



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Casimel Sarfo

**Respondent:** LIDL Great Britain Ltd

**Heard at:** Watford

**On:** 24 and 25 August 2026

**Before:** Employment Judge Tuck KC

**Appearances:**

**For the claimant:** In person, assisted by friend, Mr Iddi.

**For the respondent:** Mr S Maini – Thompson, counsel.

## JUDGMENT

**The claimant's claims of direct discrimination, discrimination arising from disability, failure to make reasonable adjustments and harassment fail and are dismissed.**

## REASONS

1. The claimant commenced employment with the Respondent as a customer assistant on 4 February 2017. He was dismissed in July 2024 by reason of capability, having been absent due to ill health since February 2020.

2. I was provided with a joint bundle of documents of 499 pages and heard evidence from the Claimant, Mr Culverwell, Regional Manager and Ms Goodard, HR manager. I was also provided with a statement from Mr Urwin, but as he was not present to be questioned I did not take its contents into account save for where the claimant confirmed his agreement.
3. The claimant was dismissed by Mr Abbott who wrote to him on 16 July 2024. EJ Skehan at a Preliminary Hearing on 18 June 2026 found that the EDT was 18 July 2024 on receipt of that letter. ACAS early conciliation started and ended on 24 October 2024, and the claimant presented his ET1 on the same date, 24 October 2024. His claim for unfair dismissal was struck out on 18 June 2026 as it was not presented within three months of the effective date of termination (and there was no extension to the primary time limit by ACAS conciliation), and it had been reasonably practicable for the claim to have been presented in time.
4. The Respondent contends that any claims of disability discrimination which took place before 25 July 2024 are out of time, and that there was no continuing act. By letter to the ET dated 6 February 2026 the Respondent accepted that the claimant is disabled by reason of his “spinal / back injury” but made no admissions as to the date from which the test under section 6 EqA was met. In the course of the claimant’s cross examination it was accepted that as of February 2020, when the claimant commenced his period of sick leave which continued until his dismissal, he was disabled by reason of his back condition.
5. The issues for this tribunal are recorded in the case management summary at pages 136 – 142. As the claimant produced only a one-page witness statement and did not have a list of documents to which he wanted to refer me, I gave him time to consider, alongside the list of issues, what evidence he wanted to give. I explained the tribunal process to the claimant and told him that it was for him to present the evidence to which he wants to the tribunal to have regard. With his companion Mr Iddi he took time to consider this, and in closing submissions Mr Iddi said that he “acknowledged that deficiency” and asked me to consider all the evidence in the bundle to which I was taken, which I have duly done. This included going to new documents in the course of closing submissions, to which, quite rightly, Mr Maini-Thompson made no objection.

2018

6. According to the account recorded by OH (in a report dated 22 May 2023), Mr Sarfo said that in 2018 he was “on an early morning shift, he was in the bakery

and went into the freezer to pick up a loaf of bread. He reports with this he felt a sharp pain in his low back.” It is apparent that this was the beginning of what has been a lengthy and painful period of back problems which the claimant has, and continues to suffer from.

7. The claimant was absent from work from July 2018. After a welfare meeting in September 2018 a GP report was sought, and on 1 October 2018 the GP stated that Mr Sarfo had presented in July 2018 with a history of lower back pain of about 3 months and was referred for physiotherapy. He was diagnosed with “mechanical back pain”. The GP said “the recovery period for his condition is rather unpredictable and can be varied, but recovery is anticipated. He may benefit from workplace adjustments and amended duties to help his return to work.”
8. On 12 November 2018 the Claimant’s GP issued a fit note saying that he was fit for a phased return to work. On 14 November 2018, having had an absence of 20 weeks, the claimant had a return to work interview which provided for a phased return over four weeks. The claimant confirmed that he signed this form. In the course of closing submissions he withdrew his allegation that his signature had been forged on this document. He started his phased return to work on 4 December 2018.
9. In the list of issues the claimant says that the Respondent “failed to offer meaningful support starting from September 2018, the point at which the claimant initially injured his back”, and that he was “pressurized into returning to work on 4 December 2018”. The claimant did not say what support he needed from September 2018, and did not say in what way he was “pressurized” into returning to work when his GP had said he was fit to do so on a phased basis. The claimant accepted that he did have a month during which he did one shift in the first week, two in the second, three in the third and four in the fourth before going back up to 30 hours per week.
10. At some point in 2019 I understand that at the claimant’s request, his contractual hours were reduced to 20 per week. There is no evidence whatsoever before me relating to 2019, and I understand that the claimant attended work without incident during this period.  
  
