



## **EMPLOYMENT TRIBUNALS (SCOTLAND)**

**Case No: 8002721/2025**

**Final Hearing in Person, Dundee Employment Tribunal 10 – 14 August 2026  
inclusive**

**Employment Judge K Wedderburn**

**M Sword**

**Claimant  
Present (apart from  
for submissions)  
represented by  
Mrs Templeton,  
solicitor**

**Tayside Health Board**

**Respondent  
Present and  
represented by  
Mr Bryce, Advocate**

### **JUDGMENT OF THE EMPLOYMENT TRIBUNAL**

The judgment of the Employment Tribunal is that the claimant's claims in terms of section 19 (indirect discrimination), sections 20 & 21 (reasonable adjustments due to disability), section 26 (harassment related to disability) and section 27 (victimisation) of the Equality Act 2010 ("EA 2010") do not succeed and are dismissed.

### **REASONS**

#### **Introduction**

1. The claimant's ET1 was presented on 7 November 2025, following ACAS Early Conciliation which took place between 27 August 2025 and 8 October 2025.
2. The claimant asserts claims of indirect disability discrimination (section 19), failure to make reasonable adjustments regarding his disability (section 20,21), harassment related to disability (section 26) and victimisation (section 27) of the EA2010.

3. The claimant has autistic spectrum disorder (“ASD”) and attention deficit hyperactivity disorder (“ADHD”) The respondent accepts that the claimant is a disabled person within the meaning of the EA2010 section 6(1)(a) and (b).
4. With regard to the hearing, the claimant had difficulty understanding a small number of questions asked. He was given time to consider questions and where needed, they were repeated or simplified as was practicable, to mitigate any disadvantage.

### **Issues to be determined**

5. The parties provided a draft List of Issues. The issues to be determined by the tribunal are in the Schedule.
6. At the full hearing, the claimant who was represented by his solicitor, Mrs. Templeton gave evidence. The respondent was represented by Mr. Bryce, advocate. The respondent called four employee witnesses: Ms. Susan Torrance, Senior Nurse, NHS Tayside Public Protection Services who was the claimant's manager at the relevant time; Mrs. Grace Gillen, who at the relevant time was Associate Nurse Director, Public Protection and Care Homes and who at was responsible for clinical areas in three health and social care partnerships in Perth, Dundee and Angus in acute service, retained service and primary care; Dr. Paul Monaghan, Clinical Care Group Manager for Children and Young People Services in NHS Tayside and Mrs. Lesley Ewing, General Manager, General Adult Inpatient Psychiatry in Tayside, Carseview Hospital and Murray Royal Hospital, Perth.
7. In the course of the hearing, the parties agreed a chronology which was provided to the Tribunal.
8. A joint bundle of productions was provided for the hearing to which photographs of the Adult Protection Team (APT)'s working area in the General Adult Psychiatry (“GAP”) Hub at Murray Royal Hospital were added during the hearing.
9. The claimant's disability protected characteristic and the respondent's knowledge of it were admitted by the respondent.
10. The respondent admitted that the Claimant carried out a protected act by initiating this tribunal claim with reference to section 27(2)(a) of the EA 2010.

**Findings in Fact**

11. The claimant is a Band 5 mental health nurse, who has 13 years' experience in nursing. He has a wide variety of mental health nursing experience ranging from forensic services, secure clinics, mental health wards, in the crisis team, in the community and in general practice. He has worked in local authority and healthcare settings.
12. He has been employed by the respondent as a registered Mental Health Nurse since 11 December 2023. He continues to be employed by the respondent.
13. The effects of the claimant's conditions are that due to ADHD, he craves novel input and sensory stimulation. He experiences a degree of restlessness, constriction to executive functioning and task sequences. He can feel under pressure and sometimes stutters. The effect of Autism is that he can be blunt and is methodical. He craves stability, structure, order and logic. He experiences debilitating sensory issues including light sensitivity, overheating and sweating. He can struggle with eye contact. He can become overwhelmed. Although not the subject of his claim, he has other underlying medical conditions including a gastrointestinal condition and anxiety and depression. The claimant worked in Amulree Ward, in inpatient mental health, Murray Royal Hospital, Perth, until November 2024.
14. In February 2024, the locker the claimant used was defaced with the words "ill wanker" in graffiti next to the claimant's name. The graffiti was below other graffiti, "Captain Cowan" which was a derogatory reference to another of the respondent's employees. The claimant told the respondent about the graffiti and it was removed. He did not raise a formal grievance at the time.
15. On 29 October 2024, the claimant raised discrimination, breach of contract and bullying and harassment concerns at an informal meeting with "AB" and "BW" who were both Senior Charge Nurses. His trade union representative, Mr Fraser was in attendance. As a proposed outcome of the meeting, the claimant stated that he no longer wished to work in inpatient mental health. He felt that a role in the community or in administration would suit him better. He felt uncomfortable in the ward environment and said that if the complaint was to be investigated, he would request to be moved off the ward to another area. He did not wish to move to general adult psychiatry inpatient services. He did not raise a formal grievance at this time. His complaints in October 2024 are not the subject of the claim.

16. On 8 November 2024, the respondent advised the claimant of allegations about his misconduct. He went on sick leave, followed by a period of paid special leave from 12 November 2024.
17. On 6 January 2025, the claimant was temporarily deployed to work in a learning role in the Adult Protection Team (APT) in Murray Royal Hospital during the misconduct investigation.
18. The APT is the team for NHS Tayside that provides specialist support in relation to adults at risk. Its objective is public protection and safety for NHS Tayside. Its role is non-clinical and mainly advisory. Its work includes under multi agency public protection arrangements (known as the "MAPPA" agenda) and violence against women and girls. MAPPA arrangements are for individuals who have predominantly committed sexual offences against children. The APT supports "MARAC", the multiagency forum to help protect mainly women; it works with offenders. It also works under the "PREVENT" anti-terrorism agenda. Reflecting its safeguarding role, the APT is staffed by Band 7 registered nurses equivalent to a Senior Staff Nurse in a ward environment. Band 7 nurses practice autonomously. The APT is managed by Suzanne Torrance, a Band 8A Senior Nurse.
19. The respondent takes its duty of care to staff seriously. It mitigates against the risk of them experiencing vicarious trauma by facilitating a supportive environment for team members who sit together and regularly speak to one another about support needs. Team members only work from home one day a week. A minimum 28 days' induction applies in the APT to new Band 7 staff.
20. The APT works in an open plan area known as the GAP Hub in Murray Royal Hospital. The team comprises Ms. Torrance and 4.2 full-time equivalent Band 7 registered nurses. The working area is 6 desks in two stations of 3 at the end of the Hub, separated from the open plan area by a tall wardrobe. There are few passers-by. Often, there are one or two people working in the in the APT space. Occupancy of the GAP Hub and the Adult Old Age hub is, over a two-week period, 25-50% at any given time. The GAP Hub is busiest first thing in the morning and is quieter during the rest of the day when clinical staff are working elsewhere. On average, other than at the start or end of the day, there are on average between 6 and 10 people in the area in the GAP Hub that can accommodate 80 desks.
21. In the APT, advisers regularly give advice by telephone and speak on teams calls with colleagues and other professionals, which can be noisy. There are regular discussions about work between colleagues. A crucial aspect of the work is that the APT members support one another with challenging cases.

22. The claimant met Susan Torrance on 6 January 2025 as he started the placement. The APT ways of working and the claimant's working arrangements were discussed. The claimant told Ms. Torrance he was affected by ADHD and ASD. He also explained he was affected by ulcerative colitis and mental health issues. The claimant was made welcome and told of the extensive learning opportunities available. The claimant found the meeting very positive and helpful.
23. With regard to the working environment, the meeting note records discussion that the claimant *"will benefit from using headphones to assist with concentration especially when doing online learning and reading....[he] can also use the library environment if preferred and/or quieter areas of the office"*. The respondent acknowledged and facilitated these arrangements as was reasonable considering the claimant's role, and that it was necessary to supervise and support him.
24. The claimant was the first Band 5 registered nurse to work in the APT. As a Band 5 registered nurse, under the NHS pay and grading system, Agenda for Change, he could not work autonomously. He had no experience of public protection work. Whilst he had broad nursing experience in other areas, there was a significant gap between the experience, roles and responsibilities of the existing Band 7 team members and those of the claimant. Daily support and supervision were required. The respondent planned how to support the claimant and provide him with opportunities for development. It intended to provide experienced support. The claimant did not want to be supervised by the Band 7 adviser Ms. Torrance proposed, so she undertook the supervision instead. She was a conscientious and supportive manager who worked hard to support the claimant and do her best by him. Due to the nature of her role, Ms. Torrance was not present at the Murray Royal site all the time.
25. The claimant worked on MAPPA "health checks" and a Missing Patient Policy audit. Having no adult protection experience, his work was supervised and checked by more experienced members of the adult protection team, including Grace Gilling. Communication was a core part of the claimant's role. Adult protection work can involve traumatic circumstances or those which may require psychiatric intervention. It can be distressing. The claimant's role was to gather and review information, for example, for MAPPA, looking at the analysis and the risk in arrangements for child sexual offenders. While the claimant's initial tasks included data input and administration, they also included review of clinical records including changes in health conditions and details of reoffending which would be used by the team to inform a risk assessment for the next meeting. He also worked on a compliance audit of the Missing Patient

Policy, pending a forthcoming review of the policy itself. Being located physically close to the team was important for the claimant's oversight, support and supervision and to ensure he could participate in discussions and meetings, so he got the most out of his placement. The work he did was of good quality.

26. The claimant was absent on 8 January 2025 and from 13 - 27 January 2025 inclusive due to his car being damaged.
27. When losing focus, the claimant used noise cancelling headphones to settle himself. He used different settings from playing music to "transparency" to "white noise" which masks background noise. The claimant worked in the library which he preferred to the open plan office. When working in the library, the effects of his ADHD still posed a challenge to him.
28. On 16 January 2025, after three days of his attendance, Susan Torrance had a telephone call with the claimant while he was absent, to consider his attendance record and discuss how to support his return to work. In the conversation, the claimant told her he didn't want to work in APT and that he would rather be on some kind of leave than be at work.
29. The claimant was absent again, from 5 –10 February 2025 inclusive due to a chest infection.
30. An occupational health report dated 10 February 2025 recorded that due to supplies of medication for his neurodivergent condition, the claimant had been without medication for a protracted period. He had been proactive in managing his condition. The report included that as the claimant is easily distracted, provision of a quiet work area with minimal foot fall for administrative activities would be beneficial and that if such provision could not be provided, the use of noise cancelling headphones should be allowed in such a period. A degree of flexibility in start and finish times and the possibility of hybrid working would also be beneficial. The claimant had flexibility in his working hours if needed and was able to accommodate medical appointments using his diary.
31. From February 2025, when at work, the claimant often worked from the library where he worked independently from the other members of the APT. He used noise cancelling headphones. He did not want to sit in the APT area when a Charge Nurse who had been involved in the disciplinary investigation from his previous role was seconded to the APT team. This, and the fact that the Charge Nurse worked elsewhere some of the time reduced the likelihood of their paths crossing at Murray Royal to one day a week.

32. The library is separate from the APT desks in the GAP Hub. The claimant kept in touch with his colleagues using email and Teams messages. The library is accessible to all staff at Murray Royal. There are five desks along a wall, a separate librarian's desk enclosed by Perspex and bookshelves. The claimant used the librarian's desk which was referred to in jest by Ms. Torrance as his "manager's office". The library is a small space used frequently by junior doctors as a common room and for meeting at the beginning and end of shifts for handovers. It is used as a place for meetings. It is used by staff who do not have office space or a computer for administrative work. Domestic staff and porters use it for training. On most days, there are more people in the library than in the GAP Hub. There is a photocopier. It can be one of the noisiest rooms on site. The respondent does not recommend carrying out confidential work there because of the nature of the environment.
33. Ms. Torrance instructed the claimant to let her, or, when she was not at Murray Royal, the Band 7 team, know of his whereabouts as it was important for his supervision, learning development, support and own wellbeing.
34. The claimant's working in the library disrupted the team. Regular working in the library was a barrier to the communication required for adult protection work and to support for, and supervision of, the claimant. When the claimant used noise cancelling headphones when working in the APT area, colleagues found it difficult to communicate with him.
35. Ms. Torrance raised concerns with Mrs. Gilling. She was trying to be supportive but there were concerns about where the claimant was, what he was doing and how the team was able to support him. When Ms. Torrance was not on site, there were one or two band seven advisors there, and the claimant was not going to the team. The busy team did not have time or capacity to go back and forward to the library to support him and check the work he was doing as they needed to be at their desks to work.
36. On 20 February 2025, a colleague was unable to find the claimant.
37. On 20 and 27 February 2025, Susan Torrance asked the claimant to make sure the team were updated about his whereabouts when she was not there so the team did not think he was missing. She was concerned as she didn't think the claimant was coping.
38. The respondent arranged for a laptop for the claimant to allow him to work from home one day a week, with a view to the imminent birth of his child. The claimant was on paternity leave from 10 March 2025 to 13 April 2025.

39. On 24 April 2025, the claimant emailed Susan Torrance at 0901am, titled "Library" to say he was in the library. Grace Gilling was unable to find the claimant in the APT working area at 10am. There were two APT advisers on duty at the GAP Hub who hadn't seen him. A colleague had been unable to find the claimant in the library. Grace Gilling was unable to find him in the library. Ms. Gilling returned to the APT about 11am and the claimant was not there. She and the advisers were concerned about the claimant's health and wellbeing. Ms. Gilling returned to the library and found the claimant. She suggested that as only two professional advisers were in the APT section, he would be better to go along and join them where they could have conversations with him and support him.
40. The claimant emailed Ms. Torrance at 12.49pm, titled "Stuff", advising he had emailed Grace Gilling to arrange an important discussion and that he would be taking advice about it. He was "pretty fucked off". Ms. Torrance replied at 12.51pm that she and Grace Gilling had been unable to find him at his desk in the library earlier. The claimant replied at 13.03pm that he had left to get some air. The claimant did not go to work with the APT team that day.
41. On 28 April 2025, the claimant sent Ms. Torrance a WhatsApp message advising he had been "ordered through to the office" by Ms. Gilling. In the messages, he told Ms. Torrance he would work at home from his laptop if permitted. He told Ms. Torrance he intended to self-certify as absent for a week. The claimant was absent from 28 April 2025 due to work stress and a recent diagnosis his mother had received. He did not return to work in the APT after 28 April.
42. Mrs. Gilling keeps her electronic diary up to date. On 28 April 2025, Mrs Gilling worked in Dundee, not in Perth.
43. From 6 January to 28 April 2025, the claimant had 30 days' attendance at work out of a possible 81 working days.
44. On 2 May 2025, by WhatsApp, the claimant advised Ms. Torrance his mother's cancer had spread, and he would ask his doctor for an extended sick line. He asked about his working accommodations and Ms Torrance undertook to check with Mrs Gilling. Ms. Torrance suggested an occupational health report relating to the working environment and the claimant agreed. The claimant noted, it was not "*a super loud office but you all do have teams calls multiple times a day every day.*"
45. On 5 May, Ms. Torrance advised she was sending the occupational health referral to help the claimant plan his return to work. She advised the respondent "*cannot support ongoing working form the library or home*" and

that he was *"being asked to sit somewhere in the GAP hub - for better access to support, direction and supervision"* with the APT team or in a quieter spot, for example near the fire officer's desk. She did not say the beneficial arrangements in paragraph 23 could not continue where reasonable. The claimant expected to hear further from Ms. Torrance.

46. During his absence in May, the claimant travelled to Spain with his partner and newborn child to visit his partner's parents as her father was dying.
47. Discussion about the working arrangements continued. An occupational health report of 13<sup>th</sup> of May 2025 recorded that Mr Sword advised that he had to be asked to leave the library and return to the open plan office to complete his administrative tasks. It recommended providing him with a list of activities to be undertaken and where they could be undertaken.
48. On 28 May 2025, by WhatsApp, Ms. Torrance advised the claimant she would be sending a note in writing about expectations for when he returned to work. For his return to work, the respondent needed to be clear about the support the claimant needed and his expectations.
49. The claimant replied he intended to return on 3 June 2025 at the end of the certificate, and that the *"best scenario"* was that he was *"left to work in the corner next to the fire guy and the rules don't get changed again"*. Ms. Torrance clarified the expectation that he sit in the team when possible, when there was space, otherwise beside the fire officer.
50. On 29 May 2025 Ms Torrance sent the claimant a broad outline of Expectations of ways of working for his return to work, as he was to be placed with the APT for a longer period. It acknowledged the agreed flexibility of ways of working at the meeting in January. It noted the claimant's preference for independent working where possible, taking into account the supervision required for his Band 5 role and the respondent's aim to recognise the claimant's requirement of a quiet workplace and use of noise cancelling headphones where appropriate as reasonable and manageable adjustments. There was agreed flexibility to work from the library, but it wasn't acceptable from a duty of care perspective for the team not to know where the claimant was. It had regard to the OH guidance about the claimant's preference to work in a quiet place away from the team and that this would be sustained where reasonably practicable. When space in the APT was available, the claimant was expected to sit in the team to access supervision, advice and guidance as were all the team. He was offered a desk in a quieter area of the GAP Hub next to the fire officer when required. It noted the Band 7 partitioners' supervisory role, providing support, and their duty of care particularly considering the potentially traumatic nature of work the claimant would review. He was asked to check

in on arrival and leaving work and when taking breaks/being away from his desk for wellbeing reasons. Use of noise cancelling headphones was to be limited to occasions when he could not cope without them as they presented a barrier to engagement with others. There required to be a degree of flexibility as there can be rapid pace of change in adult safeguarding practice.

51. On 24 July 2025, the claimant was advised of a recommendation to take no further action in relation to the earlier misconduct allegations against him.
52. The claimant lodged a grievance on 31 July 2025 which included a complaint about the graffiti on the locker in February 2024. He raised it because of the misconduct allegations against him. It also included a complaint about how others treated him. The claimant was unhappy with the grievance manager the respondent originally appointed, and Dr Paul Monaghan was appointed on 1 October 2025 instead. Dr Monaghan had previous experience as a senior manager for Adult Inpatient Mental Health for NHS Tayside. Dr Monaghan invited the claimant to attend a Stage 1 grievance hearing on 20 October 2025 by letter of 14 October 2025. At the meeting, as well as the claimant and Dr Monaghan, in attendance were the respondent's Ms. Thomson from human resources and by video, Liam Mackie of the Royal College of Nursing as the claimant's representative. The claimant's grievance was discussed at the meeting, and he was told he could share a photograph of the locker graffiti for the investigation. Dr Monaghan investigated the claimant's complaints under the respondent's "One Force Scotland" bullying and harassment policy rather than its grievance policy. Although the claimant didn't receive Dr Monaghan's letter to him of 23 October 2025 enclosing the meeting notes due to postal issues, it was also sent to his trade union representative. Fourteen days were given to check the notes for accuracy in line with the respondent's policy. The claimant's trade union representative did not dispute the content of the meeting notes. Dr Monaghan's email address was on both the letter dated 14 October 2025, inviting the claimant to the meeting on 20 October and that providing the notes dated 23 October 2025. The claimant sent documents for the investigation to the human resources team but did not send in a photograph of the locker to them or Dr Monaghan.
53. The claim was lodged on 11 November 2025. Mrs Ewing, General Manager did not mention the fact the claimant had made a claim to Dr Monaghan.
54. The respondent's bullying and harassment policy and its grievance policy provide for different processes. Dr Monaghan interviewed 4 witnesses. Witnesses are entitled to fourteen days' notice of investigation meetings under the policy. Between interviewing; analysing and preparing his

investigation report, there were Christmas and New Year holiday breaks. Dr Monaghan wrote to the claimant on 10 January 2026 with the outcome of his investigation in line with the bullying and harassment policy. He did not enclose a copy of his report, nor did he seek to convene a further meeting with the claimant. He noted it was unfortunate that the claimant had not been able to provide the photograph of the locker. He advised that the grievance was not upheld. He did not otherwise give reasoning for his decision. In line with the bullying and harassment policy, he advised the claimant he could request review of the process followed within 14 days. When he received the grievance outcome, the claimant was preoccupied as his mother was receiving palliative care and his son had experienced seizures. He did not ask for a review.

55. Mrs Ewing, General Manager had expected to receive the investigation report and convene a "Stage 1" meeting under the grievance procedure, with an independent panel, at which the claimant would have presented his complaint, and Dr Monaghan would have presented his investigation. The grievance procedure includes a right to appeal on substantive as well as procedural grounds. The question of which policy was engaged by the grievance was unclear to the respondent, as either policy could cover the complaints.
56. On 29 January 2026, Mrs. Ewing invited the claimant to an investigation feedback meeting to discuss the findings of Dr Monaghan's investigation. On 30 January, the claimant declined. Mrs Ewing wrote to the claimant on 3<sup>rd</sup> February 2026 having reviewed the investigation and its findings. She was content with the investigation remit, the extent of the investigation and she agreed that the complaint was not upheld. There was no evidence to substantiate it. On 20 February 2026, the claimant asked Mrs Ewing for a review of the process in an email. He complained that Dr Monaghan's investigation was insufficient. His email attached a photograph of the locker. In the email, the claimant stated he did not think the photograph was required previously.
57. By 20 February 2026, Mrs Ewing was aware there had been confusion in relation to the process. It was a regrettable error that the respondent had not followed the grievance policy. The respondent sought to remedy this and at the time of the tribunal hearing is arranging a stage 1 grievance meeting under its grievance policy further to Dr Monaghan's investigation, to give the claimant opportunity to present his case and comment on the investigation.
58. The claimant was provided with a copy of Dr Monaghan's report on 8 April 2026. It was redacted on advice from the respondent's Governance Team.

As it is redacted, he does not have the full report. On receiving the investigation report he felt low.

59. Following the 28 April 2025, the claimant's mental health was poor. This was due to the decline in his mother's health; what he perceived as having been vexatious misconduct allegations against him, his working arrangements; coping with being a father and thinking of the possible loss of his career. It affected his confidence. He felt withdrawn, lost and hopeless. He lost weight due to stomach flare ups. He stopped playing football. He lost sleep. He experienced feelings of negativity and quickly lost his sense of focus. He was supported by his partner, his GP and the Autism team. He spent time with his mother. Ms. Torrance also supported him. He was prescribed anxiety medication venlafaxine and propranolol. He was an occasional inpatient due to his stomach problems and was prescribed infliximab.

### **Submissions**

60. Both the claimant and respondent exchanged and provided to the Tribunal written submissions, which were detailed, spoken to and supplemented by oral submissions at the hearing.
61. The tribunal considered the parties' submissions. In the interests of brevity, it is not considered necessary to repeat the submissions. Where appropriate; they are referred to below.

### **Observations on the evidence**

62. The Tribunal broadly accepts much of the claimant's evidence as straightforward, reflecting his honest recollection of relevant matters. The claimant's view that the respondent treated him unfavourably in relation to his disability, and the nature of the matters complained of are not however accepted.
63. The respondent's witnesses' evidence is accepted as their honest recollection of the circumstances. The factual basis of Dr Monaghan's evidence was not in dispute. The witnesses made concessions that for example, it was regrettable that there had been confusion regarding which policy applied for handling the claimant's harassment grievance and they have sought to try to rectify that by giving the claimant the same opportunity to present his case and respond to the investigation once the confusion became apparent.
64. There were disputes of fact in relation to two matters in particular:

1. The date of the discussion between the claimant and Mrs. Gilling in the library, relied upon as being the relevant PCP, “a *requirement to work in an open plan office environment*”. The claimant asserted this took place on 28 April 2025 while Ms. Gilling recalled it was on 24 April 2025; and
  2. The claimant’s failure to provide the photograph of the locker graffiti following the grievance meeting on 20 October 2025.
65. In relation to the first, the parties agreed Mrs Gilling and the claimant had a conversation in the library on 24 April 2025. The claimant asserts and the respondent does not agree that they also spoke in the library on 28 April 2025 when the claimant says a requirement was applied to him. Mrs. Gilling's evidence was that she was in Dundee on 28 April and therefore was not in Murray Royal Hospital that day, is preferred to the claimant's recollection. In this conclusion, the tribunal has regard to Mrs Gilling's evidence that on the morning of the hearing she had checked her up to date electronic diary for 28<sup>th</sup> April. It showed she was in Dundee that day. The tribunal also had regard to the contents of contemporaneous emails on 24 April 2025 between the claimant and Ms. Torrance. The claimant's email to Ms. Torrance on 24 April 2025 at 09.01am, titled "Library", advised he was in the library that day. The claimant's email to Ms. Torrance on 24 April 2025 at 12.49pm, titled "Stuff" advised he had requested to speak to Mrs Gilling on an important matter, that he would be taking advice. Ms. Torrance's' s reply at 12.51pm, that she and Mrs Gilling had been unable to find him as his desk in the library earlier, after he had messaged. These emails are consistent with the oral evidence given by Mrs Gilling.
66. The tribunal also had regard to the claimant's WhatsApp messages to Ms. Torrance on 28 April 2025 which purport to record that he had "just been ordered through to the office" by Mrs Gilling. However, the tribunal considered that the contemporaneous emails from between Ms. Torrance and the claimant on 24 April were more reliable when taken with Mrs Gilling's evidence, and that on the balance of probability, the conversation the claimant objected to took place on 24 April 2025.
67. With regard to the locker graffiti, the tribunal had regard to the claimant's evidence that he was told he could share a photograph of the locker at the meeting with Dr Monaghan on 20 October 2025. This was consistent with the notes of the grievance meeting which were sent to the claimant's TU representative. The claimant subsequently said in evidence that he was given no clear instruction how to submit evidence and that he was not aware of appropriate means to do so. Dr Monaghan's email was at the top of the letter inviting the claimant to the grievance meeting of 14 October 2025 and of that providing the notes of the meeting to his TU representative

on 23 October 2025. The claimant sent other documents to be included in the investigation. This contradicted his assertion that he was not aware of how to share the photograph. The tribunal also had regard to the claimant's statement in his email to Mrs Ewing on 20 February 2026 that he did not think the photograph was required previously which was inconsistent with his oral evidence. The tribunal also considered the claimant's evidence that he raised his grievance about the locker graffiti in response to the disciplinary allegations against him.

68. Having considered the above, where the facts are disputed in relation to the above matters, the tribunal prefers the respondent's witnesses' evidence to the claimant's.
69. No substantive evidence was given about the detail of the concerns raised informally by the claimant about working in Amulree Ward, in October 2024.
70. With regard to the claimant's grievance of 31 July 2025, no substantive evidence was given by the claimant on matters other than the defacing of the locker with graffiti. From the evidence led from the claimant, any other aspects of the grievance are not before the tribunal.
71. Other than evidence given by the claimant and Mrs Ewing about the claimant's dissatisfaction with the handling of his grievance. The contents of neither the respondent's grievance policy nor its bullying and harassment policy were referred to by either party.
72. The claimant gave evidence about the effects of his conditions of ASD and ADHD. His evidence about how he was affected when going off sick from 28 April 2025 was that the impacts related to a number of personal matters as well as the matters complained of in this claim.
73. The claimant gave evidence clearly but did not give any evidence that the acts or omissions complained of at paragraph 15(ii) -(viii) of the List of Issues related to disability.
74. In relation to the indirect disability discrimination claim, no evidence was given by the claimant of the group disadvantage resulting from the application of the asserted PCP. The claimant's representative's position in submissions was that it is a matter within judicial knowledge.

### **Relevant law**

75. Other than as below and in the List of Issues, there is no need to set out the relevant statutory provisions of section 6 Disability; section 19 Indirect Discrimination, sections 20 Duty to make adjustments and 21 Failure to comply with the duty, section 26 Harassment, section 27 Victimisation,

section 124 Remedies general; section 123 Burden of Proof; section 123(1) Time Limits of the EA 2010 in full.

### **Burden of proof for discrimination claims**

76. Section 136 (1) to (3) of the EA 2010 sets out:

*(1) This section applies to any proceedings relating to a contravention of this Act.*

*(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred. 30*

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

77. The legal principles applicable to the claims are well established, and considering the tribunal's overall conclusions which follow, the cases referred to by the parties in their Submissions are not repeated, other than as below. With regard however, to detriment in the section 27 claim for victimisation, "detriment" is not defined in the EA 2010. The House of Lords in *Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337* held that a worker experiences "detriment" in circumstances which a reasonable worker might regard as being to his or her detriment. This could be a change to their position for the worse or put them at a disadvantage. An "unjustified sense of grievance" is not enough.

### **EHRC Statutory Employment Code of Practice**

78. In relation to the following discussions and decisions, the Tribunal has taken the Equality and Human Rights Commission's Employment Statutory Code of Practice on the EqA 2010 into account in each discussion and decision.

### **Discussion and Decision**

79. The reasons for the claimant's absences were both work related and related to his mother's terminal diagnosis. During the relevant period his son was born, and his partner's father was dying.

### **Substantive Issues**

80. The tribunal has regard to the claimant's health conditions and the note from the meeting between Ms. Torrance and the claimant on 6 January

2025 that he *"will benefit from using headphones to assist with concentration especially when doing online learning and reading....[he] can also use the library environment if preferred and/or quieter areas of the office"*. Further, the occupational health report of 10 February 2025 noted that supportive option remained in place. Provision of a quiet work area with minimal foot fall for administrative activities would be beneficial and if such provision could not be provided, the use of noise cancelling headphones should be allowed in such a period. The claimant preferred to work in the library and use noise cancelling headphones. The respondent acknowledged and facilitated these arrangements as was reasonable considering the requirements of the claimant's role. The beneficial arrangements did not account for the crucial aspects of the need for overview; support and supervision of; advice and guidance to, the claimant in his role (as further discussed below). Working in the library wasn't something the respondent could permit all of the time, as the claimant needed to sit near to colleagues. He couldn't use noise cancelling headphones all the time because they affected his colleagues' ability to communicate effectively with him.

#### PCP

81. The claimant takes issue with the suggestion of Mrs. Gilling to work in the APT area in the GAP hub on the 24 April 2025. Considering the nature of the claimant's Band 5 role, his lack of experience in adult protection, which is a sensitive, safeguarding and potentially traumatic area of work, and the need for support; supervision of; and guidance and advice to the claimant, it was important for his introduction to, and ongoing work in this area of work, for the respondent to provide adequate oversight, supervision and support to the claimant for him to work in close proximity to his colleagues. It was important that there was good communication between colleagues in the team. It was not possible to foster this environment as the claimant frequently worked in the library. Mrs Gilling's suggestion to the claimant move to work in the GAP Hub on 24 April 2024, was reasonable and justified.
82. In evidence, the claimant accepted that Mrs Gilling did not tell him not to use library at all. He accepted that she did not state that it could never be used. The occupational health report of 13 May 2025 shows that discussions about where the claimant would carry out aspects of his role were ongoing. The Expectations of ways of working document of 29 May 2025, stated that there was agreed flexibility to work from the library. It noted the claimant's preference for independent working *where possible* (emphasis added), taking into account the supervision required for his Band 5 role and the respondent's aim to recognise the claimant's

requirement of a quiet workplace and use of noise cancelling headphones where appropriate. The claimant also accepted in evidence that the text message from Ms. Torrance on 29 May did not say he could not use headphones. In evidence, the claimant accepted that the "Expectations" document was not an exclusion of the medical advice referred to. Considered in the context of the above ongoing discussions in May 2025 about working arrangements, Ms. Torrance's text message on 5 May 2025, "*we cannot support on going working from the library or home*" referred to permanent working from the library or home and did not say that the respondent would not accommodate the recommended arrangements for occasional use of the library and or noise cancelling headphones, as was reasonable.

83. The question of whether there is a PCP should be construed widely and can include, for example, formal or informal policies, rules, practices, arrangements. There does not need to be a formal policy in place. A one-off decision may be a PCP if it reflects the way in which things generally are or will be done, or there is some element of repetition. The claimant preferred to work in the library, away from the APT. This preference went further than the extent of the arrangements suggested by the claimant on 6 January 2025, and the medical advice in the occupational health report of 10 February 2025.
84. This case can be distinguished from that in *Rider v Lees City Council EAT 0243/11*, referred to by the claimant's solicitor. In the context of the evidence discussed above, the claimant was not required by the respondent to work in an open plan office environment. There was agreed flexibility to work from the library and use headphones when reasonably necessary. Mrs Gilling's suggestion to work in the APT on 24 April 2025, when there were only two others working in the APT, contrary to the claimant's preference, was not a requirement. It is not the application of a PCP. Considering the above, in all the circumstances, the evidence does not support the claimant's assertion that the respondent applied a PCP of: "*A requirement to work in an open plan office environment.*".

### **Indirect discrimination**

85. Indirect discrimination may occur when an employer applies an apparently neutral provision, criterion or practice which puts workers sharing a protected characteristic at a particular disadvantage (section 19(1) & (2), EA 2010). There are four requirements:

(a) the employer applies (or would apply) the provision, criterion or practice equally to everyone within the relevant group including a particular worker;

(b) the provision, criterion or practice puts, or would put, people who share the worker's protected characteristic at a particular disadvantage when compared with people who do not have that characteristic;

(c) the provision, criterion or practice puts, or would put, the worker at that disadvantage; and

(d) the employer cannot show that the provision, criterion or practice is a proportionate means of achieving a legitimate aim.

86. On basis that the respondent did not apply the asserted PCP, the indirect discrimination claim does not succeed. Even if Mrs Gilling's suggestion was the application of a PCP, the claimant did not show that the PCP puts, or would put, persons who share the protected characteristic of his disability at a particular disadvantage compared to others who do not have the characteristic. The claimant preferred to work in the library. The relevant pool for comparison is a group of Band 5 nurses employed by the respondent to work in the APT who are inexperienced in that area of work. While it could be within judicial knowledge that certain practices or arrangements may put disabled people as a group at a disadvantage compared to non-disabled people, in this case, Mrs Gilling's suggestion, contrary to the claimant's preference, did not create any group disadvantage. Considering the effects of the claimant's disability, in light of the comparative size, layout, occupation levels and types of work being done in the APT in the GAP Hub and separately, in the library, working in the APT Hub was not disadvantageous on a group basis. In reaching this conclusion, it was of note that the claimant's evidence was that while working in the library, his ADHD was still an issue. There was no disadvantage to the claimant.
87. In the event the respondent's suggestion to work in the open plan office was a PCP which had the requisite effect on a group and individual basis, it was justified. The respondent had the legitimate aims of integration with the team; oversight; support and supervision of and advice and guidance to, the claimant. The respondent also had the legitimate aim of ensuring the health and safety of staff through appropriate levels of support, guidance and oversight. These aims could not be achieved when the claimant worked in the library. While accommodating the reasonable arrangements recommended for the claimant, there was no reasonable

alternative to the team (including the claimant) working in close proximity to one another.

### Reasonable adjustments

88. Employers are required to take reasonable steps to avoid the substantial disadvantage, where a provision, criterion or practice applied by or on behalf of the employer puts a disabled person at a substantial disadvantage compared to those who are not disabled (s.20(3) EA 2010).
89. As above, the respondent did not apply a PCP of "*A requirement to work in an open plan office environment*", so the duty to make reasonable adjustments under sections 20 and 21 EA 2010 was not engaged. Even were the suggestion of Mrs Gilling to be a PCP, for the reasons above relating to disadvantage, such a PCP did not put the claimant at a substantial disadvantage compared to non-disabled employees.
90. There was no evidence that the respondent had refused to accommodate the requested accommodations to working arrangements as were reasonable. There was no failure of the respondent to make reasonable adjustments.

### Harassment

91. Harassment of a worker occurs when a person engages in unwanted conduct which is related to a relevant protected characteristic and which has the purpose or the effect of:
  - (a) violating the worker's dignity; or (b) creating an intimidating, hostile, degrading, humiliating or offensive environment for that worker related to a protected characteristic. The claim is that the asserted harassment related to the claimant's disability (section 26(1) EA 2010).
92. In deciding whether conduct had that effect, each of the following must be taken into account:
  - a) The perception of the worker;
  - b) The other circumstances of the case and
  - c) Whether it is reasonable for the conduct to have that effect (section 26(4) EA 2010).
93. The "unwanted conduct" complained of as harassment is in the list of issues paragraph 15, subparagraphs (i)- (viii). No evidence was led about the substantive matters of the grievance and its outcome other than in

relation to the complaint about of the locker graffiti, and that the respondent did not uphold any aspect of the claimant's grievance. With regard to the locker graffiti, this was because of a lack of evidence (the photo which was not provided). Further, no evidence was led that the matters (ii) - (viii) related to disability. The tribunal is not satisfied that any of the alleged acts or omissions of harassment have been established, or that they related to disability. With regard to the matters complained of:

(i) Considering the above and findings discussed at paragraph 82, there was no evidence to support the assertion that the respondent removed the claimant's ability to work in a quiet room;

(ii) Considering the above and findings discussed at paragraph 82, there was no evidence to support the assertion that the respondent removed the claimant's ability to use noise cancelling headphones when in an open plan office environment;

(iii) Regarding the grievance, other than the question of the locker graffiti, there was no substantive evidence of the claimant's grievance of disability discrimination to support that the respondent failed to properly investigate allegations of disability discrimination contained within this grievance;

(iv) While the respondent did not uphold the grievance, the claimant did not share photographs of the locker with Dr Monaghan for the grievance investigation. Dr Monaghan did not have photographic evidence of the words "ill wanker" written on the locker. No evidence of the other matters in the grievance was led, apart from that it involved a discrimination complaint.

(v) The claimant attended a stage 1 grievance hearing with Dr Monaghan on 20 October 2025, the contention that he had not been afforded a grievance hearing is not supported. While it is acknowledged the respondent is now arranging another stage 1 grievance meeting under its grievance procedure, this does not mean the meeting with Dr Monaghan can be ignored. Further to this, the claimant was provided with a right to reply, through the offer of the feedback meeting by Mrs Ewing, which he declined.

(vi) With regard to the complaint about the graffiti on the locker, Dr Monaghan's outcome letter advised that his complaint was not upheld and noted the photograph hadn't been shared. This was a sufficient basis for the grievance about that not to be upheld.

(vii) The respondent's letter of 10 January 2026 addressed the complaints relating to the locker graffiti. There was no evidence of note about the other disability discrimination complaints.

(viii) The grievance investigation took more than 3 months to conclude. The process was not unduly or unreasonably lengthy considering the claimant's objection to the initial grievance manager, time to appoint a new investigating manager, time needed to meet with the claimant, time needed to arrange witness meetings and prepare a report. Further, there was inevitable passing of time as the process took place over the Christmas and New Year periods.

94. Based on the above, the acts or omissions said to be unwanted conduct are not established.
95. No evidence was led as to the purpose or effect of the acts complained of (i) to (viii) on the claimant. Had any of the above been upheld as unwanted conduct, there is no basis for the tribunal to conclude that each had the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him.
96. Further, even had the conduct had been held to have occurred and had the prescribed effect, in the circumstances, and in particular considering the retaliatory nature of the grievance, taking into account the claimant's perception and all the circumstances, it would not have been reasonable for the conduct to have the prescribed effect. The claims of disability related harassment accordingly are not upheld.

## **Victimisation**

97. Victimisation occurs if an employer subjects a worker to a detriment because the worker has done a 'protected act' or because the employer believes that the worker has done or may do a protected act in the future (section 27 EA 2010).
98. The respondent admits that the Claimant carried out a protected act by initiating this tribunal claim on 7 November 2025 with reference to section 27(2)(a) of the EA 2010.
99. The claimant relies on paragraph 15 subparagraphs (iii) to (viii) of the List of Issues as being the detriments he experienced related to his protected act. The discussion and findings above regarding aspects at List of Issues, paragraph 15 (iii) to (viii), is referred to. While each of matters (iii) to (viii), were they to be found to have occurred, may be capable of being a detriment, the tribunal is not satisfied that they have been established for

the reasons discussed above. With regard to what amounts to a detriment, considering *Shamoon*, the claimant's sense of grievance was not justified in the circumstances.

100. Anyway, there was no evidence from the claimant that these matters complained of were because of his protected act.

### **Time limits**

101. The respondent raises a preliminary matter of jurisdiction that Claimant's Early Conciliation request was submitted on 27 August 2025, and the certificate issued on 8 October 2025, with the claim submitted on 7 November 2025. It submits that any claims related to matters/incidents pre-dating 28 May 2025 are out of time as set out in Sections 123(1)(a) & (b) of EA 2010.
102. This question would involve consideration of whether there was an act and/or conduct extending over a period and/or a series of similar acts or failures; whether time should be extended on a "just and equitable" basis; when the treatment complained about occurred.
103. However, given the findings regarding the substantive claims above, it is not necessary to address the question of time limits.
104. In all the circumstances, the claims do not succeed and are dismissed.

**Date sent to Parties**

**30 September 2026**

**Schedule*****Indirect disability discrimination – Section 19 EA 2010 (EA 2010)***

1. Did the Respondent apply the following PCP to the Claimant:

*A requirement to work in an open plan office environment.*

2. Was the PCP applied to persons who do not share the Claimant's disability?
3. What is the pool for comparison (group affected by the PCP)?
4. Did or would this PCP place those employees with the same disability as the Claimant at a particular disadvantage when compared to others?
5. Did this PCP place the Claimant at a disadvantage?
6. If yes, did the Respondent apply this PCP in pursuit of a legitimate aim?
7. What was the legitimate aim?
8. If yes, was the way in which the Respondent applied the PCP a proportionate means of achieving the legitimate aim?

***Failure to make reasonable adjustments -Sections 20 and 21 EA 2010***

9. Was there a PCP of the Respondent?
10. If so, did the PCP of "A requirement to work in an open plan office environment" put disabled employees at a substantial disadvantage compared to employees who were not disabled?
11. Could the Respondent have made adjustments to the PCP and, if so, what were they?
12. Would the adjustments suggested by the Claimant have removed or alleviated the substantial disadvantage?
13. If so, was it reasonable in all the circumstances for the Respondent to have made such adjustments?
14. Did the employer fail to make reasonable adjustments in terms of section 20 of the EA 2010?

***Harassment - Section 26 EA 2010***

15. Did the Respondent:
  - (i) Remove the claimant's ability to work in a quiet room;

- (ii) Remove the ability to use noise cancelling headphones when in an open plan office environment;
  - (iii) Fail to properly investigate the Claimant's allegations of disability discrimination contained within the Claimant's grievance;
  - (iv) Fail to uphold any aspect of the Claimant's grievance, despite evidence that the words "ill wanker" were written on the Claimant's locker;
  - (v) Make the decision to not uphold the Claimant's grievance without holding a grievance hearing with the Claimant;
  - (vi) Make the decision to not uphold the Claimant's grievance without sharing any details of the evidence gathered during the investigation (if any) with the Claimant, thus removing the Claimant's right of reply;
  - (vii) Issue an outcome letter which fails to address any of the Claimant's concerns of disability discrimination; and
  - (viii) Take more than 3 months to conclude the grievance process which was unduly lengthy given the apparent lack of investigation carried out.
16. Were each or any of the above acts unwanted conduct related to the Claimant's disability?
17. If so, did each act have the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?
18. Was it reasonable for the conduct to have that effect?

***Victimisation***

19. Did the Claimant do a protected act when he lodged his Employment Tribunal claims against the Respondent on 7 November 2025?
20. Did the respondent carry out or make the omissions at paragraph 15 (iii) to (viii) above?
21. If so, with regard to each act or omission, did the Respondent subject the Claimant to detriment?
22. If so, did the Respondent subject the Claimant to detriment because he had done a protected act or because the Respondent believed that he had done, or might do, a protected act?

***Time Limits - Section 123 EA 2010***

23.

- (a) Was the claim (and the complaint of victimisation in the amended claim) brought after the end of the period of three months starting with the act complained of in line with section 123(1)(a)?
- (b) Were any of the acts complained of continuing conduct extending over a period;
- (c) If so, when did the period end?
- (d) If the act or acts complained of did not amount to conduct extending over a period, would it be just and equitable to extend time in line with section 123(1)(b)?

***Remedy - Section 124 EA 2010***

- 24. Whether the Tribunal should make a declaration?
- 25. Whether the Claimant should be awarded compensation including injury to feelings?
- 26. Whether the Tribunal should make a recommendation?
- 27. Should the Tribunal apply an uplift of 25% to compensatory award for failure to comply with the ACAS Code?