EMPLOYMENT TRIBUNALS

Claimant: Ms Esther Chukwuocha

Respondent: HSBC UK Bank plc

Heard at: Watford and by CVP

On: 24-28 March 2025

Before: Employment Judge Isabel Manley
Mr A Scott
Mr M Bhatti

Representation
Claimant: In person
Respondent: Mr S Way, counsel

JUDGMENT having been sent to the parties on 1 May 2025 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

Introduction and issues

1. The claimant brings claims for disability discrimination and unfair dismissal. There were two preliminary hearings in this matter before a list of issues could be agreed. That is the list of issues that we used for the purposes of this hearing. It is not necessary to set out the list of issues which is referred to in our conclusions.

2. In summary, there are 10 matters of alleged direct disability discrimination, some in 2019, some in 2022, some relating to the redundancy exercise in late 2022, and the dismissal in early 2023.

3. There was a claim of failure to make reasonable adjustments with one provision, criterion or practice identified, and three suggested reasonable adjustments in 2022 and one for an auxiliary aid which relates to the provision of a laptop in 2020.

4. The claims for disability discrimination also include a question about whether any or some of them are within the time limit in section 123 Equality Act 2010.

5. There is also a claim for unfair dismissal which includes consideration of whether there was unfair selection for redundancy and failure to provide alternative employment.

The hearing

6. This hearing had been listed in person and the parties attended on the first day at the tribunal hearing centre. The claimant is a wheelchair user and asked whether she could join remotely. The respondent had no objections to that but also wanted to take part remotely, which they did. Thereafter, the parties and witnesses took part remotely whereas the tribunal was at the hearing centre.

7. There were some preliminary issues. The claimant understood that the respondent was trying to exclude her disability discrimination claims but she was told that that was not so; they appeared clearly in the list of issues which was the list of issues we were working with.

8. There were also some concerns from the claimant around the documents. The bundle of documents that we had been sent extended to over 1,000 pages but the claimant thought that some items might have been missing. She was advised to check the list of documents to see if any relevant documents were missing and she sent three emails on the second day about this asking for more time to check and send in some documents. She was granted more time to the next day and then sent three emails with seven zip files containing several documents amounting to a total of about 118 pages. The claimant was advised that she needed to identify which, if any, we needed to look at. We looked at what had been sent in by the claimant but many appeared in the bundle, and some were not relevant as they related to historical events and/or were medical documents which were not needed. The tribunal is satisfied that it has had sight of the documents which have been brought to its attention and are relevant to the issues to be determined.

9. We had witness statements from:

    - The claimant;
    - Mr Barratt, who was acting as the claimant's line manager for part of 2019;
    - Ms Gibney, who was her line manager from September 2020 until the claimant's dismissal;
    - Ms Miller, who heard the claimant's grievance which was lodged on 21 February 2023.

10. Cross examination continued in the usual way. The claimant was assisted in asking relevant questions and she reviewed what she had prepared in line with the list of issues after receiving advice on that.

11. The tribunal had frequent breaks throughout the hearing.

The facts

12. These are the facts upon which we have decided this matter. The facts relate to

the list of issues. As is common in hearings like this, we often hear other facts which are not directly relevant but in some circumstances provide useful background information.

13. The claimant started her employment with the respondent on 15 October 2012. The respondent is a large international bank. She was appointed at Great Portland Street as a Cashier on the respondent's Grade GBC8.

14. The claimant had a road accident in 2001 which led to a compound fracture of her left leg and eventually led to serious mobility issues. The respondent accepts the claimant was a person with a disability under the Equality Act 2010 because of musculoskeletal chronic pain since 2018. For some years, the claimant has been a wheelchair user.

15. The claimant had a period of sick leave for three years up to 2018 and there was a capability hearing in June 2018 before her proposed return date to find a suitable post for her because her mobility issues meant she could not undertake the cashier role.

16. By letter of 21 December 2018 she was told that she would be appointed to the Holborn Area Quality Team. I am just going to read an extract of that document which appears at 176 of the bundle. It reads as follows:-

> *"With effect from the 8th January 2019 you will join the Holborn Area Quality Team for a trial period of 6 months. Within the 6 month period the business will pay you deputizing for the increased level of responsibility during this period and arrange for adequate coaching to be provided from within the Hub. This arrangement follows on from the outcome of your capability hearing in June at which time the AQT role was in project phase, and I am pleased that we are now in a position to support your trial in the role.*
>
> *As noted in the capability hearing it is important to use this time to upskill yourself and to work with the business to refine the adjustments being made to support you to undertake the role. All reasonable adjustments will be considered to ensure you are able to deliver in the role which represents a significant learning curve for you. Your successful redeployment to the role is more likely with clear open and regular ongoing dialogue with your line manager including updates on your health and the impact of the adjustments being made."*

17. As indicated, the claimant received that letter in December, and she was due to start in January 2019. The Grade for that post was GCB7 which is one grade higher than her current grade. The job title had been Senior Bank Clerk but was changed at some point to Risk Quality Advocate.

18. On 8 January 2019, before the claimant started, her line manager, Mr Middleton, sent an email (page 179), which asked the claimant to look up the Authorised Signatory Assessment before they met as she could not undertake the role until she had done the assessment. She was told this again in the meeting on 9 January and in subsequent meetings. She was told "*None of the day to day tasks undertaken by AQT can be completed without it.*" There is a curriculum on the respondent's system for this exercise and an aide memoire summarising key

capabilities.

19. Mr Middleton had a period of sick leave coming up and Mr Barratt covered for him as the claimant's line manager.

20. Mr Barratt told us that the Area Quality Team ("AQT"), was a pilot for a centralised system for auditing bank branches which eventually took effect.

21. The claimant was based at Fleet Street Branch because it was accessible for her. The rest of the AQT team of around 14 people were at the Holborn Circus office, along with Mr Barratt. That is less than half a mile away.

22. The tribunal accepts that Mr Barratt and Mr Middleton visited the claimant regularly. She had increased one to one meetings with them of every two weeks instead of one per month. They had also asked members of the AQT Team to visit the claimant to assist her, which they did, and there was contact by phone. They also asked the Fleet Street Branch, which did no AQT work, to include the claimant in the team where possible.

23. Adjustments were made to facilitate her work at the Fleet Street branch such as a desk, a chair and alterations to the door, and she had her own office there. The tribunal do not accept that the claimant being placed at the Fleet Street branch impacted on her training.

24. The claimant raises a number of concerns about the lack of training. Her case appears to be that it was insufficient and should have been "*structured.*" In cross examination she accepted that her concerns about that were not connected to her disability. Mr Barratt gave us detailed evidence about the training provided to the claimant which included emailing her with action points after meetings, encouraging colleagues to assist her, some of whom gave extensive assistance to the claimant. The tribunal cannot find evidence that there were any obvious defects in the training provided to the claimant.

25. After some delay, the claimant did pass the Authorised Signatory Assessment on 22 March 2019 and that was an essential step in her being able to carry out the role. However, Mr Middleton and Mr Barratt still felt that they should ask for a capability hearing which later took place on 23 September 2019, as they were concerned about the claimant's ability to carry out the role. Details of their concerns were set out in an email (pages 228 and 229) and there were discussions at that hearing about placing the claimant in an office with other AQT staff. Stratford, East London, was identified as a possible branch. It was agreed that a new Occupational Health report was needed and it was also agreed that the branches to be audited by the claimant, which are usually five per person, should be reduced to three for the claimant. The claimant was allowed until December 2019 to reach the necessary standard for the role.

26. The claimant being moved to the Stratford branch did not work out and she remained at the Fleet Street branch.

27. At the end of 2019 there was an end of year review, as is usual, and the claimant was given ratings of '*developing*' and '*good*'.

28. In March 2020, there was a national lockdown because of the Covid 19 pandemic. For those employees who were to work from home, the respondent

asked them if they could use their own electronic devices, because of the urgency of the situation.

29. In April 2020, the claimant was formally promoted to the AQT role and that appears at page 343 of the bundle.

30. On 25 May 2020, the claimant asked for a laptop, in part because she was having to share with her school aged children. Mr Midleton asked for reasons why she needed a laptop, which she gave, and a laptop was provided on loan on 3 July 2020. The tribunal finds that it was not an unreasonable delay given the circumstances of the pandemic and can identify no disadvantage to the claimant. The claimant worked from home from then until the end of her employment.

31. Although staff in the AQT Team were asked to visit branches to be able to provide coaching, the claimant was never asked or expected to visit branches and she never did. The respondent's case was that the fact that she could not visit branches did not affect her scores on performance reviews and there is no evidence that it did, although the claimant seems to believe so. Ms Gibney showed us that her review was '*good*' and '*good*' scores in 2020 and '*strong*' and '*good*' in 2021. The tribunal finds that the claimant not attending bank branches had no effect on the scores and, in particular, it was never mentioned at any meetings as having had that effect.

32. On 18 August 2020, the claimant put in a grievance alleging a lack of support from Mr Middleton. The tribunal has seen minutes of the meeting where the grievance was discussed and, ultimately, in January 2021, the claimant withdrew the grievance as shown at page 382 of the bundle.

33. As indicated, the end of year reviews took place in December 2020 and December 2021.

34. The claimant never appealed or questioned the performance and behaviour ratings which were on the whole '*good*' or, in one case, '*strong*.'

35. On 27 June 2022, another Occupational Health report was requested. They suggested a more detailed assessment and that was provided on 13 July 2022. It is worth reading just a section of that which appears at 464 of the bundle. This is headed Management Advice, and it reads as follows:-

> *"I would advise that the previous Occupational Health advice remains salient. The importance of her screen breaks is likely to be the most important adjustment. This is likely to be required in the longer term. Ultimately, it is a business decision as to the degree to which her workload can be altered and to the degree that this can be accommodated. However, it would be reasonable to consider that her capacity to incorporate these breaks into a markedly higher workload is unlikely to be practically manageable. There are no other adjustments identified."*

36. Ms Gibney, who had become the claimant's line manager by this time, discussed the report with the claimant.

37. The claimant had been allocated four branches for the quality audit. She sometimes covered more in circumstances where people were sick or on holiday

and it was agreed that there would be a reduction in her diary duties. By September 2022, the branches for which she was responsible had reduced to three because one had closed.

38. Ms Gibney's evidence was in summary, that much depends on the size of the branch, and her evidence was that the claimant's branches were of the smaller variety requiring possibly about four items to be checked whereas some of the larger branches might have something up to 100 items. The tribunal finds on the evidence before it, that there was no increase in the claimant's workload except on rare occasions of sickness or holiday or when students arrived. Indeed, it appears there was some reduction in 2022.

39. There was no pressure by the respondent to suggest that the claimant should not take the breaks which had been agreed at 15 minutes after 45 minutes work. This should have been possible as the claimant was at home. When she was cross examined, Ms Gibney said that she reminded the claimant that she should take breaks and the claimant said that she was taking those breaks.

40. On 15 September 2022, Ms Gibney attended a briefing session about a number of redundancies which were being proposed. These affected a number of teams including the Risk Quality Team. What she was told was that there was to be a standard practice with respect to the scoring system for selection, which had been a system which had been agreed with the trade unions. In essence, it was to take the behaviour and performance ratings for the three previous years, 2019, 2020 and 2021, and allocate points to each rating, added up for a total figure. Those with the lowest scores would be the ones who were put at risk of redundancy. The claimant had been advised that she was at risk. In fact, her score was the very next one to being in the safe zone but that is where the line had been previously drawn. The reduction in staff was to be from those in the AQT Team of 157, 20 were to put at risk of redundancy. Very simply, because there were a considerable number of bank closures, fewer people were needed in the AQT Team.

41. On 28 September, the claimant was notified that she was at risk of redundancy. She attended a webinar for those at risk with a distribution director. Ms Gibney had been appointed the Consultation Manager and had completed an e-learning module for that role. She also had a meeting with the claimant by Zoom on 28 September. She noticed that the claimant was very quiet on that day. Ms Gibney followed the script that she had been given to go through which included details of an enhanced redundancy package. She followed that up with a standard letter advising the claimant that she had been put at risk of redundancy (page 520). Ms Gibney kept in regular contact with the claimant and forwarded job roles which might be relevant to her.

42. The respondent's policy is to give various sorts of support to employees at risk of redundancy. There is a third-party organisation called Working Transitions which people can go to, and the claimant got some support from them with regards to her CV. They also have a Disability Confident Employers Scheme which, in essence, means that the disabled employees get extra support. The redundancy policy also states that, if a disabled employee meets the minimum criteria for a vacant job, they will be invited to the first interview.

43. The claimant was allocated a Candidate Care Consultant by the name of Fuchsia

Carter. With her she agreed adjustments for job applications (page 550). These included that she should be allowed additional time to answer questions, repeating the questions if necessary, and that she should be shown the questions one hour before the interview.

44. On 1 November 2022, the claimant received a letter telling her that she was dismissed on notice subject to finding alternative employment. She was told in that letter of the right of appeal.

45. There was a further end of year review in December 2022 which gave her scores of '*good*' and '*strong*'.

46. On 1 January 2023, the claimant was placed on garden leave.

47. The claimant, towards the end of that month, asked Ms Gibney about the selection process. Ms Gibney answered that (page 787) She explained, as stated above, the three previous years using the performance and behaviour scores were used to provide a score.

48. The claimant did apply for a list of roles in the next period. These appear at page 944 of the bundle and also in the outcome of the grievance and in a letter at 924. The following is a summary of the roles.

<u>Assistant Manager, WPB compliance</u>

49. First, there was an Assistant Manager, WPB compliance; This was at Level GBC6. The claimant told us she applied in November 2022, and she was invited to an interview on 3 January 2023.

50. This required attendance at Birmingham one day per week. The claimant had asked about funding for travel but was told there was none, but she also wanted the post to be carried out remotely.

51. The interview questions were not provided one hour before, and the claimant raised this with the recruiter. Sandy Glover was the Hiring Manager, and she became aware that this had occurred. She sought guidance from HR and understood that she had complied with the reasonable adjustments. It seems as though the adjustment to allow the claimant to look at the questions an hour before had not been included in the list of reasonable adjustments before Ms Glover.

52. Ms Glover asked the claimant if she wanted to proceed or whether she wanted to have the interview later. The claimant decided that she wanted to proceed, and she did proceed with that interview. As was discovered later, this was apparently an error caused by Fuchsia Carter's assistive technology, but it was an error. The claimant thought she was the last to be interviewed and was concerned about that so, as we have said, she proceeded with the interview.

53. She was not successful at the interview as she did not have the required skill set for the role as compared to the successful candidate. She was given feedback by Ms Glover on the answers given. The claimant believed there was a preferred candidate, but we have no direct evidence of that.

54. The tribunal find that the reason for the claimant not being successful include the

fact that it was a grade above what she was already doing and that she did not have the skill set or the relevant skills.

55. There was no apparent disadvantage that the tribunal can see for the claimant not being given the interview questions before given she had been given the opportunity to delay the interview. The claimant gave no evidence about how she might have answered the questions any differently if she had seen the questions earlier.

56. At some time between that first interview and the next one, which we will come to later in February, the claimant saw a mock interview document. This is at pages 409 to 421 of the bundle. It was prepared for a course earlier in April 2021. The claimant believed it would have helped her during the interview process and, indeed, that later interview in February, she saw that they were the same questions as she was asked at that interview.

57. The respondent says that that was a document which was part of a training exercise and the claimant had been invited to that and if she had attended she would have seen the document. The claimant cannot recall being invited to that, but it appears from an email that all people at her level were invited.

ROI Assistant WPV

58. In any event, the second job is the ROI Assistant WPV role which is a GBC7 role. The claimant was invited for interview for this role. After some rescheduling it was held on 27 February which is the day before the claimant was due to leave the respondent. She was told that she was unsuccessful, and we have no other evidence about why that was. The claimant has not raised any specific concerns expect that the date of the interview was changed. That might have caused her some concern, but we note that, by that time, the claimant had seen the mock interview questions which, as I have said, were the same as were actually asked at the interview.

59. The other jobs which she was not interviewed are as follows:

    41.1 Risk Analyst Financial Crime, GBC5: That required attendance at Birmingham two to three days a week. The claimant chose to withdraw, and the role was, in any event, put on hold.

    41.2 Financial Crime Officer, GBC7: The claimant was not invited for interview. This was an Edinburgh location. The claimant has suggested that there should have been some reasonable adjustments, and it appears that there was a recruiter error in that they overlooked the fact that this was somebody on suitable alternative employment and they did not discuss the location with her and later apologised for that. The reason that that was not progressed is that there were other suitable candidates in a more suitable location. Although the claimant did not say directly, the tribunal have assumed she would have been asking to work from home given that it was an Edinburgh location.

    41.3 Distribution Support Officer, GBC7: The claimant requested to the recruiter that it be either working from home or hybrid. We have not heard directly from the recruiter, but the claimant then withdrew that application.

41.4 Internal auditor, GBC6: The claimant was not invited to interview for that role.

41.5 WPB Transaction Monitoring and Customer Screening, GBC6: The claimant withdrew from that job, and it was cancelled in any event.

41.6 Area Wealth Analyst , GBC6: The claimant was not invited for interview.

The claimant has not stated that she met the minimum criteria for the roles a grade above her current grade or for any that she was not invited for interview.

60. On 14 February 2023, the claimant's access to computer systems was revoked due to an error. It was reinstated as soon as possible. This happened to everyone on garden leave and was a mistake. The claimant's employment was not terminated. She remained in employment and was paid up to 28 February.

61. On 21 February 2023, the claimant raised a long grievance which appears at pages 804 to 813 of the bundle. It is detailed and somewhat difficult to identify the main points and some of it was historic.

62. Ms Miller, who was the appointed Grievance Manager, spent some time identifying the main points. She identified five main points as follows:

44.1 Not being provided with interview questions for the Assistant Manager role, (the first role above),

44.2 The selection for redundancy criteria being unfair.

44.3 Not being informed of the risk of redundancy.

44.4 The workload did not take account of the Occupational Health recommendations.

44.5 That the mock interview questions were not provided and that there was not enough support to find alternative employment.

63. As indicated, the claimant was interviewed on 27 February for the ROI post, and she makes no complaints about not having the interview questions before. And, as we have said, she had a mock interview questions. The claimant was not successful in securing that role.

64. On 28 February, her employment did terminate.

65. The grievance process continued.

66. There was a meeting with the claimant and Ms Miller on 30 March. The claimant attended with a companion. The claimant told Ms Miller she wanted justice and she felt she had been discriminated against because of her disability. They discussed in some detail the matters raised by the claimant. Ms Miller then met with several people. Fuchsia Carter said that her own assistive technology had led to the mistake about the provision of interview questions an hour before being left off the list of reasonable adjustments. Ms Miller's view is that was an unfortunate human error.

67. She also spoke at length to Ms Glover, who was the Hiring Manager for the Assistant Manager post. Ms Glover confirmed that the claimant had been adamant that the interview proceeded, and she had spoken to her after she was unsuccessful to provide reasons and feedback.

68. Ms Miller spoke to the HR consultant about the selection process and to Ms Gibney about the consultation process.

69. On 7 August 2023, the grievance outcome was provided and the claimant was told of the right of appeal.

70. The outcome is very detailed and contained in an eight page document.

71. In summary, Ms Miller found the claimant had not been treated unfairly or discriminated against.

72. The claimant was on holiday when that outcome was sent and in early September she asked for time to review the grievance. There seems to have been no reply to that and the claimant did not appeal.

73. Those are the facts upon which we base our judgment.

The law and submissions

74. The claimant's claims of disability discrimination fall to be determined under the Equality Act 2010 (EQA). She claims direct discrimination under section 13 which requires us to find whether there was less favourable treatment because of her disability.

75. She also claims reasonable adjustments under sections 20 and 21, including that an auxiliary aid would have assisted her. The relevant parts of those sections read:

20 Duty to make adjustments

(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice 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.

(4) –

(5)The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put 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 provide the auxiliary aid.

21 Failure to comply with duty

(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2) A discriminates against a disabled person if A fails to comply with a duty in relation to that person.

2. Section 136 EQA provides that *"If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred, unless A shows that they did not contravene the provision".* This requires the tribunal to consider, on the oral and documentary evidence before it, whether there are facts which point to discrimination under the sections relied upon.

3. The complaint of a failure to make reasonable adjustments was part of this claim. The relevant sections are as set out above. The tribunal's task is to first consider the proposed provision, criterion or practice (PCP) and determine whether there was a PCP that placed the claimant, as a disabled person, at a substantial disadvantage. The question of whether there was substantial disadvantage requires identification of a non-disabled comparator (usually in these cases, a hypothetical comparator) who would not suffer the disadvantage. If there is such a PCP and the employer has knowledge of the disability and its effects, the tribunal will move to consider whether the respondent can show it has taken such steps as were reasonable to avoid that disadvantage.

4. This requires careful analysis of the evidence and finding of the relevant facts to which the legal tests should then be applied. In considering what steps would have been reasonable, with the burden of proof resting on the employer, the tribunal looks at all the relevant circumstances and determining that question objectively, may well consider practicability, cost, service delivery and/or business efficiency. The central question is whether the respondent has complied with this legal duty or not (see Tarbuck v Sainsburys Supermarkets Ltd [2006] IRLR 664). Guidance is also provided in Environment Agency v Rowan [2008] IRLR 20 that the tribunal should look at the nature of any substantial disadvantage caused to the claimant by any PCPs before looking at whether there was any failure to make reasonable adjustments. The purpose of such adjustments as are reasonable is to ameliorate the disadvantage as identified.

5. The claimant also claims that section 20 (5) EQA is relevant here; namely that she was put at a substantial disadvantage because of the failure to provide an auxiliary aid. Again, we consider whether there was such a failure before we go on to consider whether, if there was, it put her at a substantial disadvantage.

6. The tribunal is also reminded of the relevant sections of the Code of Practice on Employment (2011) published by the Equality and Human Rights Commission (EHRC), particularly with respect to guidance on what might be reasonable steps in a reasonable adjustment case. Paragraphs 6.23 to 6.29 of the Code reminds us that what is reasonable will depend on all the circumstances of the case.

76. We must also consider time limitation points under section 123EQA. That is

whether the claim has been made within three months of the act complained of; whether there is conduct extending over a period to bring the claim in time or whether it is just and equitable to extend time. There is considerable case law guidance on a number of those legal tests.

77. We look to the Employment Rights Act 1996 (ERA) for the unfair dismissal claim. That contains a definition of redundancy at section 139 ERA the relevant parts of which read:

139 Redundancy.

(1)For the purposes of this Act an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is wholly or mainly attributable to—

(a)the fact that his employer has ceased or intends to cease—

(i) -

(ii)-

(b)the fact that the requirements of that business—

(i)for employees to carry out work of a particular kind, or

(ii)-

have ceased or diminished or are expected to cease or diminish.

78. In summary, that needs us to consider whether the requirement for employees carrying out work of a particular kind that the claimant carried out has ceased or diminished or is expected to cease or diminish.

79. Sections 94 and 98 ERA provide for employees not to be unfairly dismissed. Section 98 (1) and (2) provide that is for the employer to show one of the potentially fair reasons for dismissal, redundancy being one of those potentially fair reasons.

80. Section 98 (4) ERA provides:

> "*Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—*
>
> *(a)depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*
>
> *(b)shall be determined in accordance with equity and the substantial merits of the case".*

81. This points to a neutral burden of proof for the tribunal to assess, on the evidence before it, whether the dismissal was fair or unfair. There is settled case law that

helps us with assessing the fairness or otherwise of redundancy exercises. We expect to see various procedural safeguards including, but not necessarily limited to, adequate warnings, a fair and objective selection criteria agreed if possible, consultation and consideration of alternative employment.

82. The parties provided written and, to some extent, oral submissions which were very helpful to us and which we have taken into account during our deliberations. There is no real dispute on the legal tests which have to be applied in these circumstances. Indeed, there are very limited disputes of fact in this case.

Conclusions

83. These then are our conclusions. They are in line with the list of issues but we are going to take the time limit question out of sequence.

Issue 2

84. We start with issue 2 which is "*Was the claimant a disabled person in accordance with the Equality Act 2010 at all relevant times*?"

85. The claimant did have a disability at the material time. This is agreed by the respondent as being musculoskeletal chronic pain. She is a wheelchair user.

Issue 3

86. We then go on to the next question under issue 3 which is the direct discrimination claim.

87. The first question under issue 3 is whether "*the respondent did the following things*". Many of the answers to these appear in our findings of fact so may not need to be given in considerable detail.

88. The first is at issue 3.1:

> *"Failing between 8th January 2019 and 15th May 2019 to provide the claimant with training for her new role of Distribution Support Officer as part of the Audit Hob"*

That should read AQT (or Risk Quality Auditor) rather than Distribution Support Officer. The claimant is referring to the training she received when she took up the role in AQT.

89. Our answer to that is that there was no such failing, as we have said in our findings of fact, in the training between those or any other dates. The claimant has not shown any failing in training at all

90. Issue 3.2 reads:

> *"In 2019 requiring the claimant to work from the respondent's Fleet Street Branch as opposed to the Respondent's Bond Street branch thereby denying the claimant the ability to train for the new role referred to above until prompted by the claimant in January, February and March and April 2019."*

91. The claim is actually about the claimant not working at the Holborn Circus branch where her managers were based. The claimant did work in the Fleet Street Branch but that was because it was accessible to her. The tribunal do not accept that that denied her an ability to train for the role on those or any other dates.

92. Issue 3.3 reads:

> *"Altering the claimant's responsibilities in or around July or August 2022 to require them to visit and work across numerous branches."*

93. Our findings on this are that the claimant was not required to visit bank branches. She accepted she did not visit branches nor was ever asked to.

94. Issue 3.4 reads:

> "*In January 2019 Glen Middleton and Andrew Barratt informing the claimant that she was required to pass the Authorised Signatory Assessment in order to work in the Audit Hub*."

95. Of course that is correct. The claimant was told that she was required to pass that assessment as being essential to the role and was reminded of that.

96. Issue 3.5 reads:

> *"Between 2 February 2022 and 2 August 2022 failing to reduce the claimant's workload and increasing the claimant's workload at this time contrary to the advice of Occupational Health."*

97. Our findings are that there was no increase in the claimant's workload and, in fact, a slight reduction at a later stage. What did happen was in line with the Occupational Health report which suggested the breaks that she was advised to take. She was also reminded to take those breaks

98. Issue 3.6 reads:

> *"In 2022 removing/deleting documentation from the claimant's personnel file pertaining to the requirements of the claimant to be provided with interview questions one hour in advance of an interview for the role of Assistant Manager WPB Compliance and failing to take sufficient steps to investigate this when the claimant brought it to the respondent's attention."*

99. There is no evidence that anyone removed or deleted anything from the claimant's personnel file. It would appear that human error led to the adjustment for the questions to be provided one hour before being omitted from the list of reasonable adjustments. There is clear evidence to that effect. We also find that it was thoroughly investigated at the time and in the grievance.

100. Issue 3.7 reads:

> "*Not appointing the claimant to suitable alternative employment despite her eight applications during the redundancy process and/or placing the claimant's applications for roles on hold."*

101. It is correct that the claimant was not appointed to any of those roles. We return later to how we assess that outcome.

102. Issue 3.8 reads:

> *"Not making the claimant aware of the mock interview internal paper."*

103. The tribunal's findings are that she should and could have been aware of that mock interview paper and was in any case aware of it at some point before the second interview that she attended.

104. Issue 3.9 reads:

> *"Terminating her employment early on 14 February 2023".*

105. That did not happen. Her employment was not terminated then.

106. Issue 3.10 reads:

> *"Selecting the claimant for redundancy."*

107. The claimant was selected for redundancy.

108. So, we have several matters above that did occur and same did not. We move on to consider under Issue 4 whether those that did occur were "*less favourable treatment"*.

109. We are looking at those that have found to have occurred - that is 4 matters - being told that she was required to pass the Authorised Signatory Assessment; not getting the interview questions an hour before for one role; not being appointed to any of the roles she applied for and being selected for redundancy. The tribunal accepts that it is less favourable treatment to be selected for redundancy and not getting alternative roles.

110. It does not find that being told she had to pass the Authorised Signatory Assessment or not getting the interview questions amounted to less favourable treatment for the reasons given in our findings of fact.

111. We go on then to look at Issues 5 and 6 in the list of issues. This requires us to consider whether the claimant was treated worse than someone else with no material difference in their circumstances was or would have been treated.

112. The claimant has not suggested any direct comparators here so we consider a hypothetical comparator whom, it appears to us, would be a person working in the AQT without the claimant's disability. There is no evidence for us to consider that anybody in that position would be treated any better than the claimant in the outcome of her applications for alternative roles or in the selection process. The claimant has simply not been able to prove, on a balance of probabilities, that anyone would have received any different treatment.

113. Finally, for the claim of direct discrimination, we look at issue 7, *"If so, was it because of the claimant's disability?"* Even if the claimant had shown some less favourable treatment, there is no evidence at all that it was because of her disability. The roles that the claimant applied for were often at a grade above the

one she was on, many were at a different location and could not be done entirely from home. The claimant has not shown, on the balance of probabilities, that there was less favourable treatment because of her disability. Nor, can she show that the selection for redundancy had any link to her disability. Even if the burden of proof passed to the respondent, it can show the process was without any discrimination, being based on historical performance scores and agreed with the trade union.

114. We now turn to the claim of failing to make reasonable adjustments.

115. First, we have to consider whether the respondent applied a provision, condition or practice. That is at issue 9. The PCP there is suggested to be the requirement for the claimant to attend the respondent's bank branches for work. Of course, the problem with that is that there was no such requirement. The claimant has simply failed to show on the facts that there was such a requirement. So, strictly speaking, we do not need to answer the rest of those issues for that claim but, just for completeness, we answer them relatively quickly.

116. At Issue 10, it is asked whether the PCP would put the claimant at a substantial disadvantage compared to someone without her disability. In particular, Issue 10, states that the claimant's case is that her performance appraisals were negatively impacted because she could not attend multiple bank branches. We have already answered in our findings of fact that there are no facts to support that assumption. There is nothing to show that her not attending branches impacted her appraisals at all.

117. Issue 11 asks whether the respondent would know or could reasonably be expected to know that the claimant was likely to be put at that disadvantage? Given that there was no such disadvantage, the respondent could not be expected to know about it.

118. At Issue 12, there are then some suggested reasonable adjustments. These include at Issue 12.1, altering the claimant's responsibilities, so she did not have to go to branches. This does not apply in that case because she was not so required. Issue 12.2 repeats the suggestion that the respondent should not have taken into account her non-attendance at branches in her performance appraisals but the tribunal has already found the respondent did not take it into account. Issue 12.3 suggests a reduction in workload which we have already agreed did happen to a limited extent.

119. issues 13 and 14 asks us to consider whether those steps were reasonable. We do not need to answer those because we have found that there was in fact no PCP and no further steps that were needed.

120. The next Issue 15 is about the provision of an auxiliary aid, and it says:

> *"Would an auxiliary aid have prevented the claimant being placed at a substantial disadvantage compared to someone without the claimant's disability? The claimant alleges that in 2020 during the Covid 19 pandemic she ought to have been provided with a laptop to be able to work from home."*

121. Our finding of fact is, of course, that the claimant was provided with a laptop,

albeit slightly later than she wished.

122. In essence, that answers all the questions between 15.1 and 15.5 given that there was no substantial disadvantage to the claimant. There was a slight delay but certainly no substantial disadvantage.

123. We now need to address the time point in relation to the disability discrimination matters at Issue 1. In short, all those that predate January 2023 are out of time. The question is whether the claimant can show that there was conduct extending over a period to bring the claims in time or that it is just and equitable to extend time.

124. Many of the allegations raised, we have found did not occur but, if they had, there are serious time lapses between them and, of course, there were different line managers from time to time. Even if the claimant had been able to succeed in some of those claims, which she has not on the facts, the claims for disability discrimination that do not relate to selection for redundancy and the process which follows in relation to her applications for alternative employment, are out of time. We have not found conduct extending over a period to bring them in time. There has been very little evidence, if any, to show why it would be just and equitable to extend time. The claimant has, to some extent, relied on having put in a grievance, but that does not allow an extension of time to put these claims in time. In any event, the claimant has not succeeded on the facts but, for completeness, we add that many of the claims would have been out of time.

125. We now provide our conclusions on the selection for redundancy and dismissal. These arise under the unfair dismissal claim but we have already considered some of them in the claim for disability discrimination.

<u>Unfair dismissal</u>

126. For unfair dismissal, the first question for us is at Issue 16 - *"What was the principal reason for dismissal? Was it a potentially fair one in accordance with sections 98(1) and (2) of the Employment Rights Act 1996". (ERA)*

127. The respondent asserts that it was redundancy. This is for the respondent to prove, again, on a balance of probabilities. It has to show facts that support its case on this. The tribunal finds that the reason for dismissal was redundancy. There has been no real dispute about this. The tribunal accepts that the respondent has shown sufficient evidence that there was a requirement for people working in the AQT had ceased or diminished or that it was expected to cease or diminish because of branch closures. It clearly meets the definition as set out in s.139 ERA.

128. We then go on to issue 17, which is *"If so, was the dismissal fair or unfair in accordance with ERA section 98(4) and, in particular, did the respondent in all respects, act within the so called band of reasonable responses."*

129. Here we consider the process as a whole and then concentrate on the claimant's own concerns as set out at Issues 18.1 and 18.2 which are, in essence, that there was an unfair selection and a failure to consider alternative employment.

130. Looking at the process as a whole, the tribunal can see that employees were informed. Those at risk were informed at a webinar, then in person and then by

letter, and that included the claimant. The claimant kept in touch with her line manager and there were a variety of support methods for those at risk and, specifically for the claimant as a disabled employee. At risk employees had access to information on alternative jobs and could contact Human Resources. We have seen evidence of considerable communication between the claimant and recruiters and hiring managers. Employees were informed of their right of appeal and even though the claimant did not appeal the dismissal, her grievance covered many of these concerns and was thoroughly investigated. The tribunal can take no real issue with the process followed for redundancy by the respondent. It does not amount to an unfair process.

131. We then look at the matters raised by the claimant.

132. She first raises the question of whether there was an unfair selection process. The tribunal's findings are that this was an objective process that relied on historic ratings weighted in favour of later years and there had never been an objection by the claimant to her ratings for performance and behaviour. This was selection criteria agreed with the trade unions and used many times by the respondent.

133. In essence, the claimant's case is that in 2019, and to some extent 2020, should be discounted because she was training, but the tribunal does not accept that that would be fair given the number of employees being scored and some or many of whom may well have had other reasons for their scores being below what they would have wished for.

134. The process used in which the claimant was very close to not being put at risk, was not an unfair selection process.

135. Turning then to the question of alternative employment.

136. It is true that the claimant was unsuccessful in her applications for alternative roles. It cannot be said that the respondent did not consider alternative employment; the claimant received notification of vacancies and help in applying for them. The policy allowed for disabled employees to have a first interview where they met the minimum criteria and, in the evidence before the tribunal, this appears to have taken place.

137. The claimant may have had some unrealistic expectations as, of the eight jobs applied for, five were a higher grade than she held. Some needed attendance at work in person at least some of the time, and some were based in distant locations of Birmingham and Edinburgh. The claimant withdrew some of her applications, perhaps for reasons of needing to attend the workplace. The claimant has not been able to identify a role which she says was suitable alternative employment for her.

138. The tribunal cannot find that the dismissal was unfair. We cannot say that dismissal in these circumstances fell outside the band of reasonable responses in a redundancy exercise like this. Whilst it was very unfortunate for the claimant because she had been with the bank many years and worked very hard for it, it was the consequence of the need for AQT staff to be reduced because branches had closed. The dismissal was not unfair.

139. This means that all the claimant's claims must fail and are dismissed,.

Approved by:

Employment Judge Manley

30 May 2025

JUDGMENT SENT TO THE PARTIES ON

4 June 2025

FOR THE TRIBUNAL OFFICE