



EMPLOYMENT TRIBUNALS

Claimant MARCUS BRIDGES

Respondent: MINISTRY OF DEFENCE

Heard at: Bristol (via CVP)

On: 9th – 13th March 2026

Before: **Employment Judge David Hughes**
Mrs P Skillen
Mr P Lowe

Representation

Claimant: in-person

Respondent: Julian Allsop, counsel

JUDGMENT

1. The Claimant's claims were presented within the applicable time limits and, to the extent that they were not, it is just and equitable to extend the time limit.
2. The complaints of unfair dismissal, discrimination arising from disability and failure to make reasonable adjustments, are well-founded and succeed.
3. The complaints of direct disability discrimination and harassment related to disability are not well-founded and are dismissed.
4. All questions going to remedy will be determined at a hearing to take place on 11th to 13th January 2027, for which directions are given in a separate Order.

REASONS

1. The Tribunal gave its decision at the end of the above hearing. Having done so, the Respondent's counsel asked the Tribunal to give written reasons. The Tribunal indicated that it would give its reasons in a single

document with the Judgment.

Who everyone is

2. The Claimant worked for the Respondent for 37 years, up to 22.04.2025. He is a chartered engineer.

The Claimant

3. The Claimant presented his claim on 11.11.2024.
4. The case has perhaps not had the smoothest procedural history. A list of issues was prepared by EJ Ferguson at a hearing on 22.05.2025. There was a second list of issues prepared EJ Rayner on 28.10.2025. This was supplemented at a later date .
5. In January, the Claimant emailed the Tribunal, seeking to add to the list of issues. For some reason, that application was not dealt with, and we had to deal with it at the outset of this hearing. We did not allow the Claimant to add to the list of issues, for reasons we delivered orally on the first day of the hearing.
6. The list of issues was as follows:

1. Time limits

1.1 Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.1.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act or omission to which the complaint relates?

1.1.2 If not, was there conduct extending over a period?

1.1.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.1.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.1.4.1 Why were the complaints not made to the Tribunal in time?

1.1.4.2 In any event, is it just and equitable in all the

circumstances to extend time?

1.2 Was the constructive unfair dismissal complaint made within the time limit in section 111 of the Employment Rights Act 1996? The Tribunal will decide:

1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the effective date of termination?

1.2.2 If not, was it reasonably practicable for the claim to be made to the Tribunal within the time limit?

1.2.3 If it was not reasonably practicable for the claim to be made to the Tribunal within the time limit, was it made within a reasonable period?

2. Constructive unfair dismissal

2.1 Did the Respondent do the following things

2.1.1 the conduct alleged to amount to unlawful discrimination below

2.1.2 not uphold the claimant's grievance 29 January 2025 and dismiss his appeal 19 March 2025.

2.2 Did that breach the implied term of mutual trust and confidence? the tribunal will need to decide

2.2.1 Whether the Respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent; and

2.2.2 Whether it had reasonable and proper cause for doing so.

2.3 Did the Claimant resign because of the breach? The Tribunal will need to decide whether the breach of contract was the reason for the Claimant's resignation.

2.4 Did the Claimant affirm the contract before resigning? The Tribunal will need to decide whether the Claimant's words or actions showed that they chose to keep the contract alive even after the breach.

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

3.1 Did the Respondent do the following things:

3.1.1 Refuse to make adjustments to the application process after the interview had taken place and require the Claimant to raise a

formal grievance;

3.1.2 Omar Khan told the Claimant he was seeking unfair advantages over other candidates via e-mail on 23 May 2024; in a meeting

on 26 June 2024 and on or around 29 October 2024

3.1.3 Cdr Adcock refused the claimant's request for temporary promotion in June July 2024;

3.2 Was that less favourable treatment? The Tribunal will have to decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and those of the Claimant. If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether he was treated worse than someone else would have been treated. The Claimant has not named anyone in particular and therefore relies upon a hypothetical comparator, but relies upon the treatment of Linda Disket in a previous recruitment campaign five years previously, and who the Claimant says was allowed reasonable adjustments afterwards, as well as the treatment of mark Beaverstock who was involved in a recruitment sometime in 2023, as evidence of different treatment.

3.3 If so, was it because of disability?

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

4. Discrimination arising from disability (Equality Act 2010 section 15)

4.1 Did the Respondent treat the Claimant unfavourably by:

4.1.1 "Failing" the Claimant in his interview on 20 March 2024

4.1.2 rejecting the Claimant's application for promotion which was formally confirmed on 14 June 2024;

4.2 Did the following things arise in consequence of the Claimant's disability?

The Claimant's case is that his performance in interview including his inability to hold eye contact; speak clearly and structure answers was affected by his disability:

4.3 Was the unfavourable treatment because of any of those things?

4.4 Was the treatment a proportionate means of achieving a legitimate

aim?

The Respondent says that its aims were:

4.4.1 Candidate(s) were appointed on merit by the best available person Judged against the published criteria for the role. No one should be appointed to a role unless they are competent to do it and the appointment must be offered to the persons who would do it best

4.4.2 a structured selection process (including interview) gives the candidate(s) a fair opportunity to prepare against the advertised requirement and ensures a level of consistency across the panel. In order to sit on an interview panel the individuals have to undergo training that helps to drive consistency and mitigate against bias.

4.4.3 A guidance document is utilised at interview which ensures consistency in the questions asked to each candidate as well as a framework that guides how their answers should be scored.

4.4.4 A structured selection process that allows the Respondent to take a pool of applicants through an interview and measure them against an advertised requirement is a more effective way of assessing candidates than using performance reports. Performance reports are written by someone the candidate would have a relationship with (IE line manager) whereas the interview panel are required to be independent and objective, mitigating against any conflict of interest. In addition, performance reports are not written with the purpose of deciding whether or not someone should be promoted nor will they be written to assess the recipient against a specific advertised recruitment. An annual appraisal and an internal promotion interview are two very different and distinct propositions. A pool of applicants on an internal promotions campaign may not all have performance reports written by the same individual, meaning that it will not be as objective as an interview process. The individuals who have written the performance report may not have a view on the advertised requirement at all and may not be involved in the selection process for the advertised requirement.

4.5 The Tribunal will decide in particular:

4.5.1 Was the treatment an appropriate and reasonably necessary

way to achieve those aims;

4.5.2 Could something less discriminatory have been done instead;

4.5.3 How should the needs of the Claimant and the Respondent be balanced?

4.6 Did the Respondent know or could it reasonably have been expected to know that the Claimant had the disability? From what date?

5. Reasonable Adjustments (Equality Act 2010 ss. 20 & 21)

5.1 Did the Respondent know or could it reasonably have been expected to know that the Claimant had the disability? From what date?

5.2 A "PCP" is a provision, criterion or practice. Did the Respondent have the following PCPs:

5.2.1 Assessing applications for promotion based on performance in interview [PCP1]

5.2.2 requiring employees to go through a formal grievance process in order to request adjustments to a promotion exercise once an interview had taken place [PCP 2]

5.2.3 allowing grievance process is to become delayed such that the outcome may be given many months after the grievances submitted [PCP 3.;

5.3 Did the PCPs put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability, in that

5.3.1 PCP1: his performance in the interview on 20 March 2024 was impacted by his mental health. He suffered a panic attack could not hold eye contact and his speech was very strained.

5.3.2 PCP2: the requirement to go through a formal process negatively impacted on the claimant's mental health

5.3.3 PCP3: the delay negatively impacted on the claimant's mental health

5.4 Did the Respondent know or could it reasonably have been expected to know that the Claimant was likely to be placed at the disadvantage?

5.5 What steps (the 'adjustments') could have been taken to avoid the disadvantage? The Claimant suggests:

5.5.1 Using staff reports to assess suitability for promotion;

5.5.2 allowing the Claimant to attend a further interview

5.5.3 considering adjustments in an informal process

5.5.4 ensuring the grievance process was concluded more quickly.

5.6 Was it reasonable for the Respondent to have to take those steps and when?

5.7 Did the Respondent fail to take those steps?

6. Harassment related to disability (Equality Act 2010 s. 26)

6.1 Did the Respondent do the following things:

6.1.1 when I said I mental health problems my direct boss Mr Stephen Robinson said "I have never noticed anything",

6.1.2 I contacted my direct boss, following interview as I wanted to put together some evidence to support my application , and was told later that "there was no evidence"

6.1.3 In a meeting on 22 October 2024 in respect of my grievance, I asked Cpt. Riordan if they could progress the grievance as quickly as possible. He commented that " the complaint is yours" and "you can only get a reinterview from your complaint" saying that was the best I can get.

6.2 If so, was that unwanted conduct?

6.3 Did it relate to the Claimant's protected characteristic, namely disability?

6.4 Did the conduct have the purpose of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

6.5 If not, did it have that effect? The Tribunal will take into account the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

7. Issues relating to remedy were not considered at this hearing, for time reasons.

8. The list of issues was added to – the additions unfortunately not reduced into a single document – by adding the following:

Para 3.1.2. Where the text is "via e-mail on 23 May" the date should be "31 May".

Para 3.2. The comparator is Mr. Kwok Tang, who was part of the same P1

Promotion Campaign as the claimant. Mr Tang suffered a non reoccurring illness before his interview and a resulting fatigue. The P1 Campaign was extended beyond the 28 March 2024 campaign closure date so that Mr Tang could be considered for the promotion. He was subsequently the only successful Engineer candidate.

Hypothetical comparator "Linda Disket" is in fact "Linda Diskett" "mark Beaverstock" is "Mark Beverstock" who failed an Interview in 2023 but was subsequently given the job in T26.

Para 6.1.1. Amend the Para to read "when I said I had mental health problems on 22 October 2024 my Team Leader Cpt Sean Riordan said "I have never noticed anything" "

Para 6.1.2 to read "I contacted my newly started direct boss, Cdr Steve Robinson on 30 August 2024 as I wanted to put together some evidence of my Delivery to support my Grievance, and was told on 13 September, after he had consulted the T26 Seniors that "there was no evidence" "

The hearing

9. The hearing took place over 5 days, from 09.03.2026.
10. The hearing was listed for 5 days. Given that the Respondent proposed to call no fewer than 9 witnesses, the timetable appeared to us to be challenging. We asked the parties for time estimates for each witness. Mr Allsop estimated that he would take 5 hours with the Claimant, an estimate to which we held him.
11. The Claimant provided estimates of the time he would take to cross-examine the Respondent's witnesses. He is not a professional advocate, and it would be unfair to hold him to his estimates with the same rigour as was applied to Mr Allsop. But we did apply a time limit to each witness, albeit one above his own estimates, indeed often double the time he had estimated.
12. We heard evidence from the Claimant, and from no fewer than 9 witnesses on behalf of the Respondent. These were:

- (a) Omar Khan, a Senior Talent Acquisition Manager who has worked for the Respondent since 2021;
- (b) Mark Beverstock, head of the Combat Ships Delivery Group;
- (c) Kwok Chung Tang, an Engineer;
- (d) Commander Markus Adcock;
- (e) Mark Elson, a People Coach;
- (f) Robert Cummings, a People Coach;
- (g) Captain Shaun Riordan;
- (h) Mark Bailey, another People Coach;
- (i) Commander Steven Robinson

13. At the start of the hearing, both Mr Lowe and Mr Allsop indicated that they knew one another slightly. The Claimant was content that Mr Lowe should sit, and the Tribunal saw no reason why he should not do so.

14. After the hearing, but before we delivered our decision, the Claimant sent in a document entitled “missing section of closing argument”. We considered the contents of it, which did not appear to us to say anything new or to be particularly helpful. We offered Mr Allsop the opportunity to address us briefly on it.

What happened

15. In deciding what happened, the standard of proof is “on the balance of probabilities”. In other words, if we decide that something is more probable than not, it is proven. When we say that we have “found” something, it means that we have decided it to be the case, applying that standard of proof.

16. We do not propose to resolve every possible factual difference between the parties. We confine ourselves to resolving the factual differences that need to be resolved, in order to answer the questions posed in the list of issues.

17. In addition to hearing live evidence from the witnesses we have mentioned, we had before us a main bundle extending to 559 pages (in

pdf format), plus a “Claimant’s Bundle” of 57 pages. Although, perhaps unsurprisingly, we were not referred to all of the documents in these bundles, we were referred to a large number of them.

