



EMPLOYMENT TRIBUNALS

BETWEEN

CLAIMANT

RESPONDENT

JAMIE GIMBLETT

V

OPENREACH LIMITED

HELD AT SWANSEA

ON: 14, 15 & 16 JANUARY 2026

**BEFORE: EMPLOYMENT JUDGE S POVEY
MR M LEWIS
MR P PENDLE**

REPRESENTATION:

**FOR THE CLAIMANT: MR CAPARROS (TRADE UNION REPRESENTATIVE)
FOR THE RESPONDENT: MR HOWELLS (COUNSEL)**

JUDGMENT having been sent to the parties on 13 February 2026 and written reasons having been requested in accordance with Rule 60(4) of The Employment Tribunal Procedure Rules 2024, the following reasons are provided:

REASONS

1. These are the reasons of the whole Tribunal, contributed to by whole Tribunal, and unanimous in all aspects.
2. The Claimant brings complaints of discrimination arising from disability and breach of the duty to make reasonable adjustments.
3. At a case management hearing on 1 August 2025 before Employment Judge Jenkins, a List of Issues was agreed and directions made to prepare the case for the final hearing. Save for the fact that disability is no longer in issue, the parties confirmed at the outset of the hearing that the aforementioned List of Issues represented the issues which the Tribunal had to determine.
4. The Tribunal heard oral evidence from the Claimant and from his former colleague, Greg Calloway. For the Respondent, we heard from:

- 4.1. Chris Thorpe (at the relevant time, Senior Poling Manager for UK South, having since left the Respondent's employment on 30 June 2025)
- 4.2. Tracey Phillips (Regional Asset Poling Programme Manager)
- 4.3. Lindsay Ferguson (Senior Manager of Poling, who gave her evidence by video).
5. Each witness we heard from adopted their written witness statement. We were provided with a paginated and indexed bundle of documents ('the Bundle'), to which, by consent, an additional five documents disclosed by the Respondent were added.
6. We also received oral and written submissions from Mr Howells for the Respondent and written submissions from Mr Caparros for the Claimant.
7. Mr Caparros is a trade union official with, on his own account, limited experience of presenting cases in the Employment Tribunal. The judge explained the processes and procedures to him, checked his understanding, encouraged him to ask questions and gave guidance throughout. We were satisfied that Mr Caparros was able to fully engage in the process and present the Claimant's claim to the best of his abilities.
8. We were grateful to Mr Caparros, to the Respondent's solicitors and to Mr Howells for the assistance they provided and the work they had undoubtedly undertaken both before and during the hearing. We were also grateful to all the witnesses, including the Claimant, who attended and answered the questions asked of them to the best of their recollections.
9. In reaching our findings and conclusions, we had full regard to all the evidence seen and heard and the submissions we received.

Applicable law

10. The applicable legal provisions and tests were not in dispute and we summarise them as follows:

Disability discrimination

11. Section 39(2) of the Equality Act 2010 ('EqA 2010') states:

An employer (A) must not discriminate against an employee of A's (B)—
...
(c) by dismissing B;

(d) by subjecting B to any other detriment.

12. Disability is a protected characteristic (per section 4 of the EqA 2010). Section 6 of the EqA 2010 defines disability for the purposes of the Act.
13. Discrimination arising from disability is defined by section 15 of the EqA 2010 as follows:
 - (1) A person (A) discriminates against a disabled person (B) if—
 - (a) A treats B unfavourably because of something arising in consequence of B's disability, and
 - (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
 - (2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.
14. There are two distinct steps to the test to be applied in determining whether discrimination arising from disability has occurred (per Basildon & Thurrock NHS Foundation Trust v Weerasinghe UKEAT/0397/14):
 - 14.1. Did the claimant's disability cause, have the consequence of, or result in, "something"?
 - 14.2. Did the employer treat the claimant unfavourably because of that "something"?
15. In Pnaiser v NHS England [2016] IRLR 170, the Employment Appeals Tribunal summarised the proper approach to claims for discrimination arising from disability as follows:
 - 15.1. The Tribunal must identify whether the claimant was treated unfavourably and by whom.
 - 15.2. It then has to determine what caused that treatment, focusing on the reason in the mind of the alleged discriminator. The motive of the alleged discriminator in acting as they did is irrelevant.
 - 15.3. The Tribunal must then determine whether the reason was "something arising in consequence of [the claimant's] disability", which could describe a range of causal links. That stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.
 - 15.4. The knowledge required is of the disability, not knowledge that the "something" leading to the unfavourable treatment was a consequence of the disability.
16. Section 20 of the EqA 2010 sets out the duties to make reasonable adjustments in respect of disabled persons. So far as relevant, section 20 states:

- (1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.
 - (2) The duty comprises the following ... requirements.
 - (3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
17. Schedule 8 to the EqA 2010 provides more details as to the duty to make reasonable adjustments. In addition, section 212 of the EqA 2010 defines "substantial" as "*more than minor or trivial.*"
18. What constitutes a "provision, criteria or practice" should be construed broadly. It includes formal and informal practices, policies and arrangements and may in certain cases include one-off decisions (per Lamb v The Business Academy Bexley UKEAT/0226/15). However, it is not appropriate to interpret the phrase "provision, criterion or practice" so as to encompass all one-off decisions made by employers during the course of dealings with particular employees (per Ishola v Transport for London [2020] EWCA Civ 112).
19. If a person fails to comply with the duty to make reasonable adjustments, that person discriminates against the disabled person (per section 21 of the EqA 2010).

Discrimination: standard & burden of proof

20. The standard of proof is the balance of probabilities. The burden of proof in discrimination complaints has two stages, as follows (per section 136 of the EqA 2010, Efobi v Royal Mail Group Ltd 2021 ICR 1263, SC; Madarassy v Nomura International plc [2007] IRLR 246 and Igen Ltd (formerly Leeds Careers Guidance) v Wong 2005 ICR 931, CA):
- 20.1. The Claimant has to prove facts from which the Tribunal could infer that discrimination has taken place;
- 20.2. If so, the burden 'shifts' to the Respondent to prove that the treatment in question was in no way because of a protected characteristic.

Findings of fact

21. We made findings necessary to determine the issues before us. The Claimant raised a number of issues about his training and the disciplinary procedure. Those matters were not relevant to what we had to decide and it was no part of our function to consider and decide them.

22. Most of the relevant facts were not in dispute.
23. The Respondent is a subsidiary business of the BT Group, and is responsible for supplying and maintaining BT's digital network to its customers. The Claimant's employment with the Respondent began on 5 December 2022 and, at the relevant time, he held the position of Poling Gang Lead. The Claimant's line manager was Ms Phillips.
24. It was not in dispute that, also at the relevant time, the Claimant was disabled by reason of hearing loss. This was reflected in a standardized audiometry assessment arranged by the Respondent and undertaken by the Claimant on 16 January 2024 (which all engineers undertook). The report recommended further analysis of the audiogram results, a referral to occupational health ('OH') and that the Claimant should see his own GP. It concluded that the Claimant remained fit to continue in his role (at [704] of the Bundle).
25. The subsequent OH reports were in evidence, dated 28 August 2024 (at [712] – [713] of the Bundle) and 21 October 2024 (at [715] – [717]). So far as relevant, they included the following (to which we were referred variously by the parties):

- 25.1. From the report of 28 August 2024 (by which time, as we explain below, the Claimant had been suspended from all duties on full pay):

A noise safety risk assessment should be undertaken to ensure that the exposure to noise is reduced as far as reasonably practicable and that appropriate control measures are implemented. A noise safety assessment should also be undertaken to ensure that he can understand and hear safety critical commands.

The level of hearing loss indicates that it is likely he would be able to hear conversations and commands and instructions whilst at work. He was advised to reduce his exposure to loud noises outside of work. He is medically fit for his role and he does not require any restrictions. He should continue to wear his hearing protection when exposed to noise at work. It is recommended that a further audiogram is undertaken in 12 months' time.

- 25.2. From the report of 21 October 2024 (issued after the Claimant's employment had been terminated):

The hearing loss in the left ear is more severe and it is unlikely that in the left ear he would be able to hear the appropriate commands and instructions in the left ear. Previously it was recommended that a noise safety risk assessment should be undertaken to ensure that he can understand and hear safety critical commands in the workplace. Therefore a functional assessment of his ability to hear in the workplace would be an appropriate assessment to determine if he is able to hear instructions and commands in the workplace and this was previously recommended in the advice report.

26. At the heart of this case were the events of 18 July 2024, which, to a large degree, were not in dispute. The Claimant was a member of a four-person gang tasked with removing and replacing a pole. The Claimant was one of two gang leaders in the team. The Claimant arrived at the site first and, in his role as gang lead, undertook a risk assessment (at [407] of the Bundle). That assessment included the Claimant assessing and confirming that “*verbal and visual communication can be maintained at all times*”.
27. The risk assessment reflected the various policies and procedures that the Respondent operated to ensure safety in its operations and to its employees, its customers and the wider public (those policies and procedures were in evidence). In particular, and with specific reference to the issue of verbal and visual communications, we were taken to the Mechanised Poling Operations Procedure (at [180] – 266] of the Bundle), and section 2.5 regarding use of the crane (as was being used for the job on 18 July 2024), which included provision for the use of hand signals if required for communication (at [198] – [200]). In our judgment those provisions were reflected in the risk assessment’s requirement for confirmation that both verbal and visual communications could be maintained at all times.
28. It was not in dispute that, in order to safely and correctly manoeuvre a pole, in line with the Respondent’s practices, procedures and training, it was necessary for a strop to be placed around the pole at the correct point (so that it could be lifted without becoming tip heavy) and a guide line be attached to the bottom of the pole and used to stabilise the pole (the role of one of the team being to hold the rope as linesman). The pole would then be lifted by a member of gang operating the lorry-mounted crane.
29. It was also not in dispute that it was the role and responsibility of the gang lead to ensure that those procedures were implemented and followed.
30. The Claimant undertook the risk assessment before the job began. The Claimant operated the crane. The Claimant was one of the gang leads. It was not in dispute that it was his responsibility to ensure that the strop was in the right place, the guide rope was properly attached and that it was being held by the linesman.
31. The old pole was removed without incident. However, upon lifting the new pole into place, it became tip heavy and fell onto a parked car. Fortunately, nobody was hurt, as the car was unoccupied at the time.
32. There followed an investigation into the accident, which included all members of the gang, including the Claimant, providing statements. A copy of the investigation report was in evidence (at [385] – [395] of the Bundle) as were the statements (at [375] – [379]). The Claimant was suspended on full pay whilst the investigation was on-going.
33. As a result of the investigation, the Respondent commenced disciplinary proceedings against the Claimant. Mr Thorpe was appointed as the

disciplinary officer. Two disciplinary hearings were held with the Claimant, who was accompanied by Mr Caparros as his trade union representative. Transcripts of the recordings of both hearings were in evidence (at [425] – [450] and [451] – [458] of the Bundle, respectively).

34. By a letter dated 4 October 2024, Mr Thorpe informed the Claimant that he had been found guilty of gross misconduct and the decision had been taken to summarily dismiss him, with effect from 9 October 2024 (at [459] – [465] of the Bundle). The letter included Mr Thorpe's rationale for his decision, which included the following (emphasis retained):

Jamie has been found that he knowingly disregarded process, following a central investigation into a high potential event that occurred on the 18th July 2024.

1. Jamie was the gang lead operating the PEU [Pole Erection Unit] at the time when a pole was removed from the hole in the ground, with the stop too low down the pole. The pole collapsed onto a car when lifted into the air by Jamie operating the PEU.

2. No guide rope was being used during the pole changeover which is in contravention with the poling processes.

...

Jamie acknowledges that as gang lead, he is ultimately responsible for the implementation of the correct safe working practices whilst working on site. I have found sufficient evidence within my investigation, of Jamie missing critical opportunities to abort the job and prevent the accident from occurring. In particular Jamie acknowledges that he should have checked the positioning of the stop on the pole, as this is critical to the stability of the pole as it is lofted into the air. This is a check that Jamie didn't do, nor did he offer me any mitigating circumstances for the oversight. Also on this point, I have several witness statements from Ben Cooling, John Beels and Steve Lewis stating that they told Jamie that the stop was too low.

Jamie's actions therefore clearly disregarded safety process, which ultimately resulted in the pole collapsing on a parked vehicle. This could have had the potential to cause a fatality, if the pole had collapsed on another gang member, or member of the public.

Overall I have identified a clear lack of leadership from Jamie on the day, which is expected of him as a gang lead and a clear lack of communication.

...

During the interview, Jamie acknowledges that the pole changeover at the time of the incident, was being carried out without the use of the stabilising rope at the bottom of the pole. Now whilst I accept that having the rope attached wouldn't have prevented the pole from collapsing under the circumstances, due to the sheer weight of the pole. This does again demonstrate to me however that Jamie's actions clearly disregarded safety process. Again during the interview Jamie offered up no mitigation as to why the rope wasn't being used, nor why he didn't take the opportunity to abort the job.

Overall I have identified a clear lack of leadership from Jamie on the day, which is expected of him as a gang lead and a clear lack of communication.

35. In respect of points raised by the Claimant, in the course of the disciplinary the rationale recorded as follows (so far as relevant):

You also highlighted to me that you have recently found out that you have issues with your hearing, and that you felt that was the reason that you didn't hear any warnings from Ben [Cooling – gang member] that the strop was too low on the pole.

...

Jamie has raised that he has recently been referred to see a specialist with regards to problems that he has been having with his hearing for a number of years, a problem that he and his representative feels may be an underlying reason for not hearing anyone informing him that the strop was located too low on the pole.

I acknowledge that the medical report does indicate that Jamie does have some loss of hearing, however the report indicates that Jamie should be able to hear conversations and commands and instructions whilst at work, which indicates to me that he should have been able to hear one of the comments to him that the strop was too low on the pole from the other gang members.

A verbatim extract from Jamie's medical report reads 'The level of hearing loss indicates that it is likely he would be able to hear conversations and commands and instructions whilst at work. He was advised to reduce his exposure to loud noises outside of work. He is medically fit for his role and he does not require any restrictions. He should continue to wear his hearing protection when exposed to noise at work. It is recommended that a further audiogram is undertaken in 12 months' time. If you have any concerns or questions on this advice do not hesitate to contact me'.

36. In his oral evidence, the Claimant accepted that he had failed to check the position of the strop on the pole prior to commencing the lift. He also confirmed that he did not check if the guide rope was attached or whether his linesman (who had been Ben Cooling) was holding the guide rope at the time of the lift. He also accepted that it was his responsibility to ensure the strop was in the correct position, that the guide rope was fitted and that his linesman had hold of the guide rope. He accepted that those failures were in breach of the Respondent's procedures. He confirmed that he did not, and continues to not, dispute the allegations he faced in the disciplinary proceedings (as recorded above) or the findings reached by Mr Thorpe.
37. Finally, the Claimant accepted in his oral evidence that the reason for his dismissal (namely the failure to check the position of the strop and the failure to ensure the guide rope was attached and/or was being held by his lines man) had nothing to do with his hearing impairment.
38. The Claimant was offered and exercised his right of appeal against the decision to dismiss him. The Respondent appointed Ms Ferguson as the appeal officer. Appeal hearings took place on 21 November 2024 and 6 January 2025. By a letter dated 3 February 2025, Ms Ferguson upheld

the decision to dismiss and rejected the Claimant's appeal. The rationale for that decision was also in evidence (at [697] – [701] of the Bundle).

39. Ms Ferguson reached the same conclusions as Mr Thorpe for broadly the same reasons. In respect of the Claimant's hearing loss, the following was instructive from the decision rationale (at [697] – [698] of the Bundle):

You raised the following points in the appeal meeting:

- You challenged the conclusion that you could hear on the day which was in the initial rational. You felt that this did not take into account the noise of the machinery which were enclosed around the driveway which was exacerbated by the noisiness of the site.
- You presented new evidence, a medical report, which clarifies the hearing loss and shows severe hearing issues in your left ear and also some in your right and the report's recommendation for functional hearing check/noise safety risk assessment. Your hearing issues span back to 2004 and you believe it is a disability and that this situation has in part arisen due to this disability.
- The company had conducted a hearing test which you were in the process of undergoing an assessment so the company was aware of a potential issue before the accident.
- Neither you nor Ben had completed banksman courses and were not competent in the use of hand signalling.

My response:

- You were not dismissed due to your hearing challenges. You were dismissed as you were proven to have shown a lack of leadership on the day and a lack of communication with all others present on site.
- Both you and Ben were aware of the role of a banksman and if you were having issues hearing, I would expect as a gang lead that you would have taken other steps to ensure that communication was clear amongst all present gang members/leads.
- We discussed how you have been operating as a gang lead for months and your hearing challenges had not negatively impacted your ability to hear or do your job prior to this day, therefore I do not accept that your hearing loss is a contributing factor to the dismissal decision.

40. The Claimant began ACAS Early Conciliation on 16 December 2024 and it conclude on 24 January 2025. He presented his claim to the Tribunal on the same day.

Analysis & conclusions

41. We considered the complaints per the agreed List of Issues (at [48], - [50] of the Bundle).

Discrimination arising from disability (Equality Act 2010 section 15)

42. Did the Respondent treat the Claimant unfavourably by dismissing him?
43. It was not in dispute that the Respondent dismissed the Claimant. Dismissal is clearly unfavourable treatment (in that it is detrimental rather than beneficial to the Claimant).
44. Did the Claimant's reduced ability to hear verbal warnings from colleagues arise in consequence of his disability?
45. We did not understand this to be materially in issue. The OH reports confirmed that the Claimant's ability to hear commands and instructions in his left ear was compromised (per the report of 21 October 2024), albeit the report of 28 August 2024 stated that he could still hear commands and instructions (presumably because of his right-sided hearing).
46. In the circumstances, we found that the Claimant did have a reduced ability to hear commands and instructions, although not a complete inability, and that verbal warnings would fall within the rubric of commands and instructions. To that end, the reduced ability to hear verbal warnings from colleagues arose in consequence of the Claimant's disability.
47. Was the unfavourable treatment because of any of those things?
48. To rephrase the question, was the Claimant dismissed because of his reduced ability to hear verbal warnings? Clearly, on the evidence and findings as recited above, the Claimant was not dismissed because of his reduced ability to hear verbal warnings. Indeed, the Claimant was not dismissed in respect of anything to do with his hearing at all, a fact that he himself acknowledged in his own evidence. The Claimant's impaired hearing played no role whatsoever in the issues which led to his dismissal or the decision to dismiss him.
49. The Claimant was dismissed because he failed to undertake the safety assessments he was trained and required to do, prior to lifting the pole. In particular, he failed to check the positioning of the strop, failed to ensure that a guide line was either attached and failed to check that it was being held by his linesman. None of those failures were in any way related to the Claimant's hearing loss, a fact, again, he admitted in his evidence.
50. If there was a verbal warning from Mr Cooling which the Claimant did not hear (as he alleged), that was not why he was dismissed. Rather, any such warning was, at its highest, a consequence of the failures for which he was dismissed. If the Claimant had done what he was required to do, there would have been no need for Mr Cooling to issue a verbal warning (whether to alert the Claimant that the strop was in the wrong place or otherwise).
51. We did not accept that the Claimant's reduced ability to hear verbal warnings (the 'something arising' advanced by the Claimant and reflected in the List of Issues) played any part whatsoever in the decision to dismiss

him. As transpired from what he told the Respondent in the course of the disciplinary proceedings and as confirmed in his oral evidence, neither did the Claimant.

52. In conclusion, the Claimant was not subjected to unfavourable treatment because of something arising from his disability.

53. For all those reasons, the complaint of discrimination arising from disability was not made out and is dismissed.

Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

54. The Claimant relied on two alleged provision, criterion or practices ('PCP'), which he said were applied to him by the Respondent, and placed him at substantial disadvantage because of his disability, such that the Respondent was under a duty to make reasonable adjustments to those PCPs, which, the Claimant said, it failed to do.

55. The alleged PCPs were as follows:

55.1. Only using verbal communication when installing or removing poles.

55.2. Imposing the sanction of dismissal in circumstances considered to amount to gross misconduct

56. The Claimant said that the PCPs were applied to him and put him to the following substantial disadvantages:

56.1. He was less able to hear verbal warnings from colleagues; and

56.2. He was more likely to commit an act said to amount to gross misconduct, in circumstances where he was less able to hear verbal warnings from colleagues.

57. However, the Respondent did not have a PCP of only using verbal communication when installing or removing poles. As we have referred to above, the Mechanized Poling Operations Procedures included explicit reference to the use of non-verbal communications, namely hand signals. That was further reinforced by the express requirement for verbal and visual communications to be checked as part of the risk assessment ahead of pole removal and installation.

58. In reality, the Respondent had a PCP of not using only verbal communications when installing or removing poles.

59. If, as alleged by the Claimant (and repeated by Mr Calloway in his evidence), hand signals were not used in practice, that would have been in direct breach and contradiction of the Respondent's actual PCP and the requirements of its risk assessments. That may, on the Claimant's case, have been a practice utilised by gang leads and gang members but it was not a PCP operated or applied by the Respondent.

60. Similarly, the Respondent did not have the PCP of imposing the sanction of dismissal in circumstances considered to amount to gross misconduct. That was evident from the Respondent's disciplinary procedure, which set out a range of sanctions including dismissal, but did not mandate any of them. It said the following in the disciplinary procedure (at [174] of the Bundle, emphasis added):

After the disciplinary meeting (and the conclusion of any further investigation) the outcome from the formal process could include one or more of the following:

...

61. The disciplinary procedure goes on to details the various sanctions available to the Respondent, from no action to dismissal.
62. It was also evident from the disciplinary invite letter of 14 August 2024 sent to the Claimant, which included the following (at [423] of the Bundle, emphasis added):

You need to know that this is a formal disciplinary meeting and if there's evidence to support any of the allegations outlined above, this could amount to gross misconduct which if confirmed could mean that you'll be summarily dismissed from the Company.

63. The fact that the Respondent dismissed the Claimant for gross misconduct did not establish the existence of a PCP. With respect, the Claimant appeared to have fallen into the very error warned against by the Court of Appeal in Ishola (cited above).
64. In any event, even if the Respondent had the PCP as alleged, applying it to the Claimant did not give rise to the substantial disadvantage contended for. The Claimant's committal of acts found to constitute gross misconduct had nothing whatsoever to do with his reduced ability to hear verbal warnings, and by extension his disability, for all the reasons already explained.
65. As the Respondent did not have the alleged PCPs, it did not apply them to the Claimant, they could not have caused him any disadvantage, substantial or otherwise, because of his disability or otherwise. The Respondent was under no duty to make any reasonable adjustments As there was no duty, there could be no breach of duty.
66. For those reasons, the complaint of breach of the duty to make reasonable adjustments was not made out and is dismissed.

Order posted to the parties on
23 February 2026

Kacey O'Brien
For Secretary of the Tribunals

Approved by:

EMPLOYMENT JUDGE S POVEY
Dated: 16 February 2026

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