



EMPLOYMENT TRIBUNALS

Claimant: Miss L Payne

Respondent: Independent Catering Management Limited

Heard at: Ashford

On: 27-28 April 2026 &
18 May 2026
10 September 2026 (in
chambers)

Before: Employment Judge A Corrigan

REPRESENTATION:

Claimant: In person

Respondent: Ms R Paterson, Counsel

RESERVED JUDGMENT

1. The complaint of direct disability discrimination in relation to the dismissal is well-founded and succeeds
2. The remaining complaints of direct disability discrimination are not well-founded and are dismissed.
3. The complaint of unfavourable treatment because of something arising in consequence of disability is well-founded and succeeds.

REASONS

1. By her claim dated 25 September 2024 the claimant brings claims of direct disability discrimination and disability-related discrimination.

2. The disability relied on was recorded in the Case Management Order dated 24 November 2025 as generalised anxiety disorder, depression and underactive thyroid. The claimant confirmed at the outset that she was only relying on anxiety and depression.
3. The list of issues was set out in the same Case Management Order. The claimant did include with her statement what appeared to be an AI generated document which included other claims and issues but confirmed at the outset that she agreed with the list of issues in the order. In particular she confirmed that she did not want to add any of the alleged conduct in the direct discrimination (s13) issues to the discrimination arising from disability (s15) issues. The list was however modified in the hearing to reflect the way the respondent's case was put in cross examination and the claimant's answers, at my initiative (as set out in the next paragraph). The Respondent's representative agreed to produce the amended list of issues which are as set out below. I have just included the liability parts (and only as necessary to explain this decision), and I have removed the names of individuals who have not given evidence as this document will be published online.
4. The list of issues was amended on my initiative in discussion with the parties after the claimant's evidence. I only fully understood the respondent was making a distinction between the claimant's anxiety related absence and her conduct on 9 and 10 July 2024 when she was cross examined and after I had had time to reflect. This was partially apparent in the witness statements but I did not think the claimant had understood the significance. I considered the fact that the respondent had not put the dismissal reason in writing apart from very brief details in the response to the claimant's SAR request. Neither side was represented at the case management discussion and it does not appear that Mr Saunders explained the dispute about whether there had been contact by the claimant at that stage and that the respondent was saying the reason for dismissal was unauthorised absence due to the claimant's alleged lack of contact. I considered that it was a big ask for a litigant in person who knew she had sent messages in the relevant period to understand (without it being made clear) that the respondent's case was that the dismissing managers were unaware of them (the respondent's case on this did not fully come out until they were giving evidence) and that she should deal with this alternative scenario in the list of issues. However I felt notwithstanding her acceptance in evidence that the absence on 9 and 10 July 2024 was solely about her daughter there was conflicting evidence in the bundle including her explanation on 11 July 2024 by WhatsApp as to why she had not responded to calls. There was clearly an arguable case that even on the respondent's case the reason for dismissal was potentially for conduct arising from the disability. I felt the list of issues needed to be adjusted to reflect the true cases between the parties and that both sides could deal with the amended list of issues.

5. There were comments made during the hearing that could potentially have been relevant to a claim involving the protected characteristic of sex but that was not the claim before me and the respondent has not had the opportunity to defend such a claim so I make no further reference to those comments.

Issues

Disability

6. Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:
 - 6.1 Did they have a physical or mental impairment: generalised anxiety disorder and depression?
 - 6.2 Did it have a substantial adverse effect on their ability to carry out day-to-day activities?
 - 6.3 If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?
 - 6.4 Would the impairment have had a substantial adverse effect on their ability to carry out day-to-day activities without the treatment or other measures?
 - 6.5 Were the effects of the impairment long-term? The Tribunal will decide:
 - 6.5.1 did they last at least 12 months, or were they likely to last 12 months?
 - 6.5.2 If not, were they likely to recur?

Direct disability discrimination (Equality Act section 13)

7. Did the respondent do the following things:
 - 7.1 Her managers (her initial manager [name removed], Rad and Jack) asking the claimant whether the job was right for her;
 - 7.2 Rad chastising her for texting him at the weekend when other people did this regularly;
 - 7.3 Increasing her workload after a colleague [name removed] left;
 - 7.4 Either her initial manager [name removed] or Rad telling the claimant that 'it is not rocket science, just get the job done';
 - 7.5 Being excluded from social conversations in the kitchen by Rad;
 - 7.6 Being singled out for doing things wrong when her colleagues were doing the same thing;
 - 7.7 Rad refusing to provide details of alleged poor performance;
 - 7.8 Rad showing friendly behaviour to others in the kitchen but telling me 'I am not here to be your friend';
 - 7.9 Being sent home for crying when members of staff (names removed) who had shouted and sworn in the kitchen were allowed to stay at work;

- 7.10 Being told by Lamine that 'he hopes he makes her cry today as it makes him laugh';
 - 7.11 Treating the claimant sitting down during a dizzy spell as an example of poor performance;
 - 7.12 Being sent to work at the pod on more occasions than any other members of staff (it was meant to be a weekly rotation);
 - 7.13 Being refused permission to have time off in term time to attend a hospital appointment with her daughter when a colleague (name removed) was allowed time off to attend her child's sports day.
 - 7.14 Being dismissed.
8. Was that less favourable treatment? The claimant says they were treated worse than everyone else who worked in the kitchen including Rad, Lamine and three named colleagues.
9. If so, was it because of disability?

Discrimination arising from disability (Equality Act 2010 section 15)

10. Did the respondent treat the claimant unfavourably by dismissing her?
11. What was the reason for dismissal?
12. Did the following things arise in consequence of the claimant's disability?
- 12.1 Her sickness absence?
 - 12.2 Her failure to call or pick up a call on 9 and 10 July 2024?
13. Did the respondent dismiss the claimant because of either of the above?
14. Was the treatment a proportionate means of achieving a legitimate aim?
15. The tribunal will decide in particular:
- 15.1 was the treatment an appropriate and reasonably necessary way to achieve those aims?
 - 15.2 Could something less discriminatory have been done instead?
 - 15.3 How should the needs of the claimant and the respondent be balanced?
16. Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

Hearing

17. The hearing had been listed for 3 days but there was only judicial resource for 2 days during the original listing so the third day took place on 18 May 2026.
18. I heard evidence from the claimant on her own behalf. I heard evidence on behalf of the respondent from Mr J Jepson-Sykes (Director of Food), Mr L

Sonko (Head Chef and Kitchen Manager at the relevant grammar school), Mr R Gaffke (Chef Manager and Hospitality Manager), and Mr A Saunders (Managing Director).

