



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr Robert Shaw

**First Respondent:** Project People Limited

**Second Respondent:** Fujitsu Services Limited

**Heard at:** Bristol and by CVP

**On:** 13-17 April 2026

**Before:** Employment Judge Walters

## Representation

**Claimant:** In person assisted by his wife

**First Respondent:** Mr Jack Mitchell, Counsel

**Second Respondent:** Mr. James Hyde, Counsel

# JUDGMENT

The judgment of the Tribunal is that:

1. The Claimant's claim against the First Respondent that he suffered discrimination arising from disability contrary to section 15 of the Equality Act 2010 is dismissed.
2. The Claimant's claim that the First Respondent breached its duty to make reasonable adjustments contrary to section 21 of the Equality Act 2010 is dismissed.

3. The Claimant's claim that the Second Respondent breached its duty to make reasonable adjustments contrary to section 21 of the Equality Act 2010 is dismissed.

## REASONS

### Introduction

1. The Claimant commenced proceedings in the Bristol Employment Tribunal on 2 July 2024 alleging, inter alia, that
  - a. the First Respondent had subjected him to unfavourable treatment because of something arising as a consequence of disability contrary to s.15 Equality Act 2010 (hereinafter referred to as "EqA 2010"),
  - b. the First Respondent breached its duty to make reasonable adjustments contrary to s.21 EqA 2010
  - c. the Second Respondent breached its duty to make reasonable adjustments contrary to s.21 EqA 2010
2. The claim was heard at Bristol between 13-17 April 2026. The last day of the hearing was conducted by CVP with the ready agreement of the parties in order for the Tribunal to give judgment with the parties attending remotely.
3. The Tribunal read all the witness statements which had been disclosed by the parties prior to the commencement of the hearing.
4. The Tribunal received oral evidence from the Claimant and his wife, Mrs Amelia Shaw and from Ms. Freeman and Ms Freeman on behalf of the First Respondent. The further witnesses relied upon by the First Respondent and whose statements were disclosed were not called to give evidence. The Tribunal admitted the statements but in light of their non-attendance their evidence was of little assistance or weight. The Second Respondent called oral evidence from Mr. Mannering and Mr. Steve Jones.
5. The Tribunal had regard to a bundle of documents which consisted of 416 pages.
6. Closing written and oral submissions were delivered by both counsel for the Respondents and by the Claimant.

## Preliminary matters

7. At the outset of the hearing with the agreement of the parties the Tribunal decided to deal only with liability at this hearing because
  - of time constraints,
  - the question of remedy was not straight forward and
  - the parties had not fully prepared for a remedy hearing e.g. the disclosure was not complete.
8. On 31 March 2026 application was made by the Claimant to adduce a medical report prepared by the Claimant's GP dated 18 February 2026. The report contains expressions of expert medical opinion. No permission had been sought for reliance on the report. Unsurprisingly strong objection was taken by both Respondents. The matter was held over until the final hearing for determination.
9. The Tribunal refused the application in so far as it was relied upon at the liability stage of the hearing. The reasons are:
  - a. The reason given by the Respondents in their written objection
  - b. No prior permission had been granted in advance for obtaining such a report
  - c. The Respondents had not had a reasonable opportunity to instruct their own medical experts
  - d. The admission of the report would derail the hearing leading to an adjournment in order for the respondent to instruct an expert
  - e. The granting of the application would be wholly unfair and not in accordance with the overriding objective

## The Claims

10. It was not in issue that the Claimant was disabled within the meaning of the EqA 2010. The Claimant is disabled by reason of three conditions:
  - a. Post Traumatic Stress Disorder (PTSD)
  - b. Anxiety and
  - c. Depression
11. The proceedings had been the subject of a lengthy case management hearing by Employment Judge O'Rourke on 13 March 2025. **[63-76]** As a result of the hearing an agreed list of issues was prepared which was set out in the order made at the preliminary hearing. **[74]**
12. It is noted that the Claimant had been given opportunity to make representations as to whether the order properly reflected the issues to be decided. **[66]** He made no objections.

13. The case had been the subject of further consideration by REJ Pirani on 17 February 2026 in order to ensure the case was ready for final hearing.
14. The Claimant was represented at times by a firm of solicitors (including after the original preliminary hearing), and at other times, by his wife who had been a claims handler for an organisation which assists claimants.
15. Of course, as per the decision in **Chandhok and anor v Tirkey UKEAT 0190/14/1912** and **Nicole Moustache v Chelsea and Westminster Hospital NHS Foundation Trust [2025] EWCA Civ 185** it is the pleadings which must take primacy over any other document including the list of issues. However, in this case the pleadings are not of much help in understanding the Claimant's case but generally the list of issues does not appear to be in conflict with those pleadings.
16. In any event, the witness statements were completed and the preparation for the hearing was undertaken based on the issues as identified by the Employment Tribunal and as agreed by the parties.
17. At no time did the Claimant seek to resile from the list of issues until, during his written response to the submissions of the Second Respondent, the Claimant sought to advance a claim of s.15 EqA 2010 against the Second Respondent. However, the time for making such a claim had long since passed. The case had been prepared on the basis of the claims identified previously and the evidence and submissions had been heard.
18. It would be wholly unreasonable and unfair to the Second Respondent to have allowed the Claimant to make such a claim at this late stage: it would have caused the Second Respondent substantial prejudice and it would have necessitated the re-opening of the evidence and potentially an adjournment for the Second Respondent to reconsider the claim and to submit further evidence at some time in the future. That would have been a wholly unjustified misuse of tribunal time and resources, and it would have caused both respondents to incur considerable additional legal costs.
19. In so far as the written submission document is an attempt to amend the claim against the Second Respondent it is refused.

## **The First Respondent**

### **Unfavourable treatment under s.15 EqA 2010**

20. The Claimant brings a claim under section 15 EqA 2010. The Claimant contends that the First Respondent treated the Claimant unfavourably by dismissing him on 4 March 2024. It is alleged the Claimant was dismissed because of something arising in consequence of his disability namely: that he needed additional or lengthier breaks and that following any 'episodes/attacks' he suffered, he needed to take medication which prevented him from working with machinery.

21. The First Respondent accepts it dismissed him on 4 March 2024 but denies that it dismissed him for the reason contended by the Claimant.
22. It asserts it dismissed the Claimant because the Second Respondent terminated his assignment and there was no further work for the Claimant.
23. In any event the First Respondent relies on the statutory defence of justification.

**A failure to make reasonable adjustments contrary to s.21 EqA 2010**

24. The Claimant brings a claim under section 21 of the EqA 2010 alleging a failure to make reasonable adjustments in circumstances where he alleges PCPs put him at a significant disadvantage compared to someone without his disability.
25. It is no longer in issue that the Claimant was disabled by reason of PTSD and depression and anxiety because of the order of the Employment Tribunal on 9 June 2025.
26. The First Respondent denies actual or constructive knowledge of disability.
27. The First Respondent accepts the claimed PCPs were applied to the Claimant:
  - a. That workers exercise good timekeeping;
  - b. That workers have regular attendance at work
28. It is alleged that the PCPs put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability, in that he needed to take longer/more frequent breaks that impacted on his timekeeping and also that the medication he took following 'episodes' resulted in him being unable to work with machinery, which was his core role, affecting his attendance at work.
29. The First Respondent denies it knew or could reasonably have been expected to know that the Claimant was likely to be placed at the disadvantage.
30. The suggested adjustments which it is contended it was reasonable for the First Respondent to have made to avoid the disadvantage are as follows:
  - a. Conducting a risk assessment
  - b. Permitting time off following the onset of an episode of symptoms of PTSD
  - c. Allowing longer or additional breaks
31. The First Respondent denies that the duty to make the claimed reasonable adjustments arose.

## The Second Respondent

### A failure to make reasonable adjustments contrary to s.21 EqA 2010

32. The Claimant brings a claim under section 21 of the EqA 2010 alleging a failure to make reasonable adjustments in circumstances where he alleges PCPs put him at a significant disadvantage compared to someone without his disability.
33. The Second Respondent accepts that the Claimant was disabled by reason of PTSD, depression and anxiety.
34. The Second Respondent denies actual or constructive knowledge of disability.
35. The Second Respondent accepts the claimed PCPs were applied to the Claimant.
36. The Second Respondent denies it knew or could reasonably have been expected to know that the Claimant was likely to be placed at the disadvantage.
37. The suggested adjustments which it is contended it was reasonable for the Second Respondent to have made to avoid the disadvantage are as follows:
  - a. Conducting a risk assessment
  - b. Permitting time off following the onset of an episode
  - c. Allowing longer or additional breaks
38. The Second Respondent disputes that the disability caused the Claimant substantial disadvantage when compared to someone who does not have his disability.
39. The Second Respondent denies that the duty to make the claimed reasonable adjustments arose.

## Legal Principles

### Agency

40. It is not disputed that the Claimant was engaged by the First Respondent as an agency worker and his services were supplied by the First Respondent to the Second Respondent. Therefore, the following statutory provisions are relevant:
41. Section 41 EqA 2010 provides:

41 Contract workers

- (1) *A principal must not discriminate against a contract worker—*
- (a) *as to the terms on which the principal allows the worker to do the work;*
  - (b) *by not allowing the worker to do, or to continue to do, the work;*
  - (c) *in the way the principal affords the worker access, or by not affording the worker access, to opportunities for receiving a benefit, facility or service;*
  - (d) *by subjecting the worker to any other detriment.*
- (2) *A principal must not, in relation to contract work, harass a contract worker.*
- (3) *A principal must not victimise a contract worker—*
- (a) *as to the terms on which the principal allows the worker to do the work;*
  - (b) *by not allowing the worker to do, or to continue to do, the work;*
  - (c) *in the way the principal affords the worker access, or by not affording the worker access, to opportunities for receiving a benefit, facility or service;*
  - (d) *by subjecting the worker to any other detriment.*
- (4) *A duty to make reasonable adjustments applies to a principal (as well as to the employer of a contract worker).*
- (5) *A “principal” is a person who makes work available for an individual who is—*
- (a) *employed by another person, and*
  - (b) *supplied by that other person in furtherance of a contract to which the principal is a party (whether or not that other person is a party to it).*
- (6) *“Contract work” is work such as is mentioned in subsection (5).*
- (7) *A “contract worker” is an individual supplied to a principal in furtherance of a contract such as is mentioned in subsection (5)(b).*

42. Finally, pursuant to s 109 EqA 2010, the principal is liable for acts of agents under s. 109 (2)-(3), which provides:

- “(2) Anything done by an agent for a principal, with the authority of the principal, must be treated as also done by the principal.”
- (3) It does not matter whether that thing is done with the ... principal’s knowledge or approval”.

**Discrimination arising from disability**

43. Section 15 EqA 2010 states as follows:

- “15 Discrimination arising from disability*
- (1) *A person (A) discriminates against a disabled person (B) if –*
- (a) *A treats B unfavourably because of something arising in consequence of B’s disability, and*
  - (b) *A cannot show that the treatment is a proportionate means of achieving a legitimate aim*
- (2) *Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know that B had the disability.”*

44. As can be seen by section 15(2) the employer does not discriminate if it did not know nor could it be reasonably expected to know that the employee had a disability. In **A Limited v Z [2020] ICR 199** the EAT held that the Tribunal had failed to apply the correct test, asking itself only what more might have been required of the Respondent in terms of process without asking what it might then reasonably have been expected to know; on that basis, even if the Respondent could reasonably have been expected to do more, it could not reasonably have been expected to have known of the Claimant's disability.
45. In situations where the employee has not provided “the detail required as to substantial disadvantage, the effects on her day-to-day activities or the longevity of those effects so as to satisfy the requirements of Section 6 of the 2010 Act then no actual knowledge is established.” However, in cases of constructive knowledge the question is what would the employer have discovered had it, for example referred the matter to Occupational Health? Obviously, if the Tribunal concludes nothing further would have been likely to emerge then there can be no constructive knowledge of disability see **Gallacher v Abellio Scotrail Limited UKEAT/0027/19/SS**.
46. The correct approach to the determination of a section 15 claim was summarised by the EAT in **Pnaiser v NHS England and Another [2016] IRLR 170**. This includes the following:
- The first stage is to assess the “because of”. In determining what caused the treatment complained about or what was the reason for it, the focus is on the reason in the mind of A. This is likely to require an examination of the conscious or unconscious thought process of A;
  - The “something” that causes the unfavourable treatment need not be the main or sole reason, but must at least have a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it;
  - Motives are not relevant.
  - The second stage is to determine whether as a matter of fact the “something arising in consequence” was a consequence of the disability.
  - The expression “arising in consequence of” can describe a range of causal links. The causal link between the something that causes unfavourable treatment and the disability may include more than one link;
  - This stage of the test is an objective question and does not depend on the thought processes of the alleged discriminator.
  - Knowledge is only required of the disability. Knowledge is not required that the “something” leading to the unfavourable treatment is a consequence of the disability.

- It does not matter precisely in which order these questions are addressed.
47. A further summary of the legal principles which should be followed by a tribunal in determining a s.15 claim was set out in **McQueen v General Optical Council [2023] EAT 36**.
48. In assessing whether something is “unfavourable” treatment there must be a measurement against “an objective sense of that which is adverse as compared to that which is beneficial”; **Trustees of Swansea University Pension & Assurance Scheme v Williams [2018] UKSC 65**. Furthermore,
49. The respondent will successfully defend the claim if it can prove that the unfavourable treatment was a proportionate means of achieving a legitimate aim. The burden of proof is on the employer to establish objective justification.
50. The Supreme Court in **Ministry of Justice v O’Brien [2013] ICR 449** restated the general principles of objective justification that:
- i. firstly, the treatment must pursue a legitimate aim;
  - ii. secondly, it must be suitable for achieving that objective; and
  - iii. thirdly, it must be reasonably necessary to do so.
51. The Equality and Human Rights Commission Code of Practice on Employment contains guidance on objective justification, to reflect some of the case law in the field. It terms the first issue as being the determination of whether the aim is lawful and non-discriminatory and one that represents a real, objective consideration. In **Bilka-Kauhaus GmbH v Weber von Hartz [1987] ICR 110** it was termed: “*correspond to a real need on the part of the undertaking.*”
52. In **Chief Constable of West Yorkshire Police and anor v Homer [2012] ICR 704**, the supreme court reiterated that the measure in question has to be both an appropriate means of achieving the legitimate aim, as well as being reasonably necessary in order to do so. Some measures may simply be inappropriate to the legitimate aim in question or they may be appropriate but go further than is reasonably necessary and so be disproportionate.
53. As to the third stage, the EHRC *Employment Code* notes: “*Deciding whether the means used to achieve the legitimate aim are proportionate involves a balancing exercise. An employment tribunal may wish to conduct a proper evaluation of the discriminatory effect of the provision, criterion or practice as against the employer’s reasons for applying it, taking into account all the relevant facts.*”

54. In a section 15 claim, it is, of course, the treatment that has to be justified, not a provision, criterion or practice (the terminology from an indirect discrimination complaint).
55. In **Ali v Drs Torrosian, Lochi, Ebeid & Doshi t/a Bedford Hill Family Practice [2018] UKEAT0029/18/0205** the EAT stated that
- Justification of the unfavourable treatment requires there to be an objective balance between the discriminatory effect and the reasonable needs of the employer;
  - When determining whether or not a measure is proportionate it will be relevant for the tribunal to consider whether or not any lesser measure might nevertheless have served the employer's legitimate aim;
  - More specifically, the case law acknowledges that it will be for the tribunal to undertake a fair and detailed assessment of the working practices and business considerations involved, and to have regard to the business needs of the employer
  - As to the time at which justification needs to be established, that is when the unfavourable treatment in question is applied;
  - When the putative discriminator has not even considered questions of proportionality at that time, it is likely to be more difficult for them to establish justification.
56. In **Hardy and Hansons Plc v Lax [2005] EWCA Civ 846** Pill LJ stated: *“It is for the employment tribunal to weigh the real needs of the undertaking, expressed without exaggeration, against the discriminatory effect of the employer's proposal. The proposal must be objectively justified and proportionate.”*
57. Further, Pill LJ said: *“I accept that the word ‘necessary’ .... has to be qualified by the word ‘reasonably’. That qualification does not, however, permit the margin of discretion or range of reasonable responses for which the appellants contend. The presence of the word ‘reasonably’ reflects the presence and applicability of the principle of proportionality. The employer does not have to demonstrate that no other proposal is possible. The employer has to show that the proposal, in this case for a full-time appointment, is justified objectively notwithstanding its discriminatory effect. The principle of proportionality requires the tribunal to take into account the reasonable needs of the business. But it has to make its own judgment, upon a fair and detailed analysis of the working practices and business considerations involved, as to whether the proposal is reasonably necessary. I reject [the employer's] submission ... that, when reaching its conclusion, the employment tribunal needs to consider only whether or not it is satisfied that the employer's views are within the range of views reasonable in the particular circumstances.”*
58. The Court of Appeal said in **O'Brien v Bolton St Catherine's Academy [2017] EWCA Civ 145**:

*"...it is well-established that in an appropriate context a proportionality test can, and should, accommodate a substantial degree of respect for the judgment of the decision-taker as to his reasonable needs (provided he has acted rationally and responsibly), while insisting that the Tribunal is responsible for striking the ultimate balance; and I see good reason for such an approach in the case of the employment relationship."*

59. The EAT in **Birtenshaw v Oldfield [2019] IRLR 946** repeated the above but added that:

*"it does not follow that the tribunal has to be satisfied that any suggested lesser measure would or might have been acceptable to the decision-maker or otherwise caused him to take a different course. That approach would be at odds with the objective question which the Tribunal has to determine; and would give primacy to the evidence and position of the Respondent's decision-maker."*

60. Therefore, the test is ultimately an objective one and it is open to an employer to justify the treatment after the event, even if in fact it was not properly articulated or thought through by the decision maker at the time see **Harrod v Chief Constable of West Midlands Police [2017] EWCA Civ 191**.
61. The more serious the discriminatory impact, the more cogent must be justification for it see **Macculloch v Imperial Chemical Industries plc [2008] UK EAT 0119/08**.

### **Reasonable Adjustments**

62. The duty to make reasonable adjustments appears in Section 20 as having three requirements. In this case the Tribunal is concerned with the first requirement in Section 20(3):

*"(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."*

63. Under section 21 a failure to comply with that requirement is a failure to comply with a duty to make reasonable adjustments and will amount to discrimination.
64. Under Schedule 8 to the EqA 2010 an employer is not subject to the duty to make reasonable adjustments if the employer does not know and could not reasonably be expected to know that the claimant has a disability or that the claimant is likely to be placed at a substantial disadvantage.
65. In **Environment Agency v Rowan [2008] ICR 218** it was emphasised that an employment tribunal must first identify the "provision, criterion or practice" applied by the respondent, any non-disabled comparators (where appropriate), and the nature and extent of the substantial disadvantage

suffered by the claimant. Only then is the tribunal in a position to know if any proposed adjustment would be reasonable.

66. The words “provision, criterion or practice” [“PCP”] are said to be ordinary English words which are broad and overlapping. They are not to be narrowly construed or unjustifiably limited in application. However, case law has indicated that there are some limits as to what can constitute a PCP. Not all one-off acts will necessarily qualify as a PCP. In particular, there has to be an element of repetition, whether actual or potential. In **Ishola v Transport for London [2020] EWCA Civ 112** it was said:

*“all three words carry the connotation of a state of affairs... indicating how similar cases are generally treated or how a similar case would be treated if it occurred again.”*

67. It was also said that the word “practice” connotes some form of continuum in the sense that it is the way in which things are generally or will be done.
68. The PCP must put the disabled person at a substantial disadvantage compared to non-disabled persons. Simler P in **Sheikholeslami v University of Edinburgh [2018] IRLR 1090**, EAT, held:

*“It is well established that the duty to make reasonable adjustments arises where a PCP puts a disabled person at a substantial disadvantage compared with people who are not disabled. The purpose of the comparison exercise with people who are not disabled is to test whether the PCP has the effect of producing the relevant disadvantage as between those who are and those who are not disabled, and whether what causes the disadvantage is the PCP. That is not a causation question ... For this reason also, there is no requirement to identify a comparator or comparator group whose circumstances are the same or nearly the same as the disabled person's circumstances.*

*The Equality Act 2010 provides that a substantial disadvantage is one which is more than minor or trivial: see s 212(1). The EHRC Code of Practice states that the requirement that an effect must be substantial reflects the general understanding of disability as a limitation going beyond the normal differences in ability which might exist among people: see para 8 of App 1. The fact that both groups are treated equally and that both may suffer a disadvantage in consequence does not eliminate the claim. Both groups might be disadvantaged but the PCP may bite harder on the disabled or a group of disabled people than it does on those without disability. Whether there is a substantial disadvantage as a result of the application of a PCP in a particular case is a question of fact assessed on an objective basis and measured by comparison with what the position would be if the disabled person in question did not have a disability.”*

69. In **County Durham and Darlington NHS Trust v Dr E Jackson and Health Education England EAT/0068/17/DA** the EAT stated:

- It is for the disabled person to identify the “provision, criterion or practice” of the respondent on which s/he relies and to demonstrate the substantial disadvantage to which s/he was put by it;
- It is also for the disabled person to identify at least in broad terms the nature of the adjustment that would have avoided the disadvantage; he need not necessarily in every case identify the step(s) in detail, but the respondent must be able to understand the broad nature of the adjustment proposed to enable it to engage with the question whether it was reasonable;
- The disabled person does not have to show the proposed step(s) would necessarily have succeeded but the step(s) must have had some prospect of avoiding the disadvantage;
- Once a potential reasonable adjustment is identified the onus is cast on the respondent to show that it would not been reasonable in the circumstances to have to take the step(s);
- The question whether it was reasonable for the respondent to have to take the step(s) depends on all relevant circumstances, which will include:
  - The extent to which taking the step would prevent the effect in relation to which the duty is imposed;
  - The extent to which it is practicable to take the step;
  - The financial and other costs which would be incurred in taking the step and the extent to which taking it would disrupt any of its activities;
  - The extent of its financial and other resources;
  - The availability to it of financial or other assistance with respect to taking the step;
  - The nature of its activities and size of its undertaking;

70. In summary the tribunal should identify clearly the “provision, criterion, or practice” the disadvantage suffered as a consequence of the “provision, criterion or practice” and the step(s) the respondent should have taken.

### **Risk assessments**

71. In **Tarbuck v Sainsbury’s Supermarkets Ltd [2006] IRLR 664** (EAT) it was held that an employer’s failure to consult a disabled employee about possible adjustments is not, in itself, a breach of the duty to make reasonable adjustments. Likewise, the failure to undertake a risk assessment is not likely to be a failure to make reasonable adjustments.

### **Continuing to pay wages after work has ceased**

72. In **Fowler v London Borough of Waltham Forest [2007] UKEAT/0116/06/0902** it was held that there is no obligation to continue to

pay an employee wages after they have exhausted sick pay provisions. If they are unfit to work then there is no right to be paid indefinitely. By analogy this is support for the contention that there is no obligation on an agent to continue to pay the worker when there is no assignment for them to undertake work.

### **Burden of proof**

73. The Equality Act 2010 provides for a shifting burden of proof. Section 136 so far as material provides:

*“(2) if there are facts from which the Court (which includes a Tribunal) could decide in the absence of any other explanation that a person (A) contravened the provision concerned, the Court must hold that the contravention occurred.*

*(3) But subsection (2) does not apply if A shows that A did not contravene the provision.”*

74. Consequently, it is for a claimant to establish facts from which the Tribunal can reasonably conclude that there has been a contravention of the EqA 2010. If a claimant establishes those facts, the burden shifts to the respondent to show that there has been no contravention by, for example, identifying a different reason for the treatment.

### **Standard of proof**

75. I have, of course, applied the civil standard of proof when fact finding i.e. the balance of probabilities.

### **Findings of fact**

76. The witness statements and the document bundle contained a good deal of unnecessary and irrelevant facts and information. The Tribunal has to focus on the issues in the case and, therefore, only findings of fact which are necessary for the proper determination of those issues are made. Wherever evidence is disputed the reasons why one account is preferred over another are explained.

77. Before the Tribunal deals with specific findings of fact it is important to record that the Claimant was not an entirely reliable historian. Counsel for the First Respondent has identified several glaring internal inconsistencies in the evidence given by the Claimant and additionally he has pointed out several occasions where the evidence of the Claimant is inconsistent with

documentation. The Tribunal accepts that the analysis is accurate and the Tribunal has treated the assertions of the Claimant about the chronology of events with considerable caution.

78. The Claimant commenced an assignment on 29 November 2022 at the Second Respondent's Warrington warehouse. He was supplied to the Second Respondent by the First Respondent, which engaged him and paid his wages via the terms of an Agency Worker Agreement between the Claimant and the First Respondent. **[150-152]**
79. From the outset of his assignment the Second Respondent was aware that the Claimant had PTSD because Mr. Mannering was informed about it during the initial interview. However, the Tribunal is not satisfied that the Claimant flagged it up to the Second Respondent that there was a need for adjustments to accommodate that condition in the context of a warehouse operative role. Had that been the case the Tribunal is confident that the Second Respondent's supervisors would have made immediate contact with the First Respondent to raise that as a potential issue for the assignment to them.
80. The Tribunal is equally not satisfied that the Claimant informed the First Respondent's Martin Walker that he had the disability and that it required reasonable adjustments. It is noteworthy that the Claimant failed to mention his disability at all in any pre-contract documentation and the Tribunal finds it unlikely he mentioned it to Mr. Walker but failed to reveal it earlier. It is also noted with concern that during his oral evidence he denied ever suggesting that he had raised matters about his disability in Whatsapp messages. However, in the Claimant's witness statement he made the assertion that he had communicated with Mr. Walker by Whatsapp see paragraph 10.
81. Furthermore, had it been the case that he had revealed it to Mr. Walker the Tribunal is satisfied that there would have been email correspondence internally and/or with the Second Respondent discussing the implications of the same for the businesses. The absence of any such evidence is particularly compelling.
82. Furthermore, had the Claimant raised the question of adjustments for his work and those adjustments had not been made the Tribunal has little doubt that he would have complained to the First and/or Second Respondent particularly as he now contends that the adjustments would have been required to avoid danger when he was using machinery in the warehouse.
83. The Claimant indicated in his evidence that he "might have" informed the Second Respondent about his use of citalopram (something which is denied), but the Claimant also stated that that medication did not impact on his ability to use machinery at work in any event. The Claimant stated in evidence he did not inform any of the First Respondent's employees that he was taking medication or any medication that was impactful on his ability to operate machinery.
84. The Claimant did not challenge Mr. Mannering's evidence to the effect that he had been unaware of any medication that the Claimant was taking. The

Tribunal accepts the evidence of Mr. Jones that he was not informed about the use of medication. If he did not inform Mr. Mannering why would he have told Mr. Jones? The Tribunal finds that if there has been any suggestion that the medication being taken was potentially impactful on safety it would have been addressed. Therefore, the Tribunal accepts the evidence of the Second Respondent's witnesses that they were not informed at any time that the Claimant was unable to operate machinery because of medication taken by him for the PTSD. The Tribunal finds that had that been the case inevitably it would have been the subject of communication with the First Respondent.

85. The Tribunal notes that the Claimant accepted that there was no evidence of any absences having anything at all to do with his taking medication that impacted upon his ability to operate machinery; and of real significance he stated "my case has nothing to do with my medication."
86. The Tribunal does not accept that the medication was ever an issue for the Claimant: had he mentioned it then it would have led to communications by email between the Respondents' employees about the ramifications of the same.
87. Between 1 August 2023 and 5 August 2023, the Claimant was absent from the Second Respondent's warehouse for five consecutive working days. This was the first period of absence. This absence was because he had been subjected to a knife related incident. The fit note records the fact of an incident and that the Claimant had anxiety and PTSD. The absence was relatively short and there was no suggestion that adjustments needed to be made. **[626]**
88. The Claimant was again absent from work between 20 September 2023 and 1 October 2023. This period comprised twelve consecutive days of absence. This initial absence occurred because he was arrested. It is apparent that he was due to be the subject of court proceedings. He also was claiming to have injured his wrist. **[281]**
89. In an email of 22 September 2023 from an employee of the First Respondent to the Second Respondent. It indicates that the Claimant was asserting he was fit to work. However, there was a query raised as to whether he would be permitted to return to work before a risk assessment was made as to whether he presented a risk to the organisation or its employees. **[288]**
90. Mr. Mannering responded to the email stating he would need to see written evidence that the Claimant had not been charged before allowing him back to work. **[287]**
91. The same day the Claimant had provided a notification that he would not be charged by the police in respect of the incident, and it was supplied to the Second Respondent. **[291-292]**
92. The initial fit note supplied to the First Respondent concerning 20-24 September 2023 revealed that the GP was advising that the Claimant had

PTSD and a wrist injury. [627] Likewise the second one which took his absence to 25 September. [628]

93. The Claimant appears to have informed the First Respondent he was fit to work and would be attending on the 25 September 2023. [296]
94. However, the Claimant then obtained another fit note that same day. The fit note covers the period 25 September – 1 October 2023. [629] It refers to PTSD, mental health and wrist injury. The Claimant was advised not to return until he was fit. [304]
95. It is noteworthy that while the Claimant remained unfit for work during the currency of the fit notes there was absolutely no reference to any reasonable adjustments being required for his return to work. There is absolutely no evidence that the First or the Second Respondent had direct knowledge that the condition caused an ongoing substantial adverse effect on the Claimant's day-to-day activities. Indeed, the Tribunal finds that there was in fact no substantial effect as alleged.
96. Indeed, the picture appeared to be quite the opposite. The Claimant seemed to be a conscientious and valued member of the warehouse team and there were no concerns raised about his performance by the Second Respondent.
97. However, if further questions had been asked about his disability it would have on balance elicited information which would have established his disability and so the Tribunal finds that the First Respondent had constructive knowledge of disability from August 2023.
98. On 2 October 2023 the Claimant returned to work.
99. On 6 October 2023 the First Respondent was informed that the Claimant required a risk assessment in relation to a wrist injury. [315] The Tribunal accepts the evidence that he was seeking such an assessment: Mr. Mannering would not have written the email if he had not done so. Clearly, some form of limited risk assessment was undertaken because the Claimant was given lighter duties.
100. The Tribunal accepts the evidence of Mr. Mannering that shortly thereafter the Claimant was also seeking an assessment of his mental health. That assessment was not undertaken.
101. However, the Tribunal finds that any restriction on operating machinery at that time as per the email from Mr. Mannering related solely to the wrist injury and not to medication or PTSD. It was anticipated that the Second Respondent would carry out the risk assessment on the Claimant due to his wrist injury. It was done.

102. On 6 November 2023 the First Respondent enquired whether the Second Respondent wished to extend the Claimant's assignment. It was agreed to extend it for a further six months. **[319]** The Claimant's assignment was extended until 28 May 2024. **[154]**
103. On 28 November 2023, the Claimant was absent from the Second Respondent's warehouse for a single day. This absence formed part of the attendance record considered by the Second Respondent although it seems that this should not have been recorded as sickness absence at all.
104. On 25 and 26 January 2024, the Claimant was absent from work for two consecutive days. This was the fourth recorded period of absence during his assignment. The absence was due to flu/Covid.
105. Between November 2022 and 22 February 2024 the Claimant worked without any recorded difficulty in taking the breaks to which he was entitled.
106. However, on 23 February 2024 the Second Respondent raised with the First Respondent a concern about the Claimant's use of break time on a single occasion. The First Respondent's supervisor spoke to the Claimant on the same day. The Claimant advised that he had "no excuses", that he had lost track of time, and that he would be mindful of his breaks going forward. **[341-342]**
107. The Tribunal finds that the Claimant did not inform the First Respondent on this occasion that his break issue was linked to PTSD or any other disability, and no request for an adjustment to break arrangements was made. The Tribunal finds that this instance was wholly unrelated to his disability. And it accepts the Second Respondent's unchallenged evidence that this discussion played no part in its decision to terminate the assignment.
108. It is particularly noteworthy that in his evidence the Claimant expressly disavowed any concern about the breaks he had taken or been allowed.
109. Overall, from August 2023 the First Respondent was aware that the Claimant had PTSD. This came about because of the unusual life events which plagued him.
110. The Tribunal is not satisfied that this knowledge extended to the condition having a substantial adverse impact on the Claimant's work. However, the Tribunal is satisfied that if the First Respondent had undertaken any enquiries it would have become aware of the impact of the condition on the Claimant.
111. On 4 March 2024, the Claimant attended the Second Respondent's warehouse at approximately 06:00 hours. He left the workplace approximately twenty minutes later, at around 06:20 hours. This incident was treated by the Second Respondent as a further attendance issue. This was probably related to his disability.

112. Later on 4 March 2024, Mr Robert Mannering, the Second Respondent's supervisor discussed the Claimant's attendance record with his colleagues, Mr Simon Jones and Mr Danny Griffiths. They concluded that the Second Respondent was no longer receiving a satisfactory level of service from the Claimant due to his attendance record. A decision was taken to terminate the Claimant's assignment with immediate effect.
113. On the same date, the Second Respondent informed the First Respondent that it wished to terminate the Claimant's assignment. The reason given was the Claimant's poor attendance.**[344]**
114. Also on 4 March 2024, following the Second Respondent's notification, the First Respondent complied with that instruction, thereby terminating the Claimant's assignment and his engagement by the First Respondent. **[286-287]** The Tribunal accepts the contention of the First Respondent that the termination of the assignment meant that the First Respondent was entitled to bring its agreement with the Claimant to an end for that reason: there was no obligation to continue the agreement in the absence of work.
115. The Tribunal finds that the Second Respondent did not request a replacement for the Claimant and did not engage the First Respondent to supply any other warehouse operatives from that date onwards. It covered the work internally. The Tribunal finds that it was the unpredictability of the Claimant's absences and their frequency which caused the Second Respondent's business significant difficulties. If a worker simply does not attend work and/or having attended work he then leaves suddenly that would indeed cause chaos in terms of both planning work and undertaking it when the shift complement is relatively small. In this case on early morning shifts there might be as few as six rostered workers.
116. The Tribunal also accepts the unchallenged evidence of Mr. Korja on behalf of the First Respondent that at the date of termination the business of the First Respondent did not involve the supply of warehouse operatives to any other hirers. In fact, the supply of warehouse operatives to the Second Respondent was a unique state of affairs.
117. Therefore, the Tribunal finds that the First Respondent had no alternative work to offer the Claimant and, on the termination of his assignment with the Second Respondent, his termination was inevitable. There was no other work to which the Claimant could be redeployed following the termination of the assignment.
118. Finally, the Tribunal accepts the evidence called on behalf of the First Respondent that the contract of engagement with the Claimant would have ended on the 28 May 2024. It is unnecessary for any further fact finding on whether the Claimant would have obtained other work at the Second Respondent's warehouse with another agency or directly as an employee of the Second Respondent.

## Conclusions

### The First Respondent

#### The discrimination arising from disability claim

119. The Tribunal finds that the termination of the Claimant's contract on 4 March 2024 by the First Respondent was unfavourable treatment.
120. The termination by the First Respondent was not because of something arising in consequence of his disability namely: that he needed additional or lengthier breaks and that following any 'episodes/attacks' he suffered, he needed to take medication which prevented him from working with machinery.
121. The only time there was an issue with the Claimant taking a break i.e. on 23 February 2024 was wholly unrelated to his disability. Furthermore, the alleged problem with using machinery was not within the knowledge of either the First Respondent or the Second Respondent and it played no part in the termination of the assignment by the Second Respondent.
122. Neither of those 'things' played any part in the decision of the Second Respondent to terminate the Claimant's assignment and nor did they play any part in the First Respondent's termination of his contract of engagement.
123. Therefore, the First Respondent did not dismiss the Claimant for the reason contended by him.
124. The Claimant was dismissed because the Second Respondent terminated his assignment and there was no further work for the Claimant. The decision was unrelated to his disability. The decision made by the First Respondent was unrelated to his disability or anything arising from it as a consequence of his disability.
125. The statutory defence is relied upon by the First Respondent. The legitimate aim advanced in the Grounds of Resistance relates to the service delivery by the Second Respondent and consistent attendance at the Second Respondent's premises and not to the fact that the First Respondent had no alternative but to terminate his employment because of the actions of the Second Respondent. However, the First Respondent could not compel the Second Respondent to continue to allow the Claimant to work for it. The Second Respondent was not acting as agent for the First Respondent.
126. Had the 'somethings' alleged by the Claimant been upheld as playing a part in the termination of the assignment or if he had pursued a claim that the 'something' was his repeated absences then the Tribunal would have found that termination by the First (and indeed the Second Respondent) was a proportionate response in pursuit of a legitimate aim.

127. The continued difficulties caused were problematic for the Second Respondent and 'efficient service delivery' and 'attendance' are legitimate aims of any employer. Once the Second Respondent had decided it could no longer endure the consequences of the Claimant's disability and terminated the assignment the First Respondent was justified in terminating the assignment. It had no alternative but to terminate its engagement because there was no longer any work for the Claimant to undertake on its behalf: that was an entirely reasonable and proportionate response.

### **The reasonable adjustments claim**

#### **The PCPs**

128. The claimed PCPs i.e. that workers exercise good timekeeping and that workers have regular attendance at work were applied to the Claimant.

#### **Substantial disadvantage**

129. The PCPs did not put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability as alleged. The Claimant did not need to take longer or more frequent breaks. There was no impact on his timekeeping. The medication the Claimant took following 'episodes' did not result in him being unable to work with machinery such that it affected his attendance at work.

130. In such circumstances the question of knowledge is irrelevant because there was, quite simply, no substantial disadvantage as claimed by the Claimant.

131. The duty to make the claimed reasonable adjustments did not arise. There was, therefore, no breach of a duty to make a reasonable adjustment.

### **The Second Respondent**

#### **The reasonable adjustments claim**

#### **The PCPs**

132. The claimed PCPs i.e. that workers exercise good timekeeping and that workers have regular attendance at work were applied to the Claimant.

#### **Substantial disadvantage**

133. The PCPs did not put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability as alleged. The Claimant did not need to take longer or more frequent breaks. There was no impact on his timekeeping. The medication the Claimant took following 'episodes' did not result in him being unable to work with machinery such that it affected his attendance at work.

134. In such circumstances the question of knowledge is irrelevant because there was, quite simply, no substantial disadvantage as claimed by the Claimant.
135. The duty to make the claimed reasonable adjustments did not arise. There was, therefore, no breach of a duty to make a reasonable adjustment.

### Time

136. The submissions on limitation were made by Counsel for the First Respondent and adopted by the Second Respondent. There is no submission by the First Respondent that the s.15 EqA 2010 claim is out of time and for good reason: it is clearly in time. Therefore, it was always going to have to deal with this litigation. And that litigation would have effectively had regard to broadly similar evidence as the reasonable adjustments claim. However, in respect of both Respondents the Tribunal is satisfied that the claim was brought in time.
137. The Tribunal finds that the alleged failure to make reasonable adjustments was an allegation that there was a continuing omission up until termination and there was no date when it could be said that there was any earlier point in time from which time could be taken to have run. See **Matuszowicz v Kingston upon Hull City Council [2009] IRLR 288**. The claim is not out of time.
138. Even if the Tribunal is wrong about that then in this case the consideration which weighs most greatly on the exercise of discretion is the balance of hardship. Having regard to the circumstances of this case the exercise of discretion lies in favour of extending time. Neither Respondent has contended it had suffered any prejudice from the late submission of the claim. The prejudice to the Claimant of losing his right to bring a claim is substantial. The Tribunal, in so far as it is necessary, finds it is just and equitable that time is extended.

### Decision

139. For the reasons expressed above the Tribunal does not uphold the Claimant's claims and they are dismissed.

Employment Judge Walters  
Date: 17 April 2026

JUDGMENT & REASONS SENT TO THE PARTIES ON  
25 April 2026

Jade Lobb  
FOR THE TRIBUNAL OFFICE