EMPLOYMENT TRIBUNALS

Claimant: Ms Tamzin Beach

Respondent: Wernick Buildings Limited

Heard at: Employment Tribunal Wales sitting via CVP **On:** 1 – 3 June 2026

Before: Employment Judge Grubb
Lay Member L Thomas
Lay Member C Bleasdale

REPRESENTATION:

Claimant: In person **Respondent:** Mrs G Cullen (Counsel)

JUDGMENT

1. The complaint for direct disability discrimination under *s. 13 of the Equality Act 2010* is not well-founded and is dismissed.

2. The complaints of harassment related to disability under *s. 26 of the Equality Act 2010* are not well-founded and are dismissed.

3. The complaints that the Respondent failed to make reasonable adjustments contrary to *sections 20 & 21 of the Equality Act 2010* are well-founded and are upheld in that:

1.1. The Respondent failed, from 10 June 2025 to maintain meaningful communication and explore alternative adjusted roles for the Claimant including the possibility of redeployment.
1.2. The Respondent failed from 7 July 2025, to take reasonable steps to implement a move to a different department at least on a trial basis.

Approved by:
Employment Judge C Grubb
08/06/2026

JUDGMENT SENT TO THE PARTIES ON
06 July 2026

Kacey O'Brien
FOR THE TRIBUNAL OFFICE

Written reasons having been requested at the hearing in accordance with *Rule 60 of the Employment Tribunals Rules of Procedure*, the following reasons are provided:

Reasons

Introduction

2. The Claimant is a Production Operative within the dispatch team, who has been employed by the Respondent since 19 September 2023. In late 2024 she was experiencing difficulties with chronic pain and was subsequently diagnosed with fibromyalgia on 3 December 2024. She informed the Respondent of her diagnosis on 10 January 2025. She considers that the Respondent has been unsupportive and dismissive of her disabilities.

3. On 11 February 2025 the Claimant attended a meeting where she asked for adjustments to be made including to move to a different department. The Claimant went home after that meeting. She attended work on 12 and 13/02/2025, but has not been back to work since.

4. The Claimant says that there was then a lack of communication from the Respondent lasting until October 2025. During this time, she says that the Respondent failed to properly discuss and consider adjustments and support that could be offered to get her back into work, resulting in a decline in her mental and physical health and well-being.

Issues

5. The Respondent agrees that the Claimant is disabled within the meaning of *s. 6 of the Equality Act 2010*, by reasons of fibromyalgia and anxiety. The list of issues were discussed at the outset of the hearing as agreed as being the same as set out in the case management order of EJ Cawthray following the Preliminary Hearing on 20 November 2025, as follows:

Time Limits:

6. Whether the discrimination complaints were brought within the time limit prescribed by *section 123 of the Equality Act 2010*. Specifically, whether any complaints

relating to events occurring before 17 March 2025 formed part of conduct extending over a period ending after that date.

7. If the claim remains out of time, it is just and equitable to extend time, including the reasons for the delay?

Direct Disability Discrimination:

8. Whether, on 29 April 2024, Mr Rhoden informed the Claimant's partner that he would call later that day and failed to do so.

9. Whether that amounted to less favourable treatment by comparing the Claimant's treatment with a hypothetical comparator.

10. If less favourable treatment is established, the Tribunal will consider whether it was because of disability and whether it amounted to a detriment.

Harassment related to disability:

11. Whether, on 11 February 2025:

    11.1. Mr Varvara dismissed the Claimant's fibromyalgia, stated that he had overcome depression twice, and asked the Claimant to prove her diagnosis.

    11.2. Mr Rhoden made comments suggesting that reasonable adjustments could be exploited for an easy day and questioned whether the role was suitable for the Claimant.

12. Whether, between 16 April and 15 July 2025, Mr Rhoden ignored the Claimant's emails.

13. Whether that constituted unwanted conduct related to disability.

14. Whether the conduct had the purpose or effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment, taking into account her perception, the surrounding circumstances, and whether it was reasonable for the conduct to have that effect.

Reasonable adjustments:

15. Whether the Respondent knew, or could reasonably have been expected to know, that the Claimant was disabled, and from what date.

16. Whether the Respondent operated the following provisions, criteria or practices (PCP's):

    16.1. refusing or failing to implement adjustments for employees with chronic health conditions;
    16.2. requiring employees to perform full duties without modification regardless of medical advice or individual capability;
    16.3. failing to maintain communication with employees during sickness absence; and failing to follow internal policies on sickness management, mental health support, and employee wellbeing.
    16.4. failing to follow internal policies on sickness management, mental health support and employee wellbeing

17. Whether those practices placed the Claimant at a substantial disadvantage compared to a person without her disability, including increased pain, fatigue and flare-ups, inability to perform work safely, psychological distress, inability to return to work, deterioration in health, and being effectively forced out of employment.

18. Whether the Respondent knew, or ought reasonably to have known, that the Claimant was likely to be placed at such disadvantage.

19. What steps could have been taken to avoid the disadvantage, including redeployment to alternative areas such as the Mill, Stores or Painters, maintaining communication, and exploring alternative roles.

20. Whether it was reasonable for the Respondent to take those steps and whether it failed to do so.

Procedure

21. We discussed reasonable adjustments for the Claimant at the outset of the hearing and it was agreed that she be given frequent breaks and time to process information, which included keeping questions short, simple language and dealing with one issue at a time.

22. The Claimant asserted that the Respondents solicitor had refused to include certain documents in the bundle asserting that they were not relevant. She wanted these included. There was no material objection from the Respondent to these

documents being considered. However, the Respondent maintained its submission that the documents were not relevant to the agreed issues. We admitted the documents considering that it was for the tribunal to determine the extent to which they are relevant when considered as part of the evidence as a whole.

23. In her oral evidence on the first day the Claimant stated that she had taken a note of what was said at the meetings on 20 January 2025 and 11 February 2025 on her phone. These notes had not been disclosed. She was directed to search for the notes and disclose these to the Respondent over the evening adjournment if still available. She confirmed on morning of second day that she had carried out a search and these documents were no longer available. We accepted this submission as the Claimant had changed phones since the meetings took place.

24. On the Second day of hearing the Respondent submitted a note written by Mr Rhoden from the first meeting on 20 January 2025. There was no objection from the Claimant to this note being admitted. They were relevant to the issues we had to determine and we did not consider there was prejudice to the Claimant in being able to deal with the contents given that it was less than an A5 side of written notes that were not substantively different from Mr Rhoden's account of the meeting.

25. We heard evidence from the Claimant, Thomas Rhoden (production manager), and Benjamin Wernick (Managing Director).

Relevant Findings of Fact

26. The Respondent is a construction company that specialises in the manufacture of modular accommodation.

27. When commencing employment with the Respondent in September 2023 the Claimant underwent an induction process where she received information and training on health and safety matters, such as manual handling and PPE. In her new starter questionnaire, she confirmed that she did not have a disability. This is not surprising in respect of her condition of fibromyalgia as she was only diagnosed with this condition in December 2024.

