EMPLOYMENT TRIBUNALS

Claimant: **Mr N Baker-Webb**

Respondent: **Ministry of Defence**

Heard at: **Bristol**

On: **21, 22, 23, 24, 25, 28, 29 September and 1 October 2026**

Before: **Employment Judge Murdoch**
Mrs Metcalf
Ms Maidment

Representation
Claimant: **In person**
Respondent: **Mr Holloway, counsel**

JUDGMENT

The unanimous judgment of the Tribunal is as follows:

1. The complaint of discrimination arising from disability pursuant to section 15 of the Equality Act 2010 is not well-founded and is dismissed.

2. The complaint of failure to make reasonable adjustments pursuant to section 20 and 21 of the Equality Act 2010 is not well-founded and is dismissed.

REASONS

Introduction

1. The Claimant was employed by the Respondent from 15 December 2021 and continues to work for the Respondent now. During the relevant period of time of the claims, he was employed in Knowledge, Management and Exploitation within the Defence Safety Authority (DSA).

2. The Claimant's claims are of failure to make reasonable adjustments and discrimination arising from disability.

3. It was not in dispute that the Claimant has a disability – by reason of ADHD – as defined in section 6 of the Equality Act 2010 (EqA).

4. It was in dispute whether the Claimant had anxiety as a disability as defined in section 6 EqA.

The hearing

5. We heard the claims on 21, 22, 23, 24, 25, 28, 29 September and 1 October 2026.

6. The Claimant was representing himself at the hearing, and was supported by his wife, Mrs Baker-Webb. The Claimant gave sworn oral evidence.

7. The Respondent was represented by counsel, and called sworn oral evidence from Ms Rosie Massingham, Mr Stephen Gillstroem McLean, Ms Joanne Lintern, and Mr Garry Bye.

8. We considered the oral evidence, the Claimant's witness statement, four witness statements from the Respondent, documents from an agreed 1253 page bundle, 61 page supplementary bundle, a chronology, cast list, list of key documents, and written and oral closing submissions.

9. We deliberated and gave oral judgment on the last day. The Respondent requested written reasons at the end of the oral judgment.

Reasonable Adjustments

10. We explained to the parties that the overriding objective is to deal with cases fairly and justly, which includes seeking flexibility and ensuring that the parties are on an equal footing. Fair and just treatment does not always mean treating everyone in the same way.

11. The Equal Treatment Bench Book gives advice as to steps that the Tribunal may wish to take to meet any particular individual needs to ensure that everyone understands each other and everyone can participate fully in the process on a fair and equal basis. Each person must be treated as an individual so that their specific needs can be considered and appropriate action taken.

12. We emphasised to the Claimant that we wanted to make sure that everyone understands each other and everyone can participate fully in this process.

13. We noted that it was not in dispute that the Claimant has a disability by reason of ADHD as defined in section 6 of the EqA. We noted that we had read the section in the Equal Treatment Bench Book on ADHD and we had considered suggestions that may help the Claimant participate fully in this process. We also asked if there was anything else that we could arrange to help the Claimant.

14. After this conversation, we proscribed the following reasonable adjustments:

- Speaking, asking questions and giving information in short sentences.
- Allowing pauses for the person to process what has been said and respond.
- Readiness to calmly repeat instructions and questions.
- Frequent summing up of the current stage of court process and what is expected.

- Reducing distractions within the court room.
- Increased short breaks to refocus, including a 10 minute break for every one hour of cross-examination.

15. All parties confirmed they understood and that they were content with these reasonable adjustments.

16. Counsel for the Respondent noted that one of the Respondent's witnesses also had ADHD, and may need pauses as necessary and questions to be repeated. We agreed that the same measures that we had just set out for the Claimant were equally applicable to this witness, and we reminded the parties as such before that witness gave evidence.

17. We are content that all these reasonable adjustments were adhered to throughout the hearing.

Issues for the Tribunal to decide

18. We agreed there to be two claims:

    18.1. Reasonable adjustments (ss. 20 & 21 EqA); and
    18.2. Discrimination arising from disability (s. 15 EqA).

Agreed list of issues

19. We explained to the Claimant that the agreed list of issues is the roadmap in any hearing. The Tribunal's job is to go through the List of Issues and apply the facts to the law. That is exactly what we have done in this case.

20. The agreed list of issues were as follows:

1. Time limits

1.1. Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:

1.1.1. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act or omission to which the complaint relates?
1.1.2. If not, was there conduct extending over a period?
1.1.3. If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
1.1.4. If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
1.1.4.1. Why were the complaints not made to the Tribunal in time?
1.1.4.2. In any event, is it just and equitable in all the circumstances to extend time?

2. **Disability**

2.1. Did the Claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:

2.1.1. Whether the Claimant had a physical or mental impairment. The Claimant asserts that he is disabled by reason of ADHD and/or anxiety. The Claimant says he was disabled by reason of ADHD throughout employment and by reason of anxiety from September 2023, although the Claimant says that he had episodes of anxiety before that date.

2.1.1.1. The Respondent admits that the Claimant's ADHD amounted to a disability as defined in section 6 of the Equality Act 2010 and that the Claimant had this condition for the duration of his employment.

2.1.1.2. The Claimant is put to proof on whether his anxiety amounted to a disability as defined in section 6 of the Equality Act 2010.

2.1.2. Did it have a substantial adverse effect on the Claimant's ability to carry out day-to-day activities?

2.1.3. If not, did the Claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?

2.1.4. Would the impairment have had a substantial adverse effect on his ability to carry out day-to-day activities without the treatment or other measures?

2.1.5. Were the effects of the impairment long-term? The Tribunal will decide:

2.1.5.1. did they last at least 12 months, or were they likely to last at least 12 months?
2.1.5.2. if not, were they likely to recur?

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

3.1. Did the Respondent treat the Claimant unfavourably by:

3.1.1. Subjecting him to a formal performance management plan.

3.1.1.1. It is admitted that a formal performance management plan was put in place, but the Respondent denies that this was unfavourable treatment for the reasons set out at paragraph 35 of the Amended Grounds of Resistance.

3.2. Did the following things arise in consequence of the Claimant's disability? The Claimant claims that the 'something' arising in consequence of disability is his poor organisation, poor communication, lack of ownership, asking too many questions and inability to meet deadlines.

3.2.1. The Respondent neither admits nor denies that these things arise in consequence of the Claimant's disability as set out at paragraph 34 of the Amended Grounds of Resistance. The Claimant is put to proof on this point.

3.3. Was the unfavourable treatment because of any of those things?

3.3.1. It is denied that the alleged unfavourable treatment was because of any of the things set out at 3.2.

3.4. Was the treatment a proportionate means of achieving a legitimate aim? The Respondent says that its aims were:

3.4.1. to be able to manage the performance of its staff, to ensure that they are able to properly perform their roles and responsibilities.

3.5. The Tribunal will decide in particular:
3.5.1. Was the treatment an appropriate and reasonably necessary way to achieve those aims;
3.5.2. Could something less discriminatory have been done instead;
3.5.3. How should the needs of the Claimant and the Respondent be balanced?

3.6. Did the Respondent know or could it reasonably have been expected to know that the Claimant had the disability? From what date?

4. Reasonable Adjustments (Equality Act 2010 ss. 20 & 21)

4.1. Did the Respondent know or could it reasonably have been expected to know that the Claimant had the disability? From what date?

4.2. A "PCP" is a provision, criterion or practice. Did the Respondent have the following PCPs:

4.2.1. implementation of a formal performance management plan before obtaining Occupational Healthadvice and implementing reasonable adjustments;
4.2.1.1. This is denied as set out at paragraph 39(a) of the Amended Grounds of Resistance.

4.2.2. requiring the Claimant to carry out his normal duties and have a Capability Assessment before being given an ADHD coach;
4.2.2.1. The Respondent denies having this PCP in place as set out at paragraph 39(b) of the Amended Grounds of Resistance.

4.2.3. not allowing the movement of the Claimant between departments;
4.2.3.1. The Respondent denies having this PCP in place as set out at paragraph 39(c) of the Amended Grounds of Resistance.

4.2.4. not allowing the Claimant to self-refer for a Capability Assessment in December 2023.

4.2.4.1. The Respondent denies that this PCP was in place as set out at paragraph 39(d) of the Amended Grounds of Resistance.

4.3. Did the PCPs put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability, in that:

4.3.1. The Claimant's performance, as assessed in the management plan would be lower than a non-disabled person's because of his disabilities;
4.3.1.1. This is denied by the Respondent.

4.3.2. The department which the Claimant was in caused an increase to his anxiety.
4.3.2.1. This is denied. The Claimant is put to proof on this point.