2020.
11. In February 2020 the claimant commenced a period of sickness absence which continued until the termination of his employment. As set out above, the

Respondent accepts that from this recurrence, the claimant was disabled and it had actual or constructive knowledge of that.

12. The claimant said that his personal possessions were removed from his work locker in March 2020, and that despite requests there had been a “refusal” to return them. He was not able to tell me who he had asked or when. It is apparent from the statement produced for Mr Urwin that this was an issue about which the claimant raised a grievance which was heard, dismissed and the subject of an appeal in September 2023. Mr Urwin’s statement says that he investigated this matter and found that colleagues were given two weeks’ notice of lockers being replaced such that personal items should be removed, and that the claimant had told him that he was not in the WhatsApp group via which that information had been disseminated.
13. The claimant in the list of issues complained that both as an issue of direct disability discrimination and of harassment, that he was “harassed with multiple calls from around 2020 until his dismissal in July 2024”. When asked about this he made reference only to the document showing two missed calls on the WhatsApp platform in 2024, adding there were many others. He did not give any evidence as to who had phoned him or why he considered the calls to amount to “harassment”. There were a number of documents in the bundle (to which I was not taken) showing invitations to welfare meetings and notes from such meetings.
14. In November and December 2020 the Claimant’s partner tragically suffered the miscarriage of twins and 18+3 and 18+6 weeks gestation. The claimant handed to his then manager a hospital letter setting this out, in evidence the claimant told me that the manager said “sorry for the loss of your twins”. Initially Mr Maini-Thompson said that Lidl had no knowledge of this until 2024, but in the course of the hearing the claimant produced a clip of correspondence showing that he was invited to a meeting in February 2021, that this was scheduled for the same week in which there was a funeral for the twins, and that Lidl had responded offering condolences, postponing the meeting for a month and giving the details of the employee assistance programme should the claimant want to access it. The claimant says that an act of direct disability discrimination and harassment is Lidl’s “failure to take into account the impact on the claimant of his family’s miscarriage of twins”. When asked in cross examination what the respondent should have done which it failed to, or what it did that it should not have, he said they had a “duty of care” towards him. He did not identify any link between this issue and his disability.

2021

15. By 2021 the claimant had exhausted sick pay entitlement and was receiving universal credit. He alleges, as an act of direct discrimination and harassment, that the respondent “misreported sick pay figures disrupting access to benefits” on 30 January 2021, 30 March 2021, 3 September 2023 and (post dating his dismissal) on 30 November 2024. Ms Goddard in her evidence explained that in March 2021 and September 2023 there had been pay rises, and that as payroll is done a month in arrears from the higher rate was a deduction at the lower rate for hours missed the previous month, this resulted in small payments of £16.63 and £24.96 respectively. There was no payment made in January 2021, and I had no information before me about November 2024. Payroll is done in Lidl by a dedicated department.
16. I had before me a letter from a payroll manager at Lidl to HMRC dated 30 June 2021 explaining that he received a payment in February 2021 for holiday and in April 2021 for 10 days company sick pay at the start of the new financial year. Ms Goddard said that the payroll department have a dedicated helpline, and I inferred from the letter to HMRC that when the claimant contacted payroll to seek assistance in sorting out his income with the benefits agency / tax office, they sought to assist him. The claimant beyond saying that if he had been at work he would have been paid wages normally, did not explain why any discrepancies amounted to discrimination or harassment. Mr Iddi explained in closing submissions that the claimant was very distressed when there were interruptions to the claimant’s benefits. In an email dated 21 November 2021 the Claimant declined an invitation to a sickness review meeting as he said he could not afford to get to Milton Keynes, saying that this was “because of how Lidl has fraudulently interfered with my income support... it is my belief that Lidl is deliberately causing me this financial stress...”. He did not address this allegation in the hearing before me.

