



EMPLOYMENT TRIBUNALS

Claimant: Mr B Barnett
Respondent (1): The Sheffield College of Further Education
Respondent (2): Sparks Teaching Services Limited
Heard at Sheffield ET On: 15, 16, 17 and 18 July 2025

Before: Employment Judge Brain
Members: Mrs J L Hiser
Mr M Taj

Representation

Claimant: In person
Respondents: Mr S Robinson, Solicitor

RESERVED JUDGMENT

The Judgment of the Employment Tribunal is that:

1. The respondent's application that the claimant's claim be struck out pursuant to Rule 38(1)(b) of the Employment Tribunal Procedure Rules 2024 upon the basis that the manner in which the proceedings have been conducted by him is unreasonable is dismissed.
2. The complaint of indirect disability discrimination brought pursuant to the Equality Act 2010 fails and stands dismissed.
3. The complaint of victimisation brought under the 2010 Act fails and stands dismissed.

REASONS

Introduction and preliminaries

1. Upon the conclusion of the case on the afternoon of 17 July 2025, the Tribunal reserved judgment. The Tribunal deliberated in chambers that afternoon and on 18 July 2025. Our judgment is that the claimant's complaints of indirect disability discrimination and victimisation fail. We now give reasons for the judgment we have reached.
2. The first respondent is a further education institution based in Sheffield. The second respondent is a wholly owned subsidiary of the first respondent. The second respondent employs temporary staff who may be used by the first respondent where the need arises and where the budget allows.
3. The claimant was employed by the second respondent as a main grade associate lecturer. His statement of terms and conditions of employment is at pages 115 to 118 of the hearing bundle. Clause 4 provides that *"This is a flexible hours contract, with no guaranteed hours of work, designed to enable Sparks Teaching Services Limited to respond to fluctuations in the demand for teaching and related studies. The hours which you will be required to work may vary from week to week and from month to month."*
4. The statement of terms and conditions was issued on 17 January 2023. It is agreed that the claimant commenced his employment with the second respondent working as a main grade lecturer on 28 February 2023. His contract of employment has not been terminated. However, the claimant has not been provided with work from June 2024.
5. The claimant presented his claim form on 19 May 2024. The case benefited from two preliminary hearings held for the purposes of case management. The first of these came before Employment Judge Jaleel on 15 November 2024. The second came before Employment Judge Maidment on 24 February 2025 who identified the issues to which the claimant's claim gives rise.
6. The issues are in paragraph 38 of Employment Judge Maidment's case management record which was sent to the parties on 26 February 2025 (pages 69 to 76 of the bundle). The issues are at pages 74 to 76. These are set out in paragraph 119 below. It suffices to say at this stage that the claimant complains of:
 - (1) Indirect discrimination related to the protected characteristic of disability.
 - (2) Victimisation following him doing protected acts on 5 January 2024 and 29 January 2024. (The respondents accept these to be acts which qualify for protection under the 2010 Act).
7. The respondent accepts that the claimant is a disabled person for the purposes of section 6 of the 2010 Act. This concession is made by the respondents upon them being satisfied that the claimant (at the relevant time with which the case is about) had mental impairments which arise from attention deficit hyperactivity disorder ('ADHD').
8. The impugned acts of which the claimant complains are those of staff employed by the first respondent. Mr Robinson confirmed that were the claimant to succeed with some or all of his claim, then the first respondent would meet any liability of

the second respondent. In reality therefore this is a claim against the first respondent. From now, the Tribunal shall use the term "*the respondent*" which shall be understood to be a reference to the first respondent. (Where the second respondent is involved, we shall refer to it as such or as *STSL* or *Sparks*).

9. On 14 July 2025, the day before the commencement of the hearing, the respondent made an application to strike out the claimant's claim. The strike out application was made pursuant to Rule 38(1)(b) of the Employment Tribunal Procedure Rules 2024. The application was made upon the basis that the manner in which the claimant had conducted the case was unreasonable.
10. The respondent's application was heard on 15 July 2025. The claimant consented to the application being heard (notwithstanding the short notice).
11. The application occupied the first day which had been listed for the final hearing of the case. The Tribunal's judgment dismissing the application was delivered on the morning of 16 July 2025. The application was dismissed.
12. Reasons for the dismissal having been given orally at the hearing on the morning of 16 July 2025, the Tribunal will not include within this reserved judgment written reasons unless, pursuant to Rule 60(4)(b) of the Employment Tribunal Procedure Rules 2024 a request is made within 14 days of the date upon which this reserved judgment is sent to the parties.
13. Following the dismissal of the respondent's strike out application, the Tribunal heard evidence on 16 and 17 July 2025. Helpful oral submissions were then made by the parties following which, as we have said, the judgment was reserved.
14. The Tribunal heard evidence from the claimant. On his behalf, the Tribunal heard evidence from Stacey Mackenzie-Wintle. She is employed by the respondent as a permanent member of staff. She works as a film and TV director and course lead. She has been the claimant's flatmate for around nine years.
15. On behalf of the respondent, the Tribunal heard evidence from:
 - (1) Jane Parr. She is employed by the respondent as curriculum manager – media and games.
 - (2) Allan Colley. He is a technical trainer at the college. He is the sole technician for film and TV, photography and journalism (levels 1 to 6).
 - (3) Katie Marshall-Preece. She is the academy director for art and creative industries at the college.
16. Jane Parr and Katie Marshall-Preece also gave evidence upon the strike out application, as did the claimant and Ms Mackenzie-Wintle. In advance of Mrs Parr giving her evidence for the main hearing, an application was made on her behalf from Mr Robinson for her to give evidence remotely by video or alternatively in person but from behind a screen to shield her from the claimant. The Tribunal directed that the latter course was proportionate and which was adopted. (No such application was made when she gave her evidence upon the strike out application).
17. The Tribunal shall now make our factual findings. We shall then set out the relevant issues followed by the relevant law. Finally, we shall set out the conclusions which we have reached by applying the relevant law to the facts as found.

Findings of fact

18. Before commencing his work with the respondent, the claimant was asked to fill out an occupational health form. This is at page 186. The claimant ticked the box declaring that he was having treatment or was waiting for treatment. He did not tick the box to indicate that there was any illness, impairment or disability which may affect his work.
19. The claimant gave evidence in paragraph 6 of his witness statement that he then received an email asking for further information whereupon he declared that he takes medication to manage ADHD. There was no challenge from Mr Robinson to this evidence. The Tribunal therefore finds that the claimant did draw his ADHD to the attention of the respondent and they had knowledge of it at the relevant time.
20. Following the resignation of Sally Johnson, a lecturer in TV and film, a vacancy arose for a permanent role within the college as a lecturer in media, TV and film. This was on a 0.8 full time equivalent ('FTE') contract. The claimant's evidence (in paragraph 12 of his witness statement) is that at this point he was teaching two level 3 film and TV classes, one level 2 film and TV class, and four level 3 journalism classes. As this account was uncontested by Mr Robinson, the Tribunal accepts the claimant's evidence as to the extent of his involvement within the college when the opportunity presented by Sally Johnson's resignation arose.
21. In paragraph 10 of his witness statement, the claimant says that *"An informal agreement was made that the job would be advertised internally in order to hire myself and [John] Taff on full, permanent contracts, with Mr Taff receiving a 0.2 [FTE] contract and me receiving a 0.6 [FTE] contract."* Mr Taff at this point was another employee of the second respondent.
22. The claimant was under the impression that the job was only being advertised internally. He applied for the role. He candidly accepts (in paragraphs 15 and 16 of his witness statement) that he did not provide the level of detail within his application form that he otherwise would have done had he been an external candidate or competing for it against external candidates.
23. In paragraph 11 of her witness statement, Ms Mackenzie-Wintle refers to a discussion that she had with Mrs Marshall-Preece about the vacancy created by Sally Johnson's resignation. Her evidence is that she pointed out to Mrs Marshall-Preece *"that advertising the job internally must mean that it will be Mr Barnett and Mr Taff who would do the 0.8 as a job share, as they were already teaching the classes, and she said she expected that was what would happen."*
24. In paragraph 12 of her witness statement Ms Mackenzie-Wintle says that *"On 22 November 2023, I had a progress review with Jane Parr and, at the end, we discussed the upcoming job advertisement as I was concerned that the specification had not mentioned that the job was half journalism (due to staffing, there was a not a 0.8 FTE vacancy available in film and TV so it was understood that it was Mr Barnett's role of film and TV alongside journalism that was being advertised. When I mentioned that the job vacancy was half journalism, Mrs Parr said "I know it is" and that they would 'weed out' the candidates who could not teach journalism during the interview process."*
25. In a similar vein, the claimant said in paragraph 17 of his witness statement that *"One thing that stood out regarding the application was that it was advertised as a film and TV lecturer only, whereas I had been under the impression that the*

contract would cover my current hours, which were mostly in journalism at that point. Whoever took over my hours, if not me, would be teaching more journalism than film and it felt odd that this was not mentioned in the ad (pages 191 to 193)."

