Issue: July & August 2025

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eNewsletter

Welcome to our July & August 2025 eNewsletter!

In this edition, we provide details of our new Customer Service Excellence Programme, and articles on Isle of Man employment law changes for 2025, proposed UK employment law changes for 2026 and 2027, the benefits of outsourcing learning and development, and examples of our people and culture development packages.

We also provide various tribunal summaries covering unfair dismissal, disability discrimination, maternity discrimination, discrimination and failure to make reasonable adjustments including ADHD training, and an interesting ruling that speaking in a foreign language during a meeting to exclude colleagues was race discrimination.

The importance of conducting appropriate and thorough investigation is also highlighted.

We hope you find our eNewsletter of interest.

Please feel free to forward this to other colleagues.

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'WORKAHOLIC' DIRECTOR WINS £190K AT TRIBUNAL FOR UNFAIR DISMISSAL AFTER CARDIAC ARREST

Judge rules employer discriminated against claimant, as legal experts warn of the risks of treating disabled employees as 'inconveniences'.

An operations director at a recruitment company has been awarded nearly £190,000 at tribunal after being sacked because of his "ill health" following a cardiac arrest.

The incident left Darron Blewitt, who described himself as a "workaholic", with a hypoxic brain injury affecting his mobility, speech, memory and cognitive skills.

The Cambridge tribunal heard he was not supported and "left to his own devices" after the attack, before eventually being dismissed over alleged incapacity.

Employment judge Tynan ruled Blewitt was discriminated against for having a disability and unfairly dismissed as a result. The tribunal found that his employer, Mach Recruitment, viewed him as an "inconvenience to the business" and that "stereotypical assumptions" were made around his ability to perform his role and contribute.

Background

Blewitt began working for Mach Recruitment as a Regional Operations Director, although the exact start date was not given. On 7 February 2020, he suffered a cardiac arrest, which led to lasting health impairments, including memory loss and cognitive difficulties.

He made his initial return to work in October 2020, which proved difficult because of his ongoing health problems.

Nadine Sowinski, an Occupational Therapist, completed a report dated 21 January 2021, referring to several meetings with Katie Barrett, the company's Head of HR, and recommending 16 specific adjustments for Blewitt as a result of his disability.

After a period of furlough, Blewitt resumed work in May 2021. However, he was reportedly left to manage alone with "no clear direction or even guidance in terms of what was expected of him".

In August 2021, he was transferred to a Boohoo site, where he reportedly lacked direction and found that a site manager was already present, leaving his role undefined. Blewitt described feeling "deeply unhappy" and said he felt "abandoned" by the company, which had not made efforts to support him with his disability.

The tribunal heard that during the Boohoo placement he experienced a particularly busy and noisy working environment.

Barrett suggested to Blewitt in February 2022 that he might be referred for an occupational health assessment by the company's nominated specialist but the tribunal heard this did not materialise.

Barrett also scheduled one-to-one meetings with Blewitt in June 2022 but the meetings were cancelled or rescheduled and ultimately did not go ahead.

The tribunal heard he had no direct communications with his manager over this period and that neither his performance nor health challenges were discussed.

On 27 September 2022, Blewitt was told by Barrett he was being let go because of a decision to reduce headcount in the senior team.

Two days later, on 29 September, he was dismissed with immediate effect, with the stated reason being ill health. No further explanation was provided.

The tribunal also saw evidence that he did not receive pay for his notice period.

Judge's finding
Judge Tynan concluded that Blewitt was dismissed because the company found his health-related issues "time consuming and difficult to manage", and it was "unwilling to invest the necessary time and effort in that regard".

"The fact that the respondent never documented its concerns in writing, failed to document or minute any meetings or discussions with the claimant, and did not even confirm his dismissal in writing, points to an organisation that was entirely neglectful of its responsibilities in the matter," he added.

He found that while the company claimed it needed to reduce headcount, there was actually no such need, but "merely a desire to remove the claimant from the business in the most expedient way".

The judge concluded that he was wrongfully dismissed and discriminated against as a result of his disability.

Expert comments
Liz Stevens, professional support lawyer in the employment team at Birketts, said it was clear from the tribunal's findings that the employer had failed to follow "even the most basic procedural steps".

"It had disregarded occupational health advice, failed to document its concerns in writing and kept no records of meetings with the claimant. Crucially, there had been no formal capability process or any warning given of the potential for dismissal," she explained.

The employer's case was further weakened by its failure to comply with tribunal orders and to attend both the merits hearing and remedy hearing, according to Stevens. "Engaging properly with the tribunal process, even if a claim has a high prospect of success, is always advisable to minimise potential losses," she advised.

Thanks to Freddie Clemo and People Management for the tribunal summary.

CUSTOMER SERVICE EXCELLENCE
- IS IT EMBEDDED IN YOUR ORGANISATION?

We're excited to introduce our NEW
Customer Service Excellence Programme
- a flexible, four-part development journey designed to assess, strengthen, and embed customer service standards that align with your organisation's values, behaviours, and strategic goals. Whether you're ready to embark on a full transformation or want to focus on priority areas, this programme is adaptable to your time, budget, and objectives.

🔹 Part One – Customer Service Excellence Assessment

"Temperature Check" of Current Standards

- A comprehensive audit of existing customer service practices
- Employee and customer feedback analysis to identify strengths and gaps
- A detailed report with key insights and actionable recommendations

Outcome: A clear understanding of where your service stands today and what is needed to enhance it.

🔹 Part Two – Defining & Developing Your Customer Service Excellence Workshop

Building a Bespoke Service Framework

- Define what exceptional service looks like for your organisation
- Develop service principles aligned with your values and goals
- Customise content for engaging, relevant team training

Outcome: A tailored framework that reflects your brand and organisational culture.

🔹 Part Three – Your Customer Service Excellence Training

Interactive & Practical Learning

- Engaging, high-impact training using real-world scenarios
- Equip staff with the mindset, skills, and techniques to excel
- Improve communication, problem-solving, and customer engagement

Outcome: A skilled, confident workforce delivering consistent, high-quality service.

🔹 Part Four – Review of Your Customer Service Excellence

Measuring & Embedding Long-Term Impact

- Assess training impact using feedback, performance data, and follow-ups
- Offer coaching, refresher sessions, or action planning
- Support lasting improvements and a culture of excellence

Outcome: Measurable results and a sustainable approach to outstanding customer service.

Want to know more?

Contact Natalie Cellamare, People & Culture Development Consultant to discuss how we can tailor the programme bespoke to meet your needs - natalie@SmartHR.co.im

ADMIN OFFICER WINS £29K AT TRIBUNAL AFTER MINISTRY OF JUSTICE REFUSES WFH REQUEST

Judge rules claimant's requests to work remotely because of menstrual health issues were not consistently granted and subsequent attendance warnings amounted to disability discrimination.

An administrative officer at the Ministry of Justice has been awarded £29,065 in compensation after her requests to work from home on consecutive days because of menstrual health issues were refused by her employer.

The central London tribunal heard that Ms G Platukyte, who worked in the secretary of state for justice's office, suffered from debilitating menstrual symptoms including migraines, intense pain and vomiting. Although her manager had previously agreed to adjustments that allowed her to work from home when she could not attend the office, this arrangement was later withdrawn.

She was subsequently informed that she must attend the office or take sick leave, even during the three to five consecutive days per month when her symptoms were most acute. As a result of these health-related absences, she was subjected to discrimination arising from disability after receiving "unsatisfactory" attendance warnings, the tribunal ruled.

In its judgment, the tribunal concluded that Platukyte had suffered significant injury to feelings including severe and sustained stress, anxiety, loss of self worth and strain on personal relationships over a period of around 17 months, which the tribunal found was down to the discriminatory actions of her employer.

Platukyte's £29,065 award included £24,000 for injury to feelings and £5,065 in interest.

Background

Platukyte was employed as an Administrative Officer at the Ministry of Justice and brought a tribunal claim alleging disability discrimination and a failure to make reasonable adjustments under the UK's Equality Act 2010. She argued that the organisation failed to allow her to work from home when experiencing menstrual symptoms, contrary to occupational health advice.

The tribunal was told that she experienced a range of debilitating symptoms linked to her disability, including menstrually associated migraines, severe abdominal pain, vomiting, loss of consciousness, heavy bleeding, severe constipation, excessive gas, bloating and piles.

These symptoms often prevented her from commuting to the office for around five days each month. However, she maintained she was able to work from home during these episodes.

Initially, Platukyte's managers permitted her to work from home as an adjustment but, in March 2022, this arrangement was withdrawn, with the claimant being informed by email on 4 March that, starting the following week, she would be required to attend the office in person five days a week.

From that point, she was required to attend the office full time unless she received same-day approval from her line manager, who would access requests based on business needs. If remote work was not authorised, she had to take sick leave.

Although Platukyte did not specify exact dates in her claim, the tribunal identified multiple instances when her requests to work from home as a result of symptoms were either denied or only partially granted.

For example, on 7 November 2022, her request to work from home because of an impending migraine was refused, with the respondent citing a lack of suitable remote tasks.

On 28 February 2023, another request was initially denied on business grounds but was later approved, allowing her to work from home the following day.

On 19 September 2023, Platukyte made a request via WhatsApp to work from home the next day, which was approved, and she attended the office for the remainder of that week.

The tribunal heard that her employer accepted issuing Platukyte with attendance warnings on 18 January and 9 October 2023. The second written warning was rescinded following her appeal, effective 10 April 2024.

These warnings were issued because of several recorded sickness absences between 8 April 2022 and 19 September 2023.

The tribunal found that most of the absences were linked to her disabilities or treatment she was receiving. The respondent conceded it could not discharge the burden of proof necessary to justify its actions under the Equality Act 2010.

Platukyte's evidence that she was effectively forced to take sick leave or attend work in a vulnerable and sometimes semi-conscious state was not challenged. Nor was her testimony regarding the emotional and physical toll of her condition and treatment.

The tribunal accepted her account, finding that she experienced "severe and sustained stress anxiety and loss of self worth", including episodes of depression, tearfulness, and social withdrawal, serious strain on her marriage and relationships, stress-induced hair loss and loss of confidence, sleep disturbances and difficulty recovering because of the need to prepare for formal meetings.

Although she did not provide medical evidence of a clinical diagnosis of depression or treatment for low mood, the tribunal accepted that she felt "depressed".

Ian Byfield, operations manager at the secretary of state for justice's office, apologised to Platukyte during the proceedings, acknowledging the distress caused by the failure to apply the recommended adjustment and the imposition of attendance warnings.

While home working was not always denied after March 2022, it was inconsistently granted. Byfield explained that her employer had misunderstood the occupational health advice, mistakenly believing that remote working could only be considered if it was compatible with business needs.

The tribunal accepted this explanation as credible and consistent with the organisation's conduct.

Platukyte also alleged that the attendance warnings harmed her internal promotion prospects. She referred to five roles of interest, including two executive officer positions. However, the tribunal found no evidence that she was rejected because of the warnings.

Judge’s comments

The tribunal found that Platukyte had experienced “significant injury to feelings” as a result of the failure to make reasonable adjustments and the imposition of attendance warnings. The emotional impact of this discrimination was sustained over a period of 17 months, from 7 November 2022 to 20 April 2024.

During this time, the tribunal accepted that Platukyte experienced ongoing emotional distress, including anxiety, depression, social withdrawal, loss of self worth and motivation and sleep disturbance. She also attended work on days when she was unwell because of the policy shift.

The tribunal considered but rejected her claim for aggravated damages. While it found that the respondent had failed in its duties, its action stemmed from policy misinterpretations rather than malice, or high-handed conduct. It noted the respondent’s responsible behaviour during proceedings, including acknowledging liability and offering an apology.

Employment judge Brown concluded that Platukyte’s injury to feelings fell within the middle band of the Vento guidelines – which are used by employment tribunal judges to determine compensation for injury to feelings – reflecting the sustained but not extreme nature of the emotional harm.

However, the judge also noted that Platukyte remained employed and had not experienced “any damage to her career”.

Expert comments

Natalie Parkinson, head of employment litigation at AfterAthena, said the case illustrated the importance of organisations handling adjustments requests from potentially disabled employees with care.

“The employer took several positive steps, including consulting occupational health and, in the broader sense, following absence management procedures. However, they failed to fully understand and implement recommended adjustments,” she explained.

“Occupational health advised allowing the employee to work from home when symptomatic. Instead of implementing this as a reasonable adjustment, the employer treated it as a request subject to business needs.”

Parkinson added that this case underscored the need for employers to clearly understand and apply recommended adjustments, and that a practical approach would be to meet with the employee to discuss and agree on reasonable adjustments. “Once agreed these should be clearly communicated to relevant managers and reviewed regularly to ensure their continued effectiveness,” she explained.

Thanks to Mahalia Mayne and People Management for the tribunal summary.

ISLE OF MAN EMPLOYMENT LAW CHANGES IN 2025

New employment rights for shared parental leave and parental bereavement leave will be introduced in the Isle of Man from 1 November 2025.

The new rights are the final provisions of the Employment (Amendment) Act 2024 to be introduced, providing crucial support for parents during challenging times and ensuring the continued commitment to supporting family-friendly policies.

Parental Bereavement Leave

Under the new rights, parents will be entitled to take an additional two weeks' leave following the death of a child under the age of 18, including cases of stillbirth.

Leave will be able to be taken as a single two-week block or two separate one-week blocks within the first year after the child's death.

Expectant parents who suffer a miscarriage will be entitled to one week of leave.

Shared Parental Leave

Shared parental leave will enable parents to share up to 50 weeks of leave to care for a new baby in the first 12 months of their baby's life. Both maternity and paternity leave will still be available as options for new parents.

A similar right to shared parental leave will be implemented for adoptive parents at the same time.

Both shared parental leave and parental bereavement leave will be accompanied by the introduction of new Government allowances– namely parental bereavement allowance and shared parental allowance. For employees who are eligible, parental bereavement allowance will be paid for up to two weeks in the case of the death of a child or stillbirth after 24 weeks of pregnancy, or one week in the case of miscarriage before 24 weeks of pregnancy. Other eligibility criteria will apply.

Whilst draft shared parental leave guidance is available, we await final employment rights guidance documents from the Government and then we will contacting our clients' to review and update their policies, procedures, and staff handbooks. Further updates will be provided in future.

DISABLED COUNCIL WORKER AWARDED £48K AFTER BOSS TOLD HIM 'I WOULD JUST RESIGN IF I FELT LIKE YOU'

Judge rules employee was unfairly dismissed, victimised, and harassed for his disability as council also refused to give evidence at tribunal.

A parish council worker who was told “I would just resign if I felt like you” by his boss after disclosing his disability has been awarded more than £48,000 at tribunal for discrimination and unfair dismissal.

The Liverpool tribunal heard that Luke Trevaskis was dismissed with immediate effect in the weeks following the meeting, in which he also raised concerns about how the working environment at Puddington Parish Council was affecting his health.

The council refused to give any evidence or assistance to the tribunal, with one councillor even threatening the tribunal with a prosecution for criminal harassment for writing to her with updates on the proceedings. The judge noted that this undermined the council’s credibility.

Employment judge Barker ruled that Trevaskis was victimised, harassed and unfairly dismissed and that the council failed to make reasonable adjustments. The claimant was awarded a total of £48,913, including aggravated damages for injury to feelings.

Background

Trevaskis was appointed as Puddington Parish Council’s proper officer and responsible financial officer in January 2020 and worked part time.

At a meeting on 28 June 2023, Trevaskis presented a letter that raised concerns of a serious failure in governance by the council for failing to acquire public liability insurance. Trevaskis also stated that he was “working under protest”.

The tribunal found that Trevaskis had never been given an appraisal, despite promises that his pay would be reviewed, and he had not been paid his expenses.

He told the tribunal that a number of council members were also critical of his efforts to comply with the council’s statutory obligations after he warned them about the risks of being uninsured. Trevaskis had attempted to buy insurance but the councillors failed to authorise the payment, so the policy was never purchased.

A few weeks later, Trevaskis met with councillors Alison Raine and Jennifer Sneddon to discuss the letter. During that meeting, he disclosed his disability – which was not specified in the tribunal document – and raised concerns that the hostility he was experiencing in the workplace was affecting his health.

He also said some councillors were insisting that he was available throughout the week and at short notice, even though his contract only required him to work an average of five hours a week.

In response, Raine said: "Do you actually want to work here? I would just resign if I felt like you." Sneddon then suggested that Trevaskis's role could be covered by a local volunteer, saving the council money.

On 1 August, Trevaskis received a letter from Raine dismissing him with immediate effect, saying that there had been a "complete breakdown in their working relationship" and they had made "a number of efforts to engage" with him.

Trevaskis replied the following week, saying that he considered the letter to be disability discrimination and a "retaliatory decision" in response to the grievances he had raised.

After his dismissal, Trevaskis failed to return his laptop and the council's papers and documents stored at his home. He said this was because of data security concerns and his unwillingness to fund the return of the items himself, particularly as he was still owed salary and other payments. As a result, on 6 January 2024, Raine sent him a message threatening to contact the police.

Later that month, Cheshire Police contacted Trevaskis regarding allegations of theft made by the council; however, no charges were brought against him.

The council took 12 months, until August 2024, to arrange for a secure courier to collect the files and laptop. The tribunal found that Trevaskis was "rightly aware" of his data protection responsibilities.

The council also reported Trevaskis to the Cheshire Association of Local Councils for misconduct and theft of its documentation. It said: "We shockingly discovered that he had left us uninsured as a council since 2021 and knowingly lied in meetings and in minutes that he had renewed the policy when he hadn't. Thankfully nothing has happened whereby we could have needed cover and we now have arranged cover."

The judge found this statement was "factually inaccurate", saying the council was "attempting to pin the blame for its failures on the claimant" and that the accusations were a "deliberate attempt to undermine him and damage his professional standing".

Colleagues of Trevaskis at his other places of work reported that members of the parish council had made remarks to them, including references to the theft allegation against Trevaskis. The judge said these actions were "at best reckless and at worst malicious".

Trevaskis told the tribunal he had been "badly treated" by the council and subjected to gossip and rumours, which he said caused him significant personal distress and harmed his professional reputation.

A series of resignations followed at Puddington Parish Council, resulting in the council being mothballed. Judge Barker claimed the councillors' resignations appeared to be a "misguided attempt to evade their responsibilities" in the employment tribunal.

The tribunal heard that “hundreds of emails” were sent to the press, local radio presenters and Cheshire West and Chester Council ward councillors, speculating about Puddington Parish Council’s collapse and questioning whether Trevaskis was responsible.

The judge accepted that this had a “hugely detrimental impact” on Trevaskis’s mental health and private life.

Judge’s comments

Barker found that Trevaskis was victimised when he was dismissed a short time after disclosing his disability and requesting adjustments and was given no proper process or right of appeal. It was also judged to be unfair dismissal as the council had not demonstrated that the sacking of Trevaskis was within a “range of reasonable responses”.

He ruled that the council also failed to put in place reasonable adjustments for Trevaskis, saying that its practice of “expecting the claimant to be responsive and available to deal with parish queries throughout the week, including outside working hours”, put the claimant at a “substantial disadvantage” and exacerbated his condition.

Raine’s comment that she would “resign if she felt like him” and Sneddon’s remark that replacing him with a volunteer would save costs for the council were all harassment relating to disability, the judge concluded.

He said these comments had the effect of violating Trevaskis’s dignity and “creating an intimidating, hostile, degrading, humiliating or offensive environment”.

Lawyers’ comments

Katherine Cooke, senior associate in employment at Higgs, said employers should always engage with tribunal litigation, warning that failure to do so would result in an expensive judgment in favour of the claimant. She added: “If a dispute arises it is not a good idea to encourage an employee to resign. A better approach is to investigate and see if it is possible to address an employee’s concerns.

“In particular, it is best not to summarily dismiss an employee after they have made allegations about disability discrimination and failure to comply with statutory duties.”

Businesses should keep the circumstances of termination of employment confidential, as far as possible, Cooke continued: “The respondent made unsubstantiated allegations that the claimant had stolen property and implied he was responsible for the parish council mass resignation event.”

The harm to the claimant’s reputation and the additional stress and anxiety that was caused led the tribunal to award aggravated damages.

The case also drew attention to potential governance issues within parish councils, especially regarding HR practices and legal compliance, said Dawn Dickson, partner at Scottish law firm Anderson Strathern.

“Public bodies must take legal claims seriously and respond appropriately,” she added. “Parish councils and similar bodies should review their employment policies, training and oversight mechanisms to avoid future litigation.”

Thanks to Isabel Jackson and People management for the tribunal summary.

OUTSOURCING LEARNING AND DEVELOPMENT – FLEXIBLE SOLUTIONS TO SUPPORT YOUR ORGANISATION

What does your 'to do' list tell you?

Often, we procrastinate by placing the tasks we least enjoy at the bottom of our list – especially those outside our daily operational responsibilities. Learning and development frequently falls into this category. It can feel time-consuming, overwhelming, or even outside your area of expertise. Sometimes, it's simply a matter of not knowing where to start.

The benefits of hiring SmartHR to support your employees and contribute to the success of your organisation:

• **Specialist expertise** from qualified professionals in learning, development, and organisational culture.
• **An extra pair of hands** to help you achieve your objectives efficiently.
• **Bespoke solutions tailored to your needs** – we don't believe in a one-size-fits-all approach. Every organisation has different requirements and budgets, and we adapt accordingly.
• **Experts in coaching, mentoring, wellbeing, and neurodiversity,** ensuring a truly inclusive approach to development.
• **Identify your culture reality** and allow us to be honest in providing culture solutions that are relevant to you.
• **Talent retention and loyalty** – we help your people thrive, encouraging long-term commitment and growth.
• **Empowering employees** to be the best version of themselves, fostering a culture of continuous personal and professional development.
• **Future-focused strategies** – we leave behind tools and frameworks to ensure ongoing improvement.
• **Follow-up support to keep you on track,** with the option of ongoing assistance for future needs.
• **Flexible engagement options** – retain us daily, weekly, monthly, or on an ad-hoc basis, either onsite or remotely.
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• **Building workforce resilience** to help your teams adapt and perform through change.
• **A trusted and reliable service,** consistently aligned with your business goals.

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SMARTHR'S PEOPLE AND CULTURE DEVELOPMENT PACKAGES

At SmartHR, as well as providing retained and 'pay as you use' **people management packages**, we also provide a broad range of **people and culture development solutions** - and we can create a package bespoke to your needs. Below are a few examples of our people and culture support packages:

1. People Development Audit Package
- Review and audit of existing learning and development framework and policies
- Training Needs Analysis / Skills Gap Analysis
- Review of professional development in line with industry regulations
- Review of performance management framework and alignment to development processes
- Comprehensive report with insights and strategic recommendations
- Creation of a new / updated strategic learning and development framework

2. Culture Development Audit Package
- Organisational culture review and audit using an employee engagement survey
- Analysis and interpretation of survey data
- Comprehensive report with insights and recommendations

3. Retained People and Culture Development Package
- Combined People and Culture Development Audit, report and strategic recommendations
- Skills and Knowledge Matrix development
- Creation of a new / updated strategic people and culture development framework
- Plus an agreed number of days of onsite and/or offsite support to focus on delivery of priority areas within a specific timeframe e.g. 1 or 2 days support per month for a 6 or 12 month period

4. Wellbeing Audit and Support Package
- Creation and delivery of a wellbeing audit via a wellbeing survey
- Review of existing wellbeing strategy, framework and plans
- Detailed report with analysis and strategic recommendations
- Plus an agreed number of days of wellbeing-focused support within a specific timeframe e.g. this could deliver one wellbeing-focused workshops on a quarterly basis

5. PAYU People and Culture Development Services
- As-needed access to expert people and culture development support
- Ideal for businesses needing flexible, ad-hoc assistan

If you would like to discuss any of the above, please contact Gail, Natalie or Andrea or email contact@SmartHR.co.im

TOP SALESWOMAN SUCCEEDS WITH MATERNITY DISCRIMINATION CLAIM AFTER SHE ALLEGED BOSS 'LAUGHED AT' REQUEST TO RETURN TO OLD JOB AFTER LEAVE

Tribunal rules it was 'irrational' not to reinstate award-winning web team member's role, after she had generated £1.3m in sales for the business in less than a year.

A former business software consultant who claimed to have been "laughed at" by her female boss after asking to return to her original role following maternity leave has succeeded in her claim for maternity discrimination.

The Manchester tribunal heard that Sarah Lindup, described as a "very successful" member of Bright HR's web sales team, was excluded from the team and reassigned to a different one, despite receiving written confirmation from her manager Liam Regan, the head of telesales, that she would be reinstated with protected earnings.

The tribunal was told that Lindup met with newly appointed head of sales Jayde Stott to discuss her return. When Lindup expressed her desire to rejoin the same team, she claimed that Stott "laughed at me as though my returning to the web team was a ludicrous idea".

The tribunal observed it is "striking" that Stott referred to the meeting as a "mum-to-mum" chat, despite it being a formal discussion, adding that this significantly undermined or degraded the claimant's employment status. It said that Stott was "deliberately defensive and potentially insensitive", and likely coming across as "uncooperative and obstructive, impatient and insensitive", while stonewalling Lindup's return.

Stott had never worked with Lindup before and was unaware of Lindup's pre-maternity performance, which included winning two internal awards for her excellent sales figures and being recognised as a highly effective team player. The tribunal criticised the decision made by Stott on October 26, 2022 to exclude Lindup as "irrational", noting that basic inquiries would have shown her strong track record.

The tribunal concluded that from 15 November 2022 onwards, Lindup was "treated unfavourably" with "disastrous personal consequences for her income". The tribunal found that this decision was closely linked to Lindup's maternity leave, as it was made during what Stott repeatedly described as a "mum-to-mum" meeting.

Background

Lindup was employed by BrightHR from 7 September 2020 until May 2023 as a business software consultant. Her employment contract entitled her to statutory maternity leave.

On 17 June 2021, she was promoted to the web team in recognition of her “good performance, compliance, and values”. The web team was responsible for handling high-value inbound sales leads, which generated significant commission-based earnings.

Shortly after her promotion in 2021, Lindup became pregnant. She continued to work up to the eighth month of her pregnancy and began maternity leave on 8 February 2022. At the time, her line manager and head of sales was Mark McMinn.

On 11 April, during a visit to BrightHR’s head office, she claimed that McMinn confirmed she would return to the web team after maternity leave.

On 15 May 2022, while still on maternity leave, Lindup received two internal awards in a ceremony at Hotel Football in Old Trafford, the “Millionaire” and the “Ally” award for her high performance in the web team. She had generated £1.3m in revenue over 12 months, despite not working the full year. McMinn confirmed that Lindup had “consistently performed” before her leave.

On 22 July, Lindup attended a keep in touch (KIT) day. Weeks later, on 17 August, she received an email from Regan, confirming she would receive £1,250 per month in protected earnings for the first three months after her return.

On 19 August, Lindup received a second email from Regan, which she described as written confirmation of her reallocation to the web team. Lindup claimed that the £1,250 reflected her position and income on the web team, and if she was considered to be a member of another team, then the protected earnings figure would have been closer to £750 per month.

On 26 October, Lindup and Stott had a meeting to discuss her return to work the following month.

During the meeting, Lindup asked whether Stott was aware of her agreed return to the web team on 15 November and her entitlement to protected earnings for the initial three months post-return. Lindup alleged that Stott laughed dismissively at the suggestion of her returning to the web team and told her “so let’s move on. Secondly, no one gets protected earnings anymore, so you won’t be getting that either”.

Stott denied this version of events in her witness statement. She claimed she initially misunderstood the reference to protected earnings, assuming it applied only to new starters, and said that she was unaware it applied to business software consultants (BSCs) returning from maternity leave. She stated she would need to clarify the matter internally with Regan and senior management.

The tribunal found no evidence that the meeting was formally arranged or why the format was chosen, but from Stott’s evidence, typically such meetings would be conducted by a line manager. However, Stott, several levels above Lindup, decided to lead the meeting herself, which she justified as an opportunity to meet Lindup in her new role.

The tribunal noted that it was “striking” that Stott referred to the meeting as a “mum-to-mum chat,” despite it being a formal return-to-work discussion.

The tribunal acknowledged Lindup's eagerness to confirm her return to the web team as the meeting's primary focus.

Immediately after the meeting, Stott emailed Lindup, confirming: "Thanks for catching up. It was lovely to meet you and Evie, as discussed, your return date will be Tuesday 15 November at 9am." Stott also stated that flexible working would not be necessary, Christmas leave would be reviewed, and due to monthly campaign changes, Lindup's placement on the web team was not guaranteed.

Lindup responded immediately, referencing a prior agreement with Hannah Jenkins, another manager at Bright HR and Regan confirming her return to the web team and protected earnings. She offered to locate the relevant correspondence and emphasised that, despite any structural changes, her return to the web team had been agreed. In a follow-up, she noted her assignment to the team was due to strong past performance and argued it would be unreasonable to exclude her due to performance during her maternity leave.

Stott replied that the agreement predated her employment and that the team structure had since changed. She proposed discussing the issue further on Lindup's return. Lindup requested a formal meeting with a notetaker; Stott acknowledged this and reconfirmed the 15 November start date.

The tribunal observed that Stott failed to directly address Lindup's primary concern: confirmation of her return to the web team following two weeks in "grad bay". No reassurance was provided by Stott and Lindup's mother, provided corroborating evidence based on a conversation with her daughter immediately after the call.

The tribunal accepted this as contemporaneous support for Lindup's concerns, which were also evident in her emails.

In her witness statement, Lindup described Stott's tone as "mocking and intimidating" and said she was shocked by what she perceived as a hasty and uninformed refusal to honour the prior agreement.

By 29 October, the protected earnings issue was resolved. It was later clarified that Lindup would receive earnings at the web team equivalent rate, but the tribunal found it significant that Stott communicated this before verifying the details.

On 15 November, Lindup returned to work and entered a standard two-week reintegration phase known as "grad bay."

She claimed that Stott refused to meet with her on the first day. The following day, Lindup filed a grievance alleging bullying and discrimination.

The tribunal further heard at the end of her grad bay on 29 November, Lindup expected to return to the web team but was assigned to the partnership team, which provided "lower quality" data. The tribunal noted that while the exact quality of this data was unclear, it was not as advantageous as the web team data.

On 1 December, Lindup contacted Alan Price, CEO at BrightHR, to restate her confirmed return to the web team and filed another grievance on 2 December. This grievance was not upheld, and her appeal was rejected in February 2023.

Lindup claimed her income dropped from £65,000 to £24,000 annually after returning to work, due to being excluded from the higher-value web team leads. While the tribunal could not find accuracy or reliability of Lindup's figures, it highlighted that upon her return to work after her maternity leave she suffered a very "significant drop" in her income – less than half of what it had been before her maternity leave.

The tribunal further noted that BrightHR defended its decision by citing Lindup's failure to meet performance targets from December onwards, arguing that "extrapolating" from her post-return performance showed she wouldn't have performed well in the web team.

However, Lindup argued that the lower-quality data given to her hindered her performance, and that had she been placed in the web team, she would have had access to better leads and higher sales targets.

The tribunal agreed, finding that she had been denied the opportunity to demonstrate her sales abilities and earning capacity due to the inferior data provided after her return.

Judges comments

Employment Judge Holt, said: "It was irrational for the respondent not to redeploy their award-winning team member, who only months earlier they had feted, back to the position where she had a track record of bringing in £1.3m in sales for them in less than a year.

"On the balance of probabilities, the only conceivable reason for the sudden vault face in the respondent's attitude towards Lindup, and the resulting massive loss of remuneration, was her maternity leave."

He continued: "The maternity leave was not a background, contextual issue. We find that this was the fundamental matter and the vehicle whereby, through Stott, Lindup could be 'gifted' the disadvantageous role." As a result, Lindup's complaints of maternity discrimination were well-founded.

A remedy hearing will be scheduled at a later date.

A Bright HR spokesperson said they would be appealing the decision, and it would be inappropriate to comment further at this stage.

Employment lawyer comments

Shazia Shah, employment partner at Irwin Mitchell, said employers should not assume a returning mother is "less ambitious, less committed, or open to a lesser role".

She emphasised that maternity leave should not be treated as a "career interruption" that resets or reduces a woman's status. Shah also highlighted the importance of carefully chosen language in internal communications, noting that even well-intentioned phrases like "easing her back in" can betray "unconscious bias" if not applied uniformly to all employees returning from leave.

Furthermore, Shah stressed the significance of ensuring parity. "If job changes are being made for business reasons, they must be applied consistently across all employees, not selectively to those returning from maternity leave," she added.

Thanks to Mahalia Mayne and People Management for the tribunal summary.

POTENTIAL FUTURE CHANGES TO UK EMPLOYMENT LEGISLATION IN 2026 AND 2027

There are various potential future changes to UK employment legislation proposed via the UK's Employment Rights Bill, including:

- Trade union rights
- The right to statutory sick pay from day one of sickness
- Collective redundancy protective award doubling from 90 days to 180 days
- Paternity leave becoming a day one right
- Unpaid parental leave becoming a day one right
- Whistleblowing and disclosure relating to workplace sexual harassment
- The establishment of a Fair Work Agency
- Voluntary requirement for employers with 250+ employees to publish action plans on gender pay gaps and menopause action plans
- Restricting the ability for employee to use 'fire and rehire' re variation to terms of employment
- Extending the time limit to bring tribunal claims from 3 months to 6 months
- Requiring employers to take "all" reasonable steps to prevent sexual harassment
- Introducing a new provision requiring employers to not permit harassment from a third party (such as a client or customer)
- Collective consultation during redundancy
- Giving zero hours and low hours workers a right to a guarantees hours contract
- Making flexible working a default day one right (apart from when it is not reasonably feasible)
- Extending protections for pregnant workers
- Day one right to take bereavement leave
- Also, a review of the Carer's Leave Act 2023 including the benefits of introducing paid carer's leave

The UK Government previously stated it would make **unfair dismissal a day one right from 2027**. The Employment Rights Bill also introduced a new concept called an 'initial period of employment', likely 9 months, during which employers could dismiss staff using a simpler process. However, the House of Lords has voted to remove the initial period entirely. Instead, they have amended the Employment Rights Bill to reduce the qualifying period for unfair dismissal from 2 years to 6 months.

The Employment Rights Bill will now return to the House of Comments. The Government may reject the Lords' amendment using its majority to restore the original proposal. The Lords must then decide whether to push back or step aside.

We will provide further updates regarding agreed future changes to UK (and IOM) employment legislation and their implementation dates in future eNewsletters.

DISABLED BMW WORKER WHO WAS SPIED ON BY EMPLOYER DURING SICK LEAVE WAS UNFAIRLY DISMISSED, TRIBUNAL RULES

Panel says it would have been 'reasonable' for the company to offer the claimant a less physically demanding role and finds the absence warning issued was discriminatory.

A disabled BMW factory worker, suffering from chronic back pain, was unfairly dismissed and discriminated against after managers authorised covert surveillance over suspicions that he was exaggerating his symptoms, a tribunal has ruled.

The Reading tribunal heard that Mohamed Kerita, who had experienced ongoing back issues since 2017 and was signed off work, became the subject of suspicion by his managers while on long-term sick leave.

The company's HR manager and absence lead instructed security firm G4S to conduct surveillance, suspecting that Kerita was exaggerating his condition to receive sick pay, which they believed might constitute gross misconduct.

Footage gathered by G4S showed Kerita walking approximately three miles over a 90-minute period and bending down to examine the side of a car. While Kerita never claimed he was incapable of walking, BMW accused him of being dishonest and dismissed him for misconduct.

However, the tribunal ruled his dismissal was both unfair and discriminatory and found that the company failed in its duty to make reasonable adjustments for his disability.

Employment judge Hawksworth said it could be inferred that BMW managers may have "had a level of distrust or hostility towards associates with back conditions" and were "quick to conclude that a person with a condition was not being honest about their symptoms".

The panel also found that "none of the films... showed Kerita's face", and that BMW representatives "jumped to conclusions based on the nature of his condition".

Background

Kerita had worked as an assembly associate at BMW's manufacturing factory from October 2015 until his dismissal in May 2023, which occurred during a long-term period of absence because of his health condition.

As a result of the physically demanding nature of the job, BMW entered into an agreement with Nuffield Health to provide onsite physiotherapists who oversaw employees' treatment and assisted in reducing repetitive strain injuries through job rotation.

The company aimed for employees to be able to perform a minimum of four job roles, allowing flexibility in staffing.

In March 2017, Kerita developed “severe” back pain after attempting a new task. This led to recurring flare-ups over several years, though he remained in work with the support of physiotherapy.

In July 2020, following another episode, his GP advised adjusted duties, and both his GP and physiotherapist recommended that he perform lighter tasks during his absences.

In February 2021, Kerita attended an informal absence meeting with his line manager, Amy Reed, and was warned that further issues might lead to disciplinary action. He was later diagnosed with disc protrusion, which can cause pain and weakness in the back.

Following this, in June, Kerita submitted a letter from his GP to his manager. He was referred to occupational health, which found that his regular duties were worsening his condition and recommended a workplace assessment along with lighter work.

Despite these recommendations, his condition did not improve. Kerita was off work from 6 to 27 December and returned on 4 January 2022. A formal review of his absences was held on 19 January.

During the meeting, his line manager explained the discussion would cover sickness absences from 2020 and 2021. Kerita was then issued a first formal discussion letter and an absence warning, with a 12-month review period, for his last three absences, the most recent of which was down to back pain in December 2021.

Kerita appealed, with his GP pointing out that the recommended adjustments had often been ignored. The appeal was upheld, and no action was taken by BMW to find a suitable role, the tribunal heard.

In May 2022, Kerita’s trade union requested a final trial in a suitable role, but BMW did not respond. Around the same time, his physiotherapist also warned that continued work was exacerbating his condition.

Between September 2022 and January 2023, Kerita attended several absence review meetings with Richard Darvill, the absence manager. Kerita said that he continued to find it difficult to walk without experiencing pain and dizziness and asked if he could return to a more suitable role.

n February 2023, Kerita was seen by a pain management clinic. The consultant’s letter said that Kerita’s back pain had deteriorated because of psychosocial factors, such as anxiety and work pressures. The consultant emphasised that the pain was chronic and needed to be managed.

On 2 March 2023, a BMW physiotherapist informed Darvill that Kerita had been signed off work by his GP for a further two months and would begin pain rehabilitation on 13 March.

The tribunal heard that, in a subsequent conversation, the physiotherapist expressed concerns that Kerita should have returned to work by then, stating that he was unable to explain the level of pain Kerita reported, and why he remained unfit for work.

However, the physiotherapist had not discussed these concerns with Kerita nor obtained consent to share them with management.

These remarks raised suspicion among Kerita's managers. As a result, Akhil Patel, the HR manager at the hearing, and Darvill instructed G4S to conduct surveillance on Kerita, an action the tribunal described as "highly unusual".

G4S surveillance operatives monitored Kerita and submitted a report to the respondent showing footage of Kerita walking approximately three miles over 1.5 hours and bending once to examine a car. It noted "no indication" of lower back, leg or shoulder pain, sickness or dizziness", but the tribunal said that the footage was filmed from behind and did not show Kerita's face – making it unreliable for assessing physical pain.

The tribunal found that managers had misunderstood Kerita's statement. They believed he had said he could only walk 20 to 30 metres, when in fact he had consistently reported being able to walk for longer but experiencing pain and symptoms such as dizziness when doing so.

On 20 March, Darvill sought additional funding from a senior manager, Wayne Smith, for further surveillance "to ensure [a] robust outcome", though none was conducted. On 19 May, Kerita was invited to a disciplinary hearing for alleged fraudulent sick pay claims and unacceptable absence.

Following the hearing, the disciplinary meeting was led by Gerry McCabe, group leader in assembly, who dismissed Kerita for gross misconduct on the grounds of fraudulent sick pay claims and an unacceptable level of absence. This was confirmed in a dismissal letter dated 26 May 2023, which also advised Kerita of his right to appeal. Kerita appealed that same day, but the appeal hearing on 20 July ultimately upheld the decision to dismiss him.

Judge's comments

The tribunal found that BMW unfairly dismissed Kerita after wrongly believing he had "fraudulently" claimed sick pay. This belief lacked reasonable grounds, as Kerita had been unfit for work, as confirmed by his GP, and was not receiving sick pay during the surveillance period, the tribunal noted.

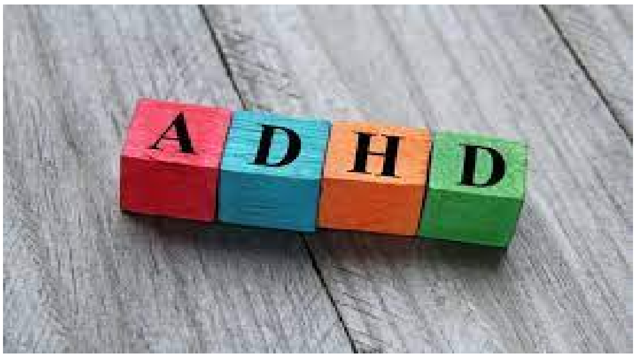
The tribunal also ruled that Kerita was disabled under the Equality Act from 25 November 2020, and BMW "knew or ought to have known" this based on an occupational health adviser's report.

The panel further acknowledged that despite Kerita's repeated requests to be moved to less physically demanding roles, and several roles existed, the company refused to adjust his duties. Instead, it continued to expect him to perform work in physically painful conditions, contributing to a cycle of worsening health and further absences. "It would have been reasonable for the respondent to move the claimant to a role which was less physically demanding at some stage between 25 June 2021 and 15 March 2023," the tribunal said. The panel also found that the attendance warning issued was "unfavourable treatment", putting Kerita at risk of dismissal under absence procedures.

Hawksworth said: "We have found that the respondent made assumptions about what Kerita had told them about his ability to walk and about the G4S surveillance film." The judge and tribunal concluded that the respondent had not met the "burden of satisfying us that the decision to dismiss him was not because of his back condition". **As a result, Kerita's claim of direct discrimination in relation to his dismissal was upheld. Additionally, his claim for failure to make reasonable adjustments, disability discrimination and unfair dismissal were all successful.** A remedy hearing will be arranged at a later date.

Thanks to Mahalia Mayne and People Management for the tribunal summary.

IT EXECUTIVE DISCRIMINATED AGAINST AFTER FIRM FAILED TO OFFER ADHD TRAINING, TRIBUNAL RULES



Tech company placed neurodivergent employee at 'substantial disadvantage' by failing to make reasonable adjustments, panel finds.

A senior IT worker diagnosed with ADHD was discriminated against after her employer failed to provide staff with compulsory training on neurodiversity, a tribunal has ruled.

The London Central tribunal heard that Bahar Khorram's condition significantly affected her ability to multitask and meet deadlines. After disclosing her ADHD to her manager, a workplace needs assessment was conducted, which recommended several potential adjustments, including setting achievable tasks and providing neurodiversity and ADHD awareness training. However, the respondent, IT services and consultancy company Capgemini, failed to implement these provisions.

The panel said the training could have helped Khorram's colleagues understand how best to work with her and reduce some of the disadvantages she faced in the workplace. While Khorram's complaint of harassment relating to disability was dismissed, her complaint of failure to make reasonable adjustments was successful.

Background
Khorram began working for Capgemini in June 2023 as presales market lead – a position that paid £120,000 annually.

She was diagnosed with ADHD in November 2022, and told the tribunal that her condition significantly impacted her ability to multitask, manage unstructured tasks and cope with ambiguity. These challenges caused Khorram anxiety and reduced her ability to complete tasks on time without appropriate support.

In a meeting on 28 July 2023, Khorram's objectives for her six-month probation period were discussed. They were described by the tribunal as "somewhat stretching".

Khorram informed her line manager, Steve Baldwin, of her ADHD diagnosis, on 8 September 2023. A week later, Baldwin told the claimant she would be offered additional support and advised her to speak to occupational health.

Following his advice, Khorram attended a workplace needs assessment. The resulting report contained a long list of potential adjustments, which included setting achievable and realistic tasks, providing neurodiversity and ADHD awareness training, the provision of coaching sessions focused on time management and coping strategies, as well as coaching sessions alongside a line manager.

Khorram later met Robyn Wright, an HR engagement manager, to discuss the report. Wright noted that, although Khorram was keen to try ADHD workplace coaching sessions, she would not be comfortable undertaking training, which was clearly directed at her, alongside other team members.

Following the report from occupational health, Khorram emailed Baldwin and Wright, stating: "It appears that, regardless of my efforts and achievements in meeting probation objectives, I continue to receive obstacles and negative feedback." Khorram said she would like Baldwin and herself to attend the training on managing ADHD, and that she would be taking the rest of the week off. The substance of the email was never responded to, although Baldwin did reply that evening to say that he was disappointed that she was taking time off work without discussing this with him or occupational health. Khorram's probation period was extended to the end of January. A probation review meeting took place on 10 January 2024, where it was found that Khorram was far from completing her objectives, several months after the deadlines.

The claimant raised a formal grievance later that month, stating that there had been "palpable tension" between herself and Baldwin from the beginning, and referring to his "intimidating behaviour and lack of confidence in her capability". She felt she had been presented with unattainable tasks and said the probation period had been more like an interview process. Additionally, Khorram said she had been dissuaded from raising a grievance and that she had been treated unfairly, bullied and discriminated against. The grievance was ultimately unsuccessful.

The final probation review meeting took place without the claimant present, on 31 January. A follow-up letter dated 2 February from Neil Davis confirmed that her employment would be terminated with immediate effect, with payment in lieu of notice. The letter pointed to ongoing concerns about her performance, as well as highlighting that the claimant had waited until 10:47pm the night before the probation meeting to raise her grievance.

Judge's comments

The panel found that Khorram was expected to multitask and work to deadlines, which placed her, as someone with ADHD, at a "substantial disadvantage". The additional objectives were also determined to be "setting her up to fail". "We find that there was some prospect of setting achievable and realistic goals at this stage, ameliorating the disadvantage suffered by the claimant in relation to multitasking and deadlines," the panel said. "This was not done and represented a failure to make reasonable adjustments."

In addition, the tribunal noted that neither the neurodiversity nor ADHD awareness training suggested in the workplace assessment report were taken up by Khorram's employer, adding that the cost would not have been a "prohibitive difficulty" for the business. This also amounted to a breach of discrimination law.

The respondent argued that the training was not implemented because the claimant had expressed that she did not want it. However, the tribunal heard that the claimant "did not want to be placed in a situation where it was obviously being delivered because of her with her team members". "We find that it would have been possible to arrange this training so that it did not put the claimant in an awkward situation," the panel said, adding: "The claimant herself did not need to attend the training, given that the point of training was to educate the team." The respondent also failed to make the reasonable adjustment of providing coaching sessions for Khorram and her line manager.

Thanks to Isabel Jackson and People Management for the tribunal summary.

SPEAKING A FOREIGN LANGUAGE TO EXCLUDE COLLEAGUES IS RACE DISCRIMINATION, TRIBUNAL RULES

Panel finds English care worker was treated less favourably because of her race after bosses spoke to each other in Polish during meeting.

A care worker experienced race discrimination and harassment when her colleagues excluded her by speaking in a foreign language during a meeting, a tribunal has ruled.

The Glasgow tribunal heard that Samantha Kellington-Craword, an employee at care home services provider Newlands Care Angus, had her dignity "violated" after she was excluded from a conversation held in Polish during a meeting with her three bosses.

Many of Newlands Care Angus's employees are Polish and some are unable to speak fluent English, with many instead opting to converse in their native tongue during work. Kellington-Craword, who is English, argued she was being discriminated against as a result of her colleagues speaking a language she did not understand.

The tribunal ruled that the majority of these interactions were "too infrequent and innocuous" to be discriminatory. However, the meeting with her three bosses did "cross the threshold" and "created an intimidating, degrading or humiliating environment for her".

"She was outnumbered and the only one who could not understand anything being said in Polish," the panel said, awarding the claimant £2,500 compensation for injury to feelings.

Background
Kellington-Craword was appointed as a care assistant at Newlands Care Angus in February 2022. She was promoted to the position of senior care assistant in October that year.

The company is Polish owned and, while English was the main language in the office, the tribunal heard that management – all of whom spoke Polish – often used it among themselves.

A disciplinary meeting was held on 9 December 2022 to discuss an allegation that Kellington-Craword had made "critical and personal comments" to someone receiving care.

She was then invited to a 'support supervision meeting' on 14 December with Gosia Berent, care manager, Ewelina Masiak, managing director, and Sylwia Natzel, manager and care co-ordinator.

The tribunal heard that Masiak and Natzel spoke with each other in Polish at various points in the meeting. Masiak told Kellington-Craword that she had written something inappropriate in a group chat, but did not give any further details of the alleged misconduct. She felt she was being discussed and criticised without knowing what was being said.

Two days later, Kellington-Craword received a final written warning, which, the letter stated, was “an alternative to gross conduct dismissal”.

Kellington-Craword had taken issue with her employer for a number of reasons during her employment, including accusing her bosses of overlooking her for promotion and issues around pay during compassionate leave.

Her bosses also criticised her performance and raised issues with the condition of her company car during a probationary meeting held on 17 January 2023.

The following day, a letter was sent to her stating that the decision had been made to end her employment with one week’s notice.

Panel’s comments

The panel found that Kellington-Craword could rely on being English as a protected characteristic under the Equality Act. It decided that she experienced direct race discrimination when members of management spoke Polish to each other during the meeting on 14 December, as she was treated “less favourably” because of race.

Because of the nature of this conversation the panel ruled this interaction “crossed the threshold” and constituted harassment as it “violated her dignity or created an intimidating, degrading or humiliating environment for her”.

“She was outnumbered and the only one who could not understand anything being said in Polish,” the panel said. “Given the importance of the meeting and the sensitivity of the matters under discussion it was reasonable that she felt intimidated and humiliated.”

The panel did not find that those speaking Polish intended to harass the claimant but found that it ultimately did have that effect.

While the panel accepted that members of management spoke Polish among themselves in the open-plan office at times when the claimant was present, it found that these interactions did not constitute direct race discrimination and were “too infrequent and innocuous” to be harassment.

The claimant was awarded £2,500 in compensation for injury to feelings and £16.97 for unlawful deduction from wages.

Her complaints of unfair dismissal, age and sex discrimination, harassment, victimisation and detriment were all unsuccessful.

Thanks to Isabel Jackson and People Management for the tribunal summary.

BARCLAYS EMPLOYEE WHO ALLEGEDLY MADE SEXUAL REMARKS TO FEMALE CO-WORKER WAS UNFAIRLY DISMISSED, TRIBUNAL RULES

Judge finds that banker accused of telling colleague to buy ‘sexy underwear’ was unfairly dismissed due to ‘seriously flawed’ investigation.

A Barclays financial advisor who was accused of making sexual comments to female colleagues was unfairly dismissed due to procedural failings, although the outcome may have been justified if the process had been handled fairly.

The Glasgow employment tribunal heard that Omar Nayfeh, who was fired without notice in July 2024 for gross misconduct, allegedly asked a younger female co-worker: “If I show you my willy, will that make us friends?”

Nayfeh was also accused of telling the coworker to buy “some sexy underwear from Victoria’s Secret” and asking: “What’s the youngest a 40-year-old can go with?”

However, employment judge M Whitcombe found that only the third comment had been proven on the balance of probabilities. Nayfeh admitted making the comment but claimed it was a casual response to his 24-year-old female colleague discussing her own relationship.

The tribunal rejected this explanation, concluding that the phrase was “reckless and inappropriate” and likely to be interpreted in a sexual context.

While the comment was found to be inconsistent with Barclays’ conduct policies and could have justified dismissal, the bank’s poor handling of the investigation process and the reliance on speculation rather than evidence made the dismissal unfair.

Whitcombe said: “If a fair investigation had been carried out, then more cogent evidence of the claimant’s guilt might have emerged, as well as more cogent evidence of innocence. Both are possibilities.”

Background

Nayfeh worked as a financial advisor in Barclays’ mortgage advice and financial guidance team at the Glasgow branch from 6 August 2015 until he was dismissed for gross misconduct on 22 July 2024.

The tribunal heard that around 21 November 2023, Nayfeh allegedly made a series of sexually inappropriate comments to a younger female colleague, which she said made her feel “vulnerable” and “ill”.

In her statement, Nayfeh's colleague accused him of making references to anal sex and asking her: "If I show you my willy, will that make us friends?"

She initially ignored the comments before later saying: "I don't think my boyfriend would appreciate that."

Her line manager Margaret Brown was informed of the incident and an internal investigation was conducted by operations leader Kay Sedgwick, who interviewed Nayfeh and several other colleagues, including Brown, Nayfeh's team leader and another employee.

Brown stated that Nayfeh had once said he was "surprised" he hadn't been referred to HR for some of the things he said, but she personally had never found him disrespectful or heard him make sexual remarks.

A second female colleague, aged 23, said Nayfeh once jokingly told her, "I miss the days when we could hit women", after she refused to make him a coffee. She said she hadn't taken offence but acknowledged that others might.

During her interview with the alleged victim, the female colleague admitted that a medical condition meant her concentration could sometimes suffer and that she "zoned in and out" of the conversation with Nayfeh.

Nayfeh denied the allegations, calling them "ridiculous".

Despite this, Sedgwick concluded it was likely Nayfeh made the comments and recommended the case be referred to a disciplinary hearing.

The disciplinary hearing took place on 1 March 2024, chaired by operations leader Joanne Dooley, with Nayfeh accompanied by a Unite representative. Dooley concluded that the decision would be made within two weeks, by mid-March 2024.

Nayfeh was initially accused of making three inappropriate comments. However, the outcome letter, which was issued months later on 22 July 2024, raised two more allegations.

The tribunal found this to be procedurally unfair. Nayfeh had not been informed he would be judged on five allegations and was denied an opportunity to respond properly. Dooley admitted he wouldn't have known he was accused of the other comments until he received the outcome letter.

Dooley also relied heavily on Sedgwick's interview notes rather than conducting her own interviews with witnesses. She claimed HR advised her not to do so, though this was contradicted by Barclays' own code of conduct, which allows for adjournments to gather further evidence.

In her reasoning, Dooley suggested Nayfeh failed to deny the allegations firmly and described him as "defensive" and "irritated". But the tribunal accepted Nayfeh's explanation that he had already denied the allegations multiple times and was frustrated by being repeatedly asked why his colleague would lie.

Judge Whitcombe criticised Dooley's approach to assessing credibility, particularly her focus on Nayfeh's "demeanour" and expectation of hyperbolic denials such as being "1000%" sure.

Following the disciplinary hearing, Nayfeh appealed his dismissal, raising eight grounds, including that the investigation process had been flawed and that the case against him was based on probability, not fact.

His appeal was heard by Barclays vice president Ryan McGee on 3 September 2024. However, he was informed on 5 December 2024 that his appeal had been unsuccessful.

McGee concluded that Nayfeh was dismissed for making the comments, despite his clean disciplinary record, and that the dismissal was "justified".

Judges comments

Employment Judge Whitcombe determined that Barclays' disciplinary hearing and dismissal process was "seriously flawed", adding that the investigator should "put as much focus on evidence that may point towards innocence as on that which points towards guilt".

The judge highlighted that Barclays' core task was to assess the credibility of the only two witnesses to the central incident, Nayfeh and the female co-worker.

However, the tribunal determined that **the disciplinary hearing relied too heavily on notes** and, having failed to interview the female colleague that made the accusations, tested the evidence of the accused more than the accuser.

The disciplinary outcome was **"unnecessarily and unfairly delayed"**, according to Whitcombe, and the outcome letter was also said to be hard to follow.

Nayfeh did admit to saying something similar to, "What's the youngest a 40-year-old could go with?" However, Whitcombe determined he had not made the other comments he was accused of.

As Nayfeh was found to have made one of the comments, the tribunal reduced Nayfeh's compensation by 15 per cent for contributory fault and by 50 per cent under the 'Polkey' principle. This principle allows for a reduction in the compensation awarded to employees in an unfair dismissal case, if the employee may have been dismissed had the employer followed a fair procedure.

Thanks to Mahalia Mayne and People Management for the tribunal summary.

This case highlights the importance of taking allegations of sexual harassment in the workplace seriously and ensuring that appropriate investigation and disciplinary processes are conducted by competent individuals. These processes should be completed in a timely and fair manner.

It also highlights the importance of having appropriate people management policies and procedures in place and taking preventative actions to prevent sexual harassment including equality awareness and prevention of sexual harassment training.

Contact us if your organisation would benefit from having your people management policies and procedures reviewed, and equality awareness and prevention of sexual harassment training delivered.

PHARMACY MANAGER SACKED FOR WATCHING NETFLIX AND TUTORING DAUGHTER AT WORK WAS UNFAIRLY DISMISSED, TRIBUNAL FINDS

Panel rules employer failed to conduct a thorough investigation and assessed evidence without keeping an 'open mind'.

A pharmacist manager who was sacked for allegedly watching Netflix, bullying staff members and home-tutoring his daughter during work hours was unfairly dismissed, a tribunal has ruled.

Dr Alfred Agyeman was sacked from Westfield Pharmacy over claims that he failed to fully engage in his role, potentially putting patient safety at risk, and for bullying staff members, including two who resigned as a result. However, the Bristol employment tribunal found the pharmacy's investigation into the allegations was flawed and the decision to dismiss him was unreasonable, as complaints were "insufficiently precise" to support the allegations.

This led the tribunal to conclude the organisation failed to "keep an open mind" when assessing the evidence.

Background

Agyeman was employed as a pharmacy manager at Westfield Pharmacy, part of Avicenna Retail, from 1 April 2004.

On 10 September 2023 Fiorina Caravona, Agyeman's line manager, visited the pharmacy, while Agyeman was on annual leave. During her visit, several employees complained about the "bad atmosphere" in the workplace, with two members of staff accusing Agyeman of bullying.

These concerns prompted Caravona to begin an investigation. During interviews, one of the pharmacy's employees said Agyeman was "always doing non-work related stuff at work". Meanwhile, another said Agyeman was using the work phone to call his family and tutor his daughter, who was home-schooled, during work hours. They also added that he watched Netflix and played on his phone.

Four other staff members complained about him tutoring his daughter and watching Netflix and YouTube.

There were also concerns raised around patient safety, which the tribunal found arose from him not being attentive to matters as he was spending time on non-work related matters.

Accusations of bullying also resurfaced, with one employee, who claims she left due to Agyeman's behaviour, saying: "I felt like he was being a bully and I couldn't do anything right. I just couldn't face Alfred every day."

Another member of staff said there was a "bad atmosphere" in the workplace when Agyeman had a bad day. "I have seen the way he treats people and the things he says to them and it is often rude or just not acceptable to come from a manager."

One of Agyeman's colleagues also provided a photograph of his iPad with a maths paper on it, which they claimed was evidence he was helping his daughter during working hours.

On 25 September Caravona suspended Agyeman. She did not prepare an investigation report, and the tribunal heard there was no structure to the meeting.

During the hearing, chaired by disciplinary hearing manager H Shazad, Agyeman claimed he had never watched Netflix or any video on his iPad at work, and that he wasn't completing maths questions when the picture was taken.

He claimed that when he was tutoring his daughter he was on a break but, due to the tight layout of the shop, staff could see what he was doing.

Agyeman also claimed the allegations of bullying were "exaggerations and half truths" and accused his team of misandry in their treatment of him, suggesting staff had colluded against him.

Agyeman was fired on November 3 2023 for "gross insubordination". Shazad cited Agyeman's lack of engagement with his managerial role, which she claimed endangered patient safety, and accusations of bullying as reasons for his dismissal.

He appealed the decision on November 9, citing a lack of a proper investigation.

Adrian Bunn, appeal hearing manager, chaired the appeal meeting on 6 December. He showed Agyeman photographs showing physics and chemistry papers on his iPad, which were taken in the morning. Agyeman had not seen them before and failed to adequately explain why he was working on the science papers during working hours, the tribunal found.

Agyeman accused one of his colleagues of racism, stating that they didn't like the fact he was "black and of a level of authority". He also questioned the fact staff made allegations of bullying against him without providing specific examples of his behaviour. However, his appeal was rejected.

Panel's judgement

Employment Judge Woodhead and the tribunal panel ruled that the company's investigation was not "sufficiently thorough". It found that the employer had failed to conduct an investigation interview with Agyeman to test his responses to their allegations.

This should have been expected due to the "imprecise nature" of the allegations, the tribunal said. This should have been expected due to the size of the business, the number of pharmacies it operated and the fact it had a dedicated HR team.

Agyeman also claimed direct race discrimination but this was dismissed.

Thank you to Freddie Clemo and People Management for the tribunal summary.

This tribunal case also highlights the importance of conducting an appropriate formal investigation including interviews with the accused and any relevant witnesses. Investigators should be unbiased and have an open mind when conducting the investigation.

COULD YOUR ORGANISATION BENEFIT FROM PEOPLE, CULTURE, AND DEVELOPMENT SUPPORT?

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