EMPLOYMENT TRIBUNALS

Miss E Farrar — **Yorkshire Ambulance Service NHS Trust**

Claimant — Respondent

Heard: in Leeds (with one remote witness) **On:**

Reading Day:	8 June 2026
Hearing:	9 to 12 June 2026
Deliberations:	15 June 2026
Judgment:	16 June 2026

Before:
Employment Judge JM Wade
Mr Q Shah
Mr M Taj

Representation:
Claimant: **Mr P Ward, counsel**
Respondent: **Mr M Rudd, counsel**

FULL REASONS

Introduction

1. The claimant was a paramedic for the respondent trust. The claimant is a disabled person by reason of five conditions - rheumatoid arthritis, anxiety, haemophilia, hypothyroidism (secondary to a cancer diagnosis in 2022) and lymphedema/vascular disease (secondary to cancer). She presented a claim on 16 May 2025 including alleging disability discrimination and constructive unfair dismissal – she had not resigned at that time. She resigned on 28 July 2025 after an initial case management hearing.

Complaints, Issues and Hearing

2. By the time of this hearing there had been three case management hearings to discuss and clarify the complaints, the claimant acting as a litigant in person. An Employment Judge directed in October 2025 that the the allegations for this hearing (unless a party applied) were as follows:

   2.1. Over November 2024 to April 2025, Mark and the union representative Steve, placing pressure on the claimant to resign, alleged as Section 15 unfavourable treatment because of something arising in consequence of disability;

2.2. Over June 2024 to April 2025, Mark frequently contacting the claimant around returning to work – again alleged as Section 15 unfavourable treatment;

2.3. Over November 2024 to April 2025, Mark pressured the claimant to take ill health retirement as disability related harassment;

2.4. A failure to make reasonable adjustments – the following were asserted as the adjustments which should reasonably have been made:
   2.4.1. Delaying the absence management policy until a final treatment plan had been received – the claimant says this adjustment should have been made from October 2024 onwards;
   2.4.2. Contacting the claimant only by email and/or by way of managers/union representatives, in a gentler manner – the claimant says this adjustment should have been made from August 2024 onwards;
   2.4.3. Adjusting roles to fit the claimant's hours, pay and capabilities – the claimant says this adjustment should have been made from November 2024 to December 2024.

2.5. Constructive unfair and wrongful dismissal relying on the above alleged breaches of the Equality Act **and** a final straw as follows: Ewelina and Mark in April 2025 sending a letter to the claimant which warned dismissal was likely.

3. The corresponding issue list asked the relevant questions arising from the allegations above (and these are addressed below where necessary).

4. The Tribunal had a file of relevant documents of around 1600 pages, which was not agreed, and the claimant provided her own file of 113 pages, many of which were duplicated in the respondent's file. There was also bank statement evidence and better copies of existing documents admitted during the course of the hearing.

5. The Tribunal heard oral evidence (in order of relevance) from
   5.1. The claimant;
   5.2. Mr Revell her line manager in 2024/2025 (Mark in the allegations above);
   5.3. Mr Massheder (Steve, the union representative in the allegations above);
   5.4. Ms Prusinowska (Ewelina the HR adviser in the allegations above);
   5.5. Mr Longley, who decided a grievance raised about these events, with an outcome given on 2 July 2025 (after the claim was presented);
   5.6. Mr Smith, Ms Whitehouse, and Ms Higman, who all had dealings with the claimant during the background to the complaints above. Ms Higman gave her evidence by video link.

6. The claimant was supported during this hearing by her parents' attendance. Representation by experienced counsel had been arranged shortly before the hearing and her case was put to the respondent's witnesses professionally.

7. The claimant had provided two witness statements. The first of six pages signed on 1 April 2026, and the second of four pages signed on 25 April 2026, following an order that she give disclosure of documents relevant to her Aesthetics business, which provides injections of lip and skin fillers.

8. The claimant denied any allegations of dishonesty vehemently. She also provided a written statement from a Ms Rock, who operates a Sheffield business through which the claimant undertook further aesthetics training and practice. Ms Rock confirmed she gave the claimant permission to use images from Ms Rock's website to promote the claimant's Leeds business on the claimant's instagram account – in rebuttal of the impression from the claimant's account that she had a thriving business during these events.

9. At the end of the evidence the Tribunal heard oral submissions on behalf of each party. The respondent did not argue Equality Act limitation, other than in its general pleaded sense, and as the claimant's harassment allegation included, arguably, an in time act – the sending of a follow up email within a month or so before the commencement of ACAS conciliation in February 2025 – the Tribunal addressed matters on merit – if we had reached different conclusions, we may have been called upon to consider limitation.

<u>The Law - key concepts and the types of discrimination alleged</u>

<u>Section 15 Discrimination</u>

10. Section 15 of the Equality Act 2010 ("the 2010 Act") relevantly provides:

(1) A person (A) discriminates against a disabled person (B) if—
(a) A treats B unfavourably because of something arising in consequence of B's disability, and

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

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

11. The "something arising in consequence of B's disability" sometimes has to be proven by a claimant, or sometimes is accepted by an employer.

12. In <u>T-Systems v Lewis</u> (UKEAT/0042/15/JOJ) His Honour Judge Richardson sets out a four stage test for Section 15 discrimination in employment cases:

There must be a contravention of Section 39(2)

There must be unfavourable treatment

There must be "something arising in consequence of the disability"; and

The unfavourable treatment must be because of the "something".

