EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8002436/2025

Held in Glasgow on 3, 4, 5 and 6 August 2026

Employment Judge O'Donnell

Mr B Mackie	**Claimant** **In Person**
Student Loans Company Limited	**Respondent** **Represented by:** **Mr S McEntee -** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The judgment of the Employment Tribunal is that:

1. The claim of victimisation under s27 of the Equality Act 2010 having been withdrawn by the claimant at the hearing is dismissed under Rule 51 of the Tribunal Rules of Procedure.

2. The claimant's remaining claims under the Equality Act 2010 are not well-founded and are hereby dismissed.

REASONS

Introduction

1. The claimant has brought complaints of unlawful discrimination under the Equality Act 2010 relying on the protected characteristic of disability.

2. The respondent concedes that the claimant was disabled as defined in s6 of the 2010 Act at the relevant time but otherwise resist the claims.

Preliminary issues

3. At the outset of the hearing, there were a number of preliminary case management issues to be resolved.

4. First, the claimant had indicated that he no longer wished to pursue the claim of victimisation. He was asked if this claim was withdrawn and he confirmed that it was. The victimisation claim was, therefore, dismissed under Rule 51.

5. Second, the claimant had applied to amend his case to add a claim under s15 of the Equality Act in relation to being progressed to a recorded discussion on 14 October 2025. The respondent did not object to the amendment and this was granted at the hearing. Both parties were prepared to deal with this claim at the hearing and so there was no need for any postponement.

6. Third, parties had not been able to agree a list of issues for the final hearing. This was discussed and the Tribunal directed that the issues would be as set out below.

List of issues

7. Breach of the duty to make reasonable adjustment (ss20 & 21 of the Equality Act 2010).

    a. Did the respondent apply the following provision, criterion or practices (PCP)?

        i. Employees must report sickness absence personally by telephone except in exceptional circumstances.

        ii. Once contact was made, absence reporting and structured questioning would ordinarily be completed during that call.

    b. Was the claimant placed at a substantial disadvantage by the PCP as compared to employees who are not disabled?

    c. Did the respondent know (or could they reasonably have known) that the claimant was likely to be placed at this disadvantage?

    d. If the duty applies, were there any adjustments which would overcome the disadvantage to the claimant which were reasonable for the respondent to have made.

8. Harassment under s26 of the Equality Act.

    a. Was the following which occurred during the telephone call between the claimant and his team leader on 5 June 2026 unwanted conduct?

        i. The continued questioning of the claimant.

        ii. Hospitalisation being the only situation in which the exceptional circumstances exception would be applied.

    b. If so, was it conduct related to disability?

    c. If so, did the conduct have the purpose or effect (taking into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect) of violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for him?

9. Discrimination arising from disability under s26 of the Equality Act.

   a. Was the claimant treated unfavourably by being progressed to a recorded discussion on 14 October 2025?

   b. Was this because of something (that is, his absence from July to October 2025) arising from his disability?

   c. Was the recorded discussion a proportionate means of achieving the legitimate aim of monitoring absences and ensuring appropriate support was in place for employees who met absence triggers?

10. Remedies

    a. What compensation (in terms of financial loss and injury to feelings) would it be just and equitable for the Tribunal to award in the event that one for more of the claims are upheld?

    b. Did the claimant or respondent fail to comply with the ACAS Code of Practice? If so, what is the appropriate level by which compensation should be increased or decreased?

    c. Did the claimant contribute to his loss? If so, what is the appropriate reduction to compensation?

    d. Did the claimant fail to mitigate his financial loss? If so, what is the appropriate reduction to compensation?

    e. What interest should be awarded?

Evidence

11. The Tribunal heard evidence from the following witnesses:

    a. The claimant.

    b. Amanda Cairns – senior people adviser.

    c. Ewa Wiergacz (EW) – the claimant's team leader at the time of the 5 June 2025 phone call.

    d. Rebecca Dowding (RD) – operations leader who heard the claimant's grievance.

    e. Nigel Glover (NG) – health & safety manager who heard the claimant's grievance appeal.

f. Karen Sutherland (KS) – the claimant's team leader as at 14 October 2025.

