EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 8000695/2025

Held in Glasgow on 12 – 15 August 2025

Employment Judge Campbell

Dr J Koechlin	**Claimant** **Represented by:** **Mr B Duncan - Blackadders**
Global Voices Limited	**Respondent** **Represented by:** **Ms G Stein - Counsel**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. The claimant was unfairly dismissed under section 94 of the Employment Rights Act 1996; her complaint succeeds and the respondent is ordered to pay her a basic award in the sum of £408.50;

2. The claimant was discriminated against within the scope of section 15 of the Equality Act 2010, and the respondent is ordered to pay her £3,000 in respect of injury to feelings with interest at 8% per annum; and

3. The claimant was not subjected to harassment within the scope of section 26 of the Equality Act 2010 and that complaint is dismissed.

REASONS

Introduction

1. This claim was brought by the former employee of a company which provides various language-based services such as interpretation and translation. The partis were both legally represented.

2. The claimant alleged she had the protected characteristic of disability from 6 June 2024 by virtue of a cancer diagnosis. The respondent accepted she had disability status on that basis.

3. The hearing took place over four days in person. The claimant gave evidence on her own behalf. The respondent called Mr Michael Lovatt (Managing Director) and Ms Pamela Speirs (Head of HR). The parties had prepared a joint hearing bundle and an agreed list of issues (reproduced below). Numbers in square brackets in the findings of fact below correspond to pages in the joint bundle.

4. The hearing was to deal with liability and, if required, remedy.

5. All of the witnesses (including the claimant in that capacity) were found to be generally credible and reliable. There was not a large degree of dispute over the relevant facts of the claim.

Legal issues

6. The parties had agreed the legal issues for determination as below. The complaints relating to events of 24 October 2024 (issues 2.1.1(a) and 2.2.1(a)) were removed following their withdrawal by the claimant in the course of the hearing.

1. UNFAIR DISMISSAL – s94 and s98 Employment Rights Act 1996

1.1 Fairness

1.1.1 Was the reason for the Claimant's dismissal a diminished need for employees to do work of a particular kind?

1.1.2 Did the Respondent carry out a fair redundancy process, including in relation to the pool identified for redundancy?

1.1.3 Did the Respondent carry out reasonable consultation with the Claimant about the redundancy?

1.1.4 Did the Respondent act reasonably in looking for, and identifying, suitable alternative employment for the Claimant?

1.1.5 Did the Respondent make a formal offer of suitable alternative to the Claimant?

1.1.6 Was dismissal within the range of reasonable responses open to the Respondent?

1.1.7 Did the Respondent adequately consider alternatives to dismissal?

2. DISCRIMINATION - DISABILITY

2.1 Discrimination arising from disability – s15 Equality Act 2010

2.1.1 Was the Claimant treated unfavourably in relation to the following incidents;

(a) On 24 October 2024, the Claimant was contacted by a colleague and advised that an instruction was issued at a team meeting by Mr Koechlin and Ms Speirs not to contact the Claimant, including in relation to her welfare ("the 24 October Complaint");

(b) On 1 November 2025, ahead of a virtual meeting which the Claimant was scheduled to attend with a client and colleague, the Claimant was contacted with little notice by Ms Speirs and told not to attend the meeting, notwithstanding that the Claimant had been working with the client on the project for some time and that the client was expecting her on the call ("the 1 November Complaint"); and

(c) The Claimant's dismissal.

2.1.2 If so, was the treatment noted at (a) and/or (b) and/or (c) above because of something arising in consequence of the Claimant's disability?

The Claimant asserts that these incidents arose in relation to her disability-related absence.

2.1.3 If so, what was the reason for that treatment?

In relation to (a), the Respondent denies that there was a general instruction not to contact the claimant at all, instead the management team advised colleagues to refrain from work-related communication.

in relation to (b), the respondent advised the claimant by email that she did not need to attend the meeting as she was on sickness absence.

in relation to (c). the respondent dismissed the claimant by reason of redundancy due to a diminished requirement for employees to carry out work of a particular kind.

2.1.4 In treating the Claimant in that way what aim was the Respondent seeking to achieve?

In relation to (a), the Respondent sought to alleviate any work-related stress and protect the Claimant's recovery.

In relation to (b), the Respondent sought to maintain business consistency and to aid the Claimant's recovery.

In relation to (c), the Respondent ***sought to restructure the business following a downturn in business.***

2.1.5 Was that aim legitimate?

2.1.6 Was the treatment a proportionate means of achieving that aim or was there a less discriminatory way of achieving it?

2.2 Harassment – s26 Equality Act 2010

2.2.1 Has there been any unwanted conduct related to disability? The unwanted conduct complained of is;

(a) the 24 October Complaint; and

(b) the 1 November Complaint,.