28. The Claimant's role as production operative was a manual and physically demanding role. This included cleaning the building. The Claimant says and we accept that these were her lightest duties. Her role also included sheeting buildings, which would require fitting and pulling sheeting, moving sheeting rolls, fixing timber, using power tools including impact drivers and heat guns including work at height up ladders, scaffolding towers, mobile elevated work platforms.

29. The Claimant fractured her right hand in July 2024. This was not a work-related injury. An occupational health review was carried out and adjustments were made to place her on amended duties and on ground level. She was placed in stores for a 2-week period.

30. During late 2024, the Claimant reported ongoing health difficulties including chronic pain and was undergoing investigation for fibromyalgia. Return to work meetings in October and November 2024 recorded chronic pain, soreness, and pending diagnosis. We find that she requested no adjustments during those meetings. Nothing is recorded in the return-to-work meeting notes, while the Claimant submitted that these records would not set out everything that was discussed, she was vague as to whether any adjustments were specifically requested. Furthermore the purpose of these forms were to set out the salient points discussed, which would clearly include any adjustments requested or agreed. The Claimant had seen and signed these forms. The fact that they contained no detail of adjustments support that no adjustments were requested or agreed at that point.

31. The Claimant received a diagnosis of fibromyalgia on 3 December 2024.

Meeting 10 January 2025

32. On 10 January 2025 she reported to work with a sprained ankle sustained outside of work. A meeting took place on that day with the Claimant, Christopher Pugh and Mr Rhoden. The Claimant disclosed that she had been diagnosed with fibromyalgia and that she believed that the sprain may be linked to this. She stated that she had recently started on medication and that her dose was due to increase later that week.

33. Mr Rhoden's evidence is that the Claimant said that she had been advised not to drive while she adjusted to the medication. The Claimant disputed this in her oral evidence. We however find that she did advise them of this as it is set out in both Mr Pugh's and Mr Rhoden's notes of the meeting. The Claimant confirmed in her oral evidence that in that meeting she observed notes being taken. This is also consistent with the fact that she was on new medication which had the potential to cause drowsiness.

34. The Claimant agreed in cross examination that during that meeting adjustments were discussed. It is agreed that during that meeting she was advised to take breaks when necessary and that she would be confined to light cleaning duties and low-level dispatch work. We find that the Claimant was also instructed not to work at height until she felt confident her medication was not affecting her judgment or balance. While the Claimant agreed there was a discussion around work at height, she did not

agree that this related to her fibromyalgia, but rather her ankle. We consider that the Claimant misunderstood the instruction and that this indeed related to medication. This confusion could have been mitigated had the discussed temporary adjustments been properly recorded in a document for the Claimant to sign, but they were not.

35. Finally, it is common ground that the Claimant was advised to contact her GP. The Respondent's case is that this request was made in order to obtain medical advice regarding the Claimant's functional capacity and any adjustments that might be required. The Claimant's evidence, when first asked about the matter, was that she understood the request as being to obtain confirmation that she was fit to work. We accept that Messrs Pugh and Rhoden made the request with the intention of obtaining advice as to capability and adjustments. However, we also accept that this was not the Claimant's understanding at the time.

36. The Claimant's evidence, which was not materially disputed, is that immediately after the meeting she went to the induction room and telephoned her GP. She states that she was informed that the GP would not provide the form of confirmation or advice sought. She further states that Mr Pugh was present during the call, and that she relayed the substance of that response to him immediately thereafter. The Claimant gave clear and specific evidence on this issue, including identifying those present and involved, such that her account was capable of verification. The Claimant has not had assistance from a legal representative when drafting her witness statement and consider it credible that she did not include this information as she did not consider it to be relevant. We accept her account that she did ask the GP for a fit note, was not provided with one an informed the Respondent of this.

37. The Respondent places great emphasis on the Claimant's failure to provide evidence from her treating practitioner by way of fit note to inform adjustments to be implemented. We note however that the sickness and absence policy only mandates a fit note in the event of an absence of 7 days or more. That was not the case here.

Were adjustments put in place.

38. The Claimant's position is that, although certain adjustments were discussed at the meeting of 20 January 2025, they were not implemented in practice. There is no contemporaneous documentary evidence within the bundle confirming that any agreed adjustments were recorded in writing, communicated to relevant managers, or formally disseminated. Nor are any such adjustments clearly particularised in Mr Rhoden's witness statement. His statement instead discusses what was agreed in the meeting on 20 January 2025. The only support for implementation derives from oral evidence as to what was said to have occurred on the shop floor.

39. We nevertheless accept that some adjustments were implemented following the meeting. In particular, the evidence indicates that the Claimant was placed on lighter duties and permitted to take breaks as required. However, these measures were informal and lacking in structure. In relation to working at height, we accept the Claimant's evidence that she in fact continued to undertake such work. The Respondent's instruction was that she should refrain from working at height where her medication affected her judgment or balance, thereby leaving the assessment to her discretion.

40. We have already found that the Claimant misunderstood the purpose of this instruction, believing it to relate to her ankle rather than her medication. In those circumstances, we find that, had the position been properly understood, she could have confined herself to lower-level duties. The fact that this did not occur reflects the absence of clarity in how the adjustment was communicated and applied in practice.

41. The absence of any written record or formal plan resulted in a lack of clarity as to what adjustments were in place and how they were to operate in practice. his lack of clarity is reflected in concerns being raised on 13 February 2025 by Mr Vavara that the Claimant had been spending extended periods in the changing rooms. This suggests uncertainty or inconsistency in the application and supervision of any modified duties in particular in relation to the Claimant taking regular breaks.

42. The Claimant continued working with these adjustments in place for around 12 working days before the meeting on 11 February 2025 due to subsequent absences from work on 3 to 5 February 2025 and 10 February 2025. Her absence on 3 – 5 February 2025 was explained as being due to car issues. She took these dates as holiday. The Claimant had a return-to-work interview on 6 February 2025.

43. She was then absent on 10 February 2025 and we can see that this is cited in her return-to-work form as being due to a chronic health condition and mental health issues.

11 February 2025

44. On 11 February 2025, the Claimant telephoned the Respondent to explain that she would be late for work, having forgotten her work boots (which were required as PPE). During that call she requested a meeting with Mr Varvara and Mr Rhoden to discuss her condition. She attended work shortly before 08:00 and met with Mr

Varvara in a meeting room. Mr Rhoden joined them shortly after commencing work at around 08:00.

45. The Claimant says that before Mr Rhoden joined them and the formal meeting began, Mr Varvara said to her that he had overcome depression twice & asked her to prove her condition. She says that she found this upsetting as she thought he was being dismissive and minimising her situation. She accepted in her oral evidence that Mr Varvara could have been asking her about providing a sick note or amended duties but this was not the way it came across. She also stated in her witness statement that Mr Varvara may not have intended his comments about overcoming depression negatively, but that is how she perceived it and she says she was visibly upset at the time.