12. There was an agreed file of documents prepared by the parties running to 459 pages. A reference to a page number below is a reference to a page in that file. An audio recording of the 5 June 2025 phone call was also heard by the Tribunal.

13. This is not a case where there was any real dispute of fact. The events giving rise to the case were agreed by the parties and supported by contemporaneous documents which both parties agreed were accurate.

14. The Tribunal did hear evidence about the claimant's grievance, both in terms of process and outcome, which it did not consider relevant to the issues to be determined. The grievance was only relevant to the remedy issue of whether either party had failed to follow the ACAS Code of Practice rather than any substantive issue. Issues relating to the reasoning behind the outcome of the grievance and appeal are at a level of detail beyond that necessary for the Tribunal to determine whether the Code has been followed.

15. In particular, the grievance process and outcome were not alleged to be acts of discrimination nor did they provide any evidence from which the Tribunal could draw inferences about the substantive allegations of discrimination. For these reasons, the Tribunal's findings of fact below about the grievance are limited to those matters relevant to the list of issues.

Findings in fact

16. The Tribunal made the following relevant findings in fact.

17. The claimant has been employed by the respondent since June 2021 and remains employed as at the date of the hearing. At the relevant time and the date of the hearing he held the role of student finance officer.

18. The claimant has a number of medical conditions; fibromyalgia; chronic migraine; irritable bowel syndrome; chronic depression. The respondent accepts that the claimant is disabled as defined in the Equality Act 2010.

19. The respondent operates an attendance management policy and procedure which is at pp320-343. The purpose of the policy is to support staff and managers in maintaining and managing attendance at work. The parts of the policy which are relevant to the present case are as follows:

a. If an employee is unable to attend work then they must contact their manager (or another manager) by telephone. Other forms of contact such as email, text messages or voicemail are not acceptable. Contact must be made personally by the employee unless there are exceptional circumstances (the example given in the policy is hospitalisation) where members of the employee's family or some other third party can make contact (p328).

b. Action will be taken under the policy when an employee reaches certain triggers (p331):

    i. 3 instances of absence (sickness or non-sickness) within any 6 month period (on a rolling basis) or

    ii. 8 days (60 hours pro rata) of absence or more (sickness or non-sickness) in any 12 month period (on a rolling basis).

c. The first stage of the attendance management process is an informal review hearing (p333) to discuss the reasons for the absence, any circumstances affecting attendance, any underlying health problems, the need for an Occupational Health referral, any reasonable adjustments and that further absence may be result in formal action. The details of what is discussed is put into writing and referred to as a "record of discussion" (ROD)

20. In April 2025, the claimant had been unfit for work due to a migraine. He was unable to phone due to the effects of his migraine and so his partner phoned on his behalf and spoke to EW explaining that the claimant was unable to speak to her. No issue was raised by EW about the claimant's partner calling on his behalf.

21. On 4 June 2025, the claimant was unfit for work and his partner telephoned on his behalf. The claimant's manager, EW, was not available at the time and the claimant's partner spoke to another manager. The reason given for the claimant's absence was that he had a stomach bug.

22. On 5 June 2026, the claimant remained unfit for work and his partner again phoned on his behalf. The call was recorded by the respondent and a transcript of the call is at pp138-145:

    a. The claimant's partner initiates the call and speaks to a member of the respondent central hub who puts her through to EW.

    b. The claimant's partner explains to EW that the claimant will not be coming in. EW asks to speak to the claimant to which the claimant's partner says *"Yeah. Thank you".*

    c. There is a short silence and the claimant then speaks. EW asks him if he can tell her why he will not be in. He replies that he has a bad migraine at the moment and that yesterday he had very little sleep because he was coughing and this affected his fibromyalgia. He states that this is the reason he had his partner calling.

d. EW asks if he was unfit to speak to her or anyone else. She goes on to state that she tried to call twice the day before to speak to him. She states the respondent's policy that if he is not able to speak or hospitalised then it is fine for his emergency contact to call but otherwise it is expected that the employee will call.

e. The claimant replies that he understands that but he had been unfit to call the day before because he was fatigued and had *"fibro fog".* This was the reason for why his partner called. He went on to explain that he did not appreciate the voicemail from EW which he felt was like her saying that he should have called anyway.

