EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Miss D Beckford	**v**	**Priory Healthcare Limited**

Heard at: Watford (by CVP) **On**: 26 to 28 May 2026

Before: Employment Judge Wyeth

Appearances:

For the Claimant: In person
For the Respondent: Miss C Bonifai (counsel)

JUDGMENT having been sent to the parties on 2 July 2026 after being handed down along with reasons verbally on 28 May 2026 and a request for written reasons having been made by the claimant in accordance with Rule 62(3) of the Employment Tribunal Rules of Procedure 2024, the following written reasons are provided:

REASONS

The claims

1. Following a period of ACAS Early Conciliation commencing on 21 July 2024 and a certificate being provided on 25 July 2024, by way of a claim form issued on 7 August 2024 the claimant brought complaints of ordinary unfair dismissal, wrongful dismissal (breach of contract), direct disability discrimination, discrimination arising from disability, harassment related to disability and a failure to make reasonable adjustments. The respondent defended the claims.

The issues

2. The claims and issues for this final Hearing were identified and set out in the order of EJ Bartlett sent to the parties on 20 February 2025 following a case

management preliminary hearing before her on 11 February 2025. She recorded them as follows:

"1. Time limits

1.1 Does the tribunal have jurisdiction to consider the claimant's allegations of discrimination made before 22 April 2024? The claimant commenced ACAS Early Conciliation on 21 July 2024.
1.2 Do the claimants allegations constitute a series of continuous acts?
1.3 Does the tribunal consider it just and equitable to extend the primary time limits for the claimant to present her case?

2. Unfair dismissal

2.1 It is not disputed that the Claimant was dismissed.
2.2 What was the reason or principal reason for dismissal? The respondent says the reason was capability (long term absence).
2.3 If the reason was capability, did the respondent act reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the claimant? The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case. It Tribunal will usually decide, in particular, whether:
2.3.1 The respondent genuinely believed the claimant was no longer capable of performing their duties;
2.3.2 The respondent adequately consulted the claimant;
2.3.3 The respondent carried out a reasonable investigation, including finding out about the up-to-date medical position;
2.3.4 Whether the respondent could reasonably be expected to wait longer before dismissing the claimant;
2.3.5 Dismissal was within the range of reasonable responses.
2.4 Did the respondent act reasonably or unreasonably in all the circumstances, including the respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the claimant? The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case.
2.5 If the procedure followed by the Respondent in dismissing the Claimant was unfair, what is the likelihood that the Claimant would have been fairly dismissed in any event, had a fair procedure been followed?

3. Remedy for unfair dismissal

3.1 If there is a compensatory award, how much should it be?
3.2 What basic award is payable to the claimant, if any?
3.3 Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

4. Wrongful dismissal / Notice pay

4.1 What was the claimant's notice period?
4.2 Was the claimant paid for that notice period?

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

5.1 Did the respondent do the following things:

5.1.1 From May to August 2023 the Respondent contacted the Claimant on a weekly basis for what it called a "wellbeing" call
5.1.2 From September to November 2023 the Respondent contacted the Claimant on a weekly basis for what it called a "wellbeing" call;
5.1.3 In the Capability meeting on 13 May 2024 Mr Olsen made the following comments:
5.1.3.1 The claimant would be better off on benefits
5.1.3.2 We have a contract with you and you have not met your contractual obligation
5.1.3.3 That the claimant was required to work on site and not from home
5.1.4 dismissal on 13 May 2024
5.1.5 delay in providing the claimant with her appeal outcome
5.2 Was that less favourable treatment?
The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's. If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether they were treated worse than someone else would have been treated. The claimant relies on a hypothetical comparator.
5.3 If so, was it because of disability?

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

6.1 Did the respondent treat the claimant unfavourably by:
6.1.1 Dismissing her on 13 May 2024
6.2 Did the following things arise in consequence of the claimant's disability:
6.2.1 Sickness absence from 13 May 2023 to 13 May 2024?
6.3 The respondent does not dispute that it dismissed the claimant because of that sickness absence.
6.4 Was the treatment a proportionate means of achieving a legitimate aim? The respondent says that its aims were:
6.4.1 To have some carrying out the Medical Secretary role on site
6.5 The Tribunal will decide in particular:
6.5.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;
6.5.2 could something less discriminatory have been done instead;
6.5.3 how should the needs of the claimant and the respondent be balanced?

7. Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

7.1 A "PCP" is a provision, criterion or practice. Did the respondent have the following PCPs:
7.1.1 Requiring medical secretaries to work on site and not from home
7.1.2 Requiring medical secretaries to work full time
7.2 Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that she was unable to carry out her role?
7.3 Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?
7.4 What steps could have been taken to avoid the disadvantage? The claimant suggests:
7.4.1 She was allowed to work part time or from home whilst she recovered from illness
7.5 Was it reasonable for the respondent to have to take those steps?
7.6 Did the respondent fail to take those steps?

8. Harassment related to Disability (Equality Act 2010 section 26)

8.1 Did the respondent do the following things:

8.1.1 From May to August 2023 the Respondent contacted the Claimant on a weekly basis for what it called a "wellbeing" call
8.1.2 From September to November 2023 the Respondent contacted the Claimant on a weekly basis for what it called a "wellbeing" call;
8.1.3 In the Capability meeting on 13 May 2024 Mr Olsen made the following comments:
8.1.4 The claimant would be better off on benefits
8.1.5 We have a contract with you and you have not met your contractual obligation
8.1.6 That the claimant was required to work on site and not from home
8.1.7 dismissal on 13 May 2024
8.1.8 delay in providing the claimant with her appeal outcome
8.2 If so, was that unwanted conduct?
8.3 Did it relate to disability?
8.4 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?
8.5 If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

<u>9. Remedy for discrimination</u>

9.1 What financial losses has the discrimination caused the claimant?
9.2 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?
9.3 If not, for what period of loss should the claimant be compensated?
9.4 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?
9.5 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?
9.6 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?
9.7 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
9.8 Did the respondent or the claimant unreasonably fail to comply with it?
9.9 If so is it just and equitable to increase or decrease any award payable to the claimant?
9.10 By what proportion, up to 25%?
9.11 Should interest be awarded? How much?"

3. Both parties agreed at the outset that this remained the full and accurate list of issues for determination at this hearing.