13. This means at stages 3 and 4 the Tribunal sometimes has to look at two different ways in which facts in the case relate to each other. The first is: does the "something" arise in consequence of disability? Stage 3 can sometimes be straightforward, and sometimes complicated.

14. Stage 4 is whether the unfavourable treatment was because of the "something". "Because of" at stage 4 means that the "something arising" operated on the mind of the person making the decision (consciously or sub-consciously) to a significant (that is material) extent. See Lord Justice Underhill at paragraph 17 of IPC Media Limited v Millar UKEAT/0395/12 SM and at paragraph 25.

15. The Tribunal, as its starting point, has to identify the individual(s) responsible for the decision or act or behaviour or failure to act which is being complained about. It does not matter whether the putative employer has knowledge that the something arose in consequence of disability, provided there is knowledge of the disability itself - City of York v Grosset [2016] ICR 1492 CA. See also the full guidance in Pnaiser v NHS England [2016] IRLR 710 EAT at 31. "A Tribunal may ask why A treated the claimant in the unfavourable way alleged....alternatively it might ask whether the disability has a particular consequence for a claimant that leads to "something" that caused the unfavourable treatment". Motive is irrelevant.

16. There is also often a "Stage 5" in a Section 15 claim: the employer in the example above can say that the treatment, even if unfavourable, was appropriate and necessary to achieve its aim of making sure security guards look after the premises.

17. This type of "justification" defence in section 15(2) is common to many other types of discrimination, including direct discrimination because of age, and indirect discrimination. Whether the employer's "means" are "proportionate" requires the Tribunal to determine whether they were "appropriate and necessary" (taking into account less discriminatory measures) (see Homer v Chief Constable of West Yorkshire [2012] UKSC 15 paragraphs 22 to 25). Section 15 does not derive directly from the European Equality Directive, but there is no judicial decision that the Homer approach should not be applied to Section 15 (2). Even on the bare statutory language, a structured approach is required to considering whether an employer has made out the defence.

Harassment

18. Section 40 of the 2010 Act designates harassment as a contravention and Section 26 relevantly provides:
    Harassment

(1)A person (A) harasses another (B) if—
    (a)A engages in unwanted conduct related to a relevant protected characteristic, and
    (b)the conduct has the purpose or effect of—
    (i)violating B's dignity, or
    (ii)creating an intimidating, hostile, degrading, humiliating or offensive environment for B....

(4)In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
(a)the perception of B;
(b)the other circumstances of the case;
(c)whether it is reasonable for the conduct to have that effect.
(5)The relevant protected characteristics are—
age;
disability;......

<u>The duty to make adjustments</u>

19. Section 20 relevantly provides:

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

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparisons with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

20.
Section 21 deals with failure to comply with the duty:

(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

21. Schedule 8 of the 2010 Act sets out relevantly provides: “A is not subject to a duty to make reasonable adjustments if it does not know, and could not reasonably be expected to know that a disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement (Schedule 8, paragraph 20 (1) of the 2010 Act)”
22. At paragraph 6.28 of the Employment and Human Rights Commission Code of Practice on Employment (2011) (“the Employer Code”) says: whether it is reasonable for a person to have to take a particular step in order to comply with a duty to make reasonable adjustments, regard shall be had, in particular to:

    the extent to which taking the step would prevent the effect in relation to which the duty is imposed;

    the extent to which it is practicable for him to take the step;

    the financial and other costs which would be incurred by him in taking the step and the extent to which taking it would disrupt any of his activities;

    the extent of his financial and other resources

    the availability to him of financial or other assistance with respect to taking the step;

    the nature of his activities and the size of his undertaking.

Proving discrimination

23. Section 136 of the Act states:-

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

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

24. This is a two stage process: it is for the claimant to prove facts from which the Tribunal could conclude an act of discrimination has occurred before the respondent is called to provide an explanation. In examining those primary facts, poor treatment is not enough.

25. In **Igen Limited v Wong [2005] IRLR 258CA** the guidance issued in **Barton** in respect of sex discrimination cases and was said to apply and approved in relation to race and disability discrimination allegations. That guidance includes that finding direct evidence of discrimination is rare, and in considering the inferences or conclusions that can be drawn from the primary facts, the Tribunal must assume that there is no adequate explanation. The guidance mentions twice that evasive or equivocal replies to a questionnaire or indeed inadequate explanations for a failure to deal with code of practice provisions can lead to inferences being drawn where it is just and equitable to do so in such

circumstances. At the final stage, the respondent must establish that the treatment is in no sense whatsoever on the grounds of the protected characteristic.

26. Inferences are further findings of fact. If there is an explanation for, for example, the conduct of litigation or a questionnaire reply, such matters may be of no assistance in finding the mental processes of the alleged discriminator or answering the reason why question.

27. Underhill J in the **Martin v Devonshire Solicitors** **[2011] ICR 352, para 37** said: "Tribunals will generally not go far wrong if they ask the question suggested by Lord Nichols in **Nagarajan**, namely whether the prescribed ground or protected act had a significant influence on the outcome".

Equality Act Limitation

28. Section 123(1) of the Equality Act 2010 provides: "Proceedings on a complaint within section 120 may not be brought after the end of - (a) the period of three months starting with the date of the act to which the complaint relates, or (b) such other period as the Employment Tribunal thinks just and equitable. Conduct extending over a period is taken from the end of that period.

