Case Number: 6012427/2025

EMPLOYMENT TRIBUNALS

Claimant: **A**

Respondent: **Home Office**

Heard at: **Cardiff and by video**

On: **22, 23, 24, 25, 26 June 2026**

Before: **Employment Judge S Moore**
Mrs Y Neves
Mrs H Evans

Representation
Claimant: In person
Respondent: Mr Harris, Counsel

JUDGMENT was sent to the parties on 10 September 2026. Written reasons were requested on 26 June 2026 but did not specify whether summary or full written reasons were requested. The Tribunal considers that it is appropriate to provide written full reasons and the following written full reasons are therefore provided:

FULL REASONS

Background and Introduction

1. An oral judgment was given on 26 June 2026. The Claimant made an application for written reasons on 26 June 2026. Judge Moore was not told about that request until 10 September 2026. The Tribunal apologises for the delay in providing these written reasons but they have been produced as soon as judicial time was available.

2. The Tribunal acknowledges this is a long judgment. The Tribunal has had to address knowledge of three separate disability impairments, five acts of direct discrimination, thirteen acts of s15 unfavourable treatment with seven separate "something arisings", six legitimate aims, eleven PCPs, six substantial disadvantages, two acts of harassment and reliance of all direct and s15 unfavourable treatment (so eighteen separate complaints) as protected victimisation detriments. The written reasons have taken three judicial days of writing time. This claim would benefited greatly from judicial led and / or applications for strike out / deposit orders as many of the

complaints had no or little prospects of success as well as a judicial supervised final list of issues.. It is recognised that significant judicial time was spent in trying to clarify the Claimant's claims at preliminary hearings.

3. The ET1 was presented on 10 April 2025. The claimant brought claims of direct disability discrimination, discrimination arising from disability, failure to make reasonable adjustments, disability related harassment and victimisation.

4. There was an agreed bundle of 1429 pages. The Tribunal also considered the impact statement and preliminary hearing bundle from 10 September 2025 which contained the medical evidence. The Tribunal heard witness evidence from the claimant. The respondent called Mr C Bidwell, decision manager, grievance, Ms R Williams, investigating manager, grievance, Mr K Bird, SEO Senior Operations Manager and Mr D Hussey, HEO Operations Manager.

5. The Claimant's witness statement, particulars of claim and further and better particulars of claim were long documents with no paragraphs or page numbers. The Tribunal is grateful to the Respondent for providing numbered paragraph versions to the Claimant and the Tribunal on 23 June 2026.

The list of issues

6. There was a Preliminary Hearing in front of Judge Grubb on 10 September 2025 and she prepared a draft list of issues. Judge Grubb documented the claimant had provided a document called "categorised claim" which was used to draft a list of issues by Judge Grubb after discussion with the parties. This was not in the bundle. Judge Grubb asked the Claimant to review the summary in the Case Management Order to provide additional information and make an application to amend along with further information.

7. Judge Grubb's list of issues contained one complaint of direct discrimination, eleven complaints of discrimination arising from disability, four PCPs for the reasonable adjustments claim and one protected act for the victimisation claim.

8. The next Preliminary Hearing was on 26 November 2025. The Claimant had provided further information dated as 3 October 2025 on the index to bundle and described as further and better particulars. This document contained an application to amend her claim in respect of new matters had arisen since she lodged her claim. Judge Ryan recorded as follows:

   I listed the potential claims that I identified in the Claimant's narrative further and better particulars/application to amend, in the period in potential dispute, that is 11 April 2025 – 2 October 2025 and asked the Claimant to confirm the claims being pursued. I have done my best to set out those claims in a draft List of Issues below. The Claimant is to confirm the accuracy of that list or to make required corrections but is not to add further or later claims, at least for now.

   And

The draft List of Issues below is limited to the Claimant's apparent amendment application; in due course the Respondent will draw up a comprehensive list incorporating Judge Grubb's draft, the amendments by consent, and any other amendments granted.

9. It did not seem apparent from this order that any application to amend had been granted.

10. Judge Ryan's list of issues substantially differed to Judge Grubb's list of issues possibly because Judge Ryan's version only addressed the new matters that had arisen since Judge Grubb's list of issues. The big difference was the reduction of unfavourable treatment section 15 claims from 11 to 1. There was also an additional claim of harassment added in Judge Ryan's list of issues.

11. On 6 February 2026 the respondent filed an amended response confirming they did not object to any of the amendments noting all alleged events were in the period 11 April 2025 to 2 October 2025.

12. The Respondent was ordered to agree a final list of issues which was before us at the start of the hearing. This substantially differed again from both Judge Grubb's order and Judge Ryan's order possibly as it incorporated all issues. Unfortunately, it was not clear which of the issues had pleaded in the ET1 and which in the further and better particulars, for which there remained no formal judicial decision permitting amendment. Mr Harris told the Tribunal at the start of the hearing that the Respondent had filed amended grounds of resistance addressing most of the claims except for six of the PCPs and Mr Harris confirmed they were entirely ready to deal with the case as set out in the list of issues.

13. The Tribunal had to make a decision about what claims and issues they would be required to determine over the forthcoming days of the hearing. A list of issues is not a pleading. It remained unclear to this Tribunal the source of some of the complaints that were in the list of issues and we asked Mr Harris to file an updated list of issues specifying the source of the complaint. Mr Harris has done his best to assist the Tribunal and provided a numbered list of issues, annexed to this judgment which labels the potential source of the complaint. In many complaints whilst the factual matters were set out, as can be seen in our conclusions the pleaded case contained no other crucial discernible elements of a complaint, for example the something arising for a s15 claim.

14. One particular example was that when discussing the issues the Tribunal were unable to identify the source for the comparator relied upon for one of the direct discrimination complaints (at paragraph 5.3- attending outpatient appointments in her own time).

15. Given that the respondent had not opposed the application to amend and the parties were ready to deal with those matters it was our determination that we should continue to deal with them and set out in our findings and deliberations whether or not there had been any such discernible claim pleaded by way of the claim or amendment application. Whilst this was not

ideal, this Tribunal concluded it was the most effective way of addressing the differing list of issues presented to us at the start of the hearing.

16. On the morning of the first day, the claimant had not attended the hearing and was contacted by the clerk. Some confusion had arisen over the status of the first day as a reading day. The claimant attended as soon as she was able and no criticism is made of the claimant regarding this issue which was not of her making.

17. On the second day of the hearing the Claimant raised a concern about being in the same room as Mr Hussey and Mr Bird. It was explained that the hearing is public and also as witnesses they would both need to hear her evidence in case they needed to comment on anything she said. The Claimant was offered a private case management hearing to discuss what further adjustments could be made but this was declined and the Claimant confirmed she was fine to proceed.

18. On the second day of the hearing during cross examination of the Claimant, the Claimant told the Tribunal that the list of issues was wrong at 5.4. This was set out as follows:

Fail to (in relation to the Claimant's grievance against Yasmine) provide the Claimant with a copy of the investigation report, statements & related evidence attached to template letter HGR24

19. The Claimant said the complaint should have read that it was about a failure in relation to *Yasmin's grievance against the Claimant.*

20. The Tribunal could see from Judge Ryan's draft list of issues that he had specified it as a failure to provide *the* Claimant with documentation required by her prior to her grievance hearing against Yasmin. The comparator was Yasmin.

