Neutral Citation Number: [2026] EAT 103

Case No: EA-2022-000392-AT

EMPLOYMENT APPEAL TRIBUNAL

Rolls Building,
Fetter Lane, London, EC4A 1NL

Date: 13 July 2026

Before :

HIS HONOUR JUDGE TARIQ SADIQ

- -

Between :

MR M SHAH **Appellant**

- and -

HOME OFFICE **Respondent**

- -
- -

James McCabe (**Trade Union Representative**) for the **Appellant**
David Mold (instructed by **Government Legal Department**) for the **Respondent**

Hearing date: 23 April 2026

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JUDGMENT

SUMMARY

Disability discrimination – sections 15 and 27 Equality Act 2010

The claimant was disabled by reason of depression. He applied for a post under the 'Guaranteed Interview Scheme' (GIS) which entitled him to a guaranteed interview if he met the minimum criteria for the post. The Respondent believed that he had dishonestly claimed that he was disabled to gain a guaranteed interview under the GIS and instigated disciplinary proceedings against him. The Employment Tribunal (ET) dismissed the s15 claim (discrimination arising from disability) and the s27 victimisation claim.

Held: upholding the appeal.

The ET had erred in (i) finding that the disciplinary investigation was not something arising from the claimant's disability and (ii) in finding that the claimant had not done a protected act for the purposes of the victimisation claim. The appeal was allowed and the EAT substituted a finding that the disciplinary investigation was something arising from the claimant's disability and remitted back to the same ET to consider the justification defence under s15(2). The EAT also remitted back to the same ET whether the claimant had done a protected act and causation.

HIS HONOUR JUDGE TARIQ SADIQ

1. In this judgment, I will refer to the parties as they were in the Employment Tribunal ("ET) as Claimant and Respondent.

2. The Claimant appeals against the decision of the ET sitting in London Central whose reasons were promulgated on 10 January 2022. The ET upheld the claim for unfair dismissal but dismissed the claims for direct race and/or religious discrimination, victimisation (s27 claim) and discrimination arising from disability (the s15 claim). The matter was listed for a remedy hearing regarding the successful unfair dismissal claim in April 2022.

3. The Claimant was represented by James McCabe, Trade Union Representative, and David Mold of Counsel represented the Respondent. I am grateful for their assistance.

The Background

4. It is not necessary for me to say very much about the facts since there are only three grounds which focus on the decision to dismiss the s15 claim and the victimisation claim under s27.

5. The Claimant was employed by the Respondent as an Executive Officer from 18 March 2022 until 26 August 2019. He was off sick from 26 June 2015 to 18 January 2016 with depression. It was conceded that by mid-June 2016 the Claimant was disabled by reason of his depression.

6. The Respondent has a policy whereby disabled applicants are entitled to a guaranteed interview if they meet the minimum criteria for the job, known as the 'Guaranteed Interview Scheme'(GIS). At paragraph 9 of the Reasons, the ET set out what the application form stated as follows: *"if you have a disability defined by the Equality Act, you're eligible to apply via the Guaranteed Interview Scheme. This means you must have a physical or mental impairment which has a substantial and long-term negative effect on your ability to carry out normal day-to-day activities. If you think you meet the criteria for the GIS, would you like to be considered for the GIS scheme?"*

7. On 22 May 2017, the Claimant applied for a post as an Immigration Liaison Officer with RALON which was based overseas and in his application asked to be considered under the GIS. The application form also required the Claimant to provide his line manager's email address. The line manager's email address prompts an automatic email to be sent to the line manger for the application to be "validated". The Claimant inserted his own Home Office email account in the section requiring the line manager's validation and so the automatic email went to his own email account, rather than to his line manager's account.

8. All jobs in the Home Office require employees to hold counter terrorist check clearance (CTC). Most jobs require Security Check (SC) clearance. Some senior jobs require Developed Vetting Clearance (DV). When he joined the Respondent the Claimant obtained CTC clearance. In 2006 he obtained SC clearance for a 10-year period. In February 2016, the Claimant applied for the renewal of his SC clearance.