f. EW asked why the claimant had not called today and he replied that he has a migraine and that he was in pain during the call because he has earache. He goes on to state that if he has his partner call then it is for a good reason and he is not happy for EW just to dismiss that.

g. EW asks if the claimant is physically okay to make the call and he replies that she obviously does not understand.

h. EW asks if she can continue with the reasons for his absence on the day before and the claimant explained that it was acute fibromyalgia which kept him up all night with coughing so he had been tired and fatigued. On the present day he explained that he had woken up with a migraine.

i. He goes on to state that if EW does not believe him then that is fine. EW replies that it was not that she did not believe him but needed to make contact with him. The claimant went on to say that he felt it was reasonable for him to have his partner call so if EW did not believe him then it was fine but he would be raising it.

j. EW asked whether the symptoms of fibromyalgia and coughing had gone and the claimant replied that the migraine was part of this. He went on to say that he was still unwell and this could be discussed the next day.

k. EW explained that she just wanted to get his symptoms right. The claimant replied that he understood this but she had forced him to come to the phone and she obviously did not believe his partner.

l. EW asked about the stomach bug which had been recorded the day before and the claimant explained that this was on top of the other symptoms. EW explained that this had not been mentioned and she wanted to clarify.

m. At this point the claimant stated that he was not feeling well enough to have the conversation. EW then summarised the claimant's symptoms as migraine, sickness bug, fibromyalgia, coughing and not being able to sleep. He confirmed this was correct and EW said *"okay".*

n. The claimant then asks EW what she considered were reasonable grounds for his partner to call and whether it was only if he were hospitalised. EW replied it was mostly when people are hospitalised and unable to actually come to the phone.

o. The claimant again asks if it is only when someone is hospitalised and EW replies *"Because they are not able to come to the phone, yes".*

p. The claimant again states that he will be raising this because he does not think it is acceptable. EW replies that this is fine. The claimant goes on to state that it is nothing against EW but he does not know if it is a misunderstanding of the policy and he will have to raise it.

q. EW explains that she simply wanted to get the symptoms recorded on the system. The claimant asks EW if it could have waited and she explained that once the reason is put on the system then it stays and she could not change it.

r. The discussion continues about why it is important to get the reasons for absence recorded with reference to past meetings where there had been issues with the reasons for the claimant's absence.

s. The claimant confirms that he is hoping to return to work the next day.

t. The call concludes with EW telling the claimant that she hopes he feels better and thanking him for the update.

23. The recording was played to the Tribunal. Both the claimant and EW spoke to each other politely during the call, neither became heated nor raised their voice. The tone adopted by both of them was broadly calm and even.

24. The claimant returned to work on 6 June 2025. He did raise a formal grievance which was heard by RD. The grievance was not successful and the claimant appealed. The appeal was heard by NG and was not successful.

25. During the grievance, the claimant was moved from EW's team to that of KS, first as a temporary measure and then on a permanent basis.

26. The claimant was absent from work during the grievance process. He submitted fit notes from his doctor covering the period 9 July 2025 to 14 October 2025 (pp307, 308, 312 & 319). These gave the reasons for the claimant's absence as "stress at work".

27. A return to work meeting was held between the claimant and KS on 14 October 2025. As a result of his absence since July, he had met both of the triggers under the attendance management policy. KS discussed this with the claimant and produced a ROD (pp270-271). This noted the absences which had led to the triggers being reached and that the claimant had been informed that further absences may lead to him progressing to the next stage of the policy which would be a formal meeting. No action was taken other than this discussion being recorded.

Submissions

28. Both parties produced written submissions which they adopted. For the sake of brevity, the Tribunal does not intend to set out the submissions in details. These have been noted and the Tribunal will refer to any point raised that requires to be specifically addressed in its decision below.

Relevant Law

29. Disability is one of the protected characteristics covered by the Equality Act 2010.

30. The definition of discrimination arising from disability in the 2010 Act is 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.

31. Guidance as to how to apply the test under s15 was given in *Pnaiser v NHS England* [2016] IRLR 170, EAT:

a. Was there unfavourable treatment and by whom?

b. What caused the treatment, or what was the reason for it?

c. Was the cause/reason 'something' arising in consequence of the claimant's disability?

d. This stage of the test involves an objective question and does not depend on the thought processes of the alleged discriminator.

e. The knowledge requirement is as to the disability itself, not extending to the 'something' that led to unfavourable treatment.

