



EMPLOYMENT TRIBUNALS

Claimant: Mr A Paraskeva

Respondent: Wessex Water Services Limited

Heard at: Bristol Employment Tribunal **On:** 8 - 10 July 2026

Before: Employment Judge Bradford
Mrs M Metcalfe
Ms S Maidment

Representation

Claimant: In Person

Respondent: Mr A Pincott, Counsel

JUDGMENT having been sent to the parties on 7 August 2026 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Procedure Rules 2024, the following reasons are provided:

REASONS

1. The Claimant was employed by the Respondent as Operations (Transport) Manager Solid Waste from 23 January 2023 until his dismissal, due to failing to pass his probation, on 13 November 2024.
2. By an ET1 filed on 9 February 2025 he brought claims of unfair dismissal, disability discrimination and whistleblowing detriment. At a case management hearing on 5 February 2026 his whistleblowing detriment claim was struck out on the basis that it was an abuse of process as the claimant had previously brought an identical claim in 2023. The Claimant's claim of unfair dismissal was struck out, the tribunal lacking jurisdiction to hear it as the Claimant did not have two years continuous service as required by s108 Employment Rights Act. His discrimination claims proceeded.

3. At this hearing the Claimant gave oral evidence, having provided a written witness statement which stood as his evidence in chief. From the Respondent we heard from:
- Mr F Marsh, Head of Commercial Operations (who interviewed the Claimant and became his line manager during his sickness absence)
 - Mr R McCluskey, Head of Commercial and Customer (who interviewed the Claimant and was the Claimant's line manager prior to his sickness absence. He was Head of Solid Waste at that time)
 - Mr G Boylin, Head of Sludge Logistics (who undertook the Claimant's final probation review and terminated his employment).

Background facts

4. The Claimant's role was advertised in November 2022. He was not the Respondent's first choice of candidate, and was offered the job after the successful candidate turned it down. Having been offered the role on 16 January 2023, and accepted it, his employment commenced on 23 January 2023.
5. The evidence of Mr McCluskey and Mr Marsh, who interviewed the Claimant, was that a WAMiTAB qualification was a requirement of the role as set out in the job description. The Claimant disputed that the job description produced by the Respondent at the hearing was the version that had been advertised when he applied. The Claimant's position was that documents can be altered and he suggested this was what had happened with the advert. There were duplicate copies or versions of the advert within the bundle, which the Respondent said had been the advertised role. Each of the copies or versions referenced WAMiTAB. The Tribunal had particular regard to a screenshot of an advert for the role, with a closing date of 11 December 2022, in the bundle. In view of the screenshot, with the closing date of December 2022, the Tribunal accepted the Respondents' evidence. It found that the advertised role included a requirement for WAMiTAB.
6. This finding is supported by the Respondent's evidence as to the reason the qualification was a requirement of the role. Mr McCluskey's evidence was that it is a legal requirement to have a 'Technically Competent Manager', and a WAMiTAB qualification is widely regarded as meeting this regulatory requirement. The Environment Agency may determine that a waste site is being operated illegally if there is not a Technically Competent Manager in place. It was therefore imperative for the person appointed to the Claimant's role to either already hold the full WAMiTAB qualification, or be working towards achieving it, including the composting modules, to ensure compliance with the company's Environment Agency permits. This explanation led the Tribunal to find that the Respondents' witnesses were genuine in their evidence that the qualification was a

requirement of the role. The Tribunal did not find the Claimant's stance that the job advert had not referenced this to be plausible, in view of the underlying regulatory requirement.