46. The only direct evidence we have on this part of the discussion is that of the Claimant. There is no direct evidence from Mr Varvara to contradict her account, and no contemporaneous document displacing it.

47. We were informed that he stopped working for the Respondent in August 2025. The oral evidence was that he left in April 2025 and this was subsequently corrected to August in closing submissions. While this was not evidence, we accept the correction given that there is email evidence in the bundle showing Mr Varvara still being copied into emails in July 2025.

48. Mr Wernick stated in questions from the tribunal that they had asked for his evidence, but he did not engage with them. We note that ACAS conciliation in this matter began on 16 June 2025. While we do not know the extent to which the Claimant has clarified her complaints in respect of Mr Vavara, we would have expected there to have been some attempt to obtain his account, particularly in light of his giving notice. The Respondent has provided no evidence to support what steps were taken and when to try and obtain Mr Varvara's account to demonstrate that reasonable efforts were made in this regard.

49. On the evidence before us we accept that Mr Varvara did make reference to having overcome depression and did ask the Claimant for some form of evidence relating to her condition. In reaching that finding, we have had regard to the consistency of the Claimant's account. However, we do not find that the request was expressed in terms explicitly requiring her to *"prove"* the condition in a pejorative sense. Rather, we consider it more likely that the request was directed towards obtaining further medical evidence to inform discussion moving forward following on from the request on 20 January 2025.

50. Similarly, we accept the Claimant's account that Mr Varvara likely did not mean the comments around overcoming depression negatively.

51. We do not accept her evidence that she was visibly upset during that discussion. She accepts that she did not inform Mr Rhoden about the comments and we have direct evidence from Mr Rhoden that she was not upset when he joined the conversation. On the Claimant's own account, the conversation with all three present was a long one. While she could not be specific on timing, she said she left the office before 10 and that the conversation could have lasted over and hour. Had the Claimant already been visibly upset at the outset of the conversation we do not consider it plausible for it to have lasted as long as it did.

52. While she said in her evidence that she mentioned this to Mr O'Brien, we do not accept this evidence given it was raised for the first time at the hearing and she was vague as to what she actually said to him.

53. It is clear from the evidence that the Claimant found the discussion in the formal meeting very frustrating and felt that her suggestions and solutions were being dismissed. It is common ground that she was visibly upset when she left the meeting. We find that what was said in the formal meeting, tainted her view of the informal discussion with Mr Varvara beforehand and led to her perceiving his comments as questioning or minimising her condition when this was not in fact the case.

54. In terms of our findings as to what was said in the formal meeting on 11 February 2025 with Mr Rhoden present. It is common ground that potential adjustments were discussed and that the Claimant had asked to be moved to a different department. The Claimant raised the possibility of working in alternative areas, including stores, the mill, and painting roles. The Claimant thought that a role in stores would be particularly suitable given her experience of having been placed on temporary light duties there when she had broken her hand. It is agreed that no further alternatives were put forward by the managers in that meeting. It is agreed evidence that the Claimant had said that her current role was affecting her physical and mental health.

55. It is further agreed that the Respondent was made aware in the meeting that the Claimant had difficulty holding her arms above shoulder height and had visually demonstrated this in the meeting. The Claimant's symptoms were variable and said in the meeting that her duties were causing pain and fatigue. The Respondent had no other details on her capabilities and no medical evidence to further inform what adjustments they could make.

56. We accept that Mr Rhoden did not believe that redeployment in any other department was a suitable alternative as the work in other departments was also

physical work. He considered that there would be insufficient light work available which would leave the Claimant without sufficient tasks to perform.

57. The Claimant alleges that that Mr Rhoden commented that requested adjustments could amount to an *“easy day”* and expressed concern that such arrangements would not be practical if others sought the same. The Claimant accepted in cross examination that she might be *“standing around without a job to do”* if moved to stores. We find that Mr Rhoden did discuss this with the Claimant in the context of there being insufficient suitable work available in that department, rather than as a pejorative comment about the Claimant seeking to avoid work. We consider it more likely than not that concerns were expressed by Mr Rhoden about the practicality of accommodating reduced duties and the potential implications if similar requests were made by others. We are not satisfied, on the balance of probabilities, that it was articulated in the specific terms that the Claimant would have an *“easy day”* as alleged. Rather, we find that any such comment arose from a discussion about operational constraints rather than an intention to trivialise the Claimant’s condition.

58. As to the question whether the role was suitable for the Claimant, we accept that this was raised by Mr Rhoden during the meeting. In context, we find that this formed part of a discussion about whether a physically demanding production role was compatible with the Claimant’s symptoms, particularly given her own account that her physical and mental health were deteriorating. We do not find that this was expressed as a dismissal of her position, but rather as part of an attempt (albeit limited) to identify whether any viable way of continuing in the role could be found.

59. However, we accept that the suggestions around adjustments all originated from the Claimant rather than the Respondent and that there was no structured or documented assessment of those roles against her stated limitations at that stage and no trial arrangements, or follow-up plan was agreed or implemented. Responsibility for identifying viable adjustments was not clearly assumed by the Respondent, and no structured process was initiated to take matters further at that stage.

60. The Claimant was visibly upset at the end of the meeting and went home. She returned to work on 12 and 13 February. The 13 February was the last day the Claimant was in work. She has not returned since.

61. On 13 February 2025, Mr Varvara reported to Mr Rhoden that he had noticed a lack of work from the Claimant. That she was distancing herself from her coworkers, on her phone and spending a lot of time in the changing rooms.

Contact During Absence

62. The Respondent operated a Sickness and Absence Management Policy which required employees to maintain regular contact during absence and provided for management contact, review meetings, and consideration of adjustments, including amended duties or phased return where appropriate (emphasis added).

63. Sickness absence policy:

2.2 Communication whilst on sickness absence
It is our policy to keep in touch with employees during all absences, whatever the length. You must continue to regularly update your line manager on your progress during any period of sickness absence. For an absence period of 7 calendar days or less, you should contact your manager each day of your absence to notify them that you will not be in work. Telephone contact should be maintained at all times during your absence, text messages and email communications are not acceptable.

If it becomes clear that your absence is likely to become longer-term (7 days or more), your manager will notify you as to how frequently you need to notify the company, to keep us informed of your progress in order to ensure that your health situation is being discussed openly and honestly and your progress is being monitored. Your manager/HR manager may also, from time to time, arrange to meet you either at work or at home (or any other agreed location).

In such cases of longer-term absence, we may make contact with you, if necessary, for example, if there are concerns that we haven't heard from you for a while. You and ***your manager should communicate and agree as to the method and frequency of contact whilst you remain absent from work****. To make sure that we are regularly updated on your progress you must keep to the frequency and method of agreed communication between you and your line manager.*

2.4 Health Specialist
We may at times ask you to attend another health professional, or the Fit for Work service, or we may ask your permission to seek a medical report from your own doctor. This is to enable us to get a clear picture of the way your condition is affecting your ability to work, whether there is anything we can do to help your return to work and to ensure we are meeting our health and safety obligations. The medical report may also be taken into account when making decisions about your future employment.

