EMPLOYMENT TRIBUNALS

Claimant: Mrs A Naz

Respondent: The Wise Group

Heard at: Manchester (by video) **On:** 16-19 June 2025

Before: Employment Judge Slater
Mrs P J Byrne
Mr P Dodd

Representation
Claimant: In person
Respondent: Miss C Fowlie, solicitor

JUDGMENT having been sent to the parties on 1 July 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

Conduct of the hearing

1. We heard oral evidence from the claimant and from Ashleigh Mackenzie (now People and Culture Transformation Lead but, at relevant times, People and Culture Business Partner), Donna Cuthbertson (People and Culture Manager), Kelly Errington (Operations Manager for the FBD team in the NW) and Jacqueline Gourlay (Director of Finance and Strategy but, at relevant times, Finance and Operations Director) for the respondent. There were written witness statements for all these witnesses.

2. We also read witness statements, but did not hear oral evidence, from four other witnesses for the claimant, with the respondent's agreement: Paul Bussell, Mohammed Iqbal, Shirley Marshall and Simona Papaporfyriou. The last three of these witnesses were not available to attend the hearing. Paul Bussell was available to give evidence but the respondent did not wish to cross examine him, agreeing that the Tribunal could accept the contents of his witness statement. The claimant applied twice to call Mr Bussell so she could ask him further questions. The Tribunal refused her applications. The Tribunal refused these applications for reasons which were given orally. These reasons were as follows. The witness statement of Mr Bussell was of little, if any, relevance to the issues the Tribunal needed to decide. We considered that it would not help us to have evidence about

the respondent's overall running of the business and how staff are treated, which are the areas the claimant said she wanted to ask him about. In any event, in accordance with the case management orders, Mr Bussell's witness statement should have contained all the relevant evidence he wished to give. The claimant had given no good reason why any relevant evidence could not have been included in the witness statement.

3. There was an agreed bundle of documents of 776 pages. Any references to page numbers in these reasons are to page numbers in this bundle.

4. The hearing was conducted by video conference as an adjustment for the claimant. In the last two days of the hearing, we had repeated problems with the claimant's connection. Each time that we lost the claimant, we waited and, when she rejoined, repeated any parts she had missed.

Claims and issues

5. The details of the claim in the claim form were extremely brief. The complaints of disability discrimination had been discussed and clarified through discussion at a preliminary hearing and recorded in a list of complaints and issues. The claimant had not sought to make any changes to this list within the 14 days given from the orders being sent to the parties or subsequently.

6. At a public preliminary hearing on 17 February 2025, the claimant was found to have been a disabled person under section 6 Equality Act 2010 by reason of the combined effects of the physical impairments of sleep apnoea, water retention, lower back pain, lower join pain, and asthma. The judge concluded that the claimant was disabled by reason of a combination of impairments which had a substantial long term adverse effect on her ability to walk. The reasons for this judgment, at paragraph 6 (p.89) record that the claimant accepted, following a previous preliminary hearing, that mental health conditions were relevant to remedy and not to whether she was a disabled person.

7. At the start of the final hearing, we had a discussion about a matter set out in the claimant's witness statement which was not a complaint in the list of complaints and issues. The claimant clarified that she relied on this as background information and did not seek to amend her claim to include this as a complaint for which she sought a remedy.

8. The complaints and issues were confirmed to be as set out in the list contained at pages 76-77 of the bundle. These were complaints of s.15 discrimination arising from disability and failure to make reasonable adjustments. These complaints and issues, with the addition of the pleaded legitimate aims, are set out in the Annex to these reasons.

9. In accordance with case law, a claimant is required to identify the Provision, Criterion or Practice (PCP) relied on for a failure to make reasonable adjustments claim and the adjustments they say should have been made, during the course of Tribunal proceedings, prior to the final hearing. This was done at the preliminary hearing and recorded in the list of complaints and issues.

10. The complaints and issues in the list of issues are the matters on which the Tribunal was required to reach conclusions after making relevant findings of fact.

Facts

11. The respondent is a registered charity and social enterprise which supports people into jobs, aims to tackle fuel poverty and provides mentoring and guidance to people leaving prison, by helping them with their transition back into the community.

12. The respondent obtained a contract with the Ministry of Justice ("MOJ") to provide financial wellbeing support to offenders in the North West, with the contract due to go live on 5 December 2022. The respondent recruited Advocacy, Financial, Benefit and Debt Mentors (FBD Mentors) to fulfil this contract. FBD Mentors were recruited prior to the contract going live, to allow for training and an implementation period.

13. The North West was a new region for the respondent to be operating in. Most of their work was in Scotland and the North East.

14. The claimant was one of the first employed in the FBD Mentor role in the North West. The claimant began employment in August 2022. The relevant contemporaneous documentation gives a start date of 15 August 2022. The claimant says she was asked to start early, on 8 August 2022. The precise start date is not relevant to the issues the Tribunal needs to decide, so we make no finding of fact as to the precise start date. We do not draw any inferences as to the reliability or credibility of the claimant's evidence in relation to other matters from her evidence in relation to the start date. There appears to be a contradiction between her oral evidence and the claimant stating, in an email dated 11 August 2022, that she looks forward to starting her job on the following Monday i.e. 15 August. The claimant says the pay she received in August 2022 shows she was employed from 8 and not 15 August 2022. The claimant invited us, in closing submissions, to look at her pay slip for August 2022. We had not been taken to this document in evidence but found it in the hearing bundle at page 666 during our deliberations. The gross pay shown is higher than we would have expected for the period 15-31 August 2022 on the claimant's salary. The payslip for September 2022 shows the gross pay we would expect for a month, on the claimant's salary. However, gross pay for October 2022 onwards is higher than we would have expected. We cannot draw any clear conclusions from this contradictory information.