29. Those periods are extended by the ACAS conciliation provisions where conciliation is commenced within the relevant time either by the "stop the clock" provision and providing a further month from the close of conciliation.

Constructive unfair dismissal and wrongful constructive dismissal.

30. The relevant provisions of the Employment Rights Act 1996 are:

94 The right

(1) An employee has the right not to be unfairly dismissed by his employer.

95 Circumstances in which an employee is dismissed

(1) For the purposes of this Part an employee is dismissed by his employer if ...

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

31. The following relevant principles concerning Section 95(1) (c) (which imports the common law doctrine of constructive dismissal into the definition of dismissal) can be derived from the authorities.

32. Western Excavating (ECC) Limited v Sharp [1978] IRLR 27: If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed. The employee is entitled in those circumstances to leave at the instant without giving any notice at all, or alternatively, he may give notice and say that he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. Moreover, he must make up his mind soon after the conduct of which he complains, for, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract.

33. Courtaulds Northern Textiles Limited v Andrew [1979] IRLR 84: A term is to be implied into all contracts of employment that the employer will not, without reasonable or proper cause, conduct himself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and the employee.

34. Woods v WM Carr Services (Peterborough) Limited [1981] ICR 666: To constitute a breach of the implied term of trust and confidence, it is not necessary to show that the employer intended any repudiation of the contract. The Tribunal's function is to look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, was such that the employee cannot be expected to put up with it.

35. The "last straw" doctrine means that if a person resigns in response to a series of actions which, together, constitute a fundamental breach, the last of the actions (the "last straw") must be more than trivial: London Borough of Waltham Forest v Omilaju [2004] EWCA Civ 1493. It must contribute, however slightly, to the breach of the implied term of trust and confidence.

36. The principles of affirmation were examined in Cockram v Air Products EAT 0038/14/LA and were helpfully summarised. Mrs Justice Silber said this (paragraph 25): "The question whether a party has affirmed the contract is fact sensitive and context dependent. It does not generally lend itself to bright lines or rigid rules." At paragraph 15 she says: "It is undoubtedly the case that an employee faced with an employer's repudiatory breach is in a very difficult position, as the courts have repeatedly recognised. Most recently, Jacob LJ described the difficulties in these circumstances in Bournemouth University Corporation v Buckland [2011] QB 323 at para. 54 as follows:

37. "..*there is naturally enormous pressure put on the employee. If he or she just ups and goes they have no job and the uncomfortable prospect of having to claim damages and unfair dismissal. If he or she stays there is a risk that they will be*

taken to have affirmed. Ideally a wronged employee who stays on for a bit whilst he or she considered their position would say so expressly. But even that would be difficult and it is not realistic to suppose it will happen very often. For that reason the law looks carefully at the facts before deciding whether there has really been an affirmation."

38. The tension between "last straw" and affirmation was addressed in the Court of Appeal in Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978. At paragraph 51, Underhill LJ holds: "*I cannot agree with [the above] passage. As I have shown above, both Glidewell LJ in Lewis and Dyson LJ in Omilaju state explicitly that an employee who is the victim of a continuing cumulative breach is entitled to rely on the totality of the employer's acts notwithstanding a prior affirmation; provided the later act forms part of the series (as explained in Omilaju) it does not "land in an empty scale". I do not believe that this involves any tension with the principle that the affirmation of a contract following a breach is irrevocable. Cases of cumulative breach of the Malik term… fall within the well-recognised qualification to that principle that the victim of a repudiatory breach who has affirmed the contract can nevertheless terminate if the breach continues thereafter… the right to terminate depends on the employer's post-affirmation conduct."*

Findings of fact
Background

39. The claimant worked for nine years as a health care assistant for Leeds hospitals and she undertook her paramedic training and worked on the respondent's "bank. She became registered as a paramedic with the Health and Care Professionals Council in or around 2017. She had a short break in her NHS continuous employment from May 2017 until beginning her Band 6 paramedic post on 19 March 2018, on a standard 37. 5 hours Agenda for Change contract based in Leeds.

40. The claimant suffered a sexual assault at work in 2018, to which the assailant pleaded guilty and was sentenced. The claimant suffered anxiety and depression following that and had some time off, and in 2019 felt unsupported by the respondent in the court and associated processes. She wrote to the respondent accordingly at that time, and received thoughtful communications in response. It is a feature of the claimant's relationship with the respondent that she communicates clearly, and sometimes at length in writing, whenever matters are not addressed as she would wish them to be. At times she checks what she writes with her mother.

41. The claimant had a fourth child in 2020, and on return in the summer of 2021 made a flexible working request which was granted without question. It involved working two day shifts (Mondays and Tuesdays) and one Sunday night shift in week one, and one night shift only in week two. Her partner worked away and the

pattern fitted with caring responsibilities and the claimant's wish to set up an aesthetics business.

42. The claimant incurred initial professional expenses in connection with that business, both in training and premises. From then on, she paid £50 per month for professional indemnity insurance. That cover has been consistently in place and remains so, and the claimant is now, on her own case, giving considerable energy to promoting that business.

43. In 2021 the claimant completed the respondent's secondary work application form, confirming that she would work Thursdays and Saturdays in that aesthetics business, and that was granted with effect from September 2021. Such an application would not have been necessary for a hobby.

44. In December 2021 the claimant was witness to a serious disciplinary incident at work involving a colleague. She made a statement and ultimately the colleague was dismissed.