2023

17. In March 2023 the claimant was invited to a welfare meeting via Teams by Mr Urwin. There is a record that Mr Urwin attempted to phone the claimant at 9.07am and 9.12am (the meeting having been scheduled to start at 9am), but received no reply. The claimant said this was part of the harassment he suffered.
18. The claimant was referred to Occupational Health who, following a telephone assessment, prepared a report dated 22 May 2023. The claimant described his history of back pain and reported that his pain was constant and had not improved in his absence. He said around twice a week he had to stay in bed all day, and on days where he could get out of bed he had to rest after 5-10 minutes.

He said he struggles to bend and twist and can only engage in minimal lifting activities. He could not do his shopping, and was suffering from significant stresses in his personal life as well. When asked about phased return to work or amended / restricted duties the OH report said that the claimant “does not appear able to engage with such a return and does not feel he will be supported on his return by his employers, and explained this in his own words as ‘once bitten, twice shy’”. The report set out the claimant’s concerns that he could make mistakes with money due to the side effects of his medication, and that he did not “want to engage with a return back to work that could potentially aggravate his back condition”. Lidl were advised “there appear to be no adjustments at the present time that could facilitate a return to work at Lidl for him”. Given the long term nature of the absence OH advised a report from the claimant’s GP.

19. A further OH report dated 1 November 2023 states that the request made of the GP had resulted in a computerized print out of information with regards to the claimant’s back condition which corroborated the background given to them in May 2023. The GP documents confirmed the analgesic, anti inflammatory and pain management medication being prescribed. As to prognosis OH wrote “the GP’s report does not give any timescales for a return to work. My previous occupational health advice to you, therefore, would still remain applicable in that the timescales for a return to work for Mr Sarfo would depend on the outcome of pain management measures and if his coping strategies and emotional resilience can be improved to the degree that he can manage his pain symptoms for a future return back to work.... As outlined in my report to you, there are some work perceptions that may be acting as a barrier to him returning”.

20. In his letter dismissing the claimant’s appeal against dismissal, Mr Culverwell listed the sickness absence review meetings scheduled during 2023 and 2024; there were 11 meetings to which the claimant was invited, though it is apparent that he only participated in 3 such meetings. These were in March, September and December 2023. It appears that in or around February 2024 the claimant said that he would be travelling abroad due to family issues, and wanted any communication to be by email; Ms Goddard told me that the claimant also asked for communication via WhatsApp and that Mr Urwin checked with her whether this was permissible, and as an adjustment on the claimant’s request she advised it was.

21. Mr Abbott invited the claimant to a final sickness absence review meeting on 29 March 2024; he did not attend and it was rescheduled to 5 April 2024 when he

again did not attend. On 14 April 2024 the claimant said that he was seeking alternative medicines, and he was invited to a further meeting on 26 April and questions were set out for him to address. These included whether there were, in the claimant's opinion, any reasonable adjustments which could be explored to facilitate his return to work. The claimant did not attend the rescheduled meeting again – but replied to the questions asked on 30 April 2024. In response to the question “when can you see yourself being able to return to work” he said “I cannot answer that question but my GP and the NHS professionals can do that with any repercussions or liabilities.” When asked if a reduced hours would help he said “without a health professional's verdict, I SHALL not repeat the previous mistake with the Lidl”. In answer to the question of whether there was any further support or measures that might help, he said “that is a rhetorical question coming from Lidl... you've not offered or pretended to offer me any kind of support in any form or shape rather than intensifying your tactical bullying and harassment even when you have had my medical records for years”. Finally as to the question of whether there was anything further the claimant wanted to be considered he said “I will want you to exercise restraint in your pursuit to make my stress worse by frustrating me financially, mentally playing with my mental health to the point of being clinically depressed, the continuous harassment in words and in writing. I've never come across a company acting in a mafia manner like this”. Ms Goddard described these responses as “confusing, avoidant and aggressive”.