21. The Tribunal was unable to identify anywhere in the claim the source of this as a direct discrimination complaint. It is only mentioned in the 3 October 2025 further and better particulars as follows:

The grievance against me was filed in October 2024 I was notified of it verbally on 22nd October 2024. I received a written notification regarding the grievance by the initial Decision Manager (later changed) on 11 November 2024. It is now almost a year later I have still not been provided with investigation reports of witness interviews which is part of the Home Office policy to provide to the claimant & respondent. Additionally, I have not received anything in writing about the outcome of my grievance, I have only been informed verbally by my management chain that I have no case to answer to. On top of that I have not been provided of the 2nd Decision Maker's name for me to submit a Subject Access Request to obtain the information I need.

<u>Reasonable adjustments for the hearing</u>

22. It was agreed that the Claimant would need regular breaks and extra time to answer questions.

Findings of fact

23. The Claimant was employed by the Respondent as an Administrative Officer. Her duties involved guiding people through the asylum process. She commenced employment in March 2022. At the time the Claimant brought the claim she was still employed but we learnt that she had recently been dismissed.

24. The Claimant was a highly regarded employee in terms of her capabilities in her role and prior to the events that arose from the summer 2024, there were no issues in respect of her performance at work. She was line managed by Ms Pilcher who reported to Mr Bird, a witness at the hearing.

Disabilities

25. The Claimant relies on three disabilities, Borderline Personality Disorder, Asperger's[1] and OCD. The Respondent concedes the Claimant was disabled from 10 February 2025.

26. The Claimant's impact statement describes various difficulties from childhood and it was quite difficult to differentiate whether these were being attributed to OCD or autistic tendencies or both.

27. In respect of OCD there is no formal diagnosis by May 2025, when it was described as self-diagnosed by Occupational Health. The Claimant told the Tribunal about the manifestations of OCD behaviour since childhood and which particularly have worsened since 2020. This includes withdrawal from shared spaces in the family home, use of paper towels to touch items that might be touched by family members, an inability to be in the same room when there are family gatherings, having to stand in the doorway. Most recently, in the summer of 2024, the Claimant experienced a very difficult time and episode when she admits she attacked her younger brother with a rolling pin due to mess he had made in the kitchen whilst he had been left in her care for a number of weeks.

28. In terms of the borderline personality disorder, this was not diagnosed until July 2025 but the Claimant began to undertake mental health assessments from the summer 2024 following the incident with her brother. We also had evidence that the Claimant has self-harmed since childhood and had experienced some traumatic periods in her life and sadly the Claimant attempted suicide in January 2025.

Policies and Procedures

29. The Attendance Management Policy provides for keeping in touch base and a process of attendance management which has various stages that will trigger informal and formal action.

Grievance Procedures

30. There are two versions of the grievance procedure depending on whether the employee had access to Metis. The claimant had access to Metis.

[1] This is how the Claimant wished to describe this impairment

Disability leave policy

31. Definition of disability leave is defined as follows:

6. Disability leave is a form of paid leave for an employee who is disabled or has a long-term condition(s). It is a type of adjustment that can be applied when employees are fit to work but require paid leave with pay for rehabilitation, assessment, or treatment directly related to their disability or long-term condition(s).
7. In addition to Paragraph 6, disability leave can also be requested by an employee when they are either waiting for an adjustment to be considered and or, implemented.

Examples of the type of circumstances in each category when disability leave would be appropriate can be found at Annex A below.
Disability leave applies to fixed periods of absences that are usually known about in advance. In other words there is a specific start and end date for the leave. It does not therefore include absences needed to recover or recuperate from a specific illness or operation.

The difference between sick absence and disability leave

10. Disability leave should not be used when an employee is not fit to work due to illness.
11. Disability leave is not the same as sick absence. Sick absence is when a person is unable to work due to illness. Sickness and disability/long-term condition are not synonymous but certain illnesses may be exacerbated by a person's disability/long-term condition.
12. Disability leave should not be used to cover periods of sickness absence. All sickness absences should be dealt with under the attendance management policy and procedures, whether or not the sickness is directly related to the person's disability or long-term condition. In line with the attendance management policy and guidance, an adjustment in Consideration Trigger Points can be considered as a workplace (reasonable) adjustment in line with the Reasonable workplace adjustment guidance.docx (sharepoint.com) for an employee with a disability or long-term condition.

32. The individual can apply for disability leave via a system called Metis. The Claimant did not apply for disability leave.

33. We find that the Claimant's absence following January 2025 should not have been passed as disability leave as the Claimant was certified as unfit for work by not only her GP but by the occupational health advisor and that was confirmed by the fit notes. Therefore, all events prior to 8 November 2024 that are relied upon as acts of disability discrimination are dismissed as there was no knowledge, noting that the harassment claims don't specifically need knowledge but they happened after. This in particular, not so the contentions regarding not being promoted the events with Mr Bird around 20 September being denied attending the scare festival at Alton Towers and the removal of tasks. We have made findings about all of those events which we will set out if we are requested to produce written reasons because, in any event, even if there had been knowledge, we have found that they would not have amounted to discrimination.

Overlooked for promotion

34. The claimant's ET1 contained complaints that she had been continuously overlooked for promotion however this was pleaded in the context of either a race or religious discrimination complaint as she specifically stated that there had been no coloured (sic) /Muslim Cardiff HEO's in the three years she had worked at the respondent despite frequent changes. She cited two British white members of staff who she says have been able to progress from AO to HEO.

35. No race or religion complaint has been identified in any of the preliminary hearing list of issues or case management orders. The claim had not been coded as a race or religion discrimination claim.

36. The claimant goes on to say that later while she was off sick there were progression of opportunities to apply for promotion at EEO grade and everyone on the team was made aware. The complaint therefore appears to be that the management team did not notify the claimant of the vacancy while she was off sick.

37. The claimant did not lead any evidence on this in her witness statement. The Tribunal did not know the dates of any of the roles cited in the ET1. The only evidence before us was in the claimant's grievance document which referenced multiple different promotion opportunities but with very little detail as to what actually had happened with the said opportunities and in some cases the claimant's was actually placed into the role for example the stationary procurement lead role. There were at least four or five roles cited from 2023 and one in 2024 in the grievance which was pre-disability knowledge (see above) and as such this tribunal does not consider a proportionate given the lack of evidence provided by the claimants to address these and any further detail. A further reason for not addressing this complaint is that the claimant had confirmed she did not intend to proceed with her allegations involving Ms Pilcher and these allegations were about Ms Pilcher's alleged reluctance to put the claimant forward for these roles or you provide support.

Disclosures about mental health August / September 2024

38. On 23 August 2024 the Claimant told Ms Pilcher at her 1-2=1 meeting that she had self-diagnosed her self with suspected bipolar and would be liaising with her GP. The claimant was offered a referral to the EAP programme by Ms Pilcher. On 29 August 2024 Ms Pilcher's one-to-one notes record that the claimant had played down her mental health claiming she was being dramatic and described work as a happy place. Ms Pilcher once again referred the claimant to EAP and recommended journalling an opportunity to talk. On 6 September 2024 the claimant told Ms Pilcher that she had a call with mental health team and had been referred to a face-to-face assessment.

39. On 27 September 2024 at a check in Ms Pilcher asked the claimant why she was not applying for EO or HEO roles and she was informed by the claimant she was concentrating on a current role of mental health. The one-

to-one notes record on 30 September 2024 that the claimant was offered a stress risk assessment.

September 2024 Mr Bird discussed allocations of tasks when the Claimant was not in the right frame of mind and threatened to send the claimant home after she became dysregulated

40. It was not clear from the claimant's witness statement what incident she was referring to. When she described the incident in the biometric room, she said it was on one occasion (and so no date) Kris (Mr Bird) entered the biometric enrolment room where he caught me crying on a shift where I needed help and I was being asked to do more than what would have been expected of another member of staff. The claimant says she refused and told Mr Bird he needed to allocate the case and ask whoever is responsible because she could not cope. The claimant has he came around to have a chat and she tried to leave as he wasn't in the right frame of mind but she was asked to sit down and carry on discussing it. The claimant accept she was rude to Mr Bird and he threatened to send home.

