



EMPLOYMENT TRIBUNALS

Claimant : Mr Garyn Price

Respondent Dijla Ltd (T/A Dominos Pizza)

Heard at: Cardiff (by video)

On: 15,16,17 September 2025

Before: Employment Judge S Jenkins

Appearances:

For the Claimant: In person

For the Respondent: Miss A Smith (Counsel)

JUDGMENT

The Claimant's complaints of; direct disability discrimination, discrimination arising from disability, and failure to make reasonable adjustments; all fail and are dismissed.

REASONS

Background

1. The hearing was to consider the Claimant's complaints of; direct disability discrimination, discrimination arising from disability, and failure to make reasonable adjustments; brought by way of a Claim Form issued on 5 February 2025, following early conciliation with ACAS between 5 November 2024 and 2 December 2024.
2. I heard evidence on behalf of the Claimant from the Claimant himself, by way of a written witness statement and answers to questions. I also received evidence from the Claimant's wife, Kae Price, by way of a written statement which was not challenged by the Respondent, and from Sam Tiley, who had worked for the Respondent between April and November 2020, who did not attend to be questioned.
3. On the Respondent's side, I heard evidence from Shuaib Masudi, Area Manager, and Chris Daniels, Chief Operating Officer, both by way of written witness statements and answers to questions.

4. I considered the documents in the hearing bundle spanning 226 pages to which my attention was drawn, and I also considered a video prepared by the Claimant subsequent to the submission of his claim. I also took into account the parties' written and oral closing submissions.
5. I delivered my judgment and reasons orally at the end of the hearing, and this written judgment and reasons have been produced at the Claimant's request.

Issues

6. The issues to be determined at this hearing had been clarified during a preliminary hearing held before Employment Judge J S Burns on 13 May 2025, and were set out in a schedule attached to his Case Management Orders sent to the parties on 27 May 2025, and were as follows:

Schedule List of claims/issues

1 The Claimant's claims

1.1 The Claimant brings complaints of:

- 1.1.1 *Direct disability discrimination (Equality Act 2010 ("EqA"): sections 13 and 39);*
- 1.1.2 *Discrimination arising from disability (EqA: section 15);*
- 1.1.3 *Failure to make reasonable adjustments (EqA: sections 20 and 21);*

3 Direct disability discrimination (EqA: section 13)

3.1 *The Claimant describes their disability as muscle spasms/paralysis in the right arm and a limp in the right leg, each resulting from a childhood stroke.*

3.2 *Did the Respondent do the alleged acts the Claimant complains of? The Claimant says he was subjected to the following treatment:*

3.2.1 *The Claimant accepts that it was reasonable for the Respondent to carry out a risk assessment but claims that the way it was carried out was inadequate and embarrassing to him and in particular Shuaib Masudi on 25 October 2024, :*

- (i) *Told the Claimant that there was applicable to the business a food hygiene regulation to ensure food stays hot and therefore food has to be removed from the hot rack within 2 minutes of it being put on the rack - the Claimant contends that there was no such rule.*

- (ii) *Picked out potential problems rather than looked for a solution for example asked questions on how the Claimant would open his car door and navigate steps.*
- (iii) *Speculated about potential risks rather than making an objective assessment which should have been informed by a professional OH report;*
- (iv) *Speculated about the Claimant's risk of falling whilst delivering the goods;*
- (v) *Raising concerns about the challenges of delivering to flats, dark areas and uphill locations.*

3.2.2 *Received an email from the Respondent determining the outcome of the Claimant's application, with an inaccurate description of his disability (describing the paralysis as affecting the left arm and spasms in right hand which was wrong as C has nothing wrong with left arm.)*

3.2.3 *Was not accepted for employment*

3.3 *If so, was that less favourable treatment?*

3.3.1 *The Tribunal will decide whether the Claimant was treated less favourably than the Respondent treats or would treat an actual or hypothetical comparator (there being no material difference between the relevant circumstances of the comparator).*

3.3.2 *The Respondent understands that the Claimant will rely on a hypothetical comparator.*

3.4 *Has the Claimant shown facts from which, without further explanation, the Tribunal could conclude the less favourable treatment was because of the Claimant's disability?*

3.5 *If so, has the Respondent shown that the less favourable treatment was not related to the Claimant's disability?*

4 *Discrimination arising from disability (EqA: section 15)*

4.1 *Did the Respondent treat the Claimant unfavourably because of something arising in consequence of their disability?*

4.2 *The "something arising" was the concerns on the part of the Respondent about the Claimants mobility/safety/physical ability to do the job of delivering pizzas.*

4.3 *The Claimant alleges that the Respondent treated them unfavourably by:*

4.3.1 *See above at 3.2*

4.4 *The Respondent denies this.*

4.5 *Did the Respondent know, or ought reasonably to have known, that the Claimant had a disability which caused the “something arising” at the relevant time?*

4.6 *Can the Respondent show that the treatment was a proportionate means of achieving a legitimate aim? The Respondent relies on ensuring employee health, safety and welfare as the legitimate aim.*

5 *Failure to make reasonable adjustments (EqA: sections 20 and 21)*

5.1 *Did the Respondent apply the following provision, criterion or practice (“PCP”) to the Claimant?*

5.1.1 *Completing risk assessments as part of the job application process.*

5.1.2 *Requiring job applicants to undertake a practical test and carry 2 pizza bags to replicate 6 pizzas.*

5.1.3 *Requiring delivery staff to carry multiple pizza bags quickly*

5.1.4 *Requiring delivery staff to deliver to various destinations requiring access using stairs or over difficult terrain*