22. By letter dated 16 July 2024 Mr Abbott decided that having regard to the OH reports, the length of time for which the claimant had been absent and that there was no foreseeable return to work, it was appropriate to terminate the claimant's employment. He was paid in lieu of notice.
23. The claimant appealed and a meeting was held on 29 August 2024 by Mr Nicholas Culverwell, Head of Sales – Operations. By letter dated 4 October 2024 the claimant's appeal was dismissed. Whilst the claimant had said he did not receive invitations to some of the meetings he was noted as having missed, he did confirm that the information in the OH reports of May and November 2023 were accurate and there was no improvement since. Mr Culverwell also noted that the claimant had not wanted to consider applying for other posts (for example an office based job in the distribution center). A suggestion that the area manager used a store refurbishment to terminate his contract was also rejected; Mr Culverwell said that all staff impacted by the refurbishment were accommodated in stores within a five mile radius and then returned.

24. In the course of the hearing I was taken to the electronic training records kept by Lidl for staff. This showed that the claimant had been on long term sick (LTS) when a number of training courses were scheduled in 2023 and 2024. The records, according to Ms Goddard and Mr Culverwell, included a column saying how long courses were anticipated to take, and the duration was set at zero of the claimant has he had not done them, with a comment of “LTS”. The claimant was shown as not having completed or failed the courses, save for one which said “passed”. Both respondent witnesses said that this was an administrative error by the talent management team who have a drop down menu to chose the “result” from. The claimant initially alleged that Matt Abbott had forged his signature on training records; despite all records being computerized since 2020 and there being no signatures at all, it was only when I asked in the course of closing submissions why the allegation had been made that it was withdrawn. The allegation that Mr Abbott “falsely claimed that the claimant had undertaken training that he had not in fact undertaken” was maintained – on the basis of the column in the spreadsheet which had a heading of “duration”.

25. Finally, in relation of the allegation of misreporting sick pay figures on 30 Nov 2024 deduction, this post dates the ET1 and I am told there has been no application to amend the claim. In any event, I have no information whatsoever about what happened in November 2024 and why this is said to be a “misreporting”.

Law.

26. Section 6 EqA defines disability; it is a physical or mental impairment which has a substantial adverse effect on a person’s normal day to day activities, and is long term. Long term is defined as having lasted, or being likely to last for 12 months.

27. Section 13 of the Equality Act provides:

13 Direct discrimination

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

28. The House of Lords in *Nagarajan v London Regional Transport* [1999] IRLR 572 made clear that the crucial question in cases of direct discrimination is why the

complainant received less favourable treatment? Was it because of their protected characteristic? If there are multiple reasons for the treatment, the characteristic must have had a “significant influence” on the outcome.

29. It is apparent that when looking at whether treatment is “less favourable”, this requires a comparison exercise. In this regard section 23 provides:

23 Comparison by reference to circumstances

(1) On a comparison of cases for the purposes of section 13, 14, [19 or 19A] there must be no material difference between the circumstances relating to each case.

(2) The circumstances relating to a case include a person's abilities if—

(a) on a comparison for the purposes of section 13, the protected characteristic is disability;

30. In cases where a disabled person complains of being dismissed, this means that the comparator will be someone who has been absent from work for the same period of time as the claimant, but for a non-disability related reason.

31. Section 15(1) EqA concerns discrimination arising out of disability and requires the employer in certain circumstances to make allowances for disabled employees. It provides:

“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.”

