



EMPLOYMENT TRIBUNALS

Claimant: V

Respondent: W

Heard at: Sheffield **On:** 11,12,13,14,15,18 and19 August 2025

Before: Employment Judge Shepherd

Members: Ms Robinson
Mr Langman

Appearances

For the Claimant: Ms. Brooke-Ward, counsel

For the Respondent: Ms. Callan, counsel

Extempore Judgment of the Tribunal having been given orally on 19 August 2025, the claimant has requested written reasons. Unfortunately, due to administrative difficulties, the request written reasons was not considered by the Employment Judge until 5 November 2025.

These written reasons are provided pursuant to rule 60 of The Employment Tribunal Procedure Rules 2024.

REASONS

1. The unanimous judgment of the Tribunal was that:

1. The claim of failure to make adjustments was dismissed upon withdrawal.
- 2 The claim of discrimination arising from disability is not well-founded and is dismissed.
3. The claim of unfair dismissal is not well-founded and is dismissed.
4. The claim of wrongful dismissal is not well-founded and is dismissed.

2. The claimant was represented by Ms. Brooke-Ward and the respondent was represented by Ms. Callan.

3. The Tribunal heard evidence from:

V, the claimant;
Dr A. C. White, Consultant Psychiatrist, jointly instructed medical expert
gave evidence by CVP video link;
RD, Matron, Surgical Services;
JM, Matron, Urology;
RB, Deputy Nurse, Director of Operating Services;
JA, H R, Business Partner.

The Tribunal had sight of a written witness from the claimant's son but he did not appear to give oral evidence.

4. The Tribunal had sight of a bundle of documents which, together with documents added during the course of the hearing, was numbered up to page 647. The Tribunal considered those documents to which it was referred by the parties.

The issues

5. The issues for the Tribunal to have been identified at a Preliminary Hearing before Employment Judge Davies on 14 February 2025. These were as follows:

Disability

- 1.1 At any time from 2022 onwards, was the Claimant disabled as defined in section 6 of the Equality Act 2010 because of the mental impairment of mixed anxiety and depressive disorder? The Tribunal will decide:
 - 1.1.1 Did she have a mental impairment?
 - 1.1.2 Did it have a substantial adverse effect on her ability to carry out day-to-day activities?
 - 1.1.3 If not, did she have medical treatment?
 - 1.1.4 Would the impairment have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment?
 - 1.1.5 Had the adverse effects lasted 12 months or were they likely to last 12 months or to recur?

Unfavourable treatment

- 1.2 At the date of her dismissal, did the Respondent know or could it reasonably have been expected to know that the Claimant was disabled?
- 1.3 Was the Claimant's dismissal because of something arising in consequence of her disability? The Claimant says that the conduct for which she was dismissed – accessing her ex-partner's medical records – arose in consequence of her disability.

- 1.4 If so, was the Claimant's dismissal a proportionate means of achieving a legitimate aim? The Respondent says that its aim was to maintain standards of behaviour and conduct to protect patient care and confidential patient information.
- 1.5 The Tribunal will decide in particular:
 - 1.5.1 was the treatment an appropriate and reasonably necessary way to achieve the aim;
 - 1.5.2 could something less discriminatory have been done instead;
 - 1.5.3 how should the needs of the Claimant and the Respondent be balanced?

Unfair dismissal

- 1.6 What was the reason or principal reason for the Claimant's dismissal? Did the Respondent have a genuine belief that she had committed misconduct?
- 1.7 If the reason was misconduct, did the Respondent act reasonably or unreasonably in all the circumstances, including the Respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the Claimant? The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case. It will usually decide, in particular, whether:
 - 1.7.1 there were reasonable grounds for that belief;
 - 1.7.2 at the time the belief was formed the Respondent had carried out a reasonable investigation;
 - 1.7.3 the Respondent otherwise acted in a procedurally fair manner;
 - 1.7.4 dismissal was within the range of reasonable responses.

Remedy

- 1.8 If the Claimant was unfairly dismissed, should a re-engagement order be made?
- 1.9 What compensation should be awarded for discrimination or unfair dismissal? The Tribunal will decide:
 - 1.9.1 What financial losses has the discrimination or dismissal caused the Claimant?
 - 1.9.2 Has the Claimant taken reasonable steps to replace her lost earnings, for example by looking for another job?
 - 1.9.3 If not, for what period of loss should the Claimant be compensated?
 - 1.9.4 Is there a chance that the Claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?
 - 1.9.5 If so, should the Claimant's compensation be reduced? By how much?