9. In February 2017 the Claimant was informed that the Respondent was minded to refuse his SC clearance, which was subsequently refused and his CTC was withdrawn on 8 June 2017. Since all jobs in the Respondent require, as a minimum, employees to hold CTC clearance the Claimant was suspended on full pay although he retained his base line personal security standard (BPSS). The Claimant has never been told why his CTC clearance was withdrawn which is the subject of challenge elsewhere. At paragraph 14, the ET noted that for the purposes of these proceedings the Claimant accepted that none of the individuals involved in the decisions which were the subject of his ET complaints were involved in or, aware of, the reasons for the revocation of his security clearance.

10. On 8 August 2017 Ms Creech, the recruiting manager for the RALON post was considering applications for the RALON post which the Claimant had applied for in May 2017. At paragraph 17, the ET stated that her evidence was that she had noticed on the Claimant's application that he had provided his own email address in place of his line managers email for line manager's validation. The ET found that she had contacted Michelle Wright, the line manager named on the application form,

to confirm the Claimant's eligibility and when asked she informed Ms Wright that he had applied under the GIS. Ms Creech's evidence to the ET was that Ms Wright had informed her that the Claimant had been suspended and would need to withdraw. At paragraph 18, the ET noted that Ms Wright denied that account but at paragraph 21 the ET preferred the evidence of Ms Creech.

11. At paragraph 23 the ET said this:

> "Ms Wright was of the opinion that the Claimant may be falsely claiming to be disabled in order to obtain an interview under the GIS and that this and other information which the Claimant had included in the application from (none of which were relevant for the purposes of these proceedings) would potentially indicate dishonesty. It was her evidence that she did not consider the Claimant was disabled and that as part of the enquiry she had made she had reviewed the Claimant's recent application for another post in February 2017 in which he had not asked for an interview under the GIS. On 8 August Ms Wright emailed her concerns to Mr Tucker, head of investigations (466) who decided to commission an investigation. Ms Cates, deputy director, commissioned Ms Welsh to take it forward and she did so."

12. On 22 August 2017 the Claimant received a letter from Ms Welsh, who had been appointed as the commissioning officer, that he was being investigated for alleged misconduct in relation to his application for the RALON post. The Claimant made representations in response to the letter, and on 13 September 2017, he was informed that no further action would be taken. At paragraph 24, the ET found that having read his responses Ms Welsh and Ms Cates accepted the Claimant's explanation for the points raised and concluded there was nothing to suggest a deliberate intention to mislead or misrepresent.

13. In the meantime, the Claimant had lodged a grievance before the outcome was sent to him that he was being subjected to a disciplinary investigation *"because of disability and facing harassment in relation to this disability by the sharing of this data by allegations that I intentionally lied about having a disability"* – see paragraph 25. This grievance was dated 5 September 2017 which the Respondent accepted was a protected act under s27 of the Equality Act 2012. A grievance officer was appointed and the written outcome was sent on 4 May 2018. The Claimant unsuccessfully appealed the grievance outcome and the appeal decision was sent on 13 July 2018. The outcome was

that there was no evidence that the Claimant had been the subject of discrimination, victimisation or harassment on grounds of disability regarding the initiation of the investigation, but that the sharing of personal data on the application forms without his consent was potentially a breach of data protection – see paragraph 26.

14. On 15 May 2018 the Permanent Secretary refused the Claimant's appeal against the loss of his security clearance. He remained employed but suspended until 26 August 2019. As a result of the confusion about what to do next, the Claimant was not invited to attend a hearing until 7 September 2018 nearly 3 months after his appeal had been turned down. The invitation letter, which the ET found was not a model of clarity at paragraph 67, was headed 'Proposed termination of Home Office Employment – invite to a formal meeting.' There was a meeting on 1 October 2018 and on 8 November 2018 the Claimant was given 6 months notice of termination of his employment because he could no longer carry out his duties with the Respondent. He appealed but the appeal was unsuccessful.

The ETs Decision

15. The ET dealt with the law at paragraphs 85 to 99. At paragraph 88, the ET set out s27 of the Equality Act 2010 regarding victimisation and stated that the issue is whether the detrimental treatment was because the Claimant had done a protected act. The ET referred to the burden of proof provisions from paragraphs 90-91. At paragraph 92 it set out section 15 of the EqA and at paragraph 93 stated that the questions were whether there was unfavourable treatment and what caused that treatment. It said that an examination of the conscious or unconscious thought processes of the individual alleged to have treated the Claimant unfavourably is likely to be required. It then stated, *"The something that causes the unfavourable treatment need not be the main or sole reason but must have a significant (or more then trivial) influence of the unfavourable treatment and so be an effective reason or cause for it."*

16. The Claimant's s15 complaint was that he was treated unfavourably by being issued with a notification of disciplinary investigation letter dated 22 August 2017, in which it was alleged that he had falsely stated on an application form that he qualified under the GIS when he had not declared disability.

