EMPLOYMENT TRIBUNALS

Claimant: **Mr R Leeding**

Respondent: **Proserve Logistics Limited**

Heard at: **Cardiff (via video)** **On:** **05 March 2026**

Before: **Employment Judge Russell**

Representation
Claimant: Mr S Sprysak, lay representative
Respondent: Mr D Bunting, Counsel

JUDGMENT having been sent to the parties on 20 March 2026 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunals Rules of Procedure, the following reasons are provided:

REASONS

Background

1. By way of a claim presented on 29 July 2025 the Claimant complains of direct age discrimination, direct disability discrimination, and discrimination arising from disability. He had raised a complaint of dismissal and/or detriment for having made a protected disclosure. This was dismissed on 11 November 2025 following withdrawal by the Claimant. He had also raised a complaint of unfair dismissal, which was dismissed on 11 November 2025 due to the Claimant not having sufficient qualifying service.

2. This is the second preliminary hearing in this case. A case management preliminary hearing was held before EJ Moore on 11 November 2025. EJ Moore's preliminary view was that there was no discernible claim pursuant to sections 20 and 21 of the Equality Act 2010 set out in the claim. It is clear from EJ Moore's record of that hearing that there had been discussion about the difference between (i) asserting that a person had been dismissed or subjected to a detriment because reasonable adjustments may be required (a 'disability arising' complaint under section 15 of the Equality Act 2010); and (ii) a complaint that an employer had a provision, criterion or practice that put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability and that the employer should have taken steps to avoid the disadvantage (a 'reasonable adjustments' complaint).

3. The issues to be decided at this hearing are set out in the notice of the hearing sent to the parties on 13 February 2026. These were:

   3.1 Whether the Claimant's claim contained a complaint of failure to make reasonable adjustments (the "amendment issue");
   3.2 Does the claim or any part of it have little reasonable prospect of success? If so, should the Claimant be ordered to pay a deposit of between £1 and £1,000 as a condition of continuing with it? (the "deposit issue");
   3.3 Did the Claimant have a disability as defined in the Equality Act 2010 when the alleged discrimination happened? (the "disability issue");
   3.4 The Claimant's application for specific disclosure
   3.5 Clarify the claims and issues, make case management orders, and list the final hearing.

4. The issues that I had to determine were discussed with the parties at the outset of the hearing. It was agreed that I would determine the disability issue and the amendment issue first. Time permitting, I would then consider the other issues. Having determined the disability and amendment issues and having conducted further case management, it was not possible in the time available to determine the deposit issue or the Claimant's application for specific disclosure. Standard disclosure has not been finalised in this case. I have made the necessary orders in respect of this. With regards to the question of the deposit order, this remains a live issue. Further case management orders are set out in my orders of 05 March 2026.

5. I had an unpaginated bundle before me that ran to 184 pages (digital). I heard evidence from the Claimant. I was assisted by oral submissions from both parties.

6. Oral reasons were provided at the hearing on 05 March 2026. The judgment was approved by EJ Russell on 05 March 2026. It was sent to the parties on 20 March 2026. The Claimant made a request for written reasons on 26 March 2026. This request was sent to EJ Russell on 31 March 2026.

Disability

<u>Issues to be decided</u>

7. EJ Moore's record of the preliminary hearing on 11 November 2025 set out the issues to be decided in determining whether the Claimant had a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about. These are:

   7.1 Did the Claimant have a physical or mental impairment: COPD, depression, asthma, broken ankle and a fractured great toe?

   7.2 Did it have a substantial adverse effect on his ability to carry out day-to-day activities?

   7.3 If not, did the Claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?

   7.4 Would the impairment have had a substantial adverse effect on his ability to carry out day-to-day activities without the treatment or other measures?

7.5 Were the effects of the impairment long-term? The Tribunal will decide: did they last at least 12 months or were they likely to last 12 months? If not, were they likely to recur?

Findings of fact in relation to disability

8. The Claimant was employed by the Respondent as a van driver and cleaner. Occasionally he would operate forklift trucks. The Respondent is a warehouse and logistics company based in North Wales. He was employed by the Respondent on 06 March 2023. His employment ended on 11 February 2025. The Claimant asserts that his dismissal was an act of direct disability discrimination and that it also gives rise to a claim of discrimination arising from disability namely that he was dismissed because of the likelihood that he would require reasonable adjustments at work. I identified the relevant period (the time of the alleged discriminatory act) as being February 2025.

9. The Claimant has a range of medical conditions. The claimed impairments recorded at the previous preliminary hearing are COPD, depression, asthma, broken ankle, and fractured great toe. In his oral account to the Tribunal the Claimant said in response to judicial questioning that the main limiting conditions at the relevant time were a combination of his lower limb fractures and poor mental health.

10. The Claimant has COPD and asthma. This can cause shortness of breath particularly when walking or climbing stairs. These conditions are managed in a primary care setting with his GP. He takes a Salbutamol inhaler and Trimbow inhaler. These conditions have been longstanding and are generally well-controlled with his medication. COPD was first diagnosed in 2014. He attended his GP surgery for his COPD review on 12 November 2024. He had one exacerbation of COPD in the previous year. He was graded as a 3 on the MRC scale. I took notice that this is a well-known rough scale of how far someone can walk before becoming breathless and may suggest difficulties with walking distances. On 10 February 2025 he attended his GP for a chest infection and it was noted that he had no shortness of breath on walking. I find that the entirety of the medical evidence suggests that there may be some shortness of breath if the Claimant were to walk long distances. He takes a preventative inhaler.

11. With regards to the Claimant’s lower limb fractures, the Claimant fractured his ankle on 28 July 2024. He had corrective surgery on 06 August 2024. Having initially been non-weight bearing for 6 weeks and then in a walking boot for two weeks, the Claimant was fully weight-bearing 8 weeks after surgery. I find, therefore, that the Claimant was able to walk again by early-mid October 2024. This was consistent with the Claimant’s account that he was due to return to work by late October 2024.

12. On 01 November 2024 the Claimant fractured his toe. He had surgery on his toe on 07 November 2024. He was fully weight-bearing by 11 December 2024 and discharged from orthopaedics that day. He was discharged from physiotherapy on 23 December 2024. He had an occupational health assessment on 30 January 2025 and was due to return to work in early February 2025.

13. I find that, save for the short period of a few weeks from early-mid October 2024 and November 2024 when the Claimant fractured his toe, the Claimant's lower limb fractures led to difficulties with walking between 29 July 2024 and, at the latest, 23 December 2024. The Claimant can sometimes experience ongoing pain at the fracture sites but this does not prevent him from walking. The Claimant's impact statement contained a list of medications he is prescribed. This did not include analgesia. The occupational health report of 30 January 2025 noted that the Claimant would take pain relief only when he felt that he needed it.

14. Turning to the Claimant's low mood, although the Claimant's impact statement simply refers to 'a long history' of mental health conditions, I was directed to his medical records and find that the Claimant has experienced periodic episodes of low mood from 2000. On 27 September 2024 he attended his GP with low mood. I find that he had attended before this with low mood as the note of the consultation refers to the Claimant feeling much better on Fluoxetine 20mg, an anti-depressant. A referral to orthopaedics in March 2025 suggests that he was prescribed Fluoxetine on 12 September 2024. His GP issued a repeat prescription for these on 27 September 2024. The Claimant had experienced a relationship breakdown in April 2024. I took notice that the nature of mental health conditions is such that a person may experience low mood for a period before treatment. It may not necessarily result from a sudden deterioration in a person's mental health. The Appellant attended his GP again with low mood on 10 March 2025. This was shortly after his employment ended. He declined a referral to the community mental health team and wanted to remain on the same dose of anti-depressants. By May 2025 he was experiencing mood swings, panic attacks, and anxiety. He was still taking Fluoxetine 20mg and was reluctant to increase the dose. His prescription from 21 July 2025 is for 40mg per day and so I find that the dose was increased at some point in the summer of 2025.