Wrongful dismissal concession

4. During a discussion about the issues, Ms Bonifai confirmed that upon reflection, and by way of a sensible concession, the claim for wrongful dismissal was conceded by the respondent and that the claimant was entitled to receive the appropriate notice payment. Accordingly, by consent I issued a Judgment that the complaint of wrongful dismissal was well founded and ordered that the respondent pay to the claimant the gross sum of **£2,081.05**, representing one month's gross salary at the date of dismissal.

Evidence and procedure

5. At the outset of the hearing, I checked with the claimant whether any adjustments were required in light of her medical condition. She confirmed that, apart from regular breaks, which were provided throughout the hearing, there was nothing further required to enable her to participate effectively.

6. I had before me (electronically) a pdf bundle of documents comprising 173 pages. Both parties agreed that this was the correct bundle, although the claimant raised concerns about its contents, suggesting that certain documents were missing. When the matter was explored further, it appeared that the claimant was referring to the documents prepared for the purposes of the case management hearing (in particular the Agendas) including documents she had prepared in response to questions posed by the tribunal in advance of the preliminary hearing before EJ Bartlett.

7. I explained that such documents would not ordinarily form part of a final hearing bundle because they were prepared for the purpose of identifying the claims and issues to be determined at trial. They would, have been taken into account already, however, by EJ Bartlett for the purposes of her case management orders and summary of the preliminary hearing in February 2025.

8. That said, during the hearing it became apparent that there were certain evidential documents upon which the claimant wished to rely which had not been included in the bundle. I asked the parties to provide copies of those documents. They consisted of dome brief email correspondence and a handwritten note recording questions and answers from the capability meeting. So far as those documents are relevant, I have addressed them in my findings of fact. Again, sensibly, there was no objection from Ms Bonifai to their inclusion in the bundle of evidence and they were added as pages 174 to 176.

9. I heard evidence first from the claimant and then from one witness on behalf of the Respondent, Mr Olsen.

10. Midway through the hearing, I was provided with a written witness statement from Mr Adams, the appeal officer (which had been exchanged earlier with the claimant). I was told that an application had previously been made to postpone the hearing so that he could attend and give evidence in person, but that application had been refused. I have attached such weight to his statement as I consider appropriate. In circumstances where he was not available for cross-examination, I consider that weight to be limited but I did not consider it appropriate to disregard his evidence altogether. So far as it was appropriate to do so, my findings of fact and conclusions refer to the relevant parts of his evidence.

11. Following the claimant and Mr Olsen giving evidence, I then heard submissions. Ms Bonifai made oral submissions and relied upon two authorities. I then heard oral submissions from the claimant.

12. I ensured that both parties had sufficient time to question witnesses and make submissions. In particular, I was concerned to ensure that the claimant had a full

opportunity to present her case, and she confirmed that she had been able to do so.

Findings of fact

13. From the evidence before me, I make the following findings of fact (on the balance of probabilities where necessary).

14. The claimant was employed as a Medical Secretary by the respondent from 28 October 2019 until 13 May 2024.

15. The claimant initially commenced work with the respondent on 13 March 2019 as a temporary agency Medical Secretary and thereafter obtained a permanent full-time role from 28 October 2019. Her duties included providing administrative and secretarial support to multiple consultant psychiatrists, including diary management, appointment booking, correspondence, liaison with external organisations, and maintaining patient records.

16. In November 2020 the claimant was diagnosed with a brain tumour, described as a meningioma. The respondent accepts that this condition amounts to a disability (and did so throughout the material time) within the meaning of the Equality Act 2010 and that it had knowledge of the claimant's disability at all material times.

17. The claimant underwent radiation treatment in December 2022, following which she took a short period of absence before returning to work. In early March 2023 she began to experience a deterioration in her condition, including mobility difficulties, impaired coordination, headaches, visual disturbance, and cognitive impairment. On 7 April 2023 she suffered a major seizure, and subsequent investigations revealed significant intracranial swelling affecting her neurological function.

18. By May 2023 the claimant's condition had deteriorated substantially. She experienced increasing difficulty mobilising within the workplace and required assistance from colleagues. On 10 May 2023 she spoke with her line manager, who advised her to attend hospital. The claimant was subsequently admitted and was signed off work from 15 May 2023.

19. During her hospital admission and following discharge, the claimant experienced ongoing seizures, mobility impairment and cognitive difficulties.

20. From May 2023 onwards the respondent maintained contact with the claimant during her sickness absence. The respondent position is that these contacts constituted appropriate absence management and support meetings in accordance with its policies. The claimant alleges that these communications, which she describes as weekly "wellbeing" calls between May and August 2023 and again between September and November 2023, became increasingly formal and pressured, with repeated requests for information about her medical appointments and anticipated return to work. She states that these calls caused her significant stress and, at times, triggered seizures although there is no mention of triggering seizures in any of the contemporaneous documentation before me.

21. From documents in the bundle before me, described as Absence Review Meeting records, it is evident that contact was made on a series of occasions between June 2023 and February 2024, during which the claimant consistently reported that she remained unfit for work, was experiencing seizures, pain and mobility issues, and was unable to give any definitive date for returning to work.

22. During a telephone attendance meeting with her line manager, Mr Bartlett, on 16 June 2023, there was a discussion about the possibility of working from home with the intention of securing a phased return to the office as the claimant's mobility improved. According to his note of the discussion, in the section headed Return to Work, he recorded that it would be a phased return and would involve working from home. There was, however no suggestion as to when that return might be.

23. There is a record of a further telephone discussion taking place between them the following month on 13 July 2023. In the box referring to "Anticipated return to work date", Mr Bartlett recorded the following: "unknown – Doctors have said possible October 2023". In cross-examination, the claimant accepted that this was an accurate reflection of the position at the time.

24. The claimant also accepted that she and Mr Bartlett had also discussed during that call in July 2023 a process whereby she did not need to answer his calls if she did not want to because of her medical condition or her mood. Instead she would call back at a better time and leave a voicemail. Given this discussion and agreement between them, it was reasonable for Mr Bartlett to assume that the contact he was having with the claimant at this time was reasonable and appropriate.

25. There is a record of a further call between the claimant and Mr Bartlett on 25 August 2023 during which the claimant explained that she was still unable to go anywhere unaccompanied due to the amount and frequency of her seizures. She explained that she was in too much pain at that time and could not leave the house. Again there is reference to the claimant's sick note being extended to October 2023. It also remained unknown when the claimant might be fit to return to work. Mr Bartlett agreed to speak to Mr Olsen about a request by the claimant to see if the respondent would consider making any discretionary sick pay payment to her.