- 1.9.6 *Unfair dismissal only*: Does the statutory cap of 52 weeks' pay apply?
- 1.9.7 *Unfair dismissal only*: What basic award is payable to the Claimant?

1.10 What injury to feelings has the discrimination caused the Claimant and how much compensation should be awarded for that?

1.11 Should interest be awarded on discrimination compensation? How much?

It was noted that, if the reasonable adjustments complaints were pursued by the claimant, the parties should provide an updated list of issues. The claimant withdrew the claim for reasonable adjustments.

Although not identified at the Preliminary Hearing, the claimant had included a claim of wrongful dismissal in her claim to the Tribunal.

6. It was agreed at the start of this hearing that these were the issues for this Tribunal to determine.

Background/ facts

7. Having considered all the evidence, both oral and documentary, the Tribunal makes the following findings of fact on the balance of probabilities. These written findings are not intended to cover every point of evidence given. These findings are a summary of the principal findings that the Tribunal made from which it drew its conclusions. The numbers in brackets are references to the page numbers of the documents within the bundle of documents. The Tribunal has anonymized the identity of witnesses and others involved.

8. Where the Tribunal heard evidence on matters for which it makes no finding, or does not make a finding to the same level of detail as the evidence presented, that reflects the extent to which the Tribunal considers that the particular matter assists in determining the issues. Some of the Tribunal's findings are also set out in its conclusions, to avoid unnecessary repetition. The numbers included in brackets are the relevant page numbers of the agreed bundle of documents provided for the hearing.

9. The claimant had been employed by the respondent from 26 January 1998. She was employed as a Senior Sister and Ward Manager.

10. The claimant had been in a relationship with X. She had been subject to abuse and coercive and controlling behaviour for around nine years.

11. On 23 November 2023 the claimant was working on the ward. She was on a 7:00 am to 3:00 pm shift. In the early afternoon she went to the office and checked her mobile phone. She saw from the camera on her doorbell that there had been an ambulance outside her home and she saw that that X was being taken away by paramedics. The claimant believed that X may have had a stroke. This sent her into a state of panic as it brought back traumatic memories of her own previous experience when she had been taken from home on a stretcher following a stroke around 10 years

earlier.

12. The claimant tried to telephone X but could not get a response. The claimant then contacted her son and her mother. They confirmed that X had been taken away by ambulance but could not give her any more information.

13. The claimant eventually spoke to X. She said he was vague, confused and unsure of his location. He asked the claimant to find out where he was and what was happening.

14. Later that evening the claimant accessed his medical records through the respondent's electronic system. The claimant said this was in order to identify his location and to find out whether she was recorded as his next of kin.

15. The claimant said that after the incident of accessing the medical records she ended the relationship with X although there were continuing incidents of harassment and threats.

16. On 28 December 2023 X raised a complaint with the respondent's HR department about the claimant having inappropriately accessed his medical records. JA, HR Business Partner brought the allegation to the attention of the Nurse Director. RD, matron, was asked to contact IT to find out what data was held to corroborate the action.

17. On 30 December 2023, X indicated that he was dropping the complaint. He later stated that he had lied on the first occasion and then said that he had given the claimant authority to access his records. (232)

18. On 5 January 2024 RD wrote to the claimant (238) providing notification of a formal investigation into the allegation that the claimant had accessed the medical records of a member of the public known personally to the claimant. It was stated that:

“As a result of the information available to date, I confirmed my decision to put alternative arrangements to suspension in place for the period of the investigation: These are: You are not to access any records of anyone outside of your care...”

19. JM, Matron was appointed to carry out the investigation. A disciplinary investigation report was prepared dated 15 March 2024. It was recommended that a disciplinary hearing should take place.

20. On 10 April 2024 RD wrote to the claimant requiring her to attend a disciplinary hearing on 26 April 2024.

21. On 26 April 2024 the claimant attended a disciplinary hearing before a panel consisting of EJ, Nurse Director, RB, Deputy Nurse Director and AH, HR Business Partner. The claimant was accompanied by her trade union representative.