41. An email in the bundle documents and incident on 20 September 2024 Mr Bird directed the claimant to HEO's to make a decision on utilising a family member to help with a screening interview due to disabilities. The conversation took place over Teams and also involved discussions about time to complete people survey actions. The claimant was unhappy with this approach and when Mr Bird arrived into the office later she challenged him stating she often feel uncomfortable going to certain managers on shift because of the level of understanding and experience. We find this was the discussion referenced by the claimant in the above complaint.

42. Mr Bird laid out his expectations of a strong AO which was the claimant's grade and the claimant responded that she only wanted to complete AO functions. This led to a discussion about the additional functions the claimant had been given whether she wanted to give them up so she could focus on her AO duties. The claimant confirm she wants to relinquish all of those roles and opportunities at that point. Mr Bird subsequently instructed Ms Pilcher to relieve the claimant of these additional roles and expressed concerns about her behaviour and outbursts although he reneged on this the following date and this was not actioned.

Annual leave – Scare fest at Alton Towers

43. The claimant's role required personal safety training ("PST") refresher courses. The claimant had rejected a number of courses for June to August 2024 and as such was placed on a course running in Cardiff on 31 October 2024. At this time the claimant did not have annual leave booked or requested. On around 30 September the claimant requested annual leave for 31 October 2024 so she could attend scare fest which is an experience over the Halloween. At Alton Towers. Ms Pilcher wanted to support the claimant in being granted the leave but as it involved not attending the PST training the decision had to go to Mr Bird. Mr Bird sent a comprehensive email on 7 October 2024 which was before us to Ms Pilcher explaining the rationale for his reasons which were in summary the significant additional costs of the claimant having to attend a course elsewhere and also that the scare fest ran from 11 October to 3 November which he offered as an

alternative time off where she could go. It would appear that the claimant approach Mr Bird and asked him to reconsider its decision and that the claimant told Mr Bird she was expecting to have an assessment on 22 October 2024 where she was expecting to be told she was suffering with mental health and burnout and the recommendation will be to take time off. She was then offered time off by Mr Bird where she could attend scare fest but these were all rejected by the claimant who specifically wanted 31 October 2020 the claimant suggested that she would simply call in sick, day to which she was told by Mr but bad this will be managed appropriately.

Grievance against claimant by Ms Pilcher

44. On 23 October 2024 the Claimant was informed that Ms Pilcher had raised a grievance against her and that her line manager would be changed to Mr Hussey. Mr Bird offered a stress risk assessment which was declined. Ms Pilcher alleged the Claimant had begun to bully her after she had to decline the Scare fest leave following which the Claimant refused to attend any further one to one meetings with Ms Pilcher. The Claimant was very distressed at the grievance being raised against her.

Line management changes to Mr Hussey

45. On 24 October 2024 Mr Hussey conducted his first one-to-one with the claimant. She told Mr Hussey she had an assessment for Asperger's that week. The tribunal has not seen any evidence of any assessment at that time.

46. On 8 November 2024 the claimant told Mr Bird that she had recommenced self-harming something she hadn't done since much younger brains working for the respondent. The one-to-one notes record that this was the first time they were made aware of the significant mental health struggles the claimant experiences and they have been informed she had rejected therapy from the crisis team. A stress risk assessment was created on that date and the claimant told Mr Bird she had consulted with mental health first aider occupational health was noted as offered but rejected by the claimant.

47. After the report to Mr Bird that the Claimant had self-harmed on 8 November, she had to be withdrawn from PST training which had been changed to 13 November 2024, because this was training that would involve physical elements which would have caused the Claimant some harm given that she had either open cuts or healing injuries.

48. The stress risk assessment was subsequently reviewed by the claimant and Mr Bird on 19 November 2024 and a further well-being discussion took place on 5 December 2024. At this discussion the claimant told Mr Bird she believed she had Asperger's and had a consultation with a specialist and agreed to consider an occupational health referral for Asperger's. She was offered support from occupational health again on 16 December 2024 specifically for the self-harming but there was no response. The claimant eventually agreed to a referral to occupational health self-harming on 31st of December 2024 and this was submitted on 8 January 2025.

49. On 8 and 9 January 2025 Mr Bird met with the Claimant and she told him she had recommenced self-harming before Christmas. She asked for no contact with Ms Pilcher and wanted other managers to filter any work email instructions from her. They agreed the work relationship had irretrievably broken down and a staff move may need to be considered. The options of moving Ms Pilcher and the claimant were discussed and the claimant told Mr Bird that if she was moved, she would start to think more about suicide and give strong consideration in taking her life she would not be in control. The Claimant's witness statement stated that she was in an unstable frame of mind where a change could get worse for her mentally and just wanted Ms Pilcher to leave her alone.

50. She also told Mr Bird that she had been googling suicide. Mr Bird signposted her to resources available which were rejected by the claimant she did not find them helpful. Mr Bird subsequently sent the claimant an email signposting different resources including the Samaritans, Mind and NHS 111.

51. On 9 January 2025 the Claimant lodged a grievance against Ms Pilcher. It is accepted this is a protected act for the victimisation claims. The Claimant also had to be withdrawn again from PST training that had been rearranged for 16 and 17 January 2025, due again to the self-harm injuries.

52. Mr Bird had sought advice from HR on putting extensive plans in place to manage both communication to the Claimant about a team move and also how that would be managed moving forward including support measures. It was anticipated that this news was not going to sit well with the Claimant and would be very upsetting to the Claimant. Mr Bird planned and proposed:

Deliver the news to [A] on Tuesday afternoon and then if required, allow [A] to finish for the day.
We will ensure that there is a family member at home for her.
We will remind her of all the support available once more – [A] has stated that she utilises 111 and finds them useful, so we will encourage that she utilises these if needs be
We will ask that [A] confirms when she has arrived home (if she is intending to go home, or wherever it is that she goes after work) and give consideration to paying for transport home for her. If not response is received after the timeframe that it will take her to get home, we will consider contacting her Next of Kin/emergency services
We will meet her the next day and take her to the manager/location she will be reporting to as of Wednesday and introduce her to the staff she will be working with
Hold a hand-over with her temporary manager from a duty of care perspective and set up regular check-ins with that person was advised by HR that his proposals were satisfactory.

53. On 14 January 2025 there was a meeting with the Claimant and Mr Bird, accompanied by a mental health first aider which was recorded in a contemporaneous note. Mr Bird explained arrangements to move the Claimant to CIU Department Team which is on the third floor and in a different area of the building from her team members. The intention was she would work remotely with the CIU team from Cardiff.

54. An email summarising the discussion was not sent until later in the day the following day. By this time Mr Bird was aware from events on the morning of 15 January 2025 when the Claimant failed to attend work, that the Claimant had taken an overdose and been hospitalised. Mr Bird, again, was advised by HR at this juncture to treat the Claimant as on sick leave and follow an absence management procedure.

Removal from activity log

55. On 17 January 2025 the Claimant was removed from the activity log which was a form of staff rota where other people can see who was working on what particular days. She received a number of calls / contacts from colleagues asking why she had been removed. The Claimant had not actually been removed, instead the line containing her name had been hidden and this was done in a genuine attempt to protect her privacy so that it would not become clear that she was going to be off sick.