64. Mr Rhoden accepts that it was his responsibility to maintain contact with the Claimant. No method or frequency of communication was agreed.

65. The Claimant submitted regular fit notes from her GP citing Fibromyalgia as the reasons for her absence. No adjustments were noted within those notes.

66. The Claimant's queries predominantly related to pay and we consider that these were responded to promptly:

    66.1. On 27 February 2025, the Claimant, emailed the Respondent with a query around statutory sick pay and entitlements, this was responded to on the same day.

    66.2. On 18 March 2025 the Claimant emailed Ms Guppy asking whether there would be any chance of adding holidays days to her pay. Ms Guppy responded in just over half an hour to say that the Claimant did not have enough accrued holiday to do this.

    66.3. On 6 April 2025 the Claimant again emailed Ms Guppy asking for an SSP1. This email was responded to on 7 April 2025 stating an SSP1 is only issued once an employee is no longer eligible for sick pay.

    66.4. A further fit note was supplied by the Claimant on 11 April 2025 valid for one month stating that the Claimant was unfit to work citing fibromyalgia and not indicating any reasonable adjustments that could be made.

67. On 16 April 2026, the Claimant wrote again to Ms Guppy stating she had no real contact from the company since her absence and wanting to clarify where things stood, particularly with her SSP coming to an end. In that email she stated:

    "While I'm not in a position to discuss a return, I am happy to engage in any conversations that you feel are appropriate or necessary."

68. This email was forwarded to Mr Rhoden on 16 April 2025 asking him to respond to the Claimant. Mr Rhoden did not reply to this email. On 18 April 2025 the Claimant emailed Ms Guppy stating that she had not received a response, but also raising another query as to how her wages were calculated. The Claimant sent a further email on 18 April 2025 querying another payment. Ms Guppy was on leave and the Claimant received an out of office reply. The payroll queries were responded to following Ms Guppy's return on 23rd April 2025.

69. On or around 29 April 2025, Mr Rhoden told the Claimant's partner (who also works for the Respondent) that he would call her. It is agreed that Mr Rhoden and the Claimant did not speak on the phone. Mr Rhoden says that he did call the number

he had for the Claimant but this did not connect which supports that he did say he would call her. It is agreed evidence that at some point in 2025 the Claimant's number changed. The Claimant was unable to state specifically when this was. We therefore accept that it is likely that Mr Rhoden made attempted to call the Claimant but this did not connect as he was calling an old number. He made no other attempts to contact her.

70. On 12 May 2025, a further GP fit note was submitted, which confirmed ongoing unfitness for work for an additional month citing fibromyalgia and no reasonable adjustments.

71. On 4 June 2025, the Claimant emailed Tracy Guppy confirming her continuing absence noting that she had not received a response to her email of 16 April 2025 and not received a call from Mr Rhoden as promised around 28 or 29 April. She mentioned that she was thinking about the situation daily and that a lack of check-in has left her feeling isolated and increasingly anxious. She stated that she had hoped having been signed off sick that the company would take proactive steps to support her getting back into work. She asked for there to be consideration of what could be done to move things forward.

72. On 9 June 2026 she presented another fit note citing that she was unfit for work until 7 July 2025 citing fibromyalgia. A similar fit note was presented on 7 July 2025 valid until 7 Augst 2025.

73. On 23 June 2025, the Claimant had still not received a response to her emails on 16 April and 4 June and so emailed Ms Guppy chasing a response. This was forwarded to Mr Rhoden.

74. On 7 July 2025 the Claimant emailed to ask about holiday her entitlement. She received a response to this on 8 July 2025. On 15 July the Claimant was given Mr Rhoden and Mr Varavra's direct email addresses and asked to email them directly.

75. Mr Rhoden responded on 15 July 2025 confirming holiday accrued to date and that he could approve her request for leave. It is not materially disputed that Mr Rhoden responded promptly to emails send directly to him. These emails related to holidays and pay. He did not however provide any material response to the Claimant's request for discussions around returning to work.

76. The claim form was presented on 19 August 2025. On 9 October 2025, Mr Wernick emailed the Claimant asking her to attend an Occupational health assessment. It is the Claimant's position that by this point her mental health has deteriorated to the extent that she is unable to engage in this. Further requests have been made for her

to provide authority for the Respondent to discuss her condition with the GP and this has also been declined. The Claimant provided a letter from her GP on 4 December 2025 outlining her conditions. She provided a later letter that notes:

"Her mood appears to be significantly exacerbated by the stress associated with the forthcoming tribunal and ongoing contact with her employer. I would therefore ask that you consider postponing any occupational health appointments until after the tribunal, as she does not currently feel mentally or physically well enough to attend. The prospect of the tribunal, together with continued engagement with her employer, is materially contributing to a deterioration in her mood and a marked increase in her anxiety."

Law

Time Limits

77. Time limits: s 123:

> *1) Proceedings on a complaint within section 120 may not be brought after the end of—*
> *(a)the period of 3 months starting with the date of the act to which the complaint relates, or*
> *(b)such other period as the employment tribunal thinks just and equitable.*
>
> *(3) For the purposes of this section—*
> *(a)conduct extending over a period is to be treated as done at the end of the period;*
> *(b)failure to do something is to be treated as occurring when the person in question decided on it.*

78. Cases of both *Robinson v Royal Surrey County Hospital NHS Foundation Trust UKEAT/0311/14/MC* and *Worcestershire Health and Care NHS Trust v Angela Allen [2024] EAT 40* both confirm that conduct extending over a period is a question for fact for the tribunal and there is no requirement that conduct extending over a period must relate to the same cause of action or even protected characteristic.

Direct Discrimination

79. *Section 13 Equality Act 2010*:

A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

80. There is no direct comparator so the tribunal will need to consider whether the Claimant was treated less favourably than she would have been treated if she was not disabled. This requires the tribunal to look to "*mental processes"* of the alleged discriminator, namely Mr Rhoden: *Nagarajan v London Regional Transport [1999] IRLR 572*.

Harassment

81. Under the *Equality Act 2010*, harassment has a specific meaning. *Section 26* states:

> *(1)A person (A) harasses another (B) if—*
> *(a)A engages in unwanted conduct related to a relevant protected characteristic, and*
> *(b)the conduct has the purpose or effect of—*
> *(i)violating B's dignity, or*
> *(ii)creating an intimidating, hostile, degrading, humiliating or offensive environment for B.*
> *….*
> *(4)In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—*
> *(a)the perception of B;*
> *(b)the other circumstances of the case;*
> *(c)whether it is reasonable for the conduct to have that effect.*

82. In *Richmond Pharmacology v Dhaliwal 2009 ICR 724, EAT*, the EAT made the point that the claimant must actually have felt or perceived her dignity to have been violated or an offensive environment to have been created. The fact that a claimant is slightly upset or mildly offended by the conduct in question may not be enough to bring about a violation of dignity or an offensive environment.