22. On 2 May 2024 EJ (299) wrote to the claimant to confirm the outcome of the disciplinary hearing. It was stated:

“... You have accessed further information relating to this patient. You have physically had to go to each of the sections and opened these up. You have accessed 33 records in total between 19:11:02 and 19:15:40: which is enough time to have read through each of the sections and the information contained within. This is a physical task that cannot be done by mistake or in error, it is a deliberate act, and I can see no justification why you felt that it was appropriate to access patient records for a patient that is not in your care. You acknowledged that it was wrong and that you were fully aware of the processes in the circumstances. You had received appropriate training around the governance and confidentiality and was 100% compliant in all aspects of your mandatory training.

This is an abuse of your privilege stated quite clearly in the Confidentiality – Staff Code of Conduct January 2021 (section 7).

7.9 Abuse of Privilege

7.9.1. It is strictly forbidden for staff to look at any information relating to their own family, friends, or acquaintances even if they have an explicit consent from the individual unless they are directly involved in the patient’s clinical care or with the employee’s administration on behalf of (the respondent).

Action of this kind would be a breach of confidentiality may be viewed as gross misconduct following a disciplinary investigation.

This is also a serious breach of patient confidential information that you have accessed when this patient was not in your care and is a deliberate failure to adhere to (The respondent’s) policies and procedures. It is also breach of your statutory duty, serious abuse of your position and a breach of data protection in respect of this patient.

As a very experienced, senior professional member of (The respondent), you should be a role model and be leading by example. This behaviour is not acceptable and inexcusable. There were other options that you could have taken within the professional boundaries. You could also have contacted/visited the ward in person after your shift had finished

... The panel were of the view that your actions in this case amounted to gross misconduct and could not identify any factors which provided mitigation to take action short of dismissal. The panel therefore decided to dismiss you from your employment with immediate effect from 26 April 2024.”

23. On 13 May 2024 the claimant’s trade union (RCN) representative wrote to the respondent’s Human Resources Director appealing against the dismissal (306). It was stated that the grounds of appeal were that the sanction was too severe and was disproportionate. The allegation was not denied but it was said that, due to the nature of the relationship the claimant had with the patient concerned, her actions that day were not indicative of normal behaviour. It was stated that the claimant’s actions occurred in the context of a severe abusive, coercive controlling relationship with the patient and the employer was already aware of this. The claimant:

“...has stated that she went into “panic mode” when she became aware that the patient had been admitted and that this triggered a trauma response in her because of her own life threatening experience and as a result of a “trauma bond” that is formed in coercive relationships.”

24. The letter of appeal referred to the respondent’s Domestic Violence and Abuse policy and suggested that far from supporting the member at that traumatic time the Trust chose to dismiss the claimant for a singular action which could have been dealt with in a different manner:

“We would suggest that (the claimant) has shown insight into her actions and is very clear that this action would not be repeated. We would suggest that this behaviour was out of character for (the claimant)

We note that (the claimant) was not suspended whilst under investigation and would suggest that this shows that the employer had not lost trust and confidence in her at this time...

25. An appeal hearing took place on 7 June 2024. This was heard by SC, Nurse Director, SO, Head of Domestic Services and JA, HR Business Partner. The claimant was represented by her Trade Union representative PB.

26. On 12 July 2024 (326) SC wrote to the claimant confirming that the decision to dismiss was upheld:

“The appeal panel was satisfied that mitigation had been considered by the disciplinary panel, in particular your long service and previously clean disciplinary record and the stress and anxiety you were experiencing at the time. However, due to the seriousness of your actions we did not believe this warranted downgrading the sanction. We therefore concluded that dismissal was an appropriate sanction in respect of this allegation.”

The law

Disability

27. Section 6 of the Equality Act 2010 states:

(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.

Under paragraph 2(1) schedule 1 to the Equality Act it is provided:

Long-term effects

- (1) The effect of an impairment is long-term if—
 - (a) It has lasted for at least 12 months,
 - (b) It is likely to last for at least 12 months, or
 - (c) It is likely to last for the rest of the life of the person affected.
- (2) If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.

28. Section 212 provides that “substantial” means more than minor or trivial.

29. The time at which to assess the disability (that is to say whether there is an impairment which has a substantial adverse effect on normal day-to-day activities) is the date of the alleged discriminatory act. Authority for this proposition may be found in **Cruickshank v VAW Motorcast Limited [2002] ICR 729 EAT**.