4.3.3. The Claimant needed a better understanding of his ADHD/ an ADHD coach and was unable to help himself in that respect by referring himself for a Capability Assessment, he had to wait for the Respondent.
4.3.3.1. This is denied. The Claimant is put to proof on this point.

4.4. Did the Respondent know or could it reasonably have been expected to know that the Claimant was likely to be placed at the disadvantage?
4.4.1. The Respondent denies that it knew or ought reasonably have known that the Claimant was likely to be placed at the alleged disadvantages.

4.5. What steps (the 'adjustments') could have been taken to avoid the disadvantage? The Claimant suggests:

4.5.1. Provision of an ADHD coach
4.5.2. Permanent move to an alternative business area
4.5.3. Not starting the performance management plan before obtaining Occupational Healthadvice and implementing reasonable adjustments.
4.5.4. Cancelling (rather than pausing) the performance management plan when it had not obtained Occupational Healthadvice and implementing reasonable adjustments.
4.5.5. Cancelling the performance management plan once the Claimant got a diagnosis of ADHD.

4.6. Was it reasonable for the Respondent to have to take those steps and when?

4.7. Did the Respondent fail to take those steps?

4.7.1. The Respondent denies that it was reasonable to take those steps, as set out at paragraphs 42 and 43 of the Amended Grounds of Resistance.

5. Remedy

5.1. Should the Tribunal make a recommendation that the Respondent take steps to reduce any adverse effect on the Claimant? What should it recommend?

5.2. What financial losses has the discrimination caused the Claimant?

5.3. Has the Claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

5.4. If not, for what period of loss should the Claimant be compensated for?

5.5. What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?

5.6. Has the discrimination caused the Claimant personal injury and how much compensation should be awarded for that?

5.7. Is there a chance that the Claimant's employment would have ended in any event? Should their compensation be reduced as a result?

5.8. Should interest be awarded? How much?

The law on discrimination rising from disability

21. Under section 15(1) EqA, 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.

22. Section 15(2) goes on to state that section 15(1) 'does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability'.

23. It is therefore unlawful under s.15 for an employer to treat a disabled person unfavourably not because of that person's disability itself (which would amount to direct discrimination under s.13 EqA) but because of something arising from, or in consequence of, the person's disability. So, for example, a worker who is treated unfavourably as a result of having to take a period of disability-related absence would have a claim under s.15 unless the employer can objectively justify that treatment. However, the employer can only be liable if it knew, or could reasonably be expected to have known, that the worker has a disability.

24. In short, there are five elements to a s.15 claim:

    24.1. *Unfavourable treatment*: Has the Claimant been subjected to unfavourable treatment and, if so, by whom? The concept of unfavourable treatment is to be construed broadly.

    24.2. *Reason for the treatment*: What caused the alleged discriminator to act as they did? The Tribunal must identify the reason for the treatment

by examining the conscious or unconscious thought processes of the decision-maker. There may be more than one reason for the treatment.

24.3. *Something arising in consequence of disability*: Was the reason for the treatment something which arose in consequence of the claimant's disability? This requires a causal link between the disability and the relevant "something", and a further causal link between that "something" and the unfavourable treatment.

24.4. *Justification*: Can the Respondent show that the treatment was a proportionate means of achieving a legitimate aim?

24.5. *Knowledge*: Did the Respondent know, or could it reasonably have been expected to know, that the Claimant had the disability in question?

25. In practice, the outcome of many claims under s.15 EqA turns on the question of whether the unfavourable treatment can be justified as 'a proportionate means of achieving a legitimate aim'. A legitimate aim should not be discriminatory in itself and should represent a real, objective consideration. Although business needs and economic efficiency may be legitimate aims, the EHRC Employment Code states that an employer simply trying to reduce costs cannot expect to satisfy the test (see para 4.29). Case law on s.15 has recognised a range of legitimate aims, including health and safety, safeguarding, protection of the public, protection of the employer's reputation, and the operational needs of the business.

26. As to proportionality, the measure adopted by the employer does not have to be the only possible way of achieving the legitimate aim but the treatment will not be proportionate if less discriminatory measures could have been taken to achieve the same objective. An employment tribunal is expected to undertake a critical evaluation on the question of objective justification, weighing the needs of the employer against the discriminatory impact on the employee. The tribunal must carry out its own assessment on this matter, as opposed to simply asking whether the employer acted reasonably.

The law on reasonable adjustments

27. The duty to make reasonable adjustments is found primarily in sections 20 and 21 EqA. It is unique as it requires positive action by employers to avoid substantial disadvantage caused to disabled people by aspects of the workplace. To that extent it can require an employer to treat a disabled person more favourably than others are treated.

28. The duty to make reasonable adjustments arises pursuant to s20(3) EqA:

> "… where a provision, criterion or practice of [the Respondent] puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled [the employer must] take such steps as it is reasonable to have to take to avoid the disadvantage."

29. This requires first the identification of a relevant provision, criterion or practice (PCP), then a finding that that PCP puts the Claimant at a substantial

disadvantage (in comparison with persons who are not disabled) and then a consideration of whether the employer has taken such steps as are reasonable to avoid the disadvantage.

30. Section 21 EqA provides that a failure to comply with any of the requirements in section 20 is a failure to comply with the duty to make reasonable adjustments. That amounts to discrimination against the disabled person.

Findings of fact

Background

31. The Claimant commenced employment with the Respondent on 15 December 2021. He worked within the DSA in a role involving data analysis and digital projects. Initially he was managed by other managers before Ms Rosie Massingham became his line manager in approximately December 2022 or January 2023. She said that she would provide a fresh start for the Claimant.

Performance concerns during Spring 2023

32. During 2023, concerns arose regarding the Claimant's performance. We accept Ms Massingham's oral and written evidence that one example of this was feedback from sub-regulators that there was a lack of support from the Claimant on data preparation, statistics and trends which the Claimant was responsible for.

33. On 21 April 2023, Ms Massingham completed the Claimant's end-of-year review. Whilst recording that objectives had been met, she also set out a detailed list of things that the Claimant needed to focus on. Ms Massingham's email stated as follows:

> "During our 1-2-1s we have discussed areas for development and the requirement for [the Claimant] to positively demonstrate that he is meeting the standards and behaviours of the HEO grade. Over the next couple of months I would like him to focus on:
>
> - Better time and calendar management, anticipating and planning for meetings to avoid diary clashes and ensure that he is properly prepared.
> - Utilising his compressed hours effectively to ensure he works as efficiently and effectively as possible on his work tasks and his apprenticeship assignments.
> - Improving communication with LM by providing regular feedback and detail on work completed and expected/due.
> - taking a proactive approach to review data sources and produce meaningful visuals prior to the data review meetings to ensure that good customer service and value to the business is provided.
> - Being flexible and agile when it comes to short deadline tasks and fast balls, reprioritising where necessary and communicating with LM accordingly.

- Managing conflict in a calm and professional manner, escalating through the LM chain when required, presenting options and potential solutions.
- Being as self-sufficient as possible when tackling tasks, problem solving and learning and take more ownership over work. (i.e. Be decisive and a self-starter, trying to avoid waiting for LM's approval for 'business as usual' tasks)."

34. On 12 May 2023, Ms Massingham met with the Claimant and raised concerns regarding his performance. She subsequently sent the Claimant a very detailed follow-up email on 16 May 2023 recording the matters discussed. Ms Massingham recorded a number of concerns regarding the Claimant's performance and conduct. She emphasised the importance of proactive working practices, customer service, adaptability, and personal responsibility for performance. She expressed the view that the Claimant was relying too heavily on being directed by others and noted that, having been in post for approximately 18 months, he had been provided with training, documentation, access to colleagues and other resources from which he was expected to develop his knowledge independently.

35. Ms Massingham also raised concerns regarding the Claimant's organisation and communication. She reminded him to provide regular and meaningful updates regarding his work, noting that he had not been clearly communicating his progress or sufficiently using the task-tracking systems that had been put in place. She identified shortcomings in the quality of certain work outputs, including meeting records, and highlighted delays in completing projects.

36. In relation to the Claimant's apprenticeship, Ms Massingham stated that substantial support had already been provided through allocated study time (one day a week), examples of previous work, suggested project ideas and offers of assistance. She stressed that the Claimant needed to take greater ownership of his learning, communicate clearly and in good time about areas where he required assistance, and avoid waiting until review meetings to explain a lack of progress.

37. The email concluded with a summary of the areas in which Ms Massingham considered improvement was required, namely the quality of the Claimant's written and verbal communication, the timeliness of task completion, his contribution during meetings and his wider contribution to the team. Ms Massingham stated that the Claimant had been provided with the tools, resources and support necessary to achieve his objectives and that she expected to see improvements in those areas.

38. New detailed and structured objectives were subsequently agreed on 16 May 2023.

Performance concerns during Summer 2023

39. By July 2023, Ms Massingham remained concerned regarding the quality, timeliness and independence of the Claimant's work.