17. At paragraphs 102 and 103 the ET held under the paragraph headed "Was the Claimant treated unfavourably due to something arising in consequence of disability, namely the Claimant making an application under the Guaranteed Interview Scheme when he was issued with a notification of a disciplinary investigation dated 22 August 2017" as follows:

> "102. The Respondent now accepts that the Claimant was, at the relevant time a disabled person by reference to depression. The issue is whether the Claimant was issued with a notice of investigation "because of something arising from disability". We accept the Claimant ticked the box because he was disabled and that ticking the box (or the ability to do so) was something that arose from disability. However, as Mr Mold submits, the reason that the investigation was initiated was because the Respondent had doubts about the Claimant's honesty. Those doubts arose both because he had ticked the box and for other reasons (which were not related to disability). We accept that, in that respect, the case is very similar to Kelso v Department for Work and Pensions EAT 0009/15.
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> 103. It is true that the investigation would not have been initiated if the Claimant had not ticked the box, but the question is not whether "but for" the ticking of the box there would have been investigation. The issue for the tribunal is whether ticking the box was the reason (or part of the reason) for the treatment. In this case ticking the box was the background to the genuine but erroneous belief, that the Claimant was not being honest in his application form. Ms Wright had clearly jumped to the wrong conclusion (and may not have been justified in doing so), but her reasons related to a genuine belief that by ticking the box the Claimant was seeking to obtain advantage to which he was not honestly entitled."

18. In relation to the victimisation claim, one of the protected acts relied upon by the Claimant under section 27 of the EqA was making an application for a post under the GIS in around May 2017. At paragraphs 104 to 106 and the ET held under the paragraph headed "Did the Respondent victimise the Claimant when they sent him a letter initiating an investigation into his application form" as follows:

> "104. It is the Claimant's case that he had done a protected act by ticking the box on the application form. He says that the reason for the investigation was initiated was because he had ticked the box. This claim fails on 2 counts.

105. First, as we have said the reason for the investigation was not because he had ticked the box but because the Respondent believed him to have been dishonest - for seeking a guaranteed interview and for other reasons. Secondly, we do not accept that by ticking the box the Claimant had done a protected act as defined in section 27. It self-evidently does not fall within section 27(2) a b c or d. Section 27(c) is a broader catchall provision which provides that *"doing any other thing for the purposes of or in connection with this act"* is a protected act. Nonetheless we do not accept that making an application under the GIS was something done "for the purposes of or in connection with" the Equality Act. It is not a complaint (either express or by implication) that the Respondent has failed to do something that it was required to do under the Act. It is simply a broad statement that the Claimant wished to avail himself of the more favourable application process which the Respondent extends to disabled individuals."

106. It follows therefore that the time that the investigation was initiated by Ms Wright, the Claimant had not done a protected act, and the initiation could not as a matter of logic amount to act of victimisation contrary to section 27."

19. By a Preliminary Hearing decision on 27 February 2025, Her Honour Judge Tucker allowed the following amended Grounds of appeal to proceed to a full hearing:

<u>Ground 1: error in respect of causative link between disability and unfavourable treatment</u>

1. The Tribunal erred in law, particularly at paragraphs 102-3, in its approach to the question of whether the unfavourable treatment (the instigation of the investigation) was because of disability in that:
   (b) In error, it focused on the employer's motivation in terms of their suspicions of untruthfulness rather than the link between disability and the reason for the treatment; and/or
   (b) In error, it failed to consider whether disability had a sufficient or significant influence on the employer's action so as to satisfy the causal connection required by s.15 Equality Act 2010 (see <u>Hall v CC West Yorkshire Police</u> UKEAT/0057/15 in particular para.15).

<u>Ground 2: error in respect of application of s.27(2)(c) of the Equality Act 2010</u>

2. The Tribunal erred in concluding that the ticking of the box to obtain the GIS (Guaranteed Interview Scheme) was not a protected act within s.27(2)(c) of the Equality Act 2010 when it involved the assertion of the fact that the Claimant was disabled and thereby eligible for the adjustment/benefit afforded by that scheme. (Paragraphs 105-6 of the Judgment).