30. For impairments that have not lasted 12 months, the Tribunal will have to decide whether the substantial adverse effects of the condition are likely to last for at least 12 months. The word “likely” is to be interpreted as meaning that it “could well happen” upon the authority of the decision of the House of Lords in **Boyle v SCA Packaging Ltd [2009] ICR 1056**.

31. The issue of how long an impairment is likely to last should be determined at the date of the discriminatory act and not the date of the Tribunal hearing. Authority for this proposition may be found in the case of **McDougall v Richmond Adult Community College [2008] ICR 431**.

32. In the case of **All Answers Limited v W and another [2021] EWCA Civ 606** it was held that in determining whether an impairment is long-term, events after the date of the discriminatory act should be disregarded. The question must be answered by reference to the facts and circumstances at the date of the act.

33. In the case of **Swift v Chief Constable of Wiltshire Constabulary [2004] IRLR 540** (with reference to the Disability Discrimination Act 1995) it was made clear that a substantial adverse effect resulting from a different impairment would not properly be described as a recurrence.

34. In the case of **J v DLA Piper UK LLP 2010 ICR 1052** the EAT said that when considering the question of impairment in cases of alleged depression, Tribunals should be aware of the distinction between clinical depression and a reaction to adverse circumstances. While both can produce broadly similar symptoms of low mood and anxiety:

“The first state of affairs is a mental illness – or, if you prefer, a mental condition – which is conveniently referred to as “clinical depression” and is unquestionably an impairment within the meaning of the Act. The second is not characterised as a mental

condition at all but simply as a reaction to adverse circumstances (such as problems at work) or – if the jargon may be forgiven – “adverse life events”

Discrimination arising from Disability

35. Section 15 of the Equality Act 2010 states:

- “(1) A person (A) discriminates against a disabled person (B) if –
 - (a) A treats B unfavourably because of something arising in consequences of B’s disability, and
 - (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
- (2) Sub-Section (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.

36. Under section 15 of the Equality Act 2010 (discrimination arising from the consequence of a disability) there is no requirement for a claimant to identify a comparator. The question is whether there has been *unfavourable* treatment: the placing of a hurdle in front of, or creating a particular difficulty for, or disadvantaging a person; see Langstaff J in **Trustees of Swansea University Pension & Assurance Scheme & Anor v Williams UKEAT/0415/14** at paragraph 28. As the EAT continued in that case (see paragraph 29 of the Judgment), the determination of what is unfavourable will generally be a matter for the Employment Tribunal.

37. The starting point for a Tribunal in a section 15 claim has been said to require it to first identify the individuals said to be responsible and ask whether the matter complained of was motivated by a consequence of the Claimant’s disability; see **IPC Media Ltd v Millar [2013] IRLR 707**.

38. In the case of **Pnaiser v NHS England [2016] IRLR 170** it was provided as follows:

“In the course of submissions I was referred by counsel to a number of authorities including **IPC Media Ltd v Millar [2013] IRLR 707**, **Basildon & Thurrock NHS Foundation Trust v Weerasinghe UKEAT/0397/14/RN** and **Hall v Chief Constable of West Yorkshire Police [2015] IRLR 893**, as indicating the proper approach to determining section 15 claims. There was substantial common ground between the parties. From these authorities, the proper approach can be summarised as follows:

- (a) A Tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises.
- (b) The Tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely

to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a section 15 case. The 'something' that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.

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

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

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

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

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

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

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

39. In the case of **A Ltd v Z [2019] IRLR 952** it was stated by Eady J:

"(1) There need only be actual or constructive knowledge as to the disability itself, not the causal link between the disability and its consequent effects which led to the unfavourable treatment, see **City of York Council v Grosset [2018] EWCA Civ 1105, [2018] IRLR 746, [2018] ICR 1492 CA** at para 39.

(2) The Respondent need not have constructive knowledge of the complainant's diagnosis to satisfy the requirements of s 15(2); it is, however, for the employer to show that it was unreasonable for it to be expected to know that a person (a) suffered an impediment to his physical or mental health, or (b) that that impairment had a substantial and (c) long-term effect, see **Donelien v Liberata UK Ltd (2014) UKEAT/0297/14, [2014] All ER (D) 253** at para 5, per Langstaff P, and also see **Pnaiser v NHS England (2016) UKEAT/0137/15/LA, [2016] IRLR 170 EAT** at para 69 per Simler J.