7. It followed that the Tribunal did not find the Claimant to be reliable or credible in his assertion that the job advert before the Tribunal had been tampered with and added to, so as to reference the WAMiTAB qualification. This was in view of the a combination of the regulatory position and because it was not in dispute that the qualification was discussed during the Claimant's interview, albeit that there were different accounts of the precise nature of the discussion. It is noteworthy that both the accounts of the Claimant and the Respondent's witnesses is that the Claimant's position at interview was that he held the qualification (albeit not the composting modules).
8. The Claimant's evidence was that the context of the conversation at interview was a discussion of ethics and he said he had been instructed by a previous manager to speed up and complete his WAMiTAB qualification by copying the remaining three modules from his line manager's work book. He said he did so and passed the qualification.
9. The Respondent's witnesses, Mr McCluskey and Mr Marsh gave evidence that the Claimant's response to being asked at interview whether he held a WAMiTAB qualification was that he gained it in a previous role managing hazardous waste. He had said that it would be a simple process to complete additional modules to meet the Respondent's requirements.
10. The Tribunal found this account reliable, because it was reflected in an email sent by Mr McCluskey to the CEO, Mr Haywood, on 14 November 2023, when he was asked to confirm what was said at interview. In the email, Mr McCluskey wrote: *"AP stated this would not be a problem, having hazardous WAMiTAB qualification from his time at Pureclean Environment, and that 1-2 modules could be added to achieve relevant qualification for composting"*.
11. A similar account was given by Mr Marsh, who was also asked for his recollection of what was said at the Claimant's interview. He wrote: *"At the beginning of the interview which was held at Avonmouth in the Brunel Room with Richard and AP, we outlined the role and the context within our business environment. This included the need to be COTC (Wamitab qualified) and to be the O licence holder for the business. He [the claimant] said that this was no problem but may require a few additional modules but shouldn't take more than a few months. He cited his work in a similar role at Pureclean Environmental (Waste Management) in Avonmouth and reassured us that this was all very much within his competency and straight forward"*.
12. The Tribunal found these witnesses more reliable than the Claimant because their evidence to the Tribunal reflected emails sent much closer

to the event. Further the version of the interview conversation given by the Claimant was not mentioned in his original claim, and that version of events is inconsistent with his more recent position that he did not have the qualification (in November 2023). Additionally, the Respondent's witnesses confirmed in oral evidence that the Claimant would not have been offered the role if he had stated at interview that he had obtained the qualification by cheating. This was an entirely logical position and the Tribunal accepted their evidence. It found that the Claimant's account of the interview was neither credible nor reliable. Indeed, he ultimately stated that he did not in fact have the qualification. This necessarily means that on his own account he had misled the Respondent during the interview.

13. Prior to November 2023, the Claimant maintained that he held the qualification, but had been unable to produce the certificate. In a grievance meeting on 18 October 2024, held for other reasons, the matter of an extension to the Claimant's probation was referenced. In relation to the WAMITAB qualification the notes record that the Claimant stated:

My previous employer said they would pay for my training, I did the training but they went into liquidation and owed HMRC 250k, my old qualification would allow me to take two modules but that alone would take a year, I liaised with Rachel and I contacted the provider and they said £54 and they would send me the replacement and then they said they couldn't because the bill hadn't been paid.

14. In contrast, in an email to Mr Haywood, CEO, on 8 November 2023, the Claimant's position was that the qualifications he held when applying were all transport related. In an email on 9 November 2023 the Claimant stated:

"For my application I sent my CV and completed the Company onboarding form. You will note that neither mentions WAMITAB as a qualification. I do not understand why you suggest I claimed to have a WAMITAB in your required area, its not in my CV or my application nor my onboarding form".

15. These emails followed a letter from Mr Haywood to the Claimant in early November 2023 (undated) in which he stated that possession of the WAMITAB qualification was a prerequisite for the post of Operations Manager.

16. Exchanges on the topic in November 2023 took place when the Claimant had begun a period of sick leave after a grievance he raised was not upheld. On 19 July 2023 the Claimant's probation period had been extended for three months. One of the reasons for this was that he did not have, or had not provided evidence of, a WAMITAB qualification. On 13 October the probation period was further extended for an additional six weeks. The Claimant's probation period was then paused when his sick leave became long-term. He was diagnosed with stage 4 prostate cancer in early 2024. Prior to that, the last communication about the WAMITAB had been from Mr Haywood on 21 November 2023. He wrote:

During the interview process and since commencing employment, you have represented you hold a WAMITAB qualification, outlining your difficulty came from producing the certificate as evidence of your qualification.