18. We observe at this point that the hearing bundle was extensively bookmarked. However, rather than bookmarking the documents as they were listed in the index, the bookmarking was done in such a way that, had it been designed to be less useful, it could scarcely have achieved that end less well. This made the task of preparing for the hearing, and indeed that of considering our decision, considerably more difficult than it should have been.
19. In assessing the evidence, we have had little regard to the demeanour of the witnesses. Demeanour is of little use in assessing whether a witness’s evidence is reliable. However, at times the demeanour of some of the Respondent’s witnesses has been such that it has been impossible to ignore. Rather than attempt to ignore it entirely, we have reminded ourselves that it is to be approached with extreme caution.
20. In his closing submissions, Mr Allsop referred, at different times, to the credibility and reliability of witnesses. Although both are important, they are different things. Credibility is whether a witness should be believed to be telling the truth as they believe it to be. Reliability is whether what the witness honestly believes to be the truth is, in fact, correct.
21. We were mindful of the Claimant’s mental health conditions in assessing his evidence. One member of the panel had familial experience of comparable conditions. The parties were told about this at the start of the hearing, and no objection was raised to the member sitting. We have found that knowledge valuable.
22. In general, we have found the live evidence in this case to be less useful than documents recording what was said and done closer to the relevant time, where available. The Claimant, understandably for someone who is not a professional advocate, struggled at times to distinguish argument

from evidence. If, at times, his evidence appeared to be a reflection of what he might, in hindsight, wish to be the case, rather than what in fact happened, we are satisfied that this was not because of any dishonest intent, but because of an honest difficulty in separating the two.

23. Some – not all- of the Respondent's witnesses, for their part, gave a distinct impression of seeking to argue against the Claimant's case. This was particularly the case with Mr Beverstock and Mr Elson. This in itself does not mean that their evidence was incorrect. The usefulness of Mr Beverstock's evidence was as limited as his hostility to the Claimant was evident. But it is a reason to approach it with some caution, and why evidence that is closer to contemporaneous might be preferred.

History

24. The Claimant started working for the Respondent in September 1987.

25. In 2006, the Claimant complained of bullying and harassment in the workplace. In January 2007, this complaint was partially upheld, and in March 2007, it was accepted that events prior to 05.06.06 had caused the Claimant a stress-related workplace injury. He was off work for 12 months.

26. Between 2015 and 2019, the Claimant in his ET1 mentioned a number of negative experiences in the workplace. We did not hear evidence about them, the claimant was not cross-examined about them, and therefore we do not propose to determine the truth or otherwise of what he says about these events. Insofar as they are relevant to this claim, it is as background.

27. Commander Adcock, who was the Claimant's manager for about 2 years, told us that the Claimant was a high performer. He wrote mid-year reviews on the Claimant, that we understand were complimentary and led to the Claimant receiving a performance bonus.

28. After August 2024, Commander Adcock moved on, and the Claimant was managed by Commander Robinson. He told us that the Claimant's

performance declined. We are not confident that he is right about that. But if it did, that should have been an indication that something was going wrong.

Disability

29. The Claimant says that he has Stress, Anxiety, PTSD and OCD traits.

30. Ahead of a preliminary hearing on 28.10.2025, the Respondent accepted that the Claimant was, at all material times, a disabled person by reason of stress, anxiety and PTSD. The Tribunal determined at that hearing that he was not disabled by reason of OCD. The Tribunal's reasoning was:

the Claimant as a result of being disabled by reason of stress and anxiety and PTSD he had experienced obsessive and compulsive behaviour, which had impacted upon him from the point of the interview. Whilst the obsessive and compulsive behaviour that he experienced was not proven to be a separate impairment of obsessive-compulsive disorder the Claimant may nonetheless rely upon the impact on him of those symptoms as they are part and parcel of the mental health impairment which forms the basis of the admitted disability.

Interview on 20.03.2024

31. it is not in dispute that, on the above date, the claimant attended an interview for an internal promotion. This was for promotion to a role of DE & S and SDA Professional 1 Engineer.

32. The interview was scored in 4 parts: a CV review, Core Behaviour 1 (leadership), Core Behaviour 2 (changing and improving), and Technical Competence. Each part carried a mark out of 7, with 1 mark for "no demonstration" and 7 marks for "outstanding demonstration". A score of 16 was required to progress. Candidates were expected to use the STAR – situation, task, action, result – methodology in answering questions. This is well known in public-sector recruitment.

33. The Claimant was interviewed by Mr Elson and a Mr Savvides.

34. What happened in the interview was very much the subject of dispute.
35. The Claimant says that, when he entered the interview room, he was relaxed, and chatted to the interviewers. Mr Elson sounded confident that he knew the Claimant, from a time when each had worked in Maritime Combat Systems and BAE. In his statement, the Claimant said that this *"...sounded strange, like a pre-declaration"*.
36. Nonplussed by this, the Claimant says that he let Mr Elson continue. Mr Elson uttered the phrase *"because ships was an incestuous place"*.
37. The Claimant then has the interview starting with settler questions. He has the treatment of his CV initially being brief, after which Mr Savvides went into what he estimates to be *"40 leading questions"*. He said that most of his CV was untouched.
38. There came a point in the interview in which the Claimant perceived a piercing stare to his right, and that Mr Elson had stopped writing. The claimant then has Mr Elson staring unblinkingly into his eyes. Mr Elson's body was motionless. The claimant perceived considerable tension. He saw Mr Elson narrowed his eyes at him which he says triggered a panic attack.
39. The Claimant then experienced a significant mental health episode, which he described as a panic attack. We are not medically qualified, and are not in a position to make any diagnosis, although we note that disability has been accepted and we have reached factual findings about this episode. In his statement he said that he had a flashback from a previous incident, that a person's face obscured Mr Elson's face, and that he felt like he was seeing a horror movie in front of his eyes. A body attached to that face then drifted through a wall. The claimant now perceived himself to be in a bigger room with fourth person in it.
40. The claimant was shaken and in what he described as a hyped state.

Avoiding further eye contact with the panel, he fixated on a window frame to calm his mind. He says that he talked like a robot for the remainder of the interview.

41. The Claimant was able to recall some specifics of the interview. He recalled a question at the end of the discussion of core behaviour one when Mr Elson, his eyes widening and then narrowing, is said to have asked in a patronising tone *"how many people have you got working for you?"* At that point, the Claimant did not have anyone working under him.
42. The Claimant then recalls Mr Elson crossing the marking sheet with a flourish of his pen that the claimant could not avoid seeing. Mr Elson then stared at him angrily his face screwed up. Mr Savvides also stared.
43. Questioned about his hobbies by Mr Elson, the Claimant mentioned that he played guitar in a band, which drew the comment, *"you are most likely a selfish person"*.
44. After the interview, the Claimant went to see Commander Adcock.
45. Mr Elson's account differed. The bundle included the interview template that, according to his statement, he completed during the interview, and his handwritten notes from the interview.
46. Mr Elson agreed that, at the start of the interview, he declared that he knew who the Claimant was, because they used to work in Ships, and that he did make a comment about it being an incestuous world. He says that he meant by this nothing more than the industry is a small world, in which people do come across one another. He also says that their paths crossed a few years later, when he worked for BAE Systems, but that they did not have occasion to talk to one another.
47. Mr Elson said that he did not notice any significant change in the Claimant's body language as the interview progressed. He seemed to have normal interview nerves. He says that the Claimant made no

reference in the interview to any individual whom he says threatened him in 2015, so Mr Elson did not know whether or not he knew that person.

48. Mr Elson said that he would have noticed the Claimant becoming fixated in a window, as the window's position meant that the Claimant would have had to be staring through him. He didn't recall any issues regarding holding eye contact, nor any other out-of-the-ordinary interview behaviour.

49. As we have already indicated, we are cautious about using a witness's demeanour in assessing their evidence. Demeanour is apt to mislead, and is no substitute for comparing what a witness says with what was said and done at the relevant time. Even with those caveats, however, we found Mr Elson to be an unimpressive witness. When questions drew the answer that what was recorded in documents were the Claimant's own words – as happened more than once when the Claimant was cross-examining Mr Elson – Mr Elson's response was given with what appeared to be a relish unseemly in a witness. That said, we are mindful that, just because he appeared to take pleasure in giving an answer that he perceived was not to the Claimant's benefit, that in itself does not mean that Mr Elson's evidence is necessarily not credible, still less that it is unreliable.

50. The interview notes instruct interviewers to:

Take copious amounts of evidence in the form of notes, not judgements. Get real facts i.e., what they actually said, did and felt and not interpreted behaviours.

And to

Be aware of non-verbal communication - both theirs and yours. Be attentive, listen actively to what they are saying and avoid distractions of any kind.

51. Mr Elson was challenged on his notes. He was taken to a page on which there was an annotation said to be that which he had made when

dramatically crossing the marking sheet. The annotation was a small cross in box 3 in the marking area for the score for leadership. It is wholly inconsistent with the dramatic crossing of the sheet described by the Claimant.

52. Mr Elson denied using the word “*selfish*” in the interview.

53. Mr Elson was challenged that his manuscript writing on one page of the notes was at an angle, that the writing had changed, indicating that the text in question had been written at a different time. We did not notice any significant change in Mr Elson’s writing across his notes.

54. Mr Elson was taken to contradictions between his notes and those of Mr Savvides. He said that they each took notes independently, and will inevitably have different takes on things. We accept that explanation.

55. On 21.03.2024, the Claimant exchanged messages with Mr Tang after the interview. He and Mr Tang were once friends, although they are no longer so. The exchange included the following:

did you get ok yesterday

Tang, Kwok Professional II (DES Ships MCS-SSCSG-CombatCybrLd)
09:52:

i had flu and didnt make it abw

Bridges, Marcus Mr (DES Ships Acq-Eng-CS-8) 09:53:
thanks for getting me in.....(y)

Tang, Kwok Professional II (DES Ships MCS-SSCSG-CombatCybrLd)
09:54:
interview went well?

Bridges, Marcus Mr (DES Ships Acq-Eng-CS-8) 09:54:
it was okay, but regretting lots of it now

*Bridges, Marcus Mr (DES Ships Acq-Eng-CS-8) 09:56:
usual you come out thinking that was okay and then you remember stuff
(headbang)*

*Tang, Kwok Professional II (DES Ships MCS-SSCSG-CombatCybrLd)
09:57:
oh*

*Bridges, Marcus Mr (DES Ships Acq-Eng-CS-8) 09:59:
one of the interviewers kind of put me off, by saying oh did you work with
so and so....and that was a person I had an issue with brilliant*

*Bridges, Marcus Mr (DES Ships Acq-Eng-CS-8) 10:00:
He had been at several places I had worked I felt like i was being stalked*

*Bridges, Marcus Mr (DES Ships Acq-Eng-CS-8) 10:05:
technical/project stuff was fine. its just like oh your not a team
player/manager. but you have had that before?*

*Bridges, Marcus Mr (DES Ships Acq-Eng-CS-8) 10:08:
behavioural interviews lol, the best for engineers (rofl)*

*Tang, Kwok Professional II (DES Ships MCS-SSCSG-CombatCybrLd)
11:33:
did they actually say that"its just like oh your not a team player/manager.
but you have had that before? "*

*Tang, Kwok Professional II (DES Ships MCS-SSCSG-CombatCybrLd)
11:33:
who was your interviewer*

*Bridges, Marcus Mr (DES Ships Acq-Eng-CS-8) 11:51:
Our team got restructured and after always having staff for last 12 months
had no reports*

*Bridges, Marcus Mr (DES Ships Acq-Eng-CS-8) 11:53:
so they said ohh post with staff, black mark :)*

*Bridges, Marcus Mr (DES Ships Acq-Eng-CS-8) 11:54:
I'm like we just restructured always had staff (call)*

*Bridges, Marcus Mr (DES Ships Acq-Eng-CS-8) 11:56:
"no staff"*

*Bridges, Marcus Mr (DES Ships Acq-Eng-CS-8) 12:10:
I was saying, you had had that where they said you werent a Team
manager?*

*Bridges, Marcus Mr (DES Ships Acq-Eng-CS-8) 12:11:
I just think it is terrible that you can provide all these examples of technical
excellence and they are basically - We want a people manager*

*Bridges, Marcus Mr (DES Ships Acq-Eng-CS-8) 12:13:
Might as well have the eng function go up to C1, I dont see much
engineering above. Max (facepalm)*

*Bridges, Marcus Mr (DES Ships Acq-Eng-CS-8) 12:14:
You can learn Management by doing it but you cant suddenly become an
experienced CEng*

56. There are other accounts of what happened in the interview. But they are either undated, or come some time after the events discussed, in the course of an investigation into a grievance. They are unlikely to be recollection uninfluenced by what might be wished to be remembered. We do not think they are particularly useful in deciding what happened in the interview.