Absence management by Mr Hussey

56. Mr Hussey began contact, first of all by telephone through a series of keeping in touch processes. On 30 January 2025 the Claimant had suggested meeting in person, either in the office or meeting for a coffee and upon that suggestion Mr Hussey suggested that they meet in Planet Coffee shop.

57. There were a number of other calls in February 2025 and a further meeting on 19 February 2025 in Planet Coffee. On 20 February 2025 the claimant described Mr Hussey as “great and very supportive”. Mr Hussey then invited the Claimant to a formal attendance meeting on 26 February 2025. We did not see a copy of this letter in the bundle but we had a look at the policy and it indicates what might be set out in such a letter where an employee had been invited to a formal meeting.

58. Around this time on 10 February 2025, the Respondent received the first occupational health report (dated 30 January 2025 and amended on 5 February 2025) in which they were advised that the Claimant had a history of self-harm, trouble with her mental health and experienced significant traumatic events in her past. It said that she was not fit for work and recommended timely investigation in the conclusion of grievances. It was stressed the Claimant did not want to move teams and recommended an updated stress risk assessment and before returning to work meeting and a phased return with regular meetings with her line manager and access to mental health first aiders. The Claimant accepted under cross examination that prior to receiving this report the managers would not have had the medical information needed to make reasonable adjustments.

59. On 25 February 2025 the Claimant asked Mr Hussey in an email about applying for disability leave as she believed that she was not sick. Mr Hussey forwarded that email to HR for advice and they responded accordingly explaining that she could not take disability leave while she was off sick. This was relayed to the claimant on or around 27 February 2025.

60. The Claimant refused to attend the formal attendance meeting arranged by Mr Hussey on 26 February 2025. Mr Hussey reiterated to the Claimant that the crux of the meeting was to discuss her welfare and agree a way forward for her to return to work. He rearranged this several times but the Claimant did not attend.

61. In the subsequent letters inviting the Claimant to a formal attendance meeting there was no reference to disciplinary action and those letters were of a supportive nature.

62. On 20 March 2025 a meeting had been arranged in person between Mr Hussey and the Claimant. Mr Hussey said he wanted the meeting to take somewhere more private than a coffee shop. The Claimant asked in response if they could speak on the phone and Mr Hussey said that he would prefer a face-to-face meeting. The Claimant said she felt she was more able to discuss issues in the privacy of her own home. Mr Hussey did push back on this, commenting that she had previously been happy to meet in Planet Coffee. Mr Hussey subsequently agreed to call the Claimant at home. The following day he reminded the Claimant she did not have a fit note for a period of absence after 7 March 2025. In response the Claimant sent him a letter from her GP dated 13 March 2025 but this was not a valid fit note. Mr Hussey asked the Claimant to provide sick notes and there was then a period where Mr Hussey was contacting the Claimant who read the messages but was not engaging with Mr Hussey.

63. Mr Hussey sent the Claimant an email attaching a letter on 28 March 2025 in the absence of contact. We did not have sight of that letter but from the Claimant's response by email on the same Mr Hussey chased this on 26 March 2025 and did not receive a reply. it would appear that that it mentioned the possibility of formal disciplinary action / termination of employment. This was in the context of the Claimant not providing a valid fit note since 7 March 2025. responding to Mr Hussey.

64. On 3 April 2025 the Claimant emailed Mr Hussey and made a number of what we determine are unreasonable requests as follows:

- Limit contact;
- Grant disability leave, avoid KIT meetings, attendance management and remove sick from her record.
- Allow the claimant to use time away from work to focus on her ET claim, grievance, mental health,
- Refused to add her fit note unless instructed by SSC

65. It then appears that Mr Griffiths, Assistant Director became involved. It is not clear how or why. Mr Griffiths met with the Claimant and matters were resolved to a degree in so far as it was agreed Mr Bird and Mr Griffiths would conduct a return to work and the Claimant would return to work on 25 April 2025 on a phased return.

66. On this date the Claimant was advised that there was no case to answer in respect of the grievance that had been brought against her by Ms Pilcher. BY WHO

Claimant's grievance against Ms Pilcher

67. As seen above this had been lodged on 9 January 2025. Ms Williams was appointed as the Decision Manager for the grievance. Ms Williams is an SEO and experienced in investigating and reaching grievance decisions and appeal. On 27 January 2025 Ms Williams contacted the claimant to tell her she had been allocated to her grievance and requested information. She appointed an investigating manager (Ms Barker) and drafted the terms of reference of the investigation. The claimant was invited to an investigation meeting by Ms Barker which took place on 9 April 2025. Ms Barker subsequently produced an investigation report and the claimant was invited to attend a grievance meeting with Ms Williams on 21 May 2025. Attached are the invitation to the meeting that was sent by email was a copy of the investigation report in the annex folder which was in a zip format. The claimant requested a postponement of the grievance meeting as she needed more time to consider everything and this took place on 12 June 2025.

Ms Pilcher's grievance against the Claimant

68. As seen above this was lodged around 24 October 2024. Initially Mr Moorcroft was appointed as the Decision Manager but due to personal reasons he had to stand down. Between 25 November 2024 – February 2025 efforts were made to source another Decision Manager as the investigation report had been completed. By 4 February 2025 Mr C Bidwell had agreed to be the Decision Manager but he was unable to access the documents in Metis as the case was still allocated to Mr Moorcroft.

69. Mr Bidwell did not know the Claimant or Ms Pilcher. He was based in Manchester in a completely different directorate. The knowledge of the Claimant's disabilities was limited to what was in the witness statements and investigation report. He was aware from Ms Pilcher's timeline that the

70. Mr Bidwell contacted Mr Moorcroft about the Metis allocation who tried to reallocate the case to Mr Bidwell but there was a systems issue and a ticket was then raised with IT. The Tribunal can see from the emails that both Mr Moorcroft, Mr Bidwell and the HR Business Partner repeatedly sent chasing emails trying to get this issue resolved and were passed back and forth between IT and HR until on 2 April 2025 they were informed by HR that the grievance could not be reassigned on Metis. The email correspondence showed that they were all concerned about the impact of the delays on the individuals involved.

71. By mid March 2025 a solution had been found and Mr Bidwell was able to review the information and held a Teams call with Ms Pilcher on 12 March 2025. Ms Pilcher had also been deeply affected by the breakdown of the relationship with the Claimant and subsequent events. He decided not to meet with the Claimant as he did not uphold the grievance against the Claimant.

72. The Tribunal saw correspondence from February 2025 from Mr Bird to Mr Bidwell chasing an outcome to Ms Pilcher's grievance against the Claimant. By 1 April 2025 it is evident Mr Bird was becoming very concerned about the delays expressing concern for both the Claimant and Ms Pilcher

73. On 14 April 2025 Mr Bidwell wrote to Ms Pilcher and advised her grievance was not upheld. He noted that he recognised that the incidents had created for an unfavourable working environment which has caused distress to and disrupted your ability to perform your role as line manager effectively. He advised that the incidents should be managed via the disciplinary policy and procedures. These incidents whilst not detailed before us, involved the Claimant's conduct towards Ms Pilcher.

74. It had been agreed that Mr Moorcroft would upload the decision letter into Metis on behalf of Mr Bidwell. Mr Moorcroft confirmed in an email dated 22 April 2025 that this had been completed. Mr Bidwell understood from this action that the Claimant would be generated an outcome letter advising the grievance had not been upheld. The Claimant had been able to access the investigation report and read it over the Christmas period. We accept that Mr Bidwell was not aware the Claimant could not access Metis. Mr Bidwell then injured his back and was off sick for a period of three months. We know by 25 April 2025 the Claimant was aware and had been verbally informed the grievance had not been upheld as it is recorded in an email sent to her that day by Mr Griffiths, and the Claimant had commented as a result there was no reason for her to be off work.