In your email to me (dated 13th November), you stated 'what WAMITAB qualification do you suggest I need to provide?.... because I do not hold that and have never claimed to.' This statement contradicts your stance during employment...

As you have not produced evidence of the qualification by the extended deadline of 17th November and have now indicated that you do not hold the required qualification, this is a matter which we take seriously and need to address through a formal meeting to review whether you have the appropriate qualifications required to perform your role".

17. Mr Haywood considered that a formal meeting was not appropriate at that time as the Claimant was off sick, however the matter would be formally reviewed when the Claimant was ready to return to work, as he would not be able to resume his duties without producing evidence of a WAMITAB qualification.
18. The Claimant's line manager changed to Mr Marsh whilst he was on sick leave, and the evidence was that the Claimant provided verbal updates to Mr Marsh about his illness at treatment.
19. It was apparent from the evidence of Mr Marsh that calls took place throughout the Claimant's period of absence, during which the Claimant provided updates as to his health.
20. On 8 October 2024 the Claimant sent in a doctor's fit note. That stated that he may be fit to return to work with altered hours and a recommendation for alternate days in the office to reduce travel time due to ongoing fatigue.
21. In view of this, the Respondent made a referral to Occupational Health (OH), for advice as to whether the Claimant was fit to attend a meeting and whether any adjustments would be required. This was the meeting that Mr Haywood had referenced in his email of 21 November 2023. The referral form did not contain ticks in any boxes relating to matters that OH was often asked for a view on: whether the Claimant was medically fit for his role, whether adjustments were required, the timescale for regaining fitness for work, whether long term health conditions affected fitness for work or whether ill health retirement was suitable. These were standard questions on the form that OH could be asked to address. Instead, the question was: *"We would like to understand if Andy is fit to attend a work meeting and if there are any adjustments that we should consider in order to facilitate this"*.
22. The OH assessor, having had a telephone consultation with the Claimant wrote: *"Following my assessment with Andy today, I would agree that he*

is fit to attend a work meeting and no adjustments would need to be considered to facilitate this. Andy is keen to get a date, time and location for this meeting though, therefore please could you arrange as soon as is reasonably practicable for all parties". The form was dated 21 October 2024.

23. On 5 November Mr Marsh emailed the Claimant in response to an email the Claimant had sent, raising he had not heard from Mr Marsh since the previous week. Mr Marsh replied asking the Claimant if he was available the following Thursday for a catch up call. The Claimant replied saying he had not heard anything since the OH conversation. He asked what was happening. The same day a member of the HR department wrote to the Claimant inviting him to a meeting with Mr Boylin on 12 November to discuss the outcome of his probation period, which had been paused whilst he was on sick leave. Upon receipt the Claimant emailed Mr Marsh again asking for a copy of the objectives and previous reviews so he could be ready for the meeting.
24. On 8 November HR contact emailed the Claimant in view of a number of questions he had asked of Mr Marsh. The email stated that if the Claimant passed the probationary period, a return to work meeting would be arranged to discuss his medical situation and any reasonable adjustments that would be required upon his return. Altered hours would be explored in line with his GP's advice. The previous probationary reviews requested by the Claimant were attached.
25. At the Claimant's request, the meeting was postponed until 13 November. At the meeting Mr Boylin stated that the Claimant's job was advertised as requiring a WAMiTAB. During his employment he had been asked multiple times to produce evidence of that qualification, which was a requirement for the role. He was asked whether he had the qualification. The Claimant replied that this was not correct. He said WAMiTAB was not on his CV and was not part of his contract. It was put to the Claimant that he alluded to having the qualification at interview. He disagreed. He said the first time he was told it was a pre-requisite was by Mr Haywood in an angry and hostile letter, which followed the grievance he had previously raised.
26. The meeting concluded with Mr Boylin stating that the Claimant had not passed his probation period and the offer of employment would be withdrawn. The Claimant had said he had the qualification, and then said he did not have it. It had been a requirement of the role.
27. This decision was confirmed by letter of 15 November 2024. The Claimant had failed to pass his probation period. The reason was that he had not met the required standard for the role. The decision had been made due to his inability to provide evidence of the WAMiTAB qualification, a requirement of the role, which had been outlined in the job advert and discussed at interview. There had been nothing found to support the

Claimant's position that the company had falsified records and that WAMiTAB was not mentioned as a requirement of the role. Further, the inconsistencies in the Claimant's representations about his qualifications had led to a breakdown in trust and confidence in the employment relationship.