32. As Elias LJ held in *Griffiths v Secretary of State for Work and Pensions* [2017] ICR 160 a case in which an employee had been dismissed after long term sickness.

“23 This would mean, for example, that the dismissal of an employee for absences which are disability-related would amount to unfavourable

treatment arising in consequence of disability and would therefore require justification."

Elias LJ went on to hold (per incuriam):

(1) It is unfortunate that absence policies often use the language of warnings and sanctions which makes them sound disciplinary in nature. This suggests that the employee has in some sense been culpable. That is manifestly not the situation here, and will generally not be the case, at least where the absence is genuine, as no doubt it usually will be. But an employer is entitled to say, after a pattern of illness absence, that he should not be expected to have to accommodate the employee's absences any longer. There is nothing unreasonable in the employer being entitled to have regard to the whole of the employee's absence record when making that decision.

(2) The positive duty to make reasonable adjustments is only a part of the protection afforded to disabled employees. The fact that the employer may be under no duty to make positive adjustments for a disabled employee in any particular context does not mean that he can thereafter dismiss an employee, or indeed impose any other sanction, in the same way as he could with respect to a non-disabled employee. The employer is under the related duty in section 15 to make allowances for a disabled employee. It would be open to a tribunal to find that the dismissal for disability-related absences constituted discrimination arising out of disability contrary to section 15. This would be so if, for example, the absences were the result of the disability and it was not proportionate in all the circumstances to effect the dismissal.

33. The duty to make reasonable adjustments for disabled employees and the consequence of failing to do so are set out in sections 20 and 21 EqA:

"20 Duty to make adjustments

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

(2) The duty comprises the following three requirements.

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

....

#### 21 Failure to comply with duty

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

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

34. Whilst it does not have to be established that the step contended to amount to a reasonable adjustment would necessarily remove the disadvantage, it must be shown that there is a real prospect that it would. (*Romec v Rudham* – [2007] All ER 206). Cavenagh J in *Hindmarsh v North East Ambulance NNS Foundation Trust* [2025] IRLR 673, at paras 61 - 62, held:

“It is clear, in my view, that if the steps that it is suggested that a Respondent should have taken by way of reasonable adjustment .... would have no real chance of avoiding or reducing the disadvantage, then the Respondent is under no duty to take those steps. This is no more than common sense. It cannot be reasonable to require a party to make an adjustment that has no prospect of achieving the desired effect. In many cases, the question of the likelihood that the adjustment will help will be only one of a number of relevant considerations, for the purposes of section 20 of the 2010 Act, but there are cases, such as this one, in which the conclusion that the adjustment has no real prospect of making a positive difference provides a complete answer.

This is supported by the authorities. In *Paulley v FirstGroup plc* [2017] UKSC 4; [2017] IRLR 258, Lord Neuberger PSC, with whom Lord Reed JSC agreed, made clear that in order for a claim for breach of a reasonable adjustment to succeed, it must be shown that there would have been at least a real prospect that the adjustment would have made a difference (judgment, paragraph 60). The other three members of the Supreme Court, Baroness Hale DPSC, Lord Kerr JSC, and Lord Clarke JSC also applied the “real prospect” test (see judgment at paragraphs 110, 138 and 149). Though *Paulley* was a section 20(3) case, the same must apply to a

section 20(5) case. In one of the cases cited by Lord Neuberger, *Foster v Leeds Hospital NHS Trust* [2011] EqLR 1075 (EAT), Keith J said that, in order for an adjustment to be reasonably required, there had to be “some prospect” (paragraph 17) or “a chance” (paragraph 20) that the adjustment would have made a difference. See also, *P Lancaster v TWBA Manchester* (UKEAT/0460/10/DA, Slade J) at paragraphs 44–46, *South Staffordshire & Shropshire Healthcare NHS Foundation Trust v Mrs C Billingsley* (UKEAT/0341/15/DM, Mitting J), at paragraph 17, and *Romec Ltd v Mr H.S Rudham* (UKEAT/0069/07/DA, HHJ Peter Clark), at paragraph 39.”