75. A formal outcome letter was subsequently produced in November 2025 which had to be recreated by Mr Bidwell due to ongoing issues with the Metis system.

Claimant's return to work from end of April 2025

76. An updated occupational health reports was provided on 17 May 2025. This stated the Claimant was fit to remain at work with adjustments which needed to remain in place for the foreseeable future. It reported that the Claimant found it challenging to deal with last minute changes. She would have mood swings and it was essential to consider these factors in planning her work and interaction and set out the adjustments that would be required moving. The Claimant could sit at the front counters as long as she was sat away from the middle counter and as close to the wall as possible.

77. The adjustments recommended that she sat alongside colleagues rather than in isolation, that she was involved in the EAP for counselling, arrange for a mentor to provide pastoral support, implement a wellbeing action plan and to be allowed time to attend outpatients.

78. There was a dispute between the Claimant and the Respondent as to whether or not these adjustments had been implemented. The Claimant says that although Mr Hussey put in place her completing of work diary and also a diary for a work day to focus on her emotional feelings, he did not follow these through and only worked three days a week. They were not on the same shifts.

79. The Respondent says that there were regular catch ups with the Claimant. These were documented in a document from 29 May 2025. Mr Hussey checked in daily when on the same shift. There were monthly check-ins recorded and Mr Bird and Mr Roberts were available also. There was also evidence in the form of text messages showing that Mr Hussey was in

contact with the Claimant checking her wellbeing in stages of the return to work and also permitting days off to be swapped to accommodate medical appointments.

80. The Respondent found it challenging to ensure the Claimant worked alongside colleagues as she refused to sit with at least three members of the team for varying reasons.

81. The Claimant chose not to engage with the EAP programme as she did not want to talk about the past as documented in the check in on 25 June 2025.

82. Mr Hussey was the allocated pastoral support and Mr Roberts was designated to provide support on the days he did not work. The Claimant subsequently decided she did not want support from Mr Roberts and there is evidence that their working relationship had broken down by mid July 2025

83. The Claimant was permitted to attend outpatient appointments including the orthodontist and a psychiatric assessment on 16 July 2025. with days off rearranged by Mr Hussey.

84. In relation to being able to sit at the front counter as long as it was not the middle counter and as close to the wall as possible. The Claimant alleged that the desk next to the wall was reserved for Validation Officers and other staff were sitting in the seat. She asserted that she had only been afforded this adjustment for two half days even though others were provided with set desks for adjustments. Mr Bird discussed this in an email dated 17 July 2025 where he stated:

Sit away from middle counters
We discussed this and I had previously explained to [A] that for a short period, and for business and support purposes, I was allocating desks for staff to sit at. This was to alleviate stress on certain staff. The reintroduction of the receptionist staff member has alleviated this issue and other than retaining desk 1 for the VAL officer, staff can sit where they choose. I explained to [A] that I could not agree to specific desks, however they would be available to staff on a 1st come 1st served basis. I also agreed [A] could sit CW side for the 4 week period when she was on SUP. [A] accepted this.

85. The Respondent was not able to fully implement this adjustment due to a stress risk assessment of the Claimant's team which was dealing with low staff numbers. Instead, the Claimant was given permission to sit in the North wing which was quieter and able to sit on a non-customer facing side and select which desk she wanted when working in SUP (asylum support) a non-customer facing work stream provided it could be accommodated by the work flow manager on any given day.

86. The Claimant accepted under cross examination that this had been for a period of two weeks. Her objection appeared to be Mr Bird's decision to allocate staff to desks as she told the Tribunal, "*I was ok with desk one being reserved all I said was one close to wall, was a time when allocated a desk every single day I am an adult I should be able to choose where I like never been told before in any other employment where to sit".* There was also one desk adapted and allocated to an individual due to Musko skeletal issues.

87. One of the Claimant's reasonable adjustment claims is that the Respondent operated a PCP of allocating more than one work stream to employees without consultation. The substantial disadvantage is that the Claimant struggled to cope with change.

88. The Claimant's witness statement did not address this complaint other than to complain she had been reduced to one workstream and been placed on a QA process on return from sick leave.

89. The Occupational health report did not recommend the Claimant should only work on one workstream. The Claimant requested this on her return to work and Mr Bird agreed with a caveat that of extra support was required it would be discussed with the Claimant to see if she could assist.

90. On 9 July 2025 Mr Hussey amended the Claimant's shifts for the following week as she had a psychological assessment on 16 July 2025. Instead of the Claimant having to attend work before and after the assessment, Mr Hussey changed 16th to a day off. The Claimant objected to this as she considered she now had to attend the appointment on a rest day when she should have been allowed to attend during work time. at this time the Claimant was working three days per week. Mr Hussey said this was done to ensure that the Claimant could attend the appointments without having to come into work before and after and ensure she could therefore focus on being able to attend that appointment without the pressure of having to attend work.

91. The Claimant went off sick on 9 July 2025 and cited that she did not think Mr Hussey was providing her with support.

92. On 12 July 2025 Mr Roberts raised concerns with Mr Bird about the impact on Mr Hussey of managing the Claimant and also that the rest of the team were also being impacted.

93. On 17 July 2025 there was a long call between Mr Bird and the Claimant lasting about three hours, discussing how the return to work had gone since April. Mr Bird set out in detail the feedback on the adjustments that had been recommended by occupational health and how those were working in practice, setting out in cases where things hadn't gone completely to plan and what the reasons were for those. He agreed that the Claimant would stay on a service line all day for a period of four weeks where possible but had set out the caveat that may not always be possible.

94. They discussed the return of the Claimant's thematic roles (stationary and planning a survey) but whilst she had been off sick someone else had been given these roles. Mr Bird told the Claimant she would be given back these roles at some point once that had been managed and he felt her QA files needed attention and asked her to focus on improving her performance there. Pastoral support was reallocated to mental health first aiders and EAP given the Claimant's complaints about Mr Hussey. Lastly, Mr Bird dealt with some concerns about the Claimant's behaviour which he described as inappropriate challenges, disrespect , insubordination and concerns over relationships with others which the Claimant is recorded as saying, she was not shocked at.

95. The Claimant then produced a fit note on 22 July 2025 which said she may be fit for work for a period of six months.

96. On 26 July 2025 the Claimant raised with Mr Bird and at another time with Mr Hussey, concerns about having to work closely with colleague A due to their personal hygiene which caused her anxiety.

97. The Claimant returned on 12 August 2025 and had a return to work meeting with Mr Bird. It was confirmed that her thematic roles would be handed back over to her on 1 October 2025. Colleague A had been allocated as a mentor to her for "further subs" (we are not quite sure what this is). The Tribunal did question the wisdom of that decision given what the Claimant had said about colleague A to Mr Bird previously. Colleague A took it upon himself (it was agreed by the Claimant that he had not been instructed by anyone) to undertake some sort of activity which meant that he would be closely in contact with the Claimant using her equipment and sharing a desk and biometric booth with her. Colleague A also told the Claimant he had a bit of a cold .This resulted in the Claimant having a panic attack and had to leave work early on only the second day back. The Claimant says she recommended self-harming after this incident. She remained off sick until she returned on 20 August 2025.