28. The Claimant's appeal against that decision was unsuccessful. Thereafter the Claimant brought this claim.
29. The matters to be determined at this hearing were agreed during the case management conference on 5 February 2026, and following discussion with the parties, as follows:

1. Time Limits

- 1.1 Given the date the ET1 was presented, 09.02.25, any act before either 10 November 2024 (if the early conciliation provisions do not apply) or 6 November 2024 (if the early conciliation provisions apply) is on its face out of time.
- 1.2 Do the early conciliation provisions apply?
- 1.3 In relation to matters alleged that are on their face out of time, was there conduct extending over a period, or if not, is it just and equitable to extend time?

2. Disability

- 2.1 The claimant has stage 4 prostate cancer; the respondent admits disability in consequence.

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

- 3.1 Did the Respondent do the following things:

3.1.1 From a date on or about 8 November 2024 the respondent determined that it did wish the claimant to return to work and would dismiss him on the false grounds of non-completion a probationary period because, in particular:

3.1.1.1 The respondent ignored the claimant's Doctor's fit note which suggested that he was fit to return to work;

3.1.1.2 The respondent placed unreasonably reliance on an OH health report which suggested that he was not fit for work;

3.1.1.3 The respondent relied upon the WAMiTAB being a prerequisite for the claimant's role.

3.1.2 The respondent terminated the claimant's employment on the grounds that he had not satisfactorily completed his probationary period on 13 November 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 they were treated worse than someone else would have been treated. The Claimant has not named anyone in particular who they say was treated better than they were and therefore relies upon a hypothetical non-disabled comparator.

3.3 If so, was it because of the protected characteristic?

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

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

4.1 Did the Respondent treat the Claimant unfavourably by:

4.2 Did the Respondent do the following things:

4.2.1 From a date on or about 8 November 2024 the respondent determined that it did wish the claimant to return to work and would dismiss him on the false grounds of non-completion a probationary period, in particular:

4.2.1.1 The respondent ignored the claimant's Doctor's fit note which suggested that he was fit to return to work;

4.2.1.2 The respondent placed unreasonably reliance on an OH health report which suggested that he was not fit for work;

4.2.1.3 The respondent relied upon the WAMiTAB being a prerequisite for the claimant's role.

4.2.2 The respondent terminated the claimant's employment on the grounds that he had not satisfactorily completed his probationary period on 13 November 2024.

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

The Claimant's case is that:

4.3.1 He was likely to require further periods of sickness absence to manage the symptoms of his stage 4 cancer; because, in particular:

4.3.2 He was likely to require further medical treatment to manage those symptoms; and

4.3.3 As a consequence of those two matters the claimant was less likely to be able to provide regular and effective service in his role in the future and/or the respondent perceived that that would be the case.

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

4.5 Was the treatment a proportionate means of achieving a legitimate aim?

The Respondent says that its aims were:

4.5.1 TBC in amended response

4.6 The Tribunal will decide in particular:

4.6.1 Was the treatment an appropriate and reasonably necessary way to achieve those aims;

4.6.2 Could something less discriminatory have been done instead;

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

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

Law

30. Time limits are dealt with at s123 of the Equality Act 2010 (EqA) which states that claims are to be brought within three months, plus the relevant extension for early conciliation (s140B) unless the Tribunal thinks that it is just and equitable to extend time.

31. Where ACAS is contacted twice in relation to the same matter, then the second early conciliation period does not serve to further extend time for filing the claim: *HM Revenue and Customs v Serra Garau* 2017 ICR 1121, EAT.