57. Our findings about the interview are as follows.

58. We accept that Mr Elson did make a comment with the word incestuous.

This was made with innocuous intent, along the lines that Mr Elson said in his statement.

59. The effect of the statement was, however, to put the Claimant into something of a tailspin. We find that, because of his conditions, the Claimant read into this innocuous comment something sinister, and became fixated upon it.

60. We do not accept the Claimant's account of being asked 40 rapid-fire leading questions. It seems to us to be simply too improbable to accept that it happened.

61. We accept that the Claimant experienced what we can only describe as a significant mental health episode during the interview. We accept that he saw Mr Elson's face become obscured by a different head, that he saw that head and a body pass through a wall, that he perceived himself to be in a different, larger, room.

62. We do not find that this would have been noticeable to those interviewing him. We accept that the Claimant fixed his attention on the window. We note that Mr Elson expressed enthusiasm for interpreting body language, and confidence in his ability to do so. We do not share his confidence. We find that the Claimant was successful in hiding the episode he experienced.

63. On 18.04.2024, the Claimant was supplied with formal interview feedback. His score was 15, meaning that he missed the pass mark by a single mark. The breakdown of his scores was:

CV review	Good demonstration of current role and key achievements.	5
Core Behaviour 1 (leadership)	Wasn't clear to the panel what was delivered given limited resources. Candidate talked about diversity & inclusion but this was out of context in	3

	relation to answering the question.	
Core Behaviour 2 (changing & improving)	Wasn't clear what the unexpected change was or what the outcome was. Needed to tie the answer back to managing change and bringing people on the change journey with him.	3
Technical competence (decision making & risk management)	Wasn't clear what the actual technical decision made was. Needed a better example of how to identify and manage technical risk.	4

64. The feedback also included;

- (a) Strengths – said to be *“Good technical breadth and wide range of experience. Understanding of diversity & inclusion”*;
- (b) Areas for development – *“Interview technique needs work to ensure answers are structured to articulate the actions undertaken, STAR is a good way of thinking about to structure and prepare answers to the questions. Ensure the original question is fully answered”*, and;
- (c) Summary of interview performance, which read:

Started off well with a good CV review demonstrating a good range of experiences. Was unable to demonstrate sufficient behaviours at interview. Needs support with interview techniques and how to tell a story around the behaviours and competences to give the panel confidence of ability.

65. It was suggested to us that, because of the mental health episode he experienced, the Claimant's recollection of the interview was inherently

unreliable. We think that argument should be treated with caution. We are not mental health experts. We think that the passage of time, and the inevitable subjectivity that comes with the Claimant being a party to this case, are perhaps weightier reasons for caution about his recollection.

66. It was also suggested, in a more general critique of the Claimant's evidence, that he sought to answer factual questions with argument. There is something in that, but not as much, we think, as counsel suggests. The Claimant often sought to refer to documents in the course of answering questions. He did so, we find, because he genuinely believed the documents to be germane to the answer he was giving, which was almost always an answer to the question he had been asked. He may have been wrong about how helpful the documents were, or in his interpretation of them. At times, he may have gone off on a tangent. But we do not think that he was seeking to "*play chess*" with counsel, as counsel put it. Indeed, the criticism that witnesses were seeking to argue a case may be made with more force against some of the Respondent's witnesses.

67. It was also suggested that the Claimant's account of his episode in interview was unreliable because of changes in the detail of what happened, in later accounts. We do not accept that such changes go to the core account, the truth of which we accept.

68. Counsel also suggested that, if the Claimant's account were correct, he would have performed poorly in the section of the interview concerning the CV review, after being thrown by Mr Elson's incestuous remark. In fact, he performed well in that part. We regard that as simplistic and unpersuasive.

69. We do not accept Mr Elson's evidence that he would have noticed had the Claimant fixed his attention on a window. We think the confidence he has in his ability to read body language is inconsistent with a true appreciation of how misleading it can be.

After the interview

70. The day after receiving the interview feedback, the Claimant exchanged

messages with Commander Adcock. The dialogue went as follows:

Adcock, Markus Cdr (DES Ships Acq-Eng-CS-6) 10:43:

Hi Marcus, Hope you're doing alright! Two things, any recruitment outcome update yet? and secondly, can we chat briefly regarding you becoming a NSDG focal point for NGMT please! :D

Bridges, Marcus Mr (DES Ships Acq-Eng-CS-8) 10:46:

Ah yes, failed by one mark for I think the third of asking, can't say I'm completely happy about that

Adcock, Markus Cdr (DES Ships Acq-Eng-CS-6) 10:47:

1 Mark - thats bloody close Marcus! For what its worth, well done

Adcock, Markus Cdr (DES Ships Acq-Eng-CS-6) 10:47:

1 mark 3 times on the bounce.

Bridges, Marcus Mr (DES Ships Acq-Eng-CS-8) 10:50:

Thank you, I think the interview was a bit compromised because Mark implied he knew of me, MCS and BAE when we had never spoken

Bridges, Marcus Mr (DES Ships Acq-Eng-CS-8) 10:51:

There was some bad stuff went on in MCS which I had to stand up against and was part of my evidence which I assume failed the interview

Bridges, Marcus Mr (DES Ships Acq-Eng-CS-8) 10:54:

Some of that involved his boss at the time :D

Adcock, Markus Cdr (DES Ships Acq-Eng-CS-6) 10:57:

do you want to make a complaint of sorts on this?

Bridges, Marcus Mr (DES Ships Acq-Eng-CS-8) 10:59:

Ruminating over it.

Adcock, Markus Cdr (DES Ships Acq-Eng-CS-6) 11:00:

Keep me close. I'll call you after my current session to chat NGMT!

71. Commander Adcock was the Claimant's manager for about 2 years, until 02.08.2024. There was a good, productive relationship. Asked by the Claimant, Commander Adcock did not agree that the Claimant got a bit more "*weirded out*" after the interview, saying that their relationship did not change until "*right at the end*". Certainly Commander Adcock's exchange on 19.04.2024 was nothing other than supportive of a colleague whose work he valued.

72. On 24.04.2024, the Claimant emailed one Linda Diskett. His email makes a number of points, which are as follows:

- *I vaguely knew one of the Interviewers by sight, never spoken to him. He had been a Warrant officer in MCS, where I received quite a bit of victimisation by his direct managers, particularly a Cdr and later a Captain, over a report I wrote on a Lt Cdr. It was suggested by his Cdr that I should consider leaving Ships, because I would not change the report to the words he wanted. There was a hostile environment for CS staff who spoke out in MCS and increasingly for me after this event.*
- *Interviewer has since left the Navy and was employed back in MoD as a L4 and now L5 TAHL. He opened up Interview preamble that 'our careers had seemed to follow each other and that ships was extremely incestuous place'. He made it sound like we were well known to each other or he knew all about me, which was not the case at least directly. It made me nervous to use some of my Behavioural Competences because they had evidence from my time in MCS dealing with bullying (commonly by Navy Staff on Civilians) which he would potentially see differently.*
- *I later realised that the Interviewer was good friends with a Contractor (ex Navy Warrant Officer) in my current team. A few weeks after I joined the T26 team in 2019, I had a minor disagreement with the Contractor who said pretty much out of the blue "I will never work for you" in some fit of*

pique, I never quite understood why. I would see these two, Contractor/Interviewer chatting socially (he was BAE function lead at the time, so it wasn't about our work on Comms systems). So I now agree, he was correct in that it is very incestuous place.

- Interview continued I was asked to run through my CV but not allowed to run through more than about 20% of it. I was bombarded with numerous behavioural questions over my two main achievements. I was then unable to use STAR effectively when we did the Competences on the same examples as they had been exhausted previously, I was just repeating myself. By the level of Qu's I assumed we had got onto the later Comp Qu's as the CV review I assume is supposed to be top level? It did not seem to follow the guidance I had seen. I clarified with that because my example and evidence was spread across several questions "were they totting up the scores for leadership etc?" Answer "Yes we are, there are two of us to facilitate this" So I did not worry about it, I realise that was not true because he was on a different marking sheet.*
- We got onto Leadership. My example was on T26, where I had staff initially when I joined and for most my time there and have had for most of the last 20years. Sadly my Mother died last year and all the Agile initiatives happened when I was out, when I returned and the team was fundamentally restructured I had no direct CS staff. I said part of my leadership was leveraging effort from other teams due to lack of resources and they then rightly questioned how many staff I had. I'm not going to lie in an interview, I admitted no direct CS staff, but said this was due to a recent team restructure. Without making any eye contact the Interviewer overtly crossed thru a whole load of evidence he had written, and this appeared to be a really big deal and the turning point of the interview. The interviewer then (randomly) asked me whether the **Contractor** (by Name Specifically) worked for me, noting the previous comment in **bullet 3**. The outcome of failing the behaviours appears an entirely unfair reflection of the truth, and obviously I can not bring up the personal matter that influenced it.*
- To maybe strengthen the 'apparent lack of leadership' I was asked about*

my interests. I talked about playing an instrument in a band and the challenges therein. The interviewer replied that as far as he was concerned people who play that instrument “are all selfish”.

- *The interview feedback says Behavioural Competences, “not demonstrated”, this is surely inaccurate. The main feedback is that I did not use STAR so apparently you automatically fail for not telling a “story”. The conduct of the interview prevented that from happening and the Interviewers did not credit scores across examples which they promised me they were doing. The feedback points are extremely debatable, points I had specifically covered but they did not hear!*

73. It seems that matters had developed in the Claimant’s mind by this point. He is reading more into the “*incestuous*” comment. His account concerning his CV is at some odds with the fact that he was given a good score for that part of the interview. Overall, the flavour of the email indicates, and we find, that the Claimant had become fixated on the idea that the interview was conducted with malicious intent, and was only seeing things that corresponded with that view.

74. We do not find that the Claimant was being dishonest, or was consciously misrepresenting what had happened. But we do find that he was seeing an inaccurate picture of things.

75. On 29.04.2024, Ms Diskett replied. She wrote:

Sorry to hear about your Mother, It does sound familiar from what I have experienced before too. Ships is the worse place for this bias, it happened to me after I got L5 that they would not take me in any team, but gave people Tahl. Why did you not object to an interviewer that you knew? That is acceptable to do so. You can only appeal for a failure of process and it is difficult to see where that is, although I do believe the picture that you give. This should change as people move to skills pools and there should be wider promotion opportunities with less bias and previous knowledge. Who was the ex-Warrant officer?

I suggest that, unless you can demonstrate failure of process, which as I say is hard, then do try again this year. I will volunteer to interview if I can and even without that I think the interviews will be fairer with a wider range of people. I have volunteered to be a people coach so that I can help the right people.

Don't get too down about it, I know where you are coming from and there is a classic Ships thing here. You easily do a L4 role, I have had some really poor substantive L4s, you would be far better.

76. We find that message to be a supportive but – in intention – realistic message from someone who appears to have been, at that time, a well-meaning colleague.

77. On 20.05.2024, the Claimant sent a lengthy email to one Natasha Jones, copying in Mr Elson. The email read as follows:

Thank you for the Interview Feedback received on 18 April from the 20 March interview, I have reviewed the information carefully and taken further advice and concluded I have substantive grounds to challenge the assessment scores from the interview, and as this was a marginal failure this must bring the overall outcome into question. I further request that a Reasonable Adjustment is taken into account due to my circumstances and the conduct of the interview which make the RA relevant and negatively affected my interview performance.