5.2 *Did the PCP/s put the Claimant at a substantial disadvantage in comparison with persons who are not disabled? The alleged substantial disadvantage relied upon by the Claimant is:*

5.2.1 *he was unable to meet the Respondent’s expectations of the role in the same was as a non-disabled person due to his physical impairment.*

5.3 *Did the Respondent know, or ought it reasonably to have known, of the Claimant’s alleged disability and that he would likely be placed at that disadvantage?*

5.4 *If so, did the Respondent fail to take steps to avoid any such disadvantage? The Claimant alleges that the Respondent should have taken the following steps (which the Claimant alleges the Respondent did not take):*

5.4.1 *permitting the Claimant to take orders in smaller loads (both during the risk assessment and on the job);*

5.4.2 Resting pizza bags on the car bonnet while opening the door(both during the risk assessment and on the job);

5.4.3 Providing a delivery backpack to carry larger orders.

5.4.4 Allow the Claimant to liaise with customers (for example to get them to meet him at the front door of a block of flats if the alternative would be the Claimant having to climb flights of stairs)

5.4.5 Exempt that Claimant on occasions from difficult destinations and get someone else to do the delivery

5.5 Was it reasonable for the Respondent to have taken those steps at the relevant time and would they have ameliorated the substantial disadvantage?

5.6 The Respondent denies that the adjustments at paragraph 5.4 would have resolved the Respondent's concerns about the Claimant's ability to safely complete aspects of the advertised role.

7. The original list of issues included, as a section 2, that whether or not the Claimant was disabled for the purposes of section 6 of the Equality Act was to be determined, but the Respondent subsequently confirmed that it accepted that the Claimant was disabled and that, therefore, was no longer an issue.
8. Section 4.6 of the list of issues noted the legitimate aim that the Respondent was advancing in respect of the discrimination arising from the disability claim. That was set out in the list of issues as being ensuring employee health safety and welfare.
9. On Friday 12 September 2025 the Respondent made an application to amend the legitimate aim, effectively to two, by replacing the original wording with the following, 'Ensuring employee health safety and welfare and maintaining high levels of good customer service, including delivery of food at the right temperature to the customer's door in the expected timescale with appropriate presentation reducing the risk of theft, cross contamination and reputational damage'. I considered the matter as a preliminary issue at the start of the hearing and gave my decision permitting the amendment and my reasons for it orally at that time.
10. The list of issues also identified, as a section 6, that remedy, i.e. what compensation to award if the Claimant was successful, would be determined at this hearing, and the notice of hearing also confirmed that it would deal with both liability and remedy. However, I noted that the list of issues confirmed that the Claimant was pursuing personal injury compensation, and that was confirmed by the Claimant in his Schedule of Loss. In view of the fact that an expert medical report would be required in respect of that

matter, it was agreed, at the outset of the hearing, that we would focus on liability i.e. on whether the Claimant's claim succeeded or not, and that a further hearing to deal with Remedy matters would be scheduled if the Claimant was successful.

Law

11. The main legal principles relevant to my consideration of the complaints brought by the Claimant, and the issues underpinning, them were as follows.

Direct Discrimination

12. Section 13(1) EqA 2010 provides that:

"A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."

13. Section 23(1) then notes that there must be "*no material difference between the circumstances relating to each case*" when undertaking the comparison, with section 23(2)(a) further noting that the circumstances relating to a case "*include a person's abilities if... the protected characteristic is disability*". That means that, when considering a complaint of direct disability discrimination, the appropriate comparator is someone who has the same abilities or skills as the claimant, but who is not categorised as having a qualifying disability.

14. The Court of Appeal summarised the approach to be taken in relation to section 13, and in particular the required degree of causation arising from the words, "because of", in **Chief Constable of Greater Manchester -v- Bailey [2017] EWCA Civ 425**, and stated, at paragraph 12:

"Both sections use the term "because"/"because of". This replaces the terminology of the predecessor legislation, which referred to the "grounds" or "reason" for the act complained of. It is well-established that there is no change in the meaning, and it remains common to refer to the underlying issue as the "reason why" issue. In a case of the present kind establishing the reason why the act complained of was done requires an examination of what Lord Nicholls in his seminal speech in Nagarajan v London Regional Transport [1999] UKHL 36, [2000] 1 AC 501, referred to as "the mental processes" of the putative discriminator (see at p. 511 A-B). Other authorities use the term "motivation" (while cautioning that this is not necessarily the same as "motive"). It is also well-established that an act will be done "because of" a protected characteristic, or "because" the claimant has done a protected act, as long as that had a significant influence on the outcome: see, again, Nagarajan, at p. 513B."

Discrimination arising from disability

15. Section 15(1) of the EqA, which is headed '*Discrimination arising from disability*', provides that, "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."*
16. The reference to "*unfavourable treatment*" in section 15, contrasts with the words "*less favourable treatment*" used in section 13, and means that there is no need for a comparison with another person, whether real or hypothetical, under section 15.
17. In ***Pnaiser v NHS England and anor* [2016] IRLR 170**, the EAT summarised the proper approach to establishing causation under section 15. First, the tribunal must identify whether the claimant was treated unfavourably and by whom. It must then 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 actual motive of the alleged discriminator in acting as he or she did is irrelevant. The tribunal must then establish whether the reason was 'something arising in consequence of the claimant's disability', which could describe a range of causal links. This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.
18. With regard to the justification of any unfavourable treatment that may be considered to have arisen, I noted that the EAT provided guidance, in the second case of ***Department for Work and Pensions -v- Boyers* [2022] IRLR 741**, at para. 22:

"When assessing whether unfavourable treatment can be justified as a proportionate means of achieving a legitimate aim, the discriminatory effect of the treatment must be balanced against the reasonable needs of the employer. The treatment must be appropriate and reasonably necessary to achieving the aim. The more serious the impact, the more cogent must be the justification for it. It is for the ET to undertake this task; it must weigh the reasonable needs of the employer against the discriminatory effect of the treatment and make its own assessment of whether the former outweigh the latter."