26. Pages 191 to 193 is a reference to the job advertisement. This describes the vacancy as *"lecturer - media, TV and film (29.6 hours per week)."* It goes on to say that the successful candidate would be carrying out *"the full breadth of teaching duties"* which are then described. The claimant and Ms Mackenzie-Wintle are right to say that journalism does not feature in the list of the teaching duties.
27. For her part, in paragraph 7 of her witness statement, Mrs Marshall-Preece says that *"The claimant seems to have been under the misapprehension that this was a journalism focused role. However, it was to replace a lecturer, Sally Johnson, who was a TV and film lecturer, develop the T-level media technician course and teach as part of the media team."*
28. In paragraph 9 of her witness statement, Mrs Parr says that *"The role was advertised internally and externally, following HR guidance, for equality purposes and to widen the scope of applications."* She refers in the same paragraph to the job advertisement at pages 191 to 193, the main grade lecturer job description (pages 194 to 196), the person specification (page 197) and the guidance notes for candidates at pages 180 to 185. The Tribunal notes that the main grade lecturer person specification cites as an essential attribute experience of work within the TV/film production industry. There is no mention of experience in teaching or lecturing in journalism.
29. Mr Robinson had very little in the way of cross-examination for Ms Mackenzie-Wintle. Upon this basis, the Tribunal finds as a fact that she was under the impression that the vacancy created by Sally Johnson's resignation involved a significant component of journalism, teaching and lecturing. The claimant was also under this impression. Doubtless, his impression was reinforced in his discussions with Ms Mackenzie-Wintle. Plainly, she was feeding back to him her understanding of the position.
30. However, the claimant's and Ms Mackenzie-Wintle's understanding of the matter was on any view incorrect. In the final analysis, the college did advertise the vacancy externally as well as internally. Mrs Parr in fact drew the claimant's attention to the advertisement on 16 November 2023 (pages 213 and 214). As we said in paragraph 28 above, the advertisement and the accompanying documentation do not refer to journalism.
31. Katie Marshall-Preece and Jane Parr sifted the applications to draw up a shortlist of candidates for interview. Mrs Parr says that in accordance with the respondent's recruitment and selection policy (page 113) this was done on an anonymised *'blind'* basis. The claimant's application form is at pages 215 to 222. The reality is that Mrs Parr and Mrs Marshall-Preece must have known which application was from the claimant as it describes his current employment and his role.
32. The shortlisting scores are at pages 229 and 230. The claimant fell short and was not invited for interview.
33. On 5 December 2023 Mrs Parr wrote to Mrs Marshall-Preece (page 223). She said *"It isn't sitting well with me that Brett [the claimant] hasn't got an interview*

after covering for us for quite some time now.” She prevailed upon Mrs Marshall-Preece to offer the claimant an interview.

34. In paragraph 9 of her witness statement, Mrs Marshall-Preece said that *“When I found out which applicant was the claimant’s, I said to his flatmate Stacey Mackenzie-Wintle that she needed to tell the claimant that his application was shit; I used that phrase because I was speaking to her as a friend (we had become close during a trip to Valencia) and I wanted him to realise that he needed to improve his skills in terms of applying for work whether for an internal or external role.”*
35. Ms Mackenzie-Wintle gives similar evidence in paragraph 13 of her witness statement. She expands upon this saying that she was told by Ms Mackenzie-Wintle that the claimant’s *“application had been so poor that he would need to ‘knock it out of the park’ at the interview”*. Therefore, the Tribunal accepts that Katie Marshall-Preece gave blunt and direct advice to Ms Mackenzie-Wintle to pass on to the claimant ahead of the interview.
36. Mrs Marshall-Preece says in paragraph 10 of her witness statement that *“The assessment process had two parts; a practical exercise and an interview. Both took place on 12 December 2023. I refer to the letter that was sent to the claimant in advance (page 228). The candidates were invited to write and demonstrate a 30 minute session with L3 Year 1 students in mind. There was no specific detail regarding a PowerPoint presentation or a micro teach.”*
37. The letter at page 228 is corroborative of what Mrs Marshall-Preece says in paragraph 10 of her witness statement. It is necessary to set out the salient parts of this letter in full. The one addressed to the claimant invited him for interview at 11.00 o’clock on 12 December 2023. (There is no issue that the letter was sent to and received by the claimant. He says in paragraph 23 of his witness statement that *“I was sent instructions for the practical task which were clear (page 228)”*). The letter says:

“You’ll be meeting with Katie J Marshall-Preece (interim head of academy – art and design), Jane Parr (curriculum manager).

As part of the recruitment process, please prepare:

We would like you to write and demonstrate a 30 minute session on setting up a talking head interview. We are looking for camera, audio and lighting skills and how you would share this knowledge to engage learners to help build their skills base in preparation for industry. We would like you to write it with Level 3, Year 1 learners in mind.

We would like to see the camera set up with manual settings for exposure, focus etc. We would like you to include how to record separate audio which could then be edited onto the visuals. We also want to see the use of 3 point lighting in your setup. For the purposes of this demonstration, you will be using the following items:

- *Canon 2000D DSLR*
- *Zoom H6 Audio Recorder*
- *Rode NTG-2 Directional Microphone*
- *LED Lighting Kit (with variable colour temperature)*

If you have any queries regarding the task, please contact – Katie Marshall-Preece [email address].

Please let us know you'll be attending your interview or if the date/time doesn't work for you. If you require any reasonable adjustments or support before, during and after your interview, please contact our recruitment team and we will be happy to help – [email address].

Reasonable adjustments may include (but are not limited to) changes of venue, location and/or access arrangements, longer deadlines for completion of assessments, increase in interview time, availability of specific equipment, access to the questions due to be asked before the interview or an interpreter."

38. The term 'micro teach' was introduced by the claimant in paragraph 23 of his witness statement. By reference to page 228, he understood the instructions to be that he "*would be teaching a 30 minute micro teach to Mrs Marshall-Preece and Mrs Parr in which I will be expected to teach and demonstrate talking head interview setups.*" It was put to the claimant by Mr Robinson that the term 'micro teach' doesn't appear in page 228. In fact, there is no reference in page 228 to teaching at all. The claimant maintained that what was being described there was "*micro teaching.*"
39. When the claimant cross-examined Mrs Marshall-Preece, he asked her about page 228 and whether the intention was for there to be a demonstration of teaching. She replied "*They [the candidates] were asked to prepare a session to teach Level 3 students, it's not a micro teach, it's to see you demonstrating your skills.*" The claimant then asked her what the difference was between teaching and demonstrating practical skills in the context of sharing knowledge to engage Level 3 Year 1 learners. Mrs Marshall-Preece conceded that there was "*not much*" of a difference.
40. The respondent is correct to say that the expressions "*micro teach*" or "*teach*" do not feature in page 228. The term "*micro teach*" was therefore introduced by the claimant. However, this is a distinction without a difference. In the final analysis, the respondent's intention was for the candidates for the role to be able to demonstrate how to set up a talking head interview to Level 3 Year 1 learners. The Tribunal is unable to see any distinction between a practical demonstration showing them how to do it on the one hand and teaching them how to do it on the other.
41. The claimant took on board the rather direct advice of the need for meticulous preparation which had been conveyed to him by Mrs Marshall-Preece via Ms Mackenzie-Wintle. The claimant and Ms Mackenzie-Wintle gave an unchallenged account of the claimant spending time preparing his 30-minute demonstration of setting up a talking head interview and which he practised in front of Ms Mackenzie-Wintle.
42. To help with the demonstration, he also prepared a 51-page slideshow (pages 568 to 614). Although this was not mandated by the respondent in page 228 (or elsewhere) the respondent's witnesses confirmed that there was no reason why the claimant could not use a slideshow in his presentation. As we have seen, page 228 contemplated candidates being able to request specific equipment. The claimant borrowed the necessary equipment to display the slideshow from Mr Colley the day before the interview in order that he could undertake a practice run. We refer to paragraph 26 of the claimant's witness statement.