(3) The question of reasonableness is one of fact and evaluation, see **[2018] EWCA Civ 129, [2018] IRLR 535 CA** at para [27]; nonetheless, such assessments must be adequately and coherently reasoned and must take into account all relevant factors and not take into account those that are irrelevant.

(4) When assessing the question of constructive knowledge, an employee's representations as to the cause of absence or disability related symptoms can be of importance: (i) because, in asking whether the employee has suffered substantial adverse effect, a reaction to life events may fall short of the definition of disability for EqA purposes (see **Herry v Dudley Metropolitan Council (2016) UKEAT/0100/16, [2017] ICR 610**, per His Honour Judge Richardson, citing **J v DLA Piper UK LLP (2010) UKEAT/0263/09, [2010] IRLR 936, [2010] ICR 1052**), and (ii) because, without knowing the likely cause of a given impairment, 'it becomes much more difficult to know whether it may well last for more than

12 months, if it is not [already done so]', per Langstaff P in **Donelien EAT** at para 31.

(5) The approach adopted to answering the question thus posed by s 15(2) is to be informed by the Code, which (relevantly) provides as follows:

'5.14 It is not enough for the employer to show that they did not know that the disabled person had the disability. They must also show that they could not reasonably have been expected to know about it. Employers should consider whether a worker has a disability even where one has not been formally disclosed, as, for example, not all workers who meet the definition of disability may think of themselves as a "disabled person".

5.15 An employer must do all they can reasonably be expected to do to find out if a worker has a disability. What is reasonable will depend on the circumstances. This is an objective assessment. When making enquiries about disability, employers should consider issues of dignity and privacy and ensure that personal information is dealt with confidentially.'

(6) It is not incumbent upon an employer to make every enquiry where there is little or no basis for doing so (**Ridout v T C Group (1998) EAT/137/97, [1998] IRLR 628; Alam v Secretary of State for the Department for Work and Pensions (2009) UKEAT/0242/09, [2010] IRLR 283, [2010] ICR 665**).

(7) Reasonableness, for the purposes of s 15(2), must entail a balance between the strictures of making enquiries, the likelihood of such enquiries yielding results and the dignity and privacy of the employee, as recognised by the Code."

40. In the case of **City of York Council v Grosset [2018] IRLR 746** the Court of Appeal held that section 15(1)(a) requires an investigation of two distinct causative issues: (i) did A treat B unfavourably because of an (identified) 'something'? (ii) and did that 'something' arise in consequence of B's disability?

Burden of Proof

41 Section 136 of the Equality Act 2010 states:

"(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 sub-Section (2) does not apply if (A) shows that (A) did not contravene the provision.

- (4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or Rule.
- (5) This Section does not apply to proceedings for an offence under this Act.
- (6) A reference to the court includes a reference to –
 - (a) An Employment Tribunal.”

42. Guidance has been given to Tribunals in a number of cases. In **Igen v Wong [2005] IRLR 258** and approved again in **Madarassy v Normura International plc [2007] EWCA 33**.

43. To summarise, the claimant must prove, on the balance of probabilities, facts from which a Tribunal could conclude, in the absence of an adequate explanation that the respondent had discriminated against her. If the claimant does this, then the respondent must prove that it did not commit the act. This is known as the shifting burden of proof. Once the claimant has established a prima facie case (which will require the Tribunal to hear evidence from the claimant and the respondent, to see what proper inferences may be drawn), the burden of proof shifts to the respondent to disprove the allegations. This will require consideration of the subjective reasons that caused the employer to act as he did. The respondent will have to show a non-discriminatory reason for the difference in treatment. In the case of **Madarassy** the Court of Appeal made it clear that the bare facts of a difference in status and a difference in treatment indicate only 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”.

44. In the case of **Strathclyde Regional Council v Zafar [1998] IRLR 36** the House of Lords held that mere unreasonable treatment by the employer “casts no light whatsoever” to the question of whether he has treated the employee “unfavourably”.