Why do I believe my Equality was affected in the Interview and Why should I receive a Reasonable Adjustment? I have suffered from Anxiety for about 20 years this is recorded and known and has links to a work related incident. This is a condition I live with and manage on a day to day basis, therefore it is a Disability and affects my interaction with other people. Given certain stimulus it can trigger Panic Attacks, Freezing up, Inability to Speak which is extremely distressing to me. Occasionally previous colleagues have seen fit to 'exploit' this weakness, the last time was when I worked in Ships MCS, the bullying and harassment I received

led me to a poor position with my mental health. I subsequently recorded evidence around certain individuals to successfully allow my release to a less toxic workplace. My refusal to buckle to unreasonable behaviours from certain people, I consider would have been well known in the tight knit MCS community that persisted.

At the beginning of the interview one of the interviewers claimed to know me from Ships as if our careers might be closely linked, but I only recognise him by sight and have to my knowledge never spoken to them. I am aware however, that he worked directly for Senior MCS people who openly demonstrated aggravated behaviours towards me for an extended period, when both myself and the interviewer worked in MCS. Interviewer then added that “Ships was an Incestuous place”, which I perceived at the time as meaning that in Ships people knew each other’s business (good and bad) in an excessively closed organisation resistant to outsiders.

As I had already experienced this type of behaviour directly in MCS from close colleagues of the interviewer, I immediately concluded I had little chance of a Fair and Unbiased interview. Furthermore it made me extremely anxious during the interview. Answering the Behavioural questions under this context was an excruciating experience for me leading to a panic attack to surface at one point, hardly the conditions to demonstrate what are challenging behaviour competence questions. This no doubt influenced the negative impression that the Feedback captures, I was certainly aware of extreme difficulty in dealing with certain sensitive topics during the interview due to the unnecessary familiarity that was implied.

This is far from my only comment from the interview, at one point where the Interview seemed to be diverging away from the Interview guidance, I considered whether “special criteria” were maybe being applied to L4 candidates to perhaps make it extra difficult or put off the candidate. I realise this was instead incorrect implementation of the process. I perceived numerous demonstrations of what felt to me to be unconscious bias, but I do not wish to dwell upon them here because there is a clear

RA that can be made that counters the unreasonable situation I found myself in and its affect on my Interview performance.

My Recommended Recourse to above is:

- *A Reasonable Adjustment is made increasing the Behavioural scores that were affected by the above situation which were the Leadership and Change & Improvement.*
- *The Interviewers should take note of their Impartiality and Adherence to Interview guidance to ensure they do not affect future candidates performance.*

I apologise for the delay in notifying you of this complaint, however whilst I was concerned during and immediately after the interview it has taken until now to fully comprehend all the aspects that happened and their relevance to myself and the Equality Act 2010. I am content to discuss the above but request notification that you have received this note and your consideration of my recommendations.

78. In this email, the Claimant told two people at the Respondent – including one of those who interviewed him – that he had suffered from Anxiety for about 20 years. He linked it to a work-related condition, of which the Respondent must have known. He explained what he said were some of its effects on him.

79. We do not accept the Claimant's account that "*As I had already experienced this type of behaviour directly in MCS from close colleagues of the interviewer, I immediately concluded I had little chance of a Fair and Unbiased interview*" was correct. But he believed it to be correct, and the error was, we find, a consequence of his condition.

80. We find that, from this point on, the Respondent should have known of the Claimant's condition of Anxiety. Although the Respondent knew of the Claimant's history of workplace illness, it may not, until this point, have appreciated that the Claimant's complaints about his interview were related to his health. At this point, the Respondent knew that the Claimant

was linking the two. Given his history, the Respondent could not dismiss this.

81. We note the redress the Claimant sought: an increase to the behavioural scores, and that the interviewers take note of guidance.

82. On 22.05.2024, the Claimant sent to Commander Adcock and Ms Diskett, an email in the following terms

I submitted a revised feedback to the Function (below), concentrating on the disadvantages that I feel I was subject to.

Based on previous experience, the main danger here is that the Function may look to sit upon this grievance and ignore it. I am complaining about a situation/status rather than an Individual, so finding a swift resolution is in everyone's interest. If I hear nothing I would potentially have to open up a much wider complaint with HR including other past events, but I am extremely reluctant to do this. There are statute limits in time (3 months) for raising external complaints which could escalate this well beyond this relatively simple ask.

Markus, I do not know if you are likely to be in contact with the Function, but encouraging early engagement if for example they want evidence or a discussion with me, would be most valuable. I personally feel I have a lot to contribute to the organisation and others have said I have the right skills to fill the vacant L4 posts available. That should be where the collective minds are focused rather than on discrediting a complainant.

Many thanks for your help

83. A couple of hours later, Commander Adcock replied:

Thanks Marcus – as we discussed, I wasn't quite expecting the button to be pressed but following conversation with you, perhaps that doesn't really matter and the conversation can be forced one way or another. I will pick

up with you, and indeed the function, on my return from leave; w/c 2 June. I would expect that there would be some form of a response before then. With all that said, you have my contact number so please do not hesitate to message or call whilst I am out; I do mean this.

84. In cross-examination, it was put to Commander Adcock that he knew of the Claimant's disability from having received the email of 22.05.2024, which had copied the e-mail of two days earlier. He denied that. We found Commander Adcock to be an impressive witness. He was ready to complement the Claimant where he thought it appropriate, and appeared to be without the hostility towards the Claimant that some other witnesses showed. But on this, we find that he is wrong. He may not have understood the importance of what he was being told, but as we have found the Respondent was on notice that the Claimant was disabled from 20.05.2024, when Commander Adcock saw that email 2 days later, he should have understood that to be the case.

85. That said, we find Commander Adcock's email to be a well-intentioned and supportive response. He held himself out as being available for contact, even whilst on a family holiday. We find this offer was genuine.

86. The bundle contained another email from Commander Adcock to the Claimant, dated 24.05.2024. That read:

My sense from the below exchange is that this has, I posit, the potential to exacerbate your anxieties and has the potential to get quite messy and heated.

Whilst I accept there is unlikely a convenient point to leave the discussion, I would recommend we pause it until I return as I confess that there isn't much I can do remotely to support you or discuss with the function whilst I am on family holiday. I would also counsel that further exchange over email is not in anyone's interest, yours primarily for reasons I've pointed to above.

Your case has been made eloquently and so my view is that no harm will come from the slight pause until I can support you in this upon my return.

87. The email refers to others, it is not easy to identify which from the organisation of the bundle. But Commander Adcock's words here strike us as wise. Matters appeared to be becoming more grave in the Claimant's mind, his anxiety was increasing. A short pause – at least until he returned from leave – was likely to seem to be good advice to Commander Adcock, and would have been, had the Claimant's condition allowed him to implement it.

Emails with Mr Khan

88. On 23.05.2024, there was a series of email exchanges:

- (a) One Stephanie Marsh emailed the Claimant, asking him to make a complaint to an address to which she directed him;
- (b) The Claimant responded, in the following terms:

*Good Morning Steph,
Thanks for your reply and rapid response.*

At this stage this is a request for a Reasonable Adjustment which is a stated part of the Interview protocol. I was not aware that a RA was applicable to my condition until after the interview happened. If that is considered then there is no grounds for a complaint on my part, so I would request we attempt to mediate this at the lowest possible level. Are DES HR-WSC-PMO COMPLAINTS part of the Reasonable Adjustment process?

Certainly any complaint is going to be much more complex than this request for a RA and will certainly cause me a great deal of anxiety dealing with some past events I wish to forget. It will consume a great deal of the departments time and most likely end in a sub optimal conclusion for all. I was invited to contact the Function to

discuss the Interview in the Feedback, I am doing so because there was a problem from my perspective, one that is potentially solvable.

I have copied in my PDM as he is aware of the issues and also content to facilitate a resolution.

Many thanks

- (c) Mr Khan emailed the Claimant at 13:25hrs, in the following terms:

Thanks for your enquiry.

I'm writing to clarify that increasing an interview score is not a Reasonable Adjustment. However, if you wish to register a complaint please do so via the relevant multiuser: DESHR-WSC-PMOCOMPLAINTS@mod.gov.uk

Kind regards

- (d) The Claimant responded at 16:36hrs, as follows:

Thanks for your email, but the RA could be making some allowance around the criteria due to circumstances or giving the candidate another opportunity to prove themselves in another way.

The Employer is obligated to explore RA where appropriate for an Employee who makes them aware. My understanding, either the Employer/Employee can jointly agree on a RA or an Employment Tribunal can determine what is reasonable. I don't believe you or I can make that judgement.

I will ask again, You do not wish to address or engage on this issue on an informal or any basis even though you have not clarified or asked me any questions, that it uses up valuable Dept resources and will cause me Stress and Anxiety and reduce my effectiveness

in T26 at a critical time ?

Kind Regards

(e) At 18:40hrs, Mr Khan replied:

Unfortunately, we cannot retroactively employ a reasonable adjustment to an interview that has already taken place.

When you made the application on 5th Feb 2024, you answered "None" to the pre-screening question "Please indicate and give details of any reasonable adjustments you may require for the recruitment process". There were also numerous opportunities for you to request a reasonable adjustment prior to the interview on 20th March 2024, but none were flagged.

Whilst I appreciate that this may be disappointing, I hope you can understand our position. For future applications I would recommend using the pre-screening questions at application stage to flag up any RA request, as well as liaising with your Recruiter who will be happy to help.

89. On 24.05.2024, the Claimant emailed Omar Khan, in the following terms:

I was not aware that a pre-existing condition and one that was obviously triggered by the behaviours of the Panel, is a protected characteristic. So I am not disappointed at all, I just expect the organisation which recently judged me on such high standards of fairness, inclusion etc. would act on its own stated policies.

My understanding: By Law, employers must consider requests for reasonable adjustments from those with qualifying disabilities.

Employers can refrain from RA if it will cost too much or is too disruptive to the workplace.

My perception: I don't believe immediately stating there is no RA applicable is meeting your requirements under the Law, Equality Act 2010. I'm not aware that an employee has to take out a grievance process to obtain or investigate provision of an RA. This is discriminatory in its most basic form.

Please can I have for my records, your policy document which states "we cannot retroactively employ a reasonable adjustment"

My opinion is you should be taking me up on my offer to speak at an early opportunity and establish the facts of my disability and how it negatively impacted the Interview.

90. Mr Khan responded on 31.05.2024. He wrote:

Apologies for the delay. I wanted to check if there was any record of you registering a request with the Reasonable Adjustments team prior to this campaign. It was confirmed to me this morning that you haven't.

"My understanding: By Law, employers must consider requests for reasonable adjustments from those with qualifying disabilities." – This is why our application forms contain a mandatory question set prompting candidates to disclose any disability and/or to request a reasonable adjustment. As stated in my previous email, at no point during the selection process did you do either, and only flagged up the RA request when interview feedback was provided.

There is no policy that states Reasonable Adjustment can't be employed retroactively. However, to grant you a reasonable adjustment at this stage would confer an unfair advantage over other candidates in the process, constituting a breach of the Civil Service Recruitment Principles to which we are legally obliged to adhere.

If you feel that you have been treated unfairly through this recruitment process you are welcome to raise a complaint via the multiuser address

that we supplied earlier in this email exchange. If not, we will consider this matter closed and no further action will be taken.

91. The Claimant took great exception to the penultimate paragraph of Mr Khan's email. He felt that he was being accused of seeking an unfair advantage. The Respondent denies that that is the effect of what Mr Khan wrote.
92. We find that true position is this: Mr Khan believed that to grant the Claimant a reasonable adjustment at that stage would – despite there being no policy stating that one could not be applied retrospectively – confer upon the Claimant an unfair advantage. He did not say, and did not mean to say, that the Claimant was seeking to obtain an advantage the Claimant knew to be unfair.
93. That, however, is how the Claimant honestly understood Mr Khan's words. We do not think he was right, or reasonable, to understand them in that way. His understanding was a consequence of his conditions.
94. There is a more fundamental point about Mr Khan's words, however. It is this. They show what we find to be a pervasive feature of this case. The Respondent believed that to offer the Claimant reasonable adjustments for the exercise of which the interview on 20.03.2024 had formed part, after the interview, would necessarily be unfair to other candidates. It clung rigidly to the idea that reasonable adjustments had to be requested either before the interview, or at the interview. The Respondent therefore closed its mind to the possibility of such adjustments.
95. It takes only a moment's thought to understand that this position is flawed. The Claimant could not declare his need for an adjustment because of the episode he experienced, because he could not know and did not anticipate that he would experience it. During the interview in which he experienced the episode, it is unlikely in the extreme that he would be in a position to disclose it, and it would not be reasonable to require him to do so. So the only time he could disclose it was after the interview.