43. We now turn to the events of 12 December 2023. In arriving at this point, despite the bad start with the application process the claimant had in the end obtained an interview and had prepared well for it with the assistance of Ms Mackenzie-Wintle.
44. The claimant's account of the job interview process is in his witness statement commencing at paragraph 35. His evidence is that he was expecting to be presenting to Mrs Marshall-Preece and Mrs Parr. However, he was left to present the 30-minute session on setting up a talking head interview to Mr Colley and another employee, Suzanne Latham. Miss Latham was to act as the model for the talking head interview.
45. In paragraph 41 of his witness statement the claimant says that *"Based on the instructions in the email, I was expecting to deliver a lesson to Mrs Marshall-Preece and Mrs Parr and that I would, throughout the lesson, set up the relevant equipment. Seeing that I would not be demonstrating for Mrs Marshall-Preece and Mrs Parr but instead for Mr Colley, whose background is not in teaching, that there was no screen or computer provided for a presentation, and the equipment was already half set up, I realised that the instructions in the email did not match the task in front of me and I was not sure how to proceed."*
46. He goes on to say in paragraph 42 that, *"Needing further clarification, I asked Mr Colley if I should 'just start setting up' and Mr Colley replied that I could not as the 'model' [Suzanne Latham] was not here yet. We waited for a few moments without speaking. This started to feel awkward and uncomfortable, so in order to break the silence, I suggested that I could start setting up around the chair and finalise the set up once the model has arrived. Mr Colley said I could do this and I began setting up my lights."*
47. In paragraph 43 the claimant says, *"At first I did this in silence. This was the first time something felt seriously off about the process as it felt like I should be doing more than setting up the equipment in silence. I asked Mr Colley if I needed to do anything else in addition to setting up the equipment. He told me that I should talk him through what I'm doing as I do it."*
48. The claimant then describes Suzanne Latham arriving and that he was not introduced to her or informed that she was a member of the interview panel. The claimant subsequently learned during the later grievance process that she was a member of the interview panel (or at any rate had some input into the process as we shall see in due course).
49. The claimant says that he got on with setting up the equipment. In paragraph 46 he mentions that *"At no point did I explain what terms like key light, fill light and back light mean, nor did I explain what ISO, aperture, and shutter speed are, as I knew that as a technician Mr Colley was already aware."* In paragraph 50 he says that Ms Latham asked the claimant *"if this is how I would explain this process to a student. I told her that no, it was not, and I would present the information very differently if I was teaching it to a student."*
50. For his part, Mr Colley described the claimant being shown into the studio. His account is that he simply repeated the instructions at page 228 (in the form of a script) to each of the candidates. He says in paragraph 12 that he was not there to chat.
51. At page 280 is the script used by Mr Colley to introduce the task for each of the candidates. It is worth setting this out in full:

"We would like you to write and demonstrate a 15 minute session on setting up a talking head interview. We are looking for camera, audio and lighting skills and how you would share this knowledge to engaged learners to help build their skills base in preparation for industry. We would like you to write it with Level 3 Year 1 learners in mind. We would like to see the camera set up with manual settings for exposure, focus etc. We would like you to include how to record separate audio which could then be edited on to the visuals. We also want to see the use of three point lighting in your setup. For the purposes of this demonstration, you would be using the following items" [the same four items are then listed as in page 228- see paragraph 37 above].

52. Page 280 is in substantively the same form as page 228. There is a difference in timing, page 280 referring to 15 minutes whereas page 228 referred to 30 minutes. This was not something about which the claimant complained (at the time or in these proceedings,) and Mr Colley confirmed in evidence that in any case there was some flexibility with time.
53. In evidence given under cross-examination, Mr Colley said that he read out the instructions at page 280 after Miss Latham arrived. There was then some small talk around what people had had for breakfast as an ice breaker.
54. The claimant said that he had not seen page 280 until it was disclosed by the respondent for the Tribunal proceedings. This is credible evidence. Mr Colley was not interviewed as part of the subsequent grievance process and therefore the script read by him is unlikely to have surfaced at that point. It was no part of the respondent's case that the script was given to the claimant.
55. The Tribunal accepts that the claimant was expecting to do his presentation before Katie Marshall-Preece and Jane Parr. Page 228 says that the meeting was to be with them. There is nothing in page 228 to alert candidates to the fact that the presentation would be to Mr Colley (or anyone else).
56. The significant point of dispute between the parties is whether Mr Colley, as he says, read the script at page 280 or whether, as the claimant says, Mr Colley simply told the claimant to *"talk him through"* the setup process (as the claimant contends in paragraph 43 of his witness statement).
57. The height of the claimant's case is that Mr Colley did not read the script at page 280 and simply instructed the claimant to talk him through the setup. The claimant said as much when he was interviewed by Mark Wheeler, the investigating manager for the claimant's grievance. The claimant told Mr Wheeler (at page 394 of the bundle) that Alan Colley *"said just talk me through what you're doing if you do it. And that's what I did. I didn't realise that I was supposed to be delivering. He just told me to talk him through it. So I spoke to Alan, I wouldn't tell him things like what settings I was using, what ISO, what stop, but I did not explain what they were like to a bunch of students."*
58. Our conclusion is that it is against the probabilities that Mr Colley would not read out the script at page 280. It had been provided to him by the respondent for the very purpose of introducing the task to the candidates. Mr Colley said that he did not indulge in idle chatter with the candidates. This is credible evidence as it chimes with the claimant's account of him subjectively feeling some awkwardness from the silence when he was alone with Mr Colley. Mr Colley was aware that this was a competitive interview. There were five candidates whom he was expecting to see that day. (In the event, one of them did not turn up). The agreed fact that Mr Colley did not indulge in chat with the claimant (even

though they knew one another) is consistent with Mr Colley wishing to preserve the integrity of the process which points to the likelihood of him sticking to the script. Departing from it for some candidates would be to endanger the integrity of the process.

59. We find therefore that the claimant was instructed by Mr Colley to do that which the claimant had been expecting to do from the written instruction at page 228 which he (the claimant) had received. For us to accept the claimant's account would be to find that at the interview the respondent departed significantly from that which the candidates had been asked to do in preparation for the task. Such has the potential to work significant unfairness. It is in our judgment far more likely that the respondent wished to ensure consistency in the process hence the very similar wording between pages 228 and 280.
60. Even on the claimant's account, there is nothing inherently inconsistent between Mr Colley saying "*talk me through it*" or words to that effect and what the claimant was expecting to do in accordance with the instructions at page 228.
61. It would, frankly, be an utterly pointless task for the claimant to talk Mr Colley (in his professional capacity as sole technician for film and TV, photography and journalism) through the process of setting up a talking head interview given the extent of Mr Colley's knowledge and experience. It is difficult to see how such an exercise would in any way assist the respondent in assessing the most suitable candidate for the role in imparting such tasks to learners. It was plainly Mr Colley's intention for the claimant to talk him through it as if he (Mr Colley) was a student.
62. There is no medical evidence to support a proposition that Mr Colley saying "*talk me through it*" should be taken literally as an instruction to talk Mr Colley through it in his professional capacity as opposed to talking him through it as if he was a Level 3 Year 1 learner. The Tribunal was not taken to any medical or other evidence for the proposition that those with ADHD would take literally Mr Colley's instruction to "*talk me through it.*"
63. There is an ADHD psychological assessment within the bundle starting at page 646. The Tribunal was not taken to this. We were not referred to any evidence that the instruction "*talk me through it*" from Mr Colley should be taken so literally. As we say, such a literal interpretation of what Mr Colley is alleged to have said completely defeats the purpose of the exercise in any case.
64. Our primary finding of fact therefore is that Mr Colley did read the instruction at page 280 to all the candidates including the claimant. Alternatively, if Mr Colley contented himself with simply instructing the claimant to "*talk me through it*" that could not and does not detract from the clear instruction in page 228 in any case.
65. The practical task was then followed by an interview. The interviewing panel was Katie Marshall-Preece and Jane Parr. The claimant's scoring sheet is at page 223. In contrast to the shortlisting exercise, no specific scores were given to the candidates for each competency. The shaded boxes at page 233 show where the interviewing panel assessed the claimant against the relevant competencies. There were 11 competencies. The claimant only met two of those 11.
66. After they had seen all four of the candidates for the practical tests, Mr Colley and Miss Latham briefed Mrs Parr and Mrs Marshall-Preece on the candidates' practical performance. Mr Colley fed back to the interviewing panel, as he says

in paragraph 11 of his witness statement, that the claimant “*set the equipment well enough, but said very little throughout, when the whole point was to explain it.*” He went on to say in paragraph 13 of his witness statement that the claimant “*set up correctly but scored low [against the practical test] because of the lack of explanation.*”

