EMPLOYMENT TRIBUNALS

Claimant: **X**

Respondent **BT Group plc**

HELD AT: Manchester **ON:** 21-23 May, 4 August 2025
6-9 July 2026
(and in chambers: 25 August 2026)

BEFORE: Employment Judge Batten
B Rowen
A Gill

REPRESENTATION:

For the Claimant: In person
For the Respondent: A Jervis, advocate

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that: the claimant's complaints of constructive unfair dismissal and disability discrimination are not well-founded and are dismissed.

REASONS

1. By a claim form presented on 25 November 2022, following early conciliation commenced on 5 October 2022, with a certificate dated 28 October 2022, the claimant pursued complaints of constructive unfair dismissal and disability discrimination, being a failure to make reasonable adjustments. The respondent presented its response on 22 December 2022.

2. On 28 June 2023, a case management preliminary hearing took place before Employment Judge Anderson, at which the complaints were confirmed to be constructive unfair dismissal and a failure to make reasonable adjustments only. The final hearing was then listed for 3 days in July 2024. However, it was later postponed due to the claimant's ill-health which had affected his preparation for the final hearing.

3. On 26 September 2024, a case management preliminary hearing took place before Employment Judge Benson, at which Unless Orders were issued in respect of the claimant's failure to progress his claim. The case was then listed for this hearing, commencing 21 May 2025.

4. In 2025, the final hearing (listed in-person) was converted to video platform, at the claimant's request, on the basis that he had agoraphobia and could not come to the Tribunal building for the final hearing.

Evidence

5. The Tribunal was provided with an agreed bundle comprising 654 pages, to which the claimant's medical records were added at the start of the hearing. Further documents were added to the bundle in the course of the hearing. These largely comprised WhatsApp messages, and further NHS/medical records for the claimant. The Tribunal was also provided with a recording of a telephone conversation said to have taken place in December 2020, but without a transcript of it. In any event, this conversation was not referred to in oral evidence and neither party asked the Tribunal to listen to it. The Tribunal therefore has not listened the recording.

6. The Tribunal was provided with a witness statement from the claimant which, together with his disability impact statement and an expanded chronology, were taken as the claimant's written evidence. In addition, the claimant tendered statements from Nathan Gould, the claimant's ex partner and former employee of the respondent, and also from Patricia Whittle, a personal friend of the claimant. The claimant and Mr Gould gave oral evidence and were subject to cross-examination. Ms Whittle was not called by the claimant to give oral evidence or be cross-examined and so the Tribunal has given little weight to her evidence.

7. For the respondent, witness statements were tendered by: John Cain, Operations manager; Hannah Boyd, Customer Care Operations manager; Lee Smith, the claimant's line manager from April 2022; and also Karla Halliday, an employment relations specialist role. Ms Boyd, Mr Cain and Mr Smith each gave oral evidence and were subject to cross-examination. Ms Halliday was not called by the respondent to give evidence as she had left the respondent

by the time of the relisted final hearing and so the Tribunal has given little weight to her evidence.

8. The respondent produced a chronology and cast list, and the claimant produced a separate chronology.

9. On 6 July 2026, at the start of the resumed hearing, the respondent's advocate served an 'opening note' and the claimant served a position statement in response.

10. After the conclusion of the oral evidence, the claimant produced detailed written closing submissions, which he spoke to at length.

Applications in the course of the hearing

11. A number of decisions on applications, and also orders, were made for the conduct and good management of the proceedings during the course of the hearing. In making its orders, the Tribunal considered the overriding objective and the Employment Tribunal Procedure Rules 2024. Decisions and orders included the following matters.

12. The final hearing, listed for 3 days, from 21 to 23 May 2025, was adjourned in the middle of the claimant's evidence/cross-examination. On day 3, 23 May 2025, the claimant did not appear for the video hearing. Instead, the claimant applied by email that morning to postpone the hearing, due to ill-health. The Tribunal attempted to contact the claimant but he did not answer the phone and he supplied no medical evidence in support. The hearing was unable to proceed in the claimant's absence and without further information. Consequently, the hearing was adjourned, and the claimant was given 28 days to produce medical evidence of his state of health.

13. On 29 May 2025, the claimant made an application for anonymity pursuant to rule 49 of the Employment Tribunal Procedure Rules 2024. His application was granted, such that the claimant is known as "X" in this judgment.

14. On 16 June 2025, the claimant applied to strike out the response because he had by then discovered that documents which he thought should be in the bundle were not in fact included. The documentation in question consisted of the notes of a conduct meeting in December 2020, the notes of an appeal of a final warning in January 2022, an 'undelivered grievance meeting letter' of 17 October 2022, and unspecified documentation which the claimant said had been produced by the respondent in response to his DSAR. In addition, the claimant submitted his view that the respondent had misrepresented and/or mishandled a number of matters, had failed to act on the advice of occupational health and had misused a GP fit note. The Tribunal acknowledged the claimant's application which it proposed to deal with at the start of the resumed

hearing on 4 August 2025. Ultimately, the Tribunal rejected the claimant's application for strike out of the response in the absence of any cogent evidence as to the relevance of these matters/documentation to the issues in the claim, noting that they were not referred to in evidence by either party. The claimant's application was not pursued thereafter, and the matters were not visited in his cross-examination of the respondent's witnesses.