<u>Ground 3: perverse finding of fact regarding the identity of the decision-maker</u>

3. The Tribunal erred in law made a perverse finding that Mr Tucker decided that an investigation should be initiated (as set out in para.23 of the Judgment). The evidence before the Tribunal was that the decision was not taken by Mr Tucker. (The appellant asserted that it was, in fact, taken by Ms Cates). The evidence before the Tribunal was that Mr Tucker did not take the decision but handed the responsibility back to

Michelle Wright as denoted by the words in an email (page 2140 of the hearing bundle before the tribunal) which stated, "if you wish to commission and (sic) investigation…".

4. Ground 3 would become relevant if either Ground 2 or 3 were to succeed: if the case were remitted the Tribunal to which the case was remitted would need to consider the decision-making process of the actual decision-maker.

The Law

20. Section 15 of the Equality Act 2010 provides 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."

21. In **Pnaiser v NHS England** [2016] IRLR 174, Simler J (as she then was) having reviewed the authorities, summarised the proper approach to s.15 claims at [31] as follows:

(a) A tribunal must identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respect relied on by B. No question of comparison arises.

(b) The tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a s.15 case. The 'something' that causes the unfavourable treatment need not be the main or sole reason but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason or cause of it.

(c) Motives are irrelevant. The focus of this part of the enquiry is on the reasonable cause of the impugned treatment and A's motive in acting as he or she did is simply irrelevant: see *Nagarajan v London Regional Transport* [1999] IRLR 572.

(d) The tribunal must determine whether the reason/cause (or, if more than one), a reason or cause, is 'something arising in consequence of B's disability'. That expression 'arising in consequence of' could describe the range of causal links. Having regard to the legislative history of s.15 of the Act (described comprehensively by Elizabeth

Laing J in *Hall)*, the statutory purpose appears from the wording of s.15, namely to provide protection cases with the consequence or effects of the disability the availability of a justification defence, the causal link between that something that causes unfavourable treatment and the disability may include more than one link. More than one relevant consequence of the disability may require consideration and it will be a question of fact assessed robustly in each case whether something can properly be said to arising consequence of disability.

(e) …However, the more links in the chain there are between the disability and the reason for the impugned treatment, the harder it is likely to establish the requisite connection is a matter of fact.

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

(g) It does not matter precisely in which order these questions are addressed. Depending on the facts, tribunal might ask why A treated the claimant in the unfavourable way alleged in order to ask the question whether it was because of something arising in consequence of the claimant's disability. Alternatively it might ask whether the disability has a particular consequence for a claimant that leads to 'something' that caused the unfavourable treatment

22. Regarding causation, in **Sheikholeslami v University of Edinburgh** [2018] IRLR 1090, EAT, Simler J held at [62]:

> "On causation, the approach to s.15 of the Equality Act 2010 is now well established and not in dispute on this appeal. In short, this provision requires an investigation of two distinctive causative issues: (i) did A treat B unfavourably because of an (identified) something? and (ii) did something arising consequence of B's disability? The first issue involves an examination of the putative discriminator's state of mind to determine what consciously or unconsciously was the reason for any unfavourable treatment found. If the "something" was a more than trivial part of the reason for unfavourable treatment then stage (i) is satisfied. The second issue is a question of objective fact for an employment tribunal to decide in light of the evidence. (See City of York Council v Grosset [2018] EWCA Civ 1105, [2018] IRLR 746."

23. In **Grosset**, the "something" that led to the unfavourable treatment was the employee teacher showing an inappropriate film to his pupils. The ET had found as a fact that Mr Grosset had done this as a result of a misjudgment caused by stress, which in turn arose in consequence of his disability namely cystic fibrosis. The crucial question was whether, objectively speaking, there was a causal link between his disability and the relevant "something". On the findings of the ET, there was such a

causal link. The claimant showed the film as a result of the exceptionally high stress he was under, which arose from the effect of his disability.