40. On 20 July 2023, Ms Massingham met with the Claimant and again raised concerns regarding his performance. She subsequently sent the Claimant a very detailed follow-up email on 21 July 2023 recording the matters discussed.

41. Ms Massingham identified a number of areas in which she considered improvement was required and set out her expectations for the following month.

42. First, she raised concerns regarding the quality of the Claimant's work. She recorded that he struggled to lead data review meetings, relied heavily on instruction from others, did not consistently demonstrate an understanding of the data he was analysing, and produced reports and visualisations which she regarded as unclear or lacking meaningful analysis. She stated that he needed to develop a better understanding of regulators' requirements, improve the quality of his verbal and written communication, present meaningful data analysis, and show greater initiative in interpreting information and identifying findings.

43. Secondly, Ms Massingham expressed concerns regarding the timeliness of the Claimant's work and his overall level of output. She referred to a number of projects and tasks which had been outstanding for lengthy periods. She considered that the Claimant was not completing work within reasonable timescales and was failing to provide clear completion dates. She stated that he needed to improve his organisation and prioritisation of work, agree timescales with customers, provide regular progress updates, promptly raise any obstacles to completion, and produce a clear prioritisation plan for outstanding tasks.

44. Thirdly, Ms Massingham identified a lack of independent working and autonomy. She recorded that the Claimant frequently sought assistance from colleagues and managers in relation to tasks which, in her view, should have been capable of being completed independently. She considered that he often waited for direction rather than taking ownership of work, researching solutions and exercising his own judgment. She therefore expected him to demonstrate greater initiative, undertake his own research and troubleshooting before seeking assistance, take responsibility for decision-making, and complete routine tasks without extensive support from colleagues.

45. Fourthly, Ms Massingham raised concerns regarding the Claimant's engagement with colleagues, stakeholders and meetings. She observed that he was not contributing sufficiently during meetings, required prompting to engage with regulators and appeared reluctant to progress work without support. She stated that she wished to see greater confidence, participation and proactive engagement, including the presentation of ideas, solutions and suggestions during discussions.

46. The email also recorded that the Claimant acknowledged the areas identified for improvement and, in several instances, agreed with Ms Massingham's assessment.

47. Ms Massingham also noted that she had noticed a significant decline since the Claimant's home renovations had commenced and the Claimant acknowledged they were a distraction. The Claimant on multiple occasions in cross-examination acknowledged that the stress of his personal life, including house renovations, having a toddler and his wife's pregnancy, were impacting his work, which he acknowledged was falling below the required standard.

48. In an effort to enable him to improve his performance, Ms Massingham decided temporarily to remove his line management responsibilities and transfer certain tasks elsewhere. The Claimant accepted in cross-examination that this was a supportive measure intended to help him focus on his priority tasks.

49. The Claimant asked Ms Massingham for further support and training in relation to line management. In response, Ms Massingham asked him to complete the Line Manager in Defence course. The Claimant accepted in cross-examination that he did not undertake that course.

50. The email concluded by identifying four overarching areas requiring improvement: autonomy, work output, engagement and understanding of the business, and verbal and written communication.

51. Ms Massingham then made clear that a follow-up performance review was scheduled for 18 August 2023.

52. Furthermore, Ms Massingham attached to that email a detailed table setting out, under separate headings, her observations regarding the Claimant's performance, the standards expected of an employee of his grade and role, specific objectives to be achieved over the following month, and further explanatory commentary. The Claimant said in oral evidence that he should not have been expected to "read between the lines" but he did not need to as the document clearly identified a number of areas in which the Claimant's performance was considered to require improvement. These were broken down in considerable detail and included the quality of his work, timeliness, productivity, ability to work independently, engagement with colleagues, and communication. The document identified the Respondent's concerns in each area, explained the standards expected, and set out clear, specific, and measurable actions which the Claimant was expected to undertake in order to achieve the required improvement.

53. In our judgment, the email and table dated 21 July 2023 demonstrate a very significant degree of management engagement with the Claimant's performance. It was detailed, structured and specific. Rather than merely identifying concerns, it sought to explain the nature of those concerns, the standard required, and the actions that the Claimant was expected to take in order to address them. It is, in our view, difficult to reconcile the contents of these documents with the Claimant's contention that he had not been made aware of any specific concerns regarding his performance prior to the commencement of the formal process.

54. The Claimant said that he had not regarded this 21 July 2023 email as concerning when he received it. He accepted that he had read it once but said that he viewed it as no more than general feedback. He did not discuss it with

his wife and gave it no further thought. It is noteworthy that he stated in oral evidence when being asked about this 21 July email: "If I had known the severity, then I would have pulled my finger out."

55. In our judgment, the email set out in clear, detailed and unequivocal terms a number of significant concerns regarding the Claimant's performance. It also identified specific improvements that were required and warned that his performance would be reviewed again the following month. Viewed objectively, the email plainly conveyed that Ms Massingham considered the Claimant's performance to be falling materially below the standard expected of his role. Nor was this the first occasion on which Ms Massingham had raised these concerns.

56. We therefore find that the Claimant was on notice that there were serious concerns about his performance and that improvement was required. Quite simply, his assertion that the subsequent commencement of the formal performance process came entirely as a surprise is not in any way consistent with the contemporaneous documentation.

Commencement of the Managing Poor Performance (MPP) process

57. On 18 August 2023, Ms Massingham held a further meeting with the Claimant to review progress.

58. Following advice from Human Resources, Ms Massingham proceeded to the next stage of the Respondent's MPP process, as there had been insufficient improvement.

59. On 1 September 2023, Ms Massingham invited the Claimant to a formal performance review meeting on 14 September 2023.

60. Despite the detailed feedback and performance concerns communicated by Ms Massingham over a period of months, the Claimant maintained throughout his evidence that the invitation dated 1 September 2023 came as a significant surprise and shock to him. We do not accept that evidence. By that stage, the Claimant had been made aware on numerous occasions of the Respondent's serious concerns regarding his performance. In those circumstances, the invitation should not reasonably have come as a surprise to him.

61. Before that meeting, on 10 September 2023, the Claimant emailed Ms Massingham stating that he suspected he might have ADHD and requested that the process be postponed.

62. Ms Massingham sought advice from HR, which was that the performance review meeting should proceed. The Claimant's request for a postponement was therefore not granted, and the performance review meeting took place on 14 September 2023.

63. In their witness statements and oral evidence, the Respondent's witnesses all consistently explained that they considered it appropriate, in line with policy, and in the Claimant's best interests, for the MPP process to continue while further information was obtained through channels such as Occupational Health. Their evidence was that these were not mutually exclusive courses of

action and could proceed in parallel. We accept that evidence. The witnesses genuinely believed, quite reasonably in our view, that continuing the MPP represented the best means of supporting the Claimant whilst also addressing the Respondent's ongoing performance concerns. By that stage, a wide range of informal measures had already been attempted without securing any improvement, and the Respondent considered that the MPP process provided the only structured mechanism available to genuinely support and manage the Claimant's performance.

64. The performance review meeting took place on 14 September with the Claimant accompanied by his wife. During the meeting the Claimant maintained that he had not received sufficient support and remained in the process of learning the role.

65. Following the 14 September meeting, the Claimant provided further documentation which Ms Massingham reviewed. Her evidence, which we accept, was that the material did not evidence the outputs required or adequately explain why particular tasks had not been completed. Ms Massingham also invited the Claimant to suggest any adjustments which might assist him and proposed a number of possible measures herself, including noise-cancelling headphones, a designated workspace, regular breaks, alternative communication methods, and a review of his compressed working hours. Her evidence, which we accept, was that the Claimant did not engage with those suggestions.

66. Having considered the Claimant's representations, the documentation he had provided, and advice from HR, Ms Massingham decided to issue a Formal Written Warning. Her evidence was that there had been little improvement in the Claimant's performance over the preceding months despite the support provided. She considered it reasonable to commence formal performance management in circumstances where informal measures had not secured any improvement. She explained that the purpose of issuing the warning was to enable a structured MPP process to be put in place in order to support the Claimant's improvement. The outcome was communicated to the Claimant on 20 September 2023.

First Occupational Health report and sickness absence

67. During the meeting on 14 September 2023, Ms Massingham agreed that an Occupational Health referral should be made. The referral was submitted the following day on 15 September 2023. The Claimant complained that, having informed Ms Massingham by email on 10 September 2023 that he suspected he might have ADHD, it was unreasonable for the referral not to have been made until five days later. We do not accept that contention. In our judgment, the referral was made promptly and well within a reasonable timeframe.

68. The first Occupational Health report was received by Ms Massingham on 22 September 2023. It is a relatively short report, extending to approximately one and a half pages. The Claimant reported to the Occupational Health Adviser that he was experiencing stress due to personal and workplace issues. The Occupational Health Adviser stated that the Claimant appeared to be experiencing severe levels of anxiety and moderate levels of depression, and noted that he was unfit for work. She advised the Claimant to seek a GP

review. The Occupational Health report did not identify specific reasonable adjustments but suggested that the Claimant be referred for a Capability Assessment (which is an objective assessment of the individual's ability and motivation to perform their job role) when the Claimant returned to work.

69. The Occupational Health report also incorrectly stated that the referral for a Capability Assessment had been made and specifically informed Ms Massingham that there was no current action required of her. It turned out later that this was incorrect information and that Ms Massingham did need to make a referral for a Capability Assessment, which she did promptly, when this mistake of the Occupational Health Adviser had come to light.

70. It is worth noting here that on the same day that Ms Massingham received the first Occupational Health report, she sent the Claimant a supportive email setting out further information on ADHD support.

71. On 26 September 2023, the Claimant submitted a fit note stating that he was unfit for work until 17 November 2023. In response, Ms Massingham sent the Claimant some mental health guidance and support resources. The MPP process was paused during the Claimant's sickness absence. The Claimant remained on sick leave and other forms of leave until 2024, and during that time, Ms Massingham kept in touch with the Claimant for welfare checks.

Appeal against the Written Warning

72. On 29 September 2023, the Claimant appealed against the Formal Written Warning. Stephen Gillstroem McLean was ultimately appointed as Appeal Manager (as the Claimant objected to the first proposal). Mr Gillstroem McLean read the relevant policy documents on appeals, sought HR advice about the nature of his role, and reviewed the Claimant's documentation in preparation. Mr Gillstroem McLean also spoke to Ms Massingham in preparation, and reviewed documents which she had considered in reaching her decision to impose a written warning.

73. The appeal hearing took place on 13 October 2023 with the Claimant accompanied by a trade union representative. The Claimant raised concerns about the support he had received and the decision to commence formal performance management, which he said had come as a surprise to him.

74. Mr Gillstroem McLean subsequently reviewed the documentation, including the fact that the Claimant had raised the possibility that he might have ADHD, and determined that the Respondent's procedures and policies had been followed. The appeal was not upheld, and that outcome was communicated by letter on 17 October 2023.

75. Mr Gillstroem McLean noted, amongst other things, that Ms Massingham had already taken numerous steps to assist the Claimant, including that she had reduced the Claimant's workload, allowed him to work from home, removed his line management responsibility when the Claimant's circumstances appeared to be causing him stress. It was Mr Gillstroem McLean's view that informal steps had been taken and that there was sufficient evidence to establish that the Claimant's performance still was not where it needed to be and therefore steps needed to be taken to improve it.

ADHD Diagnosis

76. On 6 November 2023, the Claimant received a diagnosis of ADHD. He informed Ms Massingham of the diagnosis on 7 November 2023, but did not provide the written diagnosis at that stage. The Respondent did not receive the diagnosis documentation until 19 January 2024.

Second Occupational Health referral

77. On 7 November 2023, the Claimant asked Ms Massingham via email for another Occupational Health referral. On 8 November 2023, Ms Massingham replied stating that she was happy to set up another Occupational Health referral, noting that it would be best to wait until the Claimant was ready to come back online before looking into it to make sure he was taking time to look after himself. She stressed that she was more than happy to get another Occupational Health referral and committed to get that set up for the Claimant closer to his return-to-work date. She was asked in cross-examination why she had refused the Claimant's request for a second Occupational Health referral, and she said: "I wasn't refusing, I was respecting your time off work while you were off sick."

78. On 16 November 2023, the Claimant emailed Ms Massingham to notify her that his daughter had been born that day. He attached an extension to his sick note, and informed Ms Massingham that he would be taking sick leave, then paternity leave, then annual leave, and then return to work on 2 January 2024. He also asked Ms Massingham again to organise another Occupational Health referral so that he could discuss phased return and reasonable adjustments.

79. On 21 November 2023, Ms Massingham replied apologising for the delay (which was caused by network problems), congratulating the Claimant on his daughter's birth, noting that she was happy to make a second Occupational Health referral, and then noted that the previous Occupational Health report had recommended a Capability Assessment, asking the Claimant whether he was happy for her to submit that referral. The Claimant responded the same day to say: "I don't think that a Capability Assessment is needed at this time."

80. Ms Massingham then did as the Claimant asked, and formally wrote to the Claimant on 23 November 2023 asking for his consent to seek Occupational Health advice again. Ms Massingham made the second Occupational Health referral, as requested, the next day on 24 November 2023.

81. The second Occupational Health report was received on 30 November 2023. The Occupational Health Adviser observed mild symptoms of anxiety and minimal symptoms of depression. This second report, similar to the first report, stated that a Capability Assessment would be required before recommendations regarding workplace adjustments could be made.

Referral for first Capability Assessment

82. A Continuous Absence Review meeting took place on 11 December 2023 whilst the Claimant remained absent from work. Around this time, Optima

Health tried to phone Ms Massingham. Ms Massingham was in meetings at the time so could not pick up. As the call came from a withheld number, she was unable to return the calls. The Claimant then asked Ms Massingham by email on 14 December 2023 to call Optima Health (he provided her a number) as they had informed him that they needed to speak to Ms Massingham before any Capability Assessment was carried out. Ms Massingham actioned this on 15 December 2023 (her last day at work before her Christmas leave commenced) and emailed the Claimant to tell him she had spoken to Optimal Health and an appointment for a Capability Assessment will be made in the new year.

83. The Claimant complained about the delay in the first Capability Assessment referral.

84. We do not find that there was any unreasonable delay in the first Capability Assessment referral. Even if there was any such delay, which we find there was not, it was caused by Optima Health erroneously advising Ms Massingham that the referral had already been done and no action was required from her, and then by the Claimant declining the Capability Assessment referral and instead insisting on a second Occupational Health report before a Capability Assessment referral (contrary to the advice in the first Occupational Health report).

85. After the second Occupational Health report had advised again for the need for a Capability Assessment, the Capability Assessment referral was made within a two-week window.

86. In short, Ms Massingham made the Capability Assessment referral within an entirely reasonable time frame given the circumstances.

87. The Claimant complained that he was not able to self-refer for a Capability Assessment. We accept Ms Massingham's evidence that the policy stated that managers refer employees for Capability Assessments, and in any event, she does not recall the Claimant asking if he could self-refer himself.

Return to Work

88. The Claimant returned to work on a phased basis on 3 January 2024. On 10 January 2024, he and Ms Massingham discussed his return to work, possible adjustments and a fit-to-work plan.

89. On 12 January 2024, the Claimant sent an email setting out various requests relating to reasonable adjustments, the MPP process, and his wish not to remain in the team. On 19 January 2024, following advice taken from HR, Ms Massingham responded, confirming that the MPP process would be put on hold pending a Capability Assessment and implementation of appropriate adjustments. She noted that this did not stop them putting temporary adjustments in place. She also suggested (on the basis of HR advice that she had received) that if the Claimant wished to move roles, he should pursue a compassionate transfer request and she pointed the Claimant to the correct policy.

90. The Claimant provided documentary confirmation of his ADHD diagnosis on 19 January 2024. Ms Massingham then had a meeting with HR to discuss managing the Claimant. She felt he was becoming increasingly confrontational since returning to work and this was having an impact on her and the team.

Complaint against managers

91. On 17 January 2024, the Claimant submitted a Bullying, Harassment, Discrimination and Victimisation ("BHDV") complaint concerning Ms Massingham, Mr Gillstroem McLean and Mr Adrian Johnson.

92. The complaints were not upheld. We were not pointed to any evidence to show that there was any reasonable basis for concluding that these three employees had bullied or harassed the Claimant.

93. The Claimant's BHDV complaint outcome was communicated on 21 July 2024. The Claimant appealed that outcome on 15 August 2024. The appeal was later rejected and the outcome communicated on 4 November 2024.

Escalation and change of management arrangements

94. On 25 January 2024, a return-to-work meeting took place involving the Claimant, Ms Massingham, Mr Adrian Johnson and the Claimant's trade union representative. This is also the same day that the Claimant notified ACAS of this claim.

95. A further meeting occurred on 26 January 2024, after which the Claimant provided a list of adjustments he sought. The requests included an ADHD coach and a move to another team. Ms Massingham considered these requests to be beyond her authority and sought assistance from more senior management and HR.

96. On 1 February 2024, the Respondent held a meeting to discuss next steps. The meeting included the Claimant’s line manager, Ms Massingham, the Respondent’s People Team lead, Ms Samantha Hope, the department’s HQ lead, Ms Joanne Lintern, the HR caseworker, Mr Simon Chamberlain, the HR caseworker’s line manager, Mr Nick Thompson, the department’s HR Business Partner, Ms Ruth Coates, and Ms Massingham’s line manager, Mr Adrian Johnson. It was agreed that the matter should be managed at a more senior level and that Ms Lintern would respond to the Claimant. Ms Massingham informed the Claimant as such.

97. On 9 February 2024, Ms Massingham and the Claimant had a meeting. We accept Ms Massingham's evidence that the Claimant had become increasingly difficult to manage as he was demanding answers from her when she had already informed him that the matter had been escalated and it was out of her hands. Following this meeting, she sent an email to her line manager raising concerns about the increasingly confrontational behaviour of the Claimant, stating that she did not think it was in the Claimant’s or her best interest to continue working together. She went on a period of sick leave immediately following the meeting because the situation was having an impact on her health.

98. On 13 February 2024, Mr Johnson (Ms Massingham's line manager) contacted Ms Lintern (head of people team with DSA) and asked her to take over the Claimant's working arrangements, as he was concerned about the impact it was having on Ms Massingham and the rest of the team. Ms Lintern spoke to Mr Garry Bye to see if it was possible to create a 'firebreak' by placing the Claimant under his line management. The Claimant was then temporarily moved under Mr Bye's line management.

First Capability Assessment Report

99. A Capability Assessment took place in February 2024. Ms Massingham had posed three specific questions to the assessor, including: "In your professional opinion, from a medical or health perspective, are there any reasonable adjustments you would suggest could aid Nick's productivity and performance and support his well-being?" The six-page report was issued on 21 February 2024. The assessor noted that the Claimant presented with "severe anxiety and depression on the day of the assessment" and considered him to be unfit for work. The assessor also notes that it was her opinion that his ADHD as well as his anxiety and depression were likely to be considered a disability because they have lasted longer than 12 months and significantly affect the Claimant's activities of daily living.

100. The report advised that work coaching may be a suitable recommendation following completion of a follow-up Capability Assessment. It further advised that his current work situation is not conducive with improved performance, and it is through first resolving this, then having suitable adjustment / support in place (following a further Capability Assessment) that his wellbeing and performance will improve.

101. The Claimant complained about the delay in the first Capability Assessment report. We have already set out that we do think there was any such delay in the *referral*, which occurred in 2023.

102. As to 2024, it appears to have taken until 21 February to issue the Capability Assessment report. Our view is that this delay of approximately two months from the referral is not excessive.

103. On 22 February 2024, having read the first Capability Assessment report, Ms Lintern wrote to the Claimant concerning his requests. She reiterated that the Respondent was fully committed to supporting the Claimant. She set out a list of reasonable adjustments that had already been offered to the Claimant. These included reduction in tasks, removal of line management responsibilities, regular 121s, two Occupational Health referrals, referral to Capability Assessment, mostly working from home, offer of dedicated desk in workplace to support flexible arrival times, offer of noise-cancelling headphones, focus on training, amendment to compressed hours arrangement, reduction of tasks into manageable smaller actions, signpost to Access to Work scheme, phased Return to Work over two months, draft Fit to Work issued to include a two month plan with goals and tasks as part of phased return to work. Ms Lintern then went on to say that the Claimant's request for an ADHD coach could be considered when the Capability Assessment process had been concluded.

104. In response to the Claimant's request to have a managed move from Defence Land Safety Regulator (DLSR) into another area within DSA, she noted that she had considered the request, and set out her proposal to move the Claimant temporarily under the management of Mr Bye.

Alternative roles

105. We accept both Ms Lintern and Mr Bye's evidence that efforts were made to identify suitable roles both within and outside the DSA but it was a very challenging task because there was a Government level drive to cut down on recruitment and every department was having issues with headcount. We accept that the Respondent would have moved the Claimant if they could have. As Mr Bye put it in his oral evidence: "nobody wanted a move [for the Claimant] as much as us". We accept Mr Bye's oral evidence that "the climate was extremely challenging" and in fact, it was "one of the most challenging times to move jobs within MOD."

106. We did not attach significant weight to the document produced by the Claimant showing that numerous internal moves had occurred that year within MOD, which he obtained via a Freedom of Information request. This is because there was no analysis behind it. It was unclear what moves had happened, where, how and for what reason.

107. We accepted Ms Lintern's evidence regarding the efforts she made to identify alternative employment opportunities for the Claimant. She explained that, despite having responsibility for three teams and a substantial workload, she devoted significant time to supporting the Claimant and seeking roles that might better suit his skills and circumstances.

108. In particular, when an opportunity arose within the Military Aviation Authority team, Ms Lintern took active steps to secure an informal suitability interview for the Claimant outside the usual expression of interest process. We accepted her evidence that arranging such opportunities was not straightforward, given the limitations on resources and recruitment, and that she expended considerable effort persuading the recruiting manager to meet with the Claimant because she genuinely believed the role would be a good fit for him.

109. Ms Lintern explained that the suitability interview was an informal discussion intended to assess the Claimant's interest in, and suitability for, the role. Her understanding was that the Claimant did not engage positively with that opportunity and did not demonstrate a genuine interest in the position. As a result, the recruiting manager did not offer him the role. Ms Lintern further stated that the Claimant later sought to have the role offered to him notwithstanding that outcome, but that this was not something she was able to require the recruiting manager to do. We accept that evidence. It demonstrated a genuine attempt by Ms Lintern to identify and facilitate alternative employment for the Claimant, albeit one which ultimately proved unsuccessful at that time.

Move to Mr Bye's management

110. From March 2024, the Claimant came under the line management of Mr Bye. The intention was that this arrangement would create separation from the previous management chain.

111. Mr Bye assigned the Claimant limited and simplified work, he was not asked to do normal duties, and he was not being held to any performance targets. Meanwhile, discussions continued regarding ADHD coaching, Capability Assessment recommendations and possible redeployment.

112. Mr Bye explained in his evidence that there were, in practical terms, two possible ways forward. The first was for the Claimant to remain in his existing DLSR role, which would mean that any ADHD coaching would be linked to his DLSR duties, and the MPP would restart. The second was to defer the ADHD coaching until the Claimant had secured an alternative role, at which point the ADHD coaching would be linked to the new position, and on that basis, there would be no need to restart the MPP.

113. The Respondent's witnesses described this situation as a 'circular argument' because neither option proved capable of implementation. The Claimant rejected the first option because he did not wish to undertake ADHD coaching in relation to his existing DLSR duties, as it would mean the MPP would resume, and instead sought a 'fresh start' in a different role before commencing coaching. This was despite the Respondent having proposed a simplified and stripped back version of the MPP, intended primarily to bring that process to a conclusion with the support of Mr Bye.

114. The second option was not, however, immediately available in practice because there were no suitable alternative roles into which the Claimant could be placed at that time (as set out in more detail above). As a result, neither proposed course of action progressed. Mr Bye said the impasse was caused because the Claimant was demanding an ADHD coach but only against new duties in a new role, which the Respondent was simply unable to create or identify at that time. We accept the Respondent's evidence that this impasse, described by its witnesses as a 'circular argument', was the main reason for a delay in resolving the issues and moving matters forward at this time.

115. We accept Mr Bye's oral evidence that he was "not trying to trip the Claimant up" and that he genuinely "wanted the best" for the Claimant and that he was really "trying to help".

Subsequent developments post claim form, including second Capability Assessment, closure of MPP, move to a new team, and ADHD coaching

116. On 21 March 2024 the Claimant presented his ET1 claim form.

117. Events occurring beyond this date are outside of this claim, but for completeness, we note the following.

118. A second Capability Assessment referral was made on 28 May 2024. A second Capability Assessment took place on 20 August 2024 and recommended ADHD coaching ideally following a fresh start. We accept the Respondent's evidence that there was a delay here because the relevant assessor was off sick, which the Respondent had no control over. In the

meantime, the Respondent took the exceptional step of arranging some alternative coaching in early July, and Mr Bye supported this process.

119. By July 2024, the Respondent closed the MPP process and granted the Claimant priority mover status. The closure letter was sent on 25 July 2024.

120. The Claimant ultimately secured a temporary transfer to another team on 18 November 2024. ADHD coaching commenced in December 2024. That move became permanent in February 2025.

Ms Massingham's line management of the Claimant

121. Before moving on to our conclusions, we consider it appropriate at this stage to record our findings regarding Ms Massingham's approach to the Claimant. Having heard her evidence and considered the contemporaneous documents, we found her to be a highly diligent, conscientious, and supportive manager who approached the situation with great sensitivity and professionalism. Throughout the relevant period, she devoted considerable time and effort to supporting the Claimant, including through regular one-to-one meetings, detailed feedback, structured objective-setting, task breakdowns, and comprehensive written follow-up communications.

122. The documentary evidence demonstrates a sustained commitment on Ms Massingham's part to assisting the Claimant to succeed in his role whilst addressing ongoing performance concerns. Even after the relationship between manager and employee became strained in early 2024 when the Claimant decided he no longer trusted her, and notwithstanding the impact that the situation had upon Ms Massingham's health personally, we find that she continued to engage with the Claimant in a professional, courteous, and compassionate manner (including within the Tribunal setting). We are satisfied that her actions throughout were motivated by a genuine desire to support the Claimant whilst also addressing the Respondent's legitimate concerns regarding what it reasonably perceived to be a sustained period of significant underperformance.

Conclusions

Time limits

Time limits re discrimination arising from disability under section 15 Equality Act 2010

123. Counsel for the Respondent submitted that the Respondent's position on time limits was that any alleged acts occurring before 15 November 2023 (rather than 17 October 2023 as originally pleaded in the amended Grounds of Resistance) were presented out of time pursuant to section 123 Equality Act 2010. The Respondent therefore contended that the Tribunal lacked jurisdiction to determine these allegations.

124. The Claimant's case was that the alleged discriminatory conduct commenced on 11 September 2023 when his line manager, Ms Massingham, did not pause the formal MPP process to obtain Occupational Heath advice

regarding the Claimant's suspected ADHD, before issuing a first written warning.

125. If the written warning that was issued on the 20 September 2023 was the only act complained of, it would have constituted a discrete act for the purposes of section 123 Equality Act 2010, and the primary limitation period would have expired on 19 December 2023.

126. The Claimant did not notify ACAS until 16 January 2024 so no amendment to the three months' time limit would be required as this would have been already out of time.

127. Whilst the issuing of the Formal Written Warning was itself a discrete act, we find that the Claimant's section 15 complaint is not confined to the warning itself. Rather, the Claimant's complaint is that the warning formed part of an ongoing course of conduct connected with the Respondent's management of his performance, its response to his suspected and subsequently diagnosed ADHD, and its approach to the provision of support and adjustments.

128. Having considered the evidence as a whole, we find that there was conduct extending over a period for the purposes of section 123 Equality Act 2010. The relevant period commenced on the date the Claimant raised his suspected ADHD with his employer, namely the 10 September 2023, and continued thereafter through a series of connected acts and omissions, including the continuation of the MPP process, Occupational Health involvement, discussions concerning ADHD, requests for adjustments, Capability Assessments and discussions regarding alternative management arrangements and redeployment.

129. We find that this state of affairs remained ongoing at the date on which the Claimant presented his claim form on 21 March 2024. At that point the matters complained of had not been finally resolved and the issues concerning support, adjustments and the Claimant's position within the Respondent's organisation remained live.

130. By virtue of section 123 Equality Act 2010, conduct extending over a period is treated as done at the end of the period. Accordingly, we find that the section 15 complaint was presented in time.

Time limits re the reasonable adjustments claim under sections 20 and 21 Equality Act 2010

131. We reach the same conclusion in relation to the claim for failure to make reasonable adjustments under sections 20 and 21 Equality Act 2010.

132. The essence of the Claimant's case is not that there was a single refusal of a particular adjustment on a particular date. Rather, the Claimant alleges an ongoing failure by the Respondent to identify, consider and implement reasonable adjustments following the emergence of concerns regarding ADHD and, later, his diagnosis.

133. The Respondent submits that allegations arising before 15 November 2023 were presented out of time and cannot be considered by the Tribunal. We do not accept that submission.

134. In our judgment, the reasonable adjustments claim concerns conduct extending over a period within the meaning of section 123 Equality Act 2010. Following the commencement of the MPP process and the Claimant's disclosure of suspected ADHD, there followed a series of interconnected events including Occupational Health referrals and Capability Assessments regarding reasonable adjustments, various requests from the Claimant for adjustments and corresponding decisions by the employer regarding these requests, wider discussions regarding disability-related support, consideration of ADHD coaching and discussions regarding redeployment and alternative management arrangements.

135. These matters did not comprise a series of wholly separate and unrelated decisions. Rather, they formed part of an ongoing process through which the Respondent was considering what support or adjustments should, or should not, be provided to the Claimant, and when the appropriate time in the sequencing of events that such adjustments were possible and/or reasonable.

136. As above, we find that this continuing state of affairs commenced on 10 September 2023 and remained ongoing until 21 March 2024, when the Claimant presented his claim form. Accordingly, the conduct complained of is to be treated as occurring at the end of that period.

137. The Claimant presented his ET1 on 21 March 2024. We therefore find that the reasonable adjustments claim was presented in time.

Overall conclusion on time limits

138. Accordingly, we reject the Respondent's submission that the Tribunal lacks jurisdiction to consider allegations arising before 15 November 2023. We find that both the section 15 complaint and the reasonable adjustments complaint form part of conduct extending over a period and were presented in time.

Disability

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

139. The Claimant relies upon ADHD and/or anxiety as disabilities for the purposes of section 6 Equality Act 2010.

140. The Respondent accepts that the Claimant's ADHD amounted to a disability within the meaning of section 6 Equality Act 2010 throughout the relevant period.

141. The issue in dispute is whether the Claimant's anxiety also amounted to a disability at the material time. The Claimant's case was that he was disabled by reason of anxiety from September 2023 onwards, although he said that he had experienced episodes of anxiety before that date.

142. The Claimant did not contend that his anxiety formed part of, or arose from, his ADHD. When questioned about this in evidence, he was unable to identify any evidence linking the two conditions.

143. The medical evidence relating to anxiety was as follows:

143.1. An Occupational Health report dated 22 September 2023 recorded that the Claimant appeared to be experiencing severe levels of anxiety.

143.2. A further Occupational Health report dated 30 November 2023 recorded mild symptoms of anxiety.

143.3. A Capability Assessment report dated 21 February 2024 noted that the Claimant presented with severe anxiety and depression *on the day of the assessment* and expressed the view that the anxiety was likely to be considered a disability.

143.4. The Claimant's closing submissions point to three entries in his GP records, namely i) on 26 February 2016 (this is over 10 years ago), his GP record notes the Claimant saying that he has stress at work and "gets v anxious" and has "angry outbursts" and the following entry on 23 March 2016 (also over 10 years ago) which states that the Claimant has reported "getting anxious at work" and "feels he might shout at a customer but hasn't done so"; ii) on 29 April 2021, the GP record notes that he finds his job with the police "very stressful", "feels his stress is significant now", "feels anxious all the time", "feels manager is not understanding" and "has now been put forwards for disciplinary"; and iii) on 8 November 2023, the GP record notes that he reported "generally feels anxious, mostly around work", "finds self catastrophising", "alcohol consumption at 42 units a week", "waking 1-2 hours earlier than normal at the moment and struggling to return to sleep", "had negative performance review in September", "struggles with completing things and confidence", "wife suggested ADHD as he struggles when things are difficult", "recently spend £60,000 on renovations to house, took 6 months to complete rather than quoted for 6 weeks found this very stressful", "wife expecting second child in 4 days".

Did it have a substantial adverse effect on the Claimant's ability to carry out day-to-day activities?

144. We accept that the Claimant experienced symptoms and feelings of anxiety during the relevant period. However, the evidence does not establish, on the balance of probabilities, that the anxiety had a substantial adverse effect on his ability to carry out normal day-to-day activities.

145. The Claimant's own evidence was that the anxiety was present "in the background" and that it "dipped in and out". He accepted that his symptoms could arise as a reaction to stressful situations.

146. The evidence indicates that the anxiety was closely linked to external stressors. These included concerns about performance management at work, disciplinary issues, substantial and protracted home renovation works, related

financial pressures, and family circumstances, including the birth of a second child. The GP records and other medical evidence describe symptoms and feelings of anxiety but provide little evidence to show that this caused any significant functional limitations affecting the Claimant's normal day-to-day activities.

147. Accordingly, whilst the Tribunal accepts that the Claimant experienced symptoms and feelings of anxiety at times, the evidence does not satisfy us that its effects were substantial within the legal meaning of section 6 Equality Act 2010.

If not, did the Claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?

148. The Claimant relied upon his prescription for Duloxetine. However, on his own evidence, that medication was first prescribed in October 2024, some six months after presentation of the claim. Accordingly, it does not assist the Tribunal in determining whether the statutory definition of disability was met during the relevant period.

Were the effects of the impairment long-term?

149. We are not satisfied that any adverse effects were long-term within the legal meaning of the Equality Act 2010.

150. The evidence demonstrates episodes of anxiety occurring at various points in the Claimant's life, typically in response to particular stressful events or circumstances. There is no persuasive evidence that, at the material time, any substantial adverse effect had lasted for 12 months, was likely to last for at least 12 months, or was likely to recur.

151. Even if the Claimant had, at times, experienced a substantial adverse effect on his ability to carry out normal day-to-day activities, the evidence does not establish that such effects were ongoing or persistent. Rather, the occurrence and severity of his anxiety appear to have fluctuated according to external stressors in his life. In those circumstances, we are not satisfied that any substantial adverse effect was long-term or likely to recur within the meaning of the Equality Act.

Conclusion on disability

152. In summary, it does not appear to us that there is any clear evidence to show that anxiety was an underlying ongoing or recurrent disorder at the relevant time, and there is no clear evidence to prove it was a disability as defined by section 6 of the Equality Act 2010.

Discrimination arising from disability (Equality Act 2010 section 15)

Did the Respondent treat the Claimant unfavourably by subjecting him to a formal performance management plan?

153. The Respondent accepts that the Claimant was placed on a formal MPP but denies that this amounted to unfavourable treatment. The Respondent's

position is that the purpose of the performance management process was to support the Claimant and assist him in achieving the standards of performance required for his role. We accept that submission.

154. We do not consider that the implementation of the MPP amounted to unfavourable treatment. The fact that the Claimant strongly objected to being placed on the formal process does not, of itself, render the treatment unfavourable. The decision to commence the MPP was objectively justified and followed the failure of extensive informal support measures, implemented over a period of many months, to achieve the necessary improvement in performance.

155. We have already set out in our findings of fact the very substantial support offered and provided to the Claimant by the Respondent throughout his employment. The Respondent's witnesses, whom we found to be consistent, reliable and credible, were all clear in both their written and oral evidence that the MPP was intended as a supportive mechanism rather than a punitive one. Their evidence was that the informal measures previously adopted had not succeeded, and that the MPP was introduced as a beneficial catalyst to assist the Claimant in attaining the standards of performance required in his role, through a structured framework of support, review, and accountability.

156. We therefore conclude that the Respondent did not subject the Claimant to unfavourable treatment by placing him on the MPP. Even if we are wrong on this point, the claim would nevertheless fail because the Respondent has established objective justification, as set out below.

Did the following things (poor organisation, poor communication, lack of ownership, asking too many questions and inability to meet deadlines) arise in consequence of the Claimant's disability?

157. The Claimant relies upon the following matters as arising in consequence of his ADHD: poor organisation, poor communication, lack of ownership, asking too many questions, and an inability to meet deadlines.

158. The Claimant accepted in his evidence that he had been underperforming at work and that this was an issue which needed to be addressed. He also accepted that there had been a deterioration in his performance due, at least in part, to his domestic circumstances.

159. The ADHD diagnostic report, dated 15 November 2023, records that the Claimant met the diagnostic criteria for ADHD and demonstrated impairment in the domain of inattention. The report identifies a number of inattentive symptoms, including leaving things to the last minute unless he is passionate about it, missing the main point, unable to keep attention for too long on tasks, often starts tasks but does not finish them, difficulty in completing work, difficulty concentrating on conversations after which he does not always remember the subject discussed, and struggles to refocus after becoming distracted.

160. Whilst there is not a direct correspondence between those symptoms and each of the performance concerns relied upon by the Respondent, we accept that some of the alleged performance concerns, particularly those relating to

completion of tasks and meeting deadlines, were capable of arising, at least in part, in consequence of the Claimant's ADHD.

161. However, the evidence does not establish that all of the identified performance concerns arose solely, or even predominantly, from the Claimant's disability. The Claimant accepted that his domestic circumstances were affecting his performance during the relevant period. On his own account, childcare responsibilities affected his working hours, calls from tradespeople during working hours disrupted his concentration and workflow, and the ongoing house renovation project created additional pressures, as well as the stress caused by his wife's pregnancy. He also accepted that certain aspects of his role were unfamiliar to him and that he had knowledge gaps which necessitated learning parts of the role whilst undertaking it.

162. We place very limited weight on our observations of the Claimant during the hearing. Tribunal proceedings are a specific and unusual context, and performance in that setting is not necessarily indicative of how an individual functions in the workplace. Nevertheless, we noted that the Claimant was able to manage and organise a substantial volume of documentation, communicated clearly, took full ownership of the presentation of his case, and complied with all deadlines set by the Tribunal. Those observations do not undermine the diagnosis of ADHD, but they do suggest that the difficulties relied upon by the Claimant were not present in every context and cannot, without more, be assumed to have arisen solely as a consequence of his disability.

163. Drawing the evidence together, we find that some aspects of the Claimant's difficulties with completion of tasks and meeting deadlines were likely to have arisen, at least in part, in consequence of his ADHD. However, we are satisfied that other factors, including domestic pressures and the challenges associated with learning unfamiliar work processes, also made a material contribution to the performance concerns identified by the Respondent.

Was the unfavourable treatment because of any of those things?

164. We have already found that there was no unfavourable treatment.

165. If we had found there was unfavourable treatment, we would have gone on to find that some aspects of the Claimant's poor performance, particularly his difficulties completing tasks and meeting deadlines, were caused, at least in part, by matters which arose in consequence of his ADHD. However, we would also have found that other aspects of his poor performance, including concerns regarding the quality of his work, his failure to understand aspects of the business, and issues relating to professionalism, did not arise from those matters.

166. We find that the Claimant was placed on the MPP because of concerns regarding his performance. To the extent that some aspects of those concerns arose in consequence of ADHD, the causal requirement in section 15(1)(a) would be satisfied.

Was the treatment a proportionate means of achieving a legitimate aim?

167. We accept that the Respondent's aim of managing employee performance so as to ensure that employees are able to perform their roles and responsibilities to the required standard was a legitimate aim. Having considered the evidence for ourselves, we are satisfied that the treatment was a proportionate means of achieving that aim. The steps taken were both appropriate and reasonably necessary in the circumstances.

168. Indeed, on the evidence before us, there were no realistic alternatives available at that stage. Significant efforts had already been made to address the Claimant's performance through informal measures, but those measures had not achieved the necessary improvement.

169. We heard and read a considerable volume of evidence regarding the steps taken by Ms Massingham before the decision was made to commence the formal process. We are satisfied that she made sustained and genuine efforts to achieve the Respondent's legitimate aim through informal support, guidance and feedback. The formal performance management process was introduced only after those measures had failed to produce sufficient improvement. After the formal process had commenced, and following the Claimant raising the possibility that he had ADHD, the Respondent addressed that issue within and alongside the MPP in a thorough and supportive manner.

170. We find that the action taken throughout by the Respondent was supportive, measured and proportionate. It was implemented by a manager who sought to balance the needs of the Claimant with the operational needs of the Respondent. By contrast, the Claimant's evidence demonstrated very little recognition of the Respondent's legitimate business needs.

171. We have reached that conclusion following our own assessment of the issue of objective justification. We have not merely considered whether the Respondent acted reasonably. Rather, we have weighed the impact of the treatment on the Claimant against the importance of the Respondent's legitimate aim. We recognise that the commencement of a formal performance management process was something which the Claimant found upsetting and stressful. However, against that must be balanced the Respondent's legitimate need to address longstanding and significant performance concerns, the impact of those concerns upon colleagues and the wider business, and the fact that extensive informal support measures had already been attempted over many months without securing any improvement. Having carried out that balancing exercise, we are satisfied that the impact upon the Claimant was outweighed by the Respondent's legitimate operational need to manage performance effectively.

172. Although we have already concluded that the treatment was not discriminatory, we also find that there were no less discriminatory measures that could reasonably have been adopted. Action was required to address a sustained period of underperformance, and the Respondent had already exhausted informal means of doing so before commencing the formal performance management process.

173. Accordingly, if we are wrong in our earlier conclusion that the Claimant was not subjected to unfavourable treatment, we would in any event find that the Respondent has established that the treatment was a proportionate means of achieving a legitimate aim.

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

174. The Respondent neither knew, nor could reasonably have been expected to know, that the Claimant was disabled by reason of ADHD prior to 10 September 2023. At that stage, the Claimant himself did not know that he had ADHD. Rather, he suspected that he might have the condition and shared that suspicion with Ms Massingham on 10 September 2023. By that date, the formal performance management process had already commenced.

175. The Claimant subsequently informed the Respondent on 6 November 2023 that he had received an ADHD diagnosis and provided the relevant diagnostic documentation on 12 January 2024.

Reasonable Adjustments (Equality Act 2010 ss. 20 & 21)

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

176. See above.

Did the Respondent have the following PCP: implementation of a formal performance management plan before obtaining Occupational Health advice and implementing reasonable adjustments?

177. We find that this was not a PCP.

178. There was no provision, criterion or practice requiring the implementation of the MPP before obtaining Occupational Health advice. Rather, that is simply the sequence of events that occurred in the Claimant's particular case. The performance management process was applied in a manner specific to the Claimant and involved the exercise of managerial judgment based upon his individual circumstances. The referral to Occupational Health formed part of the supportive measures adopted in his case after informal efforts to improve performance had proved unsuccessful.

179. Nor do we find that there was any PCP requiring the implementation of an MPP before reasonable adjustments could be considered or implemented. On the contrary, considerable support and adjustments had already been offered to, and provided for, the Claimant before the commencement of the formal performance management process.

180. We also note that the Respondent's HR policies afforded managers a significant degree of discretion. This was true both of the policy in force during 2023, when the relevant decisions were taken, and the revised policy introduced in May 2024 upon which the Claimant refers to in his closing submissions. The latter included a provision stating that a manager "*may* assess that a written improvement notice is not appropriate where you are still

awaiting implementation of reasonable adjustments". This was not a PCP applied generally, but a series of case-specific management decisions made in response to the Claimant's individual circumstances.

181. Accordingly, we are not satisfied that the Respondent operated the PCP identified by the Claimant.

Did the Respondent have the following PCP: requiring the Claimant to carry out his normal duties and have a Capability Assessment before being given an ADHD coach?

182. We find that this was not a PCP.

183. The Claimant was not required to carry out his normal duties. In fact, as set out in our findings of fact, he was required to perform relatively very little referable to his normal duties following his return to work.

184. In his *individual* circumstances, the professional advice was for there to be a Capability Assessment with a view to consideration of an ADHD coach. And the first Capability Assessment report stated that there needed to be another one. The Respondent followed the professional advice and a second Capability Assessment took place (after the claim form was submitted) and recommended ADHD coaching ideally following a fresh start. The Claimant ultimately secured a transfer to another team and ADHD coaching commenced.

185. Also, it is important to note that the Claimant initially chose not to pursue a Capability Assessment in December 2023.

Did the Respondent have the following PCP: not allowing the movement of the Claimant between departments?

186. We find that this was not a PCP.

187. There was no PCP of not allowing the movement of the Claimant between departments. As set out in the findings of facts, we accept that the Respondent would have moved the Claimant if they could have at the time. As Mr Bye put it in his oral evidence: “nobody wanted a move [for the Claimant] as much as us”.

188. There were difficulties in the context of a recruitment freeze etc but the Respondent sought to assist the Claimant in a move, which did take place, but just not as quickly as the Claimant had hoped for.

Did the Respondent have the following PCP: not allowing the Claimant to self-refer for a Capability Assessment in December 2023?

189. We find that this was not a PCP.

190. Ms Massingham's understanding was initially that the Occupational Health Adviser had already made the Capability Assessment referral. That understanding was based upon information expressly provided to her by the Occupational Health Adviser. It subsequently transpired that this information

was incorrect and that the referral had not in fact been made. Once Ms Massingham became aware of that error and understood that it was for her to initiate the referral, she did so without delay.

191. In any event, we accept Ms Massingham's evidence that the Claimant never requested permission to self-refer and never raised any suggestion that he wished to do so. There was therefore no decision by the Respondent to prevent or refuse a self-referral.

192. Accordingly, we are satisfied that the Respondent did not operate the PCP relied upon by the Claimant.

Did the PCPs put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability, in that i) the Claimant's performance, as assessed in the management plan would be lower than a non-disabled person's because of his disabilities; ii) the department which the Claimant was in caused an increase to his anxiety; iii) the Claimant needed a better understanding of his ADHD/ an ADHD coach and was unable to help himself in that respect by referring himself for a Capability Assessment, he had to wait for the Respondent?

193. The PCPs did not exist, but even if they did exist, the evidence does not establish that they placed the Claimant at a substantial disadvantage in comparison with persons who were not disabled because the process itself was heavily modified and support-based. The formal process (and the documented plan was never reached) was tailored to the Claimant, including Occupational Health investigations. Under Mr Bye's proposed arrangements, the standards expected of him were going to be stripped down and made very simple, and the Claimant would have been assisted by Mr Bye at a low level of expectation, with the intention that he would have achieved what was required.

194. The evidence does not establish that any feature of the department, as opposed to the ordinary pressures of the role and the performance concerns identified, placed the Claimant at a substantial disadvantage in comparison with non-disabled employees.

195. The Claimant was not put at any comparative disadvantage by being unable to refer himself for a Capability Assessment; not only did he decline that proposal in the first instance, the Respondent did refer him, twice. It is unclear how this allegation is said to work as a comparative disadvantage in its reference back to an understanding of his own condition.

Did the Respondent know or could it reasonably have been expected to know that the Claimant was likely to be placed at the disadvantage?

196. Even if the Respondent knew, or ought reasonably to have known, that the Claimant was likely to experience some disadvantage arising from ADHD, the claim nevertheless fails because there were no PCPs and, in any event, the Respondent took such steps as were reasonable, as set out below.

What steps (the 'adjustments') could have been taken to avoid the disadvantage?

197. The Claimant suggested: provision of an ADHD coach, permanent move to an alternative business area, not starting the performance management plan before obtaining Occupational Health advice and implementing reasonable adjustments, cancelling (rather than pausing) the performance management plan when it had not obtained Occupational Health advice and implementing reasonable adjustments, and cancelling the performance management plan once the Claimant got a diagnosis of ADHD.

Was it reasonable for the Respondent to have to take those steps and when? Did the Respondent fail to take those steps?

198. We are not satisfied that it was reasonable for the Respondent to have been required to take any of the steps relied upon by the Claimant in the manner or at the time contended for by him.

199. In relation to the provision of an ADHD coach, the Respondent did not refuse that adjustment. Rather, it was actively explored through the appropriate processes following the disclosure of the Claimant's diagnosis. Occupational Health and Capability Assessment input was sought in order to understand the impact of the Claimant's ADHD upon his work and to identify appropriate support measures.

200. That process inevitably took time and was affected by factors beyond the Respondent's control, including the availability of clinicians. We do not consider that it would have been reasonable to expect the Respondent to provide an ADHD coach immediately upon the Claimant's request, without first obtaining appropriate professional advice. Nor do we accept the Claimant's apparent suggestion that the provision of a coach was refused on cost grounds.

201. In relation to an immediate permanent move to an alternative business area, we do not consider that this was an adjustment which it was reasonable to require the Respondent to make in the circumstances. As Mr Bye explained, the relevant period was one of the most difficult times for internal moves within the MOD. There were significant practical constraints, including recruitment controls, the limited availability of suitable vacancies, the requirement for any receiving team to have a business need, and the need for the Claimant to possess the necessary skills and experience for any alternative role. Furthermore, the evidence demonstrates that the Respondent did in fact take steps to explore alternative roles, including the MAA role which did not ultimately proceed. The Claimant ultimately secured a move to a different role, albeit not within the timeframe he would have preferred. That strongly supports the conclusion that the Respondent was engaging with, and seeking to facilitate, a transfer, rather than refusing one.

202. In relation to the suggestion that the Respondent should not have commenced the performance management process before obtaining Occupational Health advice and implementing reasonable adjustments, we reject that contention. By the time the MPP commenced, the Respondent had already spent many months attempting to address performance concerns informally. Those efforts had not achieved the required improvement. In those circumstances, it was entirely reasonable to commence the formal process when it did. The fact that the Claimant subsequently raised the possibility that

he had ADHD did not render the decision unreasonable. Furthermore, discussions regarding support measures and adjustments had been taking place throughout the relevant period and did not begin only after the formal process had commenced.

203. Similarly, we do not accept that it was reasonable to require the Respondent to cancel the MPP pending the receipt of Occupational Health advice or the implementation of further adjustments. The Respondent reasonably concluded that the Claimant's performance concerns still required to be managed. The MPP was intended to support the Claimant in achieving the required standards and there was no reason why that process could not continue alongside referrals to Occupational Health and Capability Assessment. This was quite reasonably a twin-track process.

204. Nor do we accept that it would have been reasonable to require the Respondent to cancel the MPP once the Claimant received his ADHD diagnosis. The purpose of obtaining Occupational Health and Capability Assessment advice was precisely to understand what impact the diagnosis had upon the Claimant's performance and what further adjustments might be appropriate. It was entirely reasonable for the Respondent to continue the MPP whilst simultaneously considering that advice and implementing support where appropriate.

205. Looking at the evidence as a whole, we find that the Respondent adopted a supportive, measured and reasonable approach throughout. It sought specialist advice, considered adjustments, explored redeployment opportunities, and balanced those matters against its legitimate need to address significant and longstanding performance concerns. The Tribunal is satisfied that the Respondent took reasonable steps in response to the information available to it at the relevant times.

206. Accordingly, we find that there was no failure by the Respondent to take reasonable steps.

Approved by:

Employment Judge Murdoch

Date: 7 October 2026

JUDGMENT & REAONS SENT TO THE PARTIES ON

4th November 2026

FOR THE TRIBUNAL OFFICE