simple terms she was not a good enough performer.

Hearing

2. The claimant represented herself throughout with the assistance of Patricia Auty as a McKenzie friend. Ms Jones, Counsel instructed directly by the respondent, represented the respondent.
3. I heard oral evidence from Ms Loren herself, and from a Ms Martina Sammut, who was the Functions Specialist Team Manager and the claimant's Line Manager. I have taken into account that oral evidence.
4. There was a bundle of 218 pages, and I have taken into account those pages to which the parties referred me in their evidence and in submissions.
5. At the close of the case, each party made closing arguments, and I have taken into account those closing submissions. The respondent also prepared a note on the law which I have taken into account.
6. No reasonable adjustments were required by either party for the hearing, although we took breaks as appropriate throughout the hearing itself.
7. Though the case was listed for three days, we managed to complete the evidence and submissions on day one. Judgment followed on day 2.
8. By consent we have dealt with liability only.

9. No party has suggested the hearing was unfair, I am satisfied that this was a fair hearing.

Issue

10. The issue that the Tribunal must determine is a simple one: Did Miss Sammut treat Miss Loren less favourably than others were or would be treated when she dismissed her on the 26th of May 2024? If so, was it because of Miss Loren's sexual orientation?
11. Ms Loren defines her sexual orientation as lesbian and that has not been disputed in this hearing.

Facts

12. I turn now to the facts of the case. I decide what the facts are on the balance of probabilities. It is not practicable or indeed proportionate for me to deal with every single evidential point, although of course I have considered all of it. I therefore only deal with those that are necessary to understand my decision.
13. I firstly make a comment about the witnesses. Both witnesses were honest and did their best to assist the Tribunal
14. From 21 August 2023 the respondent employed the claimant as a disability assessor. In essence, her job was to carry out medical assessments of people seeking to claim Personal Independence Payments from the Department for Work and Pensions (DWP).
15. The DWP has subcontracted the medical assessment part of the process to the respondent. The reports that are prepared are then used by the DWP ultimately to make its decision. Ms Loren's line manager (also called Team Manager) was Ms Sammut.
16. The contract of employment provides for a probationary period:
"Probationary Period
"Your employment will be subject to a six-month probationary period during which both parties are required to give notice as stated in your summary statement. Throughout the probationary period an ongoing assessment will be made of your work performance and suitability for continued employment. At the end of your probationary period you will be informed in writing if you have successfully completed your probationary period and are confirmed in post.
"The Company may extend in its discretion your probationary period for up to three months if circumstances require.
"The Company may at any time during the probationary period, including any extended probationary period, terminate your employment and this does not prejudice The Company's right to dismiss in accordance with the notice provisions during the probationary period, should this prove necessary."
17. I conclude that, objectively interpreted, the contract permits one extension only of probation. It provides only for an extension of up to three months, rather than a rolling power to extend. If multiple extensions were permitted

or intended, then I would expect the draftsmen would write “at a time” or similar. In addition, a rolling probationary period somewhat defeats the point of such a period. It is clear probation is intended to allow the employee to prove they are up to the role and to enable the respondent to dismiss those who are not. A rolling period or multiple extensions would be contrary to that idea.

18. During probation, the respondent through line managers assesses the employee's suitability and provides training for the employee to reach the required standard to be able to work on the cases that the DWP refers to it.
19. As part of the assessment, all reports prepared by probationary employees were audited and graded by auditors independent of Ms Sammut and Ms Loren. These assessments are uploaded into the system, and the system pulls them into a spreadsheet Ms Sammut can access albeit she cannot enter data into it. There is no evidence the auditors knew who Ms Loren was as an individual (even if they saw her name), knew of her sexual orientation, or that it influenced their assessment of the reports she wrote.
20. Throughout the probationary period there are meetings at which the line manager and employee review progress in training and performance. The claimant had several such meetings. They all took place with Ms Sammut.
21. The first one took place on the 13th of November 2023. They knew nothing of Ms Loren. They saw only the reports. They awarded different grades to show if the reports were acceptable or not. “A” [acceptable] and “AF” [acceptable with fixes] were acceptable. Other grades were not.
22. Ms Sammut told Ms Loren that to achieve stage 4, she had to achieve 5 A or AF grades on her reports and no more than 1 U grade in a rolling lot of 10 reports.
23. The meeting records that the 100% of the reports that Ms Loren had produced by this point were considered “not fit for purpose” (“NFFP”).
24. Ms Sammut also told Ms Loren that that the target for report submission is 80% of reports must be submitted within 24 hours and 100% within 72 hours. There was a factual dispute about whether time limits were part of the criteria Ms Loren was to meet. I find they were. Ms Sammut would not have raised it if not. In addition it is highly plausible that turnaround was important. It is often a part of outsourcing. It is also an obvious requirement if people's entitlement to benefits depends on the report that their application should be progressed promptly.
25. Ms Sammut also commented:
“Well done for continually working hard towards business targets, SLAs [service level agreements] and KPIs [key performance indicators] 😊 The target at this stage is to focus on reducing the NFFP%, ie. Produce more FFP reports in aiming to gain stage 4 approval. The NFFP% target is to be around the 50%. You need to determine what is causing you to work for long periods on report write up. How do you feel about this data?”