96. There was one possible exception to this. There was discussion of whether a re-interview might be offered. The Claimant's position on this was not consistent. We find that, had one been offered promptly after 20.05.2024, it may well have been accepted. It was not the Claimant's preferred outcome – that was an adjustment to the behavioural marks from interview – and, with time, the Claimant's position hardened against it.

97. In his live evidence, Mr Khan's position was that the interview process offered the Claimant a fair chance to show his capabilities. Mr Khan said that the question of a conflict of interest – a perception that had developed in the Claimant's mind about his beliefs concerning Mr Elson's links to others – and believed there to be none. We accept that to be the case.

98. Mr Khan said, in terms, that he felt it would be unfair to uplift the Claimant's score, when the Claimant's need for this was not disclosed upfront. He appeared unmoved by the fact that the Claimant could not possibly have disclosed a need for an adjustment of which he himself was unaware. His answer to this was that, from a process perspective, the Claimant had had a fair opportunity. Mr Khan added that he did not consider a re-interview would be a reasonable adjustment – his view was that a reasonable adjustment is something one does in an interview, not *"failing and asking for a replay"*.

99. It does not take much thought to see the problem with the position Mr Khan articulated. If a candidate experienced an epileptic episode in interview, Mr Khan acknowledged that any investigation would not be limited to process. He was right to so acknowledge. Why, therefore, should the Claimant's position be any different? He was saying, quite clearly, that, because of a mental health episode he experienced in the interview, which he could not and did not foresee, he had been unable to perform properly. It is both wrong factually, and no answer to that, to say that procedurally, he had had a fair chance. He had not.

100. Mr Khan also showed scepticism about the truth of the Claimant's account of having experienced a mental health episode. When, in answer to the obvious, but obviously superficial, point that the Claimant had not disclosed his panic attack, the Claimant pointed out that he experienced it during the interview, Mr Khan's response was that that was the Claimant's account. He was doubtful that something said at the start of the interview would result in lower behavioural scores, after a high CV score – an approach upon the superficiality of which we have already commented. Later, when interviewed in the investigation into the Claimant's grievance, Mr Khan had described a time when the Claimant hyperventilated during a meeting as "*performative*".

101. This scepticism was combined with a hand-wringing indifference: he told the Tribunal that the Claimant had had ample opportunity to disclose (he had not), that the Respondent had not set out to make the Claimant have a panic attack (we accept that, but it does not change the fact that he had one), and therefore "*it's just something that happened*". Mr Khan did not add, "*so tough luck*", but he might as well have.

102. The Respondent did, offer help to the Claimant going forward. But reasonable adjustments for future exercises could not make a past exercise fair.

The Claimant complains

103. On 05.06.2024, the Claimant submitted a formal complaint about his interview. The complaint is lengthy, and reads as follows:

I would Like to make a complaint about my recent interview for P1 Engineer which took place on 20 March 2024.

My main complaint is that I feel that I am being treated unfairly as I have a protected characteristic of Anxiety, and due to unforeseeable events in the interview this significantly affected my performance and the outcome. I consider that I am being discriminated against under Equality Act 2010, as the hiring department has now been made fully aware of the issue and

refuse to discuss or take any remedial action.

Please Note: It has been asked of me why the disability was not declared pre-interview. The answer is twofold, whilst I was aware of my condition it was not until the events unfolded in the interview and I looked up the precise definition of a protected characteristic and then discovered my condition met the multiple criteria stated. Secondly, as this is a long standing condition I have learned methods to manage it, primarily by avoiding trigger situations. By declaring the protected characteristic in advance, when I had no reason to think my Anxiety would be triggered, it could have affected the result as it would have made me think of the negative situations.

In Brief (you can see this from my employment history) I suffer from Anxiety and have experienced previous cases of bullying behaviour in the past, which initially triggered it. This has led to panic attacks, significant hair loss (alopecia) which is personally devastating and periods of time off work. In the interview, the interviewer had worked in an area where previously I had a negative and extended experience of bullying and made the following comments "I know you" "my career has followed yours" "it's very incestuous in that area" "does this specific person work for you".

I don't know this interviewer on a personal or business level and am not complaining directly about him and these comments could seem innocent to most people. However, due to my previous experiences with bad treatment in this area these comments triggered my anxiety and made me extremely uneasy in the interview after this was said. These statements misrepresent our relationship and to me suggested I was likely being judged on reputation or hearsay. The Interview feedback failed me by one single mark with the feedback being "Good technical breadth and wide range of experience" but "Needs support with interview techniques". I agree my interview technique did suffer significantly because of the anxiety that was triggered by the Interviewer. At the beginning of the interview discussing the CV where I was in control of the information that was discussed I scored quite highly. When I had to discuss Equality and

Diversity I was aware of the dreadful experiences of inequality I had in that previous department, and I was telling this to someone who “knew all about me”, but we had never before spoken. I felt extremely despondent in the interview, particularly when randomly another person was mentioned who had previously made discriminatory remarks about me. I soldiered on with the interview because I was positive I had all the required behaviours and therefore discussed them fully.

There is no doubt that for me the interview was affected negatively by these incidents, and there were other instances during the interview where it was clear that guidance and impartiality were ignored, I mentioned it immediately afterwards to my PDM. I was certain I had demonstrated and discussed the required behaviours even though my delivery had been compromised I considered I should have passed on that basis, otherwise we would be judging people on factors they have no control over? On receiving the feedback where I failed by the narrowest of margins, I consider that I must have failed due to either my delivery or conscious/unconscious bias rather than my Skills and Experience which appear fully up to the mark. The decline in performance and presentational reasons for failure are all borne out by the contents of the Interview Feedback. I went back to the panel and asked them to consider reasonable adjustments that could uplift this score because of the anxiety caused by the unfortunate words used by the interviewer that affected my interview performance.

As you can see from the email responses I received, they first refused to look at my case or discuss anything about it as they said I should have told them before the interview, however, I was unaware at the time this was a protected characteristic before the interview and wasn't aware the interviewer would make any comments to affect me as I had the upmost faith in the interviews being carried out professionally and cannot predict if things would be brought up to trigger this condition. They then said the policy forbade any such adjustment, but this did not turn out to be correct, and later made the claim I was seeking unfair advantage over other candidates.

I do not agree that this is the case and therefore think a complaint is justified because.

1. Interviews are individual cases and people should be judged by their own skills and experience and not by comparing them to others. We were being judged against a required standard, we were not in Competition in any respect. Issues brought up in one person's interview should not be dismissed because others happen to be involved in the wider process, as they have no bearing on my interview or my anxiety triggers.

2. I feel I was already disadvantaged in this interview due to the occurrence; I would not be at any advantage over others if they made allowances for mental and physical factors I have been forced to live with, as others would not have the same experiences as myself.

3. The anxiety here is not a normal interview anxiety or due to interview technique, it's a long history caused by bullying in the workplace which I manage successfully on a day-to-day basis but unfortunately some incidents such as this reminding me of the negative behaviour I have experienced in a high-pressured situation such as an interview can trigger this. (Solicitors letters, tribunal results and records should be available to you in my history)

I have vast experience and ability making me a good candidate for these roles. My former FDO now a L5 says I have been ready for years and current line manager concurs with this, I also have many years of highly rated reviews often stating readiness to move to the next level of my career. However, none of this will even be heard by the panel and I feel my career progression is being affected negatively by this, I have lost faith in the interview process and the ability of the panel to be able to make reasoned decisions based on the facts of individual cases. One mark based on reduced interview technique caused by an anxiety trigger seems an unfair reason to hold someone back from job progression so I would ask that you please look into this complaint.

My complaint again is that I feel they are unfairly holding back my career

progression because of my anxiety. To rectify the situation there is a simple remedy:

- Ideally I would like to have a 1 mark up lift on behavioural competences as the interview feedback directly relates to the anxiety manifestation; Interview technique. I recognise that this may not be considered as a level playing field, but this mitigates the disadvantage I experienced where the field was not level from the start. There may be other options to re-assess the perceived shortfalls but this requires impartial assessors who ideally know my specialisation of Electronic based engineering which was also appeared to be a problem in the interview.*

Thank you for looking into my case and I look forward to hearing from you regarding this, I hope you can help resolve this to everyone's satisfaction, if you need any further information, please do not hesitate to contact me I am happy to discuss or provide any evidence you require.

104. On 14.06.2024, the Claimant received an email from one Mavis Darkwah, saying that she saw "...no evidence to suggest that you have been treated unfairly nor discriminated against, and I am satisfied that the campaign - including your interview - was run in a fair and compliant manner, and as such I will not be recommending remedial action". She made the point that "Had you flagged a disability or request for reasonable adjustment at application stage or during the selection process, the team would have been able to work with you to find a suitable course of action". This, of course, entirely overlooked the heart of the Claimant's complaint.

105. On 18.06.2024, the Claimant responded to Ms Darkwah, expressing his dissatisfaction with her conclusions. Having received no response, he chased a reply two days later.

106. On 26.06.2024, Ms Darkwah sent the Claimant a link to the grievance procedure.

107. There was a meeting on that same day. It was attended by Mr Khan, Ms Darkwah, Ms Diskett and the Claimant.

108. It is said that Mr Khan said to the Claimant again that he was seeking to gain an unfair advantage. Again, the Claimant takes grave exception to this.

109. There is no contemporaneous note of the meeting. However, as Mr Khan's approach throughout this case has been characterised by rigidity, we think it probable that he expressed himself in the same terms as he used in his emails to the Claimant. We think the Claimant has misunderstood what Mr Khan sought to, and did, convey in this comment, although given Mr Khan's unhelpful attitude and rigidity, the Claimant can be forgiven for that.

The Claimant escalates to Commander Robinson and Captain Riordan

110. In August 2024, Commander Robinson took over as the Claimant's manager from Commander Adcock. It is not entirely clear that their roles were exactly the same, or seen by them as exactly the same. Commander Adcock appears to us to have taken some pastoral care for the Claimant. Commander Robinson understood his role – whether or not correctly it is not necessary to decide – as that of the Claimant's delivery manager. A People Coach had responsibility for pastoral management.

111. Upon taking up this role, Commander Robinson learnt of the Claimant's grievance. This was, in fact, presented a few days after Commander Robinson took up his role, but nothing turns on that and we accept that he learnt of it as part of taking on his role.

112. Commander Robinson, in his statement, says that there were *"...issues with his current level of performance. In a cohort of 5 engineers at the same level, the Claimant was the poorest performing and demonstrated no merit to be considered for promotion to the next level"*. This is at odds with Commander Adcock's assessment of the Claimant's performance. Given that Commander Adcock had more time to be familiar with the Claimant's performance, and appeared to lack the hostility towards the Claimant that we detected in some of the Respondent's

witnesses, we think Commander Adcock's assessment of the Claimant's performance is more likely to be correct.

113. It is, of course, possible that the toll this situation was taking on the Claimant was causing a deterioration in performance. But we do not accept that the Claimant "*demonstrated no merit to be considered for promotion to the next level*".

114. The Claimant emailed Commander Robinson on 30.09.2024. Commander Robinson replied the same day, indicating that he was aware of the situation as he had discussed it with Commander Adcock in handover.

115. A meeting took place on 13.09.2024. It was suggested to Commander Robinson that he told the Claimant that there was "*no evidence*" to support his grievance, having consulted people described as "*Type 26 seniors*". Commander Robinson denied this, contending that what he said was had said was that he could not provide direct evidence to support the Claimant, as he had not been involved in the underlying events, and it would be difficult for the Claimant to make good his grievance.

116. Commander Robinson said that he had spoken with a civil servant, Patrick Browning, about how he could most properly support the Claimant.

117. We accept that Captain Robinson did speak with Mr Browning for that purpose, and see nothing objectionable in him seeking advice.