45. In **Law Society and others v Bahl [2003] IRLR 640** the EAT agreed that mere unreasonableness is not enough. Elias J commented that

“all unlawful discriminatory treatment is unreasonable, but not all unreasonable treatment is discriminatory, and it is not shown to be so merely because the victim is either a woman or of a minority race or colour ... Simply to say that the conduct was unreasonable tells nothing about the grounds for acting in that way ... The significance of the fact that the treatment is unreasonable is that a tribunal will more readily in practice reject the explanation given for it than it would if the treatment were reasonable.”

46. A Tribunal must also take into consideration all potentially relevant non-discriminatory factors that might realistically explain the conduct of the alleged discriminator.

Unfair Dismissal

47. Where an employee brings an unfair dismissal claim before an Employment Tribunal, it is for the employer to demonstrate that its reason for dismissing the employee was one of the potentially fair reasons in section 98(1) and (2) of the Employment Rights Act 1996. If the employer establishes such a reason the Tribunal must then determine the fairness or otherwise of the dismissal by deciding in accordance with section 98(4) of the Employment Rights Act 1996 whether the employer acted reasonably in dismissing the employee. Conduct is a potentially fair reason for dismissal under section 98(2).

48. In determining the reasonableness of the dismissal with regard to section 98(4) the Tribunal should have regard to the three-part test set out by the Employment Appeals Tribunal in **British Home Stores Limited v Burchell [1978] IRLR379**. That provides that an employer, before dismissing an employee, by reason of misconduct, should hold a genuine belief in the employee's guilt, held on reasonable grounds after a reasonable investigation. Further, the Tribunal should take heed of the Employment Appeal Tribunal's guidance in **Iceland Foods Limited v Jones [1982] IRLR 439**. In that case the EAT stated that a Tribunal should not substitute its own views as to what should have been done for that of the employer, but should rather consider whether the dismissal had been within "the band of reasonable responses" available to the employer.

49. In the case of **Sainsbury's Supermarkets Limited v Hitt [2003] IRLR23** the Court of Appeal confirmed that the "band of reasonable responses" approach applies to the conduct of investigations as much as to other procedural and substantive decisions to dismiss. Providing an employer carries out an appropriate investigation and gives the employee a fair opportunity to explain his conduct, it would be wrong for the Employment Tribunal to suggest that further investigation should have been carried out. For, by doing so, they are substituting their own standards as to what was an adequate investigation for the standard that could be objectively expected from a reasonable employer. In **Ucatt v Brain [1981] IRLR 225** Sir John Donaldson stated:

"Indeed this approach of Tribunals, putting themselves in the position of the employer, informing themselves of what the employer knew at the moment, imagining themselves in that position and then asking the question, 'Would a reasonable employer in those circumstances dismiss', seems to me a very sensible approach – subject to one qualification alone, that they must not fall into the error of asking themselves the question 'Would we dismiss', because you sometimes have a situation in which one reasonable employer would and one would not. In those circumstances, the employer is entitled to say to the Tribunal, 'Well, you should be satisfied that a reasonable employer would regard these circumstances as a sufficient reason for dismissing', because the statute does not require the employer to satisfy the Tribunal of the rather more difficult consideration that all reasonable employers would dismiss in those circumstances".

50. Stephenson L J stated in **Weddel v Tepper [1980] IRLR 96**:

“Employers suspecting an employee of misconduct justifying dismissal cannot justify their dismissal simply by stating an honest belief in his guilt. There must be reasonable grounds, and they must act reasonably in all the circumstances, having regard to equity and the substantial merits of the case. They do not have regard to equity in particular if they do not give him a fair opportunity of explaining before dismissing him. And they do not have regard to equity or the substantial merits of the case if they jump to conclusions which it would have been reasonable to postpone in all the circumstances until they had, per Burchell, ‘carried out as much investigation into the matter as was reasonable in all the circumstances of the case’. That means that they must act reasonably in all the circumstances, and must make reasonable enquiries appropriate to the circumstances. If they form their belief hastily and act hastily upon it, without making the appropriate enquiries or giving the employee a fair opportunity to explain himself, their belief is not based on reasonable grounds and they are not acting reasonably”.

51. In the employment context “gross misconduct” is used as convenient shorthand for conduct which amounts to a repudiatory breach of the contract of employment entitling the employer to terminate it without notice. In the unfair dismissal context, a finding of gross misconduct does not automatically mean that dismissal is a reasonable response. An employer should consider whether dismissal would be reasonable after considering any mitigating circumstances. Exactly what type of conduct amounts to gross misconduct will depend on the facts of the individual case. Generally to be gross misconduct, the misconduct should so undermine the trust and confidence which is inherent in the particular contract of employment that the employer should no longer be required to retain the employee in employment. Thus in the context of section 98(4) of the 1996 Act it is for the Tribunal to consider:

(a) Was the employer acting within the band of reasonable responses in choosing to categorise the misconduct as gross misconduct and

(b) Was the employer acting within the band of reasonable responses in deciding that the appropriate sanction for that gross misconduct was dismissal. In answering that second question, the employee’s length of service and disciplinary record are relevant as is his attitude towards his conduct.

Wrongful Dismissal

52. The test of the band of reasonable responses has no application to this type of claim. The issue here is for the Tribunal to determine whether the respondent has shown on the balance of probabilities on the evidence before the Tribunal that the claimant was guilty of gross misconduct. It is for the Tribunal to make its own decision on that and not to evaluate the reasonableness of the respondent’s decision.

53. The Tribunal had the benefit of detailed written and oral submissions from Ms. Brooke-Ward and Ms. Callan. These were helpful. They are not set out in

detail but the parties can be assured that the Tribunal considered all the submissions and authorities referred to even if they are not set out at length in these reasons.

Conclusions

Disability

54. The Tribunal is satisfied that the claimant had an impairment which had a substantial adverse effect on her ability to carry out day-to-day living activities which had lasted 12 months or was likely to last 12 months. This is taking into account the evidence and information provided to the Tribunal in the claimant's impact statement, the expert medical opinion and the information provided by way of character references from the claimant's family, friends and work colleagues.

55. The medical records show that the claimant visited her GP on 3 May 2024 (350) to discuss feelings of anxiety and depression. This was after her employment had been terminated. The incident which led to the claimant's dismissal had occurred in November 2023.

56. The claimant had a history of abuse at the hands of X. Her line manager, RD, was aware of this. She said that the claimant would rarely talk about herself and her personal life. The claimant confirmed this when giving evidence to the Tribunal.

57. RD was unaware that the claimant suffered from anxiety and depression. She did know that the claimant had been in relationship with X. The claimant had informed RD that the relationship with X had ended in February 2023 when she had removed X from her property.

58. The claimant had informed RD that she thought X had narcissistic tendencies and that the claimant had taken advice about Claire's Law in respect of Domestic Violence when she had been in contact with the police in around December 2023.

59. The Tribunal accepts that the claimant had been in an abusive relationship and panicked when she saw the events on her doorbell camera and learned that X had been admitted to hospital.

60. This was a reaction to the situation and not shown to be something arising from her disability. Dr White's medical opinion was that, in general, a panic attack could last a matter of hours.

61. The claimant reacted to the sight of paramedics at her home and X being taken away. She said that she had a flashback to when she had been taken by ambulance herself when she had a stroke 10 years before.

62. The claimant said that she thought that she had dealt with the issues relating

to her stroke and did not expect to react the way she did. She said that she could not think straight and it was like no feeling she had had before. This was a one off panic attack and not related to disability.

63. The action of the claimant was not malicious. She acted out of care for X and wanted to make sure that he had someone who would act as an advocate for him. At that stage she did not realise she had been a victim of domestic abuse.

64. By the time of the claimant's appeal which was submitted on 13 May 2024, the claimant had visited her GP on 3 May 2024 when she was diagnosed with anxiety and depressive disorder. She was given one prescription for sertraline but stopped taking that and there was no repeat prescription. The claimant rarely attended her GP despite requests for her to attend appointments and for tests to be carried out.

65. There was no mention of that diagnosis in the appeal or during the appeal hearing.

66. The evidence of Dr White, the jointly appointed medical expert, was that the claimant had mild anxiety and depression from February 2023. She did not visit her GP until May 2024. Her action on 23 November 2023 was as a result of a panic reaction related to previous experience of having a stroke approximately 10 years before

67. The Tribunal is satisfied that the panic attack was a one-off event triggered by the events the claimant saw on the doorbell camera and not something arising from mild anxiety and depression and would have occurred in the absence of any such symptoms.

68. The Tribunal is not satisfied that the claimant's anxiety and depression had a material influence on her actions which led to her dismissal.

69. The Tribunal finds that the respondent did not have knowledge of that disability.

70. The claimant did not inform RD about her anxiety and depression. There was no reason for the respondent to know that the claimant was disabled and it could not reasonably be expected to know. The claimant had suffered from domestic abuse and had one or two days special leave in February 2023. She said that she just carried on and thought that she would recover.

71. The claimant had a professional relationship with RD and did not open up to her.

72. The claimant said that she only realised that she had been a victim of domestic abuse sometime later when she obtained further information from the police in around December 2023.

73. During the course of the investigation meeting with JM on 1 February 2024 the claimant referred to the abuse suffered from X. JM advised the claimant that her line manager could refer her to Occupational Health and that the claimant

could access further support from VIVUP, a support service provided to the respondent for victims of domestic abuse. The claimant made it clear to the Tribunal that she had been dismissive of those suggestions and offers of support based on information she had heard from others

74. The claimant did not know that she was disabled or even that she was a victim of domestic abuse at the time that she accessed the medical records.

75. The Tribunal has gone on to consider, if the claimant's dismissal was something arising from a disability, whether it was a proportionate means of achieving a legitimate aim.

76. The identified legitimate aim was to maintain standards of behaviour and conduct to protect patient care and confidential patient information.

77. The Tribunal is satisfied that this is a legitimate aim. It is an important principle that hospital staff should not have access to patients records and information when they are not involved in the clinical care of that patient.

78. The treatment was an appropriate and reasonably necessary way to achieve that aim. The need for confidentiality of patient information is essential to maintain confidence in the service provided by an NHS Trust.

79. Balancing the needs of the claimant and the respondent, the Tribunal is satisfied that the dismissal of the claimant was appropriate and proportionate. If the claimant had been allowed to remain in her post it would have undermined the principle of confidentiality of patients' personal information and, when balancing the rights of the claimant against the duty of the Trust, it would not have been proportionate propo to take any action short of dismissal.

80. The dismissal of the claimant was on grounds of conduct. The respondent held a genuine belief in the claimant's guilt on reasonable grounds following a reasonable investigation and dismissal was within the band of reasonable responses.

81. The fact that JA, HR Business Partner, took the initial call from X and passed the complaint to the Nursing Director did not take the procedure outside the band of reasonable outside the band of reasonable responses. JA was of the view that it was a serious allegation but, at that stage, he did not know there was any truth to the allegation and the matter needed investigating. The Tribunal does not find that his involvement in the appeal was unreasonable or that he had reached a negative view of the allegation.

82. There was no objection raised by the claimant or her union representative about the appeal panel. The Tribunal finds that the panel was appropriately and reasonably constituted.

83. The Tribunal has considered the point that the claimant was not suspended while the investigation and disciplinary process was undertaken. The Tribunal has taken into account that, in some circumstances, a suspension from work could be a breach of the term of mutual trust and confidence (**Gogay v**

Hertfordshire County Council [2000] IRLR 703) and that it may not be proportionate to suspend a claimant in such circumstances. The importance of not accessing records of patients who were not in the claimant's clinical care was reinforced to the claimant. She was aware that the respondent was taking the matter seriously and could check with IT if records have been incorrectly accessed.

84. The Tribunal has some sympathy with the claimant. She had gained access to the patient's confidential records in a state of panic following a flashback to when she had been taken to hospital following a stroke some years before.

85. The claimant was a senior Sister with many years' experience. She acted in breach of a clear policy of the respondent of which she was aware.

86. This was a fundamental principle that staff should not gain access to patient's confidential information unless they were involved in the clinical care of that patient. The claimant was aware that policy.

87. The claimant acted in a state of panic but that was not something arising out of a disability. The claimant's mild anxiety and depression was not a material influence on her action.

88. It was clear from the evidence that the claimant's reactive panic arose from her flashbacks to when she had collapsed having suffered a stroke around 10 years before. That was unfortunate and out of character but it was still a repudiatory breach of contract and gross misconduct.

89. The Tribunal is satisfied that the respondent has established that the claimant was guilty of gross misconduct and, in those circumstances, the claim of wrongful dismissal does not succeed.

90. In those circumstances, the unanimous judgment of the Tribunal is that the claims brought by the claimant are not well-founded and are dismissed in their entirety.

Employment Judge Shepherd

9 November 2025