Later Ms Sammut wrote in the assessment.

"You are showing a positive attitude towards your role. Please make sure you are using the necessary supportive resources on Totara, you use the DASL when necessary, and please reach out to our team chat as well as the Honeypot Teams channel if required, which are designated specifically to help out with queries unapproved DAs have. The main areas which require improvement in the coming month are:

- "- Reducing the NFFP % (ie produce more A and Af grade reports),
- "- Making sure we implement good time management techniques,
- "- Signposting to necessary supportive resources to help with assessment handling and report writing skills whilst prioritizing high quality work
- "- Reduce report writing and assessment timings to the allotted 1 hour,
- "- Being autonomous to an acceptable level with decision making, whilst ensuring TM is aware of urgent and emergency concerns.

"Our next review will be in December and we will re-evaluate these same objectives. Let's focus on producing more FFP reports and am sure that you will steadily start working your way to achieving FFP reports. Am sure that you are extra vigilant in picking up safeguarding issues and that you are working hard towards the improvement targets I've put forward for you. As always reach out if you need support. You will get there, everybody's journey is different and remember continual improvement is an unending journey 😊 "

26. It is a probation review that shows encouragement to improve performance that was not at an acceptable level. It directed Ms Loren to sources of support (Totara and DASL) too.
27. Ms Loren does not allege there was discrimination at this meeting or in anything Ms Sammut said or did. Indeed in cross-examination Ms Loren said that Ms Sammut did not become aware of Ms Loren's sexual orientation until late December 2023 (Ms Loren said she could not remember but accepted Ms Sammut's evidence that this is the correct approximate date). There is no suggestion Ms Sammut thought or believed Ms Loren was a lesbian at this point – indeed Ms Loren's evidence is things changed for the worse only after Ms Sammut became aware of her sexual orientation. However in preparation for the case Ms Loren wrote her own chronology. She wrote, against 13 November 2023:

"JL records at this meeting: "I am aware other DAs are in my situation and they are getting the support they need which I'm not getting." Early evidence of differential treatment. [Bundle p.15]"
28. The obvious problem is that she advanced in this document that she relied on before the Tribunal that the differential treatment began in November. Her evidence is clear it began only after Ms Sammut found out about her sexual orientation. She accepted this was in late December. Therefore it is either a change in her case and evidence because she is now effectively disowning her assertion the differential treatment began in November, or it shows that, if there were differential treatment, it cannot in the circumstances be linked to Ms Summat knowing the claimant is a lesbian. There was no satisfactory explanation. Either way, it undermines the

credibility of the claimant's case because it undermines the key assertion that matters deteriorated only after Ms Summat found out she was a lesbian.

29. There was a further probation meeting on the 15th of December 2023. The note shows Ms Loren still produced a significant number of reports that were marked as NFFP. Ms Sammut did note improvements but not enough to progress to the next stage. She also noted Miss Loren had been very receptive to feedback and had shown a willingness to learn, develop and improve her disability assessment related skills. They agreed Ms Sammut would arrange performance coaching form Ms Loren. referral made to provide some performance coaching to Miss Loren. Ms Sammut also reduced the number of reports expected per day to allow Ms Loren to ensure her reports were "fit for purpose" ("FFP").
30. Ms Sammut arranged the coaching. All coaching is arranged in the following manner. The line manager makes the referral for coaching. It is then for the part of the respondent responsible for processing referrals to accept it, and if it does, to allocate a coach. The line manager does not make the final decision on whether to appoint a coach and has no say on who is appointed.
31. In late December Ms Loren was away for 4 weeks on approved leave. As noted, it is in late December, which I find as a fact was after the meeting on 15 December (because that is mid-December) that Ms Loren told Ms Sammut of her sexual orientation.
32. There was a further probation meeting on 31 January 2024. It continued to note problems with the reports but some improvements. Performance coaching was now in place. Ms Sammut decided to see if the respondent would provide clinical coaching. She made the referral on 5 February, and it was approved that day. Ms Sammut noted improvement in submitting work, but that there were still problems.
33. A further probation meeting took place on 28th of February 2024. There were still a significant number of NFFT reports. Ms Sammut decided to extend the probation period by 3 months to allow more time for improvements, that Ms Loren was receiving clinical pathway coaching and she had been away for 4 weeks. She said:

"At this stage we need to prioritise submitting high quality work whilst working against all submission targets in preparedness for achieving stage four telephone assessment approval. Monthly probation meetings will continue throughout your probation extension and their performance will continue to be monitored against attainment of all business objectives. A probation extension response letter will be sent out for your reference."
34. The next meeting was on 11 April 2024. Ms Sammut emphasised and reminded Ms Loren that to progress to the next stage, Ms Loren had to achieve five A grade or AF grade reports and no more than one U grade in a rolling 10 report. She commented that she believed Ms Loren had the competency to achieve this and by now should be achieving that level. She also reminded the claimant what support the respondent had provided so far. Ms Sammut added

“Our next review will be in May and we will re-evaluate these same performance objectives. If any of the performance objectives will still be ranked as ‘progressed’, probation outcome will be termination of probation. Please be mindful that by next month probation outcome can be successful or termination, based on your overall performance until end of probation date. If probation outcome is termination you will be given 2 weeks’ notice in advance, prior to your new end of probation extension date. Please continue prioritising submitting high quality work the first time round by ensuring utilisation of supportive resources. As always do not hesitate to reach out if you need support. I wish you all the best of luck in achieving your full DWP TA [telephone assessment] approval in the next month.”

35. Ms Loren therefore left the meeting in no doubt that the next meeting would be pass or dismissal. There is nothing said to lead Ms Loren to understand her probation might be extended again.
36. I have considered these reports, and I find as a fact that they are all of the same tenor: Ms Loren was being provided with support and encouragement, that there were improvements but that they were not good enough. She was still failing to reach the required standard of producing enough FFP reports. They are all fair reports in that they note the negatives, but also the positives, and they provide encouragement. I also find as a fact that the tenor of the reports in November and December (before Ms Sammut found out about the claimant’s sexual orientation) is the same as that afterward: fair, supportive and encouraging. There is no detectable change. After considering the oral evidence as well, there was nothing in cross-examination that led me to consider that the reports do not reflect the non-recorded interactions. It leads me to conclude, and to find as a fact, that Ms Sammut’s attitude and approach to Ms Loren did not change after she found out Ms Loren was a lesbian in late December 2023.
37. The next probation assessment meeting was fixed for the 20th of May 2024. The invite was sent out on or about the 8th of May 2024. It referred to the possible outcomes that the respondent might dismiss Ms Loren or progress her to the next stage. It also said there was a possibility of an extension to probation. Ms Sammut says this was an error and something she omitted to remove from the template letter. I accept that evidence. It would tally with the contract of employment and what was said at the last meeting to Ms Loren. I find as a fact it was an innocent error that the paragraph remained in the letter.
38. At the meeting Ms Loren was represented by her trade union representative.
39. The meeting considered Ms Loren’s performance. At her request, the meeting focused on the data for the last month rather than the previous five months. Auditors had declared 74.3% of her reports for that period were NFFT. Only 26.7% of reports were produced in 1 working day (the target is 75%) and many were 4 or more days late. It also confirmed that there were other errors as well. They also confirmed the support that the respondent had provided to the claimant and the extension of the probationary period in which she could prove herself able to do the job. It also acknowledged the positives.