45. In February 2022 the claimant was diagnosed with a cancerous tumour which was removed the following month, and the claimant remained unfit for work in any capacity, followed by a phased return later in the year.

46. During her phased return following cancer, the claimant believed colleagues in Leeds were victimising her for the dismissal of the colleague, and that her statement in those disciplinary proceedings was being circulated.

47. The claimant became unwell with stress and anxiety in 2023. She raised a grievance and sought an "exit" from the respondent on agreed terms. She took legal advice at that time, and raised a grievance, and had union representation. The grievance was addressed and a fresh start agreed by transfer to a new location – Castleford – and a reduction to one shift per week.

48. At no stage thereafter did the claimant apply to the respondent to increase her hours, or to return to her 2019 flexible working rota, or to return to full time.

49. The claimant's five year attendance record - days or shifts complete – and absence, was very limited as follows:

    Covid medical suspension during pregnancy 01/04/2020- 30/06/2020
    22 shifts completed on a double crewed ambulance (DCA)
    Covid isolation 10/10/2021- 28/11/2021
    8 shifts completed on a DCA
    Covid isolation 03/01/2022- 19/01/2022
    Long term ill health ("LTS") (Diagnosis of Cancer 21/02/2022- 16/09/2022)
    Phased return to work plan - 17/09/2022- 26/02/2023
    LTS- (stress and anxiety) 06/03/2023-05/07/2023
    Phased return to work plan - 06/07/2023-09/10/2023

Move to Castleford from Leeds on a return to work plan 10/10/2023-10/01/2024
11 shifts completed on a DCA .
LTS (leg cellulitis) and further complications/diagnoses 29/04/2024 until resignation with immediate effect on 28 July 2025.

50. DCA or "double crewing" typically denotes deploying a paramedic as an extra paramedic during a phased return or to allow support and refreshing of skills following absence.

51. Throughout the claimant's absences she was subject to the respondent's supporting attendance policy. Management were required to maintain regular contact - at least weekly or as otherwise agreed - with those absent for ill health reasons. Managers recorded that contact and all communications on the respondent's "Empactis" system. Those records were not challenged with the respondent's witnesses - unsurprisingly- the entries were wholly supportive. The policy required regular absence review meetings, and during the claimant's cancer absence and subsequent mental ill health absence, the policy was applied to her consistently and in the same way.

52. After the cancer absence she was required to attend a first stage attendance management meeting, and was represented by her union representative. Her manager decided absence monitoring was not to be put in place – it had been a possible outcome permitted by the policy, but was considered unnecessary or inappropriate because the cause of one of the claimant's absences had been cancer – the claimant's then disability.

53. The claimant was, throughout this period, promoting her aesthetics business through an instagram account. The account gave an impression that she was treating multiple clients.

54. For example on 8 August 2023 she posted that she was working all day in her clinic on Thursday 10 August 2023, giving prices and treatment details; and that she had a cancellation on that day; she posted photos of her garden treatment studio; on 24 August 2023 she posted having been away for a couple of weeks, and having appointments available on 11, 14 and 16 (Mondays, Thursday, Saturday) September at specific times; on 15 November 2023 she posted about losing her "Thursdays" because she was starting a new job on Thursdays. Thereafter she said she would be offering evenings and Saturdays in the clinic. This was at a time when she was working one shift on a Tuesday for the respondent – either the post about a new job was untrue, or she did, indeed take up a third job.

55. On 14 February 2024 the claimant posted about working three jobs, but having a valentines related treatment offer for aesthetics clients. The claimant's daughter was due to attend primary school later that year. By July 2024 the claimant had established an on line diary/appointment booking link such that clients could book

their appointments. By March 2026 she advertised five day a week availability (weekends and Monday to Wednesday appointments), keeping Thursdays and Fridays indicated as unavailable.

56. In February 2026 the claimant also celebrated her 250th client – in an Instagram post. Her evidence to this Tribunal was unclear about this: in fact she had more like 80 clients for whom she had record cards – information where she recorded allergy or other health information about her clients; only two of those clients were work colleagues; exaggerating to 250 clients was promotional and not dishonest – the claim relied on the number of treatments given and/or people she had treated while shadowing at the organisation with whom she trained; she only treated friends and family; she did not have a separate bank account and did not have a card machine for her business; she accepted some cash payments; she had disclosed (when ordered to do so) her bank statements. She rejected that she had been dishonest or misleading; £10,000 or so in costs of the business meant that she had still not made a profit (in the sense of total income exceeding costs of the business), and an accountant had told her she did not need to register with HMRC, but would need to do so in the future. She did not, therefore, need to provide any financial records to the Tribunal of income received from the business.

57. We were encouraged in submissions to treat the claimant's social media posts as advertising "puff", and to accept the claimant's evidence about the material events. The difficulty with that submission is that there were other examples of the claimant being prepared to say things which were not reliable – most notably to allege that she had been encouraged to resign by her union representative when that was plainly the opposite of his advice to her; or at one stage saying to a prospective employer that she wished a career change away from night shifts, when she had not worked a night shift since early 2023 at the very latest.

58. The claimant traded on her paramedic status in her social media posts. That is an indicator of the extent to which people need reassurance about the skills and experience of the person administering aesthetics services. It is all the more reason they might reasonably expect honest advertising. The claimant demonstrated no perception that this might be the case or that her communications, on her case, did not reflect reality and that affects the Tribunal's assessment of her evidence.

59. In the round, where there was a conflict in the evidence, we preferred the evidence of the respondent's witnesses, who were, across the board, straightforward, consistent about the events and chronology and prepared to make concessions. In our assessment, they were not, as submitted, inconsistent in their evidence – the fact that the numbers employed by the respondent were not known by all and their guestimates of those employee numbers varied, tells us nothing about their honesty in relation to the events in this case – and there was no other material inconsistency drawn out in the evidence.

60. The Tribunal is not unsympathetic to the claimant's disabilities and challenges, but those with disabilities are not immune from their approach to facts and reality being assessed, and that is particularly the case where we are required to address perception, as we are, in a harassment allegation.

<u>The most recent ill health before the claimant's resignation and the application of the respondent's absence management policy</u>

61. Sadly in April 2024, the claimant suffered severe swelling (cellulitis) of her leg, with her other conditions (haemophilia, vascular disease and thyroid) also causing symptoms including pain and fatigue. She became very unwell, but was without a clear unifying diagnosis initially. She became desperate to improve her symptoms and health but was faced with long waiting lists for specialties at a time when she was also experiencing nasal haemorrhages, and loss of consciousness, with the associated injuries. On at least one occasion that resulted in emergency hospital admission.

62. The respondent's attendance management policy was again applied and Mr Revell kept up regular contact with the claimant initially by telephone.

63. As a team leader of 25 to 30 paramedics he had managed a number of colleagues with long term absence over four years or so, but all had returned to work after three or four months. He did not know the claimant before she joined his team in February 2024 at Castleford, but he had completed a shadow shift with her.

64. The policy required a number of actions to be done or considered: welfare contact; occupational health referrals; review meetings monthly, consideration of reasonable adjustments; consideration of redeployment; progression to formal absence management panel hearings where no foreseeable return to work could be envisaged; consideration of early retirement.

65. Formal panel hearings where dismissal could be considered could typically be discussed in a case management conference with Human resources and senior leaders at three months absence or later. If such a hearing had not taken place after a year of absence, an employee is entitled to continue on half pay pursuant to Agenda for Change terms. Typically the sick pay entitlement is six months' full pay, six months' half pay and then no pay, but by the very nature of union representation in the NHS, the policies, and terms such as the continuation of half pay beyond that period, are the subject of collective bargaining, and they generally benefit staff.

66. Mr Revell and the claimant undertook long term absence review meetings in accordance with the policy, by telephone or "Teams", remotely. These took place on: 10 June, 16 July, 13 August, 25 September, 12 November 2024, 7 January and 27 February 2025. At the first two meetings there was nobody else present, and after that Ms Prusinowska was generally present and the claimant had union

representation - at the last four of the seven meetings the claimant was represented by Mr Massheder in that capacity.

67. All the respondent's staff do online Equalities training, and understand the need for reasonable adjustments and that disability is a protected characteristic. The respondent employs more than seven thousand people, around 25% of whom are paramedics – or at least that is the Tribunal doing its best with the information from different witnesses.

68. Occupational Health consultations with the claimant, again by telephone, took place on or around 8 July, 20 August, 1 October, 12 November, 13 December, and 20 February 2025. At no time was the respondent advised the claimant was fit to return to her operational paramedic role.

69. Before this report, and in January 2025, the claimant described occupational health as having been <u>brilliant</u>, and she found their advice helpful and supportive. In this hearing complaint appeared to be made of the number of referrals - at one stage later on, the claimant suggested a further referral may be able to add little more, until she had diagnosis and treatment, but this was the limit of any concern – and the February 2025 report effectively said the same.

70. On 1 October 2024 Occupational Health had advised that she could work from home in an office/desk based role, with a recommendation for home working. This was also at a time when the claimant's daughter was not attending school regularly. Mr Revell immediately looked with colleagues to see if any alternative desk based duties were available, and although they required attending the office because of a lack of supported laptops, there was an office based letter writing task available.

71. Mr Revell then asked the claimant to ask her GP if that would be okay and to provide advice that she was fit with adjustments to attend the office one day a week for that, but the claimant replied on 24 October indicating that while she welcomed a return on alternative duties, she was still not up to it, or words to that effect. Mr Revell then let others know the task could be released to be done by someone else on light duties. He could not be criticised for that, taking into account the content of the claimant's 24 October email and the restrictions on the claimant at that time.

72. Meanwhile, the claimant was undertaking meetings and engaging with her union. Mr Masseder's communications with her were warm and encouraging – he encouraged her to apply for a career break. She did not do so. <u>He was very clear that resignation was not in her interests when she asked about that – he advised against it.</u> He also advised her that the reason she was included on the re-deployment register was because there was no likely date when the advice suggested she could return to paramedic duties – that was what made her role "at risk". That happened on or around 19 November 2024 after six months absence.

Mr Massheder told the claimant she was being treated the same as everyone who did not have a likely end date to their absence. When she was told in February that she was likely to be invited to a panel hearing, he encouraged her that very few such hearings resulted in dismissal or words to that effect, and that all options would be explored. For whatever reason, perhaps affected by her anxiety, or by advice given by others, the claimant was not persuaded by any of his advice.

73. The claimant was expected to seek alternative roles on the respondent's recruitment site, for which she would have priority, because the employer's policy was to maintain employment, notwithstanding disability or ill health. The claimant could have increased her understanding of redeployment and policy at any time – the policies were available to her – but she did not read the policies and did not wish to redeploy away from her paramedic role.

74. On 12 November the occupational advice had maintained that a desk based role could enable return to work. It advised the employer that the claimant still awaited a treatment plan or diagnosis via a specialist, and she was finding the telephone contact from work a stressor and had talked to her GP about that, with medication being prescribed to help her sleep.

75. From the receipt of the advice, Mr Revell changed his approach to communicate by email only with the claimant, and she was happy with weekly emails. There were two exceptions. On 11 February the clamant was due to join a review meeting but did not attend and Mr Revell telephoned her because he was worried about that non attendance. She did not answer that call.

76. At a meeting on 7 January 2025 the claimant asked in the meeting if resignation was an option for her – it was not the other way around – the respondent did not suggest resignation. Mr Massheder suggested ill health retirement should be first considered – he had experience of that and he considered the claimant should consider that before resigning.

77. There were two tiers of ill health retirement, one of which may have been a possibility for the claimant, and Ms Prusinowska may well have explained something of the scheme - but the claimant became upset in the meeting – she considered herself way too young in her thirties to be considering retiring.

78. After the meeting Mr Revell provided a supportive and sympathetic follow up email with pensions contact details, and contact details for the 111 service managers, so that she could explore 111 as a career option or alternative duties. He also attached a wellbeing form and sought to provide emotional support with the helpline number and offering contact with him if she needed anything.

79. On 20 February 2025 OH advised that there were no adjustments to enable the claimant to return to work, and she was not fit to return in any capacity. The report advised that when the claimant felt ready to return she should let managers know

and at that time she would need comprehensive reinduction to be discussed when next referred. The adviser was unable to say that the claimant could return within three months in any capacity unless and until she had effective treatment for her endocrine and vascular issues.

80. The next day the claimant commenced the ACAS conciliation process (21 February) and a certificate was issued on 26 February 2025.

81. On 26 February the claimant emailed Mr Revell, copying in others, including Mr Massheder and Ms Prusinowska saying another union representative had called her and was unable to act for her, saying she wished them to be aware she had contacted ACAS, instructed a solicitor and considered her position untenable ever since she raised an initial grievance with the respondent (referring back to the grievance which resulted in a transfer to Castleford). Notwithstanding his concession in cross examination, Mr Massheder in fact betrayed no confidence in a meeting the next day – the claimant had already told her employer what she had done and the information about ACAS and proceedings was not confidential from her employer.

82. Mr Massheder considered he should no longer represent the claimant, because she had told him she was taking advice from a solicitor which appeared to contradict his advice, and she appeared not to have confidence in him or his advice. He did undertake representation at an absence review meeting on 27 February 2025, maintaining he was there for members if needed, but the union provided different representation in a grievance which followed. The claimant also had some complaint about how she had been spoken to by a different representative of the union.

83. At the absence review meeting on 27 February the claimant kept her camera off and the reasons for that were explained by Mr Revell when introducing the meeting – essentially anxiety - by inviting her to confirm that she wished to proceed in that way. There was nothing amiss with that introduction.

84. There was discussion of the claimant's email about ACAS and Mr Masseheder questioned that while she remained an employee constructive dismissal was not an option and she felt embarrassed by that discussion.

85. After the meeting Mr Revell sent the claimant her occupational health report – she said she had not seen it – albeit the contents had been discussed with her, and she had consented to release to the employer, and she had access on the respondent's system if she had logged on or sorted out that access.

86. On 12 March 2025 Mr Revell sent the claimant a welfare email, enquiring how she was and whether she could attend a review meeting on 1 April and for follow up information from her.

87. On 19 March, having had no reply to his email Mr Revell called the claimant and left a voicemail – this was the second occasion of a telephone call after agreeing email contact.

88. After that call, and until the claimant's resignation, welfare calls were undertaken by a different manager about which the claimant made no complaint, and the respondent undertook an investigation of a further grievance presented by the claimant.

89. The claimant did not complete any formal expressions of interest for any of the roles on the redeployment register – for which she was eligible - she did not want to give up her paramedic role, and was looking instead for some temporary work until she could be well enough to resume that paramedic role.

90. She did, with Mr Revell's support enquire about the respondent's 111 call centre roles, but that required lengthy on site training initially, and then further close supervision even for qualified paramedics, and she was not in a position to work enough hours to complete either the initial training on site or for that further period of supervised work. That was explored by Ms Prusinowska in March 2025. It was not suggested to the employer in cross examination, given the nature of that work, that its training requirements in this respect were unreasonable or could have been adjusted.

91. The claimant also looked for work outside of the respondent which she could do. On or around November 2024 she enquired about a post on a domestic abuse helpline based in Wakefield – she declared that she was a registered paramedic and was "hoping for 20 to 25 hours" at that time.

92. On or around December 1 2024, in a further application the claimant said she was only working one shift a week and so would be available to work as soon as possible – and was looking for a new challenge - ideally part time hours.

93. On or around January 2025 she applied for a post as a custody paramedic working in York on behalf of the North Yorkshire police; she was successful in that application process, but it took until July 2025 for the formal offer/start date to come through. The respondent received a reference request in March for a triage clinician post and this may or may not have been the same post.

94. The claimant considered the respondent's advertised roles were either graded too low, took her backwards in career terms, or were otherwise unsuitable. She did email a manager with some questions about a recruitment manager post. That was graded below her band 6 paramedic post. The claimant asked how things would work on pay, and indicated some flexibility in her working hours if that would help. That post was closed to applicants at the time she sent that email in early January, and instead she sought support with any temporary work that might become available. The recruitment manager let Mr Revell know that there were no temporary vacancies in that team at that time.