118. In cross-examination, Commander Robinson said that he thought the Claimant was given lots of support.

119. Commander Robinson's professed wish to give the Claimant support, and his belief that lots of support was given, are perhaps hard to square with his grudging assessment of the Claimant's performance. We think it unlikely that he told the Claimant that there was "*no evidence*" to

support his grievance, although we find that he did communicate to the Claimant that he thought it would be difficult to substantiate. The Claimant may have read marginally more into this than was intended, although we think that the Claimant will have picked up that Commander Robinson was not sympathetic to his position.

120. The Claimant asked if his case could be escalated to Mr Beverstock. Commander Robinson explained that Mr Beverstock, who was 3 levels above the Claimant, would not have detailed knowledge of the day to day management structure, and was unlikely to be in a position to assist. In any event, before us Mr Beverstock appeared impatient with and hostile to the Claimant, and to have involved him is likely to have exacerbated matters.

121. Captain Riordan was Commander Adcock, and then Commander Robinson's direct superior. He was aware of the position from weekly 1-2-1 meetings with Commander Adcock.

122. Captain Riordan had a high regard for Commander Robinson, but came to the view that the Commander was struggling to make progress with the Claimant. In his statement he says:

...I offered to engage the Claimant directly to hear his concerns and offer my view, so as to reinforce the official T26 position already provided by Cdrs Adcock and Robinson and ensure the Claimant was reassured he was being supported as fully as possible, albeit within the limitations of the Line Manager role...

On 15 October 2024 I discussed this matter in more detail with Cdr Steve Robinson to understand what had been discussed thus far and determine what further assurances I could offer the Claimant. We discussed that the Claimant suffered with anxiety and panic attacks. We agreed that DE&S were able to provide reasonable adjustment support for this if he formally

recorded his disability with HR; this was a familiar process to me as another L4 direct report of mine was already subject to Reasonable Adjustments for a disability with resounding professional and personal success. We agreed that independent of the Promotion process, our role as Line Manager and Team Leader respectively was to provide a safe and supported workplace for the Claimant whilst navigating his formal grievance, alongside offering the Claimant coaching and assistance ahead of any future interviews

123. Captain Riordan met with the Claimant on 22.10.2024. The Claimant told Captain Riordan about his mental health issues. Captain Riordan said, *"I have never noticed anything"*. In fact, Captain Riordan had had some notice of the position from his meetings with Commander Adcock and we think his expression probably referred to him personally not having noticed that the Claimant had mental health issues. The Claimant took exception to this comment. We think that was unreasonable. It is common for people with mental health difficulties to mask them. The Claimant's dealings with Captain Riordan had been minimal hitherto. Captain Riordan's expression was wholly innocuous.

124. Captain Riordan says, and we accept, that he told the Claimant that neither he nor Mr Beverstock could write a letter in support of his promotion interview, as this would *"...circumvent the independent process and introduce unfair bias"*. He speculated that the most likely outcome, should the grievance be upheld, was a re-interview, rather than automatic promotion.

125. The Claimant read more into this than was intended or reasonable. The Claimant views this speculation as something sinister. It was not. It was Captain Riordan's honest view as to what he anticipated the best outcome for the Claimant might be. There was an element of expectation-management in what he said.

126. The Claimant was unhappy at this as a possible outcome. We accept that he probably did ask for support for, in substance, a re-marking

exercise from both Captain Riordan and Mr Beverstock, and was unhappy that this would not be given.

127. It was put to Captain Riordan that he scared the Claimant, both in the meeting and in the hearing. Captain Riordan professed incredulity at this suggestion.

128. Here, demeanour is of some assistance to us. Captain Riordan is, as one might expect of a relatively senior Navy officer, a forceful personality with a commanding presence. Although he was always polite in the hearing, he gave a very strong impression of someone used to being in command. It is easy to see how his mode of expressing himself, together with the rank he holds, could well be intimidating, or even scary, to the Claimant. We do not think Captain Riordan intended to scare or intimidate him. But his commanding, rather than cosy, manner had that effect.

129. Captain Riordan offered to see if he could see if the Claimant's grievance could be speeded up. He asked for the case number. The Claimant did not supply this, as he felt the meeting had not been helpful.

The Claimant's grievance

130. On 08.08.2024, the Claimant submitted a formal grievance. The grievance read as follows:

An Interview was carried out 20 Mar 24, where I perceived a significant Conflict of Interest in that the Interviewer clearly and incorrectly stated his knowledge of (me) the Candidate. As the Interviewer definitely does not know me, his apparent knowledge of me must be based upon other peoples knowledge not his own. He confirmed this by saying "I know you because of the Incestuous environment within Ships". Of the work area and people that are common to both of us, I was subject to a sustained pattern of Bullying and Victimisation by a closed group of people that he was a member of. At the time this affected my mental health significantly enough to request a transfer away from that area, which was accepted.

Those actions at the time further reinforced a long term Mental Health Anxiety disability I have.

My complaint is: A panel member suggested familiarity which does not exist, the Interview did not follow the expected DE&S format, this triggered my Mental Health condition causing severe anxiety and flashback to previous harmful events. This significantly impacted my ability to convey the required Behaviours in the requested format. As an example, at one point I was describing D&I tackling bullying in the Department when I realised I was explaining it to someone whose friend/colleague had drunkenly threatened me with violence. The criticism in the Interview Feedback is entirely around Interview Technique and ability to structure answers, this pales against the mental anguish I was dealing with which prevented that.

The conduct of the interview, lack of adherence to guidance/process and style of questioning/panel feedback and formal feedback points towards an unconscious bias, this was plain enough to ensure I remained anxious throughout the interview. I did not receive notification of the Result until 18 April 24, it took me a number of weeks to understand the full context, I raised my concerns on 20 May 24 and repeatedly attempted to hold Informal mediation. I was instead directed towards a formal written Complaints portal. When I was finally signposted towards the Civil Service Recruitment Principles on 17 Jun 24, it was clear there were acts that were in breach, including Impartiality, the Declaration of any relationship and handling of Conflict of Interests. The promised 'full investigation' was non-existent, with no research into the issue. The Formal Response I received gave unequivocal outcomes, all my claims were completely dismissed and offered as normalised behaviours, and the stated desire was to finalise a Promotion Campaign rather than deal with any issues impeding a Fair, Impartial outcome.

I further researched my Equality rights under UK law and they appear to have been breached. This was also denied in the outcome of the 'full investigation'. The complaint 'process' has been obstructive with no

transparency. To make the complaint or be heard was extremely hard as I was 'swim-laned' into an unregulated complaints process and all wrongdoing strenuously denied.

Any further investigation that happens requires an impartial approach, entirely independent Investigator and Deciding Officer. This episode has been extremely unwelcome and damaging to my Mental Health as I advised would happen and this fact was entirely ignored during the complaint.

Professionally I am in an untenable position of making fundamental observations of conduct in the department, these have been summarily dismissed at point of source and those individuals in positions deciding my career outlook and progression remain apart from any problem.

Insert the date (within 3 months of the latest incident or completion of informal action), and times (if relevant), relating to the complaint, and the names of any employees involved:

The 'investigation' concluded on 17 Jun 24 with a Formal letter. I have submitted the evidence previously that it was practical to submit in a number of complaint threads, this has the dates and people involved. I am happy to provide the rest of the evidence such as medical, legal notes that were offered at the time but not accepted. I also summarised the position to the Civil Service Commission due to the apparent Breach of CS Code, I include that as a summary of the whole issue. I have been disadvantaged and singled out for illegal behaviours during my career, the interview is the latest and related event. In place of the fair hearing I was expecting, instead I have been openly accused of seeking Unfair Advantage over my colleagues, this is extremely upsetting as effectively it is my integrity that is being drawn into question now.

Please explain what you have done so far to resolve the issues through informal action (refer to Grievance Procedure Section 7). If informal action has not been taken or considered, please explain why:

Informal Action was denied me, despite my insistence that the complex

issues and my Mental Health considerations made it the best approach. I was directed to a formal written Complaints portal that appeared to have a Formal Process, but it was later confirmed it did not, and was later claimed to have a limited remit which was not the response given by the mail box reply or the tone of the Formal response received. Despite any claimed limits to remit it entirely dismissed all my claims without investigating them.

I attempted to raise the Complaint with the Civil Service Commission, they would not accept it because they offered that DE&S have a full remit to properly address the issues, and put in place any reparations.

The delay caused by the obstructive behaviours in DE&S have significantly narrowed down the possible positive outcomes that I could receive. What started as a relatively simple complaint with obvious agreeable outcomes has been significantly escalated due to DE&S unwillingness to engage or seek resolution.

I have sought and obtained Character and Ability statements from Seniors to suggest my suitability for the promotion. I have had a significant career over 37 years with a number of major milestones of equipment delivery and influencing decision making saving £10M's in some cases.

Please clearly explain the outcome that you are seeking:

I am seeking:

- *A Fair outcome from the Interview.*
- *Allowances for my Disadvantages in the context of the Interview as I am legally entitled to.*
- *The opportunity to progress my career that is unjustly being denied.*
- *Assurance that DE&S overhauls what appears a divisive way they are currently handling Complaints.*

131. On 21.08.2024, the caseworker assigned to the grievance, one Audrey Harris, asked for an investigating officer to be appointed. Ms Harris chased this on 03.09.2024, and again on 12.09.2024. There was a possible investigating officer identified, only to be discounted due to his workload. Eventually, on 25.09.2024, one Emily Townsend was appointed as investigating officer.

132. Ms Townsend met with the Claimant on 17.10.2024, and interviewed Mr Savvides on 23.10.2024, Mr Elson and Mr Khan on 29.10.2024 and Commander Adcock on 04.11.2024. The following day, she told the Claimant that the investigation would be delayed until 13.12.2024.
133. The interviews were discussed before us, but, given the remove in time, we did not find them particularly useful in deciding the underlying facts in this case.
134. The initial investigation report was sent to the Claimant on 26.11.2024. 3 days later, he submitted comments on it.
135. The final report was completed on 05.12.2024.
136. In January 2025, the Claimant was invited to a formal grievance outcome meeting. The meeting took place on 22.01.2025, and minutes of it were before us. The formal decision was issued one week later.
137. On 28.02.2025, the Claimant tendered his resignation. This was rejected on 04.03.2025.
138. On 11.03.2025, a grievance appeal hearing was held, and on 19.03.2025, a decision dismissing the appeal was issued.
139. The Claimant re-resigned on 23.03.2025, and his end of work date was 22.04.2025.
140. The Claimant told us, and we accept, that when the Respondent refused to accept his initial resignation, he became hopeful that he would get what he saw as proper engagement from the Respondent. When the position did not move in a direction he wished or expected, however, the Claimant decided to resign, which second resignation was accepted.

141. Although the Claimant carried on working for the Respondent for a considerable time after the interview, he consistently made his position clear and at no point accepted the Respondent's position. Delay may be evidence of an implied affirmation, but here, it was accompanied by a consistent assertion by the Claimant of the correctness of his own position.

Comparators

142. We heard evidence from Mr Tang and Mr Beverstock, both of whom were named in the list of issues as possible comparators.

143. We have not found it necessary, or indeed helpful, to consider comparators. We have been able to find out why things were done.

144. Mr Beverstock himself raised a number of grievances in the course of his own employment. He told us that these took about a year to resolve. He said that some grievances take longer than this, others take less time.

145. Mr Beverstock appeared to make little effort to hide his impatience with, and hostility to the Claimant. But his evidence is the best that we have about the time that the Respondent takes to resolve grievances. It took too long to resolve the Claimant's grievance. But we cannot find that it has a practice of taking too long to resolve grievances generally.

Law

Equality Act 2010 ("EA")

146. EA s13 provides as follows:

13 Direct discrimination

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

(2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.

(3) *If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.*

(4) *If the protected characteristic is marriage and civil partnership, this section applies to a contravention of Part 5 (work) only if the treatment is because it is B who is married or a civil partner.*

(5) *If the protected characteristic is race, less favourable treatment includes segregating B from others.*

(6) *If the protected characteristic is sex—*

(a) *less favourable treatment of a woman includes less favourable treatment of her because she is breast-feeding;*

(b) *in a case where B is a man, no account is to be taken of special treatment afforded to a woman in connection with pregnancy, childbirth or maternity.*

147. EA s15 provides as follows:

15 Discrimination arising from disability

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

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

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

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

148. EA ss20 & 21 provide as follows:

20 Duty to make adjustments

(1) *Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.*

(2) *The duty comprises the following three requirements.*

(3) The first requirement is a requirement, where a provision, criterion or practice of A's 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.