83. Importantly, the tribunal must consider whether it was reasonable for the conduct to have the effect on *that particular claimant*. In *Reed v Stedman 1999 IRLR 299, EAT*, the EAT made the point that since *"it is for each individual to determine what they find unwelcome or offensive, there may be cases where there is a gap between what the tribunal would regard as acceptable and what the individual in question was prepared to tolerate. It does not follow that because the tribunal would*

not have regarded the acts complained of as unacceptable, the complaint must be dismissed."

Reasonable Adjustments

84. Where a provision, criterion or practice of an employer places a disabled person at a substantial disadvantage in relation to a relevant matter, as compared with persons who are not disabled, the employer is under a duty to take such steps as it is reasonable to have to take to avoid that disadvantage.

85. *'Substantial'* is defined by *s.212(1) of the EqA 2010* as *"more than minor or trivial."* A tribunal must therefore test whether the PCP has the effect of disadvantaging the disabled person more than trivially in comparison with others who do not have the disability whilst considering the nature and extent of the disadvantage (*Sheikholeslami v Edinburgh University [2018] IRLR 1090*)

86. *Paragraph 20 of Schedule 8 to the Equality Act 2010* provides that an employer is not under a duty to make reasonable adjustments if it does not know, and could not reasonably be expected to know, that: (i) the individual concerned has a disability; and (ii) the individual is likely to be placed at a substantial disadvantage by the employer's provision, criterion or practice when compared with persons who are not disabled.

87. The Claimant has the burden of proving not only that the duty has arisen, but that there are facts from which it could reasonably be inferred, absent an explanation, that it has been breached. What a claimant must do is raise the issue as to whether a specific adjustment should have been made. The burden then shifts to the Respondent to argue that this was not reasonable: *Project Management Institute v Latif 2007 IRLR 579, EAT* .

88. In *Smith v Churchills Stairlifts plc 2006 ICR 524, CA*, the Court of Appeal confirmed that the test of reasonableness in the context of what is now *s.20 of the Equality Act 2010* is an objective one and it is ultimately the Employment Tribunal's view of what is reasonable that matters.

89. A failure to consider whether a particular adjustment would or could have removed the disadvantage amounts to an error of law: *Romec Ltd v Rudham [2007] All ER(D) (206) (Jul), EAT*.

90. However, we bear in mind that the reasonableness of an adjustment should not be seen in isolation if there are other adjustments that can be made: *Burke v College of Law [2012] All ER(D) 29*. We further take into account the Court of Appeal's

observations in *Griffiths v Secretary of State for Work and Pensions [2017] ICR 160*:

> *"So far as efficacy is concerned, it may be that it is not clear whether the step proposed will be effective or not. It may still be reasonable to take the step notwithstanding that success is not guaranteed; the uncertainty is one of the factors to weigh up when assessing the question of reasonableness."*

91. In *Leeds Teaching Hospital NHS Trust v Foster EAT 0552/10* the EAT made it clear that there does not necessarily have to be a good or real prospect of an adjustment removing a disadvantage for that adjustment to be a reasonable one. It is sufficient for the tribunal to find that there would have been a prospect of the disadvantage being alleviated.

92. Where a provision, criterion or practice places a disabled employee at a disadvantage, the duty to make reasonable adjustments arises as soon as the employer is in a position to take steps which it is reasonable for the employer to have to take to avoid the relevant disadvantage (*Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 640*).

Conclusions

Time limits

93. Early conciliation began on 16 June 2025 and concluded on 28 July 2025. The claim form was presented on 19 August 2025.Therefore any complaint arising before 17 March 2025 is out of time unless it is part of conduct extending over a period.

94. In our view, the evidence demonstrates an ongoing state of affairs rather than a series of isolated or discrete acts. From 20 January 2025 onwards the Claimant was subject to a continuous course of management responses to the same underlying disability and the same constellation of difficulties arising from it.

Direct Discrimination

95. The Claimant's complaint of direct discrimination is confined to the allegation that Mr Rhoden failed to make contact with her after indicating that he would do so.

96. We have already made findings of fact that Mr Rhoden informed the Claimant’s partner that he would telephone the Claimant, and that no such call was received. We further find that Mr Rhoden made a single attempt to contact the Claimant, which did not connect as he used an outdated telephone number, and that he made no further attempts thereafter.

97. In those circumstances, we do not consider that this amounts to less favourable treatment for the purposes of *section 13 Equality Act 2010*. Firstly, Mr Rhoden did make an attempt to contact the Claimant and was not able to do so because she had changed her number. While we consider it would have been good practice to make further attempts to contact the Claimant, we do not consider that Mr Rhoden would have made such further attempts for an employee who a not disabled either. Communication channels remained open and she was able to, and did, correspond with the Respondent regarding pay, leave, and other matters during her absence. We are consequently not satisfied that this is less favourable treatment.

98. We are further not satisfied that the failure to make further contact was because of the Claimant’s disability. We accept Mr Rhoden’s evidence that he did attempt to make contact and that, at the material time, he was uncertain how to progress matters given that the Claimant was signed off as unfit for work with no adjustments identified. We also take into account that, in her email of 16 April 2025, the Claimant expressly stated that she was not in a position to discuss a return to work. Further, while we make no finding that the Claimant used the precise wording attributed to her, we do accept that she had been critical of Mr Rhoden’s conduct arising from the meeting of 11 February 2025. We find that these factors led Mr Rhoden to adopt a cautious approach to further communication. Accordingly, we are satisfied that the limited contact was attributable to those circumstances, rather than to the Claimant’s disability.

Harassment

February 2025 Mr Varvara

99. As to the allegations that Mr Vavara had stated that he had overcome depression twice and asked the Claimant to prove her diagnosis, we have made factual findings that Mr Varvara did make reference to having overcome depression and did ask the Claimant for some form of evidence relating to her condition. However, we consider that these comments were not made in a pejorative or dismissive sense. Rather, for reasons outlined above, we consider Mr Varvara was requesting further medical evidence to inform discussion moving forward following on from the request on 20 January and was relating his own experience of depression to the Claimant.

100. We do not accept that the comments either had the purpose or the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. We have already expressly rejected the Claimant's assertion that she was visibly upset following that discussion as this was not witnessed by Mr Rhoden and we do not consider it plausible that she would have been able to continue with the discussions lasting the length that they did if she was already upset at the outset.

101. As outlined above, we find that what was later discussed in the formal meeting with all three present, tainted her view of the discussion with Mr Varvara beforehand and led to her perceiving his comments as questioning or minimising her condition when this was not in fact the case.