95. There were two management case conferences about the claimant's absence. The first could have referred her to a panel to consider dismissal – it did not - in 2024. The second, in March 2025, did so, because without the referral to panel, the claimant would be entitled to continuation of half pay in circumstances where there was no treatment plan or likelihood of return on the occupational health advice, until that treatment could commence. The respondent was being asked by occupational health to wait, effectively, for an unknown time when the claimant would have received diagnosis and treatment, and she had, by then, been absent for eleven months with no prospect of return against the background of attendance recorded above.

The final part of the chronology

96. The claimant did not attend the normal absence review meeting on 1 April. The respondent then sent her an invitation to a panel hearing at the end of April. The letter set out the reason for the meeting, the policy being applied, and recapping all the necessary information. It included the words: "you should be aware that after consideration of all the information presented during the hearing, the outcome may be dismissal from the Trust on the grounds of 'capability due to ill health". The respondent included those words in every such letter, but, as Mr Massheder had previously advised the claimant, dismissal at such a panel hearing was rare.

97. The claimant made a subject access request for any documents processed by the respondent related to her around this time and she was dissatsifed with how that was addressed. The claimant also told Mr Revell she had commenced arthritis medication in April and she presented a grievance about her treatment by the respondent. Her panel hearing to consider all matters pursuant to the policy was put on hold pending the investigation and resolution of that grievance.

98. The claimant commenced this claim against the respondent in mid May 2025. A lengthy grievance outcome was given on 2 July 2025.

99. The claimant also received the formal offer of commencement as a paramedic in York working with the police at the beginning of July 2025. She agreed with that employer to take up the role on a bank basis only because her daughter was out of school, and she agreed to work occasional or one day a week shifts as that caring responsibility allowed. By then she had better diagnosis and was on the way to medication being able to address her symptoms. She was also promoting and building her aesthetics business with energy.

100. The claimant resigned on 28 July 2025 with immediate effect – the Employment Judge had explained on 15 July 2025 that while her employment continued she could not allege constructive dismissal, the advice Mr Massheder had given her much earlier in the year – and he had encouraged her not to do so. Her resignation with immediate effect referred to historic bullying and ostracism in

connection with her 2022 cancer diagnosis, and a failure to make reasonable adjustments.

Conclusions/further findings on the allegations

100.1. Over November 2024 to April 2025, Mark and the union representative Steve, placing pressure on the claimant to resign, alleged as Section 15 unfavourable treatment because of something arising in consequence of disability;

100.2. Over June 2024 to April 2025, Mark frequently contacting the claimant around returning to work – again alleged as Section 15 unfavourable treatment;

100.3. Over November 2024 to April 2025, Mark pressured the claimant to take ill health retirement as disability related harassment.

100.4. Reasonable adjustments as follows should have been made

100.4.1. Delaying the absence management policy until a final treatment plan had been received – the claimant says this adjustment should have been made from October 2024 onwards;

100.4.2. Contacting the claimant only by email and/or by way of managers/union representatives, in a gentler manner – the claimant says this adjustment should have been made from August 2024 onwards;

101. The claimant clearly felt aggrieved at the chain of events above, and she considered the respondent should have simply paused the attendance management procedure until she had received treatment and her health was better. She told Mr Revell as much in a number of emails and it was clear, again in lengthy email correspondence, that she was aggrieved.

102. Throughout, Mr Revell's written communications to her were in gentle, measured tones, with empathy for her health challenges. We find his communications in meetings were of a similar character – that was consistent with the impression he gave when giving evidence and we reject the claimant's evidence that he was otherwise. The claimant said that she felt, in meetings from October, as if Mr Massheder, Mr Revell and Ms Prusinowska were against her, but we find:

102.1. Her perception, if this was her perception, was likely driven by her anxiety; it was not evident in her communications at the time, which were robust and combative, nor in her instagram posts, nor in her applications to other organisations;

102.2. The respondent had a clear attendance management policy to support those with absence, and the respondent was following its policy with compassion;

102.3. The claimant was not pressured to resign by Mr Massheder or Mr Revell over November 2024 to April 2025 – in respect of the former, the opposite was his advice; Mr Revell encouraged the claimant to look at every available option at at no stage suggested she resign.

102.4. From June 2024 to April 2025 Mr Revell maintained contact with her as he was required to do because she was absent on sick leave - this contact with her was because of something arising in consequence of disability.

102.5. His contact was manifestly compassionate in tone, and did not amount to pressure to resign. Nor can it objectively be regarded as unfavourable treatment. At times during these events she said, “it is not Mark”, or words to that effect indicating that she did not believe he was unkind or not gentle at that time.

102.6. His contact was the same as the contact from others during absence in 2023 and 2022. It was not because of her reduced hours commitment or a negative impression of her unwillingness to work – there was no such impression in any communications at the time, but simply an acknowledgment that the claimant had very poor health through no fault of her own, which she was trying to have diagnosed and treated, as well as having family caring responsibilities.

102.7. If we are wrong in our conclusion that this was not objectively unfavourable treatment, we consider his contact was appropriate and reasonably necessary and in pursuit of the respondent’s legitimate aim of managing long term sickness absence fairly and consistently. He offered fortnightly contact by email, but the claimant was content with weekly email contact – again indicating that his contact was not the problem.

102.8. The claimant had found telephone contact anxiety inducing because, of course, the ring of a telephone is more intrusive and disturbing than chosing to access emails. When that became apparent to the respondent, the new arrangement was made.

102.9. The needs of the respondent and the claimant were balanced appropriately and proportionately.

102.10. The alternative proposed by the claimant, by way of adjustment, and addressing that reasonable adjustment allegation, was the pausing of the application of the procedure from October 2024. In effect, permitting the claimant to be in touch when she was well enough or had a treatment plan in place.

102.11. Pausing the application of the procedure, or any management contact from the employer could be achieved by a career break, and the claimant was pointed to that as a good idea, but did not apply for one. It cannot be said that the respondent unreasonably failed to put that in place, because a career break requires the claimant to be prepared to go without pay, and she was due to receive half pay from October to March 2025. She chose not to apply for a career break, despite it being recommended as a good ideal by her union representative, and one he had not thought of before she mentioned it.

102.12. To summarise our conclusions on the claimant's reasonable adjustment case: the respondent did make email only contact when the duty arose – when it had knowledge that telephone contact was exacerbating anxiety, that she was put at a particular disadvantage. It was not argued that the respondent ought reasonably to have known of disadvantage sooner. On the two occasions telephone attempts were made after email contact had been put in place, it was reasonable not to make the adjustment, because the claimant had failed to attend a meeting and there was welfare concern, and on the second occasion had failed to reply to an email.

103. The third reasonable adjustment allegation - Adjusting roles to fit the claimant's hours, pay and capabilities – the claimant says this adjustment should have been made from November 2024 to December 2024.

104. No roles which the claimant could have done or wished to do were put to the respondent witnesses, other than those we have made findings about. The 111 roles were not feasible for the reasons above – to be clear it is not reasonable to permit allocation to such a role on a ten hour a week basis when the ability to embed learning and training in a telephone advisory role, essential to patient safety, is not possible to achieve in a ten hour a week remote role.

105. As for the letter writing temporary duties, and recruitment manager post, it was not reasonable to allocate the temporary duties in preference to someone else, when the claimant was clear by the time she replied to Mr Revell's enquiry, that she was not able to return at all, and was equivocal about whether her health would permit it. The claimant did not apply the recruitment post or indicate any interest until after the recruitment deadline had expired; in those circumstances, including her then state of health, the tentative nature of the enquiry, and the need to fill the post, it was not reasonable for the respondent to have to allocate that post to her.

106. Over November 2024 to April 2025, Mark pressured the claimant to take ill health retirement as disability related harassment;

107. The claimant has not proven her factual allegation and this allegation is dismissed. Paragraphs 82 to 84, our findings about the application of the respondent's policy, and our further findings/conclusions above are not facts from which we could uphold this allegation and decide harassment.

108. If we are wrong in that, the following facts were, subjectively, unwanted conduct relating to disability (or absence in connection with it):

108.1. Mention of early retirement, in the January meeting, in response to the claimant's question as to whether she should resign;

108.2. some explanation of the early retirement scheme;

108.3. a sympathetic email with information following that email covering a number of matters, but including information for a pensions contact;

108.4. asking the claimant by email on one subsequent occasion if she had followed that up.

109. Those matters did not have the proscribed effect as their purpose; the purpose was to offer alternatives in the claimant's interests, if the claimant was asking if she should resign, and to enable the respondent's policy considerations and its commitments to the claimant and all staff, to be fulfilled. Did those matters, have the proscribed effect, asking ourselves the Section 26(4) considerations? They did not, weighing the three factors, in all the circumstances above. The claimant's case was that it was upsetting to have early retirement mentioned when she was in her thirties, and for that to be followed up when it plainly upset her. That is her perspective. These were emotional times, with the claimant trying to find treatment; resignation was against her union's advice, Mr Revell knew that early retirement could offer some benefit in such circumstances; he gave information and asked once if it was being taken forward, and the claimant was not interested. That does not, in our unanimous judgment, meet the proscribed effect in all the circumstances of this case, recognising the claimant's subjective perception as part of the weighing of the factors.

<u>Constructive unfair and wrongful dismissal relying on the above alleged breaches of the Equality Act **and** a final straw as follows: Ewelina and Mark in April 2025 sending a letter to the claimant which warned dismissal was likely –</u>

110. It will be apparent in the conclusions above that the claimant has not established the alleged contraventions of the Equality Act, and that the respondent had reasonable and proper cause for its actions in connection with her absence – in short, it followed its policy with compassion.

111. As to the final allegation, the letter did not warn dismissal was likely, rather, it said: "you should be aware that after consideration of all the information presented during the hearing, the outcome may be dismissal from the Trust on the grounds of 'capability due to ill health".

112. The allegation is not made out in fact: dismissal was a possibility, is the fair interpretation of that letter – and an outcome which the claimant was advised, was unlikely or rare. The respondent had proper cause for sending that letter at that time. It was applying its policy after absence without any end in sight, having considered and applied the toolkit within the policy. Had it not included the possibility of dismissal as an outcome, and, because by then there was still no prospect of return or other solution, had taken a rare decision to dismiss, it would have been criticised, no doubt in this Tribunal.

113. In all those circumstances the claimant has not established a dismissal, and the unfair dismissal complaint is not well founded. It follows from the conclusions above that the constructive wrongful dismissal must also be dismissed.

Employment Judge JM Wade

Date: 3 July 2026