24. In **Bodis v Lindfield Christian Care Home Ltd** [2024] EAT 65, HHJ Tayler held at [47] that the authorities make it clear that to establish liability the something can be a minor component of the reason for the treatment provided it is "significant" so as to be an "effective cause". He said that Simler J's reference in **Pnaiser** to "more than trivial" was used to ensure that too high a standard is not applied to the word "significant" because all that is required is that it is "more than trivial". In that case, where the claimant's disability resulted in her answers to questions in a disciplinary investigation was short and evasive, the s.15 claim was made out since the ET had held that the claimant's demeanour was a contributory factor for the respondent in referring her to a disciplinary hearing, albeit it was trivial – see [49] and [50]. On the facts, however, there was no breach of s.15 since the employer's decision to proceed was justified as a proportionate means of achieving a legitimate aim.

25. In **Hall v Chief Constable of West Yorkshire Police** [2015] IRLR 893, EAT Laing J (as she then was) held at [35] that s.15 was enacted to restore the approach taken in **Clark v Novacold** [1999] ICR 951 and reverse the effect of **Lewisham London Borough Council v Malcolm** [2008] UKHL 43, and loosen the causal connection required between disability and unfavourable treatment. Mrs Hall was dismissed after 23 years service because her employer had a genuine, mistaken belief that she had been working in a pub during the period of disability -related sickness absence. The ET had concluded that the disability-related absence was mere background, and the cause of the employer's action was its belief in the misconduct – see [18]. At [42], in setting aside the decision Laing J held that the ET had made three errors:

> "Firstly, it appeared to consider that it was necessary for the claimant's disability to be the cause of the respondent's action in order for her claim to succeed. Secondly, it made a contrast between the cause of action and the background circumstance. This leaves out of account a third logical possibility, which it seems to me, is present on the loose the

> language of section 15(1) i.e. a significant influence on the unfavourable treatment, or a cause which is not the main or the sole cause, but is nonetheless an effective cause of the unfavourable treatment**.** The third error, in my judgement, the ET's approach, as evident from paragraph 7.8 of its decision, is its reference to the motivation for the unfavourable treatment. It is clear from the authorities which I cited at some length to inquire into the motivation for unfavourable treatment is to ask the wrong question."

At [42], she held that it was sufficient for disability to be "a significant influence, or a cause which is not the main or sole cause but is nonetheless an effective cause of the unfavourable treatment."

26. The approach in **Hall** was followed by Mitting J in **Risby v London Borough of Waltham Forest** UKEAT/0318/15. That was a case in which a disabled, wheelchair using employee was dismissed for using offensive and racist language. He was angry about a training course having been arranged at a venue that was not accessible to him and shouted at junior colleagues, including saying that "the council wouldn't get away with it if they said no fucking niggers were allowed to attend." The ET dismissed the claimant's claims of unfair dismissal and disability discrimination. The ET concluded that the claimant's short temper was a personality trait and there was no logical connection between the claimant's behaviour and his disability.

27. Mitting J held at paragraph 15 that if the claimant had not been disabled, he would not have been outraged by the decision to use a venue without suitable disabled access. His misconduct arose from the indignation caused by that decision:

> "His disability was an effective cause of that indignation and so of his conduct, as was, of course, his personality trait or characteristic of shortness of temper, which did not arise out of his disability. On the Employment Tribunal's own analysis of the facts, this was a case in which there were two causes of conduct that gave rise to the dismissal, one of which arose out of his disability. In concluding otherwise, the Employment Tribunal erred in law. In consequence, it did not go on to answer the question whether the Respondent had shown that the unfavourable treatment to which the Claimant had been subjected, dismissal, was a proportionate means of achieving the legitimate aim…"

28. The appeal was allowed and remitted to a different ET to consider.

29. **Hall** was considered by Stacey J in the EAT in **Kelso v Department for Work and Pensions** EAT 0009/15. In that case, the claimant had been in receipt of Disability Living Allowance stating

that she suffered from Raynaud's disease. Following a tipoff there was an investigation into the claimant and it was decided that the claimant was not entitled to Disability Living Allowance. The claimant was dismissed and claimed disability discrimination and unfair dismissal. At a Preliminary Hearing in August 2014, it was confirmed that the sole act of discrimination was the dismissal, and it was accepted that that the reason for dismissal was the respondent's belief that the claimant had acted dishonestly by claiming benefits to which he was not entitled – see [5] and [6]. At a later Preliminary Hearing, the claim was struck out as having no reasonable prospect of success. Stacey J dismissed the appeal on the basis that based on the pleased case under s15 and the admissions made at the Preliminary Hearing, the s15 claim had no reasonable prospect of success. At [38], she said that although **Hall** was superficially similar, it did not assist:

> "On the facts found in it, it is clear that absences which might be because of illness all arising from disability were part of the rationale for dismissal. In the present case there is no offer to prove that the respondent did anything unfavourable to the claimant other than to pay heed to a report received about her dishonesty and failed to investigate that properly, leading to unfair dismissal. There is no suggestion that the failure was due anything arising from disability. Therefore the claim is for unfair dismissal only."