15. On 19 June 2025, the claimant sought to amend the claim to include a complaint of victimisation. The "protected act" was said to be the fact that the claimant had anxiety and depression, and later being diagnosed with disabilities including ADHD and ASD. The victimisation was said to be the claimant's treatment by Ms Boyd following their telephone conversation, in August 2022, culminating in the claimant's grievance of 5 October 2022. The Tribunal acknowledged the claimant's application which it proposed to deal with at the start of the resumed hearing on 4 August 2025. Ultimately, the Tribunal refused the amendment application, considering that it was made well outside of the primary time limit and there was no new information available which caused the claimant to make the application at this stage. The Tribunal was therefore satisfied that the balance of prejudice favoured refusing permission to amend. In any event, the Tribunal considered that the claimant had not understood the concept of a protected act in section 27 of the Equality Act 2010 ("EqA").

16. On 3 August 2025, at 22:53, the claimant applied for a further adjournment due to ill-health The claimant did not attend the video hearing. However, he produced a letter from Dr Josep Vilanova of Rainbow Medical Practice, dated 4 August 2025, in support of his application. As a result, an adjournment was granted but the claimant was ordered to supply more detailed medical evidence of the condition suffered at the time together with the professional view of his GP as to when the claimant would be fit enough to attend a resumed final hearing. Such medical evidence was not forthcoming.

17. Regrettably, due to listing availability, the final hearing did not resume until Monday 6 July 2026. At the start of the day, there was a short discussion about arrangements for the rest of the hearing and outstanding matters, during which the claimant assured the Tribunal that he was fit to participate in the final hearing. Indeed, the claimant said that he wanted to proceed and "get it over with". Nevertheless, the Tribunal felt it prudent to request evidence of the claimant's mental health as a result of the assertions he made that morning. The claimant then sent documents to the Tribunal about a recent Autism diagnosis, the contents of which were taken into account thereafter.

18. On the afternoon of day 7 of the hearing, which was 8 July 2026, the respondent delivered its submissions, in writing and orally. It was agreed that the claimant would be given overnight to prepare and produce his submissions in response. The claimant sent written submissions to the Tribunal and then

delivered his oral submissions on the morning of day 8, after a late start (11.20am), to allow for printing and dissemination of the claimant's written submissions and to allow time for the Tribunal to read them before hearing from the claimant.

Issues

19. At the outset, it was confirmed that the issues to be determined by the Tribunal were as agreed by the parties at the case management preliminary hearing before Employment Judge Anderson, as follows:-

1. <u>Time limits</u>

1.1. Was the reasonable adjustments claim brought within the primary time limit, as extended by ACAS Early Conciliation? Time runs from when the Respondent could reasonably be expected to have made the adjustment.

1.2. If not, is it just and equitable to extend time?

2. <u>Unfair dismissal</u>

Dismissal

2.1. Did the respondent do the following things:

2.1.1. Hannah Boyd ordered the Claimant to return to work amongst the other staff on the occupied floor. Hannah Boyd spoke to the Claimant in a derogatory manner. She ended the call whilst the Claimant was still talking mid-sentence. The Claimant says that this had a significant effect on his health;

2.1.2. On 22 August, the Claimant went on sick leave never to return;

2.1.3. On 26 August, the Claimant texts Lee Smith asking for assistance re work location. Lee responds with that this won't be discussed until the Claimant returns to work;

2.1.4. On 7 September, Lee Smith Absence review meeting, nothing progressed;

2.1.5. On 12 September, a call from Lee Smith with no resolution;

2.1.6. On 4, 22, 26 October, Lee Smith called the Claimant, on each occasion offering no resolution;

2.1.7. On 5 October, the Claimant spoke to his Union rep and was told that he would get a call from John Kane by 4pm. Mr Kane did not call. (Last straw)?

2.2. Did that breach the implied term of trust and confidence? Taking account of the actions or omissions alleged in the previous paragraph, individually and cumulatively, the Tribunal will need to decide:

2.2.1. whether the respondent had reasonable and proper cause for those actions or omissions; and if not

2.2.2. whether the respondent behaved in a way that when viewed objectively was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent.

2.3. Did the Claimant resign in part in response to the breach?

2.4. Affirmation – runs from the act found to be the last straw. (para 55 of Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978).

Reason

2.5. Has the respondent shown the reason or principal reason for dismissal?

2.6. Was it a potentially fair reason under section 98 Employment Rights Act 1996?

Fairness

2.7. If so, applying the test of fairness in section 98(4), did the respondent act reasonably in all the circumstances in treating that reason as sufficient reason to dismiss the claimant?

3. <u>Remedy for unfair dismissal</u>

3.1. If there is a compensatory award, how much should it be? The Tribunal will decide:

3.1.1. What financial losses has the dismissal caused the claimant?
3.1.2. Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?

3.1.3. If not, for what period of loss should the claimant be compensated?
3.1.4. Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
3.1.5. If so, should the claimant's compensation be reduced? By how much?
3.1.6. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?
3.1.7. Did the respondent or the claimant unreasonably fail to comply with it?
3.1.8. If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?
3.1.9. If the claimant was unfairly dismissed, did he cause or contribute to dismissal by blameworthy conduct?
3.1.10. If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?
3.1.11. Does the statutory cap apply?

4. <u>Reasonable adjustments (EqA sections 20 and 21)</u>

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

4.1.1. That employees were required or would be required at a point in the future to work from a generic office on the same floor.

4.2. Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that as a result of his depression and anxiety, he found it more difficult to work alongside other employees?

4.3. Did the respondent fail in its duty to take such steps as it would have been reasonable to have taken to avoid the disadvantage? The claimant says that the following adjustments to the PCP would have been reasonable:

4.3.1. Allowing the Claimant to continue working from the First floor or in isolation;

4.3.2. Allowing the Claimant to continue working from home.

4.4. By what date should the respondent reasonably have taken those steps?

5. Remedy for discrimination

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?