(4) The second requirement is a requirement, where a physical feature 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.

(5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put 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 provide the auxiliary aid.

(6) Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.

(7) A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty.

(8) A reference in section 21 or 22 or an applicable Schedule to the first, second or third requirement is to be construed in accordance with this section.

(9) In relation to the second requirement, a reference in this section or an applicable Schedule to avoiding a substantial disadvantage includes a reference to—

- (a) removing the physical feature in question,*
- (b) altering it, or*
- (c) providing a reasonable means of avoiding it.*

(10) A reference in this section, section 21 or 22 or an applicable Schedule (apart from paragraphs 2 to 4 of Schedule 4) to a physical feature is a reference to—

- (a) a feature arising from the design or construction of a building,*

- (b) a feature of an approach to, exit from or access to a building,
- (c) a fixture or fitting, or furniture, furnishings, materials, equipment or other chattels, in or on premises, or
- (d) any other physical element or quality.
- (11) A reference in this section, section 21 or 22 or an applicable Schedule to an auxiliary aid includes a reference to an auxiliary service.
- (12) A reference in this section or an applicable Schedule to chattels is to be read, in relation to Scotland, as a reference to moveable property.
- (13) The applicable Schedule is, in relation to the Part of this Act specified in the first column of the Table, the Schedule specified in the second column.

Part of this Act	Applicable Schedule
<u>Part 3</u> (services and public functions)	<u>Schedule 2</u>
<u>Part 4</u> (premises)	<u>Schedule 4</u>
<u>Part 5</u> (work)	<u>Schedule 8</u>
<u>Part 6</u> (education)	<u>Schedule 13</u>
<u>Part 7</u> (associations)	<u>Schedule 15</u>
Each of the Parts mentioned above	<u>Schedule 21</u>

21 Failure to comply with duty

- (1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.
- (2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.
- (3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.

149. EA s26 provides as follows:

26 Harassment

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

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

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

(i) violating B's dignity, or

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

(2) A also harasses B if—

(a) A engages in unwanted conduct of a sexual nature, and

(b) the conduct has the purpose or effect referred to in subsection (1)(b).

(3) A also harasses B if—

(a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,

(b) the conduct has the purpose or effect referred to in subsection (1)(b), and

(c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

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

(a) the perception of B;

(b) the other circumstances of the case;

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

(5) The relevant protected characteristics are—

- age;*
- disability;*
- gender reassignment;*
- race;*
- religion or belief;*
- sex;*
- sexual orientation.*

150. EA s123 provides as follows:

123 Time limits

(1) Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of—

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

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

(2) Proceedings may not be brought in reliance on section 121(1) after the end of—

(a) the period of 6 months starting with the date of the act to which the proceedings relate, or

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

(3) For the purposes of this section—

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

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

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

151. EA s136 provides as follows:

136 Burden of proof

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) *But subsection (2) does not apply if A shows that A did not contravene the provision.*

(4) *The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule.*

(5) *This section does not apply to proceedings for an offence under this Act.*

(6) *A reference to the court includes a reference to—*

(a) an employment tribunal;

(b) the Asylum and Immigration Tribunal;

(c) the Special Immigration Appeals Commission;

(d) the First-tier Tribunal;

(e) the Education Tribunal for Wales;

(f) the First-tier Tribunal for Scotland Health and Education Chamber

152. Mr Allsop prepared a comprehensive written note on the law. The citation of caselaw perhaps went beyond what was necessary for the Tribunal to resolve the issues before us, particularly when 2 or more cases were cited in support of the same proposition. That was, no doubt, influenced by an advocate's proper wish to ensure that the Tribunal was fully informed of the law, and an awareness that the Claimant was appearing in person and could not be expected to be on top of the caselaw in the way that Mr Allsop was. For that reason, we may not cite every case that Mr Allsop mentioned in his written note.

153. Insofar as the EA s13 claim was concerned, he submitted that the *"the fundamental question in any discrimination case is 'why' the Claimant has been treated less favourably than her¹ comparator(s)"*, a proposition he drew from Ahsan -v- Watt². He submitted that this can be ascertained either by way of a two-stage burden of proof – referring to Igen Ltd -v- Wong³ (a case not included in the bundle of authorities) or by making positive findings as to the motivation concerned.

154. On the burden of proof, Mr Allsop referred us to Efobi -v- Royal Mail

¹ The gender used in the Respondent's note/

² [2008] IRLR 246.

³ [2005] EWCA Civ 142 [2005] ICR 931

Group⁴. We have not had to apply EA s136 to this case, as we have been able to make positive factual findings without its assistance.

155. On the question of comparators, and whether it is necessary to consider them in all cases, we were not referred to Shamoon -v- Chief Constable of the RUC⁵, Lord Nicholls of Birkenhead said:

11. This analysis seems to me to point to the conclusion that employment tribunals may sometimes be able to avoid arid and confusing disputes about the identification of the appropriate comparator by concentrating primarily on why the claimant was treated as she was....

156. However, Mr Allsop accepted that it was acceptable for us simply to find why the Claimant was treated as he was, if we were able to make such a finding. He referred to Efobj, in which Shamoon was referred to in argument.

157. On the EA s15 claim, Mr Allsop referred us to the analysis by Simler P, sitting in the EAT, in Pnaiser -v- NHS England⁶, and the summary in *Harvey*⁷ as follows:

- (1) Was there unfavourable treatment and by whom?*
- (2) What caused the impugned treatment, or what was the reason for it?*
- (3) Motive is irrelevant.*
- (4) Was the cause/reason 'something' arising in consequence of the claimant's disability?*
- (5) The more links in the chain of causation, the harder it will be to establish the necessary connection.*
- (6) This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.*
- (7) The knowledge requirement is as to the disability itself, not extending to the 'something' that led to unfavourable treatment.*

⁴ [2021] IRLR 811.

⁵ [2003] UKHL 11 [2003] ICR 337

⁶ [2016] IRLR 170

⁷ Harvey on Industrial Relations and Employment Law.

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

158. We were also referred to The Trustees of Swansea University Pension & Assurances Scheme and another -v- Williams⁸ on the meaning of “*unfavourable treatment*”. Mr Allsop referred us to Langstaff P:

*In my judgment, treatment which is advantageous cannot be said to be "unfavourable" merely because it is thought it could have been more advantageous, or, put the other way round, because it is insufficiently advantageous. The determination of that which is unfavourable involves an assessment in which a broad view is to be taken and which is to be judged by broad experience of life. Persons may be said to have been treated unfavourably if they are not in as good a position as others generally would be. Sometimes this may be obvious: as for example, where a person may suffer a life event which would generally be regarded as adverse – taking the **Malcolm** case as an example, eviction; or being surcharged; being required to work harder, longer, or for less. A person who is asked, on pain of discipline, to perform at a rate which he cannot achieve because of his disability would be treated unfavourably if he were then to be subjected to that discipline, or threatened with it: this would not be directly because of his disability, but because of that which arose from it – his inability to perform work at the same speed or with the same efficiency. In a case such as this the contrast with the **Malcolm**⁹ approach is clear – for in **Malcolm**, the question would be whether an able bodied worker in the same position without the disability, who did not complete work at the rate or to the standard required would be subject to discipline. This approach is both consistent with and reflective of the sense in which "unfavourably" is applied in a case coming within section 18."*

159. We were also referred to the Supreme Court's decision in the same case¹⁰, in which it was said that the threshold questions of fact for the

⁸ [2015] IRLR 88

⁹ A reference to Malcolm -v- Lewisham LBC [2008] UKHL 43 [2008] 1 A.C. 1399, a case of a man with schizophrenia having sub-let his flat, following which L gave him notice to quit and issued proceedings for possession.

¹⁰ [2019] IRLR 306

Tribunal are:

- (a) What was the relevant treatment? And
- (b) Was it unfavourable to the Claimant?

160. In the course of his judgment in the Supreme Court, Lord Carnworth JSC (with whom the other members of the Court agreed) said:

- (a) *“Although it is not in dispute that the wording of section 15 was intended in broad terms to reverse the ruling in *Malcolm*, our task is not to try to reconstruct the pre- *Malcom* law. It is to the section itself, interpreted in accordance with ordinary principles, that we must look for the applicable tests in the present case. The most obvious feature, in line with the Solicitor General’s explanation, is the removal of any element of comparison. Instead, section 15 appears to raise two simple questions of fact: what was the relevant treatment and was it unfavourable to the claimant?”*¹¹;
- (b) That a *“...little is likely to be gained by seeking to draw narrow distinctions between the word “unfavourably” in section 15 and analogous concepts such as “disadvantage” or “detriment” found in other provisions, nor between an objective and a “subjective/objective” approach...”*¹²;
- (c) That a *“...relatively low threshold of disadvantage which is sufficient to trigger the requirement to justify under this section”*¹³;
- (d) That *“... as *Bean LJ* pointed out [2018] ICR 233, para 42, there was no doubt as to the nature of the disadvantage suffered by the claimant. No one would dispute that eviction is “unfavourable”*¹⁴;

161. We were further referred to Basildon & Thurrock NHS Foundation Trust -v- Weerasinghe¹⁵ emphasising the need to identify the ‘something’ and then the fact that that ‘something’ must arise in consequence of the claimant’s disability.

¹¹ @ para 12

¹² @ para 27

¹³ Ibid.

¹⁴ @ para 28

162. Pnaiser was also referred to on the question of the burden of proof. The ‘something’ identified need not be the sole or main reason for the treatment concerned, but it must have had a significant, or more than trivial, influence on the mind of the person alleged to have caused the unfavourable treatment.

163. As to the potential defence provided for by EA s15(1)(b), Mr Allsop cited R(Elias) -v- Secretary of State for Defence¹⁶, in which it was said by Mummery LJ that

- (a) “...*the objective of the measure in question must correspond to a real need and the means used must be appropriate with a view to achieving the objective and be necessary to that end*”;
- (b) In considering proportionality the Tribunal must consider:
 - i) whether the objective is sufficiently important to justify limiting a fundamental right;
 - ii) whether the measure is rationally connected to the objective, and;
 - iii) whether the means chosen are no more than is necessary to accomplish the objective.

164. We were referred to Birtenshaw -v- Oldfield [2019] IRLR 946, on the need, when considering justification, to give a substantial degree of respect to the judgement of the decision-maker as to what is reasonably necessary to achieve the legitimate aim, provided it has acted rationally and responsibly.

165. On the question of reasonable adjustments, we were referred to Environment Agency -v- Rowan¹⁷ on the need to follow the following steps:

- (a) identify the PCP applied (or if applicable the alleged physical feature of the premises or requirement) by or on behalf of the employer;

¹⁵ [2016] ICR 305

¹⁶ [2006] IRLR 934

- (b) identify comparators (if necessary);
- (c) identify the nature and extent of the substantial disadvantage suffered by the Claimant.

166. It was submitted that, if the PCP relates to a procedure, it must apply to others than the Claimant, or there can be no comparative disadvantage.

167. It was submitted that, only having gone through the Rowan exercise, will the Tribunal be able to assess whether any adjustment is reasonable applying the criteria in the EHRC Code of Practice on Employment (to whose provisions we were not expressly taken).

168. Mr Allsop submitted that reasonable adjustments are limited to those that prevent a PCP from placing a disabled person at a substantial disadvantage, citing Salford NHS Primary Care Trust -v- Smith¹⁸. He recognised that the question was whether the proposed adjustment had a prospect of alleviating the substantial disadvantage, rather than any higher bar, as per Leeds Teaching Hospital NHS Trust -v- Foster¹⁹.

169. Mr Allsop cited Secretary of State for Work and Pensions (Jobcentre Plus) -v- Higgins²⁰ as authority for the proposition that the question is, “what steps it was reasonable for the respondent to have to take in order to avoid a particular disadvantage”, rather than “what ought reasonably to have been offered”.

170. Insofar as harassment is concerned, Mr Allsop emphasised the need for it to be related to a particular protected characteristic, requiring the Tribunal to identify the reason for the harassment. He referred us to Unite -v- Naillard²¹ and Tees Esk and Wear Valleys NHS Foundation Trust -v- Aslam²².