102. However, had we accepted that the comments did have the effect of violating the Claimant's dignity we would have nevertheless considered that it would not have been reasonable for the comments to have had that effect. Viewed objectively, the comments were made in the context of a workplace discussion about health, capability, and the need for medical evidence. Applying the tribunal's specialist expertise we find that the request for supporting information, even if unartfully expressed, is not inherently inappropriate in that setting. Similarly, a reference to personal experience of depression, without more, is capable of being understood as an attempt at empathy. There was no aggressive, derogatory or mocking language, no repetition, and no conduct which could properly be characterised as hostile or demeaning. In those circumstances, and taking into account the context and content of what was said, it would not have been reasonable for the comments to give rise to the statutory effects relied upon.

11 February 2025 Mr Rhoden

103. As to Mr Rhoden's alleged made comments suggesting that reasonable adjustments could be exploited for an easy day and questioned whether the role was suitable for the Claimant, we have not accepted that Mr Rhoden used the language alleged by the Claimant. We have accepted that Mr Rhoden did discuss that there would insufficient suitable work available in other departments as part of discussions around the practicality of accommodating reduced duties and the potential implications if similar requests were made by others. We have found that any comments on whether the Claimant remained suitable for the role were made in discussion about whether a physically demanding production role was compatible with the Claimant's symptoms, particularly given her own account that her physical and mental health were deteriorating.

104. We accept that this was not what the Claimant wanted to hear as she felt that she could be accommodated with reduced duties in another department. We do not however accept that this had the purpose or the effect of violating the Claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. While we have accepted that the Claimant was upset following the meeting we find that this was due to her suggestions as to adjustments not being accepted and frustration at the perceived unreasonableness of the Respondent's approach.

105. In any event, had we found that the comments did have the effect of violating the Claimant's dignity, we would not have considered it reasonable for them to do so. The discussion was directed towards assessing what work, if any, the Claimant could realistically undertake and the operational feasibility of any proposed adjustments. Expressions of concern about the availability of suitable duties, or the sustainability of reduced duties within a production environment, are an inherent and legitimate part of such a discussion. The comments were not expressed in abusive, mocking or derogatory terms, nor were they repeated or pursued in an oppressive manner. They reflected a managerial consideration of operational constraints and workforce implications, including the impact if similar arrangements were sought by others. Further, the question of whether the role remained suitable was a rational and foreseeable issue to explore in circumstances where the Claimant herself indicated that her condition was worsening. In those circumstances, viewed objectively, the comments were neither extreme nor inappropriate in tone or content, and it would not have been reasonable for them to give rise to the statutory effects relied upon.

106. Whether the Respondent's refusal to consider the Claimant's proposed adjustments was unreasonable does however form part of our consideration in respect of the claim for failing to make reasonable adjustments.

Lack of response to emails on 16 April 2025 to 15 July 2025

107. There is no evidence before us of the Respondent initiating meaningful contact with the Claimant.

108. While Mr Rhoden did respond to all of the emails sent directly to him and regarding payroll and holidays, he did not respond to the Claimant's emails and attempts to open a dialogue around putting together a plan for her to return to work. In her email on 16 April 2025, she stated she was willing to engage in any conversations that he felt are appropriate or necessary. At this stage she had no meaningful contact in terms of managing her absence for 2 months. He further did not take appropriate steps to contact the Claimant on or around 29 April 2025.

Having said he would do so, it is surprising that he attempted to call her number just once. He could have sent her an email. He could have notified the Claimant's partner of his attempt. He did neither of these things. Nor did she receive a response to her subsequent email of 4 June 2025, in which she more clearly sought proactive steps to support a return to work. Those communications, particularly when taken together, amounted to an attempt by the Claimant to re-open dialogue beyond purely administrative matters. This was again re-emphasised by her email of 23 June 2025 again chasing a response.

109. We accept that it had the effect of creating an environment which violated the Claimant's dignity in that she found this isolating and distressing. The contemporaneous correspondence supports this: in her email of 4 June 2025 the Claimant expressly stated that the lack of engagement was affecting her daily, that she felt isolated, and that the absence of any check-in had increased her anxiety. In circumstances where the Claimant was absent on long-term sickness, had an ongoing health condition which included anxiety, and had previously engaged with her managers regarding her difficulties we accept that this did give rise to feelings of uncertainty, isolation and distress. We also take into account that Mr Rhoden accepted that there had been a prolonged period without direct contact of a supportive or welfare nature. Against that background, we are satisfied both that the conduct had the effect described and that it was reasonable for it to do so.

110. However, we do not find that this conduct was related to the Claimant's disability. The evidence does not establish that the lack of response arose because of, or was influenced by, the Claimant's fibromyalgia or associated conditions. Rather, we find that it arose from a combination of other factors. In particular, Mr Rhoden's evidence, which we accept, was that he understood the Claimant to have stated that she was not in a position to discuss a return to work, and that she continued to submit fit notes indicating that she was not fit for work with no suggested adjustments. In addition, there had been criticism of his conduct arising from the meeting of 11 February 2025, which contributed to a degree of caution or reluctance in engaging further on matters beyond administrative necessity. We further note that he did continue to respond to emails which required a practical or administrative answer, including those relating to pay and holiday.

111. Drawing these matters together, we are satisfied that the failure to engage more fully was the product of Mr Rhoden's view that there were no changes to the Claimant's role that could reasonably be made, uncertainty as to how matters could progress and a degree of caution in light of prior interactions, rather it relating to the Claimant's disability.

Reasonable Adjustments

Knowledge

112. We consider that the Respondent knew, or could reasonably have known, that the Claimant was disabled by reason of fibromyalgia at the point when she informed the Respondent of her diagnosis on 20 January 2026. At that stage, the Respondent was already aware that the Claimant had been absent from work on several occasions in connection with pain. The return-to-work form dated 31 October 2024 refers to *"chronic pain."* Taken together with confirmation of her diagnosis, we find that the Respondent ought to have known that the Claimant was disabled as at that date.

113. We consider that the Respondent knew, or could reasonably have known, that the Claimant was disabled by reason of anxiety from the date of receipt of the letter from her GP dated 4 December 2025. While we note that the Claimant had a history of anxiety and depression dating from 2019, she neither informed the Respondent of this, nor that it amounted to a disability, in her new starter form.

114. The Claimant has provided no cogent evidence to establish that she informed her employer that she was disabled by reason of anxiety/depression prior to going off sick on 13 February 2025. We accept that, in the meeting on 11 February 2025, she stated that her mental health was deteriorating. However, in our judgment, that statement alone is insufficient to amount to constructive knowledge of disability. Nor do we consider that the Claimant's references in emails over the summer of 2025 referring to anxiety and her mental health deteriorating suffice. The Claimant did begin submitting fit notes in October and November referring to a diagnosis of anxiety, and at the same time maintained that she was too unwell to participate in an occupational health assessment. However, she was not sufficiently explicit in those communications to place the Respondent on notice that her anxiety had or would have a substantial long-term adverse effect on her abilities to carry out day-to-day activities of a degree capable of amounting to a disability.