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. Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

5.9. Did the respondent or the claimant unreasonably fail to comply with it?

5.10. If so is it just and equitable to increase or decrease any award payable to the claimant?

5.11. By what proportion, up to 25%?

5.12. Should interest be awarded? How much?

Findings of fact

20. Having considered all the evidence, the Tribunal made the following findings of fact on the basis of the material before it taking into account contemporaneous documents where they exist and the conduct of those concerned at the time. The Tribunal resolved such conflicts of evidence as arose on the balance of probabilities. The Tribunal has taken into account its assessment of the credibility of witnesses and the consistency of their evidence with surrounding facts.

21. Having made findings of primary fact, the Tribunal considered what inferences it should draw from them for the purpose of making further findings of fact. The Tribunal has not simply considered each particular allegation, but has also stood back to look at the totality of the circumstances to consider whether, taken together, they may represent an ongoing regime of discrimination.

22. The findings of fact relevant to the issues which have been determined are as follows.

23. The claimant was employed by the respondent, from 18 March 2019, as a customer advisor, based at Blackburn. His contract of employment appears in the bundle at pages 61-71 and 72-75.

24. It is not disputed that C has long history of ill-health and anxiety. The respondent accepts that the claimant is disabled, within the meaning in section 6 EqA by reason of anxiety at the material time.

25. the Tribunal was informed that, since resigning and leaving the respondent, the claimant has been diagnosed with ADHD and autism – these conditions were not known to the parties at the material time.

26. In the first 6 months of employment, the claimant had several intermittent periods of absence and, on 25 October 2019, the claimant received a formal warning for his absences. An appeal against the warning was unsuccessful.

COVID pandemic and working from home

27. In 2020, the COVID pandemic led to a "Lockdown" across the UK from 23 March 2020 onwards. As a result, the respondent sent all its employees to work from home. The claimant's evidence was that the COVID pandemic situation led to a deterioration in his mental health. As a result, from 3 March 2020 to 3 May 2020, the claimant was absent from work (a total of 61.5 days).

28. On 21 May 2020, an occupational health assessment of the claimant recorded that the claimant had resumed medication for anxiety and to restore his sleeping pattern. The report, which appears in the bundle at pages 160 – 161, concluded that the claimant was fit for his current role with temporary adjustments, which were not specified. At the time, the claimant was working from home, as all the respondent's employees were doing at the time.

29. Thereafter, the claimant received a number of warnings about his attendance including, on 26 June 2020, the claimant received a warning which was called a "New Joiner Final formal warning" because his attendance did not meet the required level – see bundle page 172.

30. The Tribunal heard unchallenged evidence from Ms Boyd that, in the period from Dec 2020 to May 2021, the respondent's records revealed that the claimant had not completed a single week of full duties due to, variously, sick leave, paid leave, unpaid leave or CASU (time given that must be paid back).

31. From 11 April 2021, the claimant reduced his working hours from 37.5 to 30 per week with the respondent's agreement. Nevertheless, on 3 June 2021, the claimant received a warning about poor attendance – see bundle pages 183-187.

Respondent starts to encourage employees back to working in the office

32. In October 2021, as the COVID pandemic was subsiding, the respondent began encouraging employees to return to work in the office. The respondent's aims were to boost employee engagement, to provide an opportunity for team members to meet together, and to provide support to colleagues. The respondent had an 'informal' target, that by 31 October 2022, employees would be working a minimum of 3 days per week in the office.

33. On 15 November 2021, an occupational health assessment was undertaken on the claimant because of continuing issues with his attendance. The report appears in the bundle at pages 190 – 191 and says that the claimant was fit for his role, but that he had significant anxieties about returning to work which has the potential to impact performance and attendance if he becomes overwhelmed. It had been suggested that the claimant could work alone in an office. However, the claimant had told occupational health that this would increase his anxiety by being segregated and colleagues noting this. The report records that COVID concerns were discussed with the claimant in line with the changing advice from central Government as winter approached. Occupational health suggested ways to address the claimant's anxiety as follows:

> "*Clinical evidence tells us that managing anxiety is not, in the longer term, helped by avoidance of the source of the anxiety. We know that desensitisation is a gradual process at best and [OH] therefore suggested [the claimant] has extra EAP support and suggest you consider allowing him to work from home during this time to engage with therapy perhaps over the winter period. If desensitisation cannot be reached then you may need to consider whether there is a fundamental mismatch between organisational expectations for this role and those of the employee and whether you can support his working from home for the reasons he gives*."

34. On 23 November 2021, the claimant received a warning for poor attendance – see bundle page 212.

Agreement to attend the office 3 times per month

35. In February 2022, the claimant came to an agreement with his manager, Stefan Entwistle, by which the claimant would attend the office at least 3 times per month, and that he would work on the first floor of the building which was not being used at the time – see bundle pages 638-639. The initial reason for this arrangement was because the claimant's mother was clinically vulnerable and the claimant was concerned about the spread of infection to her via him and his partner attending a crowded office. The arrangement included the claimant's partner, Nathan Gould, also working on the first floor when he was in the office. There was no suggestion at the time that such an arrangement was an adjustment for the claimant's disability. However, there is no record of the agreement or nor minutes of a meeting to discuss such, so the reasons given at the time are unclear. On 1 February 2022, an email from Mr Entwistle to the claimant (bundle page 638) confirms the arrangement is temporary. Ms Boyd's unchallenged evidence was that this was a temporary measure to aid the transition for the claimant to return to work in the office and, in the long run, to work on the second floor where his team was located. The dates upon which the claimant would attend the office in Blackburn were agreed for February 2022, with March 2022 to be reviewed and further dates set as necessary.

36. In light of the above, the Tribunal considered that, at best, the arrangement was agreed as a temporary adjustment, designed to assist the claimant with managing his anxiety whilst promoting his return to work in the office.

37. The claimant always understood it to be a temporary adjustment, albeit that, in evidence, he sought to suggest it was permanent and contended that the respondent was therefore in breach of the agreement by trying to change aspects of it. The Tribunal disagreed with the claimant's contention as to permanency. Communications at the time and thereafter support a finding that it was temporary and that the claimant always knew of the requirement to return to work in the office in the long term. The claimant never refused nor challenged such an objective. The claimant did not mention his anxiety in communications with the respondent's managers, but he was, from time to time, pushing back and/or avoiding returning to work in the office because he preferred to work from home all the time. That was his objective. Ultimately, the claimant sought to use the change in arrangements for Mr Gould as the basis for his reasonable adjustments complaint, despite knowing at all material times, that a return to work on the second floor, in some form, would likely happen in due course.

38. In any event, from May 2022 onwards, and quite possibly before that, it became apparent that the claimant was not fulfilling his side of the temporary adjustment which he had agreed. The evidence was that the claimant had not attended the office at all, for at least 3 months.

39. During this period, the respondent's managers were finding the claimant's performance at home was difficult to monitor and concerns were raised about how much work the claimant was actually doing.

COVID restrictions lifted

40. In March 2022, the UK Govt announced the lifting of all COVID restrictions.

41. On 7 June 2022, the claimant attended an attendance meeting with Ms Boyd. He was accompanied by his trade union representative. The minutes of the meeting appear in the bundle at pages 228 – 239. At the meeting, the claimant said that his health anxiety had improved because COVID was not heard about all the time and the claimant also disclosed that he and his partner had been going out to places sensibly, wearing a mask when in congregation, and at the cinema.

42. In response to being asked about returning to work in the office, the claimant said "Then I would have to come in" and commented that he assumed the respondent would mitigate any risks. The claimant did not raise the adjustment for working on the first floor, nor his partner's working arrangements. In addition, the claimant confirmed that he did not have as much responsibility for his mother as before – see bundle page 238.

43. Towards the end of the meeting, the claimant said he was "actually looking forward to coming into the office", that he got on well with his colleagues and "had good banter" and also that he had left a previous job working from home in order to come to work for the respondent in Blackburn.

44. On 13 June 2022, Ms Boyd issued the claimant with a further warning for poor attendance which appears in the bundle at pages 243-245. The warning was to be live for 12 months, during which time the claimant's attendance was to be monitored.

Respondent encourages employee to work at least 70% hours in the office

45. In Summer 2022, the respondent commenced a business drive to encourage employees to return to the office for 70% of their working hours, and to formalise such an arrangement. It was made clear that all employees were required or would be required at a point in the future, to work from a generic office with their team. The respondent's managers had conversations with individual employees, about coming into the office for the majority of their working time. The relevant team leaders spoke to the claimant and to his partner, Nathan Gould – Ms Bolton spoke to Mr Gould and Mr Smith spoke to the claimant. The claimant was therefore aware that moves were afoot for them both to return to work on the second floor - see bundle page 295.

46. Nevertheless, the claimant continued to resist the introduction of any working arrangement except working from home. In early August 2022, the claimant telephoned his line manager, Mr Smith. They had a conversation during which the claimant objected to a return to work in the office. He told Mr Smith that his life had changed, that he was now living in Blackpool and had sold his car so travel to the respondent's office in Blackburn would be difficult.

47. In fact, the respondent's evidence, unchallenged by the claimant, was that a management audit had identified a number of employees who had not been into the office to work for several months, including the claimant who not been to the office in over 3 months. The respondent took the view that the claimant was therefore not honouring the agreement made in February 2022, to come to work in the office at least 3 times per month. The claimant had been working from home full-time. In essence, the claimant was not fulfilling his side of the temporary arrangement which had been agreed. This had become a reasonable adjustment in theory but not in practice, due to the claimant's failure to attend the office as agreed for a period of 3 months or more. The Tribunal found no evidence that the claimant had ever attended and worked on the second floor as arranged and agreed.

48. At the beginning of August 2022, Nathan Gould returned to working in the office on the second floor, a move facilitated by his manager, Claire Bolton. Mr Gould did not tell the claimant of this move. However, on 17 August 2022, the claimant participated in a Teams call from home to the office and he caught sight of Mr Gould in the background, clearly working in the second-floor office.

Telephone call with Ms Boyd

49. On 18 August 2022, the claimant telephoned his manager, Ms Boyd, about Mr Gould's move back to the second floor. The claimant objected to Mr Gould's move. He became rude and abusive, and resorted to shouting at Ms Boyd during the call, which resulted in the manager, Ms Boyd, ending the call and putting the phone down on the claimant. The claimant was upset. He characterised Mr Gould's move to the second floor in terms of the removal of a reasonable adjustment. In evidence, the claimant said that he had panic attack immediately after the call, although documents from the time show him continuing to work without interruption and communicating with colleagues. The Tribunal found no evidence of a panic attack beyond the claimant's word.

50. The next day, 19 August 2022, was the claimant's day off work. He was contacted by a team leader, Mr Day, who enquired about the claimant's welfare. The claimant became distressed and, during the call, he made threats to the safety of Ms Boyd and expressed suicidal thoughts. Mr Day was so concerned about the claimant's state of mind that he reported what had been said and rang the ambulance service which subsequently contacted the claimant to check that he was alright.

51. On 22 August 2022, the claimant's line manager, Mr Smith, who had been on leave before then, made a number of efforts to contact the claimant for a welfare call, chasing the claimant by telephone. When the claimant was eventually contacted by Mr Smith, the claimant made threats to sue the respondent for Ms Boyd's conduct during their telephone conversation on 18 August 2022 and the fact that she had hung up on him. The claimant also talked about suicide. Later that day, the claimant was signed off work, sick, and did not thereafter return to work before he resigned.

Ms Boyd's grievance

52. On 23 August 2022, Ms Boyd raised a grievance about the claimant's conduct during their telephone conversation on 18 August 2022. Mr Cain was appointed to undertake fact-finding meetings.

53. On 27 August 2022, Mr Smith again rang the claimant for a welfare call. The claimant did not answer and messages were left. Later, the claimant rang back to say he was off sick for 2 weeks, that he had been advised to avoid work-related discussions and he mentioned submitting a grievance when he was back in work.

54. As a result of concerns about the claimant's state of mind, the respondent referred him to occupational health, which reported on 7 September 2022. The report appears in the bundle at pages 323-326. It suggested that, in the short to mid-term, the claimant was expected to have persistent difficulty in attending the office due to his COVID-related anxiety and his mental health. The claimant had told occupational health that, at the time, he felt unable to attend the office for more than 3 occasions per month and only with prior adjustments in place, including his working in a separate office to ensure social distancing. The claimant also expressed a wish that there be consideration of an additional precaution for social distancing to be applied to his partner. The claimant also made clear that his return to work would in any event require resolution of the "*outstanding work-related conflict and the difficulty with the office attendance*". The Tribunal understood this to be a reference to the claimant's issues with Ms Boyd and his unwillingness to contemplate anything other than working from home. Occupational health concluded that the claimant was "*not fit to work in a role requiring office attendance and that consideration should be given to a home working alternative post."* In evidence, the claimant contended that he had developed Agoraphobia, albeit that there is no mention of this in the report and the Tribunal was provided with no other medical evidence to confirm such.

55. On 14 September 2022, the claimant spoke with Mr Cain about his situation and concerns, in a welfare call. Mr Cain sought to facilitate the claimant's return to work so that the fact-finding aspect of the grievance process could progress. When Mr Cain proposed a time frame for the claimant's return to working in the

office, the claimant reacted badly, suggesting that he would not comply because he hated being told what to do.

56. On 23 September 2022, Mr Cain had a further telephone conversation with the claimant during which the claimant suggested that, if the respondent could not offer him permanent home working, he would remain off sick.

The claimant's grievance

57. On 4 October 2022, the claimant raised a grievance about his manager, Ms Boyd. The grievance appears in the bundle at pages 400-402. At some point that day, the claimant also spoke to a manager for a welfare call.

Resignation

58. On 5 October 2022, at 2.42pm, the claimant tendered his resignation on notice, by email – see bundle page 396. The claimant resigned before the 4pm deadline which the claimant relied upon in evidence and before the claimant had expected Mr Cain to call him, based upon what the claimant had been told by his trade union representative – see below. The resignation letter says:

> *"I feel I have no other option but to resign from my position due to your behaviour as an employer, as described in my Formal Grievance and following multiple verbal grievances with Hannah Boyd, John Cain and Lee Smith. I believe the employment relationship has irrevocably broken down. Further I consider your conduct to be a fundamental breach of the employment contract on your part, in particular the duty of mutual trust and confidence.*
>
> *I resign as a result of the fundamental breach of the employment contract in addition to other points as set out in my written grievance.*
>
> *Consequently, I believe my resignation constitutes constructive dismissal."*

59. The claimant's case is that the "last straw", which led to his resignation, was that, on 5 October 2022, he spoke to his Union representative and was told that he would get a call from John Cain by 4pm, and that Mr Cain had not called him as arranged (list of issues 2.1.7). However, the Tribunal found there was no, or no firm arrangement for Mr Cain to call the claimant that day, and no evidence that the claimant had spoken to his union representative at the time. Rather, the contemporaneous evidence was that the claimant was told very clearly, via WhatsApp, that any call would be <u>after</u> 4pm.

60. On 5 October 2022, the claimant commenced early conciliation via ACAS.

61. On 11 October 2022, an HR manager at the respondent, Ms Halliday, who was appointed to handle the claimant's grievance, called the claimant to discuss his grievance. A note of the interview appears in the bundle at pages 405-409.

62. On 17 October 2022, Ms Halliday called Ms Boyd about the claimant's grievance. A note of the interview appears in the bundle at pages 410-411.

63. On 25 October 2022, the claimant telephoned Ms Halliday seeking access to his payslips and references for future employment. It was a difficult call and the claimant was at times rude and condescending. Following the call, the claimant persisted in calling and emailing Ms Haliday to the extent that she escalated the matter and declined to communicate with him again. As a result, the grievance process was reallocated to another manager.

64. On 28 October 2022, early conciliation ended and ACAS issued a certificate to that effect.

65. Wednesday 2 November 2022 was the last day of the claimant's employment with the respondent, being the end of his notice period – see bundle page 439.

66. On 21 November 2022, the respondent appointed Danielle Colborne to investigate both grievances, of Ms Boyd and of the claimant.

67. On 25 November 2022, the claimant presented his claim to the Tribunal.

68. On Monday 5 December 2022, the claimant started a new job.

69. On 20 February 2023, Ms Boyd's grievance against the claimant was upheld. The outcome letter appears in the bundle at pages 465-468.

70. On 16 March 2023, the claimant's grievance against Ms Boyd was turned down. The outcome letter appears in the bundle at 474-481.

The applicable law

71. A concise statement of the applicable law is as follows.

Constructive dismissal

72. Section 95(1)(c) of the Employment Rights Act 1996 provides that an employee is dismissed if the employee terminates their contract of employment, with or without notice, in circumstances such that the employee is entitled to terminate their contract without notice by reason of the employer's conduct.

73. The case of *Western Excavating (ECC) Ltd v Sharp [1978] ICR 221* provides that the employer's conduct that gives rise to constructive dismissal must involve a repudiatory breach of contract, or a significant breach going to the

root of the contract of employment, showing that the employer no longer intends to be bound by one or more of the essential terms of the contract of employment. In the face of such a breach by the employer, an employee is entitled to treat himself as discharged from any further performance under the contract, and if the employee does treat himself as discharged, for example by resigning, then he is constructively dismissed. If, however, the employee delays in resigning after the employer's breach, the employee may be taken to have affirmed the contract and, if so, may lose the right to claim that he has been constructively dismissed.

Unfair dismissal

74. Section 98 of the Employment Rights Act 1996 sets out a two-stage test to determine whether an employee has been unfairly dismissed. First, the employer must show the reason for the constructive dismissal or the principal reason and that reason must be a potentially fair reason for dismissal.

75. If the employer shows a potentially fair reason in law, the Tribunal must then consider the test under section 98 (4) of the Employment Rights Act 1996, namely whether, in the circumstances, including the size and administrative resources of the respondent's undertaking, the respondent acted reasonably or unreasonably in treating that reason as a sufficient reason for constructively dismissing the claimant and the question of whether the dismissal is fair or unfair shall be determined in accordance with equity and the substantial merits of the case.

76. The issue of the reasonableness of the dismissal must be looked at in terms of the set of facts known to the employer at the time of the claimant's dismissal.

77. The Tribunal must also consider whether the decision to dismiss fell within the band of reasonable responses open to a reasonable employer in the circumstances of the case: *Iceland frozen Foods Ltd -v- Jones [1982] IRLR 439*. The range of reasonable responses' test applies both to the decision to dismiss and to the procedure by which that decision is reached: *Sainsbury's Supermarkets Ltd –v- Hitt [2003] IRLR 23.*

Disability discrimination

78. The complaint of disability discrimination was brought under the Equality Act 2010 ("EqA"). Disability is a relevant protected characteristic as set out in section 6 and schedule 1 EqA.

79. Section 39(2) EqA prohibits discrimination by an employer against an employee by subjecting him to a detriment. By section 109(1) EqA an employer is liable for the actions of its employees in the course of employment.

80. The EqA provides for a shifting burden of proof. Section 136(2) and (3) so far as is material provides as follows:

> *(2) If there are facts from which the Court could decide in the absence of any other explanation that a person (A) contravened the provision concerned, the Court must hold that the contravention occurred.*
>
> *(3) But subsection (2) does not apply if A shows that A did not contravene the provision.*

81. Consequently, it is for a claimant to establish facts from which the Tribunal can reasonably conclude that there has been a contravention of the EqA. If the claimant establishes those facts, the burden shifts to the respondent to show that there has been no contravention by, for example, identifying a different reason for the treatment.

82. In *Hewage v Grampian Health Board [2012] IRLR 870* the Supreme Court approved guidance previously given by the Court of Appeal on how the burden of proof provision should apply. That guidance appears in *Igen Limited v Wong [2005] ICR 931* and was supplemented in *Madarassy v Nomura International plc [2007] ICR 867*. Although the concept of the shifting burden of proof involves a two-stage process, that analysis should only be conducted once the Tribunal has heard all the evidence, including any explanation offered by the employer for the treatment in question. However, if in practice the Tribunal is able to make a firm finding as to the reason why a decision or action was taken, the burden of proof provision is unlikely to be material.

Reasonable adjustments

83. The duty to make reasonable adjustments, in section 20 EqA, arises where:

> (a) the employer applies a provision criterion or practice which places a disabled employee at a substantial disadvantage in comparison with persons who are not disabled; and
>
> (b) the employer knows or could reasonably be expected to know of the disabled person's disability and that it has the effect in question.

84. As to whether a "provision, criterion or practice" ("PCP") can be identified, the Equality and Human Rights Commission Code of Practice on Employment ("the EHRC Code") paragraph 6.10 says the phrase is not defined by EqA but "*should be construed widely so as to include for example any formal or informal policy, rules, practices, arrangements or qualifications including one-off decisions and actions*".

85. As to whether a disadvantage resulting from a provision, criterion or practice is substantial, section 212(1) EqA defines substantial as being "*more than minor or trivial*". In the case of *Griffiths v DWP [2015] EWCA Civ 1265* it was held that if a PCP bites harder on the disabled employee than it does on the able-bodied employee, then the substantial disadvantage test is met for the purposes of a reasonable adjustments claim.

86. The duty is to take such steps as it is reasonable, in all the circumstances, to take to avoid the provision criterion or practice having that effect. The duty is considered in the EHRC Code. A list of factors which might be taken into account appears at paragraph 6.28, but (as paragraph 6.29 makes clear) ultimately the test of reasonableness of any step is an objective one depending on the circumstances of the case. An adjustment cannot be a reasonable adjustment unless it alleviates the substantial disadvantage resulting from the PCP – there must be the prospect of the adjustment making a difference.

87. Under section 136 EqA, it is for an employer to show that it was not reasonable for them to implement a potential reasonable adjustment.

Time limits

88. The time limit for presenting a complaint of unlawful discrimination is found in section 123 EqA, which provides that such complaints may not be brought after the end of: -

(a) the period of three months starting with the date of the act to which the complaint relates, or

(b) such other period as the Employment Tribunal thinks just and equitable.

89. Conduct extending over a period of time is to be treated as done at the end of that period and a failure to do something is to be treated as occurring when the person in question decided on it*, or does an act inconsistent with doing it,* or on the expiry of the period in which that person might reasonably have been expected to do it. A continuing course of conduct might amount to an act extending over a period, in which case time runs from the last act in question.

90. In *Robertson –v- Bexley Community Centre (T/A Leisure Link) [2003] IRLR 434* the Court of Appeal considered the application of the "just and equitable" extension and the extent of the discretion and concluded that the Employment Tribunal has a "wide ambit". At paragraph 25 of the judgment Auld LJ said:-

"it is also of importance to note that the time limits are exercised strictly in employment and industrial cases. When Tribunals consider their discretion to consider a claim out of time on just and equitable grounds there is no presumption that they should do so unless they can justify a failure to

> *exercise the discretion. Quite the reverse. A Tribunal cannot hear a complaint unless the applicant convinces it that it is just and equitable to extend time. So, the exercise of discretion is the exception rather than the rule."*

91. The case law on the application of the "just and equitable" extension includes *British Coal Corporation –v- Keeble [1997] IRLR 336*, in which the EAT confirmed that in considering such matters a Tribunal can have reference to the factors which appear in Section 33 of the Limitation Act 1980. As the matter was put in *Keeble*:-

> *"that section provides a broad discretion for the court to extend the limitation period of three years in cases of personal injury and death. It requires the court to consider the prejudice which each party would suffer as a result of the decision to be made and also to have regard to all the circumstances and in particular, inter alia, to –*
> *(a) the length of and reasons for the delay;*
> *(b) the extent to which the cogency of the evidence is likely to be affected by the delay;*
> *(c) the extent to which the party sued had cooperated with any request for information;*
> *(d) the promptness with which the plaintiff acted once he or she knew of the facts giving rise to the cause of action;*
> *(e) the steps taken by the plaintiff to obtain appropriate professional advice once he or she knew of the possibility of taking action."*

92. Subsequently in *Chief Constable of Lincolnshire –v- Caston [2010] IRLR 327* the Court of Appeal, in confirming the *Robertson* approach, confirmed that there is no general principle which determines how liberally or sparingly the exercise of discretion under this provision should be applied.

Submissions

93. The advocate for the respondent made a number of detailed submissions which the Tribunal has considered with care but do not rehearse in full here. In essence it was asserted that:- the claimant was never required or forced to return to work on the second floor; the arrangement for working on the first floor was always temporary and the claimant had acknowledged such; the claimant never fulfilled his side of the arrangement and never came into the office, not even to work on the first floor; that Mr Gould moved back to the second floor voluntarily; Mr Cain had proposed a reasonable solution but the claimant was not interested in anything except working from home full-time; the respondent was not in fundamental breach of contract; and that the claimant resigned of his own volition and before the last straw deadline upon which he seeks to rely.

94. The claimant also made a number of detailed submissions which the Tribunal has considered with care but do not rehearse in full here. In essence it was asserted that:- the respondent always knew that the claimant was disabled; the respondent put reasonable adjustments in place to limit his office attendance, to work from home with an arrangement for the claimant and his partner to work by distancing from their colleagues in the office; that these adjustments had been working successfully; the respondent then proposed to return the claimant to the second floor despite knowing he was not fit for such and how difficult that would be for the claimant; no assessment was made of the claimant's health and safety concerns; reasonable steps would have included maintaining the first floor arrangement and/or considering home-working as an alternative for the claimant; that the move of the claimant's partner back to the second floor undermined the claimant's reasonable adjustments; the respondent failed to provide a clear and workable solution to accommodate the claimant's disability so that, by October 2022, the claimant had lost confidence that BT was or would properly address his disability-related needs; and the claimant resigned in the face of cumulative breaches of trust and confidence by the respondent.

Conclusions (including where appropriate any additional findings of fact)

95. The Tribunal has applied its relevant findings of fact and the applicable law to determine the issues in the following way.

Constructive unfair dismissal

96. The Tribunal considered each of the matters in the list of issues, section 2.1, which the claimant said led to his resignation on 5 October 2022.

97. The first allegation (2.1.1) was that Ms Boyd had ordered the claimant to return to work amongst other staff, spoke to him in a derogatory manner and ended the telephone call whilst he was talking. The Tribunal has found no evidence that Ms Boyd "ordered" the claimant to return to work on the second floor, nor that she spoke to the claimant in a derogatory manner. The Tribunal found that the claimant had initiated the conversation on 18 August 2022 to which this allegation relates, when he telephoned his manager, Ms Boyd, to object to the fact that Mr Gould had moved back to working on the second floor – see paragraph 49 above. The claimant was upset. In the course of the conversation, it was the claimant who became rude and abusive. The Tribunal considered that the claimant resorted to shouting at Ms Boyd because he was angry about Mr Gould having moved to the second floor. The claimant thought that he should have been consulted or at least told, despite that Mr Gould was, at the time his partner and they lived in the same house. When a return to the office was raised, as something for the claimant to aim for in the future, the claimant reacted badly because he did not want to do so. The Tribunal was

mindful of the fact that, despite having agreed to come into the office 3 times per month, the claimant had failed to keep his side of that agreement. The Tribunal considered that Ms Boyd ended the call, putting the phone down on the claimant in the face of his behaviour towards her and, in that context, her actions were reasonable and justified. The Tribunal also noted that Ms Boyd herself was considerably upset and shaken by the experience.

98. Allegation 2.1.2, about the claimant going on sick leave is an action of the claimant and not the respondent. This was accepted by the claimant in the course of the final hearing.

99. In relation to 26 August 2022 and allegation 2.1.3, the Tribunal has found no evidence of any action by the claimant or Lee Smith on this date.

100. In contrast, Mr Smith kept copious notes of his interactions by telephone with the claimant on 7 September 2022 (allegation 2.1.4) and 12 September 2022 (allegation 2.1.5) and 4 October 2022 (allegation 2.1.6). It is apparent from the notes that each call was a welfare call to check how the claimant was feeling. The claimant's allegation that "nothing progressed" and that Mr Smith offered "no resolution" are not understood - the claimant has not articulated what he wanted or expected Mr Smith to do whilst the claimant was absent due to ill-health. At best, the Tribunal considered that the claimant wanted, as a resolution, for Mr Smith to authorise his working from home for 100% of the week. The respondent's position was that working arrangements would be reviewed and discussed when the claimant was in better health. Mr Smith was mindful of the fact that the claimant had made it very clear that he had been advised by his doctor to avoid all discussion of work, for the time being. Mr Smith respected that advice.

101. Further, there is no evidence of any conversation between the claimant and Mr Smith on 22 or 26 October 2022. These dates are after the claimant's grievance and resignation. The Tribunal found that, once the claimant had presented his grievance and resigned, Mr Smith had no further contact with the claimant, which was conducted by those managers appointed to deal with the grievances of the claimant and Ms Boyd thereafter.

102. As to allegation 2.1.7, to the effect that Mr Cain did not call the claimant by 4pm on 5 October 2022, the Tribunal has set out its findings on this matter at paragraphs 58 and 59 above. The contemporaneous evidence was that the claimant was told very clearly, via WhatsApp, that any call would be <u>after</u> 4pm, and that there was no firm arrangement for Mr Cain to call the claimant that day. Nevertheless, the claimant resigned at 2.42pm and before the 4pm deadline. In addition, the claimant's resignation letter makes no mention of this "last straw" which should have been in his mind at the time, in any event.

103. In light of the above findings, the Tribunal did not consider that any of the allegations in section 2.1 of the list of issues were proven and that none of the matters relied upon for the constructive dismissal complaint, whether individually or cumulatively, breached the implied term of trust and confidence. Indeed, the Tribunal considered that the respondent had reasonable and proper cause for the actions of Ms Boyd in hanging up on the claimant, and for Mr Smith's conduct of welfare calls with the claimant during his sickness absence. The claimant was not therefore constructively dismissed. The unfair dismissal complaint is not well-founded and is dismissed.

Disability discrimination – reasonable adjustments

104. The Tribunal first considered the PCP contended for and has found as a fact that the respondent's employees were required or would be required at a point in the future to work from a generic office on the same floor – see paragraphs 32 and 45 above.

105. The Tribunal considered that the claimant's depression and anxiety might mean that the claimant found it more difficult to work alongside other employees albeit that the claimant brought no evidence to support this contention as to disadvantage at the material time. The Tribunal here noted that the disadvantage claimed sits at odds with the claimant's comments on 7 June 2022, in a meeting with Ms Boyd, and as recorded in the meeting minutes which appear on page 238 of the bundle - see also paragraph 42 above. Indeed, the claimant had said that he was looking forward to getting back to the office and the opportunity to work alongside his colleagues again.

106. The claimant contends for 2 reasonable adjustments. First that he should be allowed "to continue working from the first floor or in isolation". The adjustment contended for, as set out in the agreed list of issues, makes no mention of Mr Gould also working on the first floor or in isolation. However, the claimant made much of this aspect in his submissions, suggesting that Mr Gould was, or should be, part of the reasonable adjustment. The Tribunal considered the contemporaneous evidence carefully. The details of what had been agreed between the claimant and the respondent in respect of working on the first floor are poorly recorded. It remained unclear what was agreed would happen or when. However, the fact was that the claimant had never worked on the first floor as arranged and had not kept to his side of any agreement for such. Allowing the claimant to "continue" to work from the first floor was therefore a misnomer. Working from the first floor was intended to avoid any disadvantage the claimant might suffer as a result of his anxiety. Whilst the claimant ignored the arrangements, any disadvantage would not be avoided, nor understood. There was therefore no effective failure to make this reasonable adjustment due to the claimant's conduct. He had made it clear that he was not interested in coming into the office and intended to remain off work, sick if he could not work from home full-time – see paragraph 56 above.

107. As the claimant was never in the building and Mr Gould had been working alone on the first floor when he attended the office, the Tribunal considered that the respondent reasonably requested Mr Gould to return to working on the second floor, after several months, and noted that Mr Gould complied without objection.

108. The second reasonable adjustment contended for, allowing the claimant to continue working from home was, as the Tribunal has found, precisely what happened in this case – see paragraphs 38 and 47 above. The respondent could not therefore be said to have failed to make this reasonable adjustment. However, what the claimant sought was to be allowed to work from home full-time, as was his wish and objective. The Tribunal considered that this was not a reasonable adjustment when considering the respondent's request for employees to attend the office for at least part of the working week and in the absence of any medical evidence of the claimant's anxiety and/or how it might be affected by such. In addition, the respondent had obtained advice from occupational health, at the end of 2021, to the effect that managing anxiety is not helped by avoidance of the source of the anxiety – see paragraph 33 above. Allowing the claimant to work from home 100% of the time flew in the face of such advice. Further, the Tribunal noted that, at the time when a return to the office was discussed, on 7 June 2022, the claimant said that he was prepared to come in and had commented that he was looking forward to the office banter – see paragraph 43 above.

109. In light of the above, the Tribunal concluded that the reasonable adjustments complaint is not well-founded and must be dismissed.

Approved by:
Employment Judge Batten

Date: 16 October 2026

JUDGMENT SENT TO THE PARTIES ON:

3 November 2026

FOR THE TRIBUNAL OFFICE