67. The practical test does not feature on the scoring sheet at page 233. Mr Colley refers in paragraph 13 of his witness statement to giving the candidates “*a score out of 5 across a number of categories. This was for my own reference.*” Mrs Marshall-Preece says that “*The practical exercise was not primarily a way to score candidates and decide whether they would get the job; it was seen as a good way to discover where they were at in terms of their practical knowledge and communication skills.*” We refer to paragraph 13 of her witness statement. She goes on to say in paragraph 17 that the feedback from Mr Colley and Miss Latham about the performance in the practical test was consistent with the performance of the candidates in interview. John Taff was the top candidate. The second candidate (who was offered the job with Mr Taff on a job share basis) was Matthew Rowan-Maw.
68. There was a tension between the respondent’s evidence that the practical test did not count towards the final scores or assessment of the candidates on the one hand with Mr Colley attributing scores to the candidates and the interview panel considering his feedback (and that of Miss Latham) on the other. When giving their evidence before the Tribunal, Mrs Parr and Mrs Marshall-Preece both spoke in terms of the practical exercise being a potential tiebreaker if candidates scored equally in interview. The notion of a tiebreak did not feature in their evidence in chief or anywhere in the contemporaneous interview documentation (or at any rate we were not taken to it). There was, therefore, a lack of transparency in the process.
69. That said, there plainly is merit in the respondent’s point that even an excellent or good performance in the practical exercise would not have lifted the claimant into the top two candidates in circumstances where he achieved the necessary standard in interview only in two out of the 11 competencies.
70. Mrs Marshall-Preece’s evidence in paragraph 23 of her witness statement was that “*Even if the claimant had been good in the interview, on any objective basis he would maybe have moved up to the third candidate; two other applicants scored higher on the practical task and interview.*” This reinforces what has just been said about the unsatisfactory nature of the respondent’s evidence about the importance to the assessment of the practical task. If that was not considered, then on what basis would the claimant be moved up the rankings? Why mention the two successful candidates’ scoring in the practical test at all if it would only be considered as a tiebreak?
71. It was not the claimant’s case that he would have surpassed the two successful candidates even with a better interview performance. The scoring of him in the interview was not part of his claim. Of course, it is not part of the Tribunal’s task to re-score the claimant or the other candidates. The Tribunal is in no position to do so. There is no basis to suggest that the scores given to him and the other candidates in interview by the interviewing panel were anything other than genuine. The claimant said, somewhat grudgingly, that he accepted the interviewing panel’s scores as “*their genuine belief, but they may not be reasonable scores.*” The claimant did not present any evidence before the

Tribunal to suggest that the scoring of him by the interviewing panel was in any way perverse or irrational.

72. The claimant said in interview that he did not have the opportunity of presenting the slideshow which he had prepared in advance. Mrs Marshall-Preece invited the claimant to send it to her which he did the same day (page 285). Mr Colley mentioned in paragraph 12 of his witness statement that the claimant did not ask for a computer or projector for the slideshow. Page 228 made clear that it was open to candidates to ask for specific equipment. Indeed, the claimant had asked Mr Colley the previous day for equipment upon which to play the slideshow in order that he could go through his rehearsal. There was nothing preventing the claimant from raising this as an issue with Mr Colley but he did not do so.
73. Mrs Parr informed the claimant on 15 December 2023 that he had not been successful with his interview. The claimant was naturally disappointed. He followed up with an email of the same day addressed to Katie Marshall-Preece (page 272) in which he complains of having been given *“incorrect instructions for the practical task.”* The Tribunal has found as a fact that no incorrect instructions were given to the claimant.
74. Doubtless, the claimant’s expectations were inflated by him having been informed early in the process by Ms Mackenzie-Wintle that the job was his. We refer, for example to a message sent by her to him on 4 October 2023 at page 211 where she messaged that *“In good news, they’re gonna advertise the media job internally so you’ll definitely get it.”* He also refers in an email of 5 December 2023 having been led to believe that the process is a *“formality.”* We refer to page 282.
75. It is difficult to understand upon what basis the claimant thought that the job was his and that the process was a formality. As Mrs Marshall-Preece says in paragraph 22 of her witness statement, Ms Mackenzie-Wintle was in no position to assure the claimant that he was going to get the job. All of the other factors told against him being a shoe-in. The job was advertised internally and externally. A shortlisting process took place. This was followed by an assessment day at which candidates were scored against competency criteria.
76. On 5 January 2024, Sarah Kriel, the claimant’s trade union representative met Mrs Marshall-Preece and Mrs Parr. The claimant summarised in writing his concerns in an email dated 4 January 2024 addressed to Sarah Kriel (pages 342 to 343). The claimant gave an unchallenged account that at the meeting of 5 January 2024 Ms Kriel shared the claimant’s email of 4 January 2024 with Mrs Marshall-Preece and Mrs Parr.
77. The email of 4 January 2024 contained allegations of discriminatory treatment related to disability. As we say, this was conveyed to Mrs Marshall-Preece and Mrs Parr by the claimant’s trade union representative the following day. Sarah Kriel was plainly acting as the claimant’s agent. The respondent conceded that the claimant had undertaken a protected act by conveying information (through his trade union representative) which constituted an allegation of a breach of the 2010 Act. It follows therefore that the respondent’s concession of a protected act by the claimant on 5 January 2024 was one properly made.
78. Following the meeting of 5 January 2024, the claimant’s line management changed from Mrs Parr to Mrs Marshall-Preece and Matt Henley, curriculum manager.

79. On 29 January 2024 the claimant escalated matters to a formal grievance. This is at pages 306 to 308 of the bundle. The claimant complained that the instructions given to candidates ahead of and at the assessment day held on 12 December 2023 was unclear. He said that *“because unclear instructions are incredibly hard to navigate with ADHD ... it is clear to me that the interview process was discriminatory and I have lost my job as a result.”* He noted that all candidates were given the same instructions. He said that *“If the same rule is applied to everyone then someone with a protected characteristic is disadvantaged by this, then it is indirect discrimination, and it is illegal.”* Plainly, this too is a protected act. Again, the respondent’s concession that it is a protected act is one properly made.
80. The investigation was carried out by Mark Wheeler, director of business development. After investigating the matter, Mr Wheeler sent the grievance outcome to the claimant on 1 July 2024 (page 480). His report is at pages 630 to 645. The claimant’s grievance was not upheld. The Tribunal does not need to address the conclusions in detail. They are not binding on us.
81. Mrs Parr and Mrs Marshall-Preece were both invited to an investigation interview by Mr Wheeler. The invites were dated 9 April 2024. Mrs Marshall-Preece was interviewed by Mr Wheeler on 26 April 2024. Mrs Parr was interviewed by him on 2 May 2024. In view of this timeline, it is against the probabilities that Mrs Marshall-Preece and Mrs Parr did not know of the claimant’s protected acts raised in January 2024. They were the object of the grievance investigation. They were reminded of them by the ongoing grievance process throughout the first half of 2024 (over which period the claimant complains of detriment because of the protected acts). The key question is whether the claimant was subjected to any detrimental treatment and if so whether that was because of the protected acts of which Mrs Marshall-Preece and Mrs Parr had knowledge.
82. The first alleged act of detriment is the exclusion of the claimant from team communications after the submission of his formal grievance on 29 January 2024. This was an allegation levelled by the claimant against Mrs Marshall-Preece. It concerns the emails:
 - Dated 18 March 2024 sent by Mrs Marshall-Preece to Mr Rowan- Maw, Mr Taff and Ms Mackenzie-Wintle (pages 314 and 315) about a student word-skills competition.
 - Dated 22 March 2024 sent by Mrs Marshall-Preece to the same recipients (page 321), about the T-level spec.
 - Dated 26 March 2024 at page 324 sent by Mrs Marshall-Preece to the same recipients about a film storyboard.
 - Dated 5 April 2024 at pages 325 and 326, again sent by Mrs Marshall-Preece to the same recipients about Sheffield DocFest.
83. The first question asked by the claimant of Mrs Marshall-Preece in cross-examination was for an explanation as to his exclusion from these four emails. She explained that they were not sent to him because he was not a permanent member of staff. Her evidence is that no one employed by Sparks (the second respondent) were included in these communications. The three recipients were all permanent members of staff.