35. In relation to a claim of harassment, I note firstly that section 212 EqA makes clear that a “detriment” does not include conduct which amounts to harassment – conduct may therefore be discrimination or harassment but cannot be both.

36. Section 26 EqA provides:

- (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.

37. It is important to note that the conduct complained of must have either the purpose OR the effect of creating effect described in sub section (b). Upset is not sufficient to establish that effect, and the force of the adjectives used has been highlighted in cases including *Richmond Pharmacology v Dhaliwal* [2009] ICR 724, and *Betsi Cadwaladr University Health Board v Hughes* UKEAT 0179/13.

38. When considering all the discrimination and harassment claims, I have had regard to section 136 EqA which provides:

- “(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.”

39. Finally, time limits are set out in section 123 EqA and requires a claim to be brought within 3 months of the date of the act to which the complaint relates:

“(1) Subject to section 140B [extension for ACAS Conciliation] proceedings on a complaint within section 120 may not be brought after the end of—

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

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

(3) For the purposes of this section—

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

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

### **Conclusions on the issues**

40. I am satisfied that the Claimant was not “disabled” in 2018. He had a physical impairment to his back which had a substantial adverse effect on his normal day to day activities. It was not however a long term condition, and his GP anticipated a recovery, albeit he was cautious as to when. There was nothing to indicate that the condition was likely to last for 12 months.

41. The Claimant was disabled by February 2020 when he suffered a recurrence of his back condition.

42. The issues are addressed by reference to the record made at the PH (pages 137 – 142 of the bundle). When considering time limitation points, the claimant has not contended that there was any act extending over a period, or that a particular person was responsible for orchestrating a discriminatory regime against him. His complaints span different managers, HR support staff and payroll staff.

#### **Issue 3- Direct disability discrimination**

43. The claimant’s first two complaints of direct discrimination or alternatively of harassment are an alleged failure to support him in September 2018 and pressurizing him back to work in December 2018. Neither allegation has been proven on a balance of probabilities. It is apparent there were welfare meetings with the claimant and that advice was sought from his GP. His return to work was supported.

44. The claimant has said nothing whatsoever to show any causative link between the matters he complains of and the protected characteristic of disability – which in any event he did not have at this time.

45. In any event these allegations are six years out of time and there has been no explanation for the failure to pursue them.

3.1.3

46. The third allegation is of “harassment” not discrimination and is addressed below.

3.1.4

47. The documents produced in the course of the hearing by the claimant showed that he was treated with appropriate sympathy when he suffered what was undoubtedly a distressing family loss. It is not clear what more the respondent could or should have done at this time – nothing was suggested by the claimant.

48. Any complaint about this time period would be grossly out of time and the claimant has not shown why it would be just and equitable to extend the time limit.

3.1.5

49. The claimant’s personal belongings were removed from his locker; he raised this issue in a grievance. There is no evidence to show that whoever removed the claimant’s items did so because of his disability – rather than because the lockers were being removed and replaced. The complaint is not made out. In any event it is not clear why the claimant did not pursue the matter to a tribunal if he felt it was an act of discrimination. The complaint is out of time and there is no reason shown as to why it would be just and equitable to extend the time limit.

3.1.6

50. In the circumstances described in the facts above, this allegation of forging signatures was withdrawn. There was simply no evidence to support it, and it would in any event have been dismissed.

3.1.7

51. The allegation of falsification of training records is based on a misunderstanding of a digital record. It is notable that the claimant was unable to say why anyone would want to falsify such records – particularly while also showing he was on long term sick leave. The allegation was totally without merit.

3.1.8

52. I accept that on occasions the claimant's benefit entitlement would have been impacted by payroll calculations, and also accept that this would have caused him distress and financial difficulty. The allegation however that this was deliberate "misreporting" or done because of his disability is without any factual basis whatsoever. The claim is dismissed.

3.1.9

53. The claimant was dismissed by letter dated 16 July 2024. This was because he had been absent from work for over 4 years. A non-disabled comparator who had been off with no proposed return date would similarly have been dismissed and I do not conclude that there was any "less favourable treatment".

54. In any event, the claim is out of time. The claimant knew of the outcome of his appeal by 4 October 2024. He did in fact start and end ACAS early conciliation on the same date and has offered no explanation as to why he did not do this earlier, or given any evidence as to why it would be just and equitable to extend the time period.

Issue 4-section 15 claim.

55. The claimant was subjected to the unfavourable treatment of being dismissed; this was because of his absence from work due to mechanical back pain, and that absence had arisen from his back condition. The issue therefore was whether the Respondent had a legitimate aim and whether it acted proportionately.

56. I accept the Respondent's legitimate aims as pleaded in the amended ET3, to have an appropriate workforce which can address its operational needs.

57. I am entirely satisfied that the Respondents acted proportionately. They sought OH advice and GP advice, and also asked questions of the claimant as to his desires. It was apparent from the tone and content of the written responses the claimant provided that he had no intention of engaging in any efforts to seek adjustments which would enable a return to work. I agree with Ms Goddard that the claimant was aggressive and avoidant in his replies. Furthermore, the fact that the claimant has not sought any work in the last two years because of his back condition shows that there were no adjustments the respondent could have achieved. Elias LJ in Griffiths said that it is a matter of fact and degree as to how long an employer should wait for an employee to regain sufficient fitness to seek a supported return to work. Four years in this case was very much more than long enough.

58. Furthermore, I repeat what I set out above about the matter being out of time.

Issue 5 -Reasonable adjustments.

59. The respondent did apply a PCP to the claimant requiring him to work 20 hours a week under his contract. This does place disabled people at a substantial disadvantage as compared to non-disabled people as they are less likely to be able to comply, and it did place the claimant at that disadvantage.

60. However, there was no adjustment the respondent could have offered which would have resulted in the claimant's return. He does not suggest any. An adjustment which might impact on the "PCP" set out is obviously shorter hours of work – but the claimant did not want this. It was to this suggestion his response was "once bitten twice shy" when he had previously returned in late 2018 on a phased basis.

61. In the list of issues the claimant contended for an adjustment of lighter duties at the refurbished Milton Keynes store. This effectively was a reference to being able to supervise self check out tills. However, what the claimant said to OH said in May 23 – which he confirmed in his appeal against dismissal was still factually accurate - was effectively that he was frequently bed bound and could not carry out even the most basic of tasks such as his own shopping, and that if he did get out of bed he needed rest every 5 – 10 minutes. It is impossible to imagine how, if this was a truthful account, he could have undertaken any work, including what he contended for in the list of issues, of supervising self service check outs.

62. This claim is dismissed.

Issue 6- Harassment

63. I have dealt with the factual allegations which are repeated as discrimination and harassment above, save for the claim that the claimant was subject to "multiple calls from around 2020 until his dismissal in July 2024". This he does describe as conduct extending over a period of time. What he does not however do, despite being asked expressly both in cross examination and by me, is to set out who phoned and what was said that he thought amounted to harassment. The only example given was the call log showing that when he did not attend a scheduled meeting, two phone calls were made to him, but not answered. That conduct is entirely appropriate.

64. It may be that the claimant objected to being invited to welfare meetings, but if this is the conduct on which he sought to rely I would have no hesitation in

concluding that it was not reasonable for such communications to have the stated effect. I also note that when the claimant asked for communication via email, the respondent complied. Similarly, when abroad and having difficulty using teams, and preferring WhatsApp communications, again the Respondent acceded to the claimant's request. This claim is also without any factual basis and is dismissed.

EJ REBECCA TUCK KC

25 August 2026

Sent to the parties

26 September 2026