32. Direct disability discrimination is dealt with by section 13(1) of the EqA 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.

33. Under section 39(2)(c) EqA an employer (A) must not discriminate against an employee of A's (B) by among other things, dismissing B.

34. As for the claim for discrimination arising from disability, under section 15 (1) of the EqA a person (A) discriminates against a disabled person (B) if A treats B unfavourably because of something arising in consequence of B's disability, and A cannot show that the treatment is a proportionate means of achieving a legitimate aim. Under section 15(2), this 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.

35. The provisions relating to the burden of proof are to be found in section 136 of the EqA, which provides in section 136(2) that 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. However by virtue of section 136(3) this does not apply if A shows that A did not contravene the provision. A reference to the court includes a reference to an employment tribunal.
36. The bare fact of less favourable treatment only indicates a possibility of discrimination. There must be something more for the tribunal to be able to conclude that there is a probability of discrimination such that the burden of proof shifts to the respondent: *Madarassy v Nomura International Plc* [2007] ICR 867 CA. The focus should be on the employer's conscious or subconscious reason for treating the worker as they did: *Nagarajan v London Regional Transport* [2000] 1 AC 501. The protected characteristic needs to significantly influence the less favourable treatment so as to be causally relevant (*Nagarajan*). However, sight should not be lost of the fact that the less favourable treatment and reason why issues are intertwined and essentially two parts of a single question: *Shamoon v Chief Constable of the Royal Ulster Constabulary* [2003] IRLR 285 HL. The Tribunal may therefore be better placed in simply asking itself what was the reason for the treatment; was it the protected characteristic or was it something else?

Application of the law to the facts

Time Limits

37. The Claimant contacted ACAS on 25.11.24 and a certificate was issued on 29.11.24. The ET1 was filed on 09.02.25. Whilst the Claimant had brought a previous claim in 2023 which was dismissed on withdrawal, and whilst this current claim sought to revive that whistleblowing detriment claim, this claim additionally alleged disability discrimination and discriminatory dismissal. The Claimant was not disabled at the time of his original claim, nor had he been dismissed. As such, the Tribunal did not accept the Respondent's submission that the Claimant had contacted ACAS twice in relation to 'the matter'. Rather, the Claimant had, legitimately, brought a second claim which, whilst attempting to revive his original claim, additionally alleged matters that were entirely distinct. As such, he was obliged to contact ACAS for a second time and the early conciliation provisions apply. This was entirely different situation to that where a claimant contacts ACAS twice in close succession, in relation to the same claim: *HM Revenue and Customs v Serra Garau* 2017 ICR 1121, EAT.
38. As the claim was not filed within one calendar month, the early conciliation period of 4 days extends time. This means that any act or omission before 6 November 2024 is on its face out of time.

39. The November 2024 acts complained of are in time, however the allegations relating to the fit note and OH report are out of time. As those are not proven on the facts (below), the Tribunal did not need to consider the question of continuing acts or exercising its discretion to determine whether it would be just and equitable to extend time.

Direct discrimination

40. With regard to the claim for direct discrimination, the claim will fail unless the claimant has been treated less favourably on the ground of his disability. This may be assessed by reference to how an actual or hypothetical comparator was or would have been treated in circumstances which were the same or not materially different. Sight must not however be lost of the fact the bottom line question is why was the Claimant treated as he was. In accordance with *Shamoon*, it is often simpler to ask this question, particularly where there is no actual comparator.

41. The Claimant alleges the following discriminatory acts:

The Respondent ignored his doctor's fit note which suggested he was fit to return to work – not proven

42. The evidence is that the Respondent, on receipt of the fit note, arranged an OH review to establish whether the Claimant was fit to attend a meeting. It was explained to the Claimant that, upon receiving confirmation of fitness to return to work, a probation review meeting was the first step, and if he passed his probation period, then there would be a further discussion about his return and any adjustments required.

43. The Claimant's case appears to be that the Respondent should have promptly allowed the Claimant to return to his role, although he also asserted in evidence that the Respondent should have obtained a more detailed OH report in that reasonable adjustments should have been consulted upon.