32. In order for there to be unfavourable treatment, the claimant must be subjected to some form of detriment. The question of whether there is a detriment requires the Tribunal to determine whether "by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work" (*Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] ICR 337 HL).

33. In terms of justification, the EAT in *MacCulloch v ICI* [2008] IRLR 846 set out four principles to be applied by the Tribunal. These have since been approved by the Court of Appeal in *Lockwood v DWP* [2013] IRLR 941:

"(1) The burden of proof is on the respondent to establish justification: see Starmer v British Airways [2005] IRLR 862 at [31].

(2) The classic test was set out in Bilka-Kaufhaus GmbH v Weber Von Hartz (case 170/84) [1984] IRLR 317 in the context of indirect sex discrimination. The ECJ said that the court or tribunal must be satisfied that the measures must "correspond to a real need … are appropriate with a view to achieving the objectives pursued and are necessary to that end" (paragraph 36). This involves the application of the proportionality principle, which is the language used in reg. 3 itself. It has subsequently been emphasised that the reference to "necessary" means "reasonably necessary": see Rainey v Greater Glasgow Health Board (HL) [1987] IRLR 26 per Lord Keith of Kinkel at pp.30–31.

(3) The principle of proportionality requires an objective balance to be struck between the discriminatory effect of the measure and the needs of the undertaking. The more serious the disparate adverse impact, the more cogent must be the justification for it: Hardys & Hansons plc v Lax [2005] IRLR 726 per Pill LJ at paragraphs [19]–[34], Thomas LJ at [54]–[55] and Gage LJ at [60].

(4) It is for the employment tribunal to weigh the reasonable needs of the undertaking against the discriminatory effect of the employer's measure and to make its own assessment of whether the former

outweigh the latter. There is no "range of reasonable response" test in this context: Hardys & Hansons plc v Lax [2005] IRLR 726, CA."

34. The duty to make reasonable adjustments is set out in s20 of the Equality Act with s21 making a breach of the duty an unlawful act. The relevant provisions of s20 are:

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 (PCP) 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.

…

35. In relation to the duty to make adjustments, the degree to which any adjustment would overcome the disadvantage to the claimant is relevant to whether the adjustment is reasonable (*HM Prison Service v Johnson* [2007] IRLR 951). Further, the duty is intended to integrate disabled people into the workplace and this is also relevant to whether any adjustment is reasonable (*O'Hanlon v Revenue and Customs Comrs [*2007] IRLR 404).

36. Paragraph 20 of Schedule 8 of the Equality Act provides that the duty is not engaged if the employer did not know, or could not be reasonably expected to know, that the disabled person has a disability and was likely to be placed at a disadvantage.

37. Harassment is defined in s26 of the Equality Act 2010:

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) …

(3) …

(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—

…

disability;

…

38. In *Hartley v Foreign and Commonwealth Office* UKEAT/0033/15 (27 May 2016, unreported) it was held that the question whether there is harassment must be considered in the light of all the circumstances of the case. Where the claim is based on things said it is not enough only to look at what the speaker may or may not have meant by the wording.

39. However, even where certain elements of the test for harassment are met (for example, unwanted conduct and the violation of the claimant's dignity), the Tribunal must still consider the "related to" question and make clear findings as to why any conduct is related to a protected characteristic (*UNITE the Union v Nailard* [2018] IRLR 730; *Tees, Esk and Wear Valleys NHS Foundation Trust v Aslam* [2020] IRLR 495, EAT).

40. In *Pemberton v Inwood* 2018 ICR 1291, CA, Lord Justice Underhill gave guidance on how the test for the effect of any alleged harassment should be applied:

'In order to decide whether any conduct falling within sub-paragraph (1)(a) has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of sub-section (4)(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section (4)(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also, of course, take into account all the other

circumstances — sub-section (4)(b). The relevance of the subjective question is that if the claimant does not perceive their dignity to have been violated, or an adverse environment created, then the conduct should not be found to have had that effect. The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the claimant's dignity or creating an adverse environment for him or her, then it should not be found to have done so' (original stress).