15. The claimant applied for the role of Team Lead but was unsuccessful in this application. Samantha Lawson, one of two interviewers, discussed with the claimant the FBD Mentor role. Due to lack of reliable evidence, we do not make any findings as to exactly what was said at this interview. Samantha Lawson did not give evidence. Neither party has produced any contemporaneous notes of the conversation. We do not consider the claimant's recollection, given in evidence, to be reliable after all this time. Based on what the claimant said in meeting in June 2023, we accept the claimant left the interview with the impression that arrangements could be potentially made to allow her to do the Mentor role.

16. The claimant asserted that there was a discrepancy between the job advert and the contract of employment in relation to the place of work. The contract of employment is worded differently but we do not consider it to be inconsistent with

the job description. Although the role is home based, it is clear from both documents that travel will be required as part of the role.

17. The FBD Mentor role requires working with people in prisons and within the community. The service uses a “through the gate” model which means that a FBD Mentor is responsible for supporting individuals in custody all the way through to them re-entering the community. Under the delivery model of the contract, the role is 80% prison based and 20% community based. The role is described as home based in the contract of employment, with the nature of the employment requiring the Mentor to travel in accordance with the respondent’s business needs. The home base allows the respondent to pay travelling expenses to the Mentors from their home or other places where they are required to work. The contract with the MOJ required that, as far as is practicable, the person delivering the intervention to the person on probation/in prison is the same individual throughout the duration of the intervention (p.351).

18. The job advert for the FBD Mentor role, which had a closing date of 26 August 2022, described the role as being prison-based, working with people in prison and on probation. A requirement was having a full driving licence.

19. The claimant accepted during capability proceedings leading to her dismissal and in these Tribunal proceedings, that she could not fulfil the part of the role which required prison visits.

20. The offer letter did not make employment conditional on medical fitness for the role. However, the claimant was sent a medical questionnaire with the contract and the claimant completed and returned this on 11 August 2022. The claimant disclosed various conditions which led the respondent to seeking the opinion of Occupational Health (“OH”) as to the claimant’s fitness for the role.

21. On 30 August 2022, the OH advisers informed the respondent that the claimant needed a telephone consultation before they could fully advise on fitness to take up the proposed role.

22. An OH report was produced on 4 October 2022. This report referred to the claimant having multiple health issues including obesity related sleep apnoea, obesity related joint pains, lower back pain due to slipped disks, asthma, incontinence and anxiety. It said she had had her driving licence revoked due to sleep apnoea. It said she had a walking distance of around 5 to 10 minutes before she had to stop and rest. She could go up and down a flight of stairs but generally preferred to use a lift. She could struggle to sit for long periods of time but had found ergonomic adjustments to her workstation helpful. The report advised that they considered the claimant to be fit for the role as a full-time mentor with consideration of adjustments. The report stated that the health issues outlined would be considered disabilities under the Equality Act 2010 in the advisor’s opinion. They suggested that the following adjustments be considered:

22.1. Ergonomic workstation assessment. They understood this was already done and a suitable chair and electric table had been provided and she was currently waiting for a foot rest.

22.2. Support with transport to work sites away from her home. The report stated that they understood Access to Work was already involved and her partner acted as her support driver.

22.3. The claimant would struggle to walk longer than 5 to 10 minutes at a time and this needed to be taken into account when planning her work activities.

22.4. She needed nearby (within one to two minutes maximum walk) access to toilet facilities.

23. The claimant had a meeting on 24 October 2022 with Panayota Karanicolas (known as Yotta) and Ashleigh Mackenzie to discuss the OH report and the demands of the job. Ms Mackenzie summarised the OH report since the claimant said she had not read it. The claimant said that her need for proximity to toilet facilities was more like 5 minutes than 1-2 minutes away. Otherwise, she agreed the rest of the report was accurate.

24. Panavota Karanicolas explained a day in the life of a Mentor, describing it as a very active one with lots of walking in the prisons and communities. They gave examples of a working day in a prison involving a 10-15 minute walk to one appointment, moving to another cell block which could be a 30 minute walk, then another 15-20 minute walk to another appointment in the morning, followed by a similar afternoon. They said that the claimant could be significantly further than 5 minutes from toilet facilities due to prison security and the general size of the buildings. They asked the claimant how she felt about this active role and she said she would give it a try and see how she got on as it was hard to say without actually doing the role.

25. The claimant also mentioned in this meeting that she would need time off in December for elective surgery abroad to help with lower back pain. She was told she would not have annual leave approved as this would be at the start of the go live stage. If she needed time off for a medical reason, this would be sick leave.

26. On 26 October 2022, the claimant emailed Ms Mackenzie saying, without specifying, that there were some things in the OH report which required amending. She asked to speak to Ms Mackenzie. A call took place on 2 November 2022. Following this conversation, Ms Mackenzie wrote to OH querying some points. The claimant, in cross examining Ms Mackenzie, asserted that she had not said to Ms Mackenzie that she could walk 20-30 minutes before needing a 1-2 minute breather, but she had said that, taking a breather after 5-10 minutes, she could walk for a total of 20-30 minutes. We find that Ms Mackenzie wrote what she understood the claimant to be saying to her.

27. Ms Mackenzie also wrote that the role was at least 80% prison based and the claimant would need to carry out personal protection training which would be very physical. She wrote that they were trying to get further information about this. She asked for any guidance on whether this training would be suitable for the claimant.

28. Each prison required any Mentor working in the prison to have undergone personal protection training as part of an induction. Some prisons accepted training carried out by another prison. Some of the prisons required this to be their own

training, so a Mentor working in multiple prisons may have had to do multiple courses at different prisons.

29. A query was raised as to whether the training was mandatory, but the information obtained by the respondent from prisons was that it was.

30. We find that personal protection training had to be done by all Mentors working in prisons. This was a requirement from the prisons. We do not make a finding as to whether all Mentors other than the claimant had, in fact, by June 2023, carried out this training. Kelly Errington's response to the claimant raising this matter in the June 2023 meeting could be consistent with not all Mentors having done the training at this point. In the meeting on 22 June 2023, the claimant said she had asked other colleagues and they had not had the physical intervention training. Ms Errington said it was coming for everyone. It is not necessary for us to make a finding as to whether any Mentors had started work in the prisons without the training since the claimant, in the capability proceedings and on appeal, accepted that she could not work in prisons because of the walking required and not just because of not being able to undergo the personal safety training. The claimant in submissions referred to the respondent not having produced training records. However, whether all Mentors had undergone personal protection training by June 2023 was not obviously relevant to the claimant's claims so we draw no adverse inference from the respondent not producing these records. We find that all Mentors were to be required to carry out the personal safety training even if not all had done this by June 2023.

31. The claimant provided a fit note to cover absence from work from 23 November 2022 until 8 January 2023 for back pain. She travelled to Pakistan with the intention of having elective surgery. This surgery had not been recommended by her GP. Due to ill health, the claimant did not have the surgery, and returned to work on 3 January 2023.

32. Prior to the claimant's absence from work, she was carrying out the same training and preparation for the contract going live as other Mentors. During her absence, Mentors started their work seeing offenders in prisons and the community.

33. On the claimant's return to work, the claimant was given administrative work to do which did not involve prison or community visits, while the respondent continued to assess the claimant's suitability to carry out the Mentor role. The claimant also did various training courses, not all of which were required for the role.

34. On 11 January 2023, the claimant attended a meeting with Samantha Lawson and Ashleigh Mackenzie. Although a supplementary OH report had been prepared on 3 November 2022, this had not been supplied to the respondent prior to this meeting because of a delay in the claimant giving consent for its release to the respondent. At the meeting, the claimant said she had now given consent to release the report so it should be with the respondent shortly.

35. During the meeting, the claimant said she thought she would be OK to go into prisons and do referrals. She said it was dependant on what was involved in the safety training because she didn't want to do anything to cause her back to get worse. Ms Mackenzie said that they did not want to put the claimant at any risk in terms of her health so, for now, as a temporary measure, she would be given

administrative duties until they could determine whether it was safe for her to be working in the prison setting. The claimant agreed with this. Ms Mackenzie explained that they were still trying to get information from the prisons. The next step would be to share this information and detail on the day to day job with the claimant's GP in order to get their medical opinion on whether the claimant was fit for the role. The claimant agreed to this. Ms Mackenzie said there was currently a higher level of administration for the contract due to it being the beginning of the contract and needing to set up reports and spreadsheets to monitor progress throughout. The claimant asked whether, if she gained clearance, the prison could provide facilities for being able to sit down to carry out the work. Samantha Lawson said that colleagues could be delivering work in a number of situations, sitting down or standing up. There could be a lot of moving around the prison and the meeting needed to take place wherever suited at the time. There could be no guarantees where it would take place within the building.

36. The supplementary OH report, dated 3 November 2022, was received by the respondent on 11 January 2023, after the meeting. This stated that the adviser's clinical notes recorded that the claimant had advised them she could walk 5 to 10 minutes before needing to take a break and then carrying on. They agreed with the claimant saying she could manage with the toilet being further away than 1-2 minutes. They wrote that it would be a preference that toilet facilities were easily accessible and it had been the adviser's recommendation that access be within 1 to 2 minutes. In relation to the driver's licence, the adviser wrote that they had possibly picked this up incorrectly and suggested the claimant clarify this with the sleep apnoea clinic and the DVLA who should be able to advise her on which criteria applied and whether she should still be holding a licence. The adviser, writing at a time when the claimant was expecting to have back surgery, indicated that it was unlikely the claimant would be able to engage in personal protection training prior to her operation and they would need to reassess the situation after she had had the surgery and recovered.

37. On 14th February 2023, Ms Mackenzie wrote to the claimant's GP, requesting their opinion on the claimant's fitness for the role. Ms Mackenzie described the role as a very active one, explaining what could be required within the prisons. In relation to appointments in the community, she wrote that these could take place within a workplace hub or café and they could not guarantee accessibility or toilet facilities. Ms Mackenzie referred to training on self defence offered by the prison which the respondent considered mandatory for all colleagues working within the prison and attached a document setting out details of what was involved. This included participants being "thrown" to the floor and having to get from a standing to laying down position and vice versa. She also enclosed the original and updated OH reports.

38. The GP prepared a report dated 24 April 2023. This was received later than that date, but the notes of the meeting on 2 May 2023 indicate that it had been received by then. The GP wrote that, with the correct work adaptations, the GP could not see why the claimant could not carry out her work tasks in the community but, due to excess walking in the prisons, may find this difficult.

39. On 2 May 2023, the claimant attended a meeting with Kelly Errington and Ms Mackenzie. The claimant agreed with the information in the GP report. The claimant said she would not be able to physically manage the work in prisons because of the amount of walking. The claimant asked if she could do only

community referrals. Ms Errington said that Mentors worked with customers in prison and then took them “through the gate” and continued to work with them in the community so they had continuity of care. She said this was part of the contractual obligation to continue the relationship. There were some community only referrals but these were over a wide location from Cumbria down to Chester and Mentors had been recruited to cover specific areas. She said the referral numbers for Preston and the surrounding areas would not make up a full time role.

40. The claimant did not ask whether a part-time role would be available or say she would be willing to take a part-time role, with resultant drop in pay.

41. Ms Mackenzie said that, if the Mentor role was not suitable for the claimant, they would need to look at suitable alternative positions. They talked about current vacancies online. The claimant said she had looked previously at HEAT Mentor roles but these were now filled. Ms Mackenzie spoke about the recruitment website which would have all vacancies on it going forward and said she would speak to the Heads of Departments to see whether any other roles might be available. Ms Errington encouraged the claimant to be active on the vacancy list and to reach out if there was anything concerning or she had any questions. Ms Mackenzie said the claimant would remain doing the work she was doing right now until they could look at whether alternative vacancies were available. Ms Mackenzie said that the only Mentor roles in the North West were on the contract the claimant was currently on. She asked the claimant whether she would consider relocating for work and the claimant said this was not something she could do. The claimant said she was happy to travel but it would not be reasonable to travel to the North East every day so more remote roles would be realistic. The claimant said she currently had 15 hours per week driving under Access to Work arrangements, with no restrictions on timing, and could look at increasing this.

42. The claimant said in evidence that she knew by the meeting on 2 May 2023 that the respondent was not going to offer her full time administrative work and had formed the view by 3 May 2023 that the respondent had failed to make reasonable adjustments.

43. The claimant said in oral evidence that she understood that there could not be a full-time administrative role created but thought there was scope to create a part time role. The claimant did not say this during internal proceedings and her oral evidence is the first time we are aware of, during internal proceedings or these Tribunal proceedings, where the claimant has made a suggestion that a part time role could have been created for her and that she would have been willing to take such a role with the resultant drop in pay.

44. On 3 May 2023, Ms Mackenzie emailed Heads of department (Jonathan Russell, Panayota Karanicolas and Amanda Currie) regarding any suitable upcoming vacancies. She wrote that, due to the claimant being based in the North West, the role would probably need to be mainly remote. All Heads of Department later responded confirming no suitable vacancies were available or known in the pipeline.

45. Ms Mackenzie sent the claimant notes of the meeting on 3 May 2023. The claimant replied the same day, writing that she understood that Preston prison had an area where they could see clients face to face and suggesting some alternatives

needed to be explored further to help her stay in work. She suggested Liverpool prison could also facilitate such needs.

46. Ms Mackenzie queried the suggestions about prisons with Kerry Errington who wrote to say that they must all move around prisons; the job was not sitting behind a desk where work came to them.

47. The claimant was allowed time during working hours to look for other jobs and attend interviews.

48. Prior to the meeting on 3 May 2023, the claimant had applied for several other roles within the organisation but had not been successful. She was not successful in an application for the role of Quality and Improvement Executive (Data Protection) which she applied for on 19 January 2023, because she did not have the experience required and the successful applicant had extensive previous data protection experience. The claimant applied on 6 March 2023 for an EPOP Relationship Manager role. She was not shortlisted for the role as she did not have the relevant experience.

49. In May or June 2023, but prior to the meeting on 22 June, the claimant applied for a role in the HR team but was unsuccessful as she did not have the required HR experience.

50. The claimant has not challenged the evidence that she did not have the relevant experience for these roles.

51. Ms Errington said in oral evidence that the claimant had said to her that she would not apply for an administrative role because this would be for less money. This evidence was not contained in Ms Errington's WS and is not recorded in any meeting notes we have seen as having been said by the claimant. This was not put to the claimant in cross examination. In these circumstances, we make no finding that this was said; the respondent has not satisfied us that this was said by the claimant.

52. The claimant alleged that Kelly Errington said to others that, if they found the claimant some admin work, they would have to keep her in a role. The claimant did not call anyone to give evidence that this was said. The first reference we have found to this allegation is in an undated document with the title "Asma Naz Tribunal Further Evidence" produced in the course of these proceedings (p.429). The claimant identified someone called Millie as having overheard the comment. We understand that Millie no longer works for the respondent. We have not been told of any reason why the claimant could not have called Millie as a witness. Kelly Errington denies making this comment. The burden is on the claimant to prove the facts on which she relies. She has not satisfied us this comment was made by Kelly Errington.

53. Ms Mackenzie was off work from the beginning of June 2023 and Donna Cuthbertson took over as HR support during her absence.

54. By a letter dated 15 June 2023, the claimant was invited to a meeting on 22 June 2023 about the continuing uncertainty around her fitness for work in the FBD Mentor role. The letter identified items for discussion (p.267) as follows:

54.1. Whether the claimant could work in her position as a Mentor within Advocacy, Financial, Benefit and Debt, with her current health conditions in mind.
54.2. Whether there were any reasonable adjustments which could be made to allow her to carry out the required duties of the role.
54.3. Whether there were any current alternative role opportunities suitable for her.
54.4. Whether they needed to terminate her employment on grounds of capability.

55. The claimant was advised of her statutory right to be accompanied.

56. The meeting took place on 22 June 2023 with the claimant, Ms Errington and Ms Cuthbertson. (p.269). Ms Errington referred to the claimant confirming at the meeting on 2 May 2023 that the prison environment and the amount of walking meant that she would not be able to physically manage because of her health condition. Ms Errington said they had looked at reasonable adjustments such as the claimant working fully in the community but work in prisons was around 80% of the workload and working with the remaining 20% would not make up a full-time role. They could not create a community mentor role for the whole of the North West contract as this would be too large a geographical area and there would not be enough customers in the claimant's area to make up a full-time community role. Ms Errington said they had looked at alternative roles but internal vacancies were not suitable as some involved working in prison or at locations too far away and the claimant was not able to relocate. Ms Errington referred to Ms Mackenzie having contacted Heads of Operation and managers across the Enterprise to see if any suitable roles would be coming up but there was nothing coming up; everything was in the North East or Glasgow and there were no fully remote roles.

57. The claimant said, at the meeting, that the only thing she was really upset about was that, when she started, she declared all of her health conditions on her health declaration and when she met Samantha Lawson the previous August, she had told Ms Lawson she had difficulty walking and Ms Lawson reassured her she would be all right on the contract and they would be able to work something out. The claimant said that 10 months into the contract she was put in a position where she had no other job she could take. The claimant said she had worked very hard. Ms Cuthbertson assured the claimant that the situation was no reflection on her.

58. The claimant asked for some other internal hybrid role that she could do. She said she felt she was being discriminated against because of her disability because there was no other reason her contract was ending. She said ACAS had advised her that the respondent needed to try to put her in another position. Ms Cuthbertson said they had been trying for a number of months to find her another role but there was nothing in the North West and they were restricted with the geographical area because the claimant was in the North West. The claimant said that Ms Lawson had told her that she would look at the claimant being in Preston and there would be a table and chair facility available wherever she would be working with the clients. Ms Cuthbertson asked why this hadn't been mentioned before. The claimant said she thought it was something that was going to be looked at as part of the reasonable adjustments.

59. Ms Errington said that prisons will not bring a prisoner to them, they have to go out and find them. They are an added extra in the prison, not a core duty; the only

person who gets the prisoner to come to them is the Governor. There would normally be a desk and chair to do paperwork but that would not be the claimant's desk to work from. The claimant could be on B wing to meet the customer, do the paperwork, then have to go to the kitchen to find the next prisoner and do the meeting standing up. Ms Errington said that was how prison contracts were run as they had to fit into their regime and be as flexible as the prison and prisoners need.

60. The claimant said she had asked other colleagues and they had not had the physical intervention training. Ms Errington said it was coming for everyone. The claimant said she had said right from the start that she could not do it.

61. Ms Cuthbertson said that the MOJ wanted a "through the gate" service where a lot of the work was done in prison, building up the relationship when in custody and continuing it out in the community. If there was only going to be a certain amount of work out in the community it was not enough for a role; they could not just create a role.

62. Ms Errington said she had run out of tasks to give the claimant. Ms Cuthbertson said that, fundamentally, the claimant was not able to deliver the mentor role and it was not their premises the work was carried out in; the prison has stairs and no lifts and they have security to think about. They had explored if the role could be done any other way but had reached the point that there was nothing else they could think of. There were not any admin roles. There was nothing purely remote or in the community.

63. Ms Cuthbertson asked the claimant whether there was anything else she could think of that she could do. A community role was not feasible because of the delivery model and geographies. The claimant said she would do any role. Ms Cuthbertson said the reality was that there were no suitable vacancies at the time and nothing they were aware of coming up. They could not just create a vacancy. The numbers did not justify a full time community role and it would cover such a wide area it would not be feasible.

64. The claimant did not suggest that she would be willing to take a part time role, with a resultant drop in pay.

65. The meeting adjourned and, after 30 minutes, reconvened and Ms Errington informed the claimant that they were ending her employment that day. She said that the reality was that they could not change the prison environment and the claimant could not undertake the role in prison. They had explored adjustment and other vacancies without success.

66. The claimant was not required to work her notice but was paid in lieu of notice. The claimant was also informed at termination that a balance of £625 owing from the claimant to the respondent for a crisis loan was being written off by the respondent.

67. The claimant, during this hearing, has suggested she might have been able to do some role which required frequent travel to the North East or Scotland. The claimant did not suggest this as a possibility during internal proceedings and, in fact, it contradicts what she said about not being feasible to travel on a daily basis to the North East in the 2 May 2023 meeting.

68. The claimant has asserted that some vacancies that would have been suitable for her were advertised within a short time of her dismissal. The claimant has not satisfied us that this was the case. The only specific post she referred to in correspondence with the respondent (p.429) was a post of Heat mentor which had been advertised in October 2022 (p.368).

69. The claimant wrote to the respondent on 3 July 2023 with what the respondent treated as an appeal against dismissal (p.282). The claimant wrote that she did not feel it was fair to terminate her contract on the basis of not being suitable due to her physical disability "as I am more than capable of managing the community side of the contract as stated in my OH report for my GP with the correct adjustments which I feel the organisation should facilitate and have made for me under my conditions and health circumstances." She also wrote:

> "whilst I fully acknowledge and understand that I cannot safely work in prisons, looking at creating a community contract would and could have been something the company could have facilitated for me. I have been speaking with other mentors who have expressed that they are overrun on their workload and cases, another alter alive [sic] would have been allowing me to assist them with the admin side which would have allowed me to work remotely and community based as necessary to the contract."

70. On 18 July 2023, Donna Cuthbertson sent a letter to the claimant acknowledging her appeal. She wrote that her understanding was that the reason for the claimant's appeal was that, in the claimant's opinion, the respondent failed to make reasonable adjustments. She asked the claimant to let her know within 48 hours if the understanding was incorrect. The claimant did not seek to correct that understanding.

71. Three appeal meetings were arranged on 3, 10 and 17 August 2023 which the claimant failed to attend for different reasons given after the time of the meetings. Ms Cuthbertson wrote to the claimant on 17 August, after the claimant had failed to attend the third meeting. She informed the claimant that, as had been indicated in the letter dated 11 August 2023, since the claimant had failed to attend the meeting, a decision would be made in her absence based upon the information available to the respondent. She invited the claimant to submit any further information for consideration by 5 p.m. on 18 August 2023. The claimant responded on 17 August, saying she had missed the meeting because she had lost her phone and only just found it. The claimant asked for the opportunity to discuss the matter in person rather than in writing. Ms Cuthbertson refused, saying they did not have trust and confidence that the claimant would attend another rearranged meeting. The claimant did not provide any further information in writing by 18 August.

72. Jacqueline Gourlay reached a decision on the basis of information available to her and gave her decision in writing on 22 September 2023 to uphold the dismissal. The decision was given in a letter of over 4 pages, with an attached appeal report including relevant documents. The letter included that she had decided not to uphold the appeal with regard to the following matters:

72.1. That the outcome of the meeting on 22 June 2023 was correct to conclude that the claimant was not fit to perform the mentor role. The

claimant was not mobile or agile enough to meet the physical requirements of the role and the claimant agreed with this.

72.2. It had not been possible to make reasonable adjustments that would facilitate a safe return to the role.

72.3. Driven by the person-centred approach requested by the contract and the values of the respondent, each customer should have an assigned mentor capable of meeting their needs in any of the locations they may be at during their custodial journey. Therefore, a purely community-based role could not be regarded as the best outcome for the customer cohort in this service.

73. The letter recorded that there were no suitable alternative vacancies available for the claimant despite the respondent being proactive in trying to find her one. The letter also stated that the claimant was offered the opportunity to apply for roles more suited to her physical capabilities which she did not fully explore. We are not clear what roles this referred to.

74. We accept the respondent's evidence that Mentors do their own administrative work and the respondent considered it would not be cost effective or efficient for Mentors to pass administrative work related to their clients to someone else to complete. Mentors know what they have done, so there would be no benefit to having someone else write up what the Mentors told them to write. There was no need to introduce an intermediary into the process.

75. The claimant notified ACAS under the early conciliation process on 5 September 2023 and the early conciliation certificate was issued on 8 Sept 2023.

76. The claimant presented her claim to the Tribunal on 28 Sept 2023.

77. The claimant gave evidence in her witness statement about an alleged lack of PEEP assessments by the respondent. We heard conflicting evidence about this matter from the claimant and the respondent's witnesses. We do not consider that this matter assists us with issues we need to decide so we make no findings of fact about this.

Submissions

78. The claimant and Miss Fowlie made oral submissions. We summarise the principal arguments.

79. In relation to the s.15 complaint, the respondent accepted that the reason the claimant was dismissed was because of her inability to walk around prisons and that this arose in consequence of disability. The respondent accepted that this could be unfavourable treatment. The respondent submitted that the claimant's dismissal was a proportionate means of achieving a legitimate aim.

80. The respondent's primary position on the failure to make reasonable adjustments complaint was that it was out of time. The respondent submitted that time began to run on 3 May 2023; that it was clear to the claimant by that date that the respondent was not complying with what she considered to be the duty to make reasonable adjustments. The respondent submitted that it would not be just and

equitable to extend time: the claimant had sought advice from ACAS; she was aware of her right to bring a claim. In the alternative, the respondent submitted that the respondent did not fail to make reasonable adjustments. The claimant could not do her substantive role. There was insufficient work for an admin only role and this was not in accordance with the delivery model.

81. The claimant submitted that the respondent did not make sufficient reasonable adjustments; she could have done admin work if the respondent had let her co-work with other mentors. Dismissal was only proportionate if disability prevented her doing the job after all reasonable adjustments were considered. The claimant said she felt manipulated and treated harshly because she was disabled; it was not her fault she had her conditions.

Law

Failure to make reasonable adjustments

82. Section 20 Equality Act 2010 (EQA) and Schedule 8 of that Act contain the relevant provisions relating to the duty to make adjustments. Schedule 8 imposes the duty on employers in relation to employees. Section 20(3) imposes a duty comprising "a requirement, where a provision, criterion or practice of A 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."

83. Paragraph 20 of Schedule 8 provides that an employer is not subject to a duty to make reasonable adjustments if the employer does not know and could not reasonably be expected to know that the employee had a disability and was likely to be placed at the relevant disadvantage.

Discrimination arising from disability

84. Section 15 EQA provides:

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

85. In **Pnaiser v NHS England and anor [2016] IRLR 170 EAT**, Mrs Justice Simler summarised the proper approach to determining s.15 claims as follows in paragraph 31:

> "(a) A Tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises.

"(b) The Tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a section 15 case. The 'something' that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.

"(c) Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A's motive in acting as he or she did is simply irrelevant: see *Nagarajan v London Regional Transport [1999] IRLR 572*. A discriminatory motive is emphatically not (and never has been) a core consideration before any prima facie case of discrimination arises, contrary to Miss Jeram's submission (for example at paragraph 17 of her Skeleton).

"(d) The Tribunal must determine whether the reason/cause (or, if more than one), a reason or cause, is "something arising in consequence of B's disability". That expression 'arising in consequence of' could describe a range of causal links. Having regard to the legislative history of section 15 of the Act (described comprehensively by Elisabeth Laing J in *Hall*), the statutory purpose which appears from the wording of section 15, namely to provide protection in cases where the consequence or effects of a disability lead to unfavourable treatment, and the availability of a justification defence, the causal link between the something that causes unfavourable treatment and the disability may include more than one link. In other words, more than one relevant consequence of the disability may require consideration, and it will be a question of fact assessed robustly in each case whether something can properly be said to arise in consequence of disability.

"(e) For example, in *Land Registry v Houghton UKEAT/0149/14* a bonus payment was refused by A because B had a warning. The warning was given for absence by a different manager. The absence arose from disability. The Tribunal and HHJ Clark in the EAT had no difficulty in concluding that the statutory test was met. However, the more links in the chain there are between the disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact.

"(f) This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.

"(g) Miss Jeram argued that "a subjective approach infects the whole of section 15" by virtue of the requirement of knowledge in section 15(2) so that there must be, as she put it, 'discriminatory motivation' and the alleged discriminator must know that the 'something' that causes the treatment arises in consequence of disability. She relied on paragraphs 26 to 34 of *Weerasinghe* as supporting this approach, but in my judgment those paragraphs read properly do not support her submission, and indeed paragraph 34 highlights the difference between the two stages - the 'because of' stage involving A's explanation for the treatment (and conscious or unconscious reasons for it) and the 'something arising in consequence' stage involving consideration of whether (as a matter of fact rather than belief) the 'something' was a consequence of the disability.

"(h) Moreover, the statutory language of section 15(2) makes clear (as Miss Jeram accepts) that the knowledge required is of the disability only, and does not extend to a requirement of knowledge that the 'something' leading to the unfavourable treatment is a consequence of the disability. Had this been required the statute would have said so. Moreover, the effect of section 15 would be substantially restricted on Miss Jeram's construction, and there would be little or no difference between a direct disability discrimination claim under section 13 and a discrimination arising from disability claim under section 15.

"(i) As Langstaff P held in *Weerasinghe*, it does not matter precisely in which order these questions are addressed. Depending on the facts, a Tribunal might ask why A treated the claimant in the unfavourable way alleged in order to answer the question whether it was because of "something arising in consequence of the claimant's disability". Alternatively, it might ask whether the disability has a particular consequence for a claimant that leads to 'something' that caused the unfavourable treatment."

86. Section 39 EQA provides, amongst other things, that an employer must not discriminate against an employee by dismissing them. Discrimination includes s.15 discrimination.

Burden of proof

87. Section 136 EQA provides:

"(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision."

Time limits

88. Section 123 EQA provides that proceedings may not be brought after the end of the period of 3 months starting with the date of the act to which the complaint relates, or such other period as the employment tribunal thinks just and equitable. Section 123(3)(a) provides that conduct extending over a period is to be treated as done at the end of the period.

89. Section 123(3)(b) EQA provides that a failure to do something is to be treated as occurring when the person in question decided on it. If an employer positively decides not to make a reasonable adjustment time will run from that point: **Humphries v Chevler Packaging Ltd EAT 0224/06**.

90. In **Ms M Fernandes v Department for Work and Pensions: [2023] EAT 114**, HHJ Beard, wrote, referring to principles distilled from **Matuszovicz, Abertawe** and other authorities:

> "16. The principles set out in the existing authorities amount to the following propositions:
>
> a. The duty to make an adjustment, under the statutory scheme, arises as soon as there is a substantial disadvantage to the disabled employee from a PCP (presuming the knowledge requirements are met) and failure to make the adjustment is a breach of the duty once it becomes reasonable for the employer to have to make the adjustment.
>
> b. Where the employer is under a duty to make an adjustment, however, limitation may not begin to run from the date of breach but at a later notional date. As is the case where the employer is under a duty to make an adjustment and omits to do so there will be a notional date where time begins to run whether the same omission continues or not.
>
> c. That notional date will accrue if the employer does an act inconsistent with complying with the duty.
>
> d. If the employer does not act inconsistently with the duty the notional date will accrue at a stage where it would be reasonable for the employee to conclude that the employer will not comply, based on the facts known to the employee."

91. Time limits are extended to take account of time spent in the early conciliation process with ACAS, if notification to ACAS is made within the normal time limit.

92. The Tribunal has a wide discretion when considering whether it would be just and equitable to extend time. The Tribunal must consider all relevant factors, which will almost always include the length of and reasons for the delay and the prejudice caused to the parties of extending or not extending time.

Conclusions

93. We deal first with the complaint of failure to make reasonable adjustments since, if our conclusion was that there had been a failure to make reasonable

adjustments, this would be relevant to the issue of justification in the s.15 complaint.

Complaint of failure to make reasonable adjustments

Time limit issue

94. We conclude that time did not start to run until the 22 June 2023 meeting. The respondent was still looking at alternative opportunities for the claimant up until that point, although a decision had been made by 2 May 2023 that they could not offer her a NW Mentor role without prison visits. If this is correct, the complaint was presented in time. If we are wrong and time started on 2 May 2023, we consider it just and equitable to extend time because of the ongoing process until 22 June 2023.

Knowledge of disability.

95. The respondent made no submissions on the knowledge issue. We conclude that, on the basis of information from the claimant, OH advice and GP information, the respondent knew, or ought reasonably to have known, when the duty to make reasonable adjustments arose, that she was disabled by reason of the physical impairments found at the preliminary hearing to be relevant disabilities.

Other issues relevant to the complaint of failure to make reasonable adjustments

96. We conclude that the respondent had the PCP of requiring FBD Mentors to walk at prisons and/or to walk reasonable distances.

97. We conclude that this PCP put the claimant at a disadvantage compared to someone without her disability because she could not walk the distances required. She could not, therefore, do the role for which she had been employed.

98. We conclude that the respondent knew the claimant was likely to be placed at this disadvantage.

99. The duty to make reasonable adjustments was, therefore, triggered.

100. The only remaining issue is whether the adjustments contended for would have been reasonable in all the circumstances.

101. We can only consider the adjustments identified through discussion with the claimant and set out in the list of issues.

102. We are not entirely clear on the intended difference between the suggested adjustments set out at 2.5.1 (the respondent should have allowed the claimant to undertake admin work and not prison work) and 2.5.2 (the respondent should have created a role involving only administrative work). On a literal reading, both relate to admin work only, which would not involve working in a prison.

103. We take the proposed adjustment at 2.5.1 as relating to work in the NW; admin work supporting mentors on the NW contract. We found there was not enough administrative work to support a full-time role and hiving off administrative

work would duplicate work done by Mentors and be inefficient. We conclude that this was not a reasonable adjustment.

104. If 2.5.1 was intended to cover doing community mentoring and not just admin work, but not prison visits in the NW, we also conclude it would not have been a reasonable adjustment to take the prison visits out of the role. The respondent had a “through the gate” model to provide continuity of care for clients. 80% of the work was in prison. There was a contractual requirement that the same person provide the services in prison and when the client was in a non-custodial setting, as far as reasonably practicable.

105. We take the proposed adjustment at 2.5.2 to refer to creating a new role either in the North West or a largely remote role in relation to work in NE or Scotland. There was nothing in the North West other than the respondent’s work on the FBD contract so, in relation to work in the North West, 2.5.2 duplicates the adjustment sought at 2.5.1.

106. The respondent explored whether there were any roles in the North East and Scotland, where the respondent had more work, which could be done largely remotely and there weren’t any; the Heads of Department confirmed nothing was coming up. The claimant has not suggested what it is she thinks she could have done. We conclude it was not reasonable to expect the respondent to create a completely new and additional role to those required by the respondent. The respondent had to operate within contractual and budgetary constraints.

107. The claimant was employed on a full-time basis and did not suggest during the internal process that a part time job should be created for her and that she would be willing to reduce her hours and pay. The claimant did not identify, at case management stage, that part time administrative work would have been a reasonable adjustment. It was only during the course of this hearing that she said in evidence that she understood that there could not be a full-time administrative role created but thought there was scope to create a part time role. We consider this was an attempt to change the way her case was presented. Although we understand the respondent was considering whether there was a full-time administrative role the claimant could do, for reasons relating to efficiency and avoiding duplication of work done by Mentors, if we were considering this, we would not consider it would have been a reasonable adjustment to create a part time administrative role supporting the Mentors in the North West. When looking at alternative possibilities, the claimant could have applied for any available vacancies, full or part time. Ms Mackenzie’s enquiries to Heads of Department did not specify hours to be worked, so there is no reason to believe that there was suitable part-time largely remote work available in the North East or Scotland.

108. An employer is not required to create a job for a disabled employee who cannot do the job which they were employed to do unless it is reasonable for them to do so in all the circumstances. We have concluded it was not reasonable in the circumstances for the respondent to create a new job for the claimant who was not physically capable of doing the role for which she had been employed.

109. We conclude for these reasons the complaint of failure to make reasonable adjustments is not well founded.

s.15 complaint – Discrimination arising from disability

110. There is no time limit issue in relation to this complaint.

111. The respondent made no submissions on the knowledge issue. We conclude that, on the basis of information from the claimant, OH advice and GP information, the respondent knew, or ought reasonably to have known, when deciding to dismiss the claimant that she was disabled by reason of the physical impairments found at the preliminary hearing to be relevant disabilities.

112. The respondent accepted and we conclude that there was unfavourable treatment by dismissing the claimant and that this treatment arose in consequence of her disability i.e. because she was unable to walk any distance at a prison.

113. The only live issue is, therefore, that of justification i.e. whether dismissal was a proportionate means of achieving a legitimate aim.

114. The respondent relied on the following aims:

114.1. The respondent's duty to maintain the health, safety and welfare of its employees working with offenders within a prison environment.

114.2. The respondent's adherence to the personal protection (SPEAR) training that is implemented by the prisons in orders to protect prison-based workers in situations where they are required to restrain offenders or protect themselves from physical harm.

114.3. The respondent's contractual obligations and budget constraints required services to be delivered within prisons in Northwest England.

115. We conclude that these are all legitimate aims. We conclude that dismissal was a proportionate means of achieving these aims. The respondent needed to have Mentors working in the prisons as well as the community for contractual reasons. The claimant accepted in the internal process that she was not capable of working within prisons because of the walking involved. She was also not able to do the necessary safety training. Whilst we have not found that all mentors had done the training by June 2023, we have found that they were all to be required to do it. 80% of a mentor's work was to be within prisons. Even without the contractual requirement that the same person do prison and community work with a client, there would not have been enough work, without prison work, within a reasonable travelling distance for the claimant to do. We concluded, for reasons previously given, that it would not have been a reasonable adjustment to hive off administrative work to create a purely administrative role for the claimant. We are satisfied there was no suitable alternative work with the respondent available for the claimant. Ms Mackenzie made considerable efforts to explore the possibilities but was told there were no current suitable vacancies or anything coming up. The claimant was unable to relocate and, although she could travel occasionally, daily travel to the North East or Scotland was not feasible.

116. We concluded that there were no reasonable adjustments which could have been made to allow her to remain working for the respondent.

117. The law does not require employers in all circumstances to retain an employee who is not capable, due to disability, of carrying out the role for which they were employed. There are cases, such as this, where an employer is justified in dismissing an employee who is not capable of doing their job, because of disability.

118. The respondent did not rush to dismiss the claimant when the difficulties in performing the role, due to disability, became known to them. They kept the claimant employed over a significant period, from August 2022 to June 2023, whilst they explored her capacity to do the Mentor role and explored other possible employment opportunities with them. By 22 June 2023, it was clear the claimant could not do the Mentor role and there was no prospect of suitable alternative employment for the claimant. Dismissal in these circumstances was a proportionate means of achieving the legitimate aims relied on by the respondent.

119. Dismissal for capability reasons was no adverse reflection on the claimant, as the respondent made clear at the time.

120. For these reasons, we conclude the s.15 complaint is not well founded.

Approved by:

Employment Judge Slater

Date: 12 August 2025

JUDGMENT SENT TO THE PARTIES ON

Date: 2 October 2025

.....
FOR THE TRIBUNAL OFFICE

ANNEX
List of complaints and issues

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

1.1 Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

1.2 If so, did the respondent treat the claimant unfavourably by dismissing her?

1.3 Did the following thing arise in consequence of the claimant's disability: being unable to walk any distance at a prison?

1.4 Was the unfavourable treatment because of that thing?

1.5 Was the treatment a proportionate means of achieving one or more of the legitimate aims set out in the amended response? The legitimate aims relied upon are:

1.5.1 The respondent's duty to maintain the health, safety and welfare of its employees working with offenders within a prison environment.

1.5.2 The respondent's adherence to the personal protection (SPEAR) training that is implemented by the prisons in orders to protect prison based workers in situations where they are required to restrain offenders or protect themselves from physical harm.

1.5.3 The respondent's contractual obligations and budget constraints required services to be delivered within prisons in Northwest England.

2. Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

2.1 Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

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

2.2.1 Requiring FBD Mentors to walk at prisons and/or to walk reasonable distances.

2.3 Did the PCP put the claimant at a substantial disadvantage compared to someone without the claimant's disability because she was unable to walk the distances required?

2.4 Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?

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

2.5.1 The respondent should have allowed the claimant to undertake admin work and not prison work; or

2.5.2 The respondent should have created a role involving only administrative work.

2.6 Is the claim within time? The claimant says that the adjustments sought should have been made from when she first started the employment and that the duty continued until employment ended. The respondent contends that there was a final decision not to provide solely administrative work made on 2 May 2023.

2.7 If not, can the claimant establish that it would be just and equitable for the Tribunal to allow a longer period for presenting her claim?

3. Remedy

3.1 If the claimant succeeds in any of her claims, what remedy (if any) should she be awarded?