26. By November 2023 the claimant's position had not improved. She remained unfit for work. In an email of Monday 13 November 2023 to Mr Bartlett and a colleague from HR, Elena, the claimant requested details of the exact date her statutory sick pay was due to end because she was in the process of completing an application for welfare benefit, namely ESA. The claimant mentioned that she had been expecting a welfare call from him the previous Thursday and missed a call from him the following day. I am satisfied on the evidence that the claimant was aware that the purpose of the calls was to review her absence and that information she was providing was being noted down, not least because she referred to Mr Bartlett's "tick box form" and suggested he could use the

information arising from a lengthy discussion they had on 8 November to complete the forms now before me.

27. Indeed, I find that this was the first time the claimant raised concerns about the frequency of contact, stating that she found the communications stressful, and went on to question whether they were "done for the purpose of [her] welfare or support". Notwithstanding that complaint, the claimant encouraged Mr Bartlett to call her at the end of the week or even earlier if he needed to undertake another welfare call. According to the claimant's own evidence, the HR adviser indicated at that time that the respondent considered monthly contact reasonable.

28. Whilst I do not doubt that these calls would have resonated with the claimant given her condition and that it may have seemed to her that they were happening very often, I am not satisfied that they were as frequent as the claimant now suggests, not least because there was no evidence to support that assertion. There can be no doubt that there were occasional calls between those recorded in the documents before me (indeed, in her 13 November email, the claimant referred to speaking to Mr Bartlett on 8 November 2023 – to which I have already referred and yet there is no record of that in the evidence before me). I am, however, satisfied that absence review meetings were occurring monthly and not weekly. In the documentation before me up to November 2023, there were notes of substantive reviews taking place on 16 June, 13 July, and 25 August 2023. Contact was made before those dates in July and August endeavouring to hold them sooner but those attempts were abandoned either because the claimant did not answer the call or was not well enough to engage. It is unclear whether there was also a review meeting held on 15 June (as indicated on p64 of the bundle) but I am do not find that there was because there is a detailed note of a discussion the following day instead. Nothing significant rests on that discrepancy in any event.

29. I am satisfied that those calls were consistent with paragraph 9.3 of the respondent's absence management policy and that there was nothing improper about them.

30. Whilst there was evidence of a flurry of communication between the claimant and her line manager around 30 May 2023 (the date that the claimant was being discharged from hospital), there did not appear to be anything unreasonable about the content or extent of those communications. Notably, the claimant advanced both in evidence and submissions that she was not concerned about those communications at the time because she considered they were made out of genuine concern for her wellbeing. The claimant candidly accepted in oral evidence that it was only after it became apparent that she was facing the prospect of dismissal that she determined retrospectively that the calls she received amounted to harassment. That of course explains why there were no emails prior to 13 November 2023 from the claimant raising any concerns about these communications or any other evidence to support the claimant's subsequent assertion that she was troubled by them before November 2023.

31. In any event, once the claimant did raise her concern, the respondent was sensitive to her position and only three further telephone review meetings took

place prior to the capability process being engaged. The first was as anticipated on Friday 17 November. During that meeting the claimant explained that she was unable to focus, had very low mood and her mobility had decreased further. There was no full prognosis and her GP extended her sick note to 31 December. In the box recording discussions of options available, Mr Bartlett recorded that the respondent would consider a phased return to work and the adjustments suggested were the possibility of looking to see if the claimant could work two days from home and three days on site. The claimant also agreed to an Occupational Health ("OH") referral.

32. They discussed that the claimant's SSP was due to run out on 1 December and the document also recorded that the claimant had been paid discretionary sick pay (which the claimant does not dispute).

33. The next review took place on 13 December 2023. The prognosis remained uncertain and very poor. The claimant indicated she had not left the house unaided and was still dizzy and unsteady on her feet. Her regular seizures were continuing. Although the claimant inferred that the notes were not accurate, other than what I refer to below, she did not at any stage identify anything substantively wrong with what was recorded by Mr Bartlett. Indeed, the claimant accepted in evidence that right up to her dismissal, she was in no fit state to work even from home, let alone by way of a return to the office.

34. The third review meeting took place on 27 February 2024. Before then, however, the claimant had been referred to and assessed by OH.

35. With the claimant's consent, the respondent received an OH report dated 17 January 2024 following an assessment of the claimant on 11 January 2024. The report stated that the claimant was unfit for work and both the assessor and the claimant were unable to provide a date for return. Importantly, the report was unable to suggest any reasonable adjustments and the assessor advised that the claimant was not fit to work even on a part time basis. The claimant accepts that this was the reality.

36. The assessor suggested that subject to the claimant's consent he should write to the claimant's consultant (treating clinician) assuming the respondent wished. Both the claimant and respondent consented to this course of action and a specialist report was received by the OH assessors, Medigold, dated 8 May 2024 which led them to write to Mr Bartlett again but not until 4 June 2024.

37. In the meantime, as I have stated already, the last absence review meeting took place on 27 February 2024.

38. At that point, the claimant remained signed off until 28 April 2024 and there was no anticipated return to work date. The record notes that the claimant at this telephone meeting requested that there were no further absence review meetings as they triggered her anxiety and upset her wellbeing. This was not something that appeared in any of the earlier notes. Towards the end of the record in the "any other points discussed" section, Mr Bartlett noted that he had discussed with the claimant the fact that the next meeting would probably be a capability

meeting. He went on to state "DB was upset and very agitated by this. DB informed that these meetings were not helping". The claimant disputes that she was told expressly that a capability meeting was mentioned. In her oral evidence (and not her witness statement) she maintained that Mr Bartlett said words to the effect that "SLT were meeting very soon and her name was at the top of the list". Regardless of the specific words used, I find on the evidence before me that the claimant was aware from the discussion with Mr Bartlett that her capability was now in question and she realised there was the significant prospect of her employment being terminated, which is why she became agitated. Be that as it may, it was a further nine weeks before the respondent wrote to the claimant to invite her to a capability meeting.

39. It was evident that both the claimant and the respondent were endeavouring to obtain an up-to-date OH report with input from the claimant's treating clinician.