19. There was a bundle of 113 pages. During the hearing I noted that one of the relevant messages between Mr Sonko and the claimant was clearly part of a longer chain of messages. I asked that the respondent find the full message chain. This led to Mr Sonko's message records from his phone being provided. They were clearly relevant and had not been provided during disclosure. The respondent's evidence changed during the proceedings to deal with the fact that the claimant had remained in communication with the respondent over 9 and 10 July 2024 and that Mr Sonko had been replying to her.

Facts

20. I found the following facts.
21. The respondent is a school catering provider operating multiple sites including the relevant grammar school. The claimant commenced employment on 11 September 2023 as a Catering Assistant at the relevant grammar school.
22. The Respondent provides catering services at a number of schools. At this particular school this included preparing, serving and cleaning across three outlets referred to as the main servery, the pod and the shack. There were usually 11 team members. It is the respondent's second busiest school and the workload and volume of production are high.
23. The claimant has anxiety and depression. She did not state this on her starter form though she did list underactive thyroid and high blood pressure. She did include details of the medication she takes for anxiety and depression but the respondent did not understand from that that these were for anything other than the health conditions she had declared.
24. I accept the claimant has a lengthy history of anxiety and depression dating back to at least 2007 and that for a significant period she was agoraphobic and could not work or leave her house as a result. At the relevant time she was managing by taking the medication referred to above. She said her symptoms would be very much worse if she were not. Even with that she was becoming distressed due to the work issues relevant to this case, she cried easily and on occasion was so tearful she could not work and had to go home. I accept that the events in this case have worsened her symptoms and that by 9 and 10 July she was unable to call Mr Gaffke or take a call from him. Following the claimant's evidence that she had been agoraphobic counsel for the respondent chose not to test the disability evidence further though there was no formal concession by the respondent at any stage.
25. The claimant says she told her initial manager about her anxiety and depression. She said she told him within two weeks of starting. The respondent

has not called that manager to dispute this. I accept the claimant's evidence about this.

26. She says that in the meeting that she had with Mr Jepson-Sykes in the week of 13 November 2023 she told him about the anxiety and depression. She says she did mention perimenopause but in the context of it impacting her anxiety. She says Mr Jepson-Sykes talked about his own experiences in respect of menopause and anxiety. He accepts there was such a conversation and that the claimant used the word anxiety but he thought they were discussing a symptom of menopause and this was the reason she could react tearfully or become emotional. He says they discussed coping mechanisms and that she could step away for 5 minutes as needed and he would talk to Mr Gaffke and Mr Sonko about this.
27. The claimant's line management changed from her initial line manager to both Mr Sonko and Mr Gaffke from December 2023. Mr Gaffke's role spans multiple sites and he was tasked with improvements across sites including increasing efficiency. The respondent was also introducing a new 6th form catering provision. They both report to Mr Jepson-Sykes. Mr Jepson-Sykes's view was that under the initial management the kitchen was not efficient or reaching its potential and was barely profitable. His remit when he appointed Mr Gaffke and Mr Sonko was to increase turnover and productivity.
28. The claimant says she told Mr Sonko about anxiety and depression. There are no documents to support that and again she did not say so in her statement. I do not find it established that, on the balance of probability, he knew. He did know however about the instances where she had become upset and cried a lot (in her words) and he had sent her home for this. He said he knew she could become emotional and upset at what he characterised as "small things" but that he did not know she had drugs for anxiety or depression.

Soon after Mr Gaffke became the claimant's line manager the claimant messaged him over the weekend about whether they needed help. She says that it was just one message and she was trying to be helpful, and that other staff had also done so. The respondent says the claimant was messaging more than other staff. There is no evidence either way, though the claimant has sent other messages relevant to the case out of hours. Mr Gaffke asked the claimant not to message him over the weekend in a private conversation. There is an account of this at page 108 though this was not a contemporaneous record.

29. The claimant also says she did tell Mr Gaffke about her anxiety and depression though he says she did not. She said it would have been in this meeting where he said not to text out of hours as she would have explained why she cries easily and gets upset. In her account of this meeting at page 108 she does not say she became upset and so I do not accept it was in that specific meeting.
30. She did tell Mr Gaffke about her anxiety in her text message below of 11 July 2024 and the fit note of 17 July 2024. It is right that she did not say she told him in her witness statement either generally, nor in her account of a specific

meeting. Nevertheless I find it likely she had said something about her anxiety to Mr Gaffke at some stage previously as the wording of the text message on 11 July 2024 reads as though it was written to someone who she believes already is aware of the anxiety and her mental health. It is not a message written to inform someone for the first time who was otherwise completely unaware. My view is that, more likely than not, at some stage well before July 2024, Mr Gaffke knew that the claimant suffers from anxiety. I do not however accept it was necessarily in the meeting she refers to as she did not say so in the account in her witness statement (or the earlier account of that meeting on pages 108-112).

