EMPLOYMENT TRIBUNALS

Claimant	Mr Alexander Harvey		
Respondent	The Orchard School		
Heard at	Croydon (by video)	**On**	19 to 23 October 2026
Before	Employment Judge Eoin Fowell		
Representation			
Claimant	In person		
Respondent	Mr Kevin McNerney of counsel, instructed by Arag Law		

JUDGMENT

1. The claims of disability discrimination, including failure to make reasonable adjustments, harassment and victimisation are dismissed as out of time and also as without proper foundation.

2. The claim to have suffered detriments for making a protected disclosure is similarly dismissed

SUMMARY REASONS

Introduction

1. These summary reasons are provided at the request of Mr Harvey following oral reasons given earlier today. As usual some editing has taken place for the sake of clarity, and here and there some points are expanded, so these written summary reasons shall stand as the final version.

2. Mr Harvey worked for the school from 2011 onwards. In fact, he is still, officially, a member of staff, although he has not been at work since he went off sick in November 2022, nearly four years ago. The sickness absence process became extremely fraught and he was suspended in May 2024 over his behaviour. That process seems to be in abeyance and he remains in limbo, with his sick pay long since exhausted. How has this come about?

3. It follows a traumatic incident in September 2022 when a pupil ('Pupil A') attempted to take his own life. He tried to strangle himself using his school jumper tied around a post sticking out into the corridor and around his neck. Mr

Harvey was alerted by shouts and screams and came to the rescue, helping to untie the knot and get the boy down.

4. That incident led in due course to a diagnosis of PTSD and to the long absence. More recently he has been diagnosed with Autism Spectrum Disorder (ASD) and both conditions are relied on as a disability for the purposes of this claim.

5. He began this claim on 2 October 2024, about two years after that incident, and it has taken about two more years to come to a final hearing. Then, in September 2025, Mr Harvey brought a personal injury claim against the school, alleging negligence. (The defendant was in fact Kent County Council, but since then the school has become a Foundation school and so the correct respondent to this claim is the school itself.) That claim has resulted in a settlement, reached in August 2026, and a substantial payment to Mr Harvey.

Procedure and evidence

6. As usual there were some procedural issues to deal with at the outset. The bundle of documents runs to 2,755 pages so the first day was set aside for reading. That was by no means enough time to read everything, but it allowed me to familiarise myself with the statements, totalling about 90 pages, and the key documents.

7. No list of issues had been settled or agreed at the case management hearing and so the second day was mainly taken up with agreeing them. That was not a straightforward task, and involved reverse-engineering the issues from the evidence presented. (That final version is set out as an annex at the end of this judgment.)

8. A ground rules hearing had been held very recently, on 13 October 2026, to consider how the hearing process needed to be adjusted for Mr Harvey, in view of his disabilities, which are not disputed. The adjustments mainly involved breaks and shorter, simpler questions in cross-examination, which proved perfectly manageable.

9. I heard evidence in that way from Mr Harvey, and on behalf of the school from Mr Luke Mussett, the Deputy Headteacher, who was Mr Harvey's main point of contact during the latter part of his absence.

10. It is unusual for there to be only one witness for the respondent. However, the Headteacher has changed more than once since the incident with Pupil A, as has the Chair of Governors. The absence of other witnesses leaves a gap in the first-hand account provided by the school.

11. Mr Mussett joined them at the start of the school year in September 2023, nearly a year after the incident. He therefore took over the management of Mr Harvey’s absence when it was already long-established. However, as shown by the size of the bundle, the periods before and after his arrival are well-documented and in fact there is little dispute over the events in question, only as to whether the school’s approach was appropriate and about the motivation behind it.

Findings of Fact

The attempted suicide by Pupil A

12. In the course of the personal injury claim an expert report was prepared from Dr Joanne Warren, Chartered Clinical Psychologist, on 25 September 2025. (It is necessary to obtain such a medical report to accompany the claim form.) Without going into the description of Mr Harvey's mental health, it provides a helpful summary of the original incident and aftermath [1340].

> "4.1.1 Mr Harvey told me that on September 29, 2022 in the morning between 11.00 and 11.30, he was working as a teacher at a special needs school, The Orchard in Canterbury. He had been teaching a Year 11 computing class, and one of the pupils had been struggling in the class of six pupils. The pupil was not settled, he was pacing around the class, he would not turn on the computer. This pupil left the classroom, Mr Harvey spoke to the TA who was in the class saying that he would go after the pupil to try and get the pupil to return to the classroom. As Mr Harvey left the classroom, he heard a female member of staff screaming, he followed the pupil round into the main corridor, and he saw that the pupil had stopped and was looking down the corridor. Mr Harvey could see that someone was struggling, in his words, "there were not just calling for help, they were panicking." The pupil Mr Harvey had been following stopped and walked back down the corridor towards the classroom. The rest of the corridor was empty; Mr Harvey could see only a member of staff in an alcove. Mr Harvey began walking towards the staff member, he took off his lanyard and his tie so these were not easily grabbable. He passed six or seven rooms on the right. As he got the fourth-year common room, he saw the assistant head teacher in that room. He knocked on the door to alert him that there was a problem.
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> 4.1.2 Mr Harvey carried on down the corridor towards the sound of the screaming. As he got to the end of the corridor, he saw a pole which is in an alcove and he saw the member of staff holding the legs of the pupil who was hanging himself from the pole with his jumper. This pupil was hitting out and screaming, "let me fucking die". Mr Harvey realised later that there was another member of staff holding the pupil as well, but at the time that he initially arrived he was not aware of this member of staff. Mr Harvey went towards the pupil and took hold of him, to take the pressure off the child's neck. Mr Harvey then had to stand on tiptoes to get to the knot of the jumper to untie it. By this time, the assistant head teacher had joined them to try to hold the pupil steady, so Mr Harvey could untie [the] knot.
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> 4.1.3 Mr Harvey then held the pupil to bring him down and once he was down, the assistant head teacher took the pupil away. The pupil was subdued. The pupil did not sustain overly obvious damage or harm. The pupil continued to attend the school for a period of months until he was found a different educational provision.
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> 4.1.4 After the incident Mr Harvey walked with the member of staff who had been at the scene initially to the assistant head teacher's office and made her a cup of tea. He then went back to his classroom, and he explained to the TA that something had happened that was difficult, and that he needed a minute to take a breath. The TA made him a coffee and Mr Harvey spent the rest of the day teaching.