Decision

41. The Tribunal will deal with the two claims relating to the 5 June 2025 phone call first and then turn to the claim related to the record of discussion in October 2025.

42. The first claim in respect of the 5 June phone call is an allegation that the duty to make reasonable adjustments was breached. The Tribunal must be satisfied that the duty was, in fact, engaged before assessing whether there was a failure to comply with it.

43. The respondent concedes that it applied the PCP relied upon by the claimant. The question is then whether the claimant was placed at a disadvantage by the PCP and whether the respondent knew, or could reasonably have known, that this was the case.

44. The Tribunal agrees with the submissions on behalf of the respondent that it is not entirely clear what disadvantage the claimant relies on and, in particular, how the claimant was placed at a disadvantage compared to persons who are not disabled.

45. In his submissions, the claimant argues that he was not feeling well enough to conduct the call. However, it is axiomatic that any employee engaged in a similar call are doing so because they are unwell to such a degree that they are unfit to attend work. Every person in such a situation (whether disabled or not) are not going to be fully functional and may consider that they are not well enough to conduct the call. The claimant is in no different circumstances than someone who is not disabled but is unfit to attend work.

46. Further, there was no evidence that the claimant was incapable of conducting the call or that he was at any disadvantage during it. It was only towards the end of the claim that the claimant said he did not feel well enough to have the call and even then the call continued because he quizzed EW about the policy on making contact when unwell.

47. At no point did the claimant say that he was incapable of answering the questions being asked. Indeed, he provided clear, cogent and detailed responses to the questions about why he was absent. He was able to explain

how the stomach bug and his disabilities impacted on him (and affected each other) and he was able to engage in a debate with EW about the policy regarding personal reporting, questioning her about the exceptional circumstances exception. There was no suggestion in the evidence that he had not wholly explained the circumstances or had given inaccurate information.

48. On the face of it, there was no disadvantage to the claimant. He was unclearly unhappy about having to take the call but that is very different from being placed at some disadvantage by the PCP.

49. The Tribunal also considers that, even if there was some disadvantage, the respondent (specifically EW) did not know or could not reasonably have known of this. Neither the claimant nor his partner said he was unfit to take the call when EW asked to speak to him. He did not say that he was unable to explain the reasons for his absence or that he was incapable of having the discussion with EW. There was no express knowledge of any disadvantage as a result.

50. The Tribunal accepts that the claimant did comment on a few occasions that further discussion could be had when he returned to work and that he was in pain (for example, he made specific reference to earache) but this has to be balanced with the degree to which the claimant engaged in the call in terms of providing an explanation of why he was absent and in questioning EW about the policy and its exception.

51. The only point at which the claimant gives any indication that there may be some disadvantage is when he says he does not feel fit to have the call towards the end of it. However, it is the claimant who continues the call by asking EW about the policy and her interpretation of it. EW could not be expected to know that the claimant was being disadvantaged the call continuing when it was the claimant whose questions were causing the call to continue.

52. Overall, the Tribunal does not consider that it could be said that EW could reasonably have known the claimant was being placed at some disadvantage by the call given that he was able to answer the questions she posed and raise issues with her about the policy.

53. For these reasons, the Tribunal does not consider that the duty to make reasonable adjustments was engaged in the circumstances of the case. The claim under ss20 and 21 of the Equality Act is, therefore, not well founded and is hereby dismissed.

54. The second claim relating to the 5 June call is one of harassment. The first question is whether there was unwanted conduct with the claimant relying on

the call being continued in terms of him being questioned and that EW stated the only exception to the requirement for an employee to make the absence call personally was hospitalisation.

55. The Tribunal is not wholly persuaded that the call and questioning being continued was unwanted conduct. As noted above, the claimant was, in part, responsible for the call continuing and questions being asked given that he engaged in a debate with EW about how the absence policy should be applied. There is also the fact that the claimant wanted to report his absence and so had to make the call to provide the necessary information to his manager.

56. The Tribunal does accept that the claimant was unhappy with having to speak to EW rather than his partner; this was evident from the call itself. However, that is not how he has framed his harassment claim; he does not allege having to take the call amounts to harassment but, rather, that the call continuing was the unwanted conduct. Once the claimant engaged with the call then he has to accept that he will be asked questions about the reasons for his absence and when he is likely to return.