Events on 20 August 2025

98. On 20 August 2025 the Claimant had a return-to-work meeting with Mr Hussey and was in an extremely emotional state and told him she had self-harmed after being made to sit with Colleague A. Mr Hussey described the Claimant as extremely; upset in tears and really emotionally unstable. He was extremely concerned about her welfare and decided she would have to be sent home. Mr Hussey asked the claimant to contact a specialist mental health care team to return to work before she was ready and check that someone will be at home when she arrived home. He asked the claimant to message him when she got home safely which she did so, explained there was no pressure.

99. The Claimant told the Tribunal that she was upset not because of the incident with Colleague A but because she had to do more than one workstream on that day by working on reception and this "triggered" her. The problem with this evidence is that it was not in her witness statement and did not reflect the contemporaneous note of the reason she was so upset (contact with Colleague A the week before).

100. The Claimant was then absent from work again and there were various requests going backwards and forwards from Mr Hussey who initially suggested that a letter from her doctor would be sufficient to enable her to return but evidently subsequently decided that this was not going to be enough to reassure him, given the incident that had happened. Thereafter started a series of further attempts to get the Claimant to come to an absence review meeting. Mr Hussey arranged meetings on 4 September 2025, 25 September 2025. The Claimant failed to attend these meetings and did not reply to any communications.

101. Mr Hussey attempted contact on 2, 3 and 8 October 2025. On that day the Claimant called back and left the following message:

Good Evening,
I note you've asked me a question on how you can engage with me.
My response is to please provide me with confirmation you have concluded what you intended to do when you sent me home from work on 20 August & the date you have decided I can return to my employment. I have been waiting for this information.
I cannot engage in any formal meetings or KITs or any distressing sensitive conversations regarding my health. I do not want to disrupt my mental state further as I've been engaging in a lot of those conversations for an entire year.
My last KITs, occupational health reports, & requested adjustments should still apply to my circumstances & I believe you have access to that.
I hope that answers your question & I hope you find that helpful to move forward.

102. The Claimant then failed to attend further meetings on 15 and 29 October 2025.

103. terms of those letters, they were available to us and we can see that they did not contain threat of disciplinary action and focused on attempting to get the Claimant into a position where she could return to work. There was lack of engagement from the Claimant with these letters and there were several attempts by Mr Hussey to make contact and arrange meetings up until mid-September and on 2 October Mr Hussey requested the Claimant to provide a fit note to cover her absence from 20 August. The Claimant objects to this saying that the fit note of 22 July should have been sufficient and Mr Hussey accepts that he might not have been aware of that fit note but, in any event, considered the circumstances had very much changed since the doctor had written a fit note in July, given the return to work, the broken down phased return to work, the Claimant being off sick again and the episode on 21 August. There was still no reply to this communication and on 3 October and Mr Hussey wrote to the Claimant about having an unauthorised absence.

The Law

Disability

104. The issues before the Tribunal were to determine whether the Claimant was a disabled person for the purposes of the Equality Act 2010 as defined in Section 6. The burden of proof lies with the Claimant.

105. The steps that the Tribunal are required to examine in such matters are whether the Claimant has a physical or mental impairment that has a substantial adverse effect and a long-term adverse effect on the Claimant's ability to carry out day to day activities.

106. The substantial adverse effect is one that is more than minor or trivial and a long-term effect is one that has lasted for at least 12 months, is likely to last for at least 12 months, or is likely to last for the rest of the life of the person. If an impairment ceases to have a substantial adverse effect

on a person's ability to carry out normal day to day activities it is treated as having continued to have that effect if the effect is likely to recur.

107. Guidance was set down by the EAT as to the correct approach to be taken in determining whether a person is disabled in Goodwin v Patent Office [1999] IRLR 4 as follows:

- The tribunal should look carefully at what the parties have said in their pleadings and clarify the issues;
- It should construct the legislative protections purposively;
- It should refer expressly to any relevant provisions of the Guidance which it has taken into account;
- It should bear in mind that the fact that a person can carry out activities with difficulty does not mean that his ability to carry them out has not been impaired;
- Where a claimant is or has been on medication, the tribunal should examine how the claimant's abilities were affected while on medication and how those abilities would have been affected without the medication;
- It should be careful not to lose sight of the overall picture when considering each element of the statutory definition in turn.

Disability – Knowledge

108. This is a question of fact for the Tribunal. The burden is on the employer to show it was unreasonable to have the required knowledge.

109. The EHRC Employment Code provides that employers must do all they can reasonably be expected to do to find out whether a worker has a disability. (This does not extend to work colleagues and will not apply to the second, third, fourth and fifth Respondents). What is reasonable will depend on the circumstances. This is an objective assessment. When making enquiries about disability, employers should consider issues of dignity and privacy and ensure that personal information is dealt with confidentially.

110. S15 (2) provides that the discrimination will not arise if A shows they did not know and could not reasonably be expected to know that B had a disability.

111. In respect of reasonable adjustment claims, an additional element of knowledge is required. The first element is the same test as in S15 namely that A shows they do not know or could be reasonably be expected to know that the [interested] disabled person has a disability. Schedule 8 EQA 2010 pt. 3 para 20 states that A is not subject to the duty to make reasonable adjustments if A does not know and could not reasonably be expected to know that a disabled person has a disability and is likely to be placed at a disadvantage. Accordingly, the additional element on knowledge for S20/21 claims is that A must also be reasonably expected to know the disabled person is likely to be placed at the disadvantage.

112. In deciding the S15 claims it is necessary to determine who the alleged discriminator was and whether they had imputed knowledge (Gallop v Newport City Council [2016] IRLR 395, EAT). In the Court of Appeal

decision in Gallop [2014] IRLR 211, a reasonable employer must form their own judgment as to whether the employee is disabled and not simply rely on advice from an occupational health advisor. The employer must have the requisite knowledge at the time of the unfavourable treatment. In cases where there are alleged series of acts it is necessary to consider whether it gained knowledge at any subsequent stage when the treatment was ongoing.

113. Under S15 (2) lack of knowledge that a disability causes the "something arising" in response to which the employer subjected the employee to unfavourable treatment is not a potential defence **(City of York Council v Grosset ICR 1492, CA).**

114. In respect of the reasonable adjustment claim, the approach in **Ridout v TC Group 1998 IRLR 628, EAT** was endorsed in **Secretary of State for Work and Pensions v Alam 2010 ICR 665, EAT.** The Tribunal must consider two questions:

115. Did the employer know both that the employee was disabled and that his disability was liable to affect him in the manner set out in s.4A(1)?

116. If the answer to question (i) is "no", ought the employer to have known both that the employee was disabled and that his disability was liable to affect him in the manner set out in s.4A(1)?

117. If the answer to both questions is "no", then the employer will qualify for the exemption from any duty to make reasonable adjustments.

118. Also, in **Ridout** the EAT held that it is not incumbent on an employer to make every enquiry when there is little or no basis for doing so and that 'people must be taken very much on the basis of how they present themselves'.

119. In **Jennings v Barts and the London NHS Trust - [2013] All ER (D) 184 (Mar**), the EAT held that if a wrong diagnostic label was attached to a mental impairment a later re-labelling of that condition was not diagnosing a mental impairment for the first time using the benefit of hindsight; it was giving the same mental impairment a different name. Harvey on Industrial Relations and Employment Law suggests this decision suggests that an employer should concentrate on the impact of the impairment and not the diagnosis. This is supported by the decision of the EAT in **Urso v Department for Work and Pensions [2017] IRLR 304.**

120. The issue of constructive knowledge arose in the case of **Donelien v Liberata UK Ltd UKEAT/0297.14.** The knowledge required is that the person has a disability. This must take the Tribunal back to the definition now in S6 EQA 2010. Accordingly, it is for the employer to show that it was unreasonable to be expected to know first that a person suffered with a physical or mental impairment, secondly that the impairment had a substantial and long-term effect (and further as this was a reasonable adjustments claim, of the substantial disadvantage). In that case the Claimant had a very poor sickness record with erratic and occasional attendance. She did not suffer with a condition giving rise to impairments which had consistent effects. There were occupational health referrals

identifying a myriad of different reasons for the absences other fact was that it was difficult to disentangle from what the claimant could not do because of her disability as opposed to what she would not so.