84. The Employment Judge asked Mrs Marshall-Preece if she was in any way influenced by the protected acts to exclude the claimant from these communications. She denied this to be the case.
85. The second and third alleged acts of detriment may be considered together. These are described in Employment Judge Maidment's case management record as that the respondent *"no longer invited the claimant to a meeting to discuss T levels"* and *"no longer invited the claimant to a second meeting to discuss their curriculum as a whole (which was held in June 2024)."*
86. Mrs Marshall-Preece accepts, in paragraph 40 of her witness statement, that she said to the claimant at a meeting held on 8 January 2024 that if there was to be a meeting about T level content, creation and production, then the claimant will be invited to it. The claimant emailed her on 16 April 2024 (pages 380 and 381). He complained that *"I've been made aware that a curriculum planning meeting has been planned for next Friday without me. [This was a reference to Friday 26 April 2024]. When you, I and Sarah met to discuss my grievances on January 8th, you specifically told me I would be invited to this meeting, and that Jane [Parr] would be asked not to attend due to my grievance. Has something changed?"*
87. In reply. Mrs Marshall-Preece said (also on 16 April 2024) (pages 378 and 379) that *"This meeting is for contracted staff as we are planning for the next three to five years, when we have completed this cycle of work and are looking at how we deliver the plan for the next academic year all delivery staff will be invited."*
88. The claimant remained dissatisfied and replied (also at page 378) that, *"The meeting we discussed on the 8th [January 2024] was not for next year, but for the next several years, you told me specifically that we would discuss 2025-26 onwards. Any clarification on this miscommunication is welcome."*
89. On 19 April 2024, Mrs Marshall-Preece emailed the claimant (pages 377 and 378). She said that he was welcome to the meeting on Friday 26 April. She explained that this is the *"CIAP meeting"*. She then went on to set out the items to be discussed at the meeting. She concluded that, *"I've not invited any Sparks to any of these meetings as there is no payment available for attending the meeting, so it will be a voluntary unpaid choice to attend. I know you are teaching on Friday morning so if you chose to attend the meeting please let me know so someone else can teach your class."* (CIAP stands for *"Curriculum Intent and Alignment Plan"*).
90. Mrs Marshall-Preece explained in paragraph 40 of her witness statement that *"A meeting about the T level creative media technician course has taken place, but [the claimant] hasn't been invited to that; this is because he wouldn't be involved in the delivery of that."* In contrast, the claimant would be involved in the delivery of T level content creation and production. As she says in paragraph 40 of her witness statement, the respondent has not started discussing that course yet. Her evidence, essentially, was that there was no reason for the claimant to be involved in any meetings at this stage. Only when the course was designed at higher management level would it be necessary to involve members of staff such as the claimant who would be responsible for delivering the course.
91. We have noted that Mrs Marshall-Preece agreed that the claimant could attend the CIAP meeting to be held on 26 April 2024 because of the claimant pushing back against her position on 16 April 2024 (page 378). The claimant set out his position in further detail in an email of 17 April 2024 (pages 331 and 332). He

said that, *“The meeting you promised me I would attend in January was absolutely, unequivocally not a meeting to discuss delivery of the course ... you told me that exec had signed off on T level details and so you would soon be organising a meeting with me and the rest of the film and TV team to discuss the curriculum for the film and tv course over the next three plus years, including how it will look in 2025-2026 once T levels are introduced.”*

92. On 17 April 2024 Mrs Marshall-Preece emailed several recipients (not including the claimant but including Ms Mackenzie-Wintle) that the meeting scheduled for 26 April 2024 *“is NOT the meeting referred to in January. This is a new initiative and a sequencing, and planning meeting as outlined by exec.”*
93. Matters doubtless were not assisted by the infelicitous drafting of the email from Mrs Marshall-Preece of 16 April 2024 at pages 378 and 379 and cited in paragraph 87 above. The reference to *“the next academic year”* could be interpreted as meaning the academic year 2024/2025 or alternatively as in reference to the academic year after the introduction of the T level content creation and production pathway in which the claimant was going to be involved.
94. The second meeting about which the claimant complains of exclusion was a briefing and skills map meeting held on 28 June 2024. Mrs Marshall-Preece introduces this in paragraph 41 of her witness statement. She says that *“This was an academy briefing and skills map meeting regarding planning for the next academic year, which mostly included the new student induction process. This was not a “second” meeting for the claimant; it was an end of term meeting for permanent academy staff.”*
95. There appears to be no dispute between the parties that the reference to *“a second meeting”* in Employment Judge Maidment’s list of issues was in reference to a second meeting from which the claimant says he was excluded generally and not a second meeting about the design and delivery of T levels.
96. Mrs Marshall-Preece goes on to explain in paragraph 42 of her witness statement that the final day of teaching was 28 June 2024. The claimant was timetabled to teach on that day. She did not invite any Sparks staff to the meeting or for that matter any permanent members of staff who were not in work that day. She says in paragraph 43 of her witness statement that *“I informed the claimant on the day that he was welcome to attend (meaning if his class finished early).”*
97. She then received what she described as a *“very unpleasant email accusing me of victimisation (page 466).”* She explains in paragraph 44 of her witness statement that she *“felt it would be insensitive to invite the claimant to a briefing meeting when at that point there was no guarantee for him or any other STS to teach the following year, which remains the case until we are aware of student enrolment numbers in September.”*
98. Mrs Marshall-Preece says that this was the reason for the claimant not being invited (albeit that she said that he was welcome to attend if he could make arrangements for his students to be accommodated). She summarised the matter when questioned upon this issue by the claimant in cross-examination. She said that the meeting of 28 June 2024 *“was for purely permanent member of staff, no Sparks staff were included, because I couldn’t guarantee they’d be working the next year.”*
99. The fourth alleged act of detriment is that at the end of July 2024, the claimant’s email account was blocked preventing him from receiving communications or

invites to meetings. Mrs Marshall-Preece explains in paragraph 58 of her witness statement that, *“It is standard procedure for any staff (including STS) who are not permanent to deactivate their account after one year.”* This is the position, she goes on to say, *“unless the manager informs the IT department that the person will be continuing to work for the college, as demonstrated by the email from IT to Ms Mackenzie-Wintle of 28 February 2023 (page 187) where it is explained that the maximum expiry time is a year.”*

100. In other words, up to a one-year extension may be granted. This practice was in fact followed in the claimant’s case, Mrs Marshall-Preece arranging to extend the claimant’s account to 25 July 2024. Otherwise, of course, access to the systems would have terminated one year from the date of his commencement of his employment with the respondent. The first anniversary of the commencement of his employment was 28 February 2024.
101. The procedure for disabling email accounts was explained to the claimant in an email of 21 August 2024 (page 489). The email from a people business partner was accompanied by one from an IT customer services’ manager. There, it is explained that non-permanent staff may request access for up to one year. This may be extended for a period up to a further year. Once the expiry date has been reached, the system will automatically disable the account. This process applies to Sparks teaching staff.
102. The fifth alleged detrimental course of conduct concerned cover work. This in fact was in two parts. The first concerned a second-year film class run in April 2024. The second concerned four journalism classes.
103. Mrs Marshall-Preece explains that the second-year film class run in April 2024 was covered by Mr Taff. She says in paragraph 47 of her witness statement that, *“This is because Mr Taff is a permanent member of staff and had been successful in his application for the role in December.”*
104. Mrs Parr says in paragraph 41 of her witness statement, by reference to the second-year film class, that *“I believe someone was off sick and it is likely that this class was covered by myself, as there are no records of paying a member of Sparks staff to cover it. I too cover some classes myself when staff are off sick. This is a business decision to keep staffing costs down and, although I am not a film and TV lecturer, I do teach a filmmaking module on the photography course, along with editing, and I also have 4.5 years of life TV broadcast industry experience working for Sky Sports News.”*
105. It was put to Mrs Marshall-Preece by the claimant that a member of Sparks staff had covered the course. She said that she had checked and there were no records of paying any Sparks staff and in any case the timetable for the course contemplated Mr Taff or Mrs Parr teaching it.
106. The Employment Judge asked Mrs Marshall-Preece why the claimant was not considered to cover the class. She said that Mr Rowan-Maw and Ms Mackenzie-Wintle were available who were, of course, permanent staff.
107. The Tribunal was not left with a clear understanding of who had taught the course. Mrs Marshall-Preece seemed to think that it was Mr Taff. Mrs Parr thought that she had taught it. The position was then clouded further by Mrs Marshall-Preece’s evidence that the respondent could have turned to Ms Mackenzie-Wintle or Mr Rowan-Maw to do the teaching of it.

108. However, what was clear was that the respondent did not utilise Sparks staff. Ms Mackenzie-Wintle's evidence that she had checked and noted that no payment had been made to temporary Sparks staff to cover the class is credible as it is consistent with the respondent's wish to reduce staffing costs and reliance upon agency staff.
109. The other issue around cover work concerns the journalism classes. The background to this issue is described in paragraph 50 of Mrs Marshall-Preece's witness statement. She explains that *"During discussions with the journalism programme leader, Bethan Hyatt, it became apparent that a journalism lecturer was needed to deliver extra sessions. We needed a practising journalist who could offer a wider range of skills and expertise of the industry. During the previous academic year, 2023/24, Ms Hyatt had received requests from students taught by the claimant, requesting support and that she mark their work. There had also been issues around the claimant not meeting marking deadlines. This additional work was doubling Ms Hyatt's workload and she did not want this to happen again. Importantly, as a college we have a student first ethos, ensuring our students have the best possible experience and opportunities throughout their studies. As programme leader, Ms Hyatt used her industry contacts to source two possible lecturers. They were then interviewed by Mrs Parr and Ms Hyatt. I was not involved in this recruitment process."*
110. The claimant conducted an effective cross-examination of Mrs Marshall-Preece upon her account in paragraph 50 of her witness statement of poor performance by the claimant. There was very little by way of corroborative evidence of this in the bundle. One piece of evidence relied upon was that Ms Hyatt mentioned to her in an email that two second year students who had outstanding marking to be done (page 465). This was not accompanied by any expression of great concern on the part of Ms Hyatt who credited the claimant with having marked all the first-year students at this point.
111. At pages 357 and 358 is an email from Bethan Hyatt to a student in which she provided the student with some comments. When asked about this, Mrs Marshall-Preece said that the student was asking advice from Ms Hyatt and not from the claimant. The claimant replied that they were sharing the module to which Mrs Marshall-Preece responded that, *"all the students were going to Bethan increasing her workload by 50%"*
112. One example of a student receiving advice from Bethan Hyatt where the tuition was shared between her and the claimant is hardly corroborative of an alleged doubling of workload caused by Mrs Hyatt by the claimant. If there was widespread student dissatisfaction with the claimant, the Tribunal would have expected much stronger evidence together with performance reviews of the claimant. None was forthcoming from the respondent.
113. The emails at pages 357-358 and 465 are small pegs upon which for the respondent to hang the heavy coat of an allegation of substandard performance on the part of the claimant. The Tribunal therefore finds as a fact that there was none such.
114. The difficulty for the claimant, however, is that in the final analysis the respondent had decided to increase its offering of journalism classes. The claimant accepted that he is not a qualified journalist (albeit that he has taught journalism in his career with the respondent).

115. It is, of course, the respondent's prerogative to recruit for the additional journalism courses which they chose to offer. They recruited a journalist who has extensive experience writing for the Sheffield Star and national newspapers. The respondent also turned to Jane Parr and an experienced permanent member of staff, Ken Crowe, about whom Mrs Marshall-Preece gave an unchallenged account of being *"more suitable to teach on the course [than the claimant] and would be an asset to the students."* We have commented already on Mrs Parr's experience of journalism which, as well as working for Sky TV, included a spell working as a sports journalist for the Watford Gazette.
116. The claimant said, in evidence in cross-examination, that his grievance was that a decision had been taken to remove journalist classes from him before a decision to recruit had been taken. This was difficult evidence to understand given that the course in question was an additional offering as described by Mrs Marshall-Preece in paragraph 50 of his witness statement.
117. Even if the claimant is correct that hours were removed from him, the claimant fairly accepted when the point was put to him by Mr Robinson that staff employed by the second respondent would not be utilised where permanent staff can take on the work for budgetary reasons.
118. This concludes our findings of fact.

The issues in the case

119. We now turn to the issues in the case. These are in paragraph 38 of Employment Judge Maidment's case summary (pages 74 to 76 of the bundle) and are set out here.

The Issues

1. *The issues the Tribunal will decide are set out below.*

1. Indirect discrimination (Equality Act 2010 section 19)

- 1.1 *A "PCP" is a provision, criterion or practice. Did the respondent have the following PCP:*

- 1.1.1 *The provision of instructions to job applicants verbally and in an unclear form prior to and immediately preceding interviews?*

- 1.2 *Did the respondent apply the PCP to the claimant?*

- 1.3 *Did the respondent apply the PCP to persons who do not share the claimant's disability impairment or would it have done so?*

- 1.4 *Did the PCP put persons who suffer from ADHD at a particular disadvantage when compared with non-disabled job applicants? The respondent accepts that providing unclear instructions would put people with ADHD at a particular disadvantage when compared to people without ADHD.*

- 1.5 *Did the PCP put the claimant at that disadvantage?*

1.6 *Was the PCP a proportionate means of achieving a legitimate aim? The respondent says that its aim was:*

1.6.1 *to appoint the best candidate to the role*

1.7 *The Tribunal will decide in particular:*

1.7.1 *was the PCP an appropriate and reasonably necessary way to achieve those aims? [The respondent will maintain as relevant that those involved in the recruitment process did not have knowledge of the claimant's ADHD prior to the process and that the claimant did not make them aware that he regarded the instructions for the practical exercise as unclear];*

1.7.2 *could something less discriminatory have been done instead;*

1.7.3 *how should the needs of the claimant and the respondent be balanced?*

2. **Victimisation (Equality Act 2010 section 27)**

2.1 *It is accepted that the claimant did do a protected act in the informal grievance raised by him on 5 January 2024 which was then made formally on 29 January 2024.*

2.2 *Did the respondent do the following things:*

2.2.1 *Exclude the claimant from team communications after the submission of his formal grievance (Ms Marshall-Preece)*

2.2.2 *no longer invite the claimant to a meeting to discuss T-Levels*

2.2.3 *no longer invite the claimant to a second meeting to discuss the curriculum as a whole which was held in June 2023*

2.2.4 *at the end of July 2024, lock the claimant's email account preventing him from receiving communications or invites to meetings*

2.2.5 *"cover work" previously done by the claimant was passed to less suitable staff. Specifically, (1) in April 2024 a second year film class; (2) 4 journalism classes not within the remit of the role for which the claimant unsuccessfully applied and which was filled in December 2023. Those classes still needed a teacher for the 2024/2025 academic year.*

2.3 *By doing so, did it subject the claimant to detriment?*

2.4 *If so, was it because the claimant did a protected act?*

3. **Remedy for discrimination or victimisation**

- 3.1 *Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?*
- 3.2 *What financial losses has the discrimination caused the claimant?*
- 3.3 *Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?*
- 3.4 *If not, for what period of loss should the claimant be compensated?*
- 3.5 *What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?*
- 3.6 *Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?*
- 3.7 *Did the respondent or the claimant unreasonably fail to comply with it by splitting his grievance off from that of a colleague, delaying in starting the investigation, not giving a reason for a finding that there was no case to answer and then, having given a reason not related to the claimant's actual complaints. The claimant also maintains that there was collusive behaviour between HR and those against whom allegations were made by the claimant.*
- 3.8 *If so is it just and equitable to increase or decrease any award payable to the claimant?*
- 3.9 *By what proportion, up to 25%?*
- 3.10 *Should interest be awarded? How much?*

