



EMPLOYMENT TRIBUNALS

Claimant: Miss V Williams

Respondent: South England Conference

Heard at: Bury St Edmunds (by video)

On: 18, 19, 20, 21, 22 and 25 September 2023
19 March 2024
11 November 2024
18, 19, 20, 21 and 22 August 2025
11, 16 and 20 February 2026
1 April 2026
29, 30 June and 1 July 2026 (in chambers)

Before: Employment Judge Graham

Members: Mrs L Gaywood
Mr T Doyle

Representation

Claimant: Self Representing

Respondent: Mr T Fuller, Litigation Consultant
Mr P Warnes, Litigation Consultant

RESERVED JUDGMENT

It is the unanimous decision of the Employment Tribunal that:

1. The complaints of automatic unfair dismissal and ordinary unfair dismissal fail and are dismissed;
2. The complaint of failure to implement reasonable adjustments fails and is dismissed; and
3. The complaints of direct sex discrimination fail and are dismissed.

REASONS

Introduction and procedural history

1. This claim has a long and complex procedural history. ACAS Early Conciliation took place between 6 August and 20 September 2020. The Claimant filed her ET1 on 20 October 2020 in which she made complaints of unfair dismissal, disability discrimination, and also sex discrimination. The Claimant made reference to suffering from stress, depression and anxiety.
2. The Respondent filed an ET3 Response on 11 December 2020 resisting the claim. At this time the Respondent denied that the Claimant was disabled.
3. A preliminary hearing for case management took place on 27 July 2021 before Employment Judge Allott at which time the legal issues were clarified and case management directions were issued.
4. The final hearing was due to take place from 1 – 5 August 2022 however this was postponed on 2 August 2022 following a request for one of the Claimant's witnesses to give evidence from the Netherlands.
5. Prior to the postponement of the hearing the Respondent conceded that the Claimant suffered from a disability at the material times by virtue of her conditions of anxiety and depression. Knowledge of the same was not conceded. The hearing length was extended from five days to eight.
6. The final hearing commenced on 18 September 2023 and the first day was used to confirm the issues and for the Tribunal to read in. The Respondent conceded that Issue 4.16.1 was a PCP. The cross examination of the Claimant commenced on 19 September 2023.
7. It was agreed that there would be breaks after every 30 minutes or so of the Claimant's witness evidence to accommodate her underlying mental health conditions. The Claimant was encouraged to indicate if she needed more breaks than that, and all these requests were granted.
8. During the hearing there were occasions when it was clear to see that the Claimant was beginning to struggle due to her mental health as she would either lower her head, become tearful or appear frustrated, or would disengage and give one word answers after having previously given what might be described as far longer answers to questions. On occasions where I could see the Claimant was struggling I would make enquiries of the Claimant's health and direct a further break. The hearing finished earlier on some days when the Claimant appeared to be struggling with her health. The Respondent has asked the Tribunal to bear in mind that the Claimant did not display all of these symptoms at the material time and it suggested that these may be attributable to other conditions beyond the disabilities relied upon, or possibly undiagnosed.
9. On 25 September 2023 we finished hearing the Claimant's evidence at 12.30pm. The Tribunal deemed it inappropriate to commence the Respondent's evidence then as the matter was going to go part heard until March 2024 and it would be unfair for whichever of the Respondent's witnesses was called to remain under oath for six months.

10. The matter was listed for a further five days from 19 March 2024. That hearing was adjourned shortly after it started as the Claimant's brother unfortunately passed away at that time and the Claimant was in no fit state to take part in the hearing. The Respondent pragmatically did not object to a postponement.
11. The matter was then listed for a further five days from 11 November 2024 however that was adjourned as the Respondent was not in attendance. It transpired that there had been a change of lawyer and the Respondent's new lawyer had not received notice of the hearing. This was the fault of the Tribunal for which I apologised to the parties.
12. The matter was again listed for a further five days from 18 August 2025, just under two years since the hearing commenced before the panel, and just under five years since the ET1 was filed. We were unable to complete the witness evidence in that time because Ms Crawford could only attend to give evidence on Tuesday 19 August 2025, however as we started the hearing late that day to accommodate the Claimant who appeared anxious or unwell at the start of the day, we could not therefore hear from Ms Crawford that week.
13. Moreover Pastor Boldeau could not access his bundle after his evidence began which meant he was released from oath after the start of his evidence and he needed to appear later in the week, and it later transpired that Pastor Osei was in Ghana but the Respondent did not have permission for him to give evidence from that country, so he would need to give evidence later when he was back in the UK. The Presidential Guidance on Giving Evidence from Abroad was updated in the period between the hearings in early 2025. In addition, there was a lack of judicial resource on the afternoon of Friday 23 August 2025, however that proved to be irrelevant as we completed the evidence of Pastor Surridge, Pastor McCormac, and Pastor Boldeau by 11am that morning.
14. The hearing was therefore adjourned for a fourth time, and we listed the matter for 11 February 2026 for Pastor Osei to give evidence; 16 February for Ms Crawford to give evidence; and 20 February for closing submissions. Unfortunately, there were further difficulties in this case.
15. On 16 February 2026 the Claimant's broadband failed due to work being done outside her home. We adjourned a fifth time and put Ms Crawford's evidence back until 20 February, however when we started the hearing the Claimant was playing music which she could not turn off. We therefore started 15 minutes later, at which point the Claimant's broadband started to fluctuate. I advised the Claimant that she would need to ensure she had working broadband or we would convert to an in-person hearing, or if neither of those could be achieved we would look at whether a fair hearing was no longer possible which could ultimately result in a strike out.
16. Whereas the Claimant's broadband fluctuated it was possible to complete Ms Crawford's evidence, although the Claimant had to repeat a number of her questions for us to hear. I imposed a time limit of 3pm by which Ms Crawford's evidence needed to be completed, and I extended that until 3.30pm as the Claimant said she felt under pressure. The witness evidence ended on 20 February 2026.

17. At the start of the hearing we were provided with a hearing bundle of 744 electronic pages, and a small number of additional documents, one of which was provided by the Respondent on 20 February 2026 to which the Claimant agreed then objected, however we admitted into evidence as it had some relevance and there was no real prejudice to the Claimant.
18. We were provided with an 82-page witness statement from the Claimant, and also a statement on her behalf from Sha-Lee Worrell. Ms Worrell did not attend to give evidence, and as her statement was irrelevant to the legal issues in the case, we placed no weight on it.
19. For the Respondent we received witness statements from Pastor Douglas McCormac (Executive Secretary of the SEC), Pastor Keith Boldeau (former pastor of Brixton Church); Pastor (Dr) Emmanuel Osei (President of the SEC); Pastor John Surridge (Executive Secretary of the British Union Conference); and Jacquelin Crawford (HR Manager of the SEC).
20. There were very few disputes of fact for the Tribunal to resolve in this matter. The length of the judgment is due to the number of legal issues to be decided and the complex factual background to the claim.
21. I informed the parties that the Tribunal would meet for deliberations on 29 and 30 June and 1 July 2026 and we would aim to issue a judgment promptly, however we know that there are delays in this Tribunal region in sending out judgments for which I apologised in advance for any delay in receiving this judgment, not least because of the length of time over which this matter has gone on.
22. I wrote to the parties on 27 May 2026 seeking further submissions from them on the reason for dismissal, and this is addressed in the Submissions section later in this judgment.
23. The Tribunal found that all those who gave evidence in these proceedings, on both sides, gave honest and reliable evidence, and we had no reason to question the veracity of anyone's evidence to us. We were also most grateful to the parties (and the Respondent's lawyers) for the cooperative and reasonable manner which they conducted themselves before us in these proceedings.

Legal Issues

24. The legal issues to be decided by the Tribunal as set out in the Case Management Summary of 27 July 2021 are set out below. The matters which we subsequently did not need to decide have been struck through.

~~Time limits / limitation issues~~

~~4.1 Were all of the Claimant's complaints presented within the time limits set out in the Equality Act 2010 ("EQA"). Dealing with this issue may involve consideration of subsidiary issues including: whether there was an act and/or conduct extending over a period, and/or a series of similar acts or failures; whether time should be extended on a "just and equitable" basis.~~

Unfair dismissal

4.2 What was the principal reason for dismissal and was it a potentially fair one in accordance with sections 98(1) and (2) of the Employment Rights Act 1996 ("ERA")? The Respondent asserts that it was conduct, namely failure to follow a reasonable management request.

4.3 Did the Respondent genuinely believe in the reason and was that belief based on reasonable grounds following a reasonable investigation?

4.4 If so, was the dismissal fair or unfair in accordance with ERA section 98(4), and, in particular, did the Respondent in all respects act within the so-called "band of reasonable responses"?

Section 100 ERA, Health and Safety cases automatically unfair dismissal.

4.5 Were there circumstances of danger at Brixton SDA Church?

4.6 Did the Claimant reasonably believe any such circumstances of danger to be serious and imminent?

4.7 If so, could the Claimant not reasonably have been expected to avert such danger?

4.8 Did the Claimant refuse to return to her place of work or any dangerous part of her place of work?

4.9 If so, was the principal reason for the Claimant's dismissal that she had refused to return to her place of work?

EQA, section 13: direct discrimination because of sex

4.10 Did the Respondent subject the Claimant to the following treatment?

4.10.1 Requiring her to work at Brixton SDA Church.

4.10.2 ~~Subjecting her to the disciplinary process.~~

4.10.3 Dismissing the Claimant.

4.11 Was that treatment "less favourable treatment", i.e did the Respondent treat the Claimant as alleged less favourably than it treated or would have treated others ("comparators") in not materially different circumstances?

4.12 The Claimant relies on the following hypothetical comparator, namely a male Bible Worker.

4.13 If so, was this because of the Claimant's sex?

Disability

~~4.14 Was the Claimant a disabled person in accordance with the Equality Act 2010 ("EQA") at all relevant times because of the following conditions, anxiety and depression?~~

Reasonable adjustments: EQA, sections 20 & 21

4.15 Did the Respondent not know and could it not reasonably have been expected to know that the Claimant was a disabled person?

~~4.16 Did the Respondent have the following PCP(s):~~

4.16.1 The requirement to work at Brixton SDA Church

4.17 Did any such PCP put the Claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled at any relevant time?

4.18 If so, did the Respondent know or could it reasonably have been expected to know the Claimant was likely to be placed at any such disadvantage?

4.19 If so, were there steps that were not taken that could have been taken by the Respondent to avoid any such disadvantage? The burden of proof does not lie on the Claimant; however it is helpful to know what steps the Claimant alleges should have been taken and they are identified as follows:

4.19.1 Redeploying her to work at a site other than Brixton SDA Church.

4.20 If so, would it have been reasonable for the Respondent to have to take those steps at any relevant time?

Remedy

4.21. If the Claimant succeeds, in whole or in part, the Tribunal will be concerned with issues of remedy and in particular, if the Claimant is awarded compensation and/or damages, will decide how much should be awarded.

25. The Claimant has confirmed that her automatic unfair dismissal complaint is brought on the basis of s. 100(1)(d) Employment Rights Act 1996. The Claimant has also confirmed that issue 4.10.2 is no longer pursued as she said she had not been subjected to a disciplinary process. The Respondent confirmed that it did not seek to argue that any claims had been brought out of time, and it did not appear to us that there was an issue over time in any event.
26. The list of issues did not indicate in what way the Claimant says that the PCP of requiring her to work in the Brixton Church put her to a substantial disadvantage in comparison with those who do not share her disability. During the Claimant's cross examination of the witnesses, she struggled to put this part of her claim to them, and she was reminded on numerous occasions by me to put her case to the Respondent's witnesses. I raised this not as a criticism of the Claimant but an attempt to ensure that (i) the Claimant had the opportunity to put her full case; and (ii) so the Respondent which is accused of discrimination had the opportunity to respond.

27. I explained the meaning of substantial disadvantage to the Claimant. The Claimant instead referred to the nature of the impairments rather than the substantial disadvantage, and I attempted to explain on a number of occasions what she needed to do. On occasion the Claimant referred generally to large parts of the bundle, for example pages 40-47 which contains her disability impact statement, and also a contemporaneous letter at page 306 of the bundle, however these set out the symptoms of the impairments rather than how the PCP of deploying to Brixton put her to a substantial disadvantage. The Claimant told us that she found it difficult to explain it to us.
28. It is unfortunate that the substantial disadvantage was not expressed in the list of issues, it is equally unfortunate that in the six years of the life of this claim it had not been clarified by anyone, it therefore fell to me to attempt to clarify the matter during the course of the hearing by rolling up one's sleeves and asking the obvious question as to how she says the PCP put her to a substantial disadvantage, noting that the legal test is not simply a disadvantage, but rather it must be a substantial one.
29. We understood from the Claimant's witness statement, the documents within the bundle (including her communications with the Respondent, and also the Occupational Health report), together with the Claimant's oral evidence, that she was saying that requiring her to work at Brixton Church, a church which she said had expressly rejected women in leadership, would require her to work in an environment that she considered was hostile to women in leadership roles. The Claimant said that it would seriously harm her mental health, undermine her role, expose her to hostility, and make it impossible for her (as someone with a recognised disability) to flourish and to work safely or effectively.
30. Further to that, the Claimant has explained that due to (unspecified) past trauma, her impairments cause her to feel threatened or unsafe when she is challenged or questioned and as she says she feels she is being forced to do something against her will, and consequently she will experience various stress symptoms which are set out in the findings of fact below.
31. Accordingly, and as will be detailed below, the Tribunal understands from the Claimant that when she was asked to move to Brixton Church she prayed to God who told her not to go; she then considered the environment was hostile and unsafe for women in leadership; and ultimately when told she must go, the effect was to cause her to feel threatened to do something against her will which triggered the symptoms listed below. This is what we understand to be the substantial disadvantage relied upon by the Claimant in connection with the PCP identified.
32. We make it clear that we do not criticise anyone for the substantial disadvantage not having been clarified and recorded earlier on. Discrimination claims can be complex matters, particularly so when it comes disability discrimination complaints which can be technical. Nevertheless, it is essential that the Claimant understands the case she is bringing; the Respondent understands the case it is to meet; and the Tribunal understands the case it is expected to decide.

33. We also make it clear that this judgment does not consider the lawfulness of the 2016 vote by the Congregation of the Brixton Church not to appoint female elders. That is not one of the matters before us; we have made no decisions about the vote itself; and in any event Parliament has decided that under Schedule 9 Part 1 Paragraph 2 of the Equality Act 2010, religious organisations are generally free to introduce rules about the gender of their spiritual leaders provided they reflect the beliefs of the religion in question.

Findings of fact

34. From the information and evidence before the Tribunal it made the following findings of fact. We made our findings of fact on the balance of probabilities taking into account all of the evidence, both documentary and oral, which was admitted at the hearing. We do not set out in this judgment all the evidence which we heard but only our principal findings of fact, those necessary to enable us to reach conclusions on the issues to be decided.
35. Where it was necessary to resolve conflicting factual accounts, we have done so by making a judgment about the credibility or otherwise of the witnesses we have heard based upon their overall consistency and the consistency of accounts given on different occasions when set against any contemporaneous documents. We have not referred to every document we read or were directed or taken to in the findings below, but that does not mean they were not considered.
36. The Respondent is part of the Seventh-day Adventists Church with around 230-250 churches across the country, and it operates under the British Union Conference. Each church will typically have a Pastor, and the Respondent is led by a President. The churches are divided into particular areas. This matter relates to Area 6B which is in South London.
37. The Claimant was initially employed by the Respondent as a Bible Worker by way of a one-year fixed term contract dated 1 January 2012. A permanent contract was issued on 19 May 2015. The Claimant had been recommended for appointment by Pastor Keith Boldeau.
38. The Claimant suffers from anxiety and depression, and she has produced a disability impact statement setting out in detail how these impact her. The Respondent has accepted that the Claimant was disabled at the material times due to anxiety and depression, save that it disputes knowledge at the material time.
39. The Claimant's impairments have a number of symptoms. These symptoms are not present all of the time. When the Claimant feels forced to do something against her will it brings back feelings of an unspecified past trauma, this triggers her anxiety and depression and the symptoms of which she says include high blood pressure, sickness, panic and hyperventilation, brain fog, and making it impossible for her to psychologically leave the house.
40. The Claimant has explained that she will also experience other symptoms once triggered, and these include weakness of the knees, light-headedness, fatigue, isolating and withdrawal, struggling to get out of bed, disruptive sleep pattern, poor eating habits and struggling to maintain

healthy choices, loss of interest and passion in some activities, forgetfulness and confusion, lack of concentration and focus, lack of motivation, difficulty maintaining relationships, low mood, unhappiness and feelings of hopelessness, feelings of fear and dread.

41. The Respondent's witness, Pastor John Surridge (Executive Secretary within the British Union Conference), in his oral evidence, expressed that whereas the Respondent did not know all of the Claimant's symptoms at the material time, it does accept in hindsight that these were her impairments at the time. Another of the Respondent's witnesses, Pastor Douglas McCormac (Executive Secretary of the Respondent) confirmed that he understood the impairments described by the Claimant to be genuine. Pastor Osei also confirmed that whereas he was not aware of the symptoms he did not dispute that the Claimant had experienced them.
42. Upon appointment the Claimant was assigned to the Croydon congregation which is within the South London 6B Area. The Claimant has repeatedly referred to herself as an Area Bible Worker, whereas the job description and her contract of employment both refer to the role of Bible Worker. We did not consider that anything of importance turned on whether the Claimant was a Bible Worker or an Area Bible Worker. The point is that the Claimant was employed as a Bible Worker within Area 6B.
43. The section in the Claimant's contract entitled place of work provides that the role would be home based but the Bible Worker would be required to work at various locations as directed by the Respondent to meet its needs. The contract further provides that the Bible Worker may be required to work in other locations, or to alternative churches, or to other roles, subject to at least one month's notice of reassignment. The Claimant has not sought in these proceedings to argue that the clause was void, or not binding on her, rather the Claimant's position is that the clause should be exercised reasonably by the Respondent as her employer.
44. The Respondent had around thirty churches in Area 6B and at the material time there were 72 male Pastors, seven female Pastors, ten Licensed Pastors, seven Interns, and in the region of three Bible Workers.
45. The Claimant was hard working and ambitious, and she was keen to progress and to become a Pastor. To do so one must usually obtain an MA in Religion / Theology from one of the theological seminaries before then working as an Intern who is usually placed with a Senior Pastor to be trained as a Pastor. If the person successfully completes two years of internship, they will then become a Licensed Pastor where they will work in their own church district, and after three years (where one has demonstrated their call to ministry), the person may be Ordained (if they are male) or Commissioned (if they are female).
46. The role of Bible Worker involves working alongside and under the supervision of a local minister; proclaiming and teaching gospel and this includes evangelism, bible study, counselling, visitation in homes, preaching and teaching at Sabbath School, prayer meetings, taking part in outreach programmes, and other meetings. The role may also include other duties necessary to meet the Respondent's purposes.

47. The role of Bible Worker is not a leadership role of itself in terms of people management (or managing a budget for instance), but it involves some level of spiritual leadership. A great deal of time was spent on this during the hearing, however we are clear that the Claimant was not a leader in the sense of line management, but the role inevitably required an element of spiritual leadership and leading people to God. To that end we agree with the Claimant that she was in a Spiritual Leadership position.
48. There also exists the role of Elder within the church. The role of an Elder is to work in harmony with the Pastor. This is a different role to that of the Bible Worker although it is fair to say that there is considerable overlap. An Elder is appointed by the church members (or congregation) within a church, they are therefore ordained as an Elder within that specific church, and they are a volunteer within that church rather than an employee of the Respondent. The Bible Worker is responsible to the Pastor and ultimately the South East Conference (the Respondent's senior leadership), whereas the Elder is ultimately responsible to the local church board which is made up of the Pastor, the Elders, and other leaders within the local church.
49. As to the functions, the Elder is a local church leader who is able to undertake preaching, teaching, bible studies, visitation and communion. Whereas an Elder with sufficient training may be able to undertake pastoral counselling, marriage counselling, and performing weddings, this is not something that a Bible Worker would generally be permitted to do. The type of counselling undertaken by a Bible Worker would generally be less sensitive. Put simply, an Elder is responsible for the services of the church either under the Pastor or in their absence.
50. It is possible for a Bible Worker employed by the Respondent to be also appointed by the local church as an Ordained Elder in which case they may perform functions beyond their Bible Worker role by virtue of their appointment as an Elder. In the Claimant's case she was a Bible Worker and an Ordained Elder at Croydon Church and she performed a range of functions at Croydon due to being an Elder at that church. The Claimant's role of Elder was not an employed position, and it was entirely separate to the Claimant's Bible Worker role for which she was an employee. To be clear - Elders are not appointed nor employed by the Respondent.
51. As indicated above, the Claimant was hard working and committed to her role and to the wider church, and it was clearly something which brought her a great deal of satisfaction. Likewise, the Respondent's witnesses spoke positively about the Claimant and her work, and it appeared to the Tribunal that the Respondent was keen to see the Claimant to progress. Even within the final hearing, and despite the ongoing litigation, it was clear to see that there remained considerable mutual respect and fondness between the parties. The Claimant was successful and trusted in her role and this is evident because the Respondent (or the Congregation) frequently invited her to take on additional duties beyond her Bible Worker role.
52. During April 2014 the Claimant was appointed as the Living Room church plant leader, and this was in addition to the Claimant's bible worker role. We understand that this was a gathering of church members who would meet to carry out Bible study and prayers and other similar activities.

53. The Claimant also undertook projects or programmes at other churches within Area 6B on occasion
54. During November 2015 the Claimant was voted as the Prayer Ministries coordinator, and this was in addition to her bible worker role and other functions.
55. At some point during 2016, the local members of the Brixton Church (also in Area 6B) voted not to appoint female Elders. We understand that there may have been some female Elders at the Brixton Church at the time, and as such they would not have been able to continue in those voluntary positions. The members were the Church's Congregation, they were not employees of the Respondent. The vote was taken by the membership and it was subsequently approved by the local church board. This was not a decision of the Respondent.
56. Pastor Keith Boldeau became Pastor of that church on 1 October 2016 (after the vote) until December 2021 and his evidence was that the church membership was 60% female and 40% male, the vote did not have a great deal of support but had been advanced by a small number of hard liners, and whereas the vote took place before his arrival, he would not have allowed the vote had he been the Pastor, however he did not seek to set it aside during his time at the Brixton Church. Pastor Boldeau's evidence was that the vote was contrary to his own views and that of the Respondent, nevertheless the vote still remained in place by the time of this final hearing.
57. There was a schism between the Respondent in Britain and the wider Seventh Day Adventist Church in the sense that the wider church had decided against having female pastors, whereas the Respondent did not agree with this and was happy to do so. The vote of the Brixton Congregation was therefore at odds with the Respondent's own position, it was more aligned with the wider church outside of Britain, however the vote was not something the Respondent decided nor had any control over.
58. We understand that Brixton Church has a congregation of up to 1,000 members and as such it is the largest Seventh Day Adventist church in Europe. The church has a high profile and attracts many overseas visitors who will come and preach at the church. The Pastor will preach there twice a month, the President will preach there annually, and other church leaders and department heads will also attend and preach. The Bible Worker based at the church will have the opportunity to preach there up to twice a year, subject to other services.
59. During or by October 2018 the Respondent had a Senior Pastor at the Croydon Church and also a Bible Worker (the Claimant). An Assistant (or Junior) Pastor became available and was posted to that church. As a result, the Respondent formed the view that it did not need a Bible Worker in addition to a Senior Pastor and Assistant Pastor at that church.
60. At this time Pastor Keith Boldeau, the Pastor at Brixton Church, had a vacancy as the Intern at the Brixton Church had been posted elsewhere. Having had discussions within the Respondent including with the President, Pastor Boldeau asked the Respondent to assign the Claimant to his church.

This was because Pastor Boldeau knew of the Claimant and worked well with her before. The impression we gained was that Pastor Boldeau was fond of the Claimant and had a great deal of respect for her and her work. There had been a previous female Bible Worker based at Brixton Church who worked there from 1 January 2003 until she retired on 30 April 2011.

61. On 23 October 2018 Pastor Emmanuel Osei (the Respondent's President) asked the Claimant her thoughts about moving to the Brixton Church. The Claimant expressed concern about the move on the basis that she may not be accepted at Brixton due to being a woman. This was on the basis of the previous vote from 2016.
62. We make it clear at this stage that the decision to direct or to ask the Claimant to move from Corydon Church to Brixton Church (within the same 6B Area) is something the Respondent contractually had the power to do. It was, in principle, a reasonable management instruction on the part of Pastor Osei.
63. On 28 October 2018 the Claimant emailed Pastor Osei and declined to move. Much time has been spent in the hearing debating whether the Claimant refused to move or declined to do so. As far as the Tribunal is concerned, there is no difference between the two terms in this particular context – whichever way it is expressed, the Claimant was asked to move and in her replies she confirmed that she would not – this is both a refusal and a decline.
64. At that time the Claimant indicated that she had taken time to fast, to pray, and to seek counselling with two others, and she had inquired of God what was His will, and she said that no one person recommended the move to Brixton as it was contrary to advancing God's call and her passion for pastoral ministry. There was no mention of any risk to the Claimant's health and safety in her reply.
65. On 29 October 2018 Pastor Osei replied and encouraged the Claimant to pursue her MA degree at Newbold College due to her passion for the pastoral ministry, and he repeated that the Respondent would like the Claimant to go and serve as the Bible Worker for Area 6B at Brixton Church. Pastor Osei addressed the Claimant's concerns about the vote and explained that she was being deployed as a Bible Worker not an Elder, and he advised that he would recommend the Claimant's move to the Executive Committee on 11 November 2018.
66. On 16 November 2018 Pastor Osei wrote to the Elders to confirm that the Claimant was being invited to serve as a Bible Worker at Brixton Church.
67. On 13 December 2018 the Claimant wrote to Pastor Osei. Within her letter the Claimant again expressed that it was not God's will for her to move to Brixton. The Claimant also made reference to the Respondent's duty of care to her health and safety and she said:

"To place a female, who is in leadership and has leadership responsibilities, in an environment hostile to such (evidenced by the church vote to no longer appoint female elders) flouts the duty of care to ensure the working environment supports and promotes one's wellbeing. To think otherwise is

naïve at best, negligent at worst (subject to evidence of a health and safety check being undertaken prior to the decision). A move to an environment conducive to being able to function, flourish and free from the risk of being undermined or frustrated is requested."

68. The Claimant indicated that she had applied to study the MA Theology programme at Newbold College and said that she had been assured she would be given latitude to study for pastoral ministry after taking up the new deployment which she said was contradictory *"in terms of the church' position opposing women in pastoral leadership."*
69. It was clear to the Tribunal that the Claimant's reasons for not wishing to move to Brixton Church were due to a combination of factors, including what she said was God's will, her concerns about the potential impact to her health as she considered Brixton Church to be a hostile environment for female leaders due to the 2016 vote, and also because it may impact her progression within the Respondent to the role of Pastor which was something which was important to her.
70. At this stage there was nothing to suggest that there was any specific impact upon the Claimant's health due to the proposed move.
71. In her oral evidence the Claimant was asked specifically about what she said were the circumstances of danger within Brixton Church. The Claimant's answer to us was that the Congregation's vote on female Elders would have restricted her and other females in their leadership capacities, and that restriction in turn would be harmful to her mental wellbeing.
72. When asked about her belief in any serious and imminent danger, the Claimant told us that she was certain that her duties would be restricted which would cause her harm, and that this was due to conversations she had with Bible Workers and members from Brixton Church; and because of her mental health generally; the implication of the 2016 vote itself; as well as bulletins she had seen from the Brixton Church. We understood the Claimant to be arguing that the bulletins indicated the number of times which females had been asked to speak at the Church.
73. We have not been provided with evidence as to what specifically these other Bible Workers or Church members said to the Claimant, save that they (or some of them) thought the Church had a poor attitude towards women and they recommended against being deployed there. We note that there had not been any female Bible Workers employed at Brixton Church after the vote in any event, therefore whatever had been said to the Claimant could not have related to the experience of an employed female Bible Worker after the 2016 vote. The Claimant much later (in January 2020) spoke to Brenda Rutherford who had previously been a female Bible Worker at the Brixton Church between 2003 and 2011 (five years before the vote), however nothing she said to the Claimant indicated any sort of risk to health and safety or any danger.
74. With respect to the bulletins, the Claimant did not see these until later in 2020 and in 2021. These were not things that the Claimant had seen until after her employment had ended, rather than things which could have

influenced her at the material time between the end of October 2018 and 11 May 2020 (when her employment ended).

75. Pastor Boldeau's unchallenged evidence that a previous Bible Worker at Brixton Church, Sindi, had previously been able to undertake the same Bible Worker duties as the Claimant so there would not have been any risk to her wellbeing by being asked to do the same. We also noted that Pastor Boldeau would have had the final say on what duties the Claimant performed at the Brixton Church in any event.
76. As the Claimant had never carried out the role of Bible Worker at Brixton Church previously, therefore her belief in serious and imminent danger or risks at the church would be based upon assumption rather than any direct experience.
77. On 17 December 2018 Pastor Osei met with the Claimant to discuss the proposed move to Brixton Church. Pastor Osei remained of the view that the Claimant should move to Brixton, the Claimant remained of the view that she should not and she expressed concern that women were more acceptable as Bible Workers but not as female Pastors to those who had issues with women in leadership but it did not mean that there was still no animosity towards them.
78. There was a further meeting on 18 December 2018 at Stanborough Church between Pastor Osei, Pastor Boldeau and the Claimant to discuss the proposed move. Pastor Boldeau expressed that there was not hostility within the church and that he would protect the Claimant. Dr Osei asked the Claimant to put her objections in writing.
79. The Claimant has challenged Pastor Boldeau in his oral evidence as to why he offered to protect her if there was no risk to her at the church. The Claimant told us in her evidence that she did not need protecting. The evidence of Pastor Boldeau, which we accept, is that he was not offering to protect the Claimant from a specific threat, he made that comment because it was the Claimant who said that there was a risk and he was trying to reassure her that she did not need to worry as he would be there, she would not have to deal with other people and they could come to him if they had issues to raise and the Claimant would not need to deal with them in her role as Bible Worker.
80. During the meeting Pastor Boldeau explained the duties the Claimant would be involved with as Bible Worker and these included greeting visitors, helping with the visitation programme (including attending visits on occasion), conducting bible studies, providing comments on worship time, and other duties assigned by the Pastor. The Claimant would not been required to undertake the role of Elder at the Brixton Church, and it was confirmed before us in evidence that the Claimant would have remained an Elder at Croydon Church and able to undertake those functions there.
81. During the meeting Pastor Boldeau explained that the Respondent had employed female Bible Workers at Brixton Church before, most recently Brenda Rutherford, and as far as he knew there had been no issues raised about unfair or discriminatory treatment because of their sex, and they had enjoyed their time there. Nevertheless, despite the assurances from Pastor

Boldeau, the Claimant suggested that she would not go to Brixton Church but would look to study at Newbold College instead.

82. Pastor Osei asked the Claimant to put her concerns in writing, and she did so on 30 December 2018 and in her letter she declined to move to Brixton Church. The Claimant maintained that it was not God's will that she should move having expressed such comments previously, and she added:

"I respectfully decline the request to be deployed to Brixton SDA church for the reasons stated in my letter dated 13 December 2018 and request a move to an environment conducive to being able to function, flourish and free from the risk of my role and responsibilities being undermined or frustrated."

83. The Claimant's letters of 13 and 30 December 2018 did not identify a specific risk to nor any impact upon the Claimant's health and safety, and whereas those words were used generally in the earlier of the two letters, the clear concern was about the Claimant's ability to flourish which we interpreted to mean to develop and to progress and not to be undermined. At this time there was nothing to alert the Respondent to any impact upon the Claimant's health from the move.

84. On 31 December 2018 Pastor Osei replied to the Claimant's letter. The Claimant was reminded that she was being deployed as a Bible Worker not an Elder, and he recorded that he and the Claimant had met with Pastor Boldeau who confirmed that there were no grounds for her fear in the deployment; that Pastor Boldeau had confirmed he would be present to protect the Claimant, and the Pastor had shared what her role would entail. Pastor Osei named four previous female Bible Workers at the Brixton Church and said they never complained about being frustrated because of their sex.

85. Pastor Osei recorded that Pastor Boldeau had provided assurances that there was no hostility within the church but the Claimant had been adamant that God had revealed to her and her prayer colleagues that it was not His plan for her and that she would refuse to go. The Claimant was advised that the Claimant's refusal would be considered by the Respondent's Executive Committee on 13 January 2019.

86. On 11 January 2019 the Claimant responded to Pastor Osei. In her letter the Claimant asked for more information about the experiences of the female bible workers he had named. The Claimant said that her reasons for not wanting to be deployed were not primarily due to her prayer colleagues but due to her belief that her employer has a duty of care of the health and safety of all employees, and to place a female in leadership with leadership responsibilities, in an environment which is hostile to that, flouted the duty of care to promote one's well-being.

87. The Claimant further stated:

"I wish to point out that at no point did I claim to be afraid. Nor did I claim there was an atmosphere of hostility towards a bible worker per se, but specifically a woman in leadership of which a female bible worker is such. I think this is an important distinction that needs to be clarified."

88. The Claimant added that she had not refused to be deployed, but:

“I respectfully declined on grounds of health and safety concerns, as well as the belief that this is not where God was calling to be.”

89. The Claimant copied her response to the Respondent’s Executive Committee whom she asked to consider her letter.

90. The Executive Committee comprises of the Respondent’s Trustees, and on 13 January 2019 it agreed that there was no health and safety issue preventing the deployment and they voted unanimously that the Claimant should be moved to the Brixton Church as bible worker.

91. On 14 January 2019 Pastor Osei wrote to the Claimant advising her of the decision to move her to Brixton Church and she was instructed to report there immediately.

92. The Claimant responded to Pastor Osei on the same day and requested a copy of the report of his investigation into her concerns about the move.

93. On 15 January 2019 the Claimant was signed off sick as unfit to work. We do not have a copy of the fit note however we understand that it related to work related stress. The Claimant had attended her GP with arm and chest pain and was found to have high blood pressure, and she was referred to the Rapid Access Chest Pain clinic.

94. On the same date Jacqui Crawford (Human Resources Manager) emailed the Claimant and explained what the Executive Committee had taken into consideration when making its decision about the Claimant’s move and she explained that there had not been an investigation.

95. On 23 January 2019 the Claimant was signed off sick for a further two weeks and she continued to be signed off until 30 April 2019 due high blood pressure, work related stress and chest pains.

96. On 7 March 2019 Ms Crawford asked the Claimant to complete insurance forms from the Respondent’s insurers Generali so that she could be considered for income protection payments during her sickness absence. The Claimant declined to do so, however Ms Crawford continued to remind her of the availability of this support. If an application had been successful it could have given her 40% of her pay for up to three years. The Claimant’s reason for declining was due to her concerns about the use of her private medical information.

97. On 1 May 2019 the Claimant informed Douglas McCormac that she was under investigation for chest pains and awaited a scan, and that her GP suggested she could undergo a phased return to work. Ms Crawford informed the Claimant she would be referred to Occupational Health but she would not be expected to resume work on a phased return beforehand.

98. The Claimant remained signed off sick from work 9 May to 29 July 2019. The fit notes recorded a number of symptoms included stress related problems, work related stress, chest pain and anxiety.

99. On 3 June 2019 Ms Crawford noted that the Claimant had forwarded a colleague a program for the Prayer Band during Camp Meeting, however she was reminded she was not required to undertake any work whilst she was on sick leave. The Claimant replied she had already prepared the team for her absence and the programme was a replica of a previous year with one addition. The Claimant suggested that Pastor Kwarteng should oversee the Camp Meeting and she said he had been in regular contact during her absence.
100. On 17 July 2019 Ms Crawford informed the Claimant that her fit note of 1 May suggested she may be able to return on a phased basis and an Occupational Health assessment was being arranged to look at that, however her 9 May 2020 fit note suggested she was not fit for work, and this superseded the referral they were trying to set up, therefore the Respondent would await the GP's confirmation of her fitness for work.
101. The Claimant replied on 19 July and suggested that an Occupational Health referral sent to her on 8 May had caused her great distress and she was then signed off work. The Claimant said that in order to get back to work she needed to address the work related stress and she would like to have a well-being meeting to discuss the issues before returning to work was mentioned.
102. The Claimant's sick pay was exhausted during July 2019 and she moved onto nil pay. The Claimant was reminded of the possibility for income protection from Generali on a number of occasions by Ms Crawford, however the Claimant did not complete the paperwork due to her privacy concerns.
103. The Claimant remained off sick until 30 August 2019 due to stress related problems.
104. On 15 August 2019 the Claimant attended a welfare meeting with Ms Crawford and during the meeting the Claimant explained that she continued to suffer from chest pains and high blood pressure and there were ongoing medical investigations, and she further explained that she experienced significant anxiety which she attributed to the decision to deploy her to the Brixton Church.
105. The Claimant said that she had experienced palpitations after the letter from Pastor Osei telling her she would start at Brixton with immediate effect, however she said these symptoms had been occurring since October 2018 and she was of the view the symptoms may have begun around the time the move had been presented to her. The Claimant mentioned increased blood pressure, chest pains, pain the arm and waking up in the nights with anxiety. We find that it was at this time the Respondent first had knowledge of what the Claimant was saying was the impact upon her health of the proposed move to Brixton Church.
106. It was noted during the meeting that the Claimant's fit notes said stress related problems under investigation which was still inconclusive, and the Claimant said she was ready to return to work but would not wish to be based at Brixton due to concerns as to her health. There was a discussion

about churches in other areas where it may be possible for the Claimant to be based, and she said that Pastor Boldeau had listed some of the responsibilities she would have at Brixton including leading in prayer meetings twice a month and taking Sabbath School classes and that she was ok with those duties, and she would be happy to support Brixton for their events and evangelistic campaigns but would not wish to have Brixton as a base. The Claimant mentioned undertaking the MA program and she was asked to provide evidence from her GP that she was fit to return to work. The Claimant became very distressed during the meeting which she later described as a panic attack.

107. On 16 August 2019 Ms Crawford emailed the Claimant to say that her concerns about moving to the church would be discussed further.
108. On 23 August 2019 the Claimant informed the Respondent she intended to return to work upon the expiry of her fit note and she said the Respondent ought to have undertaken a risk assessment which she described as a stress risk assessment in her case. The Claimant said she did not need to provide a fit note for a return to work.
109. On 27 August 2019 Ms Crawford emailed the Claimant about her return to work and making arrangements for an Occupational Health assessment and a risk assessment. Ms Crawford maintained that the Respondent would need confirmation from the Claimant's GP, indicating she was fit and well enough to return to work.
110. On 2 September 2019 the Claimant was issued with a fit for work certificate. There was a telephone discussion between the Claimant and Ms Crawford about the Claimant's return to work, and in a subsequent email Ms Crawford informed the Claimant that she would need to return to work at Brixton Church. Ms Crawford explained to the Claimant that the Respondent had never had to carry out a health and safety risk assessment and she asked the Claimant to tell her what would be required for her case.
111. On 4 September 2019 Ms Crawford received the Claimant's fit note from her GP indicating that she was fit to return to work however she noted that no reasonable adjustments had been recommended. Ms Crawford informed the Claimant she would be required to return to work at Brixton Church, and she stated that as the Claimant had not taken up her role there it had not been possible to ascertain the basis for her concerns nor how it would impact upon her health, however she noted that the previous bible worker had no problems carrying out their duties at the church. Ms Crawford stated that *"we can only see that you have the perception that Brixton is not the place for you"* and she recorded that there were no alternative locations for her to be placed, therefore she asked if the Claimant had any alternative suggestions.
112. The Claimant responded the same day to advise that at their meeting it was clear how distressed she was regarding redeployment to Brixton and that she became emotional and suffered a panic attack. The Claimant alleged that to suggest that Brixton Church was her only option was to *"neglect the duty of care employers are legally obliged to carry out and the health and safety legislation."* The Claimant did not elaborate on what was the specific difficulty she would experience if deployed to Brixton and we

agree with the evidence of Ms Crawford that the Claimant's reply was generalised and contained vague assertions. Whereas Ms Crawford has mentioned the Claimant had not taken up the role which made it difficult to ascertain the basis of her concerns, the Claimant replied: *"To say 'you haven't tried it' I believe is to dismissed [sic] the matter as conjecture of a matter of opinion."*

113. The Claimant's disability impact statement sets out the symptoms she was experiencing at that time. The Claimant says that she was experiencing thoughts and feelings reminiscent of past trauma as she felt forced to do something against her will, she was having to accept something she did not want to do and have someone impose their will on her, she had a paralysing fear and became hypervigilant which was crippling, and she felt unsafe and that she displayed or experience behaviors relating to past trauma. The Claimant's sleep was impacted as she would wake up multiple times in the night, she could not get back to sleep or stop her mind racing, she had thoughts of self harm, she felt exhausted and had flashbacks of past trauma and dark, bad dreams. The Claimant also experienced increased blood pressure and shooting pain in her arm and chest pain. The Respondent's witnesses in their oral evidence accepted that the Claimant was experiencing the symptoms described at the time.
114. Ms Crawford asked the Claimant on a number of occasions if she could provide a reply on the health and safety risk assessment.
115. Between 10 and 12 September 2019 there were email discussions between the Claimant and Ms Crawford about the Claimant attending and taking part in the Reclaiming the Time event and leading the prayer, and also about attending a return to work meeting. The Claimant accepted in her evidence that her involvement would have an element of public interaction or public speaking to a group of people, and that she might reasonably have been viewed by the Respondent as fit and well at that time.
116. On 16 September 2019 a meeting took place between the Claimant, Pastor Osei and Ms Crawford about the Claimant's return to work and a risk assessment. The Claimant was notified by Ms Crawford on 11 September that this would not be a formal or a disciplinary meeting therefore she would not have the right to be accompanied however she was informed the Ministerial Secretary may accompany her.
117. During the meeting the Claimant was asked to explain why she considered a move to Brixton to be detrimental to her health. The Claimant sought to distinguish between being fit to return to work from being deployed to Brixton. It was clear from the notes of the meeting and emailed correspondence between the parties at this time that the Claimant was asserting that she was fit to return to work and there was work she was able to do, including with respect to various events going on at the time (such as a weekend programme), however the Respondent asked her not to involve herself in work until it had resolved the issue of her deployment.
118. During the meeting the Claimant was asked a number of times what was the issue with moving to Brixton and after a long pause she said that she had told the Respondent before what the issues were and it was set out in previous letters why she felt that deployment would be inappropriate and

that she did not feel comfortable talking about it and she would have to put it in a letter.

119. Pastor Osei put to the Claimant that he had not seen a request for a risk assessment and he asked the Claimant what it should look like, to which the Claimant replied that it was not her responsibility or remit, and that every organisation should have a built in policy for this. We considered the Claimant's response to have been unhelpful as the Claimant was the person who was saying that there were risks at Brixton Church, and the Respondent was clearly asking her what is it that it should be looking into (as it clearly did not know), however the Claimant's response did not help explain to the Respondent what it was she said was the specific risk. The Respondent was left in the position of looking for unspecified risks.
120. In the hearing before us the Claimant complained that a stress risk assessment ought to have been performed, however this is not something that she was specifically raising at the time (despite the request to provide detail from the Respondent), and given that the Claimant never worked at that church, it would have been difficult for the risk to be assessed, and it was not explained to us what more this sort of assessment could have achieved beyond the other enquiries being made by Ms Crawford.
121. The Claimant was then signed off sick again on 17 September 2019 due to work related stress and anxiety disorder.
122. On 21 September Ms Crawford attended Brixton Church to carry out a risk assessment of the premises and she discussed the Claimant's concerns with Pastor Boldeau and the Church Elders. The Pastor repeated his earlier assurances that the Claimant would be protected if she came to the church. Ms Crawford spoke to the Elders about the Claimant's concern about the vote and we accept her evidence that the Elders were very sympathetic about the Claimant, that they had always valued and respected everyone, and there was no reason why it would not continue. Ms Crawford also spoke to the previous bible worker, Brenda Rutherford, about her experiences whilst at the church and we also accept Ms Crawford's evidence that Ms Rutherford expressed no concerns in the way the Elders behaved towards her as a female in her capacity as a Bible Worker.
123. On 24 September Ms Crawford wrote to the Claimant and advised that there was no identifiable health and safety risk to the Claimant working as a bible worker at the Brixton Church and she was to return to work from 28 September. The Claimant was warned that a failure to attend work could result in disciplinary action being taken against her.
124. Ms Crawford sent a copy of her letter to Pastor Boldeau and to the church Elders, to which Tim Francis replied that he and the Eldership team looked forward to meeting and working with the Claimant.
125. On 24 September the Claimant was signed off sick with work related stress and anxiety disorder until 8 October. We find that the Claimant was experiencing all or many of the symptoms described in paragraphs 38 and 39 above.

126. Between 27 September and 7 October there were further discussions between the Claimant and Ms Crawford. The Claimant asked for a summary of the impact of the vote from 2016 to which Ms Crawford explained on 7 October 2019 that she had not been there to discuss the vote itself but to assess whether there were any risks to her health and safety at Brixton Church.
127. On 5 November the Claimant was then signed off sick due to depression until 19 November 2019. We again find that the Claimant was experiencing all or many of the symptoms described in paragraphs 38 and 39 above.
128. The Claimant attended an Occupational Health assessment on 13 November, and the report was sent to the Claimant on 15 November but was not released to the Respondent until on or around 28 November.
129. The start of the report recorded that the Claimant had been off sick since January on advice of her GP and there had been investigations of her blood pressure and chest pain *“which were fully investigated and dealt with satisfactorily so these problems no longer have any occupational implications.”*
130. The report recorded the Claimant said she was off due to cardiovascular problems which she said was due to problems in the work place which started when asked to move churches which she felt was inappropriate for reasons explained to Occupational Health, but unhelpfully not recorded in the report. It was recorded that the Claimant said that she felt that she was being forced to do something against her own will for which she had no choice and felt trapped due to someone else imposing their will on her. Occupational Health recorded that this would need to be addressed for the Claimant to be able to return to work, and “on discussions I think it unlikely she will be able to do so at your Brixton site.” Occupational Health said it agreed with the Claimant’s doctor that she would be temporarily unfit for duties until her redeployment is resolved – and the Claimant was “adamant” this must be reconciled before she can return to work. The only recommendation was to look into the issue of the redeployment.
131. Whereas the report records the Claimant’s perception, it does not provide a reasoned or evidential basis for concluding that there was any objective risk amounting to serious and imminent danger to her at Brixton Church. Save for repeating the Claimant felt she was being forced to go to Brixton Church against her will, it did not explain why this was causing the Claimant the difficulties. It may be that Occupational Health experienced the same difficulties as us in this hearing trying to ascertain why the redeployment was causing the Claimant a problem, but nevertheless it would have been helpful if this had been explored further as it did not really provide any suggested way forward other than looking at the redeployment issue. Without knowing more about why it was such a difficulty for the Claimant the Respondent had a knowledge gap when trying to fix a problem it did not really understand.
132. We noted in particular the report says that the Equality Act would be applicable in this situation to the degree of impairment that her medical situation has caused, but the report is silent on what is the degree of impairment, and nor does it include anything to support the conclusion being

reached – for example why it says the Act is engaged. We have found the report to be generally lacking and of little assistance, save to repeat what the Claimant had told Occupational Health.

133. Leaving aside the report does not help with respect to the impact upon day to day activities, in addition a reading of that report would suggest that the Claimant's then condition would only last as long as the redeployment issue remained unresolved rather than potentially lasting for 12 months (or the rest of the life of the Claimant).
134. Ms Crawford acted upon the advice promptly and looked to identify Bible Workers in the nearby areas who may agree to be deployed instead of the Claimant. Only nearby areas were considered as Ms Crawford considered that it would be unfair to look wider given the travel involved.
135. Ms Crawford identified Linda Mukwada, another Bible Worker close by in Area 6A (Tottenham), and spoke to her on 10 December 2019 about being based at Brixton Church. There were also emailed discussions between them at this time and on 13 December Ms Mukwada said that it was not her preference to move there due to childcare arrangements for her young daughter and the associated travel, nevertheless she did not refuse to move but left the matter to the Respondent to decide and she would go if it were deemed necessary. Ms Mukwada referred to anxieties and fears, but these related to concerns about arranging childcare for looking after her young daughter if she had to travel longer distances to work. Ms Mukwada did not express any concerns about health and safety risks or dangers. The Respondent chose not to move Ms Mukwada due to the impact upon her childcare arrangements of having to travel across London
136. Ms Crawford identified two other Bible Workers however they could not be asked to move as one was placed on a special assignment amongst the Polish community in London, and we were not told that the Claimant speaks Polish. The other Bible Worker was based at Newbold Church in Bracknell, Berkshire and they had been asked for by name to work at that church. The Claimant did not challenge the decision not to move either of these people at the time, and she did not seek to do so in the hearing before us.
137. On 20 December 2019 Ms Crawford wrote to the Claimant and invited her to a welfare meeting.
138. On 23 December the Claimant was signed off sick for a month due to anxiety and depression. We find that the Claimant was experiencing all or many of the symptoms described in paragraphs 38 and 39 above.
139. There was considerable dialogue between the Claimant and Ms Crawford between 24 December and 13 January 2020 about the purpose of the welfare meeting and arrangements for it.
140. On 14 January 2020 the Claimant attended the welfare meeting with Ms Crawford and the Claimant's mother. During the meeting the Claimant remained opposed to moving to Brixton due to the vote taken with respect to female Elders, and Ms Crawford reminded her that she would be deployed as a Bible Worker not an Elder. Ms Crawford explained that no other locations had been identified and whereas there were other Bible

Workers she would not be possible to swap with these. The Claimant asked about the possibility of being placed at the Welling and Plumstead churches, and there was some discussion about her being supported to study at Newbold College.

141. Ms Crawford contacted the Pastor at Welling and Plumstead (Israel Williams) however he confirmed on or around 16 January 2020 that there was no requirement for a Bible Worker there.
142. Whereas the Claimant appeared to suggest to us that the fact that Ms Crawford had not already spoken to the Pastor there, was in some way indicative that she had not explored other locations for her, we were not satisfied that was the case. Ms Crawford was in a position to know, from her dealings with Pastor Osei and others, and in her HR role, if there were other vacancies in around Area 6B. The fact that Ms Crawford acceded to the Claimant's request to speak to the Pastor at Welling and Plumstead Church, did not in our view, suggest she had not looked for other roles for her, rather Ms Crawford appeared to us to be keen to exhaust all reasonable options.
143. In her closing submissions the Claimant indirectly suggested that the Respondent had 230 churches which could have been approached, however this was not put to Ms Crawford in her evidence, and moreover those churches are spread across the country and it has never been suggested by the Claimant that she would have willingly moved further afield. In any event the Claimant has never suggested to us that there were suitable vacancies in any of the churches anyway.
144. A further meeting took place between the Claimant, Ms Crawford and Pastor McCormac (Executive Secretary) on 22 January and the Claimant was informed that there was no vacancy at Welling and Plumstead. There was consideration of the Claimant going to do her MA at Newbold College, however the Claimant was not keen to do so at that time. The Claimant issued a grievance on this date and argued that her health and safety concerns were not being taken seriously.
145. Pastor McCormac initially indicated to the Claimant that her grievance was not in the correct format and he later sent the Claimant a copy of the grievance policy, following which the grievance was re-submitted. The grievance was not considered by the Respondent until after the Claimant had been dismissed and it was then considered as part of her appeal. The Respondent had made attempts to hold a grievance meeting on 26 February however this were postponed as the Claimant wrote to expand her grievance the day before on 25 February and the Respondent decided that more time would be needed to consider it. In addition the Claimant was having difficulties finding a suitable companion for the hearing. Attempts were made by Ms Crawford to reschedule the grievance meeting prior to the Claimant's dismissal, however a further date was postponed as the Claimant needed to self isolate.
146. The Claimant was signed off sick for mixed anxiety and depressive disorder from 24 January to 23 February 2020. We find that the Claimant was experiencing all or many of the symptoms described in paragraphs 38 and 39 above.

147. On 21 February the Claimant wrote to Ms Crawford and asked to have a meeting with the Respondent's Administrators, and for the grievance to be dealt with separately.
148. On 23 February the Claimant continued to be signed off until 22 March 2020 due to mixed anxiety and depressive disorder. We find that the Claimant was experiencing all or many of the symptoms described in paragraphs 38 and 39 above.
149. On 25 February the Claimant wrote to Ms Crawford to expand the grounds of her grievance. Subsequently the Claimant was signed off for mixed anxiety depressive disorder. We find that the Claimant was experiencing all or many of the symptoms described in paragraphs 38 and 39 above.
150. On 28 February 2020 Ms Crawford wrote to the Claimant and invited her to attend the meeting with the Administrators to take place on 1 April 2020. The final two paragraphs of the letter state that if the Claimant felt unable to attend the Respondent would consider written representations from her as to why she felt she could not relocate Brixton; the Respondent would consider everything that had preceded in the previous 1.5 years to reach a conclusion on where she would be located; and a failure to attend would mean the meeting would proceed in her absence. The Claimant was notified of her right to be accompanied; following the meeting the Administration would decide whether to impose the relocation decision on her; and no decision had yet been made as it was important for the Claimant to have her input.
151. During March 2020 there was further correspondence between the Claimant and Pastor Boldeau about the proposed redeployment to Brixton Church.
152. The Claimant was signed off sick due to mixed anxiety and depressive disorder between 23 March and 23 April 2020.
153. The meeting with the Administrators took place on 1 April 2020 between the Claimant, Pastor Osei (as the then President), Pastor McCormac (the Secretary) and Candy Layson (Treasurer) to discuss the deployment. The Claimant was accompanied by Pastor Brighton Kavaloh, the brief notes of that meeting indicate that he spoke on the Claimant's behalf and also questioned her as well to try and understand more about the impasse and the way forward.
154. The Claimant asked if there was any leeway with the decision to which she was told that the Respondent had considered Plumsted and Welling but it was not possible. We further noted that the Claimant asked if the need at Brixton was for a Bible Worker or an Intern. We found that to be an unusual question as the Respondent had been very clear up to this point that she would be deployed as a Bible Worker, moreover it created the impression that moving as an Intern might be something she may be amenable to, and if this were true then it would be hard to see how this could reconcile with the Claimant's objections about deploying there. We could not therefore understand why the Claimant asked this question about what the need was

at the church. In any event Pastor Osei told the Claimant that the role of Intern is not to help the Pastor, the Intern is to be trained by the Pastor, and the role of Bible Worker is there to help the Pastor and to carry out bible studies.

155. There was some consideration of whether it was simply Brixton Church where the Claimant did not wish to be moved. The notes of the meeting are very brief, and moreover the Tribunal observed that the Claimant did not explain in that meeting what it was about the move to Brixton that would cause her difficulties by reference to her impairments. The Claimant explained that her concern about the proposed move was that it would have the potential to affect her physical, emotional and spiritual well-being.
156. The Tribunal also gained the impression that the Respondent did not really understand what it was about the proposed deployment that would cause the difficulties for the Claimant, although we noted that the Respondent would have already had the Occupational Health report which set out the Claimant's feelings of being forced to do something against her will.
157. On 27 April 2020 Mr McCormac wrote to the Claimant and summarised the actions taken by the Respondent. It was recorded that the Respondent investigated her concerns about being based at Brixton Church and found no reason why she could not be based there. The Respondent recorded it looked at other options and places she could be based, it found there was nowhere else. It was explained that the Respondent looked at other Bible Workers swapping with her but it was not workable due to the needs of other Bible Workers and other churches. It was further recorded that the Respondent looked into the Claