



EMPLOYMENT TRIBUNALS

Claimant: Ms W Mularczyk

Respondent: Pyramid Posters Limited

Heard at: Leicester (Hybrid Hearing)

On: 25-29 August 2025,
and 9 and 12 September
am
9 September – pm –
Tribunal in Chambers.

Before: Employment Judge Brown
Mr Libetta
Ms Morrish

REPRESENTATION:

Claimant: In person assisted by her son

Respondent: Mr Menon

The Decision having been announced at the hearing in accordance with Rule 60(3) of the Employment Tribunals Rules of Procedure 2024, the following written reasons are provided:

REASONS

Outcome of these claims

1. The Claimants claim for Unfair Dismissal succeeds.
2. In relation to the claims for a Failure to Make Reasonable Adjustments and for Unfavourable Treatment Arising from Disability in relation to the Claimants disability of a back condition these claims succeed.

3. In relation to her claims for Unfavourable Treatment Arising from her disability of depression this claim fails.

Procedural History

4. The procedural history of these claims is recorded in preceding case management orders. However, in summary, at a previous preliminary hearing before myself Judge L Brown, on the 8 August 2024, I refused an application by the Claimant to amend her claim to add the claimed disability of anxiety to the claim for a failure to make reasonable adjustments, thus leaving only the disability of the spinal condition being relevant to that claim. That claim did not relate to the act of dismissal.
5. At a further hearing before Judge Broughton, it was determined that the Claimant was not disabled by reason of anxiety for her claim for unfavourable treatment, and this meant that the spinal condition of the Claimant, and her depression, were the only two disabilities relevant to the claim of Unfavourable Treatment Arising from Disability. That claim related only to the act of dismissal.

The Hearing

6. We had before us a bundle of 741 pages, and a further supplementary bundle of 81 pages. We also had a separate copy of the Respondents Policies and Procedures Handbook.
7. We heard evidence from the Claimant.
8. We also heard evidence from Richard Gillatt, Sue Warn and Ian Pridmore on behalf of the Respondent.

Findings of Fact

9. Our findings of fact are now set out in both this section on fact finding and are also set out in addition, where necessary, in the concluding section of these written reasons where we apply the law to the issues and the facts.
10. The Claimant commenced employment on the 27 April 2015 as a Warehouse Operative. The Respondent manufactures and decorates posters, mugs and other promotional materials. The Claimants first language is Polish, and her understanding of English is somewhat limited. She was assisted at work on occasion by colleagues who interpreted on her behalf and by her partner in meetings that occurred latterly.

11. On the 9 July 2015 the Claimant suffered an injury to her back while moving a box, and as a result left work that day. The result of this accident was that the Claimant was diagnosed sometime thereafter with a slipped disc, and consequently degenerative spine changes. Whilst the Claimant alleges that she moved the box under the direction of Ms West, and that it was the companies' fault, the Respondent alleged it was the Claimants fault for not weightlifting with bent knees, but in any event the Claimant never brought a claim for personal injury. However, from this point of the accident, Ms West, the Claimant's supervisor, and the Respondent we find had full knowledge of the Claimants back problem, which the Respondents concede in any event was a disability at all material times.
12. At page 275 of the Bundle a Ms Anna Zborowska gave an account of the accident she witnessed, and described it as being difficult for the Claimant to get access to a space, but that she was then instructed by Ms West to go between the pallets to lift an object, and shortly thereafter the accident occurred. We find that from this point on, due to the Claimants perception that the accident was Ms Wests fault, and the Respondents perception it was the Claimants fault, i.e. the way she lifted the object, that the relationship between the Claimant and Ms West deteriorated. The Claimant was signed off sick from work for six weeks [P.278] following the accident.
13. The description of the incident [P.280] was that she had lifted a box, and which we noted was a box of mugs, and that it weighed 14 kilos.
14. There was a subsequent investigation that was passed to the H & S Authority, which was Blaby District Council, and who confirmed by way of a letter [P279], that was sent to Mr Akroyd who was her manager, that they would no longer be investigating the incident.
15. Her manager, Mr Akroyd, then conducted a back to work interview [P.284] on the 5 October 2025, after the Claimant had been off sick for approximately three months. There was a note that said, '*not fully recovered*' and the form was completed by Mr Akroyd. There was also a question that said *Do you feel there is anything you can do to support them,*' [P.285] and the answer was, '*...light duties and more breaks for 4 weeks from the 5 October 2015.*'
16. It also said that '*...Weronika is awaiting a physiotherapy appt from the GP.*' Mr Pridmore at paragraph 10 of his statement said that '*...the Claimant confirmed that she was fit and happy to return to work,*' but this was in stark contrast to the document which said the Claimant was '*not fully recovered.*'

Light Duties

17. Following the first fit note being issued, where it recommended light duties for four weeks from the 29 October 2015, and to avoid heavy lifting and prolonged standing for four weeks [P.286], a further fit note was then issued on the 27 November 2015 that said '*Sitting work. Avoid lifting.*' [P.287] This was an open-ended sick note with no specified time frame, and we find from this point on the Respondent was aware of the need for reasonable adjustments to ensure duties that could be done sitting down, and which avoided the need to lift. We also find that there was no reference in the fit note to any lifting of any type that would be deemed to fall within '*light duties.*' We find no evidence of any specific discussion with the Claimant at this time about this fit note and what light duties she could now safely carry out. We also found no evidence throughout the next seven years up until her sick leave on the 1 August 2022 that indicated any detailed discussions took place with the Claimant about appropriate reasonable adjustments for her in view of her back condition.
18. We found throughout this period that reasonable adjustments could have been made that would have avoided the need to stand for long periods of time and also to avoid weight bearing on a consistent basis. We found, for reasons we now set out, that duties could have been reallocated to her from the all the departments where she could largely speaking carry out duties sitting down and avoid heavy lifting by reference to abilities to lift in view of her disability. We find there was no attempt to find out what the Claimant could safely lift in view of her disability. Whilst the lack of any proper procedure or investigation into the Claimants disability is not of itself an act of disability discrimination, we found the lack of investigation in relation to the duty to make reasonable adjustments led to an ongoing situation where the issue of the Claimants need for consistent light duties was left unresolved. We also found no attempt was made by the Respondents to give her sitting duties, not even on a trial basis.
19. There were ten departments in the factory as follows: -
- 19.11.1 Mugs
 - 19.11.2 Mugs picking
 - 19.11.3 Stationery
 - 19.11.4 Canvas
 - 19.11.5 Memorabilia
 - 19.11.6 Art group
 - 19.11.7 Framing
 - 19.11.8 Accessories
 - 19.11.9 Flat
 - 19.11.10 Rolled
20. Mr Gillatt gave evidence that there were approximately 30 people in the admin department covering sales, marketing and orders, and around 8 people in his production admin department. The Respondent overall employed

approximately around 130 permanent employees [para 1 of SW statement], plus agency staff when required.

21. Mr Gillatt gave evidence that the Claimant worked in the following five departments following her accident: -

21.1 The Claimant worked in the mugs department from 2015-2017.

21.2 The Claimant then moved to accessories, which was separate to memorabilia, a bench away, and that she was trained up on the tabbing gun, which was a memorabilia machine purchased in Spring 2017 and that although she was mainly working on accessories, she also spent good chunks of her time working in the memorabilia department.

21.3 From February 2020 the Claimant then worked in the art group for around six weeks up until the Covid lockdown in March 2020.

21.4 The Claimant then came back in October 2020, 6 months later, being the last worker to return from Furlough, and where she then worked in rolled posters, and it was said that this was the Claimants own choice.

22. We found that the Claimant chose to work in rolled posters. We find it is not to the point i.e., whether she asked to work in the rolled posters department, as this did not remove the Respondents duty to find consistent light duties for her in that department.

23. We find that she was then moved by Dawn West into the Mug Department at the end of July 2022 [para 100 WS. The Claimant raised with Dawn West that she would find it difficult to work in this department, and ultimately this then led to her sick leave as set out below on the 1 August 2022.

24. The Respondents case is that these duties in the five departments, were, largely speaking, light duties. The evidence was that in those five departments she would deal with merchandise such as rolled posters, accessories and packing cups. No mention is made of whether she had to carry the trays of cups, and we found that she did have to carry the trays of cups/mugs that could weigh up to 15kg per tray in that department. Her duties also, we found, involved dealing with posters which involved putting the posters into boxes, and that these were not sitting duties, and that it inevitably involved some bending and lifting of packages of posters, and we found that a box of posters contained up to 100 posters. We found that working with rolled posters, accessories and packing cups and mugs did not amount to sitting work, and did not avoid lifting as recommended in the sick note [P.287] and did not amount to consistent light duties.

25. Mr Gillatt confirmed that at no point prior to her extended period of sick leave did they consider referring the Claimant to Occupational Health.

26. Mr Gillatt gave evidence that normally warehouse operatives would be rotated around all ten departments, and that no warehouse operative had a fixed role in any one department. We found that all workers in the factory were expected to work in whatever department they were allocated to and that where they worked at any one time was '*order led*.' We found that this method of production led to a fixed mind set by the Respondents towards the Claimants need for light duties in that they failed to consider reallocating her light duties suitable for her in view of her disability.
27. We found that although following the accident the Respondent did restrict her duties to the five departments that this decision was taken without any Occupational Health advice on whether the duties she carried out in those five departments were appropriate light duties or not, and without taking any advice from an occupational health doctor as to whether the duties in each department were suitable for the Claimant having regard to her disability. In evidence Mr Gillatt asserted anything weighing between 10 – 15 kilos they considered light duties, whereas anything over 15 kilos and over was not. This was not based on any medical evidence and simply said words to the effect of that '*...this was the industry standard*'.
28. We found that the lack of referral for medical input into what were suitable light duties for the Claimant with her back condition resulted in an approach that was not based on any informed assessment of what was suitable for the Claimant to do in the workplace. This of itself is not an act of disability discrimination but we found that this lack of clarity over what were suitable light duties for the Claimant was then left unresolved for a period of eight years until her dismissal.
29. In the submissions of the Respondent, they said that in relation to her work in the art group: -
- 'Nothing turns on the distinction between whether heavy duties involves lifting a max. of 10kg or 15kg. R's position is that, following her sick note of 27.11.15 (p.287) C was allocated light duties – limited to a maximum of 15kg (RG cross-ex & statement para19-25) and where C could ask for assistance with lifting. N.B. for most of the time C was lifting considerably less than 15kg and went on to heavier lifting depts at her specific request.'*
30. We did not find that giving the Claimant lifting duties of up to 15 kg amounted to light duties. We found that the accident that injured her back involved lifting a package of mugs of 14 kilos. It made no sense to assert that allowing her to periodically lift objects of up to 15 kilos amounted to light duties as this was just

over the weight that she lifted when carrying out normal duties at the point of the accident i.e. 14 kg.

31. We found that the accident that injured her back involved lifting a package of mugs of 14 kg. It was never clear to this Tribunal how the Respondents reached the view that lifting up to 15 kg was a safe limit for the Claimant following her accident. It seemed clear to this Tribunal that the Claimant continuing to lift at that weight did require an occupational health assessment by the Respondent before they could genuinely conclude they were offering her light duties when lifting weights up to 15 kilos.
32. The Claimants case was that she did carry on having to stand and weight bear, and we found even on the Respondents own case that was the case. She gave examples of standing at a machine for the mug department for long periods of time. We did not find that the duties the Claimant was given in each of these five departments were consistently light duties that meant she could perform her duties sitting down throughout the years from 2015 to 2022 on the evidence before us and which avoided standing and lifting as recommended by her GP. We found that she would rotate around these five departments, as other employees did in the ten departments, on an 'order led' basis, and that often she would be standing for long periods of time and lifting, against the advice of her GP i.e. she would be carrying out normal duties instead of light duties. We therefore found the PCP of having to carry out normal duties in place of lighter duties was made out over the period 2015-2022.
33. It was the Respondents case that if she needed help, she could ask a colleague to move things for her or lift them for her. We found no documented evidence of such discussions with the Claimant, and we would have expected the Respondent to at least put formal arrangements in place to be able to ask colleagues to help her. We found that no such arrangements were made to assist the Claimant to make such reasonable adjustments from 2015 to 2022 i.e. arranging for colleagues to help her with lifting.
34. We also found there was no evidence before us of the Respondent monitoring the effectiveness of putting her on alleged light duties in the five departments throughout 2015-2022. We heard evidence from the Claimant, that on occasion throughout this time she raised her concerns about the lack of consistency of being provided with light duties and having to carry out normal duties with Dawn West and that she was told there were no light duties, and she was rebuffed.
35. We found that on several occasions throughout the years 2015-2022 that the Claimant, on the balance of probabilities, did repeat her request for light duties

and referred to her struggles with carrying out her duties by telling Dawn West, and we find the Respondent failed to give them to her.

First Grievance – 10 January 2016

36. The Claimant raised a grievance about a variety of matters [P.289]. The grievance letter dated the 10 January 2016 set out firstly the accident that occurred. She complained of being blamed for the accident and the refusal to supply CCTV footage to show how the accident occurred.

37. She complained about the issue of light duties [P.290]. She set out that: -

‘.. In my understanding it was threatened that if I wouldn't come back to normal duties in short time then it will be hard to find permanent light duties for me and I will lose my work position. Then I was forced to doing jobs which could aggravate my health problem and when I refuse order given by my manager Paul Ackroyd, I was asked to bring new sick note from my GP with information how long I can stand in work, how often and how long breaks I should have. Because on my sick note is written light duty and avoid standing. Then my manager doesn't know what it means longstanding because for him it is 8 hours. [our emphasis added] What was intimidation of me to force me to return to normal duties. Everything was quiet for short time when I brought new note from my GP about my special needs and work which was light duty sitting job only without end date. Very soon after this I was starting to be treated in very bad way by supervisors and manager. My requests and questions was ignored and I was kept with no knowledge about my duties on next day same like often changing my workstation and giving me contradictory orders to increase my stress level in workplaces.’

38. She also said: -

‘after my return to work I was told that it is hard to keep me and work on light duty bases. I was forced to doing job which could worsen my health condition what gave me high level of stress and made side effects on my recovery. This is how I was unfairly treated in my deep feelings giving me and my all family a lot of stress and awareness that I can lose this job in result of this all. Now I need medical help to deal with stress and my health condition can't be improved in this kind of environment. I am terrorised by management staff to that point even I have problems with conversation about my concerns with them because of blockade occurred by stress... firstly I want full and fairly investigation in the accident case in which a result of I suffered injury... finally resolve my health status and agree with fitting me on some permanent workplace to give me comfort of feeling that I am not a problem and cover me from people who can revenge on my person for the rising of all this concern....’

39. Other complaints were made which form no part of this claim.

40. A grievance meeting then took place on the 21 January 2016. The notes [p.292] show that the following was said to her: -

'WM said she gave Paul the footnote regarding not standing and was not happy with this response RW said that we have found a sitting job on decals for WM there are not really sitting jobs in the warehouse. WM thinks that Paul has a problem with this but it is not her fault RG said it is difficult for us but there was only the one role, and we have been accommodating and giving her this.'

41. We found that as to working on 'decals' that this was a reference to working in the mug department where stickers/transfers were placed onto the mugs, something that the Respondent claimed was light duties. We found that she did this in January 2016 until she moved to the accessories and memorabilia department in the Spring of 2017. However, we did not find that working in the decals, accessories and memorabilia departments were appropriate light duties as it could not be done consistently by sitting down and there would have been some lifting of items such as carrying mug trays to carry this work out.
42. At the time of the meeting in January 2016 there had been two fit notes issued by the Claimants GP [P.286 and P.287]. The first dated the 29.10.2015 said that *'advise light duties, avoid heavy lifting and prolonged standing for four weeks.'* Mr Gillatt gave evidence that until the Claimant went off sick, they never considered obtaining further medical advice on adjustments made for the Claimant. It was said that she was performing her duties, and that she at no point complained in her two grievances raised about having to carry out normal duties, instead of light duties and that the Respondent considered that she was on light duties. We found that in the first and second grievance she did raise the issue of needing consistent light duties.
43. Mr Gillatt gave evidence [Para 14] that *'We also explained that we were trying to obtain some clarity on what work the Claimant could do in the factory. We explained that this was not straightforward, but we had accommodated her in finding some appropriate 'light duties' work for her.'* **[our emphasis added]**. We heard no evidence on how they sought such clarity on what work she could do and found that they did not seek such clarity.
44. He also said at paragraph 19 that *'we work in a factory where materials and finished product need to be lifted and moved around. Every department has this activity, however, there are some department's where the lifting requirements are lighter and fewer.'* We found that this was a concession that what they classified as light duties were not light duties but was simply a reference to some light duties where there was not as much lifting and in any event.
45. The Respondent gave evidence by Mr Gillatt that *'... lifting 10 – 15 kilos was carried out by the Claimant...'* [paragraph 21 – Claimants work in the Art Group],

and this was part of his description of work assigned to the Claimant that he considered light duties.

46. We find that lifting objects up to 10 – 15 kilos were not established nor proven by the Respondent as amounting to consistent light duties for the Claimant. We found that the burden of proof shifted to them to show they had made reasonable adjustments to the requirement for the Claimant to carry out normal duties from 26 October 2015 onwards. We find that this example of the alleged allocation of light duties, in particular in the art department when lifting 10-15 kilos was a requirement imposed on the Claimant, and that they failed to establish and discharge the burden of proof that they did make the reasonable adjustment throughout the material time of her employment by giving her light duties.

47. The grievance was rejected on the 27 January 2016 [P.294] and it stated that (our emphasis added where underlined below): -

'Following your return to work we have provided you with work that takes into account the details on your Fit Note, however we did explain that in the warehouse environment there is not a great deal of tasks that can be done sitting alone. You should not take this to mean that we do not want you to work here just that you need to appreciate it is not easy for us to accommodate this, but we have done.'

48. We found this compelling evidence that on the issue of doing light duties that as admitted by them in the grievance findings 'there is not a great deal of tasks that can be done sitting alone' and which avoided standing [as per fit note issued on the 27 November 2015 that said 'Sitting work. Avoid lifting.' [P.287] and that they carried on giving her duties that was not sitting work but involved standing.

Knowledge of Depression and appeal against Frist Grievance

49. The Claimant then appealed the grievance outcome [P.299] on the 22 February 2016. In it she recorded that '*After all this situation I have problems with stress in work and I must take some medicines to reduce my stress, my GP told me that I have depression and high stress by all this problems in the workplace.*'

50. At page 321 [handed in and marked as the 22/2/2018] and at page 428 [marked 19/2/21] is a copy of the Claimants prescription for Sertraline and it is written on there at page 428 that, 'Weronika provided this packaging for information – 19/2/21. She said she has been taking these tablets for 4 years and there are no side effects.'

51. We found from around the 1 March 2016 onwards [P.301] the Respondents had knowledge the Claimant suffered from depression having brought this to their attention following her grievance hearing in writing.
52. The Respondents refused to deal with this appeal against the grievance findings due to it being submitted outside the five-day period for appealing, and due to receiving it 21 days outside the time set for appealing [P.303] and despite the Claimant formally requesting extra time for it to be considered [P.301].
53. As to the reasons for her sickness absence, whilst there were other medical issues that caused sick leave, we found the only reason for the final bout of absence that led to her dismissal was her back problem [P.579]. We did not find that the condition of depression was causative of her dismissal in relation to her claim for unfavourable treatment arising from disability.
54. Having found that the Claimants first grievance, in part about the lack of reasonable adjustments at work, resulted in no formal action by the Respondent. With the grievance being rejected, she then continued with her duties allocated to her which we found were variously in the five named departments of Accessories, the Art Group, Mugs, Memorabilia and Rolled Posters [Para 19-24 of Richard Gillett witness statement].
55. Following lockdown, it was agreed that she would return to Rolled Posters [P.409] from her return on the 26 October 2020 onwards.

Second Grievance – 2021

56. On the 18 February 2021 the Claimant raised a second grievance (425-427). In the main this resulted from an incident where it was said the Claimant had handed out exemption cards from mask wearing in line with Covid guidance at the time and that as a result Dawn West, her supervisor, had shouted at her. This is not an issue for these claims, but it was not in dispute that an altercation had occurred which upset the Claimant and led to a form of apology from Dawn West, who denied shouting but who accepted speaking loudly to her.
57. The Claimant was given an exemption from mask wearing following a letter from her GP [P.424] and how mask wearing made the Claimant anxious due to her pulmonary condition, although this is not a relevant medical issue for this claim.
58. She set out at the fifth point of her grievance that, *'I am disappointed with carelessness from the side of the company regarding my health state'...**'I am very disappointed that the company didn't care much for my health state and didn't monitor my condition.'* We find that she raised in her second grievance issues about her bad back by reason of reference to her *'health state'* and a

lack of monitoring of her condition in relation to the duties assigned to her by the Respondent.

59. A grievance hearing was set for the 25 February 2021 [P.431]. The notes from that meeting were in the bundle [P.435-446] and thereafter an investigation took place. Reference was made to her disability in the meeting where she said: -

'with the situation where I had a back problem, I was seeing a nurse about it. Paul told me all the information about my back was thrown in the bin because it wasn't relevant anymore. That's why I feel that the company doesn't adjust work to my health'.

60. It was the Respondents case that she didn't complain about a lack of light duties in the meeting for her second grievance. Whilst nowhere does she refer to light duties she does, we find, raise concerns about a lack of adjustments [P.439] when she says, 'generally feel that any health concerns are being disregarded.'.

61. The grievance, where, amongst other things, she referred to as her 'health state' [P.453] was rejected. It said the following, which we found proved the Respondent knew she was referring, amongst other things, to her back problem in this grievance when they responded as follows: -

'You told us that you feel your health concerns are not taken seriously by the company. We are aware that you have had a back problem, and adjustments have been made in the past to accommodate this, for example by give following your doctors recommendations of lighter duties and no heavy lifting. However, we're not aware of ongoing issues with this as you have not expressed any concerns and to the best of our knowledge you are comfortable working in the areas you work in [our emphasis added]. In any situation where an employee makes us aware that they have a health condition we will wherever possible make reasonable adjustments as necessary for them to perform their normal work duties. I can confirm that any information pertaining to your health is retained on your personal file in the HR department, in accordance with general data protection regulations. This includes any information that is disclosed your own return to work conditions. We are not aware that you've been formally diagnosed with any particular health condition, but if at any time you need to discuss any sensitive health related issues at work we will gladly facilitate this by ensuring you're able to do so in confidence and in a private setting and we will do our best to support you... this part of your grievance is not upheld.' [our emphasis added]'

62. We found that as of 17 March 2021[p.453] the Respondent did not consider the Claimant disabled, and so did not make any reasonable adjustments by giving her consistent light duties.

63. We found that despite restricting her to five departments in 2016, which they asserted did not involve as many standing duties and lesser lifting duties, but

which we find did not consistently avoid lifting and standing, that as at March 2021 there was still no attempt whatsoever at making any reasonable adjustments, and the five departments she worked in did involve carrying out various normal duties instead of consistent light duties.

64. The Claimant appealed the second grievance outcome [P.460-464]. In relation to her 'health state' the Claimant said as follows [P.463]: -

'In response to my grievance about their disinterest in the consideration of my state of health it has been found that there is no information from the company about my other medical conditions that and that you only have an entry about a problem with the lumbar spine that I acquired after an accident in this company in 2015. Of course, you indicated that I did not give any size that the problem still exists because I did not complain about the pain and discomfort during work. The truth is thanks to powerful drugs I'm able to work with the painkiller, but it is paid for with increased effort and adaptation movements in the position and increased pain after returning home. I did not feel sorry for my attempts were ignored or downplayed by my superiors, so I accepted the situation and tried to take care of myself. After the information I got from Paul that he got rid of my paperwork authorising me to work lightly when I tried to file a complaint against the supervisor for non-compliance with the recommendations given by my doctor, I fell out of wanting to fight for my rights and I dealt with the problems myself by increasing the doses of drugs in their rotation. I also found that after repeatedly admonishes my supervisor about my limited fitness it is her responsibility to remember about my health limitations because it is one of the aspects of health and safety for which she is responsible.'

65. The meeting with the Claimant about her grievance took place on the 15 April 2021 [P.491-496]. She told them in the meeting that [P.493]: -

'my back situation has not changed for years, I'm in constant pain but trying to manage it as best as I can using creams and tablets.

What are your limitations?

In the past I brought us doctors note which said light work and sitting work but I don't feel like it was taken into consideration. I'm still being asked to do things I shouldn't be doing.

Tell us some of the tasks you're being asked to do that you shouldn't do.

It's difficult to stand in one place without moving, it's easier to walk a bit between tasks. Picking is easier because it's easier when I move.

What about lifting?

I can still lift the weight that doesn't cause any pain, and I try to do things so as not to cause pain.'

66. We find that the Claimant was left to make her own adaptations in the workplace to manage her disability and no proactive management of her disability was taking place in any form whatsoever by the Respondent as of April 2021, despite her repeated requests for consistent light duties.
67. The appeal outcome (497-499) confirmed that the original grievance findings still stood and were unchanged. However, for the very first time and over five years after the claimant's accident the respondents confirmed [p.498] that, as one of the main health conditions was ongoing back pain, they wanted permission to obtain a medical report from her GP to ensure they were fully meeting their obligations in respect of this.
68. On the 20 July 2021 the Respondent wrote to the Claimants GP [P.508-509]. They asked for advice about any suitable reasonable adjustments that could be made. No reply was ever received from the Claimants GP. We found that this was due to an email the GP sent to the Respondent requesting payment of a fee for a report not then being sent to the correct email address. Instead, it had been emailed to a sales email address. Ms Warn admitted during evidence that she may not have chased for the report after she sent the request, and we found that she did not chase the outstanding report from the Claimants GP.

Claimants sick leave from 1 August 2022 to dismissal

69. At paragraph 100 of the Claimants witness statement she gave evidence that at the end of July 2022 she was assigned to normal duties at the mug machine that required her to be standing still for a long period, that it was the worst job for her and it made her back ache standing still for so long, and that the packaged boxes were much heavier, more than twice as heavy as boxes with posters. She said that she was placed on this job by Mrs Dawn West after she had told her she could not carry out these duties. We accepted this evidence of the Claimant.
70. The Respondents could have called Ms Dawn West to give evidence and Ms Warn confirmed during evidence that they did not do so because of the difficult history in effect between the Claimant and Ms West. The Claimant went on to say in her evidence at paragraph 100 that after handing in her fit note which said *'degenerative spinal changes, awaiting specialist input. For usual hours, no heavy lifting ^10kg or repeat bending'* [P.531] on 27 July 2022... that Ms Dawn West mocked her and said there were no light duties for her. We accepted this evidence and found it occurred as described by the Claimant. We found a failure to call Dawn West in this claim meant we could draw an inference and infer that the events occurred as described by the Claimant which led to this discriminatory state of affairs.

71. The Claimant gave evidence that she was then told by Ms West to obtain a sick note saying she was not fit for work in the absence of any suitable light duties and that as a result a sick note was obtained by her [P.532] which said, *'you are not fit for work.'* Her evidence was that the failure to give her consistent light duties meant she was forced into taking sick leave by Ms West.
72. We found that this account of events was made out by the Claimant, and we find that she was forced onto sick leave by the Respondent due to their insistence at this point in July 2022 that she work standing at the mug machine, which could not be, we find, described as light duties.
73. The Respondents case was that she was on light duties. We find that she was not on light duties consistently throughout the time from 2016 to her sick leave commencing on the 1 August 2022. The Respondents did not run their case on the basis that they could not comply with the GP note at page 531, but instead disputed that they received the sick note, something we deal with below.

Sick Leave of Claimant from August 2022 to dismissal

74. During the Claimant's sick leave the Respondent kept in touch with the Claimant, and they were aware that the Claimant had an appointment with a specialist [P.537]. On the 21 February 2023 [P.557] the Respondent sought permission from the Claimant to obtain a report from her doctor on her current state of health and on a prognosis for her future health.
75. On the 27 February 2023 [P.562] the Claimant complained that she had provided consent the year before and that it had not been actioned by the Respondent. She stated that not only did they not act on her consent but that when she requested light duties, she was put on a machine to take out the mugs which was one of the hardest duties physically for her. At this point she initially refused to give access to her health records, and asserted the Respondent *'didn't care'* about her health.
76. We have already found that the Respondents failed to chase the medical report after it was requested by them from the Claimant's GP. Had Ms Warn chased the report we found medical input would then have been obtained from the Claimants doctor at least one year earlier into whether adjustments could be made to help the Claimant.
77. The Claimant went on to say that there had been no change in her health state from when she last provided her consent the year before. She also said that it would not help the Respondents as she had not yet seen her surgeon at the spine clinic and that it would mean the information they needed would not yet be currently available, and that it would, *'be best to wait to my visit with surgeon because then I will be know what medical steps will be taken next and this will*

clarify situation about my needs or adjustment in work and will roughly time when I will be able to come back to work.'

78. We found the Claimants desire for her to see her surgeon before her medical records were released to the Respondent understandable, and her scepticism towards the Respondent had been caused by their previous lack of action in obtaining a report for her GP.
79. At this point Ms Warn pointed out that the report had never arrived from her GP [p.562] and in reply the Claimant asserted she still wished to wait for her surgeon to see her before releasing her records and giving consent for this to happen [P.561].
80. In reply on the 9 March 2023 Ms Warn stated that they now wished to obtain a report from an independent medical practitioner/Occupational Health Specialist rather than obtaining a report from her GP and that she was in the process of organising an OH Service Provider [P.561].
81. The Claimant stated her concern in reply about whether they were looking to dismiss her due to her back problem [P.560] and repeated she thought the injury was their fault.
82. On the 9 March 2023 the Claimant then consented to the OH medical report being obtained by the Respondents [P.569].
83. On the 24 March 2023 the Respondent then confirmed [P.574] that they had decided to wait until she saw her specialist before obtaining a report from their appointed OH practitioner. The following was said: -

'As your planned appointment with the spine specialist is now only a few weeks away we have decided it will be best to delay the OH appointment until after you have seen the specialist. As you have rightly said, you will hopefully have a clearer picture of what your future treatment needs will be after seeing the specialist and we recognise that this will be beneficial to the OH consultation'.

84. On the 21 June 2023 [P.584-599] the Respondents completed a form for the medical assessment of the Claimant to take place. The usual requests were made for the report to cover what adjustments could be made and what the Claimants prognosis was. The Respondent said in the form that light duties had been made available to her in the past and that: -

'Warehouse operatives are being rotated and trained to work in all areas to enable us to be more agile and meet these demands and it may therefore be difficult to guarantee that duties will always be available in lighter areas.' [our emphasis added]

85. A report was prepared and made available on the 26 June 2023 – pages 594-599 – the report recorded that the Claimant said that while she had been able to cope generally with light duties over the years, she had been expected to undertake heavier duties when the warehouse was busy [P.595]. It also identified that prior to her current absence symptoms indicated a different slipped disc to that caused by the original accident, and which was now causing her symptoms.
86. The issue of the Claimant refusing physiotherapy in favour of having a spinal injection was referred to. We had no medical evidence before us about what would have happened had she had the physiotherapy at that point, nor did we have any such evidence about the treatment options that were suitable for the Claimant at that time. We find that she preferred a spinal injection to physiotherapy at this point in time but that ultimately that was not provided for her.
87. The report confirmed she appeared to have a mood disorder caused by the back injury and due to her perception of how she was treated by her employer. It then went on to say that: -
- ‘Her specialist has not provided any recommendation in relation to workplace adjustments, as there is currently no treatment in place, they have not provided recommendations regarding timescales for improvement.’*
88. It was not in dispute that Dr Greg Irons, the author of the report, never contacted the Claimants specialist for information about her planned treatment and future prognosis. There was no explanation before us why this did not occur, and we would have expected the Dr to contact the spinal specialist to obtain such information and to consider if the Respondent could offer her light duties. We did not accept the submission that it was for the Claimant to obtain such information from the specialist and provide it to the Respondent and we found the OH Doctor and Respondent, as part of a reasonable investigation into her absence and likely future prognosis, and in relation to the question of her continued employment, should have investigated the issue of prognosis and treatment as part of a reasonable investigation about her likely return to work before deciding to dismiss her. Instead, we find that they relied on third hand information from the Claimant about what her specialist had said to her, this being a Claimant whose first language was not English. We did not find that this amounted to a reasonable investigation into her continued absence from the workplace, and in relation to their ultimate decision to dismiss her.
89. The report said it was unable to provide any timescale for the Claimants return to work [P.598].
90. The report went on to say that: -

'I am hopeful with appropriate medical and workplace support that Ms Mularczyk will be able to return to her previous role, albeit some ongoing adjustments may be required. This will be dependent on symptomatic improvement.'

91. We found that despite this opinion, i.e., that with appropriate medical and workplace support that the Claimant would be able to return to her previous role albeit with some ongoing adjustments to her role, that no such medical and workplace support was investigated as a possibility at this point, nor was there any further attempt to give her light duties that consistently avoided standing and lifting, and three days after they discussed the report with her she was then dismissed.
92. We found the Respondent at this stage had a duty once again at the point of receiving this final occupational health report on the 29 June 2023, to consider reasonable adjustments and light duties to enable her to return to work to avoid her dismissal.
93. The Claimant was invited to a further meeting [P.602] to discuss the report. A meeting took place on the 17 July 2023 and notes were in the bundle of that meeting [P.603]. Discussion took place about the Claimants desire for spinal injections instead of physiotherapy. They also said as follows [P.604]: -
- 'OK so if return to work in the near future isn't likely, then we would consider whether there might be any other positions available that might be more suited to your state of health that could help you get back to work sooner, we would also look at whether any reasonable adjustments could be made to your work arrangements to help you return in some capacity and support you on your return. Unfortunately, there are no alternative positions that we could consider and as we have no guidance or recommendations from your specialist in relation to workplace adjustments or timescales for improvement that does make it very hard [our emphasis added].'*
94. We found that during the meeting no discussion took place at all about what adjustments the Claimant thought could be made to enable her to return to work. We found that there was no exploration of this by the Respondent prior to that meeting or during that meeting as to whether a position could be created through the reallocation of some of her existing duties where she was able to mostly sit during her working hours and avoid heavy lifting, and repeated bending.
95. On the 15 August 2023 a further meeting took place and notes of that meeting were in the bundle [P.615-616]. It was said that the Claimant stated as recorded in the notes that *'she was happy with its contents.'* The Respondents counsel sought to prevent cross examination by the Claimant of their witness on this report and said she had confirmed in cross-examination that she was *'happy with it.'* I pointed out that this Claimants first language was Polish, and, in any

event, we did not find that this reply by the Claimant amounted to a concession she could not return to work as the report itself set out she would be able to do so, dependent on prognosis, if adjustments were made. A bald statement that the *'Claimant was happy with its contents'* did not in any event take the issue any further.

96. In the meeting the Claimant confirmed that she was starting physiotherapy on the 22 or the 28 October 2023 which was only two months hence from the date of the meeting. The meeting lasted twenty minutes. We found there was no detailed discussion about what adjustments might be made to facilitate her return to work, and having found that she worked for eight years without any reasonable adjustments that amounted to consistent light duties, we found that any other reasonable employer as part of a reasonable investigation would have discussed with the Claimant the issue of what the Claimant felt she could do at work, before any decision was taken about her continued employment with the Respondent.

97. Three days later, and despite the report stating her return to work may be possible with adjustments she was dismissed due to incapacity as set out in the letter dated the 18 August 2023 [Page 618-619]. It said as part of the reason for dismissal that: -

'You have no information at this time regarding the duration of the physio, or what will happen afterwards.'

98. Ms Warn gave evidence that at the point of dismissal she considered if there were any other vacancies outside the warehouse the Claimant could carry out in the company and concluded there were none which then led to her dismissal. She also confirmed however that she did not discuss with anyone outside the warehouse whether the Claimant could carry out any other roles, nor was there we found any evidence of this being discussed with the Claimant prior to her dismissal.

99. The Claimant appealed her dismissal – page 623-625. She set out physiotherapy may have facilitated her return to work *'by the end of year.'* She pointed out that they had referred to 'various options' without setting out what they were. We note that in this regard [p.615- in the last meeting prior to dismissal,] that the options referred to her firstly remaining on long term sickness absence until recovered sufficiently to return to work or secondly her employment being terminated on the grounds of long-term capacity to work. We found that there is no reference to adjusted light duties so she could return at this point to work.

Claimants Appeal against Dismissal

100. An appeal hearing then took place on the 4 September 2023 – p.634 – 679.
101. The Respondent, as set out above, had initially said they would wait for her to see her specialist, before they instructed their OH Doctor. This was then followed by no communication between the Respondent or their OH advisor and her specialist. The Claimant said, in terms, in her letter of appeal [P.624] that there had been little point in them agreeing to wait to see her specialist when they then failed to communicate with her ‘doctors’ as to what they had concluded about treatment and prognosis, and by this we inferred she was referring to her specialist as well.
102. While we find the Respondent was entitled to appoint their own independent OH advisor, and that any failure to conduct investigations by failing to communicate with her specialist cannot of itself amount to a failure to make reasonable adjustments, we do not find they were entitled to ignore any treatment plan proposed by her specialist for the purposes of her unfair dismissal claim, and the records he held about her disability. In particular his views on how long any treatment would have taken to achieve any improvement for the Claimant, and his views on her future prognosis were highly pertinent as part of a reasonable investigation in relation to their decision whether to dismiss her or not.
103. Whilst we find there was some confusion over when she would start the physiotherapy i.e. August or October 2023, we find in any event that this was a relatively short time away from the date when they decided to dismiss her on the 18 August 2023 [P.618].
104. On the 14 September the Claimants appeal against her dismissal was dismissed [P 677-679]. It said that due to the length of time she had been absent, which was at this point just over one year, and that the further significant period of time before physiotherapy was to commence, which we note at this point was less than one month away or thereabouts, and the uncertainty around duration and the success of that treatment, that they were dismissing her. They said that the issue of reasonable adjustments to enable her return to work had been considered but that her specialist had not provided any recommendations or guidance to workplace adjustments, despite the fact the Respondent had not directly, nor through their OH Doctor, sought these prior to deciding to dismiss her as set out above. They stated they *‘were unable to explore this option with her.’* We did not find they were unable to explore this option with her.
105. We found that any other reasonable employer conducting a reasonable investigation would have asked the specialist for his recommendations on adjustments before dismissing her, as they had originally planned to do, and

then discussed those with the Claimant. In making this finding we had regard to Ms Warns evidence [para 54] that:

'By this time it was only four weeks until the claimant was due to see the spine specialist and I was of the opinion that it would be best to hold off with arranging the occupational health assessment until after this had taken place so that any recommendations made by the specialist in relation to the claimants treatment plan and future capabilities for work could be taken into consideration and assist us with being able to manage her absence and future return to work.'

106. Mr Gillatt [para 47] gave evidence that *'all assistance and reasonable adjustments were made to assist the Claimant with her back injury, it is clear and documented that the company made every effort to assist the Claimant with this and her return to work.'*

107. We preferred the Claimants evidence that they did not try and assist her with her return to work and we make this finding based on all evidence before us and there being no specific discussions with her about what they could do by way of reasonable adjustments to facilitate her return to work.

Duty to Make Reasonable Adjustments

108. In a case concerning a breach of a duty to make reasonable adjustments the Respondents must either say there was no breach, as was asserted in this case, but in any event in the alternative they may run an argument about when they did breach such a duty for the purposes of determining limitation.

109. No such submissions were made by the Respondent on this point on limitation. The issue of limitation was not referred to by the Respondents in their Response, and the only time it was referred to was in the List of Issues drawn up by the Judge at the preliminary hearing and thereafter no amended Response was filed alluding to limitation. The Claimant was not cross examined either on the issue of limitation and the date when she issued the claim. We found that those witnesses for the Respondent who had knowledge of the events over these eight years were all at the hearing giving evidence, and all had a full recollection of the events in question. The other potential witness they chose not to call, was Dawn West the Claimants supervisor, and we found she would have had important evidence to give about the allegations made by the Claimant about the breach of the duty to make adjustments for her over the time period of eight years, and in particular in relation to moving her to the mug

department in July 2022 which then led to her sick leave. It was confirmed that she still worked for them at the date of the hearing.

110. As we find there was a breach of the duty to make adjustments, we now set out the dates upon which we find the duty was breached as follows: -

110.1 Upon the Claimants return to work [page 285] the GP note advised light duties from 5.10.2015 for four weeks, and we find they should have been put in place within a reasonable period of seven days following the sick note.

110.2 On the 29.10.2015 [P.286] a further sick note was provided advising light duties, and again by at least one week later we find they should have been put in place within a reasonable period of seven days following the sick note.

110.3 On the 27.11.2015 [p.287] the GP note advised on an open-ended basis light duties i.e. sitting duties and avoiding standing and as we found they should have been in place by now in any event following the issue of the above fit notes. In any event we find that they should have been put in place in the alternative at the latest by early January 2016 as set out in the List of Issues.

110.4 When the Claimant raised her first grievance on the 10 January 2016 and alerted the Respondents to her continuing difficulties with her back, we found that as of the 27 January 2016, when they sent the grievance outcome, that they should have put such light duties into place. We found that instead they rejected her grievance and failed to put such consistent light duties into place by this date.

110.5 In her return-to-work interview [P.317] on the 6 February 2018 the Claimant referred to her need for light duties where it was recorded 'no heavy lifting' and 'pain in back', and this was we find once again ignored, and we find by this date the breach of duty to make reasonable adjustments was repeated once more by failing to put into place consistent light duties.

110.6 In her appeal against the grievance findings [P.461] the Claimant stated that, as at the 26 March 2021, *'..I reminded her of my back problems and how that I can't stay here long, she disappears the whole day, leaving me in the given position and she avoided me from giving me a chance to ask when someone would change positions with me.'* We found the Claimant was clearly raising her need for reasonable adjustments and that Dawn West was ignoring her requests. We found that by this date the breach of duty to make reasonable adjustments was repeated once more by failing to put into place consistent light duties.

110.7 We found that during the appeal hearing in April 2021 [P.493 onwards] against the dismissal of her grievance above that she specifically told the Respondent that, *'My back situation has not changed for years, I'm in constant pain but trying to manage it as best as I can using creams and tablets,' and 'In the past I brought a doctor's note which said light work and sitting work but I don't feel like it was taken into consideration. I'm still being asked to do things I shouldn't be doing.'*

110.8 We found that following the dismissal of this appeal the Respondent started to finally take some action in relation to the Claimant's disability and asked for permission to instruct the Claimant's GP as at the 20 July 2021 [P.508].

110.9 We found that the Respondent having obtained the Claimants permission to get a report at the end of June 2021, they then compounded this failure by failing to chase the GP report when it didn't arrive. It was not until a year later in July 2022 that the Respondent told the Claimant that the GP report had never been obtained. We found that by this date from July 2021 onwards that the breach of duty to make reasonable adjustments was repeated once more by failing to put into place consistent light duties.

110.10 We found that the fit note dated the 27 July 2022 then stated [P 531] – no heaving lifting above 10 kg or repeat bending. We find that the Claimant showed this fit note to Dawn West but was then told by Dawn West there were no light duties. We found that by this date as of 27 July 2022 that the breach of duty to make reasonable adjustments was repeated once more by failing to put into place consistent light duties.

110.11 We found that a further meeting then took place to discuss the occupational health report [P.603 - 605]. She was told on this date of the 17 July 2023 that there were no 'alternative positions' available. We found that by this date as of 17 July 2023 that the breach of duty to make reasonable adjustments was repeated once more by failing to put into place consistent light duties.

110.12 We found that at the final meeting with the Claimant on the 15 August 2023 [Page 615] that they failed to discuss once more with her the possibility of consistent light duties. We found that by this date as of 15 August 2023 that the breach of duty to make reasonable adjustments was repeated once more by failing to put into place consistent light duties.

Disputed Sick Notes

111. The Respondents disputed that two sick notes were handed in by the Claimant which were at P.531 (dated the 27.7.2022) and P.353 (dated the 05.12.2018) of the Bundle. They based this on the fact they did not have a signature on them from the Respondent to show receipt whereas other sick notes did have. As to the disputed sick notes we find she showed them to Dawn West her supervisor who was aware of what they said about light duties – [P.531] and [P.353].

Equal Opportunities Training

112. We found that set against this continuing failure to make reasonable adjustments that it was highly relevant that Ms Warn, and all other Managers and Supervisors had not been provided with any equal opportunities training by the Respondent.

Submissions

113. We took the submissions of both parties into account but do not repeat them in full here.

THE ISSUES, THE LAW & APPLYING THE LAW TO THE FACTS

Unfavourable Treatment Arising from Disability

114. Section 15 of the Equality Act 2010 provides as follows: -

15 Discrimination arising from disability

- (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.

115. In **Pnaiser v NHS England and another [2016] IRLR 170**, the EAT summarised the proper approach to claims for discrimination arising from disability as follows:

The tribunal must identify whether the claimant was treated unfavourably and by whom.

It then has to determine what caused that treatment, focusing on the reason in the mind of the alleged discriminator, possibly requiring examination of the conscious or unconscious thought processes of that person, but keeping in mind that the motive of the alleged discriminator in acting as he or she did is irrelevant

The tribunal must then determine whether the reason was "something arising in consequence of [the claimant's] disability", which could describe a range of

causal links. That stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator. The knowledge required is of the disability; not knowledge that the "something" leading to the unfavourable treatment was a consequence of the disability.

Was it unfavourable treatment?

116. The concept is broadly analogous to the concepts of disadvantage and detriment found elsewhere in the EqA 2010.

117. We have had regard in particular to the following aspects of the EHRC Code:

'Being treated unfavourably for the purposes of section 15 of the EqA 2010 means that the person "must have been put at a disadvantage" (paragraph 5.7); and

"The courts have found that 'detriment', a similar concept, is something that a reasonable person would complain about, so an unjustified sense of grievance would not qualify.... It is enough that the worker can reasonably say that they would have preferred to be treated differently" (paragraph 4.9, in the part of the EHRC Code dealing with indirect discrimination).

This guidance stems from cases such as Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 11.122. 1

118. Case law establishes that there is a relatively low threshold for demonstrating that treatment was unfavourable, as demonstrated by the above provisions of the EHRC Code.

Burden of Proof

119. In cases of 'discrimination arising from a disability', what is required at the first stage is that the Tribunal firstly identify the individual/s responsible for the treatment complained of and enquire into the reason for that treatment,

undertaking this exercise as if determining the reason for conduct complained of in a direct discrimination claim.

120. Secondly, they must determine - applying an objective test - whether there is a connection between the disability and "the something" that provides the reason for the treatment in issue as per **Pnaiser**.

ISSUES

Disability (Equality Act 2010 section 6)

24. Did the claimant have a disability as defined in Equality Act 2010 section 6 at the time of the events the claim is about? The Tribunal will decide:

24.1. Did they have a physical or mental impairment: back pain and depression?

121. The Respondents conceded both disabilities of back pain and depression at the material time. However, they disputed knowledge of depression at the material time.

Discrimination arising from disability (Equality Act 2010 section 15)

25. Did the respondent treat the claimant unfavourably by:

25.1. Dismissing her?

122. We found that the Respondent did treat the Claimant unfavourably by dismissing her.

26. Did the following things arise in consequence of the claimant's disability:

26.1. The claimant's sickness absence that led to her dismissal?

27. Was the unfavourable treatment because of her sickness absence?

123. We found that the sickness absence arose from her back problem which then led to her dismissal. However, we find that there was no mention of depression in any of the documents leading to her dismissal, nor did her final bout of sick leave arise from her depression. We therefore find that the dismissal, which was unfavourable treatment because of her sick leave, and this sick leave related to her disability of a back problem, led to her dismissal. We found that the unfavourable treatment in dismissing her did not arise from her depression.

28. Was the treatment a proportionate means of achieving a legitimate aim?

The respondent says that its aims were:

28.1. a. The Respondent needed to manage its staff levels to maintain the operational requirements of the business.

b. The Respondent needed to engage with and manage absent employees for reasons including but not limited to ensuring employee welfare.

29. The Tribunal will decide in particular:

29.1. was the treatment an appropriate and reasonably necessary way to achieve those aims

124. On the evidence before us we found that the Respondents needed to manage their staff levels to cover the Claimants' duties by using agency workers, but we found that they had a pool of them on hand all the time and there was no evidence before us about the actual costs for their business. We found that the Respondent employed around 130 employees and in addition agency workers and had no difficulty in covering the duties of the Claimant when she was absent. By the time of dismissal, the Claimants statutory sick pay had ended and so we found that her absence wasn't incurring any significant costs for the Respondent on the evidence before us.

125. We find it was not a proportionate means of achieving a legitimate aim i.e., to dismiss the Claimant to achieve this asserted legitimate aim of managing staff levels i.e. of achieving costs saving and managing staff levels and we find the pursued legitimate aim was disproportionate to dismissing the Claimant.

126. As to the asserted legitimate aim of 28.1. b above we found this a vague legitimate aim, and whilst we found that they needed to engage with her and manage her absence including but not limited to ensuring employee welfare we did not find that this meant they needed to dismiss her in all the circumstances of this case, and we did not find this to be a proportionate means of pursuing a legitimate aim by dismissing her.

29.2. could something less discriminatory have been done instead.

127. We found that something less discriminatory could have been done instead, which would have been to delay any dismissal and to wait instead for her physiotherapy treatment to conclude at very little cost to them. At this point her Statutory Sick Pay had ended, and her treatment was due to start only a few months hence from the point of dismissal, and she may then have been fit to

return to work, with appropriate adjustments and after her treatment started to work.

29.3. how should the needs of the claimant and the respondent be balanced?

128. The Respondent has stated its legitimate aims as set out above, but these aims are not we find legitimate and proportionate balanced against the Claimants dismissal.

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

129. We have found that the Respondent knew she had a back problem from the outset following the accident in 2015 and this was conceded by the Respondent i.e. that they had knowledge of her back problem throughout.
130. The claim for unfavourable treatment arising from disability in relation to her dismissal arising from her back problem therefore succeeds.
131. We found that the Respondents knew of her depression from the 1 March 2016 [P.301]. However, we found that this played no part in her dismissal and this claim for unfavourable treatment arising from her depression therefore fails.

The Law - Failure to Make Reasonable Adjustments

132. The Equality Act 2010 provides as follows: -

6 Disability

(1) A person (P) has a disability if—

(a) P has a physical or mental impairment, and

(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

(2) A reference to a disabled person is a reference to a person who has a disability.

(3) In relation to the protected characteristic of disability—

(a) a reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability;

(b) a reference to persons who share a protected characteristic is a reference to persons who have the same disability.

.....

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) The second requirement is a requirement, where a physical feature 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.
- (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.
- (6) Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.
- (7) A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation

to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty.

- (8) A reference in section 21 or 22 or an applicable Schedule to the first, second or third requirement is to be construed in accordance with this section.
- (9) In relation to the second requirement, a reference in this section or an applicable Schedule to avoiding a substantial disadvantage includes a reference to—
 - (a) removing the physical feature in question,
 - (b) altering it, or
 - (c) providing a reasonable means of avoiding it.

133. The guidance given in **Environment Agency v Rowan [2008] IRLR 20, [2008] ICR 218** is to be applied, namely that in order to make a finding of failure to make reasonable adjustments there must be identification of:

- (a) the provision, criteria or practice applied by or on behalf of an employer; or
- (b) the physical feature of premises occupied by the employer;
- (c) the identity of non-disabled comparators (where appropriate); and
- (d) the nature and extent of the substantial disadvantage suffered by the claimant.

134. Laws LJ in Saunders added:

"the nature and extent of the disadvantage, the employer's knowledge of it and the reasonableness of the proposed adjustment necessarily run together. An employer cannot ... make an objective assessment of the reasonableness of proposed adjustments unless he appreciates the nature and extent of the substantial disadvantage imposed upon the employee by the PCP'."

Applying the Law to the Facts

135. We have noted Mr Menan's reference to the case of ***Doran v Department for Work and Pensions EAT 0017/14*** and his submission that the duty to make adjustments is not triggered until the Claimant has a date to return to work. However, this claim for reasonable adjustments does not concern the act of dismissal.
136. In ***Doran*** the EAT accepted that the decision referred to in that case, which was the case of ***NCH Scotland v McHugh [2006] 12 WLUK 396***, and which was relied upon by the Tribunal when making its decision about the trigger point for the duty to make adjustments, was in fact an obiter (i.e. non-binding) comment so far as the trigger point for the duty to make reasonable adjustments was concerned.
137. We distinguish this case from *Doran*, as in this case the actual act of dismissal is not part of the claim for a failure to make adjustments but is instead about the failure to make adjustments up to the actual act of dismissing the Claimant but not including the act of dismissal.
138. In any event, in the alternative, whilst there was no indication of a date for a return to work in the OH report for the Claimant the OH Doctor had however indicated that she would be able to return with appropriate adjustments and workplace support and a meeting was arranged to discuss the report, but we found that no discussion whatsoever took place about the possibility of any adjustments with the Claimant at the final meeting with her following which they decided to dismiss her. Instead, we found they simply told her at the final meeting they had considered adjustments but did not say what those were that they had considered and then said there were none they could make. We did not find in this case, as in ***Doran***, that the 'ball was in the Claimant's court' and instead we found that having obtained the report from their OH Doctor specifically to decide if adjustments could be made the ball was now in the Respondents court prior to deciding to dismiss her as to whether they could make the adjustments to facilitate her return to work. In short, the duty to make adjustments had already been triggered prior to going off sick and was also triggered again during the meetings they had with her prior to dismissal.
139. We found that they didn't in fact at any point consider making any reasonable adjustments when considering whether to dismiss her.
140. We also found that at the final meeting prior to dismissal that the Claimant made quite clear that she wanted to return to work but was now waiting for her physiotherapy treatment to start a few months hence. The Respondent then proceeded to dismiss her three days later without updating itself on whether such physiotherapy treatment may enable her to return to work in the near future. Whilst a failure to investigate further of itself is not an act of disability discrimination we found this telling evidence of the Respondents failure to consider reasonable adjustments up to the point it decided to dismiss her, and we found their breach of duty to make reasonable adjustments continued on until just prior to the point that they decided to dismiss her.

Duty to Make Adjustments – when did the Duty Arise?

141. In this case having found that the duty to make adjustments first arose and was breached in late 2015, and then again arose in early January 2016 and was once again breached, with further failures to make adjustments as set out above at paragraph 110 onwards, then we found there was a series of breaches of the duty to make adjustments on a variety of dates over a period of eight years.
142. Having found that the breach of the duty arose from late 2015 onwards then the Respondents submissions on this point that there could have been no breach of the duty due to the Claimant being dismissed while she was off sick falls away.

Burden of Proof

143. On the issue of a failure to make adjustments we reminded ourselves of the Burden of Proof provisions when making our findings of fact. In 'reasonable adjustments' cases the claimant is required, at the first stage:
- (a) to establish the provision, criterion or practice relied upon which in this case was having to carry out normal duties instead of being given light duties; and
 - b) to demonstrate substantial disadvantage. The burden then shifts to the respondent to show that no adjustment or further adjustment should be made.
144. On the test on disadvantage we reminded ourselves that all we have to find is "whether the PCP has the effect of disadvantaging the disabled person more than trivially in comparison with others who do not have the disability" as per **Sheikholeslami v Edinburgh University [2018] IRLR 1090**. We find that it did disadvantage the Claimant more than trivially compared to others. Suffering back pain when carrying out your duties is we find more than a trivial effect compared to other employees who are not disabled.

145. We found that requiring the Claimant to carry out normal duties at different points throughout the eight-year period without consistent light duties was a substantial disadvantage to her in that it caused her discomfort in her lower back and compared to someone without the Claimants disability this was a substantial disadvantage.
146. The Claimant having proven the PCP was applied to her, as set out in our findings of fact above, and having proven substantial disadvantage, then the burden of proof shifted to the Respondent to show that no adjustment or further adjustment should be made. They asserted an adjustment was made and that they gave her light duties. We found that the duties they gave her did not consistently amount to light duties and even on the Respondents case as conceded by them she was at times lifting up to 15 kilos which we did not find amounted to avoiding heavy lifting and we found were not light duties. In any event the issue of standing frequently was we found made out by the Claimant and this was in contravention of her doctor's sick note which recommended sitting duties [P.287]. We therefore found that the Respondents failed to discharge the burden of proof that they had made a reasonable adjustment by giving her light duties.
147. Judged objectively we found it was reasonable for the Respondents to give the Claimant light duties by giving her sitting duties that avoided lifting, [P.287], and avoiding heavy lifting [P.317]. No attempt was made to do so consistently, and we found that this amounted to a failure to make reasonable adjustments, and we find that the Respondent failed to discharge its duty to make reasonable adjustments for a period of eight years from late 2015 and thereafter on various dates up to the date of her dismissal.
148. No point was advanced by the Respondents that any failure to make reasonable adjustments could have only run up until her sick leave started. In any event even if such a point had been advanced, we find on the facts as found above that there was still a failure to make adjustments from 2016 to the date her sick leave started on the 1 August 2022. We find that this failure was then repeated when they met with her during her sick leave and prior to dismissal as set out above.

ISSUES

Reasonable Adjustments (Equality Act 2010 sections 20 and 21)

31. Did the respondent know or could it reasonably have been expected to know that the claimant had the disability regarding her back? From what date?

149. The Respondents conceded that they knew she was disabled at all material times for the disability relating to her back.

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

32.1. In around January 2016 the respondent required the claimant to do normal duties in place of light duties?

150. We find that this PCP of requiring the Claimant to do normal duties was proven by the Claimant from January 2016 to the date of her dismissal, and that they did not allocate consistent light duties often and with regularity throughout this period. We find she frequently had to carry out normal duties, and so we find this PCP was established by the Claimant.

33. Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that her back complaint meant that normal duties would cause back ache in lower back?

151. We found that it clearly put the Claimant at a disadvantage as it caused her lower back ache compared to someone without her disability when she carried out her duties. We found that the Claimant, compared to others without her disability, had to take painkillers and apply creams to her back to cope with her normal duties and so carried out her duties while in pain and discomfort. This did we find put the Claimant to a substantial disadvantage compared to someone without the Claimants disability and with find that this disadvantage was more than trivial.

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

152. We found that the Respondent could have reasonably been expected to know that she was at the disadvantage. We found that she raised this issue on several occasions about her bad back including in both grievances, and in her appeals against the grievance outcomes, and in the form of sick, and fit notes from her Dr who recommended adjustments. In her evidence and on the facts as found by us we also found that she raised her concerns and the back pain she was suffering from verbally with Dawn West on a number of occasions, and we refer to paragraph 110 above where we set out when the Claimant either alerted the Respondent to her back problems or they themselves referred to it.

35. What steps could have been taken to avoid the disadvantage? The claimant suggests:

35.1. Kept the claimant on light duties.

153. We find that the Respondent could have made reasonable adjustments so that the Claimant was consistently on light duties where she was mostly sitting down and not standing for long periods of time or repeatedly weight bearing at a level of heavy lifting, and that they could have achieved this by a reallocation of duties so that she was consistently carrying out light duties. We heard no evidence that this was not possible and the Respondents case in any event was that up to the start of her sick leave on the 1 August 2023 that she was on light duties. We find she was not on consistent light duties.

36. Was it reasonable for the respondent to have to take those steps and when?

154. We find that it was reasonable to take those steps from late 2015 onwards and on the further dates indicated above at paragraph 110 where we find the Respondents were alerted throughout her employment to her need for light duties.

37. Did the respondent fail to take those steps?

155. We find the Respondent failed to take those steps and the claim for a failure to make reasonable adjustments in relation to her disability of a back problem at the material time from 2015 to the date of her dismissal succeeds.

THE ISSUE OF LIMITATION

156. Section 123 of the Equality Act 2010 provides as follows: -

123 Time limits

(1) Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable.

- (2) Proceedings may not be brought in reliance on section 121(1) after the end of—
- (a) the period of 6 months starting with the date of the act to which the proceedings relate, or
 - (b) such other period as the employment tribunal thinks just and equitable.
- (3) For the purposes of this section—
- (a) conduct extending over a period is to be treated as done at the end of the period;
 - (b) failure to do something is to be treated as occurring when the person in question decided on it.
- (4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
- (a) when P does an act inconsistent with doing it, or
 - (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

Time limits

12. Were the claims under the Equality Act 2010 made within the time limit in the Equality Act 2010 section 123? The Tribunal will decide:

12.1. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

157. Mr Menan conceded in submissions that to the extent that the PCP, i.e., the substantial disadvantage, is found to exist it is a continuing state of affairs up to the EDT, and there can be no time point. This is not a correct statement of the law on an omission to make reasonable adjustments. There can be no continuing state of affairs in relation to a failure to make reasonable adjustments such that it continued up to the date of dismissal. Instead, what the Respondent had to argue in the alternative was, if there was a breach of their section 6 duty under the Equality Act 2010 by a failure to act, then in accordance with s.123 (4) (a) and (b) of the Equality Act they must point to a date the breach took place i.e. when an act took place inconsistent with their duty or if not identify a

reasonable time by which they ought to have complied with their duty. They did not run their defence on this basis.

158. In the absence of any submissions from the Respondent on limitation in accordance with s.123 (4) of the Equality Act 2010 we went on in any event to make findings on the evidence before us about when the duty to make adjustments was breached as set out at paragraph 110 above.
159. We found the failure to make the adjustments occurred in late 2015 in relation to the initial temporary adjustments, and by early January 2016 for the permanent recommended adjustment, and on those dates which we are set out at paragraph 110 onwards.
160. We find that the claim was not made to the Tribunal within three months of the acts to which the complaint relates. In relation to the breach of duty that occurred in late 2015 and early January 2016 the claim was presented approximately eight years out of time.
161. The further breaches of the duty to make adjustments in 2018, 2021, 2022 and 2023, as set out in paragraphs 110 above, were also presented out of time. The claims were not therefore made in time in relation to the claim for a failure to make reasonable adjustments.

12.2. If not, was there conduct extending over a period?

162. This was not applicable.

12.3. If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

163. This was not applicable.

12.4. If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

12.4.1. Why were the complaints not made to the Tribunal in time?

12.4.2. In any event, is it just and equitable in all the circumstances to extend time?

164. No evidence was led by the Claimant, and no submissions were made about why the claims were not brought in time as this was not pleaded as an issue in the Respondents response. However, there was no evidence before us that the Claimant knew about limitation periods, nor was it put to her that she could have found out if she had tried to. In fact, we heard no submissions from either party on this issue of what the Claimant knew about limitation periods. The submissions by the Respondent on this issue only appeared in their written submissions.
165. All the relevant witnesses for the Respondent gave evidence without difficulty about the events over the eight years of the Claimants employment. There was no prejudice to the Respondents in allowing these claims to proceed out of time

within this period which we considered was just and equitable. By contrast, the Claimant having established her claims on the facts for a failure to make reasonable adjustments, faced severe prejudice if we did not extend time for the presentation of her claim for a failure to make reasonable adjustments as she would then lose that claim. The prejudice to the Claimant was clearly huge whereas we could see no prejudice to the Respondent. We therefore concluded that it was just and equitable to extend time for the presentation of the claim for a failure to make reasonable adjustments over the material period until the date of the presentation of the claim.

Unfair Dismissal

The Law

166. S.98 of the Employment Rights Act 1996 provides as follows:

98 General

- (1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—
 - (a) the reason (or, if more than one, the principal reason) for the dismissal, and
 - (b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.
- (2) A reason falls within this subsection if it—
 - (a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
 - (b) relates to the conduct of the employee,
 - (c) is that the employee was redundant, or
 - (d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.
- (3) In subsection (2)(a)—
 - (a) “capability”, in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and
 - (b) “qualifications”, in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.

- (4) 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.
- (5) Subsection (4) is subject to—
- (a) sections 98A to 107 of this Act, and
 - (b) sections 152, 153, 238 and 238A of the Trade Union and Labour Relations (Consolidation) Act 1992 (dismissal on ground of trade union membership or activities or in connection with industrial action).
167. Before dismissing an employee for reasons of ill-health, it is well established law, that an employer should find out the current medical position. This will usually involve obtaining, with the employee's consent, a report from the employee's general practitioner and, if appropriate, his consultant. The tribunal must not to substitute its own answer to that question for that given by the employer. The question is ultimately managerial, rather than medical.
168. In this claim the Respondent [evidence of Sue Warn] specifically stated they would wait for her to see her specialist as this would in essence be helpful in deciding what her prognosis was. In the event the Respondent in this case went ahead on the basis of simply what the Claimant told them about her consultant had said without directly asking them what the prognosis was, and we note that this is a Claimant whose first language was not English.
169. It is also well-established law that the employer having properly informed themselves of the employee's state of health and the prognosis, should consider the requirements of his business, the employee's past sickness record and whether the employee could be offered an alternative position more suitable to his state of health.
170. The employer should also consider whether the employee should be regarded as disabled and, if so, whether any reasonable adjustments should be made for the employee. The employer should consult the employee and any representative before dismissing him.
171. Having properly informed itself of the position and consulted with the employee, the employer must decide what action to take. The central question is whether a reasonable employer would have waited longer to dismiss and, if so, how long.

172. The EAT in various cases has stated that whilst each case will turn on its facts, some factors which may be important include:
- (i) the nature of the illness;
 - (ii) the likelihood of it recurring or some other illness arising;
 - (iii) the length of the various absences and the spaces of good health between them;
 - (iv) the need of the employer for the work done by the particular employee; (v) the impact of the absences on others who work with the employee;
 - (vi) the adoption and the carrying out of the policy;
 - (vii) the emphasis on a personal assessment in the ultimate decision and of course,
 - (viii) the extent to which the difficulty of the situation and the position of the employer has been made clear to the employee so that the employee realises that the point of no return, the moment when the decision was ultimately being made may be approaching.
173. The important point is that the employer's belief that it could not wait any longer must be a reasonable one in all the circumstances of the case. It is not enough that it is genuinely held.

ISSUES

13. Was the claimant dismissed?

174. This was not in dispute, and she was.

14. What was the reason or principal reason for dismissal?

175. This was not in dispute. The Respondent states the reason was capability (long term absence).

15. If the reason was capability, did the respondent act reasonably in all the circumstances in treating that as a sufficient reason to dismiss the claimant? The Tribunal will usually decide, in particular, whether:

15.1. The respondent genuinely believed the claimant was no longer capable of performing their duties.

176. We find that the Respondent did not genuinely believe she was no longer capable of performing her duties without first obtaining the specialist input, particularly when they had agreed to defer getting the OH report until she had seen her specialist – [WS of Sue Warn as set out above where she refers to this assisting them in making decisions about the Claimant going forward].
177. Instead of obtaining this specialist input at the final meeting about the issue of her seeing her specialist [p.615]] and what their opinion was instead they simply asked the Claimant in a general way *'if there had been any developments with*

her specialist' before they dismissed her, and then went ahead and dismissed her anyway without getting any further input from specialist, i.e., as to any adjustments they may be able to make to her duties, or in relation to timescales and prognosis in relation to her return to work. This finding is made considering the fact they had employed her while she had a bad back, which we find they knew about, and which included often carrying out normal duties for over eight years on what they deemed light duties. We do not find in these circumstances they genuinely believed she was no longer capable of performing her duties.

15.2. The respondent adequately consulted the claimant.

178. We did not find they adequately consulted with the Claimant on what could be done to avoid dismissal in any meaningful way i.e. by asking her what duties do you think we could give you? Despite referring to it in the dismissal letter there was no evidence before us that they discussed alternative duties with her at any point and what she thought they could do by way of offering amended duties in the workplace. Instead, they simply told her in the letter of dismissal there weren't any other duties, even though for the previous eight years she had been doing what they asserted were light duties, and yet now they said they had none.

15.3. The respondent carried out a reasonable investigation, including finding out about the up-to-date medical position;

179. Whilst they did seek an OH report, in that report [p599] they were told she was covered by the EQA i.e. disabled, and yet at this point, despite previously saying they needed the specialist input from her specialist before deciding to dismiss her, they still took no further steps to get input from her specialist at all, and instead asked only one question of her about what her specialist had said. The report from OH was dated the 23 June 2023 and they dismissed her without further input from her specialist on 18 August 2023 following the meeting on the 15 August 2023. This was not a reasonable investigation in these circumstances within the reasonable band of investigations of any other employer, and where they had said they needed the input from the Claimants own specialist, but thereafter didn't communicate with them directly or via their OH doctor whatsoever.
180. Having found that they failed to carry out a reasonable investigation within a reasonable band of investigations of any other employer then we find that the dismissal was unfair, and the claim succeeds.

15.4 Whether the respondent could reasonably be expected to wait longer before dismissing the claimant;

181. Having found that the dismissal was unfair on procedural grounds we turn to the issue of whether the Respondent could have reasonably been expected to wait any longer before dismissing her. The OH Doctor had stated that *'I am hopeful with appropriate medical and workplace support Mrs M will be able to*

return to her previous role, albeit some ongoing adjustments may be required. This will depend on symptomatic improvement’. We find that it would have been reasonable for the Respondents within a reasonable band of investigations and within a reasonable band of responses of any other employer to wait longer before dismissing the Claimant and in particular to wait for her physiotherapy treatment to start and conclude before deciding whether to dismiss her.

15.5. Dismissal was within the range of reasonable responses.

182. On the issue of whether even had a fair procedure and investigation been followed the Claimant may have been fairly dismissed at some future point, i.e. the Polkey argument, we specifically stated that this issue would be dealt with as part of the remedy hearing i.e. whether should there be a reduction based on Polkey, and so this issue of whether any dismissal would have occurred in any event at a future date will be dealt with in our remedy judgment at the remedy hearing.
183. The issue of any alleged contributory fault by the Claimant in not starting her physiotherapy treatment earlier will also be dealt with in our remedy judgment.

Approved by:

Employment Judge Brown

13 October 2025

Judgment sent to the parties on:

.....**15 OCT 2025**.....

For the Tribunal:

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Notes

Judgments (apart from judgments under rule 51) and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found at www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/