The relevant law

120. We now turn to a consideration of the relevant law. We shall start by looking at the complaint of indirect disability discrimination.
121. By section 19(1) of the 2010 Act, "A person (A) *discriminates against another person (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.*"
122. By section 19(2), "*For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if-*
 - (a) *A applies, or would apply, it to persons with whom B does not share the characteristic,*
 - (b) *it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,*
 - (c) *it puts, or would put, B at that disadvantage, and*
 - (d) *A cannot show it to be a proportionate means of achieving a legitimate aim.*"

Disability is one of the relevant protected characteristics to which section 19 applies

123. Indirect discrimination is made unlawful in the workplace by section 39(2) of the 2010 Act. Of relevance to this case, section 39(2) provides that an employer (A) must not discriminate against an employee of A's (B) in the way which A affords B access to opportunities for promotion or transfer or by subjecting B to any other detriment.
124. As explained by Baroness Hale in **Chief Constable of West Yorkshire Police and another v Homer [2012] ICR 704, SC**, the purpose of the prohibition on indirect discrimination is to "*level the playing field*" by requiring the employer to justify "*requirements which look neutral on their face but in reality, work to the comparative disadvantage of people with a particular protected characteristic.*" Whereas the prohibition on direct discrimination is intended to ensure equality of treatment regardless of an individual's protected characteristic, the prohibition on indirect discrimination is intended to equalise outcomes for those with different protected characteristics.
125. By section 136 of the 2010 Act, it is for the claimant to show *prima facie* evidence from which the Tribunal could conclude, in the absence of any other explanation, that the respondent has committed an act of discrimination. Once the claimant has shown a *prima facie* case, the Tribunal is obliged to uphold the claim of discrimination unless the respondent can show that no discrimination occurred. In an indirect discrimination case, it is for the claimant to show that there was a provision, criterion or practice that created a particular group disadvantage and which then created a particular disadvantage to the individual complainant. Only then will the employer be required to justify the provision, criterion or practice.
126. The Equality and Human Rights Commission's *Employment Code* confirms (in paragraph 4.5) that the term "*provision, criterion or practice*" ('PCP') can cover a wide range of conduct including formal or informal policies, rules, practices, arrangements, criteria, conditions, pre-requisites, qualifications or provisions. In **Ishola v Transport for London [2010] ICR 1204, CA**, Simler LJ (as she then was) said that the function of a PCP is "*to identify what it is about the employer's management of the employee or its operation*" that causes the particular disadvantage. Therefore, to test whether the PCP is discriminatory or not, it must be capable of being applied to others.
127. For a matter to be regarded as a PCP, there must be an element of repetition. A one-off decision will therefore not generally amount to a PCP unless it can be established that something done for the first time is likely to be repeated in the future. It follows therefore that not every act of unfair treatment of a particular employee can be formulated as a PCP although a one-off decision may, on the facts, turn out to be one were it to be found as a fact that a decision would apply in future to similarly situated employees. This may be contrasted therefore with a one-off decision in an individual case where there is nothing to indicate that the decision would apply in future.
128. By section 23(1) of the 2010 Act, "*On a comparison of cases for the purposes of section...19 there must be no material difference between the circumstances relating to each case.*" The pool of people for comparison must therefore be carefully defined. The appropriate comparison pool in this case must, logically, be made up of internal and external applicants for the post of lecturer in media, TV and film.

129. The next question that arises therefore, once the appropriate pool for comparison has been ascertained, is to decide whether the application of the PCP to the members of that pool discloses indirect discrimination. It is for the claimant to show that the PCP puts, or would put, persons with whom B (the complainant) shares the relevant protected characteristic at a particular disadvantage when compared with persons with whom B does not share it – that is the group disadvantage – and then that the PCP puts or would put B at that disadvantage – the individual disadvantage.
130. Paragraph 4.9 of the EHRC Code states that “*disadvantage*” is to be construed as “*something that a reasonable person would complain about – so an unjustified sense of grievance would not qualify. A disadvantage does not have to be quantifiable, and the worker does not have to experience actual loss (economic or otherwise). It is enough that the worker can reasonably say that they would have preferred to be treated differently.*”
131. In **Shamoon v Chief Constable of The Royal Ulster Constabulary [2003] ICR 337, HL** the House of Lords held that the test for detriment is whether “*a reasonable worker would or might take the view that he had ... been disadvantaged in the circumstances in which he had thereafter to work.*” **Shamoon** is also authority for the proposition that the notion of detriment does not require the complainant to demonstrate any physical or economic consequences.
132. The PCP must not only place the complainant at a disadvantage, but the disadvantage must be “*a particular disadvantage.*” HHJ Eady, KC sitting in the Employment Appeal Tribunal in **Pendleton v Derbyshire County Council [2016] IRLR 580, EAT** noted that the words “*particular disadvantage*” do not denote any particular level or threshold of disadvantage. Rather, it denotes that it is particularly persons of a given protected characteristic who are at a disadvantage because of the practice at issue.
133. In the specific context of indirect disability discrimination claims, the appropriate pool for comparison will depend on the facts of the case. The key is to identify a hurdle that has been placed in the way of the complainant and consider the range of persons – disabled and non-disabled – who come up against that hurdle. This defines a scope of the pool. The next step then is to consider whether more persons with the complainant’s disability within the selected pool are disadvantaged by the application of the PCP than those without that disability.
134. When making the comparison, it is important to bear in mind that the claimant’s group is restricted to those who have the same disability. This is made clear by section 6(3) of the 2010 Act. As it is put in the EHRC Code (at paragraph 4.16), “*It is important to be clear which protected characteristic is relevant. In relation to disability, this would not be disabled people as a whole but people with a particular disadvantage – for example, with an equivalent level of visual impairment.*”
135. We now turn to the victimisation complaint. By section 27 of the 2010 Act:

“(1) A person (A) victimises another person (B) if A subjects B to a detriment because —

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act —

...

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.”

136. The 2010 Act does not contain a definition of the word “*detriment*”. Paragraphs 9.8 and 9.9 of the EHRC Code provide that, “*Generally, a detriment is anything which the individual concerned might reasonably consider changes their position for the worse or put them at a disadvantage. This could include being rejected for promotion, denied an opportunity to represent the organisation at external events, excluded from opportunities to train, or overlooked in the allocation of discretionary bonuses or performance related awards ... A detriment might also include a threat made to the complainant which they take seriously, and it is reasonable for them to take it seriously. There is no need to demonstrate physical or economic consequences. However, an unjustified sense of grievance alone would not be enough to establish detriment.*”
137. This passage within the EHRC Code summarises the relevant case law upon this issue. We have referred already to the leading case of **Shamoon** where the House of Lords held that a detriment exists if a reasonable worker would or might take the view that the treatment was in all the circumstances to their disadvantage. The House of Lords also said that an unjustified sense of grievance could not amount to a detriment. It is sufficient that a reasonable worker might take the view that the conduct in question was detrimental. Therefore, the situation must be looked at from the complainant’s point of view, but the perception of detriment must be reasonable in the circumstances.
138. It was also held by the House of Lords in **Chief Constable of West Yorkshire Police v Khan [2001] ICR 1065, HL** that an omission to act, such as a refusal to provide a reference (being the issue in that case), may constitute detrimental treatment. However, the detriment must be because of the protected act or because the employer believes the complainant to have done or that they might do a protected act. In **Khan**, the Chief Constable refused to provide a reference for Mr Khan as it might compromise his handling of proceedings brought by Mr Khan. The refusal to provide the reference was not because he had done a protected act. It is right to say that but for having brought the proceedings, he would have been provided with a reference. However, that was not the reason for the refusal to supply it. A “*but for*” test is therefore inapt, and the focus must be upon the real reason or motive on the part of the respondent for doing the act in question. The real reason for not providing a reference in **Khan** was because of tactical considerations in the litigation.

Discussion and conclusions

139. We shall firstly look at the claimant’s complaint of indirect discrimination. There was some discussion at the hearing about the formulation of the relevant PCP. The Employment Judge raised as an issue that the respondent was unlikely to have an arrangement or practice of giving instructions to job applicants in an unclear form. It appeared to the Tribunal that what the claimant was seeking to

convey was that the practice or arrangement of providing written and verbal instructions puts him and people with ADHD at a particular disadvantage because of the propensity for confusion in such a process. The PCP as formulated in the list of issues conflates the practice or arrangement on the one hand with the disadvantage caused by it on the other.

140. A better formulation of the PCP therefore is “*the provision of instructions to job applicants about the presentation both in writing and verbally prior to and immediately preceding interviews.*” The particular group disadvantage therefore is caused by the propensity for a lack of clarity and of confusion when adopting this arrangement.
141. Upon this basis, the claimant has established the PCP as re-formulated by the Tribunal. The respondent did adopt the practice of conveying instructions for the interview in writing (paragraph 37) supplemented by verbal instructions upon which we made our findings (in paragraphs 51 and 56-59). It was conveyed to the claimant and the other candidates and thus had the necessary quality of repetition to similarly situated individuals (being the job applicants as a group) to constitute a PCP.
142. We found as a fact that this practice or arrangement was applied to all the candidates. The question which then arises is whether the claimant has shown a *prima facie* case that the practice or arrangement adopted by the respondent was unclear and therefore (as the respondent accepts if that were to be the case) liable to put those with ADHD at a particular disadvantage and put the claimant at that disadvantage because of the practice at issue.
143. The Tribunal found as a fact that Mr Colley’s verbal instruction to all candidates was relayed by him reading the script at paragraph 280 (quoted in paragraph 51). As we said in paragraph 52, page 280 is in substantially the same form as at page 228 but for the difference in timing about which the claimant has raised no complaint.
144. The claimant accepted in paragraph 23 of his witness statement (cited in paragraph 37 above) that the written instructions were clear. As we have found as fact that the verbal instructions matched the written instructions (except for the immaterial issue around timing) it must follow that the claimant has not succeeded in establishing a *prima facie* case that the instructions were unclear. Save for the issue of timing, he was being given the same message verbally by Mr Colley as he had by the respondent in their letter at page 228 of the bundle. As the written instructions were clear (as he accepts), then it must follow as a matter of logic that so too were the verbal instructions. It follows therefore that those with ADHD were or would be put at no particular disadvantage by the respondent’s arrangements and the claimant was not put at any individual disadvantage as the written instructions which he accepts were clear were reinforced by Mr Colley verbally on the day of the assessment.
145. The Tribunal went on to make alternative findings (in paragraphs 60 to 64) taking the claimant’s case at its highest that Mr Colley simply said to him “*take me through it.*” Again, the claimant has not shown a *prima facie* case that those with ADHD would be put at a particular disadvantage (or that he was put at a particular individual disadvantage) because of the brevity of Mr Colley’s instructions. There is nothing inconsistent with Mr Colley’s instruction to “*talk me through it*” on the one hand with what the claimant was expecting to be doing from (what he accepts to be) the very clear written instructions which he had received in page 228.

There is no evidence that a brief instruction from Mr Colley to *“talk me through it”* was liable to be taken literally by those with ADHD and causative of any lack of clarity about the purpose of the assessment and what it was that the candidate is expected to do such as to cause particular group or individual disadvantage for those with ADHD.

146. The relevant PCP therefore did not place those with ADHD at a particular disadvantage and did not cause the claimant any particular individual disadvantage. Upon this basis, therefore, the complaint of indirect disability discrimination fails and is dismissed.
147. We now turn to the victimisation claim. It is accepted by the claimant that the respondent did protected acts on 5 January 2024 (paragraphs 76 and 77 above) and 29 January 2024 (paragraph 79).
148. The first alleged detriment (in sub paragraph 2.2.1 in paragraph 119) is the alleged exclusion of the claimant from team communications after the submission of the formal grievance of 29 January 2024. The factual findings are in paragraphs 82 to 83.
149. The claimant did not receive these communications because he was not a permanent member of staff. The claimant therefore had no reason to receive them. There was no reasonable basis for him to believe that he had been disadvantaged by being excluded from them. In our judgment, this is an unjustified sense of grievance on the claimant's part. There was no reason for him to be concerned about or involved in any of the four matters the subject of the emails set out in paragraph 82. The claimant did not suggest to Mrs Marshall-Preece that he had any reason to be concerned with them. The claimant's perception of detriment is not one that is reasonable in the circumstances.
150. The reason why Mrs Marshall-Preece sent the emails to permanent members of staff and not to the claimant or other Sparks staff was because only permanent members of staff needed to know about the matters in question. They were not issues of concerns to the Sparks staff and the claimant did not suggest to Mrs Marshall-Preece any reason the Sparks staff should have been concerned or known about them.
151. There is simply no causal link between the claimant's protected acts on the one hand and Mrs Marshall-Preece's conduct in communicating these matters to the permanent members of staff on the other. The reason why permanent members of staff were involved in the correspondence and the claimant wasn't is nothing to do with the protected acts but rather to do with the business of the permanent staff being appraised of or knowing about the matters in question.
152. It is convenient to take the issues in sub-paragraphs 2.2.2 and 2.2.3 together. The findings of fact were at paragraphs 82 to 98. (To some degree, there is a crossover with the first alleged acts of detriment in that the question of the T level speck featured in the email of 22 March 2024 in paragraph 82).
153. The reason why the claimant was not invited to the meeting to discuss the development of the T level creative media technician course is because the claimant would not be involved in the delivery of it. Further, there was no reason for delivery staff to be involved in the development of the course content anyway. That was a matter for higher management. We refer to paragraph 90.

154. In principle, a detriment may arise where an employee is invited to a meeting only after pushing back against an initial non-invitation. The claimant was invited to the CIAP meeting but only after having to argue the matter with Mrs Marshall-Preece. However, the Tribunal's conclusion is that the claimant had an unjustified sense of grievance about not being invited in the first place. There was no reasonable basis for him to perceive that the respondent's acts in not inviting him to a meeting to discuss T levels was unreasonable in the circumstances.
155. We reach a similar conclusion about the issue of the meeting of 28 June 2024. The meeting was only for permanent members of staff because Mrs Marshall-Preece (as she explained in paragraph 98) could not guarantee that they would be in work for the next academic year.
156. Even if the claimant, contrary to our findings, objectively had a legitimate sense of grievance about both meetings we find that Mrs Marshall-Preece's conduct was in no way influenced by the claimant having done the protected acts in January 2024. The reason why she acted as she did (by not inviting the claimant to the T levels meeting and the 28 June 2024 meeting) was because of the view she took that there was simply no need for the claimant to be involved in them. That was the reason why the claimant was not invited. There is simply no evidence that Mrs Marshall-Preece was materially influenced to exclude the claimant because of the protected acts. We are satisfied that her conduct was uninfluenced by the protected acts.
157. The fourth alleged act of victimisation is about the locking of the claimant's email account at the end of July 2024. The factual findings are in paragraphs 99 - 101.
158. We are satisfied that the reason why the claimant's email was locked is because of the pursuit of the respondent's policy (as described by Mrs Marshall-Preece in paragraph 58 of her witness statement cited in paragraph 99). That this is the respondent's practice is corroborated by emails from a people business partner and IT customer services' manager (paragraph 101). There was no suggestion that either of them even had any knowledge of the claimant's protected acts.
159. In our judgment, this again is an unjustified sense of grievance on the part of the claimant. Subjectively, he may not have liked the respondent's policy, but it is a standard process applicable to all non-permanent staff. Even if we are wrong on this, there is simply no basis to connect the disabling of the account with the protected acts. The reason why the claimant's email account was locked was by application of the respondent's standard procedure.
160. The final alleged act of victimisation centres upon the cover work. There are two aspects to this set out in sub paragraph 2.2.5. The factual findings are in paragraphs 102 -117.
161. Again, it is difficult to see how the claimant can have a justified sense of grievance about the respondent's decision to allocate additional courses to existing permanent staff and staff who (in respect of the journalism course) were more suitably qualified for the role. The claimant accepted that staff employed by the second respondent would not be utilised where permanent staff can take on work for budgetary reasons.
162. In any case, the allocation and recruitment decisions around the additional courses for the second year film class and the journalism classes was unconnected with the claimant having done the protected acts in January 2024. Mrs Marshall-Preece and Mrs Parr were both aware of the protected acts.

However, there was simply no evidence that their knowledge of them in any way influenced them to act to the claimant's detriment. The reason why they acted as they did was to make the best use of the respondent's resources and deploy and recruit the most suitable staff for the relevant courses.

163. Accordingly, the claimant's complaints of indirect disability discrimination and victimisation fail, and stand dismissed.

Approved by Employment Judge Brain

Date: 28 August 2025

RESERVED JUDGMENT & REASONS SENT TO
THE PARTIES ON

2nd September 2025

Kate Foster Jones

FOR EMPLOYMENT TRIBUNALS

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