31. In about December 2023 (about the same time as the management change) a colleague left and the claimant feels she was given extra work. The respondent disputes the claimant was given a significant amount more than anyone else and I accept that it was shared out amongst staff. The claimant believes they knew she would struggle and in that struggle they were still “picking” on her. Mr Jepson-Sykes accepts the claimant may have perceived she was doing work of others but he does not believe it was excessive.
32. The respondent’s perception was that the claimant needed support to meet the required pace of work. The claimant does not agree that she could not keep up as the food was ready on time, despite short staffing at times, and her perception is that she was being singled out for criticism. I find this is reflective of a difference in perspective of what the required pace was. The respondent wanted to increase efficiency and wanted food ready well before the required time and did consider the claimant was one of the slower team members in the food preparation and wanted her to be quicker. They wanted staff not to be finishing just as it came up to the school meal break but to be finishing earlier and able to take on other tasks as they wanted to develop the service – they were meeting the status quo but not the desired improvement. There are also peaks and troughs over the academic year with the summer months being less pressured when pupil volumes are down as some year groups leave earlier.
33. Both agree that sometimes she was ready on time (but not necessarily early) but sometimes she did need someone else to come and help. On the other hand the respondent recognises that the claimant was stronger in other areas of the work such as customer service and interaction with the pupils and staffing the tills. They felt as a result she was particularly good working in the pod and it was less busy, but the claimant felt this was furthest away and the worst place to be. The respondent sees placement in the pod as a favourable action.
34. The respondent’s managers are accustomed to managing staff working at different paces but it is high pressure and the food preparation is crucial as children must be fed on time within their breaks. At some stage the respondent introduced a rotating work rota so that all staff worked around the different tasks and venues. The different managers had different ways of doing things which at times led to contradictory instructions. Mr Sonko and Mr Gaffke would intervene if they saw a team member doing something that they considered was a safety issue such as the way they held the knife or using a tea towel under the chopping board. The claimant perceived she was singled out but I

accept they intervened whenever they saw someone doing something with safety implications, even if some staff actions may have gone unnoticed and therefore unchallenged. As Mr Gaffke sought to improve the service the claimant was also not the only staff member identified as needing support.

35. There was a perception amongst the respondent's management that the claimant could be tearful under pressure and reluctant to change and take on coaching. I find there were issues with communication and the claimant was resistant to instruction, challenge, and some of the attempts at coaching, which the respondent's witnesses found difficult to manage in the high pressure of the kitchen. Mr Jepson-Sykes accepts he did ask her if it was the right job due to her frustrations which she was sharing with him.
36. On 7 March 2024 Mr Gaffke called the claimant into his office to discuss performance and the claimant was so upset by the conversation that the next morning she sent an 8-9 minute voicemail to Mr Jepson-Sykes which has been recorded in writing and is at pages 108-112. In that message she said Mr Gaffke had said she needed to speed up; that she was struggling; and he had used the words "it's not rocket science". He had queried whether it was the right job for her and had said he was not there to be her friend. She said Mr Sonko praised her and the criticisms had come out of the blue. She said she had been really affected by the criticism, had been "really, really crying and left and went home at 20 past two", she said that she could not go back on the shop floor as she was sobbing to the point she couldn't get her words out as that's just a natural reaction that she can't help. She said she cried all night, and had a bellyache from the stress and upset. I accept that not all of the detail would necessarily be absorbed through listening to a voicemail in the same way as seeing it written down. However the length of the message and the distress were significant and I find would have been apparent to Mr Jepson-Sykes.
37. It is during that meeting that the claimant wanted more details of the performance concerns. In her own words she said she challenged Mr Gaffke about her performance. From her account of the meeting they did discuss some specific issues like speed of work and sandwiches and the number of questions she had about different tasks and the fact she had taken a personal call. She asked him what sort of questions and it was in response to that that he said he was not here to give her specifics and examples. She also said that he had it in for her since the conversation about the weekend text message and he did not really talk to her but chats and jokes with everyone else. If she tried to make conversation she gets straight answers and is cut off. She says he then said he was not here to be her friend. Mr Gaffke accepts he has said that to the claimant and others in attempts to set the professional boundary between manager and staff.
38. At some stage there was a dispute between two colleagues in the kitchen which escalated into a heated argument with swearing, but with no consequence. They were able to complete their shift though it affected the atmosphere. The claimant compares this to an incident between herself and Mr Sonko on 21 May 2024. In this incident there was a misunderstanding about topping up the gravy. The claimant sought to raise an issue with how she was treated in the moment

(during lunch service). Mr Sonko said words to the effect of “don’t start, don’t be dramatic and to do as she was told”. The claimant became very upset at this and began crying. Mr Sonko then ultimately told her to go home. She initiated a grievance about this but ultimately it was resolved informally. She says that the next day he said he enjoys annoying her as he likes to see her cry.

39. I accept Mr Sonko’s evidence that (as the claimant accepts) the claimant at times became upset in circumstances where the kitchen still needed to produce the food at the necessary time. He would try to help her keep going and avoid her getting upset. He and the claimant did talk a lot and the claimant did share personal matters. He said he did try to put himself in her shoes and understand and he had tried to support her as much as he could. He would give her a moment to go to the kitchen and toilet to wash her face and come back.
40. In relation to the gravy incident he said she was starting to become unreasonable and would not listen and in those circumstances needed to go home but there was no further negative consequence. He says she was upset and crying and was loud in front of the children for a prolonged period. He said on this day the claimant was so upset he felt he could not control the situation and felt the best thing was to send her home and allow her to recover. He felt this was best for everyone’s wellbeing before it escalated further. He said that it is crucial for the functioning of the service that the staff respond to “orders”. If a staff member thinks they know better than he does then he cannot manage the kitchen. No pay was deducted.
41. I have quoted the phrases used by Mr Sonko and accept that he was referring to the fact that the effective operation of the kitchen required staff to follow reasonable management instructions promptly during the service. The language itself is not appropriate to describe ordinary workplace management but the complaint was not about that and taking into account everything he said in evidence I do not find that it is likely that Mr Sonko said words to the effect that he enjoys annoying her and making her cry. On the contrary Mr Sonko wanted to support the claimant but found that difficult when she became upset during the busy lunch period.
42. Mr Sonko, Mr Gaffke and Mr Jepson-Sykes all were aware that the claimant was frequently upset and tearful. All three described her as emotional in some way. The claimant in her statement reports that another colleague had said she was in tears almost weekly. She herself accepts that she does cry easily because of her anxiety.
43. Mr Jepson-Sykes admitted he had asked the claimant whether the job was right for her. He said he does have such conversations where staff are finding the work hard and getting frustrated. In the claimant’s case she was obviously frustrated.
44. When the claimant requested time off to attend an appointment with her daughter she was asked if she could see if she can rearrange it. She went

anyway and there was no adverse consequence. There were other occasions where she started late or took time off due to her daughter's needs. It is right that efforts are made to enable staff to attend their child's sports day which is not something an individual parent can request to be re-arranged.

45. On 9 July 2024 shortly before the lunchtime service the Claimant informed both Mr Sonko and Mr Gaffke that she needed to go to the gate to see her daughter. Her daughter was with another family member in a distressed state because she was unwell and she was then taken to urgent care. I accept that the other family member was not in a position to take her to urgent care herself which is why she had been brought to the claimant's workplace. The claimant was told she could go and see her daughter but to return in 10 minutes. She says she could not believe that she had only been given 10 minutes and she says that was both a "last straw" and a trigger for her anxiety so she took her bag with her from her locker and did not come back but went ahead and attended urgent care with her daughter.
46. However she did promptly send a WhatsApp message at 11.47 to Mr Sonko. In this she said "I'm taking [my daughter] to urgent care, she is in [too] much pain in her belly and back" At 12.10 he replied "okay". She sent a further message that evening that she was staying home to look after her daughter the next day as she needed to be monitored. Again Mr Sonko replied "ok, no problem". Mr Sonko says he had a conversation about this with Mr Jepson-Sykes but cannot remember the detail. Mr Jepson-Sykes says he was not aware.
47. Meanwhile Mr Gaffke tried to call the claimant both days and she did not pick up. He asked a staff member to check her locker and it was empty. Mr Gaffke informed Mr Jepson-Sykes on the afternoon of 9 July that she had been allowed to go and see her daughter and then did not return.
48. The claimant messaged Mr Sonko again at 8.50pm on 10 July 2024. She said "sorry it's late and I missed a call earlier, I will not be in tomorrow I am sorry". Again early on 11 July 2024 Mr Sonko replied "Okay, that's fine".
49. The claimant says, and I accept, that the fact she had gone anyway despite being told to be back in 10 minutes had an impact on her anxiety which she describes as being "through the roof". Although the immediate reason she left was to care for her daughter, over the subsequent days the absence was because of anxiety, and she was also unable to handle calls with her employer as a result.
50. On the afternoon of 11 July 2024 (15.39) the claimant sent Mr Gaffke the message "Hi sorry I missed your calls, since I left the other afternoon my mental health has took a turn, I didn't realise how delicate I was until now, I cannot face talking to anyone at the moment, my anxiety is so high I wake up with nerves and my heart has been racing constantly since the other day, I have had my bp taken for heart palpitations. I am trying my hardest to shake it so I can get back to work". Mr Gaffke says he would have reported this to Mr Jepson-Sykes on

that day. Mr Jepson-Sykes's statement confirms Mr Gaffke shared with him the text message he had received from the claimant that date. This is also consistent with the way he responded to the claimant's later message about her fit note as he did not ask any questions about what had happened to the claimant in the interim. I find that it is clear from the message that although the claimant was dealing with her daughter she was also saying she herself had been unwell since she had left. So unwell that she could not deal with talking to anyone or picking up his calls.

51. Mr Jepson-Sykes says the decision to dismiss was taken on 11 July 2024 as the claimant was effectively AWOL 2 days and had not responded to calls (though she had and he knew she had). He says they are a small company and do not have an HR team or a process to follow. He says this was before he knew about the sick note. The claimant was also not meeting need in the kitchen and not quite making the grade. This was not the reason for the dismissal but was the context. Mr Saunders says they discussed the matter on 11 July and decided to dismiss her then.
52. On 15 July 2024 the claimant sent another message to Mr Sonko saying "Morning I was going to come in today but do not feel up to it, I will try again tomorrow, I messaged [Rad] but didn't realise he wasn't in today". Again the response was "okay, no problem".
53. On 17 July 2024 the claimant then sent her fit note dated the same date and covering the period from 15 July 2024 to 24 July 2024, stating she had anxiety and stress and was not fit to work. Initially Mr Jepson-Sykes replied to say nothing was attached but the claimant sent a further message with the attachment. The claimant sent a further message asking for confirmation of receipt and Mr Jepson-Sykes replied saying "received thanks".
54. At that point the dismissal letter had not been sent out but he says it did not occur to him to re-think. He said that in his head the decision had been made and been processed, and he did not think too much about it. He says that it would have been different if he had seen the messages with Mr Sonko and he would have reached out himself to the claimant. The last day of school was 22 July and he was due to go on holiday himself though he accepts he could have dealt with it if needed.
55. I find that even if Mr Jepson-Sykes was not aware of the messages with Mr Sonko responding "okay" to the claimant, from the claimant's contact of 11 and 17 July that had been seen, the claimant had clearly said she had been unwell herself since 9 July 2024 and had obtained a sickness certificate covering a period which commenced within 7 days of this. It is clear that the condition includes anxiety. She clearly intended to remain in employment and was communicating, albeit she had explained why she could not speak on the phone. The fact that she did not address the events of 9 July invites further enquiry as to the claimant's understanding of her conduct on that day, particularly given her usual way was to explain herself in detail.

56. The respondent's case by the end of the hearing was that it was all an unfortunate mistake. Mr Sonko had not passed on the claimant's messages or his replies, Mr Gaffke had found the locker empty and mistakenly told Mr Jepson-Sykes the claimant had left (without making any checks with Mr Sonko). Mr Jepson-Sykes and Mr Saunders then discussed the matter and decided to dismiss the claimant before either of them had seen the sick certificate because "she left the workplace without permission, subsequently failed to make contact in line with [the] absence procedure and was therefore absent without leave for a period".
57. Mr Jepson-Sykes says once he did see the fit note it did not occur to him to then reopen the matter before the letter dismissing the claimant was sent out. There is no documentary record to show the decision was made on 11 July. On the respondent's case there is no explanation for why if the decision was made on that day the letter was not sent until 25 July 2024. Mr Jepson-Sykes says he contacted the Payroll Manager to prepare the letter on 25 July 2024. On 25 July 2024 the respondent sent the claimant the letter at page 89 from Mr Jepson-Sykes informing her that her employment was terminated that day with one week's notice to be paid in lieu. She was told her employment would end on 31 July 2024. The Payroll Manager then wrote to the claimant on 31 July 2024 stating he was writing "further to Jack Jepson-Syke's letter of 25 July 2024".
58. Mr Saunders said in evidence that he had never met the claimant and he employs 100s of people. He said it was referred to him, that she had had an issue with her child and had left and simply had not returned. This is not the first time this had happened. He made the decision but does not otherwise get involved. They decided not to follow a disciplinary process. He received the hard copy of the certificate on about 25 July 2024. He says if he had known about that prior to the decision he might have come to a different conclusion. He said it is important that they have the staff in place. He was going away himself shortly after and had made his decision with the information he had. He knew Mr Gaffke had tried to make contact and not had his calls accepted. He does sometimes use HR consultants but not where someone does not have two years' service.
59. On 2 October 2025 in response to the claimant's subject access request the Mr Saunders wrote as follows: "you were dismissed from your role on 31 July 2024 due to performance/attendance." She was provided her attendance record which stated in respect of 10/7/2024 -24/7/2024 (11 days) she had been marked "Absent (now known to be sick)"
60. On the response the respondent stated that "numerous absent days were recorded and at the point of termination, Miss Payne had absented herself from her place of work without permission by her Line manager. This work record and lack of communication resulted in the decision to terminate her employment....the condition of anxiety & stress stated on a [fit note] was not received by our payroll office dated 17 July 2024 prior to the decision to [terminate] employment...The employee was deemed unsuitable with a poor

attitude and attendance record (24 days sick/absent from 190 working days) hence employment was terminated.”

61. I accept the claimant's evidence that the claimant's anxiety symptoms were triggered by the events of 9 July and that although she went to care for her daughter she was also affected by her anxiety. She was not able to follow the absence management process exactly, and also did not pick up the calls because of her anxiety, as she said in her contemporaneous message. She says and I accept that her mental health as it was at that time stopped her speaking on the phone in circumstances where she felt she had done something wrong or they could be saying they needed her in the kitchen.
62. Mr Sonko's witness statement said that the claimant made no contact with Mr Sonko on that day, the following day or the day after and he informed Mr Jepson-Sykes of her absence. This was not true as was apparent from the late disclosure.
63. Mr Jepson-Sykes accepts it was short sighted not to make more effort to make better contact and says he was equally surprised she did not contact him directly. He says he did not do anything in response to the claimant's correspondence attaching the sick note. There was no curiosity triggered by the inconsistency between the claimant's email and the assumption that she had left without any authorization on 9 July 2024. I asked why he did not re-open the issue upon receipt of this letter. He said she was not quite making the grade in respect of meeting the need in the kitchen and in his head the matter had been processed and he did not think too much about it.

Relevant law

64. The Equality Act 2010 says that a person has a disability if they have a physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. Substantial is defined as more than minor or trivial and long-term adverse effect includes where the effect has lasted 12 months or more.
65. S13 Equality Act 2010 provides that 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. There must be no material difference between the circumstances relating to the case of B and that of any comparator (s23).
66. s15 Equality Act 2010 states that a person (A) discriminates against a disabled person (B) if A treats B unfavourably because of something arising in consequence of B's disability and A cannot show that the treatment is a proportionate means of achieving a legitimate aim. This does not apply however if A shows they did not have the requisite knowledge. I had regard to paragraphs 106-7 of the respondent's skeleton argument.
67. The EHRC Code of Practice on Employment states (at paragraphs 5.8-5.9) there must be a connection between whatever led to the unfavourable

treatment and the disability. The consequences of a disability include anything which is the result, effect or outcome of a disabled person's disability. Some consequences may not be obvious.

68. In terms of knowledge of disability, the EHRC Code states at paragraphs 5.14-5.17 that it is not enough for the employer to show they did not know the disabled person had the disability. They must also show they could not reasonably have been expected to know about it. They should consider whether a worker has a disability even where one has not formally been disclosed, and do everything they reasonably can be expected to do to find out if the worker has a disability. The example given in the Code of circumstances that should have alerted an employer to the possibility that behaviour was connected to a disability was of an employee becoming emotional and upset at work for no apparent reason along with changes with time keeping and performance. 5.17 states that where an employer's employee knows of the disability the employer will not usually be able to claim they did not know. The relevant knowledge is knowledge of the facts constituting the employee's disability, the employer does not also need to know that, as a matter of law, the consequence of such facts is that the employee is a 'disabled person' as defined in the Equality Act (Gallop v Newport City Council 2014 IRLR 211).
69. The burden of proof is set out at section 136 Equality Act. This states that if there are facts from which the Tribunal could decide, in the absence of any other explanation, that s13 or s15 has been contravened by A then it must hold the contravention occurred unless A shows that it did not contravene the provision.
70. s123 Equality Act 2010 states that the tribunal does not have jurisdiction to consider a claim submitted more than three months after the act complained of, unless it is just and equitable to extend the time limit.
71. s123(3) states that conduct extending over a period is to be treated as done at the end of the period however a failure to do something is done when the person decides not to do it. In the absence of evidence to the contrary a person is taken to decide on a failure to do something when either they do an act inconsistent with it or on the expiry of the period when they could reasonably be expected to do it.

Conclusions:

Disability

Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about?

72. I accepted the claimant has anxiety and depression which amount to a disability. This has been the case for many years and throughout her employment with the respondent. The medical evidence dated 2018 was that the claimant had a long history of these conditions and the use of relevant medication was documented in the claimant's paperwork with the respondent.

There is a further GP letter dated 20 February 2025 which says she has had anxiety and low mood since 2007. I accepted the claimant suffered agoraphobia for a significant period in the past and depends on medication to be able to function. Without her medication her symptoms would be very much worse. The respondent did not really continue to challenge this in cross examination, though there was no concession of this point.

Direct disability discrimination (Equality Act section 13)

Did the respondent do the following things? If so, was that less favourable treatment? The claimant says they were treated worse than everyone else who worked in the kitchen including Rad, Lamine and three named colleagues. If so, was it because of disability?

73. A number of the allegations are matters which the claimant said triggered her symptoms. I agree with the respondent's submission that the claimant had to be repeatedly reminded that she needed to establish that her disability was the motive, and not that it was exacerbated by the treatment (though that could be relevant at remedy stage). She said the respondent do not have time for anyone with anxiety and depression in that kitchen. In evidence the claimant said they knew she had anxiety and depression and that questioning whether it was the right job for her caused her to question her whole self and think she was not good enough, and to trigger her anxiety. She did not say that this behaviour was motivated by her anxiety and depression until prompted. With respect to the comment about rocket science this was a trigger for her with anxiety and that they knew what they were doing. I have not upheld this claim save for the dismissal. I have addressed all the issues in respect of each allegation and in each case it has not been necessary to address the burden of proof as I either have not found that the incident occurred or I am satisfied it is not less favourable or done because of disability.

Her managers (her initial manager [name removed], Rad and Jack) asking the claimant whether the job was right for her;

74. It is accepted that the respondent's management asked the claimant if this was the right job for her. The intention was supportive but this does communicate that they thought it was not. This was done because she appeared to find the pressure difficult and became upset at the attempts to help her to work at the pace required. It is a busy kitchen, the claimant was not as fast at the production side and was resistant to attempts to coach. There was frustration on both sides. Mr Gaffke also says he has said this to other staff. It was not because the claimant has anxiety and depression. The claimant herself agreed it was not motivated by anxiety and depression but said, as cited by the respondent at paragraph 46 of her submission "but surely they know it would trigger anxiety".
75. The claimant has not run the case on the basis that her reaction to performance coaching was something which arose from her disability and this is why these

comments were made. It may be that such a case could have been run but that was not how she put the case.

Rad chastising her for texting him at the weekend when other people did this regularly;

76. Mr Gaffke did ask the claimant not to message him over the weekend in a private conversation. She had sent at least one message out of working time, though she was trying to be helpful, and I accept that had led to a comment to him from his wife. It is not unreasonable to seek to protect his personal time in this way.

77. The claimant says she was only doing what other staff do whereas the respondent says the claimant was messaging more than others. I have no evidence either way on this in that I do not have the actual messages. I do not consider it really matters whether other staff were also doing this but I do not find it more likely than not that the claimant was singled out. In any event I accept this was not said for any reason other than Mr Gaffke was trying to set an appropriate boundary around his personal life.

78. I accept he was not motivated by the claimant's anxiety and depression. I accept it did trigger symptoms of anxiety for the claimant but that is not the relevant test.

Increasing her workload after a colleague [name removed] left;

79. The workload following the colleague's departure was shared amongst staff and I accept this applied to others not just the claimant. It also coincided with the respondent wanting to increase productivity and that was the purpose of Mr Gaffke's role. This was not personal to the claimant and was not motivated by anxiety and depression. I accept that the redistribution of work and the efforts to increase productivity triggered the claimant's anxiety along with comments about her pace of work but it was not motivated by it.

Either her initial manager [name removed] or Rad telling the claimant that 'it is not rocket science, just get the job done';

80. I accept that these comments were made and that they caused the claimant upset and increased her anxiety. Mr Gaffke himself acknowledges they were said in frustration and upset the claimant. She is not the only person he has said this to. The comments are not a supportive way of addressing the concerns, which I understand Mr Gaffke acknowledges, but I accept the comments were made because of concerns about the claimant's speed and need for coaching, and some resistance to it, in the busy pressured kitchen environment. They were not made because she has anxiety and depression.

Being excluded from social conversations in the kitchen by Rad;

81. The claimant had a better relationship with Mr Sonko than Mr Gaffke. He did not deliberately exclude her though she felt she had been shut down by him. I infer from the evidence that Mr Sonko is more tolerant of and participates more in personal conversation than Mr Gaffke. Whether or not staff were involved in a conversation was impacted by where they were stationed. I did not hear evidence on this but consider it likely to also have been impacted by the pressure of work and speed at which staff were working as both Mr Sonko and Mr Gaffke emphasize that their priority is the business needs and getting the work done in the kitchen. He did not treat her this way because of anxiety and depression.

Being singled out for doing things wrong when her colleagues were doing the same thing;

82. There were contradictory instructions at times between Mr Sonko and Mr Gaffke. The claimant was at times instructed to do things differently when each considered there was a faster way to do something or there was a health and safety issue. I accept that they may not have intervened every time for every colleague, but that the motive in intervening was to explain a safety issue or to help the claimant achieve the necessary productivity. There were other colleagues identified as needing support as Mr Gaffke identified where this was needed. If they saw any staff member doing anything which needed intervention for a safety reason they would need to intervene. She was not deliberately singled out. She also at times responded with a challenge, which when managing a pressured kitchen environment is challenging in itself.

Rad refusing to provide details of alleged poor performance;

83. This is not really what happened. Mr Sonko and Mr Gaffke were informally coaching the claimant "on the job" and were giving details as issues arose in the performance of the role. They were not taking any performance management steps. This is a reference to the conversation with Mr Gaffke at paragraphs 36-37 (pp108-112). He said there were concerns about her performance and speed. The claimant described herself as challenging him during that conversation. They discussed a number of specific matters as described at paragraph 36. One of the issues was that Mr Gaffke said she was still asking a lot of questions about the tasks she had to do. She did ask him to give more details about the questions she was asking. He did, on her contemporaneous account, say that he was not going to give specific examples of the questions. I find he did not want to get drawn into and respond to the claimant's challenge. This was not because of anxiety and depression.

Rad showing friendly behaviour to others in the kitchen but telling me 'I am not here to be your friend';

84. As found at paragraph 81 above Mr Gaffke did not deliberately single the claimant out in terms of friendly behaviour or say this to the claimant in isolation. He said it in response to the claimant saying he was not being friendly to her. He did not agree that he ignored her but was trying to explain the professional boundary. He said this in response to the claimant's challenge and not because

of her anxiety and depression. He has said similar things to others when seeking to set professional boundaries as a manager.

Being sent home for crying when members of staff (names removed) who had shouted and sworn in the kitchen were allowed to stay at work;

85. The claimant was instructed to go home. She was still paid. There was no disciplinary action in relation to either incident. The incident involving the claimant involved her becoming very upset over a misunderstanding in relation to filling up the gravy during the pressured lunchtime service. Mr Sonko considered she was resistant to his instructions and was so upset that she was not in a position to continue working. He considered it was best to allow her the time to recover and enable himself to continue with the service. The incident involving colleagues was not really comparable. They had a fight but were separated and were able to continue to work. Again Mr Sonko was motivated by the claimant's distress which was likely to be connected to her disability, but not by her disability itself. She has not raised this allegation as discrimination arising from disability.

Being told by Lamine that 'he hopes he makes her cry today as it makes him laugh';

86. I did not find it likely that Mr Sonko made this comment. The claimant accepts they otherwise had a good relationship and accepts he tried to be supportive. I find he did try to be supportive. His priority was that the busy kitchen run effectively and when he thought she might become upset he actively sought to avoid this both to support her but also to maintain the operation of the kitchen. I do not find it credible that he wanted to upset her or expressed this.

Treating the claimant sitting down during a dizzy spell as an example of poor performance;

87. The claimant accepted that this incident was not treated as poor performance. Her case is that Mr Gaffke shook his head at her whilst she was sitting down. He cannot remember this at all. It clearly was not treated as poor performance. No disciplinary action was taken at all.

Being sent to work at the pod on more occasions than any other members of staff (it was meant to be a weekly rotation);

88. The example of this appeared to be limited to the claimant having to cover two consecutive weeks because of another staff member's absence. The respondent does not consider working in the pod to be a disadvantage as it is less pressured. It was also a role that in the respondent's view suited the claimant's skills better and she performed well. It did not have the same pressure in respect of production and the claimant performed well on the tills and interacting with students. The claimant perceived it as isolating. It is not clear that the claimant was sent there regularly more than others but another staff's absence required her to cover an extra week on a one-off basis. This

was because of the other staff member's needs. If it did occur more often it was because the claimant performed well in that position and was not done to deliberately isolate her or motivated by her anxiety and depression.

Being refused permission to have time off in term time to attend a hospital appointment with her daughter when a colleague (name removed) was allowed time off to attend her child's sports day.

89. The claimant was not refused permission. She was asked to see if she could change it. I accept that the general expectation of at least Mr Gaffke is that where possible appointments should be outside working hours as the shift finishes at 2pm, but staff will be allowed to go if that is not possible. I accept that he communicates that expectation to other staff as well. She went anyway believing she could not change it and there was no adverse consequence for doing so. Attending an appointment is not comparable to attending sports day. It is sometimes possible to change a medical appointment to a different time whereas a school is unlikely to re-arrange a sports day to suit one parent. The claimant's need for time off was accommodated on other occasions as can be seen from the message chain between herself and Mr Sonko.

Being dismissed.

90. The claimant was dismissed. None of the comparators relied on were in materially the same circumstances. However, the claimant's communication did raise mental health and stress and anxiety. If there are primary facts from which it could be inferred that the dismissal was at all because of the claimant's mental health or anxiety a comparator would not be needed.
91. Here the primary facts are that there was a history of the claimant going home from shift early or needing management support because of distress and finding coaching or management intervention upsetting. There was already some suggestion that it was because of anxiety. It is not in my view particularly relevant whether Mr Jepson-Sykes thought the anxiety was caused by menopause or otherwise. The claimant then left her shift to take her daughter to urgent care and then remained at home to monitor her. She texted her manager more than once who responded each time to the effect of "okay". She did not pick up calls from her other manager but texted him on 11 July to apologise for missing the calls explaining that the reason for this and her ongoing absence was her mental health, referring specifically to high anxiety. She then sent the fit note on 17 July 2024 signing her off from 15 July 2024 with anxiety and stress. There was no further contact from the respondent until the dismissal letter dated 25 July (this was sent two weeks after the text of 11 July and more than a week after the sick certificate had been received).
92. On 2 October 2025 in response to the claimant's subject access request Mr Saunders wrote as follows: "you were dismissed from your role on 31 July 2024 due to performance/attendance." She was provided her attendance record which stated in respect of 10/7/2024 -24/7/2024 (11 days) she had been marked "Absent (now known to be sick)"

93. On the response the respondent stated that “numerous absent days were recorded and at the point of termination, Miss Payne had absented herself from her place of work without permission by her Line manager. This work record and lack of communication resulted in the decision to terminate her employment....the condition of anxiety & stress stated on a [fit note] was not received by our payroll office dated 17 July 2024 prior to the decision to [terminate] employment...The employee was deemed unsuitable with a poor attitude and attendance record (24 days sick/absent from 190 working days) hence employment was terminated”. By the hearing the respondent’s position was that the dismissal was because the claimant had walked out of her shift contrary to management instruction and without following proper reporting procedures together with wider performance concerns (a reference to the productivity issues).
94. This was despite it being known the claimant texted her Line Manager on 11 July explaining the reason for her difficulty calling and her ongoing absence was because of her mental health. During the hearing it was conceded she had in fact communicated with her Line Manager. The sick certificate had been received well before the dismissal letter was written. The respondent also failed to disclose the messages from Mr Sonko as part of the proceedings.
95. In my view an inference could be drawn from these facts, the changing case of the respondent and the failure to properly comply with disclosure, that at least part of the reason for dismissal was the reference to mental health and anxiety. The burden of proof therefore shifts to the respondent on this allegation.
96. I find the respondent has not shown it to be more likely than not that the dismissal had nothing to do with the anxiety. There are aspects to the explanation that are not adequate and remain unexplained. There is no documentary evidence to support the decision was made on 11 July 2024 or to explain a subsequent delay of two weeks before the claimant was informed of the decision. I find it more likely the decision was made later and more contemporaneously with the dismissal letter date. In any event, even if it was not, there is no adequate explanation for why the respondent did not re-open the matter once they knew the claimant had a sick certificate and her health had impacted her ability to make contact or pick up calls. There is no adequate explanation as to why further enquiry was not made with the claimant, given the claimant was in contact to explain her situation, if there were any persisting concerns about why she had not made contact sooner than 11 July 2024 or to understand why she had done what she did on 9 July. There was a conversation between Mr Sonko and Mr Jepson-Sykes at the time of the messages and I am not persuaded he did not know the claimant had at least messaged him. There were also matters in the messages from the claimant that Mr Jepson-Sykes was aware of which called for further enquiry. In particular the lack of explanation of what had happened on 9 July 2024. Given the claimant’s usual approach being to explain her conduct the lack of any mention of this is unusual. It is surprising absolutely no further enquiry was made. Mr Jepson-Sykes’ evidence as to the reason for dismissal was not correct as he knew the claimant had provided an explanation.

97. I find the dismissal in the circumstances was because of disability.

Discrimination arising from disability (Equality Act 2010 section 15)

*Did the respondent treat the claimant unfavourably by dismissing her?
What was the reason for dismissal?*

98. Although I have found that the dismissal was at least in part because of the disability itself based on the reversed burden of proof, part of the reason was also the reason given by the respondent. I find this has shifted during the course of the proceedings. In the response it included the absence whereas by the hearing the focus was more on the fact that the claimant had left her shift on 9 July and had remained absent and not followed the absence management procedure. I find it likely that the reason was also in part the conduct in leaving the shift just before lunch with her bag, the failure to pick up Mr Gaffke's calls or reply to him before 11 July, and the ongoing absence.

*Did the following things arise in consequence of the claimant's disability?
Her sickness absence?*

99. The claimant's absence was because of her anxiety. She made it clear on 11 July 2024 that her anxiety was preventing her coming back to work and this was confirmed by the fit note which covered the period from 15 July. Although she left work on 9 July and stayed home to care for her daughter on 10 July, it was clear from her contemporaneous message that she had also not been fit to work on those days as since 9 July her anxiety was high and her mental health had deteriorated. She explained the physical symptoms she had been having. I do not accept that the fact that the fit note commenced 15 July is evidence that she was fit to attend work before that given employees can self certify for a 7 day period. I note I did not hear evidence about this but the claimant had made contact and explained how she felt and I accept that evidence and do not find it inconsistent with the dates of the sick note as I am invited to do by the respondent.

Her failure to call or pick up a call on 9 and 10 July 2024?

100. The claimant in fact had sent messages to Mr Sonko who had been replying "okay" including to let him know she was taking her daughter to hospital. However she did not speak to anyone as she left on 9 July, call in accordance with the policy nor pick up the calls from Mr Gaffke. She made clear on 11 July 2024 this was because of her mental health and high anxiety and she could not face speaking to anyone. I accept that particularly applied to someone in authority like her Line Manager and that she could not deal with either making or receiving calls because of her anxiety. I also accept her anxiety spiked at the moment she was given 10 minutes to tend to her daughter and how she behaved thereafter was to manage the situation as best she could whilst experiencing anxiety.

Did the respondent dismiss the claimant because of either of the above?

101. Yes, I find that the claimant's failure to pick up calls and her ongoing absence from 9 July were part of the reason for dismissal. Even if the respondent's decision makers erroneously dismissed the claimant because they were unaware of the messages with Mr Sonko this itself is a consequence of the fact she could not pick up the calls and explain herself.

*Was the treatment a proportionate means of achieving a legitimate aim?
was the treatment an appropriate and reasonably necessary way to achieve those aims? Could something less discriminatory have been done instead?
How should the needs of the claimant and the respondent be balanced?*

102. The respondent has not shown that the dismissal was a proportionate means of achieving a legitimate aim. The respondent asserts that the legitimate aim is enforcing proper absence reporting procedures and ensuring the service is adequately staffed to serve students. I accept those are legitimate aims.

103. However nothing of substance was said in submissions about why dismissal was the proportionate means of achieving this other than it was close to the end of term when the respondent's management would then be on leave. Both Mr Saunders and Mr Jepson-Sykes acknowledged that with hindsight they could have dealt with the matter differently. There was a pressure to ensure staff were in place for September but Mr Jepson-Sykes confirmed he would handle things over the summer as needed.

104. The respondent therefore has not discharged the burden here. In any event I find dismissal was neither appropriate nor reasonably necessary to achieve those aims.

105. In respect of the enforcement of absence management procedures, the respondent could have made further enquiries of both what happened on 9 July and the claimant's health and explanation for being unable to call before making a decision as to whether any kind of disciplinary action was needed in respect of any ongoing concerns about the compliance with the policy. This would have elicited the fact that the claimant had sent a number of messages over the relevant period and her manager had responded saying "okay", including in respect of the first message saying she was taking her daughter to urgent care and the message saying she had to monitor her daughter the next day. Dismissal in those circumstances (of an employee with anxiety who finds it difficult to manage a telephone call but was keeping in touch and receiving replies from her manager suggesting there was no problem with her conduct) was not appropriate or reasonably necessary to enforce absence management.

106. In respect of the need for staffing, this needs to be balanced with the serious effect of the dismissal on the claimant and the fact her ongoing absence was because of disability. I am not satisfied that there were not other ways to address the need for staff cover, including considering measures that could be put in place to assist the claimant's return, that would have been more

proportionate and achieved the same legitimate aim without such serious consequences to the claimant.

Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

107. I find the respondent did know well before the dismissal as I have accepted the claimant told her first line manager. I also find Mr Jepson-Sykes knew she had symptoms of anxiety and that it is irrelevant that he thought the cause of these was menopause rather than a long history of anxiety. I also accept the claimant had told Mr Gaffke prior to 11 July. I also consider that the respondent knew enough from the content of the 11 July message and the fit note, in the context of the claimant's behaviour over her employment and discussion she had had with Mr Jepson-Sykes in November 2023. This being in particular the claimant saying she could not control becoming regularly upset, including to the degree she had to leave shift early and on one occasion left a voicemail lasting over 8 minutes saying how upset she was and that it had impacted her sleep. If they did not know, then all of this should have alerted the respondent to the possibility that the claimant had a disability and they could reasonably have been expected to make further enquiries to find out whether or not this was the case prior to dismissing the claimant.

Approved by:

Employment Judge Corrigan

10th September 2026

Judgment sent to the parties on:

2nd October 2026

For the Tribunal Office

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision. If written reasons are provided they will be placed online.

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at <https://www.gov.uk/employment-tribunal-decisions> shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found at www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/