44. The fit note stated that the Claimant may be fit to return with adjustments. The Tribunal does not find that this was ignored; had that been the case, no action would have been taken following receipt. The fact that the Respondent took action by contacting OH, and thereafter arranging a probation review meeting, picking up from the point where the Claimant's employment had been left when he went on long term sick leave, is evidence to the contrary.

45. This allegation is not proven on the facts. The Respondent did not ignore the fit note.

The Respondent unreasonably placed reliance on an OH report which suggested that the C was not fit for work – not proven

46. The OH report did not make such a suggestion. That question had not been asked. The report was limited to the Claimant's fitness to attend a

meeting. It stated that he was fit to do so. This allegation is not proven on the facts.

The Respondent relied on the WAMiTAB being a prerequisite for the Claimant's role – proved by admission

47. The Respondent admits that this is the case, indeed it positively asserts this to be the position. Whilst the Claimant disputes that this qualification was a requirement of his role, the Tribunal is satisfied as a fact that it was.

The Respondent terminated the Claimant's employment on the ground that he had not satisfactorily completed his probationary period on 13 November 2024 – proved by admission

48. The Respondent admits this.

Were the two matters proven factually, less favourable treatment?

49. The Claimant did not identify a comparator; he suggested a hypothetical comparator may be someone who had a dislocated shoulder or similar and was off work. He clarified that this would be a non-disabled person. He considered that his cancer diagnosis meant that he was treated as he was.

50. The Tribunal considered that there was no-one else in substantially the same circumstances as the claimant, i.e. whose role required WAMiTAB, who did not hold the qualification and whose individual stance had been changeable with regard to the holding of any such qualification. The Tribunal accepted the evidence of Mr Marsh that previous employees in the role had held the qualification. Whilst they may have worked for the company before obtaining it, they had held other roles, prior to moving to the role that required the qualification. The Tribunal therefore considered that a hypothetical comparator would not be of assistance given the very specific nature of the Claimant's position. It therefore moved directly to consider the reason why the Claimant was treated as he was in accordance with *Shamoon*. Was it because of disability, or for wholly other reasons?

51. The question therefore is whether the Respondent relying on WAMiTAB being a prerequisite for the role and terminating the Claimant's probation period on the ground he had not completed it, were because of his disability. The Tribunal was satisfied that the Respondent had been clear from the time of the interview that this qualification was required. It was however willing to be flexible and allow the Claimant to top up his existing or partial qualification to make it meet the Respondent's requirements. The Tribunal accepted, as set out above, that the Respondents' witnesses gave logical reasons as to why the qualification was required, namely regulatory compliance. Regulatory compliance was why the qualification was a prerequisite, the requirement had nothing to do with the Claimant's disability. Indeed, the Respondent had repeatedly requested evidence of

the Claimant's qualification before he became disabled. The Tribunal was satisfied that disability played no part in the Respondent's decision-making. It followed that the Respondent did not use this as a smoke screen, as the Claimant asserted, in order to get rid of him.

52. Rather the Tribunal, has found as facts that at interview the Claimant stated that he had the majority of the required WAMiTAB qualification and would do the 2-3 outstanding modules. Thereafter failed to produce evidence of his qualification and then stated that he did not in fact have the qualification. This led to the Respondent losing trust in him. Further, the Tribunal accepted the Respondent's evidence that the highly regulated nature of its work required the person in the Claimant's management role to have that qualification, in order to be a Technically Competent Person.
53. The Claimant was asked for evidence of his WAMiTAB on a number of occasions before he went on sick leave in November 2023. Later that month, the Claimant was informed by Mr Haywood that a formal meeting was required to address whether he had the qualifications required for his role. Therefore, the meeting that had been planned when he was not disabled took place when he was ready to return to work. The Tribunal considered that had the Claimant not been on sick leave, the probation review meeting would likely have taken place in late November or early December 2023. The outcome would have been the same, namely that the Claimant could not continue in his role without the qualification and the Respondent had lost trust and confidence in the Claimant because of his changing position on, and lack of, WAMiTAB qualification.
54. The Tribunal was satisfied that the reason the Claimant did not pass his probation period, and his employment was terminated, was due to the lack of WAMiTAM and his contradictory stances as to the position regarding this. The reason behind the treatment was the Respondent's regulatory compliance obligations. Disability played no part.
55. The Claimant's complaint of direct disability discrimination is dismissed.