The Claimant asserts that both of these incidents related to her disability.

2.2.2 Did either or both of those incidents have the purpose or effect of:

(a) violating the Claimant's dignity; or

(b) creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

3. REMEDY

3.1 If the Claimant's claims are upheld:

3.1.1 What remedy does the Claimant seek?

3.1.2 What financial compensation is appropriate in all of the circumstances?

*3.1.3 Should any compensation awarded be reduced in terms of **Polkey v AE Dayton Services Ltd [1987] ICR 142** and, if so, what reduction is appropriate?*

3.1.4 Should any compensation awarded be reduced on the grounds that the Claimant's actions caused or contributed to their dismissal and, if so, what reduction is appropriate?

3.1.5 Has the Claimant mitigated their loss?

3.1.6 Should any amount be awarded for injury to feelings and, if so, what amount should be awarded in the circumstances?

Findings of fact

The following were found to be relevant facts based on the evidence provided.

Background

1. The claimant was employed by the respondent between the dates of 25 April 2008 and 22 April 2025. The respondent ended her employment on the latter date having served notice.

2. The respondent is a company which provides translation services in various scenarios, principally being the translation of documents, provision of interpretation services and provision of other language-based media such as subtitles. It does so in relation to the majority of languages spoken worldwide. It has a headcount of between 60 and 70 employees and engages many more translators and interpreters on a freelance basis. It is a Scottish company with group companies in London and Ireland.

3. The CEO of the respondent is Luigi Koechlin, who owns all of its shares. He is the husband of the claimant although since around March 2023 they have been separated, but still cohabiting.

4. According to the most recent employment contract document issued to the claimant in June 2024, her title was ‘Head of EMEA and Governance’. More accurately she was the Global Head of Governance & Quality, the title stated in an organisational chart prepared around the same time [70]. Her role comprised three main elements. The principal one was Head of Interpretation which involved her managing the respondent’s interpretation team. That comprised (at the time of the relevant events) two Senior Project Managers

named Eva and Joe, and around five further Project Managers. The second element of the claimant's role was in relation to Governance. She had historically taken on responsibility for ensuring that the respondent obtained certain external accreditations such as ISO standards and complied with the terms of its insurers. The third aspect was the management of certain client relationships which she had built up.

5. The claimant's line manager was Craig Lovatt, the company's managing director. He did not provide a great deal of day-to-day management as the claimant was senior, experienced and the spouse of the CEO. He took from indications she gave that she was content to work autonomously and both were content with that.

Medical matters in 2024

6. On 6 June 2024 the claimant received a cancer diagnosis. She notified her husband and the respondent's Head of HR, Pamela Spiers. She told her team at the end of that month that she required to have some surgery but did not give further details of the condition. She underwent surgery on 12 July 2024. She received a follow-up course of radiation therapy between 12 and 18 September 2024.

7. The claimant was given paid leave during the absences she took around this time. She wished to continue doing at least some work when she was able, which she carried out from home. Her point of contact with the respondent was Ms Spiers and both exchanged messages via WhatsApp to stay in touch.

8. More specifically, she worked as normal up to 12 July 2025 and took the following two weeks off, save that she attended a conference on two of those days with a colleague and carried out some work on an external ISO audit. Ms Speirs knew that the claimant was doing those things and also that she was doing some work on a quote for the client BMW, but was not aware of the claimant doing any other work. Mr Koechlin and Mr Lovatt understood the same. The claimant was encouraged to rest and recover, but was not expressly prohibited from carrying out any work. Effectively given her seniority she was trusted to use her own judgment. By her own recollection she worked about 40% of her normal working time on average, doing more on some days than others depending on her energy levels.

9. In early September 2024 the claimant was given three weeks of paid illness leave in light of her radiotherapy course. She attended a meeting with Mr Koechlin, Mr Lovatt and Ms Speirs on 4 September 2024, although Mr Koechlin left part way through. It was not originally arranged for the purpose of discussing the claimant's workload, which matters she would oversee and

which would be left for her team to cover, but those were discussed given that she was about to be away from the office.

10. In various WhatsApp messages exchanged with Ms Speirs, the claimant indicated how she was feeling during her absence. She said on 23 September 2024, the week after radiotherapy, that she had been 'quite unwell' and spending most of her time in bed. She reported some side effects. On 2 October 2024 she reported that she was 'up and down', and 'feeling stronger one day, then bad again the next.' She mentioned that she had been working on the client quote and taking rest in between when waiting for responses from the client. She said she was not recovered but could possibly come into the office for some of the following week. Ms Speirs replied to say that she didn't want the claimant to catch anything in the office whilst her immune system was not fully restored and suggested the claimant take a further two weeks of paid absence.

11. On 9 October 2024 Ms Speirs messaged the claimant to ask how she was feeling and to mention that a few staff had been unwell and that it was a 'transformational time' in the business, and therefore that she should stay off work until the middle of November when things would be reviewed again. The claimant replied that day to say that she was 'improving overall'. She did not challenge the suggestion to remain off work but said 'let's see how I feel next week'.

12. Ms Speirs next messaged the claimant on 22 October 2022. She suggested that the claimant continue to take time off work to recover and that there be a discussion about her return to work in January. She again mentioned changes going on in the business which were creating issues with some staff, and various individuals being ill. The claimant replied to say 'Thank you for the offer to stay off longer. I would like that. X'.

13. On 24 October 2024 the claimant contacted Eva, one of her Senior Project Managers as she had not received any communication in the days before. Eva told her that the team had been instructed by Mr Koechlin and Ms Speirs not to contact her. This had been done with the intention of allowing the claimant to recover without being distracted by work pressures, but the claimant felt hurt as she wished to retain some connection with her work and her team.

August/September 2024 dismissals

14. Around July 2024 Mr Koechlin, Mr Lovatt and the respondent's Financial Controller Ms Wincott reviewed the respondent's financial performance. Although June and July were typically quieter months in terms of client activity, there was concern that the company was likely to make a loss of

around £428,144 by the end of its financial year on 30 June 2025 [82]. This compared to a profit of £776,516 for the previous financial year.

15. It was considered that the respondent had over-recruited in 2024 in anticipation of increased client orders which did not fully materialise. Each of the respondent's teams was given a number of individuals they had to release and names were suggested based on value to the business, length of service and termination cost. This led to around 11 employees being dismissed in late August or September 2024, all of whom had under two years of service. At the same time a number of staff who resigned were not directly replaced. A calculation was made that savings from this headcount reduction would be broadly equivalent to the projected loss, meaning that the company would be more likely to at least break even.

Client video meeting on 1 November 2024

16. Since around May 2024 the claimant had been working on a particular piece of work for a Japanese client involving the provision of translation services for a conference in December 2024. It was comparatively substantial and high-profile. She continued to work on the project during her absence along with others in her team.

17. A video meeting with the client had been arranged for 1 November 2024. The claimant had planned to join it but allow Jack Wilson, the Commercial Director, to lead the discussion. She sent him a set of questions to consider asking in an email earlier that day. Mr Wilson appeared to be confused as to degree of the claimant's involvement whilst she was absent from work and spoke to Mr Lovatt who in turn asked Ms Speirs to email the claimant suggesting that she need not attend the meeting [103]. She went on to say that going forward the claimant should leave the running of the project to Mr Wilson and others in her team.

18. The claimant emailed Ms Speirs back around 40 minutes later to say that she appreciated the concern, but not joining the meeting would put unnecessary pressure on the claimant and her team. She said that joining a 30-minute call 'would not kill me' and would ensure that everything could be covered. She only intended to listen and clarify anything if needed. She also said that she had told her team from the start that she would continue to lead the project and that, whilst she had copied in Jack to emails in case he needed to take over, he did not have the in-depth knowledge that the claimant had. There were no further communications and the claimant joined the meeting as she had intended. She continued to work on the project until its conclusion with the conference which ended on 12 December 2024.

19. In her evidence the claimant emphasised that she felt upset at the speed with which Ms Speirs had contacted her to ask her not to attend the meeting despite not being involved in the project, and that she felt alienated and isolated from her team and the client by what had been said.

Proposed redundancy of claimant's role

20. In late September or early October 2024 Mr Koechlin, Mr Lovatt and Ms Spiers considered whether any changes could be made within the existing team structure to achieve further efficiencies. Mr Lovatt saw a need for the company to focus its energies on generating immediate client instructions and dealing less with internal or longer-term strategic matters. He described this as meaning that each employee had to be as commercially focussed as possible. He himself spent more time contacting and meeting with larger clients to explore where further work could be obtained.

21. This review led to each of the respondent's main teams being considered. Those teams were Interpretation, Translation, Commercial (i.e. sales), Finance, Software Development and Marketing, and Facilities. Largely there were no obvious changes which could be made. The three individuals however considered that the claimant's role could be changed in a way which would benefit the business more. The reasoning they followed was that the majority of her role involved managing the Interpretation team, but her two Senior Project Managers could undertake that. Additionally, the claimant had experience and was skilled in managing client relationships and business development. This could be better utilised to generate revenue.

22. The first contact made with the claimant about any changes to her role was by way of a WhatsApp message from Ms Speirs on 5 November 2024, in which she asked whether the claimant could join a video call that day or the following morning. They agreed to speak at 10am the following day [107].

23. No minute was kept of the discussion, but Ms Speirs followed up with an email at 12.55 that day [110]. This confirmed that she had told the claimant that 'the role of Head of Interpretation & Governance will be made redundant. As discussed, this role will not be covered by any other person.' The email went on to describe an alternative role being created and offered to the claimant, titled 'Head of New Technology – customer acquisition'. She said that in that role 'you would continue selling the existing and new technology such as the AI interpretation platform to the public sector. This could also include your current clients for BMW and Clarivate. Salary and benefits would remain the same for this position.' The email went on to confirm that 'The other option we discussed would be 6-12 months paid sabbatical where we would take a

review 4 weeks prior to the end of the agreed period.' Ms Speirs ended the email by proposing that the claimant take time to consider those options and then there would be a follow-up discussion early the next week. She ended by saying 'As I confirmed regardless of the decision that is taken of the above options the role of Head of Interpretation & Governance will be made redundant.' The parties agreed that the contents of this email accurately reflected what had been discussed during the video call. Ms Speirs had also told the claimant that only her role was being removed. The claimant felt that she was being singled out because of the deterioration in her personal relationship with Mr Koechlin.

24. The claimant had asked for the specification of the new role in writing. The above quoted details were provided but further specifics were subject to discussion and the full specification was not provided until around 14 January 2025. She saw it as a telesales role where she would be working mainly alone save some collaboration with the Marketing team, seeking new business from clients. She would not have her own team to manage. She saw this as a demotion and carrying a high risk of failure. Mr Lovatt, whose idea it was, viewed the role more positively as an opportunity to grow a new area of the business using skills and experience in business development and client care that he recognised the claimant possessed. Whilst she would not have a team to begin with, that was a future possibility if things went well.

25. On 11 November 2024 at 8.24am Ms Speirs sent an email to the claimant proposing to arrange the intended follow-up meeting. The claimant in the meantime had scheduled a meeting with Mr Koechlin to discuss the situation the following day and he had accepted an invitation she sent. When they met she conveyed how hurt she had felt when he instructed her team members not to contact her. She asked him why she was being selected for redundancy when she was successfully running the Translation team. He replied that the claimant was triggering arguments and that her team could manage without her, and so the Head of Interpretation role would be removed.

26. There was a period of inaction in the formal process as Ms Speirs had to take some personal leave away from the business and also because of some privileged discussions which took place. The process resumed in January 2025.

27. The claimant attended a meeting in person with Ms Speirs on 14 January 2025. Ms Wincott, the Financial Controller, was present to take notes. The claimant made an unauthorised audio recording of the meeting using her mobile phone and prepared a transcript which was produced [127-142]. Ms Speirs accepted that it was accurate although, reasonably, pointed out that things said verbally could be misinterpreted when converted to type.

28. At this meeting it was confirmed that the offer of a sabbatical was being withdrawn. This was because the parties had been unable to agree on some of the conditions to apply to it within their privileged discussions. Ms Speirs said she wanted to get the process 'back on track'. The role of Head of New Technology was still available. Ms Speirs gave the claimant a copy of the specification for the role [122-124]. It was now titled 'Head of New Technology – Customer Acquisition and Governance' to recognise the aspects of the claimant's existing role which Mr Lovatt wished her to retain. It was agreed that the claimant would take a week to consider the role in detail and take legal advice before a further meeting.

29. Later on 14 January 2025 Ms Speirs wrote a letter to the claimant in which she confirmed that they had met that day and proposing to reconvene on 22 January 2025 [120-121]. She confirmed that if the claimant chose not to take the new role 'we would then discuss the redundancy package'.

30. The claimant met with Ms Speirs on 22 January 2025 and again Ms Wincott attended, although the meeting was shorter and no note of the discussion was produced. Ms Speirs asked if the claimant wished to discuss the alternative role further but she did not, explaining that she did not consider it suitable. Ms Speirs replied that the claimant would therefore be given notice of the termination of her employment and receive a redundancy package. This was confirmed in an email Ms Speirs sent the claimant the following day to which a redundancy confirmation letter was attached [144-146]. The email specified that the claimant would be able to keep her company mobile telephone and laptop computer, and that she would be contacted about a handover of her duties. The letter made clear that her last day of service would be 22 April 2024 and set out a calculation of sums she would be paid by way of statutory redundancy pay and accrued annual leave. She was to consider herself on garden leave and did not need to carry out her duties further.

31. The letter also gave the claimant the right to appeal against the decision to select her for redundancy. She declined to use that option. She believed that she had been unfairly and personally singled out by Mr Koechlin in particular. She did not expect an appeal to make any difference. Her employment therefore terminated on 22 April 2025 when her notice expired.

Discussion and decision

32. Both parties provided closing submissions orally, which were noted. The parties' submissions are not reproduced here but were very helpful and were considered in detail before a decision was reached.

Unfair dismissal claim

Was redundancy the reason for dismissal

33. Where an employer accepts that it dismissed an employee, the onus falls initially on it to show that the reason for doing so was potentially fair. It can only do that if the reason falls within section 98(1) or (2) of ERA. Redundancy is one of those reasons.

34. Redundancy for the purposes of this claim is defined in section 139 of ERA. To paraphrase, it can involve a type of work diminishing or disappearing altogether, or an employer finding a way to carry out activities using fewer people. In that second scenario there may not necessarily be a reduction in the amount of work to be done at all, and it may even increase. What is relevant is that the employer finds a way to carry out its chosen activities using fewer people.

35. It follows that there need not be the complete cessation of a person's duties in order for their employer to be able to restructure its operations, carry out a redundancy exercise and remove the role in question as a free-standing job.

36. As such, the respondent's proposed removal of the claimant's role fell within the definition of redundancy set out in section 139. The majority of that role was managing and supervising her team, which the respondent believed could be done by her two senior Project Managers. That left two other parts of her role which could not be done by those individuals. But the claimant's role as a whole (whatever title the respondent or she herself wished to use for it) was no longer needed.

37. To go a step further, redundancy was also the reason for her dismissal as well as the removal of her role. One does not always follow from the other – for example an employer may use the backdrop of a redundancy exercise to wrongly select a disabled or underperforming employee for dismissal when there was another alternative, and so potentially the real reason for dismissal is something other than redundancy itself. However, on the facts of this claim there were no such factors. The claimant's dismissal was the culmination of the process which involved the respondent requiring to improve on its projected year-end performance by either cutting costs or increasing revenue, or both. That led it to reallocate some of the claimant's supervisory responsibilities to those immediately below her and to seek that the claimant use her experience, existing client relationships and business development skills to generate new work.

38. Little if any of the above was in dispute between the parties. In any event, the tribunal found Mr Lovatt's evidence on these points, supported in some aspects by contemporaneous documents, to be genuine and persuasive.

39. As discussed, any economic rights or wrongs of a decision to restructure are the concern of the business in question and the tribunal cannot generally rule

on them. It can only consider how the affected employees are treated as a consequence of the decision. In any event, there appeared to be a clear rationale for the respondent's actions. A significant year-end loss was predicted and steps had to be taken to prevent that from happening. The business was at risk of failing altogether.

Was the respondent reasonable in dismissing the claimant

40. If a fair reason for dismissal can be established, the next question to decide is whether the employer acted reasonably in carrying out the dismissal for that reason. This is required by section 98(4) ERA. There is no onus on either party to prove their position on this issue. The tribunal must come to a decision based on the evidence available.

41. In deciding if a dismissal was carried out reasonably the tribunal should take into account the employer's size and administrative resources. There are no further provisions in the ERA about how a redundancy should be reasonably implemented. A body of case law has developed which provides further guidance in relation to collective and individual consultation. Key decisions were delivered in ***Williams and others v Compair Maxam Ltd [1982] IRLR 83, Polkey v A E Dayton Services Ltd [1987] IRLR 503*** and ***R v British Coal Corporation and Secretary of State for Trade and Industry, ex parte Price [1994] IRLR 72.*** More recently those and other authorities were reviewed in ***De Bank Haycocks v ADP RPO UK Ltd [2023] EAT 129.*** Emerging from those decisions, some important features of a redundancy process are:

    a. Warning and consultation (with the individuals directly or representatives if the group affected is larger) at a suitably early point in time. This usually means when the plans are at a formative stage;

    b. If there has been collective consultation then some degree of individual consultation should then follow, focussing on the individual's particular circumstances;

    c. Provision of adequate information to those affected so they can participate meaningfully in the process;

    d. Adoption of a fair and objective selection process and following it reasonably and neutrally;

    e. Exploring alternatives to dismissal for those affected and allowing adequate time for matters to be dealt with; and

f. Considering any proposals put by employees or their representatives in good faith.

42. Each of these principles may apply to a greater or lesser extent in a given scenario depending on such factors as how may redundancies are proposed, whether they are in one or more location, whether there will be collective or only individual consultation, how long the employer can allocate to carrying out the process, which jobs are affected and whether a degree of pooling and scoring is required because numbers of particular roles will be reduced but not removed entirely.

43. The respondent in the current claim adopted a reasonable process in some respects. Having identified the need to make savings around July or August 2024 it began taking steps by terminating the roles of those most recently recruited and not replacing some employees who resigned. This led to consideration of more longstanding and senior employees on a team-by team basis. Each team was differently configured according to its function and the most similar to the claimant's was the Translation team. The head of that team, and as such the claimant's closest equivalent, did not have senior Project Managers and had to manage the team more directly. They also did not have the experience and client relationship skills of the claimant, which the respondent wished her to utilise in the new role. It was therefore permissible to consider the claimant to be in a pool of one and at least initially notify her alone that she was at risk. There were consultation meetings, one in November 2024 and two in January 2025. This includes the meeting on 14 January 2025 which the claimant argued was not a consultation meeting, principally as she had not received an invitation to it framing it as such. However, in substance as can be seen in detail from her transcript, its purpose was very much to discuss the rationale and substance of the change to her existing role and the options which remained. She was offered the alternative role of 'Head of New Technology – Customer Acquisition and Governance', in outline in November and then in detail in the first January meeting. This was on the face of it a potentially viable alternative to redundancy as it appeared to rely on the claimant's skills and strengths, combined some aspects of her existing role and carried the same pay and benefits.

44. There was no minute of the first meeting with the claimant about redundancy, which was on 6 November 2024. However, Ms Speirs emailed the claimant the same day to recap what had been covered [110]. She said that 'the decision has been taken that [the claimant's role] will be made redundant. As discussed, this role will not be covered by any other person.', and later 'As I confirmed regardless of the decision that is taken of the above options the role … will be made redundant.' This exemplified the respondent's position at this point in the process. She could consider the new role or, at that time, a

sabbatical. Ms Speirs acknowledged in evidence that it would have been better to say that the claimant's role may, rather than would, be made redundant, but this was well after the fact. The decision to remove her main role had been made and was not up for discussion.

45. Considering the process as a whole, the respondent did not begin consulting with the claimant when its plans were 'at a formative stage', it did not appear open to considering changes or alternatives to removing her role and it did not share with her sufficient information to allow her to understand the wider plan, including why she alone was affected at that stage.

46. On considering the many case authorities on the subject of what is a reasonable redundancy procedure, it is clear that the answer is heavily dependent on the individual facts of the case. The case law principles summarised above will usually apply, but may have greater or lesser relevance from one situation to another. In this claim, given the respondent's size and resources it fell short of some of those principles in too material a way for the process to meet the test of what is 'reasonable'. Those were particularly around involving the claimant at an early enough stage and providing her with sufficient information to allow her to participate meaningfully in all key decisions, not merely those which followed the removal of her role. For this reason the respondent did not meet the requirements of section 98(4) ERA and the dismissal was unfair.

47. Consideration of the claimant's unfair dismissal complaint should not end there, however. The respondent argued that, had there been any procedural shortcomings, the outcome would have been no different had they been cured. On the evidence this is correct. The respondent was entitled, as discussed above, to remove the claimant's role albeit after giving the claimant adequate opportunity to have her say. For the reasons principally explained by Mr Lovatt in evidence that decision appeared to be supported by valid business reasons and the position is clear enough to be able to say that there was no obvious difference that the claimant could have made, if involved more in the discussion. In other words, even had she been given more time and fair warning of the proposal to remove her role, she would not have devised an alternative which the respondent should have pursued instead.

48. Where this takes the parties is that there must be consideration of the process from that point on, particularly the offer of the alternative role, the claimant's refusal of it, and the timing of her termination. The respondent argued that, given the consultation began in November 2024 and ended in January 2025, that was sufficient time to seek and discuss any alternatives to dismissal. It also argued that the new role offered to the claimant was a realistic alternative to her being dismissed. It did not argue that that role was a suitable alternative in the formal sense, such that the claimant's refusal of it was unreasonable to

the extent of denying her the right to a redundancy payment. She was paid a redundancy payment as part of her termination package. It merely wished to retain the claimant and asked her to at least consider the role. The claimant, equally, was entitled not to accept the role for the reasons she gave: she felt it represented regression back to a telesales role and she would be operating largely alone when before she managed a team. In this sense it was not an alternative which she would forfeit a redundancy payment by declining. It was unfortunate that the claimant appeared to have misunderstood the option to trial the role for four weeks (after which, if she did not wish to continue with it, she would revert to the redundancy terms), as an attempt to disentitle her to any redundancy pay.

49. Viewing the evidence, the tribunal decided that, notwithstanding the respondent's error at the outset of the process, it made no difference to the course of events which followed as a whole which was otherwise reasonable. The claimant would have been presented with the same options, would have made the same choice not to try the new role offered to her, and would have been dismissed on the same date as she in fact was.

50. This has a bearing on compensation – as she received a statutory redundancy payment this would, if calculated correctly, cancel out a basic award which would normally be automatically payable upon a finding of unfair dismissal. However, she was not entitled to compensation for any further losses by virtue of the ***Polkey*** principle.

Discrimination arising from disability – section 15 EqA

51. The claimant relied on the events of 1 November 2024 in this complaint. Specifically, she argued that the contents of Ms Speirs' email to her on that day were an act of discrimination arising from her disability. The 'something' said to have arisen in consequence of her disability was that she was resting and recovering at home rather than working at the office as usual.

52. Central to this complaint was a mismatch in knowledge of what the claimant was doing, and capable of doing, during her absence. Her evidence was she was regularly capable of working for a significant proportion of her normal weekly working time from home and did do, remaining in contact with her team, preparing quotes and overseeing larger and longer-term projects such as the one under discussion in Ms Speirs' email.

53. The respondent on the other hand, in terms of senior management at least, did not know the claimant was working as much as she was, and understood her simply to be recuperating for the majority of her time with some limited involvement in a small number of identified matters, principally an ISO audit and a client quote. This understanding was informed by the claimant's

message exchanges with Ms Speirs. Those included the claimant saying on 23 September that she was 'quite unwell since last week and spending most of my time in bed when I am not in medical appointments' and that she had developed side effects which required their own treatments; then she said on 2 October that she was 'up and down' and 'feeling stronger one day, then bad again the next'. On 9 October she had said 'I am improving overall' but also added in response to Ms Speirs' suggestion to take the next two months as further paid medical leave, 'Thank you for the offer to stay off longer. I would like that.'

54. The test of whether this type of discrimination has occurred is in two parts as explained in ***Basildon & Thurrock NHS Foundation Trust v Weerasinghe UKEAT/0397/14.*** The first question is whether the disability caused, had the consequence of or resulted in the 'something' relied on. This was the case here as the claimant was on paid illness leave because of the effects of treatment she was receiving for her condition. The second question is whether the respondent treated the claimant unfavourably because of that. The motive here of whoever is responsible for the treatment is irrelevant as the question of whether there has been unfavourable treatment is objectively tested. The employer must however have known (or reasonably have been expected to have known) about the disability.

55. The claimant was clearly advised not to join the client call on 1 November 2024. She was not ordered as such, but it was made clear that the respondent did not wish her to participate because she had agreed to take time off to recover. The treatment she complained of therefore was because of something arising in consequence of her disability.

56. The next matter to consider therefore was whether the direction from Ms Spiers amounted to treating the claimant 'unfavourably'. As emphasised by the claimant in submissions, the threshold is fairly low. According to the Supreme Court in ***Williams v Trustees of Swansea University Pension and Assurance Scheme and another [2018] UKSC 65*** the term is broadly the same as 'disadvantage' or 'detriment' in adjacent areas of discrimination law, and that if a reasonable person would complain about it, or consider that they would have preferred to have been treated differently, that may point towards unfavourable treatment having taken place.

57. In the circumstances of this case the claimant was unfavourably treated. She had retained overall responsibility for a relatively prestigious long-running client project which was coming to fruition and she wished to be present at a video meeting of around 30 minutes to an hour. She felt capable of doing so. She did not intend to lead the meeting or be the main contributor from the respondent, but to observe and deal with any unforeseen matters arising which her colleagues may not be capable of doing. It was reasonable in that

context for her to have the freedom to attend the meeting and to feel unfavourably treated when asked not to do so.

58. When discrimination arising from disability has occurred an employer may escape liability if it can show that the treatment was a proportionate means of achieving a legitimate aim – section 15(1)(b). The respondent argued that such was the case in relation to this event. The tribunal accepted that there was a legitimate aim, in that Ms Speirs (and by extension the respondent) issued the email to the claimant out of a well-intended desire to ensure she properly recovered from medical treatment in circumstances where she had said she was generally tired. The evidence suggested that Mr Lovatt thought that the claimant may have felt obliged to attend the meeting rather than merely joining it by choice.

59. However, the legitimate aim was not proportionately pursued. It was not both appropriate and reasonably necessary as per ***Homer v Chief Constable of West Yorkshire [2012] UKSC 15***, another Supreme Court decision. This was because the claimant had made clear that her energy levels varied, and she had some days which were better than others. She felt capable of attending in the way that she planned, but the respondent did not apparently know this. The phrasing of the email could have allowed the claimant to use her own judgment without feeling that she would be disobeying an instruction by attending. Ms Speirs or Mr Lovatt could have called the claimant, or asked her to call them in advance of the meeting, to discuss briefly why the claimant wanted to join it and what her involvement would be. Those would have been more proportionate steps.

60. Applying the legal test therefore, the claimant was unfavourably treated under section 15 of EqA.

Harassment – section 26 EqA

61. Again, the claimant relied on the terms of Ms Speirs email of 1 November 2025 in this complaint. She accepts that it did not have the purpose of causing harassment as defined in section 26, but argues that it had such an effect, and that she was reasonable in viewing it as such.

62. For this complaint to succeed the claimant would have to have been treated in a way which violated her dignity or created an intimidating, hostile, degrading, humiliating or offensive environment for her, and in an unwanted way related to her disability. In considering whether that happened, section 26(4) requires that the claimant's perception, the other circumstances of the case and whether it is reasonable for the alleged conduct to have the effect complained of should all be taken into consideration.

63. The claimant perceived that each of the prohibited effects had been brought about by Ms Speirs' email. Objectively tested, the purpose of the email was closely enough connected with her condition for its effect to be 'related to' disability for the reasons set out in relation to the section 15 complaint above and the 'because of' test. The key issue became whether the claimant perceived any of the prohibited effects to have occurred, and if so whether she was reasonable to view them that way taking into account all of the circumstances - ***Pemberton v Inwood [2018] EWCA Civ 564.***

64. On unchallenged evidence the claimant believed the email from Ms Speirs to have violated her dignity. The claimant was a senior and autonomous employee being told by someone she did not report to that she did not need to attend a meeting with a client with whom she had managed the relationship for a number of months. The tribunal did not see evidence of any of the situations described in section 26(1)(b)(ii) being created.

65. The tribunal therefore considered whether it was objectively reasonable for the claimant to feel that her dignity had been violated in the relevant circumstances. This was a finely balanced question, but the tribunal concluded that it was not reasonable for the claimant to have that perception. In particular, reviewing again the text of Ms Speirs' email, it was polite and attempted to couch the request in diplomatic terms which offered the claimant support and, if anything, tried to protect her dignity by allowing her to feel that she was not under an expectation to join the meeting and would not be letting anyone down by not joining it, as her colleagues would be capable of covering any requirements.

66. It may be considered contradictory that the same email could fall foul of section 15 but not section 26 of EqA, but essentially the tests are different. The first is more of an objective assessment and the second requires consideration of the reasonableness of someone's perception of what may be a more serious form of conduct.

Conclusions and remedy

67. The claim of unfair dismissal succeeded, but as discussed above the claimant is not granted a compensatory award because under any realistic scenario she would have been dismissed on the same date, and therefore her financial losses are assessed as zero.

68. She would be entitled to a basic award of £15,458.50 based on her start date being 25 April 2008, her date of termination being 22 April 2025 and her age at dismissal being 52. The statutory redundancy payment she received was £15,050.00 and did not factor in the increase in the cap on a week's pay which was introduced on 6 April 2025. She is therefore due the balance of £408.50.

69. The complaint of discrimination arising from disability under section 15 EqA was also successful. The tribunal considered the claimant's evidence about the effect of Ms Speirs' email on her, both as given in chief and as narrated in her impact statement within the bundle. It was conscious to note that the claimant's feelings were affected by a number of things and not merely the one proven act of discrimination, and so not all of the effects described could be attributed to it. The tribunal also considered the values attributed to the three Vento bands in the Presidential Guidance which applied at the time, which recommended that the bottom band correspond to a figure between £1,200 and £11,700. The tribunal also considered the evidence surrounding the act in question, such as the nature and intent behind Ms Speirs' email, the claimant's response to it, the apparent duration of the effect, the fact that the claimant was not in full health, and her seniority.

70. The tribunal arrived at the view that the act was a one-off occurrence which had a relatively low and short-lived impact. It noted that the claimant's response to Ms Speirs' email was friendly and measured in putting her view across. It did not indicate any material degree of upset or distress. The claimant initially felt excluded from the project but then resumed her involvement in it until mid-December 2024 – some six weeks later - when it was completed. She was recovering from cancer treatment and was to at least some degree vulnerable, but she was of strong character and tended not to be sentimental or make a fuss over her medical needs. Taking all of this into account the tribunal considered that an award between the bottom end and the midpoint of the lower band was appropriate. It therefore awards the sum of £3,000 for injury to her feelings. Interest will run from the date of the act – 1 November 2024 – at the judicial rate of 8% which it is assumed the parties can agree.

71. The harassment complaint is not well founded on the evidence provided and requires to be dismissed.

Date sent to parties **29 August 2025**