The Appeal

Ground 1: error in respect of causative link between disability and unfavourable treatment

> 1. The Tribunal erred in law, particularly at paragraphs 102-3, in its approach to the question of whether the unfavourable treatment (the instigation of the investigation) was because of disability in that:
>   (a) In error, it focused on the employer's motivation in terms of their suspicions of untruthfulness rather than the link between disability and the reason for the treatment; and/or
>   (b) In error, it failed to consider whether disability had a sufficient or significant influence on the employer's action so as to satisfy the causal connection required by s.15 Equality Act 2010 (see Hall v CC West Yorkshire Police UKEAT/0057/15 in particular para.15).

30. The unfavourable treatment was the instigation of the disciplinary investigation. The 'something' that led to the unfavourable treatment was the Claimant ticking the box asking for a guaranteed interview under GIS. The crucial question was whether there was a causal link between the Claimant's disability and the relevant "something" namely ticking the box. The 'something' that

causes the unfavourable treatment need not be the main or sole reason but must have at least a significant (or more than trivial) influence on the unfavourable treatment and so amount to an effective reason or cause of it. Here, the ET found at paragraph 102 that the Claimant had ticked the box because he was disabled and that ticking the box was something arising from his disability.

31. However, at paragraphs 102 to 103, the ET went onto to find that the reason for the treatment namely the instigation of the disciplinary investigation was because of Ms Wright's genuine, but erroneous, belief that by ticking the box the Claimant was dishonestly claiming an advantage which he wasn't entitled to since he was not disabled. In doing so, the ET found that this case was very similar to **Kelso**. There are a number of errors in that decision. First, the ET had already found at paragraph 102 that the Claimant had ticked the box because he was disabled and that ticking the box was something arising from his disability. Objectively speaking therefore, there was a clear causal link between the Claimant's disability and the relevant "something" namely ticking the box. Second, the fact that Ms Wright had a genuine, albeit erroneous, belief that the Claimant was being dishonest did not prevent the Claimant's disability from being an effective cause of the treatment. He ticked the box because he was disabled. Third, it is clear from paragraphs 102 and 103 that the ET was focusing on the sole motivation of the Respondent for the unfavourable treatment. As is made clear in the authorities, the Respondent's motivation for the unfavourable treatment is irrelevant and is to ask the wrong question.

32. Fourth, the reference to this case being very similar to **Kelso** was clearly misplaced. Apart from saying this, the ET gave no explanation why it found this to be so and there was no consideration given to the case of **Hall** which was similar to the Claimant's case. In **Kelso**, the s.15 claim was struck out at a Preliminary Hearing on the basis of the claimant's pleaded case and her admissions at the Preliminary Hearing that the reason for dismissal was the respondent's belief that she had acted dishonestly by claiming benefits to which he was not entitled. In **Hall**, as here, the respondent had a genuine, mistaken belief that she had been working in a pub during the period of disability-related

sickness absence. As here, the ET had concluded that the disability-related absence was mere background, and the cause of the employer's action was its belief in the misconduct – see paragraph 18 of **Hall**. Here, the ET's decision was erroneous not least because of the loose connection required namely a significant influence for the unfavourable treatment. Objectively speaking, there was a clear causal link between the Claimant's disability and the relevant "something" namely ticking the box, and the ET made such a finding at paragraph 102.

33. I reject the Respondent's submission that the finding at paragraph 102 that ticking the box was something arising from a disability, not the Claimant's disability. The ET did not say this in paragraph 102. In fact, the Claimant's disability was mentioned in the preceding sentence. Section 15 of the Equality Act 2010 requires examination of the impact on B's disability, not a disability. A finding of a disability would have rendered s15(2) and the no knowledge of disability defence otiose. It follows that the ET's finding at paragraph 103 that the reason for the Claimant's treatment was not something arising from his disability was inconsistent with its finding at paragraph 102 that it was. If I am wrong about that, I find that the ET erred in applying a narrow focus on the mindset of the Respondent regarding causation. As is clear from the authorities, causation regarding the first stage involves two distinct issues. The ET only considered the first. Even if dishonesty was a conscious influence and/or the only motivation, the second stage involves the objective test whether the treatment was something arising from the Claimant's disability. On its own finding at paragraph 102 the ET found that the unfair treatment namely the disciplinary investigation was something arising from the Claimant's disability.