40. On 30 April 2024 the claimant provided a further fit note to Mr Bartlett. A copy was not before me in the bundle. There is no dispute, however, that the claimant remained signed off work and was unfit to return to any duties either in the office or from home.

41. On 7 May 2024 the claimant was invited to attend a capability hearing, which took place on 13 May 2024. This was more notice that the respondent's policy allowed for (which provided for a meeting to be held within 48 hours). The letter complied with the requirements of the ACAS code including warning that termination of her employment could be an outcome. The claimant was offered various options as to how the meeting might be held, including conducting it by telephone. It is unclear why the respondent moved to commence the capability process at this time particularly as efforts were still being made to secure further assessment of the claimant's condition by OH. That said, there is no doubt that the process had already been delayed beyond what was anticipated in accordance with paragraph 9.10 of the respondent's Absence Management Policy which provided for this to be engaged after six months of absence.

42. The capability hearing was chaired by the Hospital Director, Jon Olsen. The claimant took issue with the fullness of the typed written note of the meeting included in the evidence before me. Midway through the hearing I allowed the claimant to introduce into the bundle of evidence a copy of handwritten answers to questions that appeared to form the basis of the key points of discussion at the meeting. Mr Olsen confirmed that these were not his handwritten notes and therefore they appeared to be those of the notetaker. On the face of it, the typed notes were an expansion on the handwritten notes but any dispute about the difference in the two versions is of no consequence given what is agreed between the parties. I interpose here that the handwritten version of the notes appears to have been typed up and appears at p135 of the bundle (although not identical wording, it is substantially the same). The claimant seemed most exercised by the fact that neither version recorded Mr Olsen commenting on the possibility that the claimant might be eligible to access state benefits that could improve her financial position if she ceased to be employed.

43. Again to her credit the claimant was very candid in her evidence and accepted that at the meeting she confirmed that, although she had made some improvement, she was not physically or mentally able to return to work and could not give any timeframe for doing so. She indicated that she wished to return in the future and suggested that she might eventually be able to do so on a part-time basis working from home but could offer no indication as to when this might be.

44. The respondent informed the claimant that her role required attendance on site and that homeworking was not considered feasible something the claimant disputed. The claimant asserts that she was effectively required to return to work on site immediately, whereas the respondent does not accept that such a requirement was imposed at that stage. It is not strictly necessary for me to rule on this dispute of fact because the claimant accepts that she was unable to work from home at the point of both her dismissal and appeal being determined. Nevertheless, whilst I do not accept Mr Olsen's suggestion that working from home was not an option at all, I am satisfied on the evidence that any such arrangement would only have been possible temporarily to enable a facilitated or phased return to work at the hospital and not permanently because there was undoubtedly an operational need for the role of medical secretary to be present on site.

45. During that meeting the claimant took exception to certain comments made by Mr Olsen, including that he allegedly said that she would be better off claiming benefits, that she had not met her contractual obligations and that she could not work from home. Again, the dispute is more about context than substance because Mr Olsen accepts that he did make reference to eligibility for benefits and not being able to work from home and the very purpose of the meeting was a discussion concerning her inability to fulfil her role due to absence.

46. I am satisfied that Mr Olsen was endeavouring to assist the claimant by suggesting that if she ceased to remain employed whilst unable to work, she may be eligible for welfare benefits which would improve her financial position now that she had ceased to be eligible for any form of sick pay. Whilst this may not have been to the claimant's liking, it was neither punitive or inconsiderate. Instead it was intended to encourage the claimant to look into what benefits she might be entitled to if she ceased to be employed. Indeed, the claimant had begun the process of applying for benefits some six months earlier so this suggestion would not or should not have come as a surprise to her.

47. As for the comment about not meeting her contractual obligations, there is no doubt that prior to her sickness absence the claimant was a very well regarded employee and extremely competent medical secretary. I accept the evidence of Mr Olsen that she remained a valued employee throughout her employment and it was precisely because of how much she was valued that that the respondent was very keen to see her return if possible. The comment about not meeting her contractual obligation was referring to the obvious point that through nobody's fault, the claimant's state of health prevented her from meeting the contractual obligations she had with the respondent. This may have been rather technical language but, again, I do not find that it was sufficiently inappropriate to reasonably cause offence.

48. As for the refusal to allow the claimant to work from home, this was an operational matter and I am in no uncertainty that this was said by Mr Olsen because there is no dispute about him doing so. The fact that this was a view taken by Mr Olsen that the claimant disagreed with is not enough to justify any suggestion that it reasonably caused offence. I do not regard it as coming close to doing so.

49. There was also a discussion about the fact that the OH referrals were outstanding and the respondent's HR were of the view that Medigold were still awaiting responses from the claimant's treating clinician. Nevertheless, when asked directly, the claimant confirmed there had not been any changes to her medical position since the previous OH report in January.

50. At the conclusion of the meeting the respondent decided to dismiss the claimant on grounds of capability, having regard to the length of her absence of approximately 12 months, the absence of a foreseeable return to work date, her inability to undertake any work of any kind even from home and the absence of any indication as to when the position may change in the future. Somewhat surprisingly the dismissal took effect immediately on 13 May 2024 and the claimant was not given contractual notice to terminate.

51. The claimant appealed the decision on 23 May 2024. An appeal hearing took place on 14 June 2024. At that hearing the claimant reiterated that the decision had been premature, that further medical evidence was awaited from her neurologist, that she felt harassed by frequent contact during her sickness absence, and that working from home should have been considered even though she accepted she was unable to engage in any work at all at that time.

52. True it is that the claimant had an appointment scheduled with her neurologist for 25 June 2024 but when asked about that at the meeting (and also during cross-examination at trial) she explained that this was to establish what further treatment and medication she would need. There was no suggestion that this would provide any definitive prognosis or shed light on when she was likely to be in a position to return to work.

53. Furthermore, by the time of the claimant's appeal being determined, both the claimant and respondent had received an updated OH report from Medigold dated 4 June 2024. This made reference to a specialist report appearing to be from her treating clinician. There was nothing in that report that suggested the claimant was likely to be well enough to return to any duties in the foreseeable future. I interpose here that the claimant did not suggest the report was incorrect in any way and accepted that she remained not well enough to return when the appeal was being decided. Indeed, in her evidence before me, the claimant confirmed that although now, some two years on, she is functioning well cognitively, her mobility remained poor such that she would not be able to return to working on site.