121. In **A Ltd v Z EAT 0273/18** the EAT held that in relation to S15 claims, the complete answer to the S15 (20 question in that particular case was even if the employer could reasonably have been expected to do more (make enquiries), it could not reasonably have been expected to have known about the Claimant's disability. The Tribunal must also take into account what the employer might reasonably have been expected to know had it made enquiries.

Time limits

122. S123 EQA 2010 provides that claims may not be brought after the end of the period of 3 months starting with the date of the act to which the complaint relates, or such other period as the employment tribunal thinks just and equitable. Conduct extending over a period is to be treated as done at the end of the period. Failure to do something is to be treated as occurring when the person in question decided on it. In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something when P does an act inconsistent with doing it, or if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

123. The key date as to when time starts to run is the date of the act. In **Virdi v Commissioner of Police of the Metropolis [2007] IRLR 24, EAT** Elias P held that the question is when the act is done, in the sense completed and that cannot be equated with the date of communication. He goes on to say as follows:

"As desirable as it might be that time should not run until the employee knows of the detriment, it is difficult to see why, at least in a case where the grievance relates to the refusal to grant a benefit, the detriment is not suffered with the rejection of a grievance, whenever that is communicated and whether the employee knows of it or not. "

124. In **Commissioner of Police of the Metropolis v Hendricks [2002] EWCA Civ 1686,** Mummery LJ held that the Claimant was entitled to pursue her claim beyond the preliminary stage on the basis that the burden is on her to prove, either by direct evidence or by inference from primary facts, that the numerous alleged incidents of discrimination are linked to one another and that they are evidence of a continuing discriminatory state of affairs covered by the concept of "an act extending over a period."

125. In **Galilee v Commissioner of Police of the Metropolis UKEAT/207/16,** Judge Hand QC held that amendments to pleadings in the employment tribunal which introduce new claims or causes of action take effect for the purposes of limitation at the time permission is given to amend and there is no doctrine of "relation back" in the procedure of the employment tribunal. Also, whilst in some cases it may be possible without hearing evidence to conclude that no prima facie case of a continuing act

or for an extension of just and equitable grounds can arise from the pleadings, in many cases, often, but not necessarily confined to discrimination cases, it will not be possible to reach such a conclusion without evidential investigation.

126. In **South Western Ambulance Service NHS Foundation Trust (appellant) v King (respondent) [2020] IRLR 168,** the EAT held that in order to give rise to liability, the act complained of must be an act of discrimination. Where the complaint is about conduct extending over a period, a claimant will usually rely upon a series of acts over time (the 'constituent acts') each of which is connected with the other, either because they are instances of the application of a discriminatory policy, rule or practice or they are evidence of a continuing discriminatory state of affairs. If any of those constituent acts is found not to be an act of discrimination, then it cannot be part of the continuing act.

Direct Disability Discrimination

127. Section 13(1) of the Equality Act 2010 provides that direct discrimination takes place where a person treats the claimant less favourably because of disability (the relevant protected characteristic) than that person treats or would treat others. Under s23(1), when a comparison is made, there must be no material difference between the circumstances relating to each case.

128. S136 EQA 2010 sets out the burden of proof provisions. 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. This does not apply if A shows that A did not contravene the provision.

129. In **Nagarajan v London Regional Transport and others [1999] IRLR 572 HL** held that the Tribunal must consider the reason why the less favourable treatment has occurred. Or, in every case of direct discrimination the crucial question is why the Claimant received less favourable treatment.

130. The key to identifying the appropriate comparator is establishing the relevant "circumstances". In **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285** this was expressed as follows by Lord Scott of Foscote:

"...the comparator required for the purpose of the statutory definition of discrimination must be a comparator in the same position in all material respects as the victim save only that he, or she, is not a member of the protected class."

131. In **Igen v Wong [2005] IRLR 258 (CA)** the guidance issued by the EAT in **Barton v Investec Henderson Crosthwaite Securities Ltd** was approved in amended form. The Tribunal must approach the question of burden of proof in two stages.

"*The first stage requires the complainant to prove facts from which the ET could, apart from the section, conclude in the absence of an adequate explanation that the respondent has committed, or is to be treated as having*

committed, the unlawful act of discrimination against the complainant. The second stage, which only comes into effect if the complainant has proved those facts, requires the respondent to prove that he did not commit or is not to be treated as having committed the unlawful act, if the complaint is not to be upheld." (paragraph 17, per Gibson LJ)

132. **Hewage v Grampian Heath Board [2012] IRLR 870 (SC)** endorsed the guidelines in **Madarassy v Nomura International [2007] IRLR 246 (CA)** concerning what evidence is required to shift the burden of proof. Facts of a difference in treatment in status and treatment are not sufficient material from which a Tribunal could conclude that on the balance of probabilities there has been unlawful discrimination; there must be other evidence.

S15 EQA 2010– Disability Arising from Discrimination

133. Section 15 provides A person (A) discriminates against a disabled person (B) if—A treats B unfavourably because of something arising in consequence of B's disability, and A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

134. This does not apply where A did not know, and could not reasonably have been expected to know, that B had the disability. 'Unfavourable treatment' is not defined within EQA. It is distinct from a detriment or less favourable treatment. It is that which the putative discriminator does or says or omits to do or say which places the disabled person at a disadvantage **(T-System Ltd v Lewis UKEAT/0042/15).** See also the ECHR Code of Practice and definition of disadvantage in **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337** (a reasonable worker would or might take the view that he had … been disadvantaged in the circumstances).

135. **Basildon & Thurrock NHS Foundation Trust v Weerassinghe UKEAT/0397/14** provides the Tribunal should identify two separate causative steps in Section 15 claims (per Langstaff J, then the President of the EAT):

"The current statute requires two steps. There are two links in the chain, both of which are causal, though the causative relationship is differently expressed in respect of each of them. The Tribunal has first to focus upon the words "because of something" and therefore has to identify "something" – and second upon the fact that that "something" must be "something arising in consequence of B's disability", which constitutes a second causative (consequential) link. These are two separate stages."

136. **Pnaiser v NHS England & anor [2016] IRLR 170** sets out the approach to be followed in Section 15 claims (paragraph 31):

i. A Tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises.
ii. The Tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this

stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a section 15 case. The 'something' that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.

iii. Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A's motive in acting as he or she did is simply irrelevant.

iv. The Tribunal must determine whether the reason/cause (or, if more than one), a reason or cause, is "something arising in consequence of B's disability". That expression 'arising in consequence of' could describe a range of causal links.

v. This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.

vi. The statutory language of section-on 15(2) makes clear that the knowledge required is of the disability only, and does not extend to a requirement of knowledge that the 'something' leading to the unfavourable treatment is a consequence of the disability.

137. It does not matter precisely in which order these questions are addressed. Depending on the facts, a Tribunal might ask why A treated the claimant in the unfavourable way alleged in order to answer the question whether it was because of "something arising in consequence of the claimant's disability". Alternatively, it might ask whether the disability has a particular consequence for a claimant that leads to 'something' that caused the unfavourable treatment.

138. In respect of S15 (1) (b), the Tribunal must objectively balance whether the conduct in question is both an appropriate and reasonably necessary means of achieving the legitimate aim. In **Birtenshaw v Oldfield [2019] IRLR 946,** the EAT held that the Tribunal's consideration of that objective question should give a substantial degree of respect to the judgment of the decision-maker as to what is reasonably necessary to achieve the legitimate aim provided he has acted rationally and responsibly. We were also referred to **Gray v University of Portsmouth EAT (EA-2019-000891).**

S20/21 – Failure to make reasonable adjustments

139. Sections 20 and 21 of the Equality Act 2010 set out the duty to make reasonable adjustments. In this case, it is the duty arising under S20 (3) EQA 2010. The Tribunal must consider first of all the PCP applied by the employer, secondly the identity of non-disabled comparators (where appropriate) and thirdly the nature and extent of the substantial disadvantage suffered by the Claimant. (**Environment Agency v Rowan 2008 ICR 218, EAT).** The question whether the proposed steps were reasonable is a matter for the ET and has to be determined objectively.

140. The EHRC Employment Code provides that the meaning of "PCP" should be widely construed so as to include and formal or informal policies, rules, practices, arrangements, criteria, conditions. Prerequisites, qualifications or provisions.

141. In **United First Partners Research v Carreras 2018 EWCA Civ 323, CA**, the Court of Appeal held that tribunals should not adopt an overly technical approach to what constitutes a 'practice' for the purpose of showing that a PCP has been applied.

142. In **Nottingham City Transport Ltd v Harvey [2013] EqLR 4,** Langstaff J stated: 4 ""Practice" has something of the element of repetition about it. It is, if it relates to a procedure, something that is applicable to others than the person suffering the disability. Indeed, if that were not the case, it would be difficult to see where the disadvantage comes in, because disadvantage has to be by reference to a comparator, and the comparator must be someone to whom either in reality or in theory the alleged practice would also apply."

143. The employer's duty is to take such steps as it is reasonable to take to alleviate the disadvantages. Such steps should not be unduly restricted **(Griffiths v Secretary of State for Work and Pensions 2017 ICR 160).** The Tribunal must consider whether the particular adjustment would or could have removed the disadvantage experienced by the Claimant. We were also referred to the reasonableness of steps required to be taken is to be assessed by a "holistic approach", taking into account all of the circumstances and the totality of the adjustments implemented: **Home Office (UK Visas & Immigration) v Kuranchie EAT 0202/16.**

Section 26 EQA 2010 – Harassment

144. Section 26 sets out the definition of harassment. Part 7 of the EHRC Code provides that unwanted conduct 'related to' a protected characteristic has a broad meaning in that the conduct does not have to be because of the protected characteristic.

145. It is a question of fact for the Tribunal as to whether the conduct complained of occurred. If so, the Tribunal must determine if it had the purpose or effect as set out in S26 (1) (b). The test has subjective and objective elements to it. The subjective part involves the tribunal looking at the effect that the conduct of the alleged harasser has on the Claimant. The objective part requires the tribunal to ask itself whether it was reasonable for B to claim that A's conduct had that effect.

146. **In Tees Esk and Wear Valleys NHS Foundation Trust v Aslam [2020] IRLR 495** the EAT held that the broad nature of the 'related to' concept means that a finding about what is called the motivation of the

individual concerned is not the only necessary or possible route to the conclusion that the conduct in question is related to the particular characteristic. Nevertheless there must still be some feature or features of the factual matrix identified by the Tribunal which properly leads it to the conclusion that the conduct is related to the protected characteristic. The Tribunal must articulate what these features are.

147. **General Municipal and Boilermakers Union v Henderson 2015 IRLR 451** provides that a single comment could not constitute harassment because it had not reached the necessary degree of seriousness.

148. In **Reverend Canon Pemberton (appellant) v Right Reverend Inwood, former acting Bishop of Southwell and Nottingham (Respondent) - [2018] IRLR 542,** Underhill LJ held: S 26 of the 2010 Act [entitled "Harassment"] … is not in identical terms to s 3A of the Race Relations Act 1976, with which I was concerned in Dhaliwal … the precise language of the guidance at para 13 of [that] judgment … needs to be re-visited. I would now formulate it as follows. In order to decide whether any conduct falling within sub-paragraph (1)(a) has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of sub-section (4)(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section (4)(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also, of course, take into account all the other circumstances – sub-section (4)(b). The relevance of the subjective question is that if the Claimant does not perceive their dignity to have been violated, or an adverse environment created, then the conduct should not be found to have had that effect. The relevance of the objective question is that if it was not reasonable for the conduct to be regarded as violating the Claimant's dignity or creating an adverse environment for him or her, then it should not be found to have done so.'

149. **Richmond Pharmacology v Dhaliwal [2009] IRLR 336** confirmed that for conduct to qualify as harassment it must cross the threshold for severity to have the required effect on dignity or environment.

Victimisation

150. Section 27 EQA 2010 provides A person (A) victimises another person (B) if A subjects B to a detriment because B does a protected act, or A believes that B has done, or may do, a protected act. Each of the following is a protected act—

(a) bringing proceedings under this Act;
(b) giving evidence or information in connection with proceedings under this Act;
(c) doing any other thing for the purposes of or in connection with this Act;
(d) making an allegation (whether or not express) that A or another person has contravened this Act.

151. Under S27 (c), an act can be done in reference to the legislation if it is done “in the broad sense even though the doer does not focus his mind specifically on any provision of the Act” **(Aziz v Trinity Street Taxis Ltd & Others ICR, 534, CA).**

152. Under 27(2((d) it is not necessary for there to have been an express clear reference to the Equality Act. If a claimant asserts things have been done which breach the Act but does not say those things are contrary to the Act, this will not amount to a qualifying allegation **(Waters v Metropolitan Police Comr [1997] IRLR 589.**

153. The asserted facts must be capable of amounting to a breach of the Equality Act 2010.

154. **Durrani v London Borough of Ealing UKEAT/0454/12** (unreported, 10th April 2013) and **Fullah v Medical Research Council UKEAT/0586/12** (unreported, 10th June 2013) are authorities for the submission that a mere reference to discrimination without identifying the protected characteristic does not amount to a protected act.

155. In **Durrani**, Langstaff P said:

a. *'I would accept that it is not necessary that the complaint referred to race using that very word. But there must be something sufficient about the complaint to show that it is a complaint to which at least potentially the Act applies.*

b. *The Tribunal here thus expressly recognised that the word “discrimination” was used not in the general sense familiar to Employment Tribunals of being subject to detrimental action upon the basis of a protected personal characteristic, but that of being subject to detrimental action which was simply unfair.…*

156. Something will amount to a ‘detriment’ where “a reasonable worker would or might take the view that in all the circumstances it was to his detriment”: **Warburton v Chief Constable of Northamptonshire Police [2022] ICR 925 T**he test has both subjective and objective elements: the situation must be looked at from the Claimant’s point of view, but the Claimant’s perception must be reasonable in all the circumstances.

157. The treatment must be by reason of the protected act. The Tribunal must consider the employer's motivation (conscious or unconscious); it is not enough merely to consider whether the treatment would not have happened 'but for' the protected act. See also **Martin v Devonshires Solicitors [2011] ICR 352, Panayiotou v Kernaghan [2014] IRLR 500)** approved in **Page (appellant) v Lord Chancellor and another (respondents) - [2021] IRLR 377.**

Approved by:

Employment Judge S Moore

24 October 2026

SENT TO THE PARTIES ON
26 October 2026

Kacey O'Brien
FOR THE TRIBUNAL OFFICE

Notes

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

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