4.1.5 At the end of the day, Mr Harvey went home, he lives with his female partner and his two sons.

4.1.6 Mr Harvey then went back to work and he continued to work daily until November 30th 2022 when he spoke to the assistant head teacher and told him that he had had a panic attack. Mr Harvey has not returned to work since that time. He is still employed at the school, but he has been signed off sick. From May/June 2024, he has been facing an investigation for insubordination."

13. Some additional details appear in his witness statement that deserve mention. When he got home on the day of the incident after teaching his classes he broke down in tears. The next day he went to school as normal. There was a morning briefing led by the Assistant Head teacher, Sarah Stephens, who was also the Designated Safeguarding Lead (DSL). To his surprise she made no mention of the incident the previous day. It fell to him to speak up about it.

Mr Harvey's absence from work

14. For the purposes of these summary reasons I will just run over the main events, although they are well known to the parties.

15. He had an occupational health appointment on 2 March 2023. The nurse described him as being in a fragile emotional state. She felt that he was unlikely to be disabled, presumably on the basis that his symptoms were not expected to last more than 12 months, and recommended a review in a month's time.

16. That review took place on 17 April 2023 [211]. This time the nurse noted some improvement in his emotional state and he was benefiting from accessing the talking therapy provided by the school. (In all he had 34 sessions). However, she also felt that "his continuing work related concerns are likely to create a barrier to further progress in his recovery and his return to work." She recommended a meeting to discuss things.

17. For various reasons no meeting took place before the next review, which took place on 2 May 2023. This time she was less positive. There had been no further improvement and she restated that his work-related concerns needed to be addressed first.

18. Till then, Mr Harvey had not set out in any detail what those concerns were, but he did then make them clear. Late that same day he wrote to Dr Alan Norley, the Chair of Governors, by email. It is a long document, and described again the incident in question. He went on to add some further information about the incident itself, that "the DSL was explicitly warned that the pupil had made the threat that he was going to kill himself at school that day during his taxi journey into school."

19. Further, "no one did anything to prevent it from happening and that inaction allowed a pupil the space and opportunity to try to kill themselves in the middle of a school day."

20. The DSL was of course Ms Stephens, who had held the morning briefing the day after the incident.

21. Mr Harvey obtained this information about the taxi journey from the school safeguarding records. Even though he was not at work he still had access to those records. Before he took up teaching duties he was the school's IT manager and had been responsible for setting up the schools safeguarding system and giving the initial staff training on it so he still held administrator access.

22. The school accepts that this was a protected disclosure, setting out as it does a real concern about safeguarding practice at the school, even though Mr Harvey was in fact simply informing Dr Norley of information which the school (or at least to those with access to the safeguarding records) was already aware.

Safeguarding obligations

23. It may be helpful to say a little more about the nature of the safeguarding obligations in question. Although not contained in the bundle for this hearing, there is well-known guidance issued by the Department for Education entitled *Keeping Children Safe in Education.* It was referred to by Mr Harvey more than once in the course of this hearing. All staff working in schools who deal with children are expected to be familiar with it. It requires every school to have a designated safeguarding lead (DSL) to support staff in carrying out their safeguarding duties and the DSL will have additional training,

24. In short it places the highest priority on the safety of children and expects that all teachers will be able to recognise signs of potential concern and when it may be appropriate to escalate matters to the DSL or, through them, to the Local Area Designated Officer (LADO) who can involve other agencies such as the local authority or the police.

25. There are also requirements about record-keeping, hence the use of the safeguarding records which Mr Harvey had access to. The guidance does not however require or expect that schools will carry out a particular investigation themselves: the expectation on the contrary is that things are reported or escalated promptly. The words 'investigate' or 'investigation' do not appear anywhere in Part One of the guidance, the main section, which runs to 50 pages.

26. It must follow therefore that the school did record matters at the time, including the more concerning information about a prior warning from the child. I also note that what is expected is to record a clear and comprehensive summary of the concern and what action was taken. So while it might have been desirable to get a statement from Mr Harvey at the time, the facts about the incident did not appear to be in any real dispute and there is no reason to believe that these were not accurately summarised. Or at least, Mr Harvey raised no complaint with Dr Norley about the accuracy of the information recorded.

The response

27. Dr Norley replied with obvious concern. They arranged to have a Zoom meeting to discuss it on 10 May and he referred to it as a grave concern and an obvious whistleblowing notification [245].

28. There was some confusion after that while these concerns were passed on to the school.

29. On 2 June 2023 Mr Harvey emailed Ms Doyle, the school's Business Manager who was managing his absence at that stage, plus all staff and governors. [272]. This was in response to her email of 26 May trying to arrange a meeting with Headteacher, Mrs Lilley. He stated that any meeting with her or Sarah (the DSL) was likely to be detrimental to his mental health. It went on to copy and paste his original complaint to Dr Norley, with an added timetable of events and heavy emphasis on the fact that there had been a warning about the attempt at suicide. It added an allegation that during the meeting between these two senior members of staff and pupil A and his mother, Mrs Lilley had tried to shame the boy by telling him that his actions had led to some staff accessing counselling.

30. All in all it is a clear allegation, sent to all members of staff, that Mrs Lilley and Ms Stephens were responsible for failing to step in and prevent what had happened.

31. It is no surprise that this was later regarded as a disciplinary matter. Of course it may be excused by serious mental health problems, but certainly in the absence of any such mitigation, it would normally be regarded as an act of serious insubordination.

32. It also prompted a grievance by Mrs Lilley about bullying by Mr Harvey, although that was not made known to him at the time. In fact there was no such immediate response by the school. Instead, it was decided that Ms Rebecca Thomas-Read who was an interim Assistant Head, should take over the absence management process, and Mr Harvey was invited to what was described as an informal absence review meeting with her on 7 June 2023.

First absence review meeting

33. This was the first real meeting of his absence. Although described as informal, Mr Harvey was accompanied by a colleague and Ms Thomas-Read by Natasha Singh, an HR Consultant. There was a brief discussion about the email he had sent, which he attributed to his anxiety, and nothing more was said. It was at least an opportunity for him to put forward his concerns. One of them was about his pay which was due to go down to half pay. However the school's policy was that there would be an additional six months' full pay for any injury caused to work, and so overall he received a year's full pay and then six months half pay.

34. Dr Norley did not report back until 27 June [302]. He explained that he had had a meeting with Mrs Lilley and had also been away on holiday. In his email he set out what he hoped would be a satisfactory response. He explained, for

example, that training for staff on how to handle such situations had been booked and would be taking place in September, that procedures had been reviewed, that locations around the school which could be used in such attempts to commit suicide would be examined to avoid any further risk, and emphasised that there was a real concern for his well-being and a strong desire to see him back.

35. That was clearly not the response Mr Harvey was hoping for, but in fact Dr Norley had not promised, even in his initial very concerned response to the disclosure, to carry out any further or fresh investigation.

36. Mr Harvey then took his complaints to Ofsted, on 29 June [304]. Not long afterwards, on 14 July 2023 the school had a visit from the LADO, or Kent Area Safeguarding Advisor, Mr Miles O'Keefe. It is not clear but it seems likely that this was prompted by the Ofsted complaint rather than the earlier disclosure.

37. It seems to have been a fairly formal occasion. Ms Peggy Murphy (incoming Chair of Governors) was present with the Headteacher, Mrs Lilley. The minutes are at page 307. There is a section headed "Review of concerns raised" which reflects the concerns raised by Mr Harvey i.e.
    a) There *had* been a warning.
    b) The DSL had decided to ignore it.
    c) Afterwards there was a meeting with Mother and Son on 5 October.
    d) The son, Pupil A said that the school should have known what he was going to do and Mrs Lilley told him (untruthfully) that they would have no way of knowing.
    e) There had been a cover up
    f) The senior leadership team (SLT) had failed to report matters to the governing body
    g) Minimal support was offered to Pupil A or family or staff
    h) The SLT was negligent and continued to put students at risk
    i) The overall culture around mental health was poor

38. it goes on to note the Headteacher's response at length:
    a) She had not been on the school premises that day
    b) Pupil A had indeed told the taxi driver
    c) It was then reported to the Office Manager who suggested that it be put in writing to her
    d) There was then a 20 minute delay in telling Ms Stephens
    e) TAs in the boy's class were told although no one spoke to the child himself about it, which it was described as an oversight
    f) The boy got out of class and made the attempt but staff were quick to react
    g) He did not lose consciousness at any stage and there were no marks or injuries on him
    h) His parents were contacted and advised to take him to A&E for a mental health assessment, which they did
    i) All staff involved were offered counselling (which of course Mr Harvey had taken up)
    j) The governing body were made aware of the incident shortly afterwards

39. (It must follow that Dr Norley had received some information about the incident at the time and that what was new was the suggestion that it had been covered up.)

40. That document also records the various lessons learned. In particular that
    a) prompt records were to be made
    b) they should have spoken to the child, and
    c) risk assessments should be revisited

41. Overall it appears to be a thorough and unflinching examination of what happened that day, including whether there had been any sort of cover up. The SLT was called to account and Mr Harvey's allegations were put to them squarely.

42. The LADO essentially has the last word on such matters and I see no reason to believe that he would lend himself to any cover up or allow the wool to be pulled over his eyes over any of these points.

43. However, none of this was passed on to Mr Harvey at the time, which might have avoided a good deal of acrimony, perhaps because it was just before the school broke up for the summer holidays.

44. In the new term Mr Mussett joined the school as Deputy Head and took over the management of Mr Harvey's absence. He began by sending him an invitation to attend another informal absence review meeting, using the normal HR template. This was not well received by Mr Harvey. On its face it suggested that the school had no idea why he was off sick and wanted to find out about it for the first time. It led to some quite heated correspondence from him, culminating in a formal grievance about the way his absence was being handled.

45. That obviously needed to be addressed at a grievance meeting and so one was arranged with the new Chair of Governors, Mrs Peggy Murphy, on 18 October 2023. (Dr Norley had stood down at the end of the summer term.)

46. Mrs Murphy had of course attended the meeting with the LADO the previous July. For some reason this exercise was not mentioned. She was obviously keen to try to resolve things and apologised that Dr Norley had not done what he expected, i.e. he had not carried out a formal investigation, but she also emphasised that he had looked into things and set out his responses by email.

47. Mr Harvey was very direct about his complaints, stating for example that Ms Stephens had been negligent and that Mrs Lilley had lied in the meeting with the boy's mother about having had a warning, which he described as gross misconduct. He wanted a formal investigation into their conduct.

48. Mrs Murphy indicated that that would happen. Or at least she said, "we *can* get an independent investigation to look at what you have raised" this was in the course of discussion about whether it was a grievance or whistleblowing process and may have been only a possibility, something the school was able

to do. In any event she agreed to look into his concerns and to keep in touch fortnightly.

49. She then wrote to him on 22 November 2023. This time there was no mention of a further investigation but she did try to assure him that his concerns had been taken very seriously. She also told him that "an investigation was conducted by an external investigator, an Area Safeguarding Advisor, on 14 July 2023. The concerns raised in the investigation were similar to those you outlined in your email to Alan."

50. It would perhaps have been better simply to have described this as a meeting with the LADO rather than as an investigation. From Mr Harvey's point of view this suggested that an investigation had taken place behind the scenes, as long ago as July, and he had not been interviewed or taken any part in it. This was only likely to feed his suspicion that there was a cover-up. By that stage he had lost all faith in the school and its processes.

51. I will therefore take the remaining events more briefly. There was a formal absence review meeting on 7 December 2023, when Mr Harvey raised the fact that no information had been given to him about this investigation. After a pause there was then an invitation to a second absence review meeting in the New Year, and given the length of his absence by this stage the possibility was first raised that he might be dismissed.

52. Frustrated with the process, Mr Harvey wrote to Mr Mussett at length in January 2024 to say that no useful purpose would be served by having any further meetings. Nevertheless a meeting was held on 6 February. Mr Harvey did not attend. However he did telephone Mr Mussett at about the appointed time and according to Mr Mussett's recollection he was very upset that the meeting was going ahead, repeatedly spoke over him, used expletives and ended the call before he could fully respond. Mr Harvey describes himself as having a meltdown.

53. That left the school in something of a quandary but I take the view that they were very reluctant to dismiss him, no doubt conscious of the reasons for his absence. Mrs Murphy wrote to him again at greater length providing further details of the "investigation" by the LADO. At the same time he was removed from all staff email distribution lists. He wrote back to complain that this was discrimination against him.

54. At the same time, Mrs Lilley resigned. Mr Mussett then became the acting Head Teacher for nearly a year. I had no direct evidence about the reasons for her resignation but I felt it was important to explore this and I asked Mr Mussett. He felt that it must in part have been the result of seeing the email to all staff with these upsetting allegations.

55. The tone of the correspondence from Mr Harvey by this point was very heated. It may well have seemed to the school that there was no alternative to his dismissal. Even then this was only approached in stages. He was not dismissed after failing to attend the absence review meeting. Instead he was

given a further opportunity and was invited to what was described as a capability hearing with a panel of Governors.

56. This time Mr Harvey did attend. He also had a supporting witness, Mr Barnes, the Premises Manager, who gave evidence that he had not been asked to box in the pipework in question and that this would be a quick and easy matter to resolve. On that basis, or perhaps using that as a justification, the panel decided not to dismiss him, on the basis that further reasonable adjustments could still be carried out.

57. At that stage, having exhausted the capability process, disciplinary allegations were raised against Mr Harvey. None of them were new. They went back to his accessing the safeguarding records, the email to all staff, his conduct on the telephone to Mr Mussett on 6 February 2024 and the tone of his subsequent emails. On the basis of those allegations he was suspended on 8 May 2024, and as mentioned at the outset he remains suspended to this day. However that is the last event which forms the subject matter of this claim so I need say no more about the facts.

Applicable Law and Conclusions

Time limits

58. The starting position is that such claims have to be brought within three months of the act in question. *Within* three months means three months less one day. Extra time can then be added for time spent in early conciliation through ACAS.

59. Here, the relevant dates are as follows
    a) Early conciliation began on 8 August 2024
    b) Early conciliation ended on 19 September 2024
    c) The claim was submitted on 2 October 2024

60. Mr Harvey contacted ACAS on 8 August 2024, so any acts or failures which took place before 9 May 2024 are potentially out of time. That means all of them are outside the normal time limit.

61. The allegations of harassment for example go back to the excessive contact he complains about shortly after he went off work in late 2022. They include being pressured to attend each of the various meetings and about the conduct of those meetings including the capability hearing.

62. The allegations of whistleblowing detriments also include the conduct of that meeting in February 2024 and being suspended on 8 May 2024. The same incidents are relied on as acts of victimisation.

63. The alleged failures to make reasonable adjustments are not so straightforward to define but they rely on his difficulties in adhering to the various school policies and so reflect their handling of his absence as set out in the earlier allegations

64. As set out in the list of issues, to pursue any earlier acts of discrimination Mr Harvey must either prove that

a) the discrimination was in fact conduct extending over a period of time and ending after this last act, or
b) it would be just and equitable to extend the normal time limit.

65. The test is slightly different for the whistleblowing claim. There the relevant rules are at section 48 Employment Rights Act 1996. Subsection (3) provides that:

> "… an employment tribunal shall not consider a complaint under this section unless it is presented –
> (a) before the end of the period of three months beginning with the date of the act or failure to act to which the complaint relates, or, where that act or failure is part of a series of similar acts or failures, the last of them, or
> (b) within such further period as the tribunal considers reasonable in the case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

Conclusions

66. I will start with the whistleblowing claim since the time limit provisions are stricter there. Assuming for present purposes that this was a series of similar acts, ending on 8 May 2024, I have to consider whether it was reasonably practicable for him to have brought a claim earlier. Since the cut-off date is 9 May, it follows that the claim was at least one day late.

67. The reasons relied on by Mr Harvey were set out in his witness statement as follows, at paragraph 148:

(a) I believed the school's own processes were still running: my whistleblowing concerns, my complaints and my grievance, and from 8 May 2024 the disciplinary investigation. None of them has concluded.
(b) From the meeting of 7 December 2023 onwards the school's approach towards me became hostile, and that took time to process and recover from. I was in crisis and struggling with my recovery throughout 2024.
(c) Dr Warren records that high levels of avoidance "are both a symptom of trauma and something which in part maintains the traumatic experience", and that people with autism "often avoid situations which have higher degrees of emotional intensity". Following through on formal steps was, and is, extremely difficult for me.
(d) My autism was not diagnosed until 3 March 2025, so throughout 2024 I did not know it. The assessment report records that I have "difficulties seeking support when he is struggling" and "difficulties seeing the bigger picture"
(e) By February 2024 my solicitors were preparing a letter of claim to the school for personal injury, and I told the school so on 7 February 2024
(f) I did not understand that an Employment Tribunal claim was a separate process with its own, much shorter, time limit, until much later.
(g) Throughout, I gave the school every opportunity to put things right.

68. There was no real expansion on these points, just the reasons. It was explored in cross-examination and he insisted that there was only so much he could manage given his condition, essentially his PTSD. In fact, he became agitated and defensive and as a result I left without a very clear picture about his

understanding of Employment Tribunals, of time limits, or what it was that prompted him in May 2024 to contact ACAS and then in October to submit his claim. I asked him if he had been expecting to be dismissed and so was waiting for that to happen but he did not accept that either.

69. The first point relates to the ongoing internal processes. This is usually an argument raised when someone has been dismissed and where they are awaiting the outcome of an appeal against that decision. But the Employment Appeal Tribunal held in **Bodha v Hampshire Area Health Authority** 1982 ICR 200, that the existence of an impending internal appeal was not in itself sufficient to justify a finding that it was not reasonably practicable to present a complaint to a tribunal within the time limit. That view was approved by the Court of Appeal in **Palmer and anor v Southend-on-Sea Borough Council** 1984 ICR 372, CA.

70. **London Underground Ltd v Noel** 2000 ICR 109, is a further illustration of what can be a harsh test. Mr Noel was dismissed for assaulting a customer. After various internal appeals he was offered his job back, on a certain date. That date was two days before the time limit expired for bringing an unfair dismissal claim. He could not start that day - in fact because he had failed a drugs test - and then before he could start the offer of re-employment was withdrawn. He immediately submitted his claim but it was held to be out of time, on the basis that it had been reasonably feasible for him to have presented it earlier, without waiting for the offer of re-employment. That decision was upheld by the Court of Appeal.

71. That case can perhaps be contrasted with that of **John Lewis Partnership v Charman** EAT 0079/11. There the Employment Appeal Tribunal upheld an employment tribunal's decision to accept an out-of-time unfair dismissal claim where the claimant waited for the outcome of an internal appeal against his dismissal before deciding how to act. The deadline for bringing a claim was on 12 June 2010. Mr Charman had appealed against his dismissal but the letter rejecting his appeal, which was sent to him on 28 June, arrived while he was on holiday. He did not discover the outcome until mid-July, and then submitted a claim on 21 July.

72. The tribunal in that case took into account that Mr Charman was just 20, was dependent on his parents' advice, and until he was dismissed did not know about his right to bring a claim of unfair dismissal. The judge considered that it was reasonable in his circumstances not to have looked into the possibility of a claim until the appeal process was over.

73. That was an application of a long-standing principle that the correct test is not whether the claimant knew of his rights but whether he *ought* to have known of them. Mr Noel ought to have known of his rights, and so the internal appeal did not make any difference, but it was not reasonable to expect that Mr Charman would know.

74. The first mention of whistleblowing was in the response by Dr Norley to the whistleblowing email itself, in May 2023. There were then discussions and debates about whether he was raising a grievance or making a whistleblowing

complaint. And he has not suggested that he was unaware of his right to bring a tribunal claim on that basis. Since the onus is on him to show why he did not bring his claim I have to work on the basis that he was aware of it for all of that period from May 2023 onwards.

75. So, the continuation of internal processes is not itself enough to mean that it was not reasonably feasible to submit a claim, and there is nothing in that timetable or circumstances to suggest that a different conclusion should be reached here.

76. The next point raised is that the school was being hostile towards him and that he was in crisis and still struggling with his recovery during 2024. I accept that he is still badly affected by the incident with the pupil A, and his relations with the school certainly became highly fraught. But that was a reflection of the fact that no progress was being made towards a resolution, his repeated complaints and also the conduct issues. Their attitude is not really relevant to time limits.

77. The argument that his condition prevented him going to a tribunal cannot really explain the delay here. There is nothing to suggest that Mr Harvey became withdrawn or reluctant to engage with the school because of his PTSD. On the contrary it was a continuing preoccupation of his. In particular he was strongly motivated by his concerns about the handling of the incident, as shown for example by his email to all staff, wanting to make his concerns as public as possible. The numerous emails from him during that period will all have been time-consuming; whereas the process of commencing early conciliation can begin with a short phone call to ACAS. The process of commencing a claim involves completing a form. The details provided on the form are much shorter than the original whistleblowing complaint to Dr Norley. Overall, the failure to act earlier remains unexplained, certainly by reference to his condition.

78. He does refer to (as the third reason) high levels of avoidance relying on the guidance from Dr Warren. Her reference to avoidant behaviour, however, was in the context of his initial response to the trauma. For example she refers to him avoiding colleagues in the immediate aftermath, and avoiding leaving the classroom.

79. His subsequent very active pursuit of what he sees as justice in relation to this incident is very different. He also relies on his diagnosis of autism in March 2025 although that is not directly relevant to his whistleblowing claim.

80. He raises it in the context that he has difficulty seeking support when he is struggling and ‘seeing the bigger picture’, but it is difficult to attach too much weight to that since an Employment Tribunal is not there to offer support. It is also hard to reconcile that suggestion with the enormous effort which Mr Harvey has since invested in this case, as shown by the volume of documentation and his own witness statement of 63 pages.

81. The possibility of an Employment Tribunal claim, I conclude, must have been apparent to him from a fairly early stage. The occupational health reports, for example, addressed the question of his disability and said that this could only be decided by a judge at an Employment Tribunal.

82. Overall, I cannot accept that it was not reasonably practicable to have submitted the claim earlier.

Discrimination cases

83. The acts relied on for the victimisation claim are the same as for whistleblowing and end with his suspension on 8 May 2024 and none of the claims goes beyond that point. I accept that this was conduct extending over a period of time. All of the matters complained of were in essence considered management actions, on HR advice. The one exception to that is the complaint of excessive contact in the early stages of his sickness absence, and I was also the period when I conclude the school would not have known of his disability.

84. In **Jones v Secretary of State for Health and Social Care** [2024] EAT 2 HHJ Tayler re-stated that employment tribunals have a wide discretion to extend time on just and equitable grounds.

85. Further, although the relevant factors will vary from case to case, in **Abertawe Bro Morgannwg University Local Health Board v Morgan** 2018 ICR 1194, CA Lord Justice Leggatt said that 'factors which are almost always relevant to consider when exercising any discretion whether to extend time are
    d) the length of, and reasons for, the delay and
    e) whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh)

86. These points were also emphasized more recently by the Court of Appeal in **Adedeji v University Hospitals Birmingham NHS Foundation Trust** 2021 EWCA Civ 23.

87. Here we have a situation with a very short delay but where the reasons for that delay are not particularly strong. Finally, there is the question of prejudice to the respondent. On that aspect, the personal injury claim is very relevant. Without wishing to go too far into the law, in an area which was not considered at the hearing, there are long established legal principles preventing someone being sued more than once over the same thing.

88. Unsurprisingly the same claim cannot be brought twice, so it is not permissible, for example, to bring a claim of breach of contract in an Employment Tribunal (where there is a statutory limit on damages) and then go to the County Court for additional damages.

89. Similarly if a specific point has been decided in one case, it cannot be re-opened in another. It has been decided.

90. But there are other cases where the cases are so similar that even though the exact same point does not arise, it could have been raised before, and it is an abuse of the court or tribunal's process to allow a second claim to be brought. That principle was established in the case of **Henderson v Henderson** (1843) 3 Hare 100, Sir James Wigram V-C stated:

> "… where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward the whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of the case.'

91. An example was in **Sheriff v Klyne Tugs (Lowestoft) Ltd** [1999] IRLR 481, CA. In that case Mr Sherriff was from Somalia. He was employed as an engineer on a vessel and claimed that he suffered racial harassment, abuse and intimidation from the ship's master. It was so bad that he had what in those days was described as a nervous breakdown, was signed off sick and was then dismissed. He brought an Employment Tribunal claim alleging race discrimination and reached a settlement agreement for £4,000. The settlement agreement covered all claims he might have arising out of his employment. But he then went on to bring a claim in the County Court for personal injury. That was struck out as an abuse of process on the basis that essentially the same damages can be awarded in both forums. That decision was upheld on appeal. Hence, it was considered an abuse of process to bring a tribunal claim for discrimination and then go on to bring a personal injury claim arising from the same treatment for personal injury. That is very close to what happened here. This claim was brought first, and the personal injury claim was brought second, although it was the first to conclude. There was no application to strike out the personal injury claim and there has been no application to strike out this claim either.

92. More importantly perhaps, the two claims here have a slightly different focus. The civil claim was a straightforward one for injury caused by the traumatic incident itself, and this claim is about the way he has been treated by his employer since then. At the same time there is a very considerable overlap between the two. Mr Harvey continues to suffer trauma, he blames the school, and remains insistent that the school should have done more to protect him. Those themes are common to both claims and are the main features.

93. I do not need to make a decision about whether this claim is an abuse of process, and I would not go so far, but it is one thing to say that there are permissible grounds to continue a claim against the school, another altogether to say that it would be just and equitable to allow an extension of time in which to do so. The rule about abuse of process is to protect parties from being harassed by multiple claims, which are to heavily discouraged.

94. I also take into account that there is some potential prejudice to the school in the delay. There has been a distinct lack of witness evidence on their part and I have not heard, for example, from Mrs Lilley, Ms Stephens, Dr Norley or Mrs Murphy, all of whom have left their posts.

95. In the circumstances, despite the shortness of the delay, I do not find that it would be just and equitable to extend time.

96. It remains to deal as briefly as I can with the substance of the accusations and I will not set out all the statutory provisions.

Knowledge of disability etc.

97. The first question is to assess when Mr Harvey met the test for disability, and without setting out the guidance in full that involves trying to establish the point in time at which it could be said that his illness, or at least the substantial effect it had on normal day-to-day activities, was likely to last more than 12 months, in the sense that it could well happen. I note that the occupational health advisor in March 2023 felt that it was unlikely to meet that test but in fact that seems to be about the point in time when it was realistic to expect that he may well be off for such period of time or at least that he would continue to be affected by the trauma for such a period.

98. The next question is when the school ought to have realised that. That depends not on all the facts at the time, but what they knew about them, which was mainly the occupational health advice. That advice was that he was unlikely to be disabled in March 2023. That view did not change during the subsequent April and May reviews. However, from about the point of being off work for six months, i.e. May 2023, I judge that they ought to have realised that he could well be off for a full year as a result of his mental health - even though not yet diagnosed with PTSD - and hence would meet the test of a disability.
99. The various complaints have to be assessed against that background.

Harassment

100. Harassment involves unwanted conduct. The Code of Practice on Employment (2011) suggests that 'unwanted' simply means unwelcome or uninvited, and goes on to say that it can include

> 'a wide range of behaviour, including spoken or written words or abuse, imagery, graffiti, physical gestures, facial expressions, mimicry, jokes, pranks, acts affecting a person's surroundings or other physical behaviour' — para 7.7.

101. There is nothing of that sort here. The allegations are mainly about undue pressure to attend meetings and the conduct of the capability hearing. There was no real pressure, just invitations, however unwelcome. And nothing occurred in the capability hearing to amount to harassment. Mr Harvey was triggered or had a mental overload to do with repeated use of his name. These do not meet the threshold test, and in any event it was not reasonable, even having regard to his mental health, to regard them as acts of harassment.

Failure to make reasonable adjustments

102. This claim relies on the school's policies for whistleblowing and managing absence. Fundamentally, however, there is no real basis to conclude that these placed him at a substantial disadvantage, even acknowledging that the term substantial simply means "more than minor or trivial".

103. The points which I elicited from his statement for inclusion in the list of issues were that
    (a) because of his PTSD he had higher levels of anxiety and was less able to cope with the demands of the process
    (b) because of his ASD, he had an expectation of more literal compliance with policies and attached more importance to strict adherence to them

104. However it also has to be said that these are somewhat conflicting. On the one hand greater flexibility has to be shown in operating the absence management procedure for example, on the other hand they have to be strictly adhered to.

105. The nub of the matter is essentially the impasse which Mr Harvey reached with the school, some of which might have been avoided with better communication as already discussed. Given that impasse there was essentially no viable procedure which he would have been content with, however flexibly applied. It is true that the whistleblowing policy does require and expect an investigation to be carried out, but in the circumstances of this case the school had already done, through its discussions with the LADO, everything it might have been expected to do. Even if I accepted that an investigation should have been carried out, that is not an adjustment to the policy, it is an allegation that the policy itself was not followed.

106. But I do not agree that they should have carried out an investigation. Nothing was disclosed by Mr Harvey that the school was not already aware of. They had considered it all. (Nor do I consider that there was any basis, knowing what is now known, for any censure of Mrs Lilley or Ms Stephens, who were dealing with an extremely difficult situation.)

107. It may, however, be that the school could have been more open with Mr Harvey about the steps they had taken.

108. I also bear in mind that the school have shown a great deal of flexibility in operating these policies. They are willing to have meetings away from the school site, defer things, turn the other cheek in response to some very heavy criticisms and of course paid for the extensive sessions of counselling.

109. Overall from the point of view of the legal analysis, I am not satisfied that the policies in question did cause a substantial disadvantage, and on that basis the claims for reasonable adjustments cannot succeed.

Victimisation

110. The final claim is for victimisation. There are a number of protected acts relied on. The last of them is his complaint made on 15 July 2024 but that was after his suspension and so cannot have been a cause. The school accepts that his emails on 8 February and 12 April were protected acts since they explicitly mention discrimination. The five protected acts are set out in the list of issues below.

111. However, the last of these came after the last act of alleged victimisation – his suspension on 8 May 2024 - so cannot have been the cause.

112. Looking at the earlier ones, the first was Mr Harvey's lengthy response to the letter he had in template form from Mr Musset inviting him to an absence review meeting. It stressed the number of meetings he had already had, and the fact that he was being passed from person to person. So although it referred to his mental trauma and the length of his absence, the thrust of it was to complain that they had not resolved his concerns and he did not see any point in further meetings. There is no mention for example of disability or enforcing his rights or anything of that sort. As a result I do not accept that this was an implied complaint about breach of the Equality Act.

113. The second email was on 17 January 2024, about a week after he had been invited to a second absence review meeting with the possibility of dismissal. He accused Mr Mussett of continuing to ignore occupational health advice, said that they were at an impasse, that Mr Mussett was trying to blame him for that impasse and that he should look at things from a trauma-informed perspective. It also mentioned the Health & Safety at Work Act, but again nothing in particular about discrimination or disabilities.

114. It follows that the first protected act, which is accepted by the respondent, was on 8 February 2024. It was in response to the decision made on 7 February to remove him from all email distribution lists. Hence, he said, that "removing staff from all staff email groups because they are signed off sick, disabled or suffering from mental health issues is discrimination".

115. There was then his email on 12 April 2024, which was quite brief and complained about the lack of any follow-up to his recent complaints, "particularly the serious issues that are raised to Luke and Peggy months earlier regarding disability discrimination and bullying."

116. This email was in response to being informed about the conduct issues. It did not give rise to those conduct issues. And victimisation claim as a whole ignores the whole context of those disciplinary allegations. There were serious and genuine concerns, in particular in relation to the email to all staff that was critical of Mrs Lilley and Ms Stephens.

117. In all circumstances it is simply not credible to suggest that the real motivation behind this, or even a material influence, was either of these two emails, and hence the claim of victimisation must also be dismissed.

118. Accordingly, the various complaints are all out of time, and none of them meet the legal tests in question, so the claim as a whole must be dismissed.

_____
Employment Judge Eoin Fowell
Date: 23 October 2026

Sent to the parties on:
Date: 30 October 2026

Notes
Written full reasons will not be provided unless requested by any party at the hearing, or by a written request received by the Tribunal within 14 days of the sending of the written record of the decision.

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

Recording and Transcription
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/

Annex – The Issues

Time limits

1. The relevant dates are as follows:

Early conciliation began on	8 August 2024
Early conciliation ended on	19 September 2024
The claim was submitted on	2 October 2024

2. Since early conciliation began on 8 August 2024, any acts or failures which took place before **9 May 2024** are potentially out of time.

3. To pursue any earlier acts of discrimination, Mr Harvey must either prove that
   a) the discrimination was in fact conduct extending over a period of time and ending after this last act, or
   b) that it would be just and equitable to extend the normal time limit

4. The test is slightly different for claims under the Employment Rights Act 1996, i.e. for detriments. For these claims, the test is whether
   a) the conduct was part of a series of similar acts or failures, and if so when it ended
   b) if applicable, was it was reasonably practicable (i.e. reasonably feasible) for the claim to have been made in time, and
   c) if not, was it then made within a further reasonable period afterwards

5. In relation to the claim for failing to make reasonable adjustments, section 123 (4) Equality Act 2010 provides, in short, that a failure is not necessarily an indefinite or ongoing failure. The tribunal has to consider by when the employer might reasonably have been expected to do it. Time then begins to run from that point onwards.

Disability

6. The school accepts that Mr Harvey had ASD / PTSD throughout.

7. The school accepts knowledge of PTSD from 8 August 2023 and ASD from 28 February 2024.

Failure to make reasonable adjustments

8. Mr Harvey relies on the following as the relevant provision, criterion or practice (PCP):
   a) the Management of Absence and Ill Health Policy
   b) the Staff Discipline, Conduct and Grievance Policy, and / or
   c) the Whistleblowing Policy

9. Did these put him at a substantial disadvantage compared with others in that
   a) because of his PTSD he had higher levels of anxiety and was less able to cope with the demands of the process

b) because of his ASD, he had an expectation of more literal compliance with policies and attached more importance to strict adherence to them?

10. If so, did the school take such steps as were reasonable to avoid that disadvantage? The burden of proof does not lie on Mr Harvey but he says that the following steps should have been taken
    a) investigating the original incident, including his safety concerns
    b) making physical changes to the location
    c) ensuring that communications were empathetic
    d) ensuring that communications from Mr Harvey were answered
    e) conducting absence management meetings in a supportive manner
    f) in particular, for the capability hearing, providing him with questions in advance, allowing breaks, or simpler questions or postponement
    g) ensuring continuity and a proper handover between the managers of Mr Harvey's absence
    h) extending his sick pay
    i) providing the specific trauma therapy recommended by Occupational Health
    j) continuing his talking therapies
    k) allowing continued access to relevant staff communications

11. When did the school know, or when could they reasonably have been expected to know, that he had Autism / PTSD?

12. If so, did the school know that he was likely to be placed at this disadvantage or could they reasonably have been expected to know? (See above)

Harassment related to disability

13. Did the school or any of its employees engage in unwanted conduct as follows
    a) contacting him excessively about work matters while he was off sick
    b) Julia Doyle pressuring him in January 2023 to attend an informal absence review meeting before instructing Occupational Health
    c) Julia Doyle pressuring him in June 2023 to attend an informal absence review meeting
    d) Luke Mussett pressuring him to attend a grievance meeting and a formal absence review meeting in October 2023
    e) Luke Mussett pressuring him to attend the first formal absence review meeting in December 2023
    f) Luke Mussett pressuring him in February 2024 to attend the second formal absence review meeting
    g) not conducting those meetings and / or the capability hearing in a supportive manner.

14. Was any such conduct related to his disability?

15. Did it have the purpose or effect of violating Mr Harvey’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him, having regard to the considerations at section 26(4), in particular whether it was reasonable for him to regard such conduct as having that effect?

Public Interest Disclosures (Whistleblowing)

16. What did Mr Harvey say or write? He relies on his email of 2 May 2023 to Dr Norley about the failure to investigate the original incident (240)

17. Did that disclose information which in his reasonable belief tended to show that one of the following had occurred
    a) danger to someone's health or safety (Pupil A)
    b) a failure to comply with some other legal obligation (safeguarding)

18. If so, did he reasonably believe that the disclosure was made in the public interest?

19. Did Mr Harvey's suffer the alleged detriments, i.e.
    a) not investigating the original incident
    b) changing their position on the fact that he had made a whistleblowing allegation
    c) changing their position on the fact that a further investigation into the original incident was necessary
    d) being accused of a GDPR breach on 7 December 2023
    e) being placed at risk of dismissal on capability grounds at a meeting on 28 February 2024
    f) being suspended pending a disciplinary investigation on 8 May 2024

20. If so, was the reason or principal reason (i.e. a material influence) that Mr Harvey made a protected disclosure?

Victimisation

21. Did Mr Harvey make a complaint at work, express or implied, about a breach of the Equality Act? This is known as carrying out a "protected act"? He relies upon the following:
    a) his email of 4 October 2023 (326) (implied)
    b) his email of 17 January 2024 (522) (implied)
    c) his email of 8 February 2024 (668) (express)
    d) his email of 12 April 2024 (789) (express)
    e) the complaint on 15 July 2024 (1072) (express)

22. Alternatively, did the school believe that he had?

23. If there was a protected act, did the school later carry out any of the treatment mentioned above as whistleblowing detriments as a result? (The test in section 27 is "because of" which has been held to mean 'materially influenced by').

Remedy in Whistleblowing Cases

24. Did the detrimental treatment cause Mr Harvey any financial loss, injury to feelings or personal injury? If so, how much compensation should be awarded in each case?

25. Should this be increased or decreased to reflect any failure to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures?

26. Did Mr Harvey cause or contribute to the detrimental treatment by his own actions? If so, what percentage reduction to his compensation is appropriate?

27. Again, was the protected disclosure made in good faith? If not, is it just and equitable to reduce the compensation? By what proportion, up to 25%?

Remedy for discrimination, including harassment and victimisation

28. Should the Tribunal make a recommendation that the school take steps to reduce any adverse effect on Mr Harvey? If so, what?

29. What financial loss has Mr Harvey suffered?

30. Has he taken reasonable steps to replace his lost earnings? If not, what reduction should be made?

31. What injury to feelings has Mr Harvey suffered and how much compensation should be awarded for that?

32. Has Mr Harvey also suffered any personal injury and if so how much compensation should be awarded for that?

33. How much interest should be awarded on the above sums?

34. Did the school unreasonably fail to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures? If so, by how much should compensation be increased (up to 25%)?