15. The Claimant's impact statement contains little detail about the impact of his depression on his ability to undertake normal day to day activities. It does, however, describe feeling stressed, having low mood, and poor sleep. In his oral account, the Claimant described feeling that he was unable to concentrate, having anxiety attacks, and feeling that he was unable to cope. I find that the Claimant was, at the relevant time, experiencing difficulties with sleeping, mood, anxiety, and concentration.

<u>Relevant law – disability</u>

16. It is for the Claimant to prove that he had a disability at the material time. This is the time of the alleged discriminatory act (*Cruickshank v VAW Motorcast Limited* [2002] ICR 729).

17. Section 6 of the Equality Act 2010 defines a disability as follows: "A person (P) has a disability if— P has a physical or mental impairment, and the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities."

18. Further guidance is provided in Part 1 of Schedule 1 to the Equality Act 2010. Paragraph 5 of Part 1 provides that if measures including medical treatment

are being taken to treat the impairment, an impairment is to be treated as having a substantial adverse effect on a Claimant's ability to carry out normal day-to-day activities but for that treatment.

19. In looking at a person's ability to carry out normal day-to-day activities, the EAT in *Goodwin v Patent Office* [1999] ICR 302 at 309 stated that "it is not the doing of the acts which is the focus of attention but rather the ability to do (or not do) the acts". A person with a disability may be able to carry out an act but only with great difficulty.

20. The adverse effect that the impairment has on a person's ability to carry out normal day-to-day activities must be substantial. Section 212(1) of the Equality Act 2010 defines substantial as 'more than minor or trivial'.

21. Paragraph 9 of Appendix 1 of the EHRC Code of Practice on Employment (2011) states that 'account should be taken of where a person avoids doing things which, for example, cause pain, fatigue or substantial social embarrassment; or because of a loss of energy or motivation'. Paragraph 10 explains that 'an impairment may not directly prevent someone from carrying out one or more normal day-to-day activities, but it may still have a substantial long-term adverse effect on how they carry out those activities. For example…the person may have the capacity to do something but suffer pain in doing so…'.

22. In *Aderemi v London and South Eastern Railway Ltd* [2013] ICR 591, Langstaff P at paragraph 14 gave the following guidance on how to approach the issue of substantial adverse effect:

> "It is clear first from the definition in section 6(1)(b) of the Equality Act 2010, that what a Tribunal has to consider is an adverse effect, and that it is an adverse effect not upon his carrying out normal day-to-day activities but upon his ability to do so. Because the effect is adverse, the focus of a Tribunal must necessarily be upon that which a Claimant maintains he cannot do as a result of his physical or mental impairment. Once he has established that there is an effect, that it is adverse, that it is an effect upon his ability, that is to carry out normal day-to-day activities, a Tribunal has then to assess whether that is or is not substantial. Here, however, it has to bear in mind the definition of substantial which is contained in section 212(1) of the Act. It means more than minor or trivial. In other words, the Act itself does not create a spectrum running smoothly from those matters which are clearly of substantial effect to those matters which are clearly trivial but provides for a bifurcation: unless a matter can be classified as within the heading "trivial" or "insubstantial", it must be treated as substantial. There is therefore little room for any form of sliding scale between one and the other".

23. Section B of the Government's Guidance on matters to be taken into account in determining questions relating to the definition of disability (2011) (the "Guidance") provides further guidance on the factors that may be considered when deciding whether the adverse effect is 'substantial'. These include the time taken to carry out an activity, the way in which an activity is carried out,

the cumulative effects of an impairment, and the effects of a person's behaviour. The Guidance further provides that a person may have more than one impairment, any one of which alone would not have a substantial effect. In such circumstances, account should be taken of whether the impairments together have a substantial effect overall on the person's ability to carry out normal day-to-day activities (*Ginn v Tesco Stores Limited* EAT0197/05).