40. I referred above to the auditors' assessments data being pulled into a spreadsheet. Ms Sammut referred to that spreadsheet. It showed that, of the last 10 reports, only 2 were acceptable and 2 were graded "U".
41. Ms Loren pointed out that some of her assessments submitted before the meeting were graded as acceptable, but the data did not appear in the spreadsheet until after the meeting. Firstly if they had been included, she would still have failed to meet the standard to progress. Secondly, I find as a fact that this was not connected to Ms Sammut. She was a passive observer of the data, not an active creator of it. She could exclude, remove or hide data or prevent it being captured by the system and entered into the spreadsheet, or indeed cause it to be "pulled" into the spreadsheet. It may or not be fair, but it is just how it was. Moreover there is no evidence that the presence or absence of data was connected to the claimant's sexual orientation.
42. Secondly it is notable that 2 reports are noted as created on 29 April at 01:10 but the audits completed on 2 May 2024 34 minutes apart. The only rational explanation is that this is just how the system updated itself. There is no evidence of any other explanation, yet alone anything sinister or connected to the claimant's sexual orientation. I find as a fact that these are merely reflections of how the system works.
43. Ms Loren's representative raised that the letter talked of a possible further extension of probation. Ms Sammut took a break and sought advice from human resources (HR). I accept and find as a fact she was advised an extension was not possible. It would tally with the contract and with the warning at the previous meeting. It is also not credible she would pause to seek advice and either not seek it or ignore it. Ms Sammut advised that Ms Loren had already had a three-month extension and therefore the only options were pass or terminate. After an adjournment, Ms. Sammut terminated Ms Loren's contract
44. She wrote in the comments section of the record of meeting
- "I am sorry to see that by this stage you haven't achieved all business objectives. Due to this, probation outcome is probation termination, which is based on your overall performance until end of probation meeting date. Please note your termination end date is 26/05/2024. Your employment will be terminated with 1 weeks' notice to be paid in lieu, meaning you won't be expected to work throughout your notice period.
- "I wish you all the best for the future and thank you for being part of the team for these past 9 months.
- "For further detail, please refer to your 'Probation Outcome Letter'.
- "May I kindly reiterate, there is no right of appeal against the probation termination decision."
45. There are some comparators whom Miss Loren relies upon.
46. The first comparator is Ms Siobhan Westmacott. I note as follows.

- 46.1. There is no evidence about her sexual orientation. I am not prepared to presume what it might be. There is no safe basis to do so.
- 46.2. She was managed by a different line manager. I do not know who.
- 46.3. I do not know anything about her performance within the company.
- 46.4. The only evidence that I have is a Teams chat. Ms. Westmacott wrote on a date that is not known, "So, just had my meeting, I have passed probation, but I have three months to get approval, now otherwise, that's it."
- 46.5. "That's it" refers to termination of employment, I find. It cannot reasonably refer to anything else. I do not accept it shows she passed her probation. It is incongruous to pass it and then have 3 months to either get approval or be dismissed. In any event it does not show she had more than one extension to probation.
- 46.6. I know nothing of her performance generally.
47. The second comparator is Ms Drisilla Matanga.
- 47.1. There is no evidence about her sexual orientation. I am not prepared to presume what it might be. There is no safe basis to do so.
- 47.2. She was managed by a different line manager. I do not know who.
- 47.3. Ms Loren tells me that there was an extension to her probation of 12 months. I know nothing of the circumstances of that extension (if indeed there were one).
- 47.4. I know nothing of her performance generally.
48. The third comparator is Ms Hasfar Javel.
- 48.1. There is no evidence about her sexual orientation. I am not prepared to presume what it might be. There is no safe basis to do so.
- 48.2. She was managed by a different line manager. I do not know who.
- 48.3. There are a series of text messages relied on. They make little sense. I do not consider they show any form of different treatment. They do not disclose the circumstances in which she received any particular treatment.
- 48.4. I know nothing of her performance generally.
49. Ms Loren submitted a grievance. The respondent did not progress it. The respondent accepts it had no good reason not to. However, Ms Sammut was not involved in handling the grievance. There is no suggestion or evidence that she had any influence in how it might be handled. There is

no evidence that those who were handling or supposed to handle the grievance knew Ms Loren was a lesbian yet alone let it influence them.

Law

Direct discrimination

50. The Tribunal has considered the **Equality Act 2010 section 13 and 212, Burrett v West Birmingham Health Authority [1994] IRLR 7 EAT, Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 ICR 33 UKHL, Balamoody v United Kingdom Central Council for Nursing, Midwifery and Health Visiting [2002] ICR 646 CA, Nagarajan v London Regional Transport [1999] ICR 877 UKHL, R(E) v Governing Body of JFS aors [2010] 2 AC 728 UKSC, Stockton on Tees Borough Council v Aylott [2010] ICR 1278 CA** and understands the task to be as follows:
 - 50.1. Carry out an objective assessment of the following matters (**Burrett**)
 - 50.2. Ignore the motive of the respondent (**JFS**),
 - 50.3. Decide if there has been detrimental treatment (**Equality Act**)
 - 50.4. Decide if there is a plain reason for the difference in treatment, i.e. why it happened (**JFS, Aylott**)
 - 50.5. If not, determine if there was someone in the same position in all material respects as the claimant except for membership of the protected class (**Shamoon**)
 - 50.6. If not, determine how the respondent would have treated a hypothetical in the same position in all material respects as the claimant except for membership of the protected class, (**Shamoon, Balamoody**).
 - 50.7. If the respondent treated or would have treated the claimant less favourably than the comparator, determine if the protected characteristic had a significant influence on the outcome (**Nagarajan**)
51. I have taken into account the guidance that discriminators tend not to advertise the fact (**Glasgow City Council v Zafar [1998] IRLR 36 UKHL**), people may be unwilling to admit to themselves they are discriminatory (**Nagarajan**) and that discrimination can be based on innocent or well-intentioned motives even (**King v Great Britain-China Centre [1991] IRLR 513 CA; Amnesty International v Ahmed [2009] ICR 1450 EAT**).