57. In respect of the second allegation of harassment, the Tribunal is not wholly persuaded that, when all the facts are considered, it was being said that hospitalisation was the only exception to the requirement for employees to personally make the absence call.

58. In coming to this view, the Tribunal takes into account the following matters:

    a. The claimant's position that EW stated that the only exception was hospitalisation is based solely on her response to a question from him asking if hospitalisation is the only time she considers it reasonable. EW responds *"because they are not able to come to the phone, yes".* This is at most ambiguous and not confirmation that hospitalisation is the only exception, particularly when viewed in the whole context.

    b. Earlier in the call, EW states that if the claimant is not able to make the call or is hospitalised then it is absolutely fine for his partner to call.

    c. Just prior to the statement relied upon by the claimant, he asks EW what she considered to be reasonable grounds for his partner to call and she says it is *"mostly"* when people are hospitalised.

    d. EW had previously been willing to accept the claimant's partner reporting his absence in April 2025 when he was not able to make the call but was not hospitalised. This demonstrates that EW did not consider that hospitalisation was the only exception and the claimant was aware of this.

59. When all of this is taken into consideration, the Tribunal does not consider that an objective view of the discussion would lead to the conclusion that EW was expressing the view that hospitalisation was the only exception. The Tribunal can understand why the claimant, in focussing only on the response to his question whether hospitalisation was the only exception, came to the view which he did. This response from EW was ambiguous and could lead to someone concluding she was saying hospitalisation was the only exception. However, it has to be considered in the context of the other statements by EW which indicated that it was not the only exception and the fact that she had been content to have his partner report an absence in the past.

60. In any event, whatever view EW expressed about how the policy operated was not unwanted. The claimant quite literally asked for her opinion and she gave it. He might not agree with it or like it but he clearly wanted it. It was not, therefore, unwanted.

61. If these matters did amount to unwanted conduct then the Tribunal does consider that they were related to disability. The call and the discussion about the exception to the absence policy arose in the context of the claimant's absence which was caused (at least, in part) by his disability. The Tribunal considers that this is a sufficient connection between the alleged conduct and disability to satisfy the "related to" element of the test for harassment.

62. The next question is whether the conduct in question had the purpose or effect set out in s26(1)(b) of the Equality Act. The Tribunal will refer to this as the "prohibited purpose" or "prohibited effect" below.

63. It was quite clear that the call of 5 June 2025 and how it was conducted did not have the prohibited purpose; it was clear that EW's purpose in making the call was to confirm the reasons for the claimant's absence and when he thought he would be back to work; her views on how the policy operated were given for the purpose of answering the claimant's questions on this topic. None of it was done for the prohibited purpose and, to be fair to the claimant, he does not seek to argue this.

64. The real question is whether it was reasonable for any unwanted conduct to have the prohibited effect. Taking account of the following matters, the Tribunal does not consider that it was reasonable for any conduct to have had the prohibited effect:

    a. The call was conducted politely by both EW and the claimant. Neither raised their voice or became heated, said anything untoward or inappropriate and their tone was appropriate.

b. The call was something which happens in workplaces across the UK every day. It is perfectly legitimate for employers to ask staff to call to report an absence and to ask questions about the reasons for any absence. It is not reasonable for legitimate management actions to have the prohibited effect on their own without something more in terms of violating someone's dignity or creating an offensive, degrading or humiliating environment.

c. As noted above, neither the claimant nor his partner indicated that he was incapable of taking the call or that he was unable to respond to the questions being asked. This is not a case where EW persisted with the call in the knowledge that the claimant was not capable of dealing with it.

d. The claimant was clearly unhappy about having to speak to EW but being unhappy about something is a far cry from having his dignity violated or a degrading, humiliating or offensive environment being created.

e. Similarly, having a manager expressing an opinion on how a policy applies with which the claimant disagrees is not, on the face of it, a violation of his dignity or having a degrading, humiliating or offensive environment created where there was no detriment or disadvantage to the claimant as a result.