34. For all these reasons, ground 1 succeeds. In the circumstances, the proper course is to substitute a finding of unfavourable treatment for something arising from the Claimant's disability and remit the section 15(2) defence back to the same ET to decide.

Ground 2: error in respect of application of s.27(2)(c) of the Equality Act 2010

> 2. The Tribunal erred in concluding that the ticking of the box to obtain the GIS (Guaranteed Interview Scheme) was not a protected act within s.27(2)(c) of the Equality Act 2010 when it involved the assertion of the fact that the Claimant was disabled and thereby eligible for the adjustment/benefit afforded by that scheme. (Paragraphs 105-6 of the Judgment).

35. Section 27(2)(c) of the Equality Act 2010 provides that a person (A) victimises another person (B) if (A) subjects (B) to a detriment because (B) does a protected act namely *"doing any other thing for the purposes of or in connection with this Act."* It is not disputed that the Claimant suffered a detriment namely the instigation of the disciplinary investigation. In finding that the Claimant had not done a protected act under s27(2)(c) at paragraph 105, the ET overlooked the fact that the Claimant's application under GIS was in connection with sections 158 and 159 of the Equality Act 2010, which are about positive action. Both sections apply where an employer reasonably thinks persons who share a protected characteristic suffer a disadvantage connected to that characteristic, or persons who share a protected characteristic have needs that are different from the needs of person who share it, or participation in an activity who share a protected characteristic is disproportionately low. Both sections do not prohibit the employer from taking action with the aim of overcoming or minimising the disadvantage or participating in the activity. Here, the Claimant's application under GIS was arguably in connection with the Equality Act 2010 under s27(2)(c). The ET failed to consider whether the Claimant had done a protected act in connection with sections158 and 159 at all. For all these reasons, ground 2 succeeds. In the circumstances, the proper course is to remit the issue whether the Claimant had done a protected act back to the same ET to decide. Given ground 1 has been successful, the same ET will need to consider the issue of causation regarding the victimisation claim again.

> Ground 3: perverse finding of fact regarding the identity of the decision-maker
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> 3. The Tribunal erred in law made a perverse finding that Mr Tucker decided that an investigation should be initiated (as set out in para.23 of the Judgment). The evidence before the Tribunal was that the decision was not taken by Mr Tucker. (The appellant

asserted that it was, in fact, taken by Ms Cates). The evidence before the Tribunal was that Mr Tucker did not take the decision but handed the responsibility back to Michelle Wright as denoted by the words in an email (page 2140 of the hearing bundle before the tribunal) which stated, "if you wish to commission and (sic) investigation…".

Ground 3 would become relevant if either Ground 2 or 3 were to succeed: if the case were remitted the Tribunal to which the case were remitted would need to consider the decision-making process of the actual decision-maker.

36. Ground 3 is only relevant if grounds 1 and 2 are upheld. At paragraph 23 the ET found *"On 8th August Ms Wright emailed her concerns to Mr Tucker, head of investigations (466) who decided to commission an investigation. Ms Cates, deputy director, commissioned Ms Welsh to take it forward and she did so."* At paragraph 106 the ET found under the victimisation heading *"It follows therefore that at the time that the investigation was initiated by Ms Wright, the Claimant had not a protected act.."*. Paragraph 103 also refers to the investigation being initiated and to Ms Wright jumping to the wrong conclusion. Although it could have been made clearer and notwithstanding the expression to the contrary at paragraph 23, the ET found that the investigation was initiated by Ms Wright. That decision was not perverse in that no reasonable tribunal could not have reached that decision. Accordingly, ground 3 fails.

Conclusion

37. Grounds 1 and 2 of the grounds of appeal are upheld. The case shall be remitted to the same ET to decide the section 15(2) defence and the protected act point. The same ET will also need to consider causation regarding the victimisation claim afresh. It is hoped that the parties will avoid a further ET hearing and compromise the relevant claims given the expense to both parties.