54. The respondent considered the appeal and concluded that there remained no evidence of a foreseeable return to work date, that the management of contact with the claimant during her absence had been appropriate, and that the

requirement for on-site attendance remained integral to the role. The appeal was dismissed.

55. The respondent also refers to further medical information obtained in May 2024 indicating that the claimant continued to experience significant symptoms, including seizures and headaches.

56. Despite the appeal meeting taking place in mid-June and Mr Adams indicating to the claimant at the end of that meeting that she would have an outcome within 5 to 7 working days, there was an unacceptable and inordinate delay in providing his decision which was dated 27 August 2024 and not received until 28 August 2024. The claimant was right to be upset about this delay. It was casually dismissed in the letter as being a consequence of annual leave and the "availability of some parties". That was on any objective basis an inadequate response, compounded by the fact that the respondent had not even had the courtesy to at least write to the claimant in the meantime to explain what was causing the delay.

57. I had before me a witness statement from Mr Adams. Because he was not present to be questioned, I applied very little weight to that evidence but in reality that made no difference because his statement provides very little in the way of an expanded explanation for the inordinate delay in providing the appeal outcome. Regardless of Mr Adams' position (and I am conscious he was not present to explain the position), the respondent should have taken ownership of this and ensured better lines of communication with the claimant during this time.

58. Notwithstanding that, the claimant herself advanced in cross-examination that the delay in providing the appeal outcome was not because of her disability but was instead because of the respondent's poor approach to the process generally. I accept that analysis and find that the delay was not because of the claimant's disability.

The Applicable Law

59. An outline of the relevant legal principles that the tribunal has applied in this case is set out below. It is not an exhaustive commentary of the law but is instead a proportionate summary only.

Unfair dismissal

60. The law relating to unfair dismissal is predominantly contained in Part X Employment Rights Act 1996 ("ERA"). With regard to any claim of "ordinary" unfair dismissal, the respondent must first demonstrate that the claimant has been dismissed for one of the potentially fair reasons set out in s98 (in this case, capability – ss98(2)(a) and (3)(a)). The tribunal must then consider whether the dismissal was generally fair and, more specifically, whether the employer acted reasonably or unreasonably in treating that reason as sufficient for dismissal. The tribunal must consider, pursuant to s98(4) ERA, whether the employer acted reasonably in treating that reason as sufficient to dismiss the employee, considering all the circumstances, including the size and resources of the

employer, and must determine fairness in accordance with equity and the substantial merits of the case. The burden of proving whether or not a dismissal was reasonable is a neutral one.

61. When deciding the issue of reasonableness, the tribunal must apply the band of reasonable responses test. Consequently it cannot substitute its own view for that of the employer but must instead ask the question as to whether no reasonable employer would have dismissed in those circumstances. Only then will a tribunal conclude that a dismissal fell outside the band of reasonable responses.

62. Furthermore, the band of reasonable responses test also applies to the extent of any process followed by the respondent. Again, the tribunal cannot substitute its own view as to what it would have done to investigate the matter but must instead ask itself whether what was done in terms of the investigation fell within what a reasonable employer would have done in those circumstances (J Sainsbury plc v Hitt [2003] ICR 111, CA).

63. In accordance with the principle set out by the EAT in the seminal case of East Lindsey District Council v Daubney [1977] ICR 566, a fair dismissal would usually involve proper consultation with the employee, a thorough medical investigation (to be satisfied as to the nature of the condition and prognosis) and consideration of alternatives to dismissal. The decision in Daubney has been qualified by the Court of Session in Scotland following its decision in BS v Dundee City Council [2013] CSIH 91. Paragraphs 27, 30 and 31 are self-explanatory and worth repeating in full as they shed useful light upon the approach adopted in the present case:

> "*[27] Three important themes emerge from the decisions in Spencer and Daubney. First, in a case where an employee has been absent from work for some time owing to sickness, it is essential to consider the question of whether the employer can be expected to wait longer. Secondly, there is a need to consult the employee and take his views into account. We would emphasize, however, that this is a factor that can operate both for and against dismissal. If the employee states that he is anxious to return to work as soon as he can and hopes that he will be able to do so in the near future, that operates in his favour; if, on the other hand he states that he is no better and does not know when he can return to work, that is a significant factor operating against him. Thirdly, there is a need to take steps to discover the employee's medical condition and his likely prognosis, but this merely requires the obtaining of proper medical advice; it does not require the employer to pursue detailed medical examination; all that the employer requires to do is to ensure that the correct question is asked and answered.*
>
> *[30] As we have mentioned, the employee's views on returning to work may be of great importance to the employer, in either a positive or a negative direction. In the Tribunal's opinion, although the views are set out at length, little if any weight seems to have been given to them. This contrasts with the emphasis placed on the views of Dr Spencer (throughout paragraphs 77-83 of the Tribunal's decision). It is noted that Dr Spencer had recorded that the appellant's health was improving, that he had stated that he did not consider that the appellant was permanently incapacitated, and that he would expect that the appellant would be able to return to work within the next 1 to 3 months. We note that these views do not indicate any likelihood of an*

immediate return to work. Furthermore, at the appeal hearing before Mr Laing held on 28 October the appellant was still not fit to return to work (judgment, paragraph 83). The Tribunal noted that the appellant was at that time very distressed as a result of the dismissal. It is not clear, however, what evidence there was to support that view. Overall, the appellant's own evidence does not suggest that he was in a position to return to work in the immediate future. That, it seems to us, was a factor that should be weighed against Dr Spencer's report. In the Tribunal's analysis, however, the appellant's views are largely ignored, and instead the emphasis is on the impact of Dr Spencer's report: see, for example, paragraphs 87 and 91 of the Tribunal's judgment. We consider that Dr Spencer's views should have been balanced against the evidence that came from the appellant in deciding whether the decision reached by the respondents was one that no reasonable employer could have made.

[31] As to the third issue, the obtaining of adequate medical advice, the Tribunal attached great importance to the views expressed by Dr Spencer and indicated that no reasonable employer, given those views, would have dismissed the appellant without further investigation of his medical state: see paragraphs 87 and 88 of the judgment. The obligation on an employer is only to take "such steps as are sensible according to the circumstances" (Daubney at [1977] ICR 572A-B). Dr Spencer's report was to the effect that the appellant's health was improving and he expected that the appellant would be able to return to work within 1 to 3 months. The appellant's subjective view, however, was that he was not improving. Against that background, it is difficult to see how further medical advice could clarify matters. The respondents had a medical opinion, and they had to balance that against the appellant's own view. For that reason we think that the Tribunal attached too much importance to the need to obtain a further medical opinion; that question was rather whether a reasonable employer, in view of Dr Spencer's report, the continuing note from the GP, and the appellant's own views, would have waited longer, or whether the decision to dismiss on 23 September was within the range of reasonable responses open to such an employer. That issue was not squarely faced by the Tribunal."

Direct Discrimination

64. Section 13, Equality Act 2010 ("EqA") 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." Need it be said, disability is a protected characteristic in accordance with sections 4 and 6 of that Act.

65. In accordance with section 136(2), if there are facts from which the tribunal could decide, in the absence of any other explanation, that the respondents discriminated against the claimant, the tribunal must hold that the discrimination occurred unless the respondents show that they did not contravene the Act (this is commonly known as the shifting or reverse burden of proof rule).

66. In accordance with the Court of Appeal decision in Igen Ltd (formerly Leeds Careers Guidance) and others v Wong and other cases [2005] ICR 931, the claimant must prove facts from which inferences could be drawn that the respondents have treated the claimant less favourably on the protected ground. At this initial stage, the tribunal is entitled to have regard to all

material facts including evidence of whether less favourable treatment occurred and other facts that might indicate the reason for the treatment (as confirmed in Laing v Manchester City Council EAT 0128/06). Likewise, in accordance with the Court of Appeal decision in Madarassy v Nomura International Plc [2007] ICR 507, put in basic terms, the claimant must show more than the possibility of discrimination occurring. To succeed in a complaint of this kind it is not enough for a claimant to simply assert that there has been less favourable treatment and that she has a protected characteristic. Nor is it enough for a claimant to prove facts that the respondent *could* have discriminated. Instead the claimant must also adduce some evidence of the reason for the treatment such that the tribunal can conclude on the balance of probabilities that the respondent did discriminate against the claimant as a consequence of or in relation to that treatment. In accordance with the more recent case of Royal Mail Group Ltd v Efobi [2021] UKSC 23, the Supreme Court has ruled that the approach to the burden of proof has not been changed by the wording of s136(2) of the Equality Act 2010.

67. If having regard to all material facts at the first stage of the 'reverse burden of proof test' the claimant satisfies the tribunal that on the face of it there can indeed be an inference drawn of discrimination, then the burden passes to the respondents to demonstrate that in fact the treatment sustained by the claimant was nothing to do with her protected characteristic.

68. In essence, the tribunal must focus upon what the true reason was for the treatment received.

Harassment

69. Section 26, EqA provides that:

> "(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
> (2) ……
> (3) .....…
> (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account –
> (a) the perception of B;
> (b) the other circumstances of the case;
> (c) whether it is reasonable for the conduct to have that effect.
> (5)…."

Need it be said, disability is a relevant protected characteristic (as set out in s26(5) EqA) covered by this provision.

70. "Purpose" (s26(1)(b)) requires an examination of the perpetrator's intentions, drawing inferences where appropriate.

71. It is important to note that if the intention of the perpetrator was for the unwanted conduct to have the proscribed *purpose* (irrespective of whether it could be said to have that *effect*) then whether it was reasonable for such conduct to have the intended purpose is irrelevant. Likewise, the claimant's perception of the conduct is irrelevant. In short, the unwanted conduct will amount to harassment under s26.

72. What "effect" such treatment might have requires consideration of those matters in s26(4). Thus, the test in terms of assessing the *effect* has both subjective and objective elements to it. The tribunal must ask what effect such conduct had on the claimant, subjectively, and then consider whether it was reasonable for the claimant to claim that it had such an effect, objectively.

73. The objective element of the test is intended to exclude liability for situations in which an employee is hypersensitive or unreasonably takes offence (Richmond Pharmacology v Dhaliwal [2009] ICR 724, EAT).

74. What is and what is not harassment is fact sensitive. Although it was a case involving race discrimination and not disability discrimination, in Dhaliwal at paragraph 22, Underhill P (as he then was) said:

> "*We accept that not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offense was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (…), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.*"

75. The importance of giving full weight to the words of the section when deciding whether a claimant's dignity was violated, or whether an intimidating, hostile, degrading, humiliating or offensive environment was created for him or her was reinforced in Grant v HM Land Registry & EHRC [2011] IRLR 748 CA. In that case Elias LJ said at paragraph 47:

> "*Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment.*"

76. Furthermore, in Weeks v Newham College of Further Education UKEAT/0630/11 Langstaff P (as he then was) said:

> "*[17]….Thus, although we would entirely accept that a single act or a single passage of actions may be so significant that its effect is to create the proscribed environment, we also must recognise that it does not follow that in every case that a single act is in itself necessarily sufficient and requires such a finding.*

[21] However, it must be remembered that the word is 'environment'. An environment is a state of affairs. It may be created by an incident, but the effects are of longer duration. Words spoken must be seen in context; that context includes other words spoken and the general run of affairs within the office or staffroom concerned."

Discrimination arising from disability

77. Section 15(1) EqA provides that:

"A person (A) [in this case the employer] discriminates against a disabled person (B) [in this case the claimant] 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."

78. Therefore, if the claimant has been treated unfavourably because of something arising in consequence of her disability and the respondent cannot show that the treatment was objectively justified (a proportionate means of achieving a legitimate aim), then discrimination will have arisen (s15 EqA 2010). There is no comparator required in this situation because the claimant only has to show unfavourable rather than *less* favourable treatment.

79. For this section to apply, the respondent must have known or could reasonably have been expected to know of the claimant's disability (s15(2)). It is not necessary to show that the respondent knew or ought to have known that the unfavourable treatment would have been caused by something arising in consequence of the claimant's disability (see the EAT decision in Pnaiser v NHS England and anor [2016] IRLR 170).

80. Dismissal will only be justified if a tribunal is satisfied that this is a proportionate means of achieving a legitimate aim. Tribunals must carefully scrutinise the matters determining the question of proportionality (Department of Work and Pensions v Boyers [2022] EAT 76). The employer must first demonstrate the legitimate aim being pursued (which may include business efficiency, cost, and the need to provide reliable services etc). Thereafter the assessment of justification involves the tribunal objectively weighing the employer's needs against the discriminatory impact on the employee. As reminded by the EAT in Department of Work and Pensions v Boyers [2020] 6 WLUK 316, the approach to this question is different to that of reasonableness for the purposes determining whether a dismissal is unfair, although the extent of overlap was considered by Underhill LJ in Bolton St Catherine's Academy v O'Brien [2017] EWCA Civ 145. The tribunal must also consider whether the employer has considered and made reasonable adjustments before deciding to dismiss.

Reasonable adjustments

81. The law regarding the duty to make reasonable adjustments is set out in ss20 to 22 EqA 2010. The relevant parts of these sections set out a requirement that an

employer is to take reasonable steps to avoid any substantial disadvantage in relation to employment that may be caused to a disabled employee in comparison to those who are not disabled by: 1) any provision, criterion or practice ("PCP") of the employer; 2) a physical feature; or 3) the (lack of or) provision of an auxiliary aid.

82. Unlike unfair dismissal, the test of reasonableness for the tribunal is an objective one and the band of reasonable responses has no part to play in that assessment (Smith v Churchills Stairlifts plc [2006] ICR 524, CA). Accordingly, the tribunal may substitute its own view for that of the employer.

83. The EAT in Tarbuck v Sainsbury's Supermarkets Ltd [2006] IRLR 664 confirmed that whilst it is good practice to consult an employee about what adjustments might be reasonable, the actual question for a tribunal is simply whether an employer has complied with its obligation to make any adjustments.

The Employment Code

84. Although not legally binding, a tribunal is required to take into account the extent to which an employer has followed the guidance set out in the Equality and Human Rights Commission: Code of Practice on Employment when considering all forms of discrimination complaints.

Burden of proof

85. As already alluded to above, for each of the separate complaints of discrimination set out above, in accordance with section 136(2) EqA 2010, if there are facts from which the tribunal could decide, in the absence of any other explanation, that the respondent discriminated against the claimant, the tribunal must hold that the discrimination occurred unless the respondent shows that it did not contravene the EqA 2010 (this is commonly known as the reverse burden of proof rule).

Applying the law to the facts

86. Applying the law to the facts, I resolve the relevant issues and claims as follows:

Unfair dismissal

87. The claimant was dismissed. It is not disputed that the reason for dismissal was capability arising from long-term sickness absence. I am satisfied that capability was the reason, or principal reason, for dismissal within the meaning of section 98(2)(a) Employment Rights Act 1996.

88. The issue is whether the respondent acted reasonably in treating that reason as sufficient reason for dismissal, applying section 98(4) of the Employment Rights Act 1996. In determining that question I have had regard to the size and administrative resources of the respondent, equity, and the substantial merits of the case as required by statute and reminded myself that it is not for me to substitute my own view for that of the employer. The question is whether the

respondent's decision fell within the range of reasonable responses open to a reasonable employer in the circumstances.

89. In particular, I have considered whether:

    89.1. The respondent genuinely believed that the claimant was incapable of performing her role and duties;
    89.2. The respondent adequately consulted the claimant;
    89.3. The respondent undertook a reasonable investigation into the claimant's medical position;
    89.4. The respondent could reasonably have been expected to wait longer before dismissing the claimant.

90. I accept that the claimant was understandably upset that the respondent proceeded to dismissal before a further OH assessment had been completed. I also accept that it is not entirely clear why the capability process was initiated before that further assessment became available. However, I find that the respondent had already delayed invoking the capability procedure considerably beyond the point contemplated by its policy. The claimant had effectively been afforded an additional period of approximately six months beyond the period identified within that policy.

91. As I have found as fact, the respondent had sought OH advice during the latter part of 2023 and a report was provided in January 2024. That report did not indicate any realistic prospect of the claimant being able to return to work. More significantly, the claimant herself candidly accepted at the capability hearing that no prognosis existed and that she was unable to indicate when a prognosis might become available. When asked directly by Mr Olsen at that meeting whether her medical position had changed following receipt the OH report in January, she confirmed (as she did in evidence before me) that her position had not materially changed since. Indeed, she explained that one of the reasons she found Mr Bartlett's calls stressful was because she was concentrating on getting well but was unable to tell anyone when she might be in a position to return to work.

92. Mr Olsen was entitled to take those matters into account. On the evidence available to the respondent there was no indication that the claimant would be fit to return to work within the foreseeable future and no indication when a meaningful prognosis might become available.

93. I am satisfied that the respondent consulted adequately with the claimant. The monthly absence review meetings were conducted precisely for that purpose. Whilst I accept that the claimant found those contacts distressing, the respondent was entitled and indeed required, to maintain contact with her and to review her continuing absence. The absence of substantial or positive updates from the

claimant and the fact she was unable to indicate any prospect of returning to work, did not mean that consultation was lacking or inadequate.

94. I reject the submission that the capability process was procedurally unfair in some way. Although the claimant received only four days' notice of the capability hearing, she attended, participated and engaged in the meeting, which by its nature would inevitably be difficult and stressful for all concerned. She was offered the opportunity to attend remotely by telephone if preferred, which she chose not to accept. As for being accompanied at the hearing, the claimant accepted that she was not a member of a trade union. There was no evidence before me that she requested for a colleague to join her or that she asked for a postponement or indicated an unwillingness for the meeting to proceed in the absence of a companion.

95. I have also considered the delay in communicating the appeal outcome. I agree with the claimant that the delay was unsatisfactory and discourteous. The respondent ought to have maintained communication with the claimant and explained the reason for the delay. However, looking at the dismissal process as a whole, I do not find that the delay rendered the dismissal unfair. It is evident from the appal outcome letter that, notwithstanding the delay in that outcome being communicated, Mr Adams did engage with, and carefully consider, the points raised by the claimant albeit that he reached conclusions with which she disagreed.

96. For those reasons, I conclude that the dismissal was for the potentially fair reason of capability and that dismissal fell within the range of reasonable responses open to a reasonable employer. The complaint of unfair dismissal is therefore dismissed.

Direct Disability Discrimination

97. The claimant contends that she was subjected to direct discrimination because of disability contrary to section 13 Equality Act 2010.

98. I am not satisfied that any of the acts relied upon occurred because of the claimant's disability.

99. The regular absence review calls (which were monthly, not weekly) were made because the claimant was absent from work and the respondent was required to manage that absence. The reason for the treatment was her absence and its

duration rather than the disability itself. These calls would have occurred regardless of whether the absence was due to a disability or not.

100. The same conclusion applies to the three comments relied upon from the capability meeting. Mr Olsen's comment regarding any potential entitlement to benefits was because of the claimant's financial position and her ineligibility for sick pay, not because of her disability. The comment about her being unable to fulfil her contractual obligations was a factual observation and again was not made because of her disability nor was it less favourable treatment because of any disability. The comment was made to explain why the respondent had reached the stage of commencing the capability process. The same comment would have been made to a non-disabled employee in the same circumstances (long term absence) who, like the claimant, was also unable to fulfil their contractual role. The comment about the requirement to work on-site was made for operational and explanatory reasons and not because the claimant was disabled. Accordingly, none of the comments were made because of the claimant's disability if, indeed, they could be said to amount to less favourable treatment at all.

101. The claimant's dismissal was likewise not because of disability. The reason for dismissal was that the claimant remained incapable of returning to work and there was no evidence when that situation might change.

102. The delay in communicating the appeal decision was accepted by the claimant herself not to have occurred because of disability.

103. Accordingly, the complaints of direct disability discrimination fail.

<u>Harassment related to disability</u>

104. I remind myself that tribunals must not 'cheapen' the language of the statute regarding conduct amounting to harassment as defined by s26 Equality Act 2010. The conduct must have the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. The test for whether any conduct has the proscribed effect includes both a subjective and objective element.

105. I find that the absence review calls do not satisfy that test. Plainly, the respondent's purpose was to properly consult with the claimant and endeavour to manage her absence. As I have found, it was necessary for Mr Bartlett to maintain contact with the claimant and when the claimant raised concerns about

their frequency he acted sensitively and restricted communications accordingly. Objectively assessed, the calls were a reasonable and necessary feature of managing a prolonged sickness absence. They were not capable of amounting to harassment.

106. For completeness I add that I do not accept the respondent's submission that the calls were unrelated to disability. In my judgment they were undoubtedly *related* to disability because they arose from an absence caused by the disability. However, that does not assist the claimant because the conduct does not meet the statutory threshold required by section 26.

107. Similarly, whilst the claimant may not have welcomed the comments made during the capability process, on any objective basis, these could not be said to amount to violating dignity or creating an intimidating, hostile, degrading, humiliating, or offensive environment for the claimant. They were reasonable comments to make in the circumstances.

108. Nor was dismissal itself capable, on the facts found, of amounting to harassment. The claimant was dismissed because she was incapable, through no fault of her own, of returning to work within the foreseeable future. A reasonable employer is entitled to conclude that the employment relation cannot continue indefinitely and that is what the respondent did in this case.

109. The claimant accepted that the appeal delay was not related to disability and therefore this conduct cannot found a harassment claim.

110. The harassment complaint is accordingly dismissed.

Time Limits

111. For the reason set out above, the issue of limitation is of no consequence. Had it been necessary to determine limitation, I would have concluded, however, that the matters relied upon formed part of a continuing course of conduct culminating in the claimant's dismissal. There is a sufficient connection between the absence review process and the capability process for the matters relied upon to constitute a continuing state of affairs. I therefore do not accept the respondent’s submission that these were wholly separate acts. Rather, they formed part of the same ongoing process which ultimately resulted in the claimant’s dismissal.

112. Alternatively, if any element of the claim had been out of time, I would have considered it just and equitable to extend time in light of the claimant's medical condition.

113. These conclusions do not affect the outcome because the substantive allegations fail on their merits.

Discrimination arising from disability

114. There is no dispute that the claimant was subjected to unfavourable treatment, namely dismissal and that was because of her prolonged sickness absence and the absence of any indication as to when she might be in a position to return to work. It is not disputed that those matters arose in consequence of her disability. The central issue in relation to this claim is therefore whether the treatment was a proportionate means of achieving a legitimate aim within the meaning of section 15(1)(b) Equality Act 2010.

115. I accept that the respondent had the legitimate aims of maintaining operational continuity, ensuring adequate staffing levels and facilitating and managing workforce planning.

116. I am also satisfied that dismissal was a proportionate means of achieving those aims. At the date of dismissal there was no indication that the claimant would be able to return to work within the foreseeable future and no indication when a meaningful prognosis might become available. Even if further justification had been required, the OH evidence available by the time of the appeal did not materially improve the position and likewise provided no indication of an anticipated return to work. The claimant also accepted in evidence that she would not have been able to return to the hospital site even by the date of this hearing.

117. In those circumstances I conclude that the respondent's decision to dismiss was objectively justified. The complaint under s15 Equality Act 2010 is therefore dismissed.

Failure to Make Reasonable Adjustments

118. Again there is no real dispute that the respondent applied a provision, criterion or practice of requiring medical secretaries to work on site and also to perform the role on a full-time basis. I also accept that allowing temporary homeworking

might, in principle, have been capable of constituting a reasonable adjustment designed to facilitate a phased return to work.

119. The difficulty for the claimant is that she has not established that any adjustment would have prevented or alleviated the substantial disadvantage she experienced. At the date of dismissal, and at the date of the appeal, the claimant was unable to undertake any work. She could not work on site, from home, full-time or part-time.

120. Accordingly, there was no adjustment (reasonable or otherwise) which would have enabled her to overcome the disadvantage arising from the PCPs identified. The complaint under ss20 to 22 Equality Act 2010 therefore fails.

Remedy issues in the alternative

121. I add for completeness that had I concluded that the dismissal was unfair, or that the respondent had failed to establish justification under s15 Equality Act 2010, I would have made a substantial reduction in compensation.

122. The evidence demonstrates that the claimant remained unable to return to work, even by the date of this hearing. The respondent would, on the balance of probabilities, have dismissed the claimant in any event following receipt of subsequent medical evidence confirming the absence of any meaningful prognosis. By that stage the claimant had exhausted her entitlement to contractual sick pay. Accordingly there would have been little if any pecuniary loss flowing from dismissal.

Conclusion

123. The complaint of wrongful dismissal succeeds by concession. The respondent shall pay the claimant the sum of £2,081.05 gross in respect of notice pay.

124. All remaining claims are dismissed.

Approved by:

Employment Judge Wyeth

Date: 4 September 2026

Sent to the parties on:

10 October 2026

For the Tribunal: