# THE EMPLOYMENT TRIBUNAL

**Claimant:** **Ms S. Gangadeen**

**Respondent:** **The Secretary of State for Justice**

Heard at: London South Employment Tribunal

On: 1 – 3 October 2024

Before: Employment Judge A. Beale KC
Mrs J. Clewlow
Mr S. Townsend

Representation
Claimant: Mr R. Kohanzad, Counsel
Respondent: Ms R. Mellor, Counsel

## RESERVED JUDGMENT

**(1) The unanimous judgment of the Tribunal is that the Claimant's claims of**

**(a) failure to make reasonable adjustments, by refusing to allow the Claimant to work from home for two days per week between 22 November 2021 and 18 February 2022; and**

**(b) discrimination because of something arising in consequence of a disability**

**succeed.**

**(2) The Claimant's claims of failure to make reasonable adjustments by refusing to allow her to work from home for five days per week and/or to place her on disability leave fail and are dismissed.**

**(3) The Respondent is ordered to pay the Claimant the total sum of £13,567.40, comprising £11,000 as compensation for injury to feelings and £2,567.40 in interest on that award.**

## REASONS

1. The Claimant brings claims for discrimination because of something arising in consequence of disability (section 15 Equality Act 2010 ('EqA 2010')) and failure to make reasonable adjustments (section 20 – 21 EqA 2010). Her claims arise out of a short period of her employment with the Respondent, between November 2021 and February 2022.

2. The claim was due to be heard over four days between 1 and 4 October 2024. In fact, due to tribunal availability, only three days were available for the hearing, during which the evidence and submissions were completed, and we reserved our judgment.

3. We had witness statements and heard oral evidence from the Claimant on her own behalf and from Alpha Bah, the Claimant's then team leader; Elaine Wilks, Delivery Manager, and Janet Inniss, Delivery Manager on behalf of the Respondent. We were also provided with a bundle running to 644 pages, a key documents list and a chronology and cast list.

## The Issues

4. During the hearing, there was a discussion as to whether the reasonable adjustments claim as set out in the List of Issues reflected the evidence given, and prior to closing submissions, a slightly tweaked List of Issues was set out by the Claimant's counsel, to which the Respondent's counsel did not object. During the course of the hearing, the Respondent's counsel also accepted that no time limit issues arose. Further the Respondent had at an earlier stage conceded that the Claimant was a disabled person by reason of all the conditions on which she relied, namely psoriatic arthritis, stress/depression and long Covid. In view of this the issues the Tribunal had to decide were as set out below.

### *Issues: Failure to make reasonable adjustments*

5. Did the Respondent know, or could it reasonably have been expected to know, that the Claimant had a disability at the relevant time? [The Respondent clarified during the hearing that this issue applied only to long Covid]

6. A 'PCP' is a provision, criterion or practice. Did the Respondent apply the following PCP to the Claimant between 22 November 2021 and 18 February 2022: requiring the Claimant to attend at the workplace?

7. Did the PCP put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability, in that at the relevant time she was unable to meet the attendance requirement because of her disability and as a result it was more likely that she would be subject to further sanction regarding her attendance?

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

9. 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 the following adjustments would have been reasonable:

    9.1 allowing the Claimant to work from home for between 2 and 5 days per week;
    9.2 placing the Claimant on disability leave.

***Issues: discrimination arising from disability***

10. Did the Respondent know or could it reasonably have been expected to know that the Claimant had a disability [as above, this issue applies only to long Covid]?

11. If so, did the Respondent treat the Claimant unfavourably in any of the following alleged respects:

    11.1 requiring her to attend an informal review meeting on 3 February 2022;
    11.2 requiring her to attend a formal review meeting on 18 February 2022?

12. Did the following things arise in consequence of the Claimant's disability: the Claimant's absence(s)?

13. Has the Claimant proven facts from which the Tribunal could conclude that the unfavourable treatment was because of her absences?

14. If so, can the Respondent show that there was no unfavourable treatment because of something arising in consequence of disability?

15. If not, was the treatment a proportionate means of achieving a legitimate aim? The Respondent says its aims were:

    15.1 The need to ensure resilience and deliver an efficient and cost-effective service, by ensuring that staff absences are monitored and managed effectively pursuant to an attendance management process.

    15.2 To ensure the Claimant's wellbeing and that all reasonable adjustments to facilitate her resumption to work had been considered.

16. The Tribunal will decide in particular:

    16.1 Was the treatment an appropriate and reasonably necessary way to achieve those aims?
    16.2 Could something less discriminatory have been done instead?
    16.3 How should the needs of the Claimant and Respondent be balanced?

***Issues: Remedy***

17. If the Claimant succeeds, what award, if any, should be made for injury to feelings? No compensation is claimed for financial losses.

**Findings of Fact**

18. The Claimant was employed by the Respondent from 4 November 2019 as an Administration Officer, based at Lavender Hill Magistrates Court. The Claimant had previously been employed as an Administration Officer within the Prison Service. The Claimant's employment was on a fixed-term contract, which was extended on a number of occasions until the Claimant resigned her post in order to move to a role as a court clerk (still employed by the Respondent) with effect from 27 October 2023.

19. Lavender Hill is the "resulting hub" for a group of Magistrates Courts in South London: itself, Wimbledon, Croydon, Bromley and Bexley. This means that the team wwe responsible for the administration of any sentence or order that was issued by those Magistrates Courts. The Claimant was assigned to the team working on cases from Croydon Magistrates Court.

20. It is agreed between the parties that some of the work done by the Claimant's team had to be performed in the office. "Batching" was a task involving matching and cross-referencing all the results from the court from the previous day with the relevant register. This had to be done in the office because it involved printing out the registers and putting together physical papers. Most other tasks, however, could be performed from home.

21. Employees in the Claimant's role were trained in accordance with a Training & Development Plan for "Crime Resulting". An example of such a plan is in the bundle, and although there is a dispute between the parties about the extent to which the markings on the plan demonstrate that the Claimant had or had not completed aspects of her training, it is agreed that the unmarked plan was the one used in training the Claimant and others. The plan envisages a training programme lasting around six months in six stages, although it states that depending on progress, it may take more or less time to complete.

22. The Claimant's recollection is that she was initially trained by an individual named Navinder on a one-to-one basis, until December 2019/January 2020, but she then went on leave. The Claimant then sat with a colleague called Barry North for a couple of weeks, which enabled her to ask questions if she was unsure about anything. It appears from documentation in the bundle that the Claimant may also have been trained by Alan Reeves in the initial stages of her employment.
23. The Claimant was absent from work from 8 – 21 January 2020, a period of 10 days, with a "flu-like illness/chest infection". During the illness, the Claimant's then manager, Lucy Kanu, advised her that she would hit the trigger point of the Managing Attendance policy if she was absent for five days. The Claimant was required to attend a Formal Attendance meeting,

during which she informed Ms Kanu (and Alpha Bah, who was present to take notes) that she had rheumatoid arthritis, which was an auto immune disorder. She was offered, but declined, an occupational health referral. Following the meeting, on 28th February 2020, the Claimant was given an unsatisfactory attendance warning, as a result of which her probation period was extended for another two months to allow her to reach the required standard. The Claimant did not appeal against this decision.

24. On 18 March 2020, the Claimant informed Janet Inniss, Delivery Manager, that she was on two types of medication for her arthritis which compromised her immune system. Mrs Inniss passed this information on to Ms Kanu, Mr Bah and Elaine Wilks, another Delivery Manager.

25. On 20 March 2020, the Claimant called in sick with possible symptoms of Covid-19, a new dry cough and slight temperature. She was advised to, and did, self-isolate. The Claimant subsequently supplied the Respondent with a letter dated 30 March 2020 from her GP, which stated that she had a long-term medical condition for which she was taking medication that could weaken her immune system, which would put her in the "increased risk" category were she to catch Covid-19. On 28 April 2020, the Claimant supplied an NHS shielding letter to Ms Wilks. There is no dispute that the Claimant was shielding and was unable to complete any work (because the Respondent did not have any remote work for her to do) until June 2020, when she was supplied with a laptop by the Respondent and was able to begin working from home.

26. In July 2020, there was telephone and email contact between the Claimant and the Respondent regarding a return to work. The Claimant provided a letter from her GP stating that she would continue to shield until the government guidelines were reviewed on 1 August 2020. She also provided a letter from her consultant rheumatologist dated 28 July 2020 which stated that she was at moderate risk if she caught Covid-19, and asked the Respondent to conduct a formal risk assessment, review her case and make all adjustments possible to enable her to continue working from home.

27. On 31 July 2020, Mrs Inniss emailed the Claimant stating that the delivery of the business could not sustain staff working from home on a continuous basis, and that the Claimant would be required to return to the office on 3 August 2020, although there would be the opportunity to work from home on a rotated basis. She explained the steps that had been taken to reduce the risk of Covid transmission in the office and offered to meet with the Claimant to discuss her concerns. The Claimant did meet with Mrs Inniss on 3 August 2020, and returned to the office from that date. It was agreed that she would be able to start work at 8 a.m. and leave work half an hour earlier than usual to mitigate the risk of overcrowded public transport. Whilst the Claimant says that she requested a late start and early finish at this time, there is no evidence of such a request in the bundle, and there is no reply from the Claimant to Mrs Inniss's email confirming the adjustment. Mrs Inniss was clear that the adjustment she offered was what the Claimant had requested and on balance, we accept that evidence. It may be that the Claimant is confusing this request with her later request on 3 September 2020 to start at

9:45 a.m. and finish at 2:30 p.m. for childcare reasons (which was refused but an alternative arrangement was put in place; see below).

28. On 21 August 2020, the Claimant's union representative, Phil Wates, requested that her days working from home be increased on the basis that her condition was likely to amount to a disability, and because he said government guidance was clear that those who had been shielding should have priority for home working. Mrs Inniss responded on the same day, stating that as a result of shielding and sickness absence, the Claimant had not had sufficient training, and she was currently training on day 2 resulting work, which had to be done on a one-to-one, face-to-face basis. Mrs Inniss said that once the Claimant was sufficiently trained "on resulting", she would be given more opportunities to work from home.

29. In September and early October 2020, the Respondent agreed that the Claimant could use annual leave to adjust her hours to enable her to drop her son off and pick him up from school.

30. On 28 September 2020, the Claimant had a training review with Mr Bah, who was now her team leader. She had now been assigned to Eleanor Elcock for training. There is no dispute that the Claimant's continuing training needs are correctly recorded in the email Mr Bah sent to the Claimant on 30 September 2020. She required training or further training in witness summonses, driving disqualification suspended pending appeal, football banning orders, criminal behaviour orders, sexual harm orders, revoke and resentencing of various court orders, remanded in custody cases (where the CPS oppose bail), statutory declaration, council tax cases, DVPO, DDO and means cases. In cross-examination, Mr Bah agreed that the training for each of these areas would take somewhere between 2 days and a working week (although he did suggest that some could take up to two weeks). He also agreed that some of these types of cases (driving disqualification suspended pending appeal, sexual harm orders) were rare, and that the Croydon team did not deal with football banning orders. Although the email states that the next review meeting would take place in three weeks' time, there is no record of a further review in the documents available to the tribunal.

31. On 23 December 2020, London moved into tier 4 lockdown. The Claimant was again shielding and thus working from home until 12 April 2021, when she returned to the office 3 days per week, and worked from home 2 days per week.

32. In February 2021, the Claimant completed an exercise where she recorded her work on DMU on a spreadsheet so that the Respondent could understand what work was being done from home. It is not clear why this request was made. The Claimant agreed that on those three days she had recorded 6 hours, 5.75 hours and 6 hours of work respectively, which was less than the full working day of 7 hours 12 minutes. No similar exercise was conducted with individuals working from the office at this time. No action was taken in relation to the Claimant arising from this exercise.

33. During her shielding period, the Claimant was sick from 26 – 29 March 2021 with high blood pressure and headaches.

34. The Claimant had a further period of sick leave from 8 – 25 June 2021. She was initially signed off with migraine and panic attacks and then with an upper respiratory tract infection.

35. The Claimant was then required to attend a formal attendance meeting with Mr Bah. This took place on 12 July 2021 and was adjourned to obtain an occupational health report, and then reconvened on 9 August 2021. The occupational health report stated that the Claimant had a diagnosis of anxiety and depression with a recent exacerbation, which was due to a family bereavement and personal and home stressors. The report advised adjustments of regular 1:1s, time off for counselling support and time off for GP appointments. The report did not comment on whether the Claimant's condition was a disability. The Claimant was issued with an unsatisfactory attendance warning stage 1 notification, which comprised an Improvement Period of 3 months (during which she was not to exceed 25% of the standard trigger point) and, if her attendance was satisfactory over that period, a sustained improvement period of 12 months where she was not to exceed the regular triggers. The warning was backdated so that the Improvement Period commenced on 26 June 2021.

36. The Claimant was absent from 23 August – 3 September 2021 with Covid-19. This period of absence was not, under the Respondent's procedure, counted towards any absence triggers. The Claimant therefore satisfactorily completed the Improvement Period.

37. The Claimant was then absent with a lower respiratory tract infection from 2 – 19 November 2021. During her return to work meeting with Mr Bah, the Claimant said that her GP thought she was suffering from Long Covid, and consented to an occuaptional health referral. Mr Bah queried how she could have Covid when she had tested negative. In cross-examination, Mr Bah said that at this time Long Covid was a new phenomenon and he did not know much about it. He agreed he had not sought to find out any further information at this time.

38. On 29 November 2021, the Claimant attended a stress assessment meeting with Mr Bah. It is agreed between the parties that, by this time, the Claimant had been required to return to full-time working in the office, rather than the two days at home she had been rostered on since 12 April 2021. The Claimant said she believed this change had happened following her return after Covid. The Respondent says it was after the sickness absence in November 2021. We find that the change was after the sickness absence in November 2021, as the first time the issue is raised by the Claimant is in the stress assessment meeting on 29 November 2021. The note of that meeting records that the Claimant said the staff rota was causing her stress, and that she had been given no warning that she would be returning to the office. Mr Bah told her that she required support and she disagreed. In the column "what management action may help", Mr Bah recorded that he had told the Claimant that working from home was "no longer an option" because she

was still in training, significantly behind other colleagues, and her significant number of absences had been detrimental to the business and her training plan. He also recorded that he had instructed a more experienced colleague to assist with her training so she could cover the full range of tasks.

39. In response to a question from the Tribunal as to why he felt it necessary to change the working from home arrangement in November 2021, Mr Bah did not identify a specific trigger event, but said he just believed that the 2 days from home was not helping the business. Mr Bah's evidence was that he would have had regular feedback on the Claimant's level of training from Ms Elcock by email or verbally. There are no emails from this time period providing a training update. When questioned as to which areas from the 30 September 2020 email remained outstanding at this point, over a year later, Mr Bah identified football banning orders (which he agreed were not dealt with in Croydon), revoke and resentence and statutory declarations (which he said was a complex resulting task, and although the majority of the team could deal with them, some could not). In relation to the other tasks, he either did not know whether the Claimant could perform them, or accepted that she could.

40. Mr Bah said that the Claimant also required training on other matters such as correspondence and customer service; however, the Tribunal notes that these did not form part of the list of resulting tasks set out in the email of 30 September 2020, and Mrs Inniss had stated in her communications in August 2020 that the Claimant would have more opportunities to work from home once she was sufficiently trained on resulting. We do not consider that the need to train on these areas was a barrier to the Claimant working from home.

41. We find that Mr Bah was not up to date with the Claimant's training needs when he refused her request to resume working from home on a rotating basis in November 2021. We find that Mr Bah had no information as to the amount of work the Claimant was able to do from home, the only data on this point (which it is not clear that Mr Bah had seen) being from February 2021, when the Claimant would have had significantly less training. We find that Mr Bah did not want to allow the Claimant to work from home for 2 days per week as previously, and gave no proper consideration to whether this would be feasible from a business point of view.

42. On 2 December 2021, Mr Bah invited the Claimant to a formal attendance meeting to take place on 16 December 2021. The letter stated that her attendance had been unsatisfactory during her sustained improvement period, and that consideration would be given as to whether to progress to the next decision point. In the event, the meeting was postponed to 6 January 2022, as the Claimant's union representative was unavailable on 16 December.

43. On 21 December 2021, Mr Bah requested an extension of the Claimant's fixed term contract to 30 June 2022.

44. On 24 December 2021, when the Claimant was on annual leave, she submitted a fit note from her GP which stated that, because of the conditions of post-covid cough, tired all the time, on immunosuppressant treatment, the GP recommended that she work from home. The Claimant asked for advice on what she should do on her return from annual leave on 29 December. On 29 December, Mr Bah emailed the Claimant stating that as mentioned in his previous emails, the business could not support the Claimant working from home.

45. An occupational health report was obtained in relation to the Claimant. It is agreed that the date on the report (4 December 2022) is wrong. We find that the report should have been dated 4 January 2022, rather than 4 December 2021 as contended by the Claimant, because it refers to the Claimant's GP's advice to work from home (which appears to have been given for the first time on 23 December 2021) and also because the discussion of the report in the meeting on 7 January 2022 (p. 258 of the bundle) indicates it was only received by the Claimant and Mr Bah in early January 2022. The report stated that the Claimant had symptoms of long Covid, and also suffered from arthritis which affected her immunity. It noted that the Claimant was feeling anxious as she was expected to work from the office. The report advised that the Claimant was fit to continue working from home full time as advised by her GP, for a 3 month period, by which time it was hoped her symptoms would have eased and the pandemic status improved.

46. In cross-examination, Mr Bah repeatedly said that it was his view that occupational health would write down what staff told them in making their recommendations. When this was put to him squarely, he apparently resiled from that position, but then repeated it in response to subsequent questions. We find that Mr Bah's attitude towards occupational health recommendations was sceptical, and that he believed, for the most part, that if an employee requested a particular adjustment, occupational health would simply make that recommendation without applying their own critical faculties.

47. The formal attendance meeting in fact took place on 7 January 2022, with Mr Bah, the Claimant and Mr Wates in attendance. The meeting was fairly lengthy, and we find that it was somewhat antagonistic, with Mr Bah describing the Claimant as "disruptive". The parties have not disputed the accuracy of the note.

48. The Claimant said that her doctor had diagnosed her absence in November 2021 as being due to long Covid. Mr Bah asked whether the Claimant could provide any evidence that the absence was for long Covid and was a direct consequence of having Covid; the Claimant pointed to her fit note which referred to post-Covid cough. Mr Bah responded *"I am not a medical expert, but this is something I will take into consideration"*. Mr Wates said that Mr Bah should be treating long Covid sympathetically and not issuing warnings, and Mr Bah responded by referring to paragraph 29 of the Respondent's Coronavirus (COVID-19) HR Policy Guidance, which states in relation to long Covid:

*"Managers should view such cases sympathetically and in line with their business as usual absence procedures, in the same way as they do for other long-term health conditions or illnesses."*

49. The Claimant told Mr Bah that she was "drained" and would be good one day, and bad the next. She reminded Mr Bah that she also had anxiety and arthritis. She said she had been given a steroid injection for her arthritis (in addition to her usual medication) and was feeling very unwell. The Claimant also said, at various points in the meeting, that Mr Bah had previously questioned whether she had a disability, which Mr Bah denied at the end of the meeting.

50. Mr Bah told the Claimant that the business could not support her working from home full time in her current role. He said he could look into finding a role that could accommodate this. The Claimant said she did not need full time working from home, and that two days working from home had and would help her recover for the three days working in the office. Mr Bah said that the Claimant was on full-time training. The Claimant disagreed and said she had received no formal training since her return in November. She said she had been self-sufficient with guidance working from home for the last year, and asked Mr Bah to show her what errors she had made. Mr Bah said he was going to sit down and review the training manual and obtain an update from the Claimant's trainer. We note that it is apparent from this comment that Mr Bah had not received an update on the Claimant's training prior to the meeting. He said he would write to the Claimant within 5 working days with the outcome.

51. On 14 January 2022, Mr Bah wrote to the Claimant to state that he would refer her case to Elaine Wilks to decide whether she should be issued with a final written warning in view of her sickness absence. He also stated that workplace adjustments would be put in place to support her, namely: working from home one day per week whilst her training progress was monitored; an individual stress risk assessment (carried out by Mr Bah; the Claimant had asked that it be done by another manager but that request was refused at this stage); an individual Covid risk assessment; regular comfort breaks and advice to adjust her position regularly; increase of her absence trigger point to 12 days and 5 spells (which at this point had already been exceeded) and supporting doctor and hospital appointments. There is nothing to indicate that Mr Bah had received an update on the Claimant's training prior to writing this letter, and we find that he had not.

52. On 17January 2022, the Claimant informed Mr Bah via email that she had been advised by her GP that she was not to go into work until the recommendations in the occupational health report were met. She added that she had been advised that if she was not permitted to work from home, this should be classified as disability leave. Later that day, the Claimant provided a fit note covering the period 17 January – 28 February 2022, which stated she may be fit for work, taking into account the GP's advice to work from home only. The Claimant did not attend work from 17 January. Ms Wilks responded to the Claimant stating that the business could not support the recommendation for full time home working for 3 months, and that the

Claimant was thus not absent waiting for a reasonable adjustment to be put in place. This appears to be a reference to the Respondent's Attendance Management Procedure, which provides at paragraph 127 that disability leave may be applied where the employee is fit to work but only once adjustments have been put in place, and is awaiting those adjustments.

53. On 21 January 2022, Eleanor Elcock provided an update on the Claimant's training to Mr Bah. She noted that due to the pandemic, the Claimant was not able to complete "the majority" of her training, due to sickness absence or working from home. She said that the Claimant did not always contact her when she needed help with DMU notes when working from home, sometimes seeking assistance from other colleagues, which Ms Elcock said could be wrong. Ms Elcock listed a number of tasks, most of which she said the Claimant could do, but with some caveats; i.e. she did not know whether the Claimant would be able to identify an error when emailing warrants to the prison and cells; she needed more practice with breach warrants, particularly as she was not always sure whether the warrant was for police or NCES; and that she sometimes forgot to case complete on conditional bail cases. She added that sometimes the Claimant would ring for help and would be confused by the explanation.

54. This is not a very clear update. It does not explain whether there were other areas on which the Claimant required training, as Mr Bah suggests. In cross-examination, the Claimant (who was not copied into the email) said that she was able to do far more than was listed here. In his cross-examination, Mr Bah accepted that Ms Elcock had identified only two concrete things that the Claimant had difficulty with: breach warrants and conditional bail case complete, which he agreed was a matter of forgetfulness rather than inability. He said that it would take a month to train the Claimant on breach warrants, which this tribunal does not accept, given that he said other tasks would take 2 days to a week to train on, and it is clear that the Claimant was already partially trained. When asked why these matters would prevent the Claimant from working from home for two days per week, he said she did work from home two days per week after her training was topped up. Later, in response to questions from the Tribunal, he acknowledged that the Claimant had received no further training between the date of Ms Elcock's email and her return to work in March 2022, at which point she was permitted to work from home two days per week. In cross-examination, he eventually acknowledged that the Claimant could have worked from home for two days per week in January.

55. On 26 January 2022, Mr Bah invited the Claimant to an informal attendance review meeting, to take place on 3 February 2022, to discuss her current period of sickness absence. The topics for discussion included what options there might be to assist the Claimant, a possible return to work date, stress risk assessment, occupational health and "the possible need for a formal attendance review meeting".

56. Alongside these developments, the Claimant contacted MOJWAS (the internal MoJ Workplace Adjustment Service) about her requests for adjustments. John Gleeson, who was employed by the MoJ within MOJWAS,

and was also a trade union representative, emailed Mr Bah about the Claimant's situation on 17 January 2022. On 19 January 2022, Ms Wilks wrote to Mr Gleeson setting out her account of the history of the Claimant's situation and a summary of the reasons why full-time working from home could not be supported. The primary reason given by Ms Wilks was that only limited work tasks could be completed from home and that full-time home working would have a negative impact on the daily management of the business. She also stated that the Claimant's training would be further impacted. A meeting took place between Mr Gleeson and Ms Wilks and another employee on 2 February 2022. At Ms Wilks's request, Mr Gleeson sent an email summarising the key points of the discussion on 7 February. The email records a discussion as to whether long Covid could be a disability in its own right, and whether the underlying disability of arthritis made the Claimant more susceptible to long Covid. The agreed action point was for a further referral to occupational health regarding long Covid, and whether the Claimant's underlying disability was a factor in the impacts on the Claimant.

57. The informal absence review meeting took place with Mr Bah, with the Claimant again accompanied by Mr Wates, on 3 February 2022. The Claimant was informed that no sanction would be issued as a result of the meeting. There was a discussion as to whether the Claimant's current leave should be classified as sick or disability leave. The Claimant said the situation was making her feel very anxious. The Claimant agreed to a further referral to OH in line with Mr Gleeson's recommendation. Mr Bah reiterated that the Claimant's attendance was unsatisfactory and that she had exceeded the trigger point. He updated her on developments in the department. There was a discussion of the occupational health recommendation to work full-time from home, and, on being asked about the two-day suggestion made at the last meeting, Mr Wates said that this was a mistake, and that the Claimant should predominantly work from home save for occasional days for training.

58. On 4 February 2022, Mr Bah emailed the Claimant in response to an email from Mr Wates again stating that the Claimant's current period of leave was classified as sick and not disability leave. He noted that the Claimant had declined the offer of part working from home and to look into another role that could accommodate full-time home working, and reiterated that full time home working was "not conducive to our business needs".

59. On 9 February 2022, Mr Gleeson wrote to Ms Wilks, having been forwarded the above email by the Claimant. He advised that Mr Bah's position in the email was "problematic", in circumstances where there was an existing OH report that supported working from home as a reasonable adjustment for the existing disability. He advised that as enquiries were still taking place as to the extent to which the adjustment was needed, it was not appropriate to count the absence as sick leave. The Claimant could legitimately be asked to undertake work from home. He advised that if a claim were to be lodged in the ET, there would be a reasonable prospect of it succeeding, and that the Claimant should be provided with work from home or granted disability leave until the updated OH advice was received.

60. On the same date, a letter was sent to the Claimant to inform her that her pay would reduce to half rate from 11 March 2022. She was also invited to a formal attendance review meeting to take place on 18 February 2022. In the latter letter, Mr Bah stated that he was prepared formally to offer the Claimant two days working from home, which could be discussed at the meeting or earlier if the Claimant preferred.

61. The meeting took place as planned on 18 February 2022, conducted by Mr Bah and the Claimant was again represented by Mr Wates. The Claimant said that her symptoms of long Covid remained the same and her anxiety had been increased by the process. There was a discussion about what the Claimant could do from home, during which Mr Bah suggested she could only produce 3 hours' worth of work per day and the Claimant disputed this and said Mr Bah had provided no evidence. She said the only task she could not do was revoke and resentence and everyone struggled with that, and that she had been asking for training on correspondence but none had been provided. She also asked why training could not be given on Teams. Mr Bah asked whether the Claimant was taking advice from the workplace adjustment team or a union representative, and repeatedly questioned Mr Wates as to whether Mr Gleeson was a union representative. Mr Bah formally offered the Claimant two days working from home, and the Claimant said she would accept this, subject to what her GP and occupational health said. Mr Bah said he would adjourn the meeting until after the occupational health report was received.

62. The occupational health report provided on 21 February 2022 was somewhat difficult to understand as it recommended following the previous recommendations (i.e. full time working from home) but also said that the Claimant was keen to undertake two days working remotely. Clarification was sought which confirmed that the Claimant wished to work two days from home. The Claimant did indeed return to work on a pattern of two days remotely/three days from home on 9 March 2022.

63. The Claimant started ACAS early conciliation on 5 April 2022 and her certificate was issued on 16 May 2022. She commenced proceedings on 16 June 2022.

64. The Claimant continued to work this pattern of two days in the office and three at home for the whole of her subsequent time at Lavender Hill. The Claimant had three further days of absence in May 2022 with a swollen knee, which was related to her arthritis. She was given a stage 2 unsatisfactory attendance warning on 2 September 2022, backdated to 9 May 2022, against which she appealed unsuccessfully. At some point – it was not clear when, but it appears to have been around March 2023 - the Respondent put in place an adjustment paying for her to travel to and from work in a taxi. In August 2023, the Claimant's sustained improvement period came to an end and her attendance had remained satisfactory throughout.

65. On 29 September 2023, the Claimant resigned from her role at Lavender Hill with effect from 27 October 2023. She now has a role, still employed by the Respondent, as a court clerk based in the Crown Court. In that role, she

works in court five days a week. The adjustment of taxi travel to and from work remains in place.

## Submissions

66. We were provided with written submissions by Ms Mellor on behalf of the Respondent, which she supplemented orally, and with oral submissions by Mr Kohanzad on behalf of the Claimant, all of which we found helpful. The submissions are not repeated here, but are referred to where appropriate in our Conclusions below.

## The Law

### *Reasonable Adjustments*

67. Section 20(3) of the Equality Act 2010 provides that there is a requirement, where a provision, criterion or practice ('PCP') of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

68. Section 21(1) provides that a failure to comply with this requirement is a failure to comply with a duty to make reasonable adjustments, and section 21(2) provides that such a failure constitutes discrimination.

69. Paragraph 20 of Schedule 8 to the Equality Act 2010 provides that an employer is not subject to a duty to make reasonable adjustments if it does not know, and could not reasonably be expected to know, that an interested disabled person has a disability and is likely to placed at the disadvantage referred to in the requirement above.

70. We were referred by the Respondent to a number of propositions of law relating to the construction of the PCP, which were not disputed by the Claimant and which we accept as accurately representing the law. These propositions are reproduced below, so far as we consider them relevant to the issues we have to determine.

71. In ***Ishola v Transport for London*** **[2020] EWCA Civ 112** Simler LJ (as she then was) stated that the three words (PCP) "*carry the connotation of a state of affairs (whether framed positively or negatively and however informal) indicating how similar cases are generally treated or how a similar case would be treated again*" and "*however widely and purposively the concept of a PCP is to be interpreted, it does not apply to every act of unfair treatment of a particular employee. That is not the mischief which the concept of the duty to make reasonable adjustments are intended to address. If an employer unfairly treats an employee by an act or decision and neither direct discrimination nor disability related discrimination is made out because the act was not done/made by reason of disability it is artificial and wrong to seek to convert them by a process of abstraction into the application of a discriminatory PCP*" (para 37).

72. In ***Griffiths v Secretary of State for Work and Pensions [2015] EWCA Civ 1265***, the Court of Appeal held, approving the comments of Langstaff J in *Royal Bank of Scotland v Ashton* that, when considering the question of reasonable adjustment, it is critical to identify the relevant PCP concerned and the precise nature of the disadvantage which it creates by comparison with the effect on the non-disabled. Until the disadvantage is properly identified it is not possible to determine what steps might eliminate it.

73. In ***Ahmed v DWP [2022] EAT 107***, the EAT held:

"*The differences between the descriptions of the PCPs in the ET1, PH and the ET judgment although minor in the main illustrate a recurring problem with reasonable adjustment cases; construction of the PCP often proves elusive. Unfortunately it is often the case that the PCP is reverse engineered from the disadvantage perceived...it is important that any tribunal considering such claim begin by identifying the PCP...In order to found a claim the PCP must create a disadvantage because of disability constructing the PCP from the disadvantage has the danger of circular reasoning"* (para 25).

74. In ***Chief Constable of West Midlands Police v Gardner*** **UKEAT/0207/13/BA**, the EAT held that there is a need to show or understand what it is about a disability that gives rise to the substantial disadvantage, and therefore what it is that requires to be remedied by adjustment.

75. An employer will not be liable for a failure to make reasonable adjustments unless it had at the relevant time actual or constructive knowledge (a) that the employee was disabled and (b) that he/she was disadvantaged by the disability in the way required by section 20(3) - (5) EqA 2010 (***Wilcox v Birmingham CAB Services***)

76. In ***South Staffordshire & Shropshire Healthcare NHS Foundation Trust***, EAT, 29 April 2016, the EAT summarised the law on the extent to which it must be shown that a proposed adjustment would have been effective as follows:

*"17...the current state of the law, which seems to me to accord with the statutory language, is that it is not necessary for an employee to show that the reasonable adjustment which she proposes would be effective to avoid the disadvantage to which she was subjected. It is sufficient to raise the issue for there to be a chance that it would avoid that disadvantage or unfavourable treatment. If she does so it does not necessarily follow that the adjustment which she proposes is to be treated as reasonable under section 15(1) of the 2010 Act.*

*18. It is in the end a question of judgment and evaluation for the Tribunal, taking in to account a range of factors, including but not limited to the chance. A simple example may suffice to illustrate the point. If a measure proposed by an employee as a reasonable adjustment stands a very small chance of avoiding the unfavourable treatment arising out of her disability to which she would otherwise be subjected, but it was beyond the financial capacity of her*

*employers to provide it so a Tribunal would be entitled to conclude that it was not a reasonable adjustment. Indeed, on those facts it would be difficult to justify a conclusion that it was a reasonable adjustment. In the case of a large organisation by contrast, where a proposed adjustment would readily be implemented without imposing an unreasonable administrative or financial burden on the employer then the obligation to take it may arise notwithstanding that the chance of avoiding unfavourable treatment was very far from a certainty.*

***Discrimination Arising from Disability (s. 15 EqA 2010)***

77. Section 15 EqA 2010 provides as follows, so far as is relevant:

*(1) A person (A) discriminates against a disabled person (B) if -*
(a) *A treats B unfavourably because of something arising in consequence of B's disability; and*
*(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.*
(2) *Subsection (1) does not apply if A shows that A did not know, and could not reasonably be expected to know, that B had the disability.*

78. Again, the Respondent provided a summary of relevant authorities setting out the current state of the law in relation to s. 15, from which the Claimant did not demur, and which we accept as accurate.

79. In ***Pnaiser v NHS England [2016] IRLR 170*** at paragraph 31 Mrs Justice Simler (as she then was) summarised the proper approach to section 15 claims. The summary includes:
    a. A tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises.
    b. Motives are irrelevant. The focus for this part of the enquiry is on the reason or cause of the impugned treatment and A's motive in acting as he or she did is simply irrelevant: see ***Nagarajan v London Regional Transport [1999] IRLR 572***. A discriminatory motive is emphatically not (and never has been) a core consideration before any prima facie case of discrimination arises.

80. The Employment Statutory Code of Practice includes:

*5.7 For discrimination arising from disability to occur, a disabled person must have been treated unfavourably. This means that he or she must have been put at a disadvantage. Often, the disadvantage will be obvious and it will be clear that the treatment has been unfavourable; for example, a person may have been refused a job, denied a work opportunity or dismissed from their employment. But sometimes unfavourable treatment may be less obvious. Even if an employer thinks that they are acting in the best interests of a disabled person, they may still that that person unfavourably.*

81. In ***Williams v Trustees of Swansea University Pension and Assurance Scheme [2018] UKSC 65,*** Lord Carnwath said at paragraph 27: "*In most cases (including the present) little is likely to be gained by seeking to draw narrow distinctions between the work "unfavourably" in section 15 and analogous concepts such as "disadvantage" or "detriment" found in other provisions, nor between an objective and a subjective/objective approach. While the passages of the Code of Practice to which she draws attention cannot replace the statutory words, they do in my view provide helpful advice as to the relatively low threshold of disadvantage which is sufficient to trigger the requirement to justify under this section"*.

82. The critical question is whether on the objective facts the 'something' arose in consequences of' the claimant's disability. This is a looser connection than being caused by and may involve more than one link in the chain of consequences (***Sheikholeslami v University of Edinburgh 2018 IRLR 1090***).

### *Injury to Feelings*

83. In considering the level of any award for injury to feelings, the focus should be on the actual injury suffered by the Claimant, and not the gravity of the acts of the Respondent (see ***Komeng v Creative Support Ltd*** **UKEAT/0275/18**).

## Conclusions

### *Knowledge of Disability*

84. There is a question in relation to both the s. 20 and s. 15 claims as to whether the Respondent had the requisite knowledge that the Claimant was a disabled person by reason of long Covid (but not the other two disabilities relied upon) between 22 November 2021 and 18 February 2022.

85. The Claimant returned to work following a 14 day period of sickness with a lower respiratory tract infection on 22 November 2021, and explained that her GP thought she was suffering from long Covid. She consented to an occupational health referral. As we have found above, Mr Bah was not at this stage familiar with long Covid, but he took no steps to enquire about it and was sceptical. On 23 December 2021, the Claimant's GP advised that she should work from home because she had "post covid cough, tired all the time, on immunosuppressant treatment". When an occupational health report was obtained on 4 January 2022, it confirmed that the Claimant appeared to be suffering from symptoms of long Covid, including breathlessness, a cough and lethargy, and recommended that she work from home full time for 3 months. The report did not specifically comment on whether long Covid might be a disability.

86. We find that Mr Bah had sufficient information on 22 November 2021 to make him aware (a) that the Claimant had symptoms of long Covid; (b) that these had a substantial adverse effect to carry out normal day-to-day activities, given the period of time she had been away from work and the likely

interaction with her other disabilities and (c) had he made any enquiries at all about the nature of long Covid, that it "could well happen" that the substantial adverse effect could last a year or more. We therefore find that Mr Bah had constructive knowledge that the Claimant had a disability in the form of long Covid from 22 November 2021.

87. Even if we are wrong about that, we further find that, on receipt of the GP note of 23 December 2021 and/or the occupational health report dated 4 January 2022, which advised that the Claimant should work from home for 3 months, Mr Bah and the Respondent had constructive knowledge that long Covid was a disability, by reason of those reports, combined with the knowledge set out at paragraph 86 above.

***Reasonable Adjustments***

88. The Respondent accepted in Ms Mellor's written submissions that the Claimant was expected to attend the office for 5 days per week from 22 November 2021 until 7 January 2022 or at the latest 14 January 2022. We find that the Claimant was required to attend the office for 5 days per week until 14 January 2022, because that was the first time Mr Bah offered one day working from home. Thereafter the Respondent accepts that the Claimant was expected to attend 4 days per week. The Respondent accepts that such an expectation, even where it is the Claimant's case that it was not an expectation on others, could amount to a PCP.

89. The Respondent's objection to the PCP is that it falls foul of the warnings given in *Ishola* and *Ahmed*, in that it is an attempt to construct a reasonable adjustments claim from what is in reality a direct discrimination or harassment complaint, or alternatively, that it has been reverse-engineered from the disadvantage relied upon.

90. It is fair to say that the Claimant clearly feels she was singled out by the Respondent to remain in the office full time. However, the Respondent has accepted that this in itself does not prevent the requirement to be in the workplace for a certain number of days per week, which it agrees was applied to the Claimant, from being a PCP.

91. We note Simler LJ's (as she then was) guidance in *Ishola* that the words PCP "*carry the connotation of a state of affairs (whether framed positively or negatively and however informal) indicating how similar cases are generally treated or how a similar case would be treated again*". We consider that Mr Bah would have treated another employee who he felt had not fully completed their training in a similar way to the Claimant. The evidence indicated that Mr Bah was of the view that the other employees in his team who were permitted to work from home had completed their training. We do not consider that this is a case of the Claimant seizing on a non-disability-related example of unfair treatment and trying to fashion it into a PCP. The Respondent accepts it applied a PCP to the Claimant. This is not the type of situation that the guidance in *Ishola* was intended to exclude from the ambit of the Act.

92. Similarly, although it can technically be said that the PCP of being required to work from the office is the reverse of the Claimant's request to work from home for two (or five) days, that is true of many PCPs and adjustments. This is not a case where a nonsensical PCP has been derived from an adjustment; both the PCP and adjustment make internal sense.

93. We therefore find that the Respondent did apply a PCP to the Claimant of requiring her to attend the workplace between 22 November 2021 and 18 February 2022. Initially the requirement was to attend for 5 days, and then for 4 days from 14 January 2022.

94. The Claimant contends that this requirement placed her at the following substantial disadvantage:

*"she was unable to meet the attendance requirement because of her disability and as a result it was more likely that she would be subject to further sanction regarding her attendance"*

95. The Claimant was as a matter of fact unable to meet the attendance requirement. She had already exceeded the trigger points by reason of her November 2021 absence. The medical evidence before the Respondent was, and the Respondent accepted during the hearing, that as a result of the medication the Claimant was taking for her arthritis, she was immunosuppressed, and at greater risk of contracting infectious diseases, including coughs, colds and Covid-19.

96. We find that attendance on a daily basis or 4 days per week (by contrast with 3 days per week or no days per week) exposed the Claimant to a greater range of infectious diseases, making it more likely that she would become ill, require sick leave and face further attendance sanctions. We consider this to be plain and obvious and we do not accept the Respondent's argument that the Claimant is required to bring evidence to prove an increase in risk. This is particularly so because in December 2021 there were still Covid-19-related restrictions in place.

97. We also consider that the Claimant was placed at a substantial disadvantage because, as she said to Mr Bah during the meeting on 7 January 2022, she needed at least two days at home to recover from the three days in the office, given her symptoms of lethargy and fatigue. We accept that, without this recovery time, the Claimant was at greater risk of further sickness absence by reason of all three of her conditions, meaning she would not be able to meet the attendance requirement and would be subject to further sanction. The Claimant's case in this regard is supported by her GP note and the occupational health report, which in fact recommended 5 days at home. The Claimant explained in her oral evidence that, despite that advice, she did not really want to work from home full-time, as she had found that to have an adverse impact on her mental health. We accept her evidence in this respect.

98. Ms Mellor argued that the Claimant could not demonstrate that the PCP applied placed her at any substantial disadvantage, because she was now working in a role that required her to attend the workplace five days per week,

and she was still disabled by reason of the three conditions relied upon in this case. She pointed out that the Claimant had said she was not able to work five days per week in the office because she felt unsupported – so in fact, it appeared that it was interpersonal relationships, rather than the PCP relied upon, that were causing the substantial disadvantage.

99. We do not accept that argument. Firstly, it does not compare like with like, in that (a) the Claimant now has the benefit of a taxi journey to and from work rather than having to take a combination of bus and train, which reduces her exposure to illness and her fatigue; and (b) in December 2021, there were still Covid-19-related restrictions in place. We consider that little assistance can be drawn from the Claimant's current working arrangements. Secondly, insofar as the substantial disadvantage was caused by the lack of support the Claimant felt from Mr Bah, we consider it very difficult to separate that from the PCP, given that a significant reason for the problems in that relationship was Mr Bah's insistence that the Claimant work full-time or four days from the office. It is clear from the meeting notes that this had a negative impact on the Claimant's stress and depression, and thus on her ability to maintain regular attendance.

100. We also consider that, throughout the relevant period (i.e. 22 November 2021 to 18 February 2022), the Respondent was aware that the PCP placed the Claimant at a substantial disadvantage. The Respondent was aware throughout that period of the Claimant's immunosuppression, having been told of this as early as March 2020. From 7 January 2022 at the latest, the Respondent was also aware that the requirement to attend the office on a daily basis (or more than 3 days per week) was having an adverse effect on the Claimant's ability to recover, and thus placed her at further risk of sickness absence and attendance sanction.

101. In circumstances where the PCP of full-time or four days per week attendance placed the Claimant at a substantial disadvantage of which the Respondent was aware, we find that permitting the Claimant to work from home for two days per week was a reasonable step the Respondent could have taken between 22 November 2021 and 18 February 2022. The Claimant had been working this pattern since April 2021. The Respondent has supplied no evidence that she was able to complete less work than other employees, or that this working pattern had an adverse effect on the Respondent's operational capacity. Mr Bah could provide no evidenced explanation as to why he changed the arrangement after 22 November 2021. He had not received any update on the Claimant's training as of that date, and did not receive such an update until 21 January 2022. Mr Bah accepted in cross-examination that he could have allowed the Claimant to work from home for two days per week from January 2022, and we can see no logical distinction between January 2022 and November 2021. Insofar as the training issue is relevant, we find, as set out above, that the Claimant's residual training needs were limited, and could have been met during her three days in the office. They were so met from 9 March 2022, at which point the Claimant's training was still at the level described in Ms Elcock's email of 21 January 2022. There is no evidence that the office-based nature of the tasks prevented home working for two days per week, particularly as it is

agreed that other members of the team were permitted to work this pattern. We therefore find that the Respondent failed to comply with its duty to make reasonable adjustments under s. 20 – 21 and 39(2) EqA 2010.

102. We do not consider that full-time home working would have been a reasonable adjustment in all the circumstances. Whilst this was recommended by the Claimant's GP and OH, it was not what the Claimant said she wanted in November 2021, nor in January 2022. Although the Claimant shifted her position in the 3 February 2022 meeting, we agree with Mr Kohanzad's submission that this was more by way of a negotiating position on the part of her union representative. The Claimant was very clear in her oral evidence to the Tribunal that she did not want to work from home five days per week, and she accepted the two days per week from home when it was offered. We do also accept, as did the Claimant, that there were some residual training needs which made working from home full-time undesirable.

103. We also do not consider that placing the Claimant on disability leave would have been a reasonable adjustment at this time. The Claimant was fit to work as long as she was able to work two days from home. In such circumstances, where home working could be accommodated, disability leave would not be a reasonable adjustment either for the Claimant or the Respondent.

***Discrimination arising from disability (s. 15 EqA 2010)***

104. We have already found that the Respondent should have known that the Claimant was a disabled person by reason of long Covid during the relevant period, and, if we are wrong about that, from the date of the OH report on 4 January 2022.

105. Ms Mellor argues that the requirement to attend the meetings on 3 and 18 February 2022 cannot be regarded as unfavourable treatment. She contends that both took place against a background of inconsistent positions from the Claimant – she was in the office full-time, but said first that she needed two days working from home, then five, and then commenced a period of absence until the OH recommendations were met. In that context, the 3 February meeting was an informal one, from which no sanction could arise and was simply an attempt to consider adjustments or other steps that could get the Claimant back to work. The letter inviting attendance at the 18 February meeting offered the Claimant two days home-working, which she accepted, and the Claimant agreed it was not a bad meeting. In response, Mr Kohanzad submitted that being subjected to attendance management was in itself anxiety-inducing, and that the informal meeting was simply a step along the way to the formal meeting and ultimately, potentially, dismissal.

106. We agree with Mr Kohanzad that the requirement to attend both meetings constituted unfavourable treatment. Although no sanction could arise from the 3 February 2022 meeting, the invitation letter stated that part of the purpose of the meeting was to consider the need for a formal

attendance review meeting, so it is clear, as Mr Kohanzad argued, that it was part of the process leading to formal action. The meeting itself was somewhat fractious; the Claimant was required to reiterate personal information about her health and there was a dispute about how to characterise her leave. The same points apply to the meeting on 18 February 2022, which was a formal meeting – and at that meeting, Mr Bah also took an antagonistic approach towards MOJWAS and Mr Gleeson, who had been supporting the Claimant. We consider that a reasonable employee in the Claimant's circumstances could and would have regarded these meetings as disadvantageous, a detriment or unfavourable.

107. We also find that the meetings arose in consequence of the Claimant's disability. The Claimant was invited to the meetings because of her "current" period of absence, i.e. that commencing on 17 January 2022. That absence arose because the Respondent had denied the Claimant her request to work two days from home, or indeed five days from home, in accordance with GP and OH advice. That advice was given because of the Claimant's disability. There was clearly the requisite connection between the disability and the meetings, as set out in *Sheikholeslami.*

108. The Respondent argues that the unfavourable treatment was a proportionate means of achieving a legitimate aim, namely:

108.1 The need to ensure resilience and deliver an efficient and cost-effective service, by ensuring that staff absences are monitored and managed effectively pursuant to an attendance management process.

108.2 To ensure the Claimant's wellbeing and that all reasonable adjustments to facilitate her resumption to work had been considered.

109. We agree that these are potentially legitimate aims. However, we do not accept the Respondent's case that the meetings on 3 and 18 February were a proportionate and means of achieving them. As Mr Bah now accepts, the proposed adjustment of two days per week working from home was one he could have put in place in January 2022 (and, we have found, November 2021). Putting that adjustment in place would have been an effective and reasonable way of managing and limiting the Claimant's absence. Indeed, it would also have increased the efficiency and cost-effectiveness of the Respondent's service, as it would have enabled the Claimant to do some work for the Respondent, rather than no work, as was in fact the case during the period of her absence from 17 January – 8 March 2022. To refuse to put that reasonable adjustment in place, and to continue through the attendance management procedure, causing the Claimant stress and anxiety in the process, was not a means of achieving the Respondent's aims at all, let alone a proportionate one. We therefore find that the Respondent acted in breach of s. 15 and s. 39(2) EqA 2010 as alleged by the Claimant.

**Remedy**

110. The only remedy claimed is compensation for injury to feelings.

111. We do find that the Respondent's treatment of the Claimant, which we have found amounted to discrimination, caused an injury to her feelings for which she should be compensated.

112. The Claimant's witness evidence was that she felt Mr Bah did not believe her when she raised the issues being caused by her disability, which we have accepted to a degree above. She says that his refusal to accept OH recommendations and the fact that she was suffering from long Covid contributed to a decline in her health and mental well-being, and that she suffered panic attacks and was put on medication. The Claimant was not cross-examined on this section of her statement, and we accept that the refusal to make reasonable adjustments, and the continuation of the attendance management process, had an impact on her mental well-being, as she explained to Mr Bah in the meetings on 7 January, 3 February and 18 February 2022.

113. We do also note that the Claimant was distressed by other interactions with Mr Bah which were not raised as part of her complaint. For example, the Claimant has not made a claim in respect of her allegation that Mr Bah asked her whether she had a disability on multiple occasions, or any claim for direct discrimination or harassment. We have had regard to the fact that these issues also seem to have contributed to the Claimant's feelings of hurt and distress, and to the decline in her mental well-being, before and after and during this period. The Claimant cannot seek compensation in respect of these matters.

114. The Claimant contended that this was a case falling in the middle of the middle band *Vento* band (as of 2022/23, £9,900 to £29,600), although we note that in the Schedule of Loss, she claimed £10,000. This submission was made on the basis of the length of the treatment, from November to February, and the fact that the Claimant remained upset about her treatment which was evident in the way she gave evidence. The Respondent argued that this was a lower band case albeit possibly towards the upper end. Ms Mellor relied on the points made at paragraph 113 above, and argued that much of the Claimant's distress related to matters of which no complaint had been made. She contended for an award of £8,000.

115. We note that we are required to focus on the impact the discrimination we have found to have occurred had on the Claimant (see *Komeng*, above). We have considered the *Vento* guidelines, as uprated for claims presented after 6 April 2022. We have also reviewed previous Tribunal decisions on injury to feelings which, whilst clearly not binding on us, have provided us with some assistance in assessing the appropriate level. Of most assistance is the case of *O'Neill v Department for Social Development,* ET, 7 August 2012, where the Claimant was awarded £7,000 (now £11,231) for a failure to make adjustments in respect of her rheumatoid arthritis over a period from January-August 2011, by transferring her to another workplace. We note the similarities in treatment, although the extent of the impact on the Claimant in that case is not entirely clear.

116. This was not a one-off event. It was conduct over a period of around 3 months, which we accept had a significant effect on the Claimant, and which she found difficult to relive even at the date of the hearing, almost three years later. However, we also note (a) that the Claimant was able to return to work on 9 March 2022 and had very little sick leave after that point; and (b) that some of the upset the Claimant expressed to us related to matters for which she cannot be compensated. Overall, we consider this case to fall at the lower end of the middle band. We consider the appropriate award to be £11,000. Interest falls to be awarded on that amount at the rate of 8% from the date of the discrimination, which we take to be the beginning of the period, 22 November 2021, to 22 October 2024, a period of 1065 days. The rate of interest over that period is 23.34%, which totals £2,567.40.

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Employment Judge A. Beale KC
Date: 22 October 2024