Reasonable adjustments

19. Section 20 EqA provides as follows:

"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..."*

20. My focus here would be, as identified by the EAT in ***Environment Agency - v- Rowan [2008] IRLR 20***, on identifying:

- (i) The provision criterion or practice applied by or on behalf of an employer;
- (ii) The identity of non-disabled comparators, where appropriate; and
- (iii) The nature and extent of the substantial disadvantage suffered by the Claimant, in comparison to the non-disabled comparators.

In this case, the Claimant was relying on a hypothetical non-disabled comparator.

21. With regard to the provision, criterion or practice, or "PCP", the EAT confirmed, in ***Nottingham City Transport Ltd v Harvey (UKEAT0032/12)***, *that*, to amount to a PCP, the act or omission complained about must have some element of repetition to it, or that, in ***Ishola v Transport for London [2020] ICR 1204***, there needs to be some indication that it would be repeated if similar circumstances were to arise in the future.

22. As noted by the Court of Appeal in ***Smith v Churchills Stairlifts plc [2006] ICR 524***, the test of the reasonableness of any adjustment is an objective one and it is ultimately the employment tribunal's view of what is reasonable that matters. The focus is on assessing whether a PCP had indeed been applied, whether the employee was, as a result, placed at a substantial disadvantage, and then whether the employer had taken such steps as were reasonable to avoid any disadvantage caused.

23. The EHRC Employment Code provides a list of factors that a Tribunal may wish to take into account when considering reasonableness of an adjustment (para.6.28):

- whether taking any particular steps would be effective in preventing the substantial disadvantage;
- the practicability of the step;
- the financial and other costs of making the adjustment and the extent of any disruption caused;
- the extent of the employer's financial or other resources;
- the availability to the employer of financial or other assistance to help make an adjustment (such as advice through Access to Work); and
- the type and size of the employer.

Burden of proof

24. Section 136 Equality Act 2010 deals with the burden of proof and provides as follows:

- “(1) This section applies to any proceedings relating to a contravention of this Act.*
- (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*
- (3) But subsection (2) does not apply if A shows that A did not contravene the provision.”*

25. A two stage test is therefore involved. First, the Claimant had to prove facts from which we could decide that discrimination had taken place, and secondly, if so, the burden of proof would then shift to the Respondent which would have to prove, on the balance of probability, a non-discriminatory reason for the treatment in question.

26. With regard to the first stage of the test, i.e. the conclusion that there are facts from which, in the absence of a non-discriminatory explanation, discrimination could be concluded, the EAT made clear, in **Qureshi v Victoria University of Manchester [2001] ICR 863**, that the Tribunal must look at the totality of its findings of fact and decide whether they add up to a sufficient basis from which to draw an inference that the Respondent has treated the complainant less favourably on the protected ground.

27. The Court of Appeal made clear however, in **Madarassy v Nomura International PLC [2007] ICR 867**, that something more than less favourable treatment compared with someone not possessing the Claimant's protected characteristic is required. In that case, Mummery LJ noted, at paragraph 56, in relation to the burden of proof:

“The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a Tribunal ‘could conclude’ that, on the balance of probabilities, the Respondent had committed an unlawful act of discrimination.”

Findings

Background

28. The findings of fact I made, relevant to the issues I had to determine, which I reached on the balance of probability wherever there was any dispute, were as follows. The case revolved only a single event and my findings were ultimately therefore quite limited
29. The Respondent is a company which operates a number of Dominos Pizza franchises, which includes one in Caerphilly. That franchise provides services to up to 30,000 potential customers at a variety of locations. The operation of such a business is probably one understood by everyone, but its focus is on the cooking of pizzas at the franchise's premises, and the delivery, by delivery drivers, of those pizzas, together with certain other products, to customers who have generally placed orders remotely.
30. The Claimant, aged 28 at the relevant time, suffered a stroke as a child, caused by encephalitis, which affects the right side of his body. His right arm is potentially paralysed and is subject to muscle spasms, and his right leg is impaired such that he walks with a limp. He wears splints on his right arm and leg to support his movement and to reduce his muscle spasms. He is capable of walking short distances, albeit with a limp, and of climbing stairs, albeit one step at a time. He cannot carry heavy or large items in both hands, and noted, in his Disability Impact Assessment, that that impacts on tasks like shopping, lifting household items and managing more than one item at a time.
31. The Claimant has a principal job working for HMRC. He started there in October 2019 as a Customer Service Adviser, and was promoted to VAT Technical Support Officer in January 2023. His roles at HMRC have been office based, involving desk work.
32. The Claimant is married with a young child, and sought to procure additional part time work to supplement the family's income. Documentation in the bundle indicated that he applied for several other jobs, principally in the retail sector, from July 2024 onwards. One of his applications, made on 10 October 2024, was to the Respondent for a position as a delivery driver.

Risk assessment

33. When the Claimant attended at the Caerphilly store a day or two later to provide his documentation, potential issues regarding his physical ability were identified, and the matter was referred to Mr Masudi, the Respondent's Area Manager. It was decided that a risk assessment would need to be undertaken to assess the Claimant's ability to undertake the delivery driver role. That assessment was undertaken at the Caerphilly store on 25 October 2024. Both the Claimant and Mr Masudi provided evidence about the assessment, and their versions of events contrasted slightly. In view of that I focused initially on the risk assessment report, completed by Mr Masudi and signed by both Mr Masudi and the Claimant on the day.