Burden of proof

52. The **Equality Act 2010 section 136** sets out the way that the burden of proof operates. It was explained in **Efobi v Royal Mail Group Ltd [2019] 2 All ER 917 CA; [2021] 1 WLR 3863 UKSC** which reviewed and endorsed a significant number of earlier authorities. The Tribunal takes from it the following principles:
 - 52.1. Determine if the claimant has proven on balance of probabilities, facts from which the Tribunal could properly conclude the

respondent discriminated against the claimant. The Tribunal can consider all the evidence (including that from the respondent) to decide ultimately if the claimant has discharged that burden. The Tribunal must ignore however any explanation for proven treatment at this stage.

- 52.2. If the claimant succeeds at the first stage, then the burden moves to the respondent to show on balance of probabilities the reason for the treatment was not one prohibited by **Equality Act 2010**.
- 52.3. These provisions require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal can make positive findings on the evidence one way or the other.
- 52.4. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal 'could conclude' that the respondent had committed an unlawful act of discrimination.

Conclusions

- 53. There is clearly detrimental treatment because the respondent dismissed the claimant.
- 54. I conclude it is clear why that happened based on the findings of fact above.
 - 54.1. Every probation review both before and after Ms Sammut knew of Ms Loren's sexual orientation records Ms Loren was not performing to the required standard.
 - 54.2. By the end of the 9 month's probationary period, Ms Loren still was not good enough to progress. The statistics available to Ms Sammut show that.
 - 54.3. The auditors' assessments are neutral and show a failure to meet the standard expected and required. There is no suggestion they are tainted by discrimination.
 - 54.4. Ms Loren had already had the benefit of an extension to her probationary period to allow her to prove herself able to do the job. She had already had support and coaching. She had had encouragement.
 - 54.5. There was no change in Ms Sammut's approach or attitude to Ms Loren after Ms Sammut found out about Ms Loren's sexual orientation.
 - 54.6. In summary, Ms Loren was a poor performer. That is why she was dismissed. It is consistent with the evidence. I conclude it is what Ms Sammut believed because it tallies with her oral evidence and that tallies with the documentary evidence.
 - 54.7. The comparators provide no supporting evidence. I do not know whether they share the same sexual orientation or have a

different one. I do not know enough to say whether their position is not materially different.

- 54.8. The situation with the grievance sheds no light on the situation because there is nothing to show it was tainted by sexual orientation.
- 54.9. Ms Loren's reliance on the spreadsheet and outstanding reports sheds no light on matters. That is just an artifact of the system. It may be unfair. There is no evidence that enables me to conclude it is reflective of discrimination.
55. Even if I had had to consider comparators, I would have concluded the comparators advanced provide no useful evidence. As noted above I do not know their sexual orientation, yet alone whether their circumstances were not materially different.
56. I consider that the evidence is clear that in fact a person in the same situation as the claimant, but not a lesbian, would have been treated no differently. The evidence justifies the conclusion she was a poor performer. The facts show no change in approach after her sexual orientation was disclosed.
57. I have throughout taken a step back and looked at things in the round. Doing so still leads me to the same conclusion. There is no evidence the dismissal was because the claimant is a lesbian.
58. The claim fails. The claim is dismissed.

Approved by the Judge

Employment Judge Adkinson

Date: 14 July 2026

JUDGMENT SENT TO THE PARTIES ON

05.08.2026

.....
Hrishiraj Pramanik

.....
FOR THE TRIBUNAL OFFICE

Notes

These are the full reasons. No further written reasons will be provided.

Public access to employment Tribunal decisions

All judgments (apart from withdrawal judgments) and written reasons for the judgments (if provided) are published, in full, online at www.gov.uk/employment-Tribunal-decisions shortly after a copy has been sent to the parties in a case.

Appeals

You can appeal to the Employment Appeal Tribunal if you think a legal mistake was made in an Employment Tribunal decision. There is more information here: <https://www.gov.uk/appeal-employment-appeal-Tribunal>.

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If a Tribunal hearing has been recorded, you may request a transcript of the recording upon payment of any fee due. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings. You can access the Direction and the accompanying Guidance here: <https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>.