171. We were also reminded that, whilst it is necessary for a victim of

¹⁷ [2008] ICR 218

¹⁸ [2011] EqLR 1119

¹⁹ [2011] EqLR 1075

²⁰ UKEAT/0579/12/DM

²¹ [2017] ICR 121

treatment to have felt or perceived their dignity to have been violated or an adverse²³ environment to have been created in order for such treatment to amount to harassment, that is not sufficient. It must also be reasonable for the victim to hold that feeling or perception. We were referred to Chawla -v- Hewlett Packard²⁴ and Pemberton -v- Inwood²⁵.

172. Insofar as limitation is concerned, Mr Allsop acknowledged that the Tribunal has a very wide discretion to extend time, as per Abertawe Bro Morgannwg Local Health Board -v- Morgan²⁶, but emphasised that it will almost always be relevant to consider the length of the delay, the reasons for the delay, and whether the delay has prejudiced the Respondent.

173. Mr Allsop referred us to South Western Ambulance Service NHS Trust -v- King²⁷, on it being for the Claimant to show that acts done at different times constituted conduct extending over a period of time for the purposes of EA s123(3)(a).

174. On constructive dismissal, Mr Allsop submitted that there must be:

- (a) A breach of contract by the Respondent, either actual or anticipatory;
- (b) The breach must be of sufficient importance to justify the Claimant resigning, or be the last of series on incidents which justify resignation;
- (c) The Claimant must leave because of the breach and not for some unconnected reason;
- (d) The Claimant must not delay too long, or risks being deemed to have waived the breach – for this latter proposition, the Respondent referred to Kaur -v- Leeds Teaching Hospital NHS Trust²⁸

175. Mr Allsop referred us to Malik -v- BCCI²⁹ and Baldwin -v- Brighton & Hove City Council³⁰ as authority that a breach of the implied term of trust

²² [2020] IRLR 495

²³ Mr Allsop's words. The statute's words are "*intimidating, hostile, degrading, humiliating or offensive environment*". Mr Allsop's word is probably an acceptable paraphrase for present purposes.

²⁴ [2015] IRLR 356

²⁵ [2018] IRLE 542

²⁶ [2018] ICR 1194

²⁷ [2020] IRLR 168

²⁸ [2018] IRLR 833

²⁹ [1997] IRLR 462

³⁰ [2007] IRLR 232

and confidence will only be made out where the Respondent has acted in a way calculated or objectively likely to destroy or seriously undermine the relationship of trust and confidence between employer and employee. He submitted that this is a demanding test.

176. In a last straw case, Mr Allsop submitted that it is important to identify the last straw and assess its quality. He referred to Omilaju -v- Waltham Forest London BC³¹, approved in Kaur, as follows:

“The quality that the final straw must have is that it should be an act in a series whose cumulative effect is to amount to a breach of the implied term. I do not use the phrase ‘an act in a series’ in a precise or technical sense. The act does not have to be of the same character as the earlier acts. Its essential quality is that, when taken in conjunction with the earlier acts on which the employee relies, it amounts to a breach of the implied term of trust and confidence. It must contribute something to that breach, although what it adds may be relatively insignificant.

“20. I see no need to characterise the final straw as ‘unreasonable’ or ‘blameworthy’ conduct. It may be true that an act which is the last in a series of acts which, taken together, amounts to a breach of the implied term of trust and confidence will usually be unreasonable and, perhaps, even blameworthy. But, viewed in isolation, the final straw may not always be unreasonable, still less blameworthy. Nor do I see any reason why it should be. The only question is whether the final straw is the last in a series of acts or incidents which cumulatively amount to a repudiation of the contract by the employer. The last straw must contribute, however slightly, to the breach of the implied term of trust and confidence. Some unreasonable behaviour may be so unrelated to the obligation of trust and confidence that it lacks the essential quality to which I have referred.

“21. If the final straw is not capable of contributing to a series of earlier acts which cumulatively amount to a breach of the implied term of trust and confidence, there is no need to examine the earlier history to see whether the alleged final straw does in fact have that effect. Suppose that an employer has committed a series of acts which amount to a breach of

³¹ [2005] IRLR 35

the implied term of trust and confidence, but the employee does not resign his employment. Instead, he soldiers on and affirms the contract. He cannot subsequently rely on these acts to justify a constructive dismissal unless he can point to a later act which enables him to do so . If the later act on which he seeks to rely is entirely innocuous, it is not necessary to examine the earlier conduct in order to determine that the later act does not permit the employee to invoke the final straw principle.”

177. Mr Allsop then made the point that the employee must show that they accepted the repudiatory breach.

178. We were not referred to the following cases on the question of affirmation:

- (a) W.E. Cox Toner (International) Ltd -v- Crook³² - in which Browne-Wilkinson J held that, whilst an innocent party must at some stage decide to affirm the contract or accept the repudiation, mere delay in accepting repudiation does not, in itself, amount to affirmation, although prolonged delay can amount to evidence of an implied affirmation³³;
- (b) Chindove -v- Morrison Supermarkets PLC³⁴ - in which the EAT referred to Cantor Fitzgerald International -v- Bord & Ors³⁵, in which McCombe J described affirmation as “...essentially the legal embodiment of the everyday concept of “letting bygones be bygones””³⁶;
- (c) Brooks -v- Leisure Employment Services Ltd³⁷, in which the EAT said (referring to Kaur) that the exercise of a contractual grievance or appeal procedure is unlikely to be treated as an unequivocal affirmation on the contract.

Conclusions on the issues

S13

³² [1981] ICR 823

³³ @ 828g

³⁴ UKEAT/0076/17/JOJ

³⁵ [2002] IRLR 867

³⁶ @ para 129

179. We will deal firstly with Direct Disability discrimination.
180. The Respondent did refuse to make adjustments to the application process. It offered support for future processes, but that did not amount to an adjustment to the process of which the interview formed part.
181. The Respondent did require the Claimant to raise a formal grievance.
182. Mr Khan's message of 31.05.2024 we have discussed above. We think the message was one that the Claimant misunderstood. Something similar was probably said on 26.06.2024. What was said on 29.10.2024 was not said to the Claimant.
183. The Claimant acknowledged that Commander Adcock had not been the decision-maker insofar as issue 3.1.3 is concerned. In the light of the Claimant's acceptance of this, we have not had to consider this issue further.
184. We find that Mr Khan acted as he did because of a rigidity of thinking, combined with an indifference to the Claimant's plight. It was not, however, because of his disability.
185. The refusal to make adjustments was not because of the Claimant's disability. Nor was the requirement that the Claimant make a grievance. It was, we consider, inappropriate to require a Claimant to make a grievance to seek to obtain a reasonable adjustment, but this was not done because of his disability.

S15

186. The Respondent did "fail" the Claimant in his interview, and did formally reject his application for promotion as a result of that interview.
187. The Claimant missed the pass mark by a single point. He did so after an interview in the course of which, we have found, he suffered a significant panic attack. Mr Elson spoke of the importance of body language and non-verbal communication. We find that the Claimant's

panic attack probably did cause his performance to suffer and cost him the 1 mark – possibly more – that separated success from failure.

188. The panic attack did arise from his disability, and did impact on his performance, including his ability to hold eye contact, speak clearly, and structure answers.

189. It is hard to see that the failing of the Claimant at interview, and the consequent rejection of his promotion application, as anything other than unfavourable treatment. Mr Allsop's submissions to the contrary amounted to an invitation to engage in a comparative exercise (expressly said in Williams to be inappropriate), or to confuse the question of why such treatment happened with the entirely separate question as to whether it was unfavourable. As a matter of plain English, we consider that to be failed in an interview is unfavourable, just as being evicted is unfavourable.

190. That unfavourable treatment was because of the consequences of his disability.

191. The aims identified by the Respondent are legitimate.

192. We are not persuaded that the treatment of the Claimant was an appropriate and reasonably necessary way of achieving those aims. The Respondent simply failed to consider properly the question of reasonable adjustments to the process in which the need for the adjustments had arisen. Assistance with future exercises is simply not the same thing.

193. The Respondent could have made a prompt offer of re-interview. We are unpersuaded that it would have been unfair to consider reviewing the behavioural scores. The importance of a fair process is high, but the Respondent's approach should not be treated as sacred. Focus on STAR approach can lead to the appointment of the candidate who best masters that approach, rather than the person who can best perform the role in question. That can be said, of course, of any recruitment technique –

which is not a reason not to have structured recruitment practices, but it is a reason not to treat them as sacred or set in stone. The training against bias to which the Respondent refers had not cautioned Mr Elson against over-confidence in his assessment of body language, and the Respondent's reasoning strikes us as a reflection of rigidity of thinking more than anything else. We do not see that it would have been unfair to say, after the interview, this candidate experienced a panic attack, should his behavioural scores be re-considered in the light of that. We do not think that would be unfair to other candidate, because they – presumably – did not suffer a panic attack min-interview.

194. Birtenshaw tells us that we must give a substantial degree of respect to the judgement of a decision-maker, provided that it has acted rationally and responsibly. But the Respondent here acted neither rationally nor responsibly. The Claimant's requests for reasonable adjustments were met with a rigid insistence that such requests had to be made before interview. The Respondent was wholly unmoved by the fact that the Claimant could not have done this. That is wholly unreasonable and irresponsible.

195. The balance struck by the Respondent was wholly in its own favour. We consider that the Respondent was blind to the need for fairness in this exercise – not future ones – to the Claimant.

196. The Respondent could reasonably have been expected to know that the Claimant had a disability from 20.05.2024.

Reasonable adjustments

197. 5.1 has been answered above.

198. The Respondent did have the PCP identified in 5.2.1

199. As for the PCP in 5.2.2, the Claimant has shown that he was required to make a grievance in order to request reasonable adjustments. Either the Respondent had a PCP of requiring people to do so, or it singled out the Claimant for imposition of this requirement. We find the

former to be more probable.

200. Mr Beverstock gave evidence that his own grievance procedures had taken about a year to resolve. His evidence was that some grievances take longer, others less time. We are not satisfied that R has a PCP of allowing grievances to be delayed, although this one undoubtedly was.

201. PCP1 did put the Claimant at a substantial disadvantage.

202. We are satisfied that PCP2 did impact negatively on C's mental health.

203. The Respondent could reasonably have known that C was likely to be placed at a disadvantage from 20.05.2024.

204. Regarding the adjustments suggested:

(a) 5.5.1 we see no reason why, with appropriate care, this could not form part of the process. These assessments, after all, form part of the bonus entitlement

(b) 5.5.2 this could have been offered, had it been offered promptly, it may have been accepted;

(c) 5.5.3 we do not understand this question

(d) 5.5.4 this should have been done, but would not necessarily have avoided the disadvantage.

Harassment

205. . We accept that all of the things described in 6.1.1 and 6.1.3 did happen. 6.1.2 was not pursued.

206. We find that these were innocuous remarks. They did not have the purpose, and did not reasonably have the effect, of violating the Claimant's dignity or creating an intimidating, degrading, humiliating or offensive environment for the Claimant.

Constructive unfair dismissal

207. We find that the Respondent's unlawful discrimination we have found, did amount to a breach of the implied term of mutual trust and confidence. The Respondent has no reasonable and proper cause to behave as it did.

208. The Claimant did resign because of the breach, and did not affirm the contract before doing so. At no point did he give any indication of letting bygones be bygones. Quite the contrary.

Time

209. In closing, Mr Allsop contended that any action before 01.06.2024 was potentially out of time. Early conciliation commenced on 30.08.2024, and the certificate was issued on 11.10.2024. It seems to us that Mr Allsop's contention is probably right.

210. Insofar as the Claimant's claims are under the Equality Act, the Tribunal has a very broad discretion to extend time, if necessary. We have heard the evidence, and made factual findings. We think it would be more appropriate to determine the case on the basis of the facts we have found, than on any time point.

211. Insofar as the claim for constructive unfair dismissal is concerned, it is somewhat artificial to isolate a single act that precipitated the Claimant's decision. There was, of course, the dismissal of his grievance appeal, and that probably was the last straw. This happened after the Claimant had presented his ET1, and we therefore consider that the claim for constructive dismissal is in time.

Employment Judge David Hughes
Date: 31 March 2026

JUDGMENT & REASONS SENT TO THE PARTIES ON
25 August 2026