34. In the form, Mr Masudi noted that he had explained to the Claimant that he would be required to carry heavy bags, and that all drivers had a certain amount of time to deliver an order. He noted the Claimant requested a practical assessment of conducting a delivery.
35. The report records that Mr Masudi prepared two bags for the Claimant, and that he attempted to carry them from the hot rack area to the customer area. The form further records that the Claimant asked if he could carry orders one by one to make it easier, and that Mr Masudi replied that there were targets to meet and that that way would take longer.
36. In his witness statement, Mr Masudi expanded on the risk assessment form, stating that the bags had been taken to the car, which was denied by the Claimant. Under cross-examination, Mr Masudi confirmed that he and the Claimant had not gone further than the shop doorway, where they had discussed how the Claimant would place the bags in his car. No attempt to place the bags in the car was undertaken, that seemed to me, to have been on the basis that the Claimant was clearly going to have difficulties in doing so due to his limited ability to use his right hand.
37. Both Mr Masudi and the Claimant agreed that they discussed how the Claimant could place the boxes in the car, with the Claimant suggesting that he could open the car door and then return to the store to get the bags, ideally taking them one at a time. He also suggested that he could place the bags on the car bonnet before opening the car door to place them inside.
38. Mr Masudi, in his witness statement, noted that the Claimant had also said that he could place the bags on the floor before opening the car door. The Claimant, in his witness statement, first stated that that did not make practical sense, before saying that, if he mentioned doing that, then it was made in jest. Orally, he confirmed that he had made the comment, but reiterated that it had been made in jest. On balance I considered that all those methods were discussed, and that if the comment about placing bags on the floor had been meant in jest, it had not been received that way by Mr Masudi.
39. Mr Masudi, in his witness statement, noted that drivers are not permitted to place bags on the floor or on a car bonnet, as they are not waterproof and the quality of the food could therefore be impacted. He also noted that opening the car door before going back and forth with the pizza bags could be unsafe, both for the Claimant and any food he would be transporting.
40. The Claimant asserted that Mr Masudi had told him that the Respondent had a requirement that food be removed from the hot rack within two minutes. Mr Masudi denied both that the Respondent had such a requirement, and that he had made such a comment to the Claimant, noting that he recalled that the Claimant had asked him about the average time for the collection of orders by drivers, to which he had replied that it was one to two minutes, and that the average time for food to move from the oven to being despatched was around four minutes.

41. I noted that Mr Tiley, in his witness statement, had stated that he had no knowledge of a two-minute rule, and another of the Respondent's employees, with whom the Claimant had been in contact by WhatsApp, with those messages being contained in the bundle, had made a similar comment. On balance I considered that no discussion of a two-minute rule had taken place, and that no such rule existed. Clearly, however, for a business delivering hot food to customers, speed of service would be important.
42. Both the Claimant and Mr Masudi agreed that Mr Masudi had asked if the Claimant required any other adjustments and that the Claimant had replied that he did not. I took that to mean that he did not need any adjustments other than the ones discussed, i.e. carrying pizza bags one by one, and placing bags on the car bonnet and/or floor.
43. No discussion took place about the Claimant using a large backpack of the type used by delivery cyclists, and he confirmed that that was only something he thought about subsequently.

The Claimant's video

44. The video provided by the Claimant was of him using such a backpack, demonstrating how he would place pizza boxes within it, how he would then manoeuvre the bag into and out of his car, walk with it, unload at the customer end, and climb stairs. The Claimant used empty pizza boxes for the demonstration, and placed bottles of water in the backpack side pockets to simulate weight. The Claimant confirmed that the video was speeded up in the section showing his packing of the bag.
45. The video indicated that the Claimant could place pizzas within the backpack and remove them, but not without obvious difficulty. The tasks were carried out almost entirely by the Claimant using his left hand alone, with the right hand only being used to hold the side of the backpack in place whilst the Claimant did and undid the zip with his left hand. The Claimant struggled to place the backpack on his back, but did do so. The backpack also swayed significantly whilst the Claimant was walking with it such that it knocked against a wall on several occasions.
46. The Claimant explained in his evidence that the video had been put in place at short notice, and that a custom-made backpack would have fitted better, thus reducing any swaying. Whilst I anticipated that that would be likely to be the case, I did not consider that the Claimant would be able to prevent any backpack from swaying at all due to his gait.
47. Mr Daniels confirmed in his evidence that the Respondent did not use backpacks, as they were too large and would not keep pizzas flat. He confirmed that the Respondent's bags had been created with the aim of keeping pizzas warm and flat, and that using a backpack would impact on the achievement of that aim. I reiterate, however, that the question of a backpack did not arise at the relevant time, and was only raised by the Claimant as a possible adjustment following the submission of his claim.

The decision not to employ the Claimant

48. Returning to the events in 2024, the risk assessment was passed to Mr Daniels, and he discussed with Mr Masudi the potential difficulties in the Claimant carrying out the delivery driver role. Mr Daniels then took the decision that the Claimant could not be offered the role of delivery driver.
49. An email confirming that was sent to the Claimant by the Respondent's HR Manager, at Mr Daniels' direction, on 1 November 2024. In that, the HR Manager noted that the Claimant had a paralysed left hand when, in fact, his issues were all on his right side. The Claimant, whilst initially being annoyed and upset by that, accepted now that it had been a genuine mistake.
50. In the email, the HR Manager noted that the Respondent had a duty of care to all employees to ensure they were not asked to perform tasks and activities which could put their safety and wellbeing at risk. She noted that the role of driver would require the Claimant to deliver pizzas to properties where access may be difficult, either because of stairs or a steep approach or an uneven surface, which it was believed could be difficult and risky for the Claimant, and would be more difficult when delivering in the dark and when weather conditions were poor.
51. The Claimant replied to the email later that day, complaining about the decision. In that, he reminded the Respondent that it had a duty to make reasonable adjustments for disabled workers, but then said that he did not need any reasonable adjustments. He further commented that, if the Respondent had been so worried about the Claimant walking up stairs, then surely there would be an alternative such as another driver taking a delivery that involved walking upstairs. The HR Manager replied to the Claimant on 5 November 2024, noting that she had referred the matter to her Managing Director, who had stood by the original decision.
52. Following the rejection by the Respondent the Claimant continued to apply for part-time jobs, and was ultimately successfully appointed to a role as an emergency medical services call handler in March 2025.

Conclusions

53. Taking into account my findings of fact and the applicable legal principles, my conclusions in relation to the issues I had to determine were as follows. I deal with those issues in the order set out in the list of issues.

Direct disability discrimination

54. As noted in section 13 of the Equality Act 2010, direct discrimination would be made out if, because of the Claimant's disability, he was treated less favourably by the Respondent than it treated or would treat others. Assessing this complaint involved first considering whether the Respondent

had done the acts complained of set out in sections 3.2.1, 3.2.2 and 3.2.3 of the list of issues.

55. Where I concluded that any of those acts had occurred, I would then need to consider whether they involved less favourable treatment of the Claimant than a comparator, in this case a hypothetical comparator, taking into account the requirements in relation to comparators set out in section 23 of the Act.
56. Considering the alleged acts, I concluded as follows.
57. First, with regard to 3.2.1 (i), I was not satisfied that the Claimant had been told that the Respondent operated a requirement that food should be removed from the hot rack within two minutes of being placed on it. The Claimant contended that he had been told that, but all the evidence, including that adduced by the Claimant, pointed to there being no such rule or requirement, albeit speed of process was very much of the essence.
58. With regard to 3.2.1 (ii), I was also not satisfied that the Respondent had picked out potential problems than looked for solutions. The potential for the Claimant's disability to impact on his ability to undertake the delivery driver role was readily apparent, making the assessment of risk arising from him undertaking the role an obvious step to take. Indeed, at no time has the Claimant disputed that the undertaking of the risk assessment was a reasonable step. I also noted that the Claimant himself had suggested undertaking the practical exercise of carrying pizza bags, when the risk assessment was undertaken.
59. Bearing in mind the Respondent's health and safety obligations to all parties, which again the Claimant at no point disputed was something it could legitimately bear in mind, identifying potential problems which could impact on the health and safety of the Claimant was, in my view, a reasonable step, which did not involve unfavourable treatment. The examples of questions set out at (ii) are ones which, having seen the Claimant in the video, and presuming that he presented in very much the same way on 25 October 2024, would have been ones which fairly obviously sprang to mind.
60. The Claimant clearly has only very limited use of his right hand, and uses his left hand almost exclusively. Therefore, a question as to how the Claimant would transport bags containing pizzas and open his car door, using only one hand, would have been an obvious one. Similarly, with regard to navigating steps, whilst the Claimant's video clearly demonstrates that he can navigate steps, albeit only slowly, all Mr Masudi would have observed on 25 October 2024, would have been that the Claimant walked slowly, with a limp. Again, questioning how the Claimant would navigate steps, e.g. in a block of flats, would have been something which straightforwardly came to mind.
61. With regard to 3.2.1 (iii), my conclusion here was very similar to that at (ii). Mr Masudi was undertaking an assessment of the risks of employing the Claimant in the role of delivery driver, and it would therefore have been appropriate for him to have speculated about potentially more challenging

scenarios that could arise in that role, e.g. having to carry bags containing several pizzas, or having to climb several flights of steps.

62. The Claimant indicated that he felt that the Respondent's assessment should have been informed by a professional occupational health report. However, he did not outline what additional input he anticipated an occupational health adviser could have provided, over and above the proposed resolutions that he himself had put forward, e.g. that he transport bags one by one, or place bags on the car bonnet before opening the car door.
63. Indeed, it is difficult to see what other adjustments an occupational health adviser would have been able to propose, other than perhaps to avoid using the Claimant in circumstances where heavy loads were being carried or where access to premises was difficult, which, in circumstances where the quantity and nature of demands on the Respondent's services could not be predicted, would always have been difficult.
64. In any event, it seemed to me that the Respondent was itself in a position to assess the Claimant's likely ability to undertake the delivery driver role without occupational health input.
65. With regard to 3.2.1. (iv) and (v), these were largely addressed by my conclusions in relation to (ii). As I have already mentioned, the Respondent was undertaking an assessment of the risks that might arise were the Claimant to undertake the role of delivery driver, an assessment that the Claimant accepted was perfectly proper for the Respondent to make. Speculating and/or raising concerns about potential risks would simply have been part and parcel of that assessment, and did not involve unfavourable treatment.
66. Overall, therefore, I did not consider that any of the matters set out at 3.2.1 of the list of issues occurred in fact, or as acts of unfavourable treatment, leaving aside the issue of comparison.
67. With regard to 3.2.2, the Claimant confirmed, during the course of this hearing, that he accepted that the reference by the Respondent's HR Manager, in the email of 1 November 2024, to the Claimant having issues with his left hand and arm, was a genuine error. In the circumstances, that did not therefore involve any form of unfavourable treatment because of the Claimant's disability.
68. With regard to 3.2.3, the Claimant not being accepted for employment would clearly have been an act of unfavourable treatment. Also, as it related to the assessed difficulties of the Claimant when facing in undertaking the role, it clearly had a connection to the Claimant's disability. However, I did not consider that the rejection of the Claimant's application for employment involved less favourable treatment than an appropriate comparator.
69. I noted that the Claimant, in a document included within the bundle and also in his witness statement, contended that a hypothetical comparator would be a non-disabled applicant with short term gym related injuries, e.g. someone

who had pulled a muscle in their calf causing a temporary limp, or someone with muscle soreness or a pulled muscle causing temporary weakness in their arm. However, such a comparator would not fall within the terms of section 23 of the Equality Act 2010. That requires that there must be no material difference between the Claimant and the comparator, and that, in complaints of direct disability discrimination, that lack of material difference includes the abilities of the persons being compared.

70. An appropriate comparator in this case would therefore have been someone with the same, or very similar, impact on their abilities, in terms of their use of their right arm and leg, as the Claimant, and where those impacts were long term, indeed permanent, in the same way as they are for the Claimant. It seemed clear to me that, for the same reasons, such applicant would also have been rejected.
71. For completeness and to the extent that I may have considered that any of the other acts complained of involved unfavourable treatment relating to disability, I would not have considered that any of those acts involved less favourable treatment than an appropriate comparator, as there was nothing to indicate that a comparator falling fully within the scope of section 23 would have been treated any differently.

Discrimination arising from disability

The “something arising”

72. In her closing submissions, Miss Smith noted, on behalf of the Respondent, that the ‘something arising’, set out in the list of issues, was stated to have been concerns on the part of the Respondent about the Claimant’s mobility/safety/physical ability to do the job of delivering pizzas. She further noted that in the Claimant’s submissions he had adjusted that to refer to the ‘something arising’, as his physical limitations, referencing muscle spasms, balance and mobility. Miss Smith contended that assessing the ‘something arising’ in that way was not the Claimant’s pleaded case. She nevertheless went on to address both elements of the “something arising” that had been advanced.
73. It seemed to me that the fundamental “thing arising” from the Claimant’s disability, was the physical limitations that arose from it, and then that the concerns on the part of the Respondent about the Claimant’s mobility and safety arose from that, i.e. that they were things arising from the thing arising. It seemed to me therefore, appropriate to view the something arising in a broad sense, i.e. on the basis that the underlying issue was the limitations on the Claimant’s physical actions.

Unfavourable treatment

74. The acts of unfavourable treatment alleged to have occurred were the same as those alleged to have been less favourable treatment for the purposes of

the direct discrimination complaint. My conclusions in relation to that complaint therefore apply equally here.

75. First, looking at section 3.2.1 of the list of issues and its five sub-paragraphs, I did not consider that any of the elements set out there involved unfavourable treatment relating to the Claimant's disability.
76. As I have already noted, I did not think, with regard to (i), that the Claimant had been told that there was a two-minute rule, and, with regard to the others, whilst they happened in fact, I considered that they were appropriate and obvious questions, speculations and concerns about the Claimant's ability to do the delivery driver role, which would ultimately have been to his benefit rather than detriment, from a health and safety prospective.
77. Looked at from a different perspective, had the Respondent not raised the potential concerns, and had the Claimant then undertaken the delivery driver role and then fallen, e.g. whilst delivering to a badly lit location at night, with steps and/or uneven surfaces, the Respondent would have been very likely to have been at fault for not managing the potential risks to health and safety.
78. With regard to 3.2.2, as already noted in relation to the direct discrimination complaint, the Claimant accepted that the incorrect description of his disability, as arising in relation to his left arm as opposed to his right arm, was a genuine error. Whilst, at the time, the Claimant was upset by that error, it was difficult to see how the error itself could be said to have occurred because of anything arising in consequence of the Claimant's disability.
79. With regard to 3.2.3, not being accepted for employment was clearly unfavourable treatment, and was accepted as such by the Respondent. Bearing in mind that the reason for not accepting the Claimant's application was concerns about risks arising from his disability, it was also then clearly something which arose in consequence of his disability.

Justification – legitimate aim

80. The focus therefore, with regard to 3.2.3, was on justification i.e. whether the treatment was a proportionate means of achieving a legitimate aim. I have noted, following my acceptance of the Respondent's late amendment application, that there were essentially two aims advanced by the Respondent. One was ensuring employee health, safety and welfare, whilst the other involved maintaining high levels of good customer service involving delivery of food at the right temperature to the customer's door in the expected timescale with minimal risk of theft, cross-contamination and damage to reputation.
81. I noted that the email sent to the Claimant confirming that he was not to be offered the role, focused on the health, safety and welfare elements, and did not make any reference to customer service. A Respondent is, however, able to advance aims which may not have been at the forefront of its mind at the relevant time. The key questions are whether those aims were legitimate,

and then whether the action taken was a proportionate means of achieving them.

82. At no stage has the Claimant questioned the legitimacy of the aim of ensuring health, safety and welfare. He also did not materially question that maintaining high levels of good customer service was also a legitimate aim. It seemed to me to be clear that both those aims are legitimate ones.

Justification – proportionality

83. In terms of the proportionality of achieving those aims, as noted in **Boyers**, the discriminatory effect of the treatment must be balanced against the reasonable needs of the employer, with the treatment having to be appropriate and reasonably necessary to achieving the aim or aims.
84. The discriminatory effect of the treatment on the Claimant was significant. The Claimant wished to undertake the role of delivery driver in order to obtain additional income for his family, and was prevented from doing so by the decision taken by the Respondent.
85. As far as the needs of the employer were concerned, I have already mentioned the obligation on the employer to appropriately maintain the health and safety of its employees. It seemed to me that the delivery of pizzas to what I might describe as a “straightforward customer”, would involve little risk to the Claimant’s health and safety. He could, albeit with some difficulty, carry pizza bags, even if only limited to one at a time. He could place those bags in his car and take them from his car at the customer’s end, and, delivering to a building where there was flat ground between the car and the customer’s front door, in daylight or in well-lit conditions, would not have been likely to have impacted on the Claimant’s safety.
86. However, delivering to customers in other than those straightforward conditions would have been likely to pose risks to the Claimant’s safety. The Claimant himself appeared to recognise this, to a degree, when discussing that he would ask customers to come down to him to pick up their pizzas if any difficulties arose in him accessing premises. He went on to say that if that could not happen, for example because the customer had young children who could not be left alone, he would then get on and deliver the pizzas. However, the fact that the Claimant himself identified that there would be circumstances where he would have difficulty delivering pizzas suggested that there was likely to be a clear risk in situations which would not fall within the straightforward category, e.g. locations involving a lengthy walk over uneven ground, and/or involving stairs, particularly at night or in adverse weather.
87. The Claimant asserted that the Respondent could have offered him a trial shift or period, but that may not have been particularly helpful, in that it may have involved only straightforward deliveries, and would not have addressed more challenging circumstances. However, in any event I did not think it was unreasonable for the Respondent to take the view that it wished to avoid risk

which might arise due to the Claimant having to deliver pizzas to a difficult location.

88. It seemed to me, therefore, that whilst the Claimant's determination to undertake the role was obvious and admirable, and the Respondent itself seemed to endorse that view, it was nevertheless proportionate for the Respondent to take the view that it simply could not run the risk of the Claimant suffering injury due to the very wide range of delivery locations of its customers.
89. I took a similar view with regard to the customer service aim. The Respondent is in a competitive business and therefore needs to ensure that its food is delivered quickly, at the right temperature, and with limited impact on the customer. As seems to have been evident during the assessment on 25 October 2024, and as was apparent from the Claimant's own video, any deliveries he could have achieved, even straightforward ones, would have been undertaken in a materially longer period than would have been the case with a delivery driver without the Claimant's disabilities. That would have been likely to have had an impact on the temperature of the pizzas on delivery, which may then have led to complaints and/or to customers not making repeat orders.
90. Similarly, if a customer was faced with having to go to the Claimant to collect the pizzas, e.g. downstairs to the entrance to a block of flats rather than at the flat door, that may not be manageable due to the customer's own disability, or the need to care for young children but, even if possible and undertaken, may be viewed as less than acceptable service, potentially impacting on future orders.
91. Notwithstanding, therefore, as I have noted, that the impact of the decision on the Claimant was significant, I nevertheless considered that the Respondent's decision not to allow the Claimant to undertake the delivery driver role was a proportionate means of achieving its legitimate aims, both of maintaining health and safety, and of maintaining high levels of good customer service.
92. I did not consider that there were any reasonable potentially less discriminatory ways in which the Respondent could have achieved those aims. As I have already noted, I did not consider that obtaining occupational health advice would have advanced the position materially. Similarly, I did not consider that any form of trial shift or trial period would have removed the potential risk to health and safety and/or the potential impact on customer service and repeat orders.
93. The taking of smaller loads, e.g. taking pizza bags from the Respondent's premises to the car, and from the car to the customer's premises, one by one and/or placing bags on the bonnet before placing them in the car, would certainly have been effective in reducing the risk to health and safety, but would not have addressed concerns about the speed and efficiency of delivery to customers.

94. With regard to the provision of a backpack, the Respondent contended that it does not have them, and that the bags it does use are specifically designed to keep pizzas warm and flat, which could not be achieved by use of a backpack. I have no reason to doubt that, but that would not, of itself, mean that a backpack could not have been used. However, as was apparent from the Claimant's own video, using a backpack would potentially have allowed the Claimant to transport several pizzas at one time, but would not have materially reduced the risk to his health and safety when delivering to a difficult location, and nor would it have significantly speeded up the delivery of food to customers. I also noted that it was not something that been discussed at the time.
95. Accepting that the video was not made in optimal circumstances, and that a more tailored bag would have been easier for the Claimant to carry, I did not consider that the potential risks to the Claimant's health and safety when delivering to difficult locations would be materially reduced by the use of a backpack. Also, whilst delivery of multiple pizzas using a backpack may have been quicker than would have been the case with him carrying two or more of the Respondent's existing pizza bags, the Claimant's own video still demonstrated that he would take substantially longer than others to effect deliveries.
96. Overall, therefore, I was satisfied, notwithstanding that the decision not to accept the Claimant for employment was an act of unfavourable treatment because of something arising in consequence of the Claimant's disability, that the Respondent had nevertheless shown that its decision was a proportionate means of achieving legitimate aims.

Reasonable adjustments

PCPs

97. I first looked at whether provisions, criteria or practices, i.e. PCPs, had been applied. I noted that the Respondent did not habitually undertake risk assessments and only did so in the Claimant's case due to the obvious potential risks arising from his disabilities. I further noted that the Claimant only undertook a practical test at his own request.
98. With regard to the completion of risk assessments, whilst it may have been the case that the Respondent only did so in this particular case, I considered that such an assessment would be undertaken whenever the Respondent was faced with a similar potential employee in the future. Indeed, the Respondent has a standard employee risk assessment proforma, which would suggest that an assessment would be undertaken if the circumstances required it. It seemed to me therefore, that, notwithstanding that the completion of a risk assessment may have been a one-off act as far as the

Respondent and its Caerphilly premises were concerned, it nevertheless had the required element of repetition, or potential repetition, in order to amount to a PCP.

99. I did not, however, consider that the Respondent applied a PCP requiring applicants to undertake a practical test. I noted, in that regard, that it was the Claimant himself who asked to undertake a practical test, and I therefore considered that this was a one-off act, not capable of amounting to a PCP.
100. With regard to the other asserted PCPs, i.e. requiring delivery staff to carry multiple pizza bags quickly, and to deliver to various destinations requiring access using stairs over difficult terrain, the Respondent accepted that it applied those PCPs. The Respondent also accepted that the application of those PCPs involved substantial disadvantage compared to non-disabled persons. The comparison in relation to reasonable adjustments complaints being a straightforward comparison of a disabled person with a non-disabled person, rather than the specific comparison required in direct discrimination complaints.

Knowledge of disadvantage

101. It was also clear that the Respondent knew of the Claimant's disability, as that would have been apparent from his presentation at the store on 25 October 2024, and that it knew that its requirements regarding deliveries would have placed the Claimant at a disadvantage compared to non-disabled persons. Indeed, the Respondent took its decision because of its concerns about the impact of the Claimant's disability on his ability to undertake the role.

Reasonableness

102. The focus therefore fell on the reasonableness of any steps that the Respondent could have taken to avoid any such disadvantage. Five steps were advanced by the Claimant which have largely been addressed by my conclusions relating to the direct discrimination and discrimination arising from disability complaints above.
103. With regard to the first step, whilst permitting the Claimant to take orders in smaller loads, would, as I have already noted, have been likely to have reduced the impact on the Claimant's health and safety, it would have led to a materially longer time for the Claimant to effect deliveries, factoring in the additional time taken both in removing pizzas from the Respondent's premises to the Claimant's car, and then removing them from the car to the customer's location. Taking loads in this way, with the car door being open at all times, also increased the risk of theft. I did not consider that this would have been a practical step for the Respondent to have taken, and the potential for its business to be disrupted by the step was clearly apparent.
104. Similar impacts on speed of delivery, and consequently on the temperature of the pizzas, and on the risk of theft, would also have arisen in relation to the second step, i.e. the resting of pizza bags on the car bonnet. That would

have particularly been the case in terms of theft if the Claimant was delivering pizzas to a remote location.

105. I noted that the Respondent contended that a risk of cross-contamination would also arise by placing pizza bags on the car bonnet, but I doubted that that would have been a material risk in the circumstances. Whilst the bags are understood not to be waterproof, they are nevertheless enclosed, and I doubted that any material on the car bonnet, e.g. bird excrement, would have been likely to have transferred to pizzas inside the bags. Nevertheless, I was satisfied that resting pizza bags on the car bonnet was not a practicable step for the Respondent to have to take, due to the impact on customer service caused by the increased time of delivery and the potential risk of theft.
106. With regard to the third step, the use of a backpack, as I have already noted above, using such a backpack would have been likely to have enabled the Claimant to have delivered large orders more easily than by trying to carry multiple bags of the type used by the Respondent. However, as I have already noted, I did not consider that using a backpack would have materially reduced the risk to the Claimant's health and safety in relation to delivery to difficult locations. Nor did I consider that it would materially improve the speed of delivery and thus maintain the temperature of pizzas delivered to customers.
107. Overall, therefore, I did not consider the use of a backpack would have been a reasonably practicable step for the Respondent to have to take.
108. With regard to the fourth step, I have already discussed the issues that would potentially have arisen from the Claimant asking customers to meet him to complete the delivery of pizzas, rather than him taking the pizzas to their doors. As I have already mentioned, and as the Claimant himself appeared to appreciate, that may not always have been possible due to the customer's own disabilities, or due to customers needing to care for young children. Even if possible, it may not have been a request which would have been met positively by a customer, e.g. due to them already having changed into nightclothes. As Mr Daniels noted in his evidence, even where a customer was able and willing to go to the Claimant outside to complete the delivery of pizzas, that may cause them to be less willing to place repeat orders. In the circumstances, I again did not consider that this would have been a reasonably practicable step for the Respondent to have to take.
109. With regard to the fifth step, as I have noted, the Respondent has a potential customer base of some 30,000 addresses in the Caerphilly area, and there is no way of completely anticipating demand, whether in terms of the overall amount of deliveries or the delivery locations. The Claimant suggested that, over time, he could develop a list of locations which were particularly difficult for him, with that list being kept on the wall of the Respondent's premises and used to adjust deliveries. However, if the Respondent was faced with significant demand, such that the delivery driver was already en route to other locations, then such a list would not have been of assistance. Furthermore, in an industry where it is broadly known that staff turnover is relatively high, the ability of the Respondent to control the destinations to which the Claimant

would be required to deliver would be bound to be impacted. Again, therefore, I did not consider that this would have been a reasonably practicable step for the Respondent to have to take.

110. Overall, whilst I pay tribute to the Claimant's obvious drive and determination to overcome the impact of his disabilities on him and to provide for his family, I did not consider that the Respondent's refusal to appoint him to the role of delivery driver, whilst clearly disappointing and indeed upsetting to him, involved acts of disability discrimination. His claim therefore failed.

Authorised for issue by
Employment Judge S Jenkins
3 October 2025

Sent to the parties on:

15 October 2025
For the Tribunal Office:

Katie Dickson

Notes

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