115. We find, however, that once that information is considered in the context of the Claimant's confirmed diagnosis as set out in the GP letter dated 4 December 2025, it would have been sufficient for a reasonable employer to conclude that the Claimant was likely to be disabled by reason of anxiety as well.

Provision, Criterion or Practice (PCP)

116. With the exception of the practice of requiring employees to perform their substantive duties, we do not consider that the remaining PCPs relied on by the Claimant amount to a PCP. The PCP's as defined by the Claimant confuse what was allegedly done wrong with wider practice and procedure:

116.1. This is particularly clear in relation to the first PCP, which is expressed as a practice of failing to make adjustments for employees with chronic health conditions. The evidence demonstrates that the Respondent had, in practice, made adjustments for other employees where appropriate. The Claimant herself accepted that she was aware of other employees being referred to Occupational Health. Further, Mr Wernick gave evidence of a number of instances in which employees with chronic conditions were supported and adjustments were considered and implemented, including an example of an employee who remained in work with adjustments in place. The Respondent did make adjustments in the Claimant's case by informally agreeing that the Claimant undertake light duties and take frequent breaks following the meeting on 20 January 2025. The issue is not that there was a failure to make adjustments; rather, the Claimant contends that more should have been done. The evidence does not demonstrate a blanket refusal or failure to consider adjustments. This was not a PCP operated by the Respondent.

116.2. The third PCP relied on is an alleged practice of prolonged lack of communication for employees on sickness absence. There is no evidence to suggest that this was a PCP applied generally within the Respondent's organisation. Again, the Claimant has mischaracterised what she says the Respondent failed to do as the PCP. However, even in this specific case, the documentary evidence shows that there was ongoing communication between the parties throughout the Claimant's absence, particularly in relation to pay, holiday entitlement and administrative matters, and that those queries were generally addressed promptly. Whilst we have found that there were shortcomings in the level of proactive or supportive contact from Mr Rhoden, that does not establish the existence of a general provision, criterion or practice of non-communication. We have already made findings above that the pattern of communication reflects the particular dynamics of this case rather than any overarching policy or practice.

116.3. As to the fourth PCP, this was framed as an alleged practice of failing to follow internal policies on sickness management, mental health support and employee wellbeing. The evidence demonstrates that the Respondent had systems in place directed towards employee welfare, including access to support resources and established internal processes for managing absence.

116.4. We accept that in this case the sickness absence policy was not appropriately followed:

116.4.1. Mr Rhoden failed to communicate and agree the method and frequency of contact with the Claimant while she remained absent from work. It was the Claimant who took proactive steps to remain in contact through provision of continuing proof she was unfit to work and the emails she sent raising various queries.

116.4.2. By contrast, there was no structure, clarity or proactive steps taken on behalf of the Respondent to maintain meaningful contact with the Claimant, to obtain further information to better understand how her condition was affecting her ability to work or to ascertain whether there was anything to do to help her return, until after her claim was issued.

116.4.3. The policy does provide a degree of discretion as to the manner and degree of contact. Applying the specialist expertise of the tribunal we however find that the lack of contact in this case fell below the degree to be expected from a reasonable employer properly applying the sickness and absence policy. This however in our view demonstrates a failing in this individual case and not a systemic failure, provision criterion or practice.

117. We do, however, consider that there was a PCP of requiring employees to perform their substantive duties, and that any variation to those duties would only be made by agreement. It is standard practice for employees to be required to carry out the tasks they have been engaged to perform. Furthermore, this practice is reflected in the Respondent's own policies and was the approach applied in this particular case.

118. We acknowledge that the PCP is expressed in the List of Issues as *"requiring employees to perform full duties without modification regardless of medical advice or individual capability."* However, we are not required to adhere slavishly to the agreed List of Issues where to do so would impair the discharge of our core duty to hear and determine the case in accordance with the law and the evidence: *Price v Surrey County Council UKEAT/0450/10*. The Respondent has been legally represented throughout, and it was eminently clear that a central issue in the claim was the Respondent's refusal to modify the Claimant's duties in the manner she considered appropriate. Evidence was adduced, questions were asked, and submissions were made which fully ventilated this issue. We therefore do not

consider that it would be unfair to alter the formulation of this PCP to the limited extent we have.

Substantial Disadvantage

119. We accept that the PCPs identified placed the Claimant at a substantial disadvantage by reason of the physical nature of her role. The Claimant's role was inherently physically demanding, involving activities such as working at height, lifting, and repetitive physical tasks. In light of the Claimant's fibromyalgia diagnosis and reported symptoms, we find that this placed her at a disadvantage compared to a person without that condition.

120. In particular, the evidence before us demonstrates that certain aspects of her duties caused her pain, exacerbated her symptoms, triggered flare-ups, and contributed to ongoing fatigue. This is evidenced by the Claimant's absences in October and November 2024 (before she was formally diagnosed), comments in the meeting of 11 February 2025 that her physical and mental health were deteriorating and her subsequent long term sickness absence supported by fit notes from her GP stating that she was not fit for work. Based on this evidence we further find that, having to carry out her substantive role also resulted in a deterioration in the Claimant's physical health.

121. We further accept the Claimant's evidence that this situation gave rise to psychological distress and a deterioration in her mental health. This is entirely plausible taking into account the pain she would have been in and uncertainty around being able to perform her role.

122. For the reasons given above, we accept that the Claimant was not able to continue to perform her substantive role and therefore was not in a position to return to work without adjustments.

123. While it is right to say that the Claimant is not in a position to return to work without adjustments, we consider that the PCP of having to carry out her role has not forced the Claimant out of employment. The Claimant remains employed.

Knowledge

124. We find that the Respondent knew, or could reasonably have been expected to know that the PCP of having to carry out her substantive role would cause her pain,

exacerbate her symptoms, trigger flare-ups, and contribute to ongoing fatigue. These would have been reasonable conclusions to draw following the Claimants absences in October and November 2024, the information she provided in the meetings of the 20 January 2025 and 11 February 2025 to that effect and her subsequent sickness absence supported by fit notes from her GP thereafter.

125. The Claimant's role was an inherently physical one and we therefore consider that the Respondent could reasonably have been expected to know that carrying out her substantive role without modification was unlikely to be feasible and result in absence from work. The deterioration of the Claimant's mental health was a further foreseeable consequence of this.

126. The Claimant disclosed her diagnosis and symptoms at the meeting on 20 January 2025, and adjustments were discussed and implemented on a temporary basis. The Respondent was therefore aware that aspects of the Claimant's role caused her difficulty and had the potential to exacerbate her condition. In those circumstances, we are satisfied that the Respondent had actual, or at the very least constructive, knowledge of the substantial disadvantage.

Reasonable Adjustments

127. The addition adjustments proposed by the Claimant need to be considered in the context of the adjustments already agreed in the meeting of 20 January 2025, which included light duties and frequent breaks.