f. As set out above, the Tribunal does not consider that the claimant's view about the opinion expressed by EW is reasonable. He focussed on only one statement rather than the discussion as a whole.

g. Related to this, the Tribunal considers that the claimant formed views about the call which are not borne out by the facts. During the call, he talks about being "forced" to take the call and in his grievance he refers to being "pressurised" to speak to EW. However, EW simply asks to speak to him and nothing more; no pressure (undue or otherwise) was placed on him nor does this come close to the claimant being forced to take the call. If his partner had indicated that he was unfit to take the call then, based on past behaviour, the Tribunal considers that EW would have accepted this.

h. The Tribunal does accept that the claimant has a genuine perception about the effect of the call but, on its own, this is not sufficient for it to be reasonable for the alleged conduct to have the prohibited effect given the factors above which weigh against this.

65. For all these reasons, the Tribunal does not consider that the claim of harassment is well founded and it is hereby dismissed.

66. The final claim relates to the record of discussion (ROD) made at the claimant's return to work meeting on 14 October 2025. The claimant alleges that this amounts to discrimination arising from disability.

67. The first question for the Tribunal is whether the ROD amounts to unfavourable treatment. Applying the test in *Shamoon*, the Tribunal does not consider that a reasonable worker would consider that the ROD disadvantaged them in the circumstances in which they had to work.

68. It is important to note that the detriment relied upon by the claimant is the fact that the respondent was recording that he had reached absence management trigger points and not the fact that he had reached the trigger points themselves or that this had been raised with him. Further, the claimant was not subject to any form of disciplinary or other action because he had reached these trigger points. The ROD does nothing more than record that he had reached the trigger points and was informed of this.

69. It is difficult to see how a reasonable worker would consider they had been disadvantaged by this especially given that no action was being taken against them. The ROD is nothing more than a piece of record-keeping by the respondent which caused no disadvantage to the claimant. An employer must be entitled to keep a record of a discussions between management and staff without that, on its own, amounting to a detriment.

70. The Tribunal is not persuaded that the ROD was because of "something" arising from the claimant's disabilities. Although it was recording the fact that the claimant had reached trigger points in terms of the absence management policy, the absence which caused the claimant to reach the trigger points was his absence from July to October 2025. The reason given on the fit notes for this absence was "stress at work" rather than the claimant's disabilities or anything caused by those disabilities. The claimant led no evidence about any connection between his absence and his disabilities; the only evidence before the Tribunal about the reason for his absence were the fit notes.

71. It is correct that earlier absences related to his disability were part of the reason why the triggers were met but, on their own, neither of these came close to the triggers. It was the absence from July to October that was the immediate cause of the triggers being reached and the ROD being made.

72. In any event, the Tribunal considers that the ROD was a proportionate means of achieving a legitimate aim. The aim relied on by the respondent as set out in the list of issues above is clearly legitimate and the claimant has not sought to argue otherwise.

73. The Tribunal bears in mind that the ROD is only part of the means by which the respondent seeks to achieve its aim. It is the absence management

policy as a whole which is the means of achieving the respondent's aims with ROD playing a part of that in the sense that it is record of discussions which take place as part of any absence management process.

74. Maintaining records of discussions which take place during any internal process is clearly something which is reasonably necessary in achieving the respondent's aim. It is undoubtedly necessary for employees to be told when they reach trigger points and what may happen in the future so that they are not in the dark about such matters. A record of such discussions means that there is something which can be referred to later if there is any dispute; this potentially benefits both the respondent and the claimant.

75. It is also important to note that a ROD may include more than just the fact that trigger points have been reached. It can also set out adjustments or supports put in place, what further escalation (if any) is being taken and the reasons why any action is or is not being taken. The Tribunal considers that it is clearly necessary for such discussions to be recorded.

76. The very minimal (if any) detriment to the claimant in the discussion being recorded does not outweigh the need for the respondent to record discussions about such matters as part of achieving their legitimate aim.

77. In these circumstances, the Tribunal considers that, even if the ROD had amounted to discrimination arising from disability, the respondent would have made out the defence in s15(2).

78. For all these reasons, the Tribunal considers that the claim of discrimination arising from disability is not well-founded and is hereby dismissed.

Date sent to parties **19 August 2026**