24. Paragraphs 14 and 15 of Appendix 1 to the EHRC Code give examples of normal day-to-day activities. These include activities relevant to working life and activities such as walking, driving, using public transport, eating, and cooking.

25. The substantial adverse effect must be long-term. Paragraph 2(1) of Schedule 1 to the Equality Act 2010 states that the effect of an impairment is long-term if: (i) it has lasted for at least 12 months; (ii) it is likely to last for at least 12 months, or (iii) it is likely to last for the rest of the life of the person affected.

26. Paragraph 2(2) of Schedule 1 to the Equality Act 2010 provides that 'if an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur. The House of Lords (NI) in *Boyle v SCA Packaging Ltd* [2009] ICR 1056 and Paragraph C3 of the Guidance describe likely as 'it could well happen'. Paragraph C6 of the Guidance states that 'if the substantial adverse effects are likely to recur, they are to be treated as if they were continuing'.

27. Paragraph C9 of the Guidance provides that 'likelihood of recurrence should be considered taking all the circumstances of the case into account'.

<u>Conclusions on disability</u>

28. The burden of proof is on the Claimant to show that he had a disability at the material time. The Claimant must first show that he has a physical or mental impairment. He asserts that he has a disability by reason of COPD, asthma, depression, ankle fracture and toe fracture. The medical evidence he provided supports a diagnosis of these conditions.

29. I considered carefully whether the Claimant had the impairments at the date of the act complained of: 11 February 2025. With regards to the physical impairment of fractures, I concluded that these were not troubling the Claimant by February 2025. I accept that for a short period following each fracture, the Claimant was unable to walk but he was able to weight bear and walk some weeks after each injury. The Claimant's COPD and asthma are longstanding and continuing conditions. The objective medical evidence also supported a conclusion that the Claimant had a mental impairment of depression at the material time. On balance, I concluded that the Claimant had physical impairments of COPD and asthma and a mental impairment of depression at the material time. The objective medical evidence supported a conclusion that the Claimant's fractures had healed by this time.

30. The fractures that the Claimant sustained in 2024 had a substantial adverse effect on his ability to walk and stand but the effect of the impairment was not long-term. The nature of these conditions is that the Claimant experienced a substantial but short-term adverse impact on his ability to carry out normal day-to-day activities. The Claimant is not disabled by reason of his fractured ankle and fractured toe.

31. The Claimant's conditions must be assessed based on how he would be without medication or treatment for the condition. This means that I must consider the effect of the Claimant's asthma and COPD without inhalers. The Claimant described shortness of breath but was open in his oral account to the Tribunal that this was not the condition that was most impacting him at the relevant time. This is supported by the medical evidence showing conservative primary care management. The Claimant was vague as to how these conditions impacted on him save for him experiencing shortness of breath on exertion particularly if walking long distances or climbing stairs. The medical records provided a varied account of his ability to walk. On 10 February 2025 (the day before his employment ended), the Claimant's GP noted that he had no shortness of breath when walking despite having a chest infection. There was also evidence in the medical records before me that the Claimant had been graded as grade 3 on the MRC breathlessness scale. I reminded myself that the burden of proof is on the Claimant to show that he had a disability at the material time. It is not the job of the Tribunal to attempt to interpret medical data without the appropriate expertise. On balance, I find that at the material time there was no substantial adverse impact on the Claimant's normal day to day activities by reason of COPD and asthma.

32. I take a different view in relation to the Claimant's mental health. There was little information in the impact statement about the impact of his mental health on his ability to carry out normal day-to-day activities. The Claimant has been represented throughout albeit by a friend who is acting as a lay representative. In oral evidence he gave further details of the impact of his condition. This included difficulties with concentration in addition to having low mood, anxiety, worrying, and lacking sleep. I concluded that particular emphasis should be placed on the objective medical evidence given the lack of information in the written impact statement and this supported the claimed limitations of low mood. I found that the effects of depression on the Claimant's ability to carry out normal day-to-day activities were not minor or trivial. The Claimant's GP had considered referring the Claimant for secondary treatment with the Community Mental Health Team ("CMHT") but the Claimant declined. Having found that the effects of depression were more than minor or trivial, I concluded that they were substantial.

33. Were the effects of the Claimant's depression long-term? By 11 February 2025 the Claimant had been treated with Fluoxetine for five months since 12 September 2024. Given the evidence before me of an increased dose of anti-depressants, consideration of CMHT input, and the Claimant's history of depression that has been recorded since 2000, I find on balance that the condition was likely to last 12 months. It was long term.

34. By reason of depression, the Claimant had a disability at the material time.

Amendment

35. The Claimant submitted his claim form on 29 July 2025. Amongst other complaints, he alleged that he had been discriminated against on grounds of disability. At paragraph 8.2 of the claim it states that an Occupational Health Assessment 'recommended a phased return and workplace adjustments'. It continues that when the Claimant returned to work on 04 February 2025, it was 'without any consultation regarding his health or the recommended adjustments. Despite his willingness to work part-time or in alternative roles, no genuine consultation or employment was offered'.

36. At part 9 of the claim form, the Claimant seeks compensation. He wrote that the compensation is, in part, for 'Disability discrimination, following the disclosure of serious physical and mental health conditions and failure to make reasonable adjustments'. At part 14 of the claim form, the Claimant notes: 'Despite a clear recommendation for a phased return and workplace adjustments, no accommodations were discussed or implemented'. Later in this part, he concludes: 'his dismissal was not a genuine redundancy, but instead a pretext to remove him based on age and disability, deny him his statutory rights, and avoid the need to make reasonable adjustments for his health'. The adjustments in the occupational health report of 30 January 2025 included an initial phased return of three full days at work with a rest day in between. It also suggested that a risk assessment be considered.

37. At the preliminary hearing held before EJ Moore on 11 November 2025 the Claimant was ordered to provide further information in respect of his reasonable adjustments complaint if his intention was to bring a complaint pursuant to sections 20 and 21 of the Equality Act 2010.

<u>The application</u>

38. The Claimant submitted a document to the Tribunal dated 18 December 2025 in response to EJ Moore's order. The document is lengthy and narrative in nature. It differs from the claim form in that the claim form appears to suggest that adjustments were not implemented. The 18 December 2025 document asserts that the Claimant's return to work schedule was implemented inconsistently and that he was not involved in a risk assessment [digital page 105]. Three PCPs are set out that the Claimant says placed him at a substantial disadvantage. These are: (i) a practice of treating his role as a unique position and placing him in a pool of one for redundancy selection; (ii) a practice of failing to meaningfully implement recommended adjustments; and (iii) a practice of requiring the Claimant to attend redundancy meetings while on sick leave.

39. On 15 January 2026 the Claimant applied for permission to amend his claim and set out what he described as 'additional/clarified PCPs' [digital page 44]. These were different from those set out in the 18 December 2025 document. They were: (i) a practice of requiring the Claimant to work two consecutive work days; (ii) a practice of conducting a risk assessment when he was not

at work; and (iii) a practice of conducting a redundancy consultation meeting as a substitution for a genuine return-to-work process.

40. On 22 January 2026 the Respondent wrote to the Tribunal and the Claimant objecting to the application to amend the claim. The file was referred to EJ Moore. On 12 February 2026 she wrote to the parties. She noted that it was unclear whether the Claimant was amending his claim and, if so, what the requested amendment was. She noted: ‘it was my view that the claimant does not have a discernible s20/21 claim and as such he cannot simply write to the Tribunal and set out PCPs for a claim that is not before the Tribunal’.

41. I spent time at the hearing clarifying with the Claimant the nature of his amendment application. In sum, the Claimant asserts that the practice of asking him to work two consecutive days put him at a substantial disadvantage. He asserts that a reasonable adjustment would have been the adjustment suggested by occupational health. This was that he should work three days on a phased return with a rest day in between the workdays.

42. I heard submissions from the parties on the requested amendments and why they should, or should not, be allowed. Oral reasons were given at the hearing.

<u>Issue and the law</u>

43. The issue for me to address was whether the Claimant should be allowed to amend his claim to include a complaint of a failure to make reasonable adjustments.

44. The test involves the assessment of the balance of injustice and hardship of allowing or refusing the amendment (*Selkent Bus Co Limited v Moore* [1996] ICR 836). In *Selkent* the EAT set out a list of relevant circumstances which should be considered including the nature of the amendment, the applicability of time limits, and the timing and manner of the application to amend. Those points have subsequently been encapsulated within the Employment Tribunals (England & Wales) Presidential Guidance on General Case Management (2018), Guidance Note 1.

45. In *Vaughan v Modality Partnership* ([2021] ICR 535) the EAT explained that the factors in *Selkent* were not an exhaustive checklist to be followed. The Tribunal must focus on the balance of injustice and hardship in allowing or refusing the application, and on the real practical consequences of allowing or refusing the amendment.

46. With regard to time limits, *Selkent* suggested that if a Claimant intended to add a new complaint, it would be "essential" for the Tribunal to consider whether that complaint was out of time and, if so, whether the time limit should be extended. The Presidential Guidance repeats this point at paragraph 5.2. Amendment can, however, be granted with the issue of time limits being decided separately (*Galilee v The Commissioner of Police of the Metropolis* [2018] ICR 634).

47. In *Prakash v Wolverhampton City Council* (UKEAT/0140/06) the EAT held that there is no reason in principle why a cause of action that has accrued after the presentation of the Claim form should not be added by amendment

if it is appropriate to do so. If a new claim could be brought within the relevant time limit, that is a matter to which the Tribunal should attach considerable weight (*Gillett v Bridge 86 Limited* EAT 0051/17).

48. The risk of the balance of hardship being in favour of refusing the amendment increases the later the application is made (*Martin v Microgeneration Wealth Management Systems Ltd* (UKEAT/05/006)). It is for the Claimant to show why an application was not made earlier (*Ladbroke Racing Ltd v Trainer* (UKEATS/0067/06).

49. It may be appropriate to consider the prospects of success when weighing up whether to allow or refuse an amendment (*Kumari v Greater Manchester Mental Health NHS Foundation Trust* [2022] EAT 132).

<u>Conclusions</u>

50. In reaching my conclusions, I focused on the balance of injustice and hardship and the real practical consequences of allowing or refusing the amendment.

51. The allegations set out in the 18 December 2025 document are somewhat confused. There are parts that appear to add further detail to the Claimant's section 15 complaint rather than plead a reasonable adjustments complaint. There were differences between the PCPs detailed on 18 December and on 15 January. I make no criticism of the Claimant who is a litigant in person and is being represented by his friend who is a lay representative. The Tribunal is not, however, assisted by lengthy written documents that are narrative in nature.

52. The application to amend the claim to include (i) an allegation that the Respondent had a practice of treating the Claimant's role as a unique position and placing him in a pool of one for redundancy selection; (ii) a practice of requiring the Claimant to attend redundancy meetings while on sick leave; and (iii) a practice of conducting a redundancy consultation meeting as a substitution for a genuine return-to-work process is refused.

53. These amendments are substantial in nature in that they raise new factual lines of enquiry. The constitution of the pool is not mentioned in the claim form. With regards to the redundancy consultation, the claim refers to a lack of meaningful consultation regards redundancy not the requirement to attend. The nature of these amendments, in essence, relates to the decision to dismiss the Claimant. The Respondent says that this was due to redundancy. The Claimant says his dismissal constitutes acts of disability and/or age discrimination. The claim form already includes these complaints of direct age and disability discrimination and a claim for discrimination arising from disability where the unfavourable treatment is alleged to be his dismissal. I do not consider that the Claimant will be at any prejudice by refusing these amendments. By contrast, I consider that there will be considerable prejudice to the Respondent of having to deal with additional factual matters arising out of these new allegations particularly in circumstances where these new lines of enquiry may not necessarily aid the Claimant's case.

54. The Claimant also applies to amend the claim to argue that there was a practice of conducting a risk assessment when the Claimant was not at work

and therefore carried out without his involvement. In essence, this is a complaint about a failure to consult about risks to his health and reasonable adjustments that may be needed.

55. I weighed the balance of injustice and hardship, and the real practical consequences of allowing or refusing this amendment. I considered that the addition of a claim that the Respondent failed to involve the Claimant in a risk assessment and therefore failed to consult with him about any reasonable adjustments may not strengthen the Claimant's case significantly. A distinction can be drawn between (i) the duty to make reasonable adjustments arising under statute and (ii) consulting with an employee about what those adjustments might be. In considering the disadvantage to the Claimant of not allowing this amendment, it was not clear to me whether he would face significant disadvantage if his application were refused. The lack of consultation has arguably already been pleaded as part of the factual matrix. He asserts in his claim form that he was informed on his return to work on 04 February 2025 that his role was at risk of redundancy without any consultation regarding his health. By refusing the amendment, the Claimant will not be denied the opportunity of making arguments in submissions about any lack of involvement in decisions regarding his return to work and subsequent dismissal.

56. I refused the application to amend the claim that the Respondent failed to meaningfully implement recommended adjustments i.e. that the failure to make reasonable adjustments amounts to a breach of the statutory duty to make reasonable adjustments. This is a 'catch all' complaint in which the Claimant contends that there has been conduct on the part of the Respondent that amounts to a failure to make reasonable adjustments.

57. I permitted the Claimant to amend his claim to add in a complaint of a failure to make reasonable adjustments only insofar as the following: that the Respondent's alleged practice of requiring him to work two consecutive days during a phased return to work put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability in that Occupational Health had advised that the Claimant should return to work on a 3-day week with rest days in between. The Claimant says that the Respondent could have made an adjustment to allow him a rest day rather than ask him to work consecutive days.

58. In determining whether to allow this amendment, I considered whether the timing of the application put the Respondent to any particular prejudice. There may be difficulties caused to the Respondent arising from matters now being added that relate to events that happened some time ago but these may be mitigated by witness statements being prepared sooner rather than later. The Respondent's witnesses who are likely to give evidence in respect of these allegations will already likely be required to give evidence in respect of matters that have already been pleaded in the claim. In this respect, there would be little practical hardship of the Respondent having to deal with additional factual matters related to these new allegations. Moreover, the claim as pleaded in the claim form makes reference to the failure to implement adjustments suggested by occupational health. To this extent, the amendment does not raise entirely new factual lines of enquiry and I concluded that the balance of injustice lay in allowing the amendment. While

there has already been a somewhat lengthy procedural history in this case, it remains at a relatively early stage. There has been some disclosure but witness statements have yet to be prepared.

59. The timing and manner of the application are matters that I can consider in deciding whether to grant the amendment. I make no decision as to whether this complaint has been brought in time. This will be determined by the Tribunal having heard all the evidence.

60. In summary, I considered that the balance of hardship and convenience lay in allowing the application to amend the claim to include the following complaint of a failure to make reasonable adjustments: that the Respondent's alleged practice of requiring him to work two consecutive days during a phased return to work put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability in that Occupational Health had advised that the Claimant should return to work on a 3-day week with rest days in between. The Claimant says that the Respondent could have made an adjustment to allow him a rest day rather than ask him to work consecutive days.

61. I considered that the balance of hardship and convenience lay in refusing all other applications to amend.

62. This decision should not be taken to be any comment on the potential merits of the claim. This is a matter for the Tribunal which deals with the final hearing.

Approved by:

Employment Judge Russell

25 April 2026

JUDGMENT SENT TO THE PARTIES ON
11 May 2026

Kacey O'Brien
FOR THE TRIBUNAL OFFICE