128. We are satisfied that the Claimant has discharged the initial burden of proof by identifying adjustments which might have alleviated the substantial disadvantage identified. In particular, she relied upon redeployment to an alternative department, most notably stores. There is evidential support for this proposition. The Claimant had previously been placed on amended duties in stores following her hand fracture. In our view, this demonstrates that it was both possible and practicable for her to undertake work in that environment on a modified basis. It was not suggested by the Respondent's witnesses that, during her redeployment with a broken hand, she was effectively idle or undertaking low levels of work.

129. Mr Rhoden stated that work in stores was potentially the most suitable alternative role, but disagreed that it would have been reasonable to redeploy her on the basis as there would have been little meaningful work for her to do. While we accept that he has day-to-day operational knowledge of the roles within the organisation, the reliability of his and Mr Wernick's evidence on this point is undermined by the lack of any proper investigation into the Claimant's condition

and capabilities. Mr Rhoden's views were based largely on discussions with the Claimant on 20 January and 11 February 2025, both of which took place shortly after she received her diagnosis, she was on new medication and her symptoms (and what would support to mitigate her symptoms) were not fully understood.

130. The Respondent relies on the fit notes provided by the Claimant's GP. However, there is no evidence that the GP possessed a sufficiently detailed understanding of the range of duties within the Respondent's organisation or of the adjustments potentially available so as to reach an informed and conclusive view on the Claimant's fitness for work or the scope for adjustment. In those circumstances, it was not reasonable to place significant or determinative reliance on those notes as conclusively demonstrating that no adjustments were possible or further investigations were necessary.

131. Mr Rhoden's opinion was not based on any structured or documented assessment of alternative roles against the Claimant's stated limitations, nor on any consideration of how duties might be modified. No trial arrangements were explored, and no follow-up plan was implemented. In effect, he maintained the view he had formed on 11 February 2025 and took no steps thereafter to obtain an up-to-date assessment of the Claimant's capabilities as time progressed. This is of particular importance given the nature of fibromyalgia as a fluctuating condition. The evidence, including the Claimant's account from 11 February onwards, indicates variability in symptoms rather than a fixed incapacity. No meaningful consideration was given to adjustments that might have accommodated that variability.

132. Mr Rhoden also placed considerable weight, both in his witness statement and in oral evidence, on what he described as a deterioration in the Claimant's condition. However, that deterioration must be viewed in context. The Claimant had received a relatively recent diagnosis and was still developing an understanding of her symptoms. The adjustments that had been implemented were informal, recent, and may have been insufficiently refined. It appears that no consideration has been given to the possibility that the Claimant's symptoms could have been deteriorating because the adjustments had not been properly refined or implemented. The evidence in our view does not demonstrate a conclusive and irreversible deterioration in physical symptoms, but rather that this was the position before she went on sick leave. In our view, these factors diminish the weight to be attached to Mr Rhoden's opinion as to the Claimant's capabilities.

133. As such we consider that maintaining meaningful communication would have assisted in ensuring a better understanding of the Claimant's capabilities.

134. The principal reason advanced in evidence for rejecting stores was that the Claimant would be required to perform tasks involving lifting or reaching above shoulder height. However, we have not been provided with supporting evidence enabling us to conclude that this was a significant part of the role or could not have been mitigated in any other way. Furthermore, even though she was struggling to lift her arms above her shoulders in February 2025, taking into account the fluctuating nature of her condition and with better adjustments overall, her capabilities may well have improved.

135. The description of the role in stores from Mr Wernick's statement involves stacking, picking and distribute materials. We find that this would be a less physical role than the Claimant's original role, which included cleaning, fitting and pulling steel sheeting, fixing timber, using power tools including impact drivers and heat guns including work at height up ladders, scaffolding towers, mobile elevated work platforms. In particular, there would be less of a need for bending and twisting in a stores-based role. We heard from the Claimant that there were items in stores such as boxes of nails she could carry in one hand. We were given no specifics from the Respondent to demonstrate that the majority of the items in stores were heavy and/or bulky.

136. As such, we consider that redeployment to stores would have eliminated elements of physicality required in her role as production operative and in our view would have likely avoided the disadvantages arising from her substantive role.

137. We note from Mr Wernik's statement that there were a number of different roles available. Exploring different roles and how these could be modified may well have resulted in further suitable alternatives being found.

138. Maintained communication and proactive consideration of alternative roles, taken together with the option of redeployment would likely have assisted in identifying adjustments to avoid the disadvantage. We therefore find that all three suggested adjustments would have likely contributed to avoiding the disadvantage to the Claimant.

139. In our view, the adjustments proposed by the Claimant would have all been reasonable adjustments to make. We do not accept the assertion put forward by the Respondent that there would have been insufficient work for the Claimant in Stores which would have resulted in redeployment being unreasonable. For the reasons given above, we do not accept Mr Rhoden's opinion that the Claimant would have been unable to only perform a small part of the role as this was not based on a proper investigation/understanding of the Claimant's capabilities or proper investigation or testing of options and alternatives as set out in more detail above.

140. As to when it would have been reasonable to implement these adjustments, we do not find it unreasonable for the Respondent to have rejected redeployment in February 2025.

141. At that stage, the Respondent had only recently been informed of the Claimant's diagnosis (on 20 January 2025), adjustments had already been introduced on a temporary basis within her existing role, and there had been limited time to assess their effectiveness. Further, there was no contemporaneous medical evidence providing detailed guidance as to her functional limitations or suitable alternative duties. In those circumstances, it was open to the Respondent to adopt a cautious approach.

142. However, we find that the position changed following the Claimant's email of 4 June 2025. By that stage:

142.1. the absence had become prolonged;
142.2. the Claimant expressly indicated that the lack of contact was affecting her adversely; and
142.3. she signalled a willingness to engage in discussions about steps to support a return to work.

143. In those circumstances, it was reasonable to expect the Respondent to re-engage proactively, including:

143.1. maintaining meaningful communication;
143.2. exploring alternative roles in greater detail; and
143.3. reconsidering adjustments, including redeployment.

144. In particular, at that stage the Respondent ought reasonably to have progressed to a more detailed consideration of the Claimant's capabilities and options for such redeployment, including by obtaining an occupational health report, obtaining further information on less physical tasks available, consulting with the relevant departments, or arranging a trial.

145. We therefore find that the Respondent should have engaged more meaningfully with the Claimant and more proactively explored alternative, adjusted roles from 10 June 2025 onwards. We further consider that has this take place it would have been reasonable to move the Claimant to a different department, such as stores by 7 July 2025, if only on a temporary basis. Given the main concern was that the Claimant would still not be able to carry out most of the tasks in Stores it would at that stage have been reasonable to offer the move in order to ascertain whether this was the case.

146. The Respondent did not implement these adjustments and so has failed to comply with its duty under *s. 20 of the Equality Act 2010* to make reasonable adjustments on this basis. We therefore consider this element of the claim to be well-founded.

Employment Judge Grubb

Date: 06/06/2026

REASON SENT TO THE PARTIES ON
06 July 2026

Kacey O'Brien
FOR THE TRIBUNAL OFFICE

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