Discrimination arising from disability

56. The proper approach to section 15 claims was considered by Simler P in the case of *Pnaiser v NHS England* [2016] IRLR 170 EAT at paragraph 31: *"(a) Having identified the unfavourable treatment by A, the ET must determine what caused it, i.e. what the "something" was. The focus is on the reason in the mind of A; it involves an examination of the conscious or unconscious thought processes of A. It does not have to be the sole or main cause of the unfavourable treatment but it must have a significant influence on it. (b) The ET must then consider whether it was something "arising in consequence of B's disability".*
57. In *City of York v Grosset* [2018] IRLR 746 CA, the Court of Appeal made it clear that s15(1)(a) EqA requires investigation of two distinct causative

issues: (i) did A treat B unfavourably because of an (identified) “something”? and (ii) did the “something” arise in consequence of B’s disability?

58. In considering the objective justification defence, the following key principles were set out by Lady Hale in *Homer v Chief Constable West Yorkshire Police* [2012] IRLR 601 SC [paras 22 – 24]: (i) to be prepared a measure has to be both an appropriate means of achieving a legitimate aim and (reasonably) necessary in order to do so; (ii) if the measure goes further than is (reasonably) necessary to achieve the aim it will be disproportionate; and (iii) assessment of justification includes comparison of the impact of the act upon the claimant as against the importance of the aim to the employer.
59. The Claimant relies on the same allegations as in his direct discrimination claim. We have found that the Respondent did not ignore his fit note and that the Claimant appears to have misread the OH report; it did not state that he was not fit for work. OH had not been asked to address that question. Those allegations fail on the facts for the reasons given. These matters are not considered further.
60. Also, as above, the Respondent accepts that WAMiTAB was a prerequisite for the role and that the Claimant’s employment was terminated because he had not satisfactorily completed his probation period.
61. The Claimant says that the following arose in consequence of his disability: a) the Claimant was likely to require further periods of sickness absence; b) he was likely to require further medical treatment; c) he was less likely to be able to provide regular and effective service in the future or there was a perception that this would be the case. The Tribunal accepts the Claimant’s position here.
- Did the Respondent say that WAMiTAM was a prerequisite and/or determine that the Claimant had failed his probation period and terminate his employment accordingly, because of any of these things?
62. It is impossible for any of these things to have been in anyone’s mind at the time of Mr Haywood’s email of 21 November 2023, which stated that a formal meeting was required due to the Claimant not holding a WAMiTAB qualification, and his changing stance on the matter. This is because the Claimant was not disabled at that time.
63. The Claimant’s employment was picked up, after his period of sickness absence, from where it had been left; with a formal meeting to discuss his qualification, his changing stance around that, and what these things meant for him continuing in his role. The Respondent’s position remained entirely consistent both before and after the Claimant became disabled.

64. It follows that the Respondent's requirement for the qualification was not unfavourable treatment. Terminating the Claimant's employment was unfavourable, however the reason is that already given, namely the Respondent's regulatory compliance obligations. Whilst the Claimant did not discharge his burden of proof, the Tribunal records for completeness that the Respondent has been clear from the outset that the Claimant's treatment was a proportionate means of achieving a legitimate aim, namely to ensure that there was a Technically Competent Person to manage the site, who held the relevant qualification to meet the requirements of the Environment Agency's permit. This had been its position before the Claimant became disabled. That is evidence that disability played no part in decision-making.
65. The Claimant was not treated unfavourably due to anything arising in consequence of his disability.
66. The Claimant's claims are not well-founded and are dismissed in their entirety.

Employment Judge Bradford
Dated: 21 August 2026

REASONS SENT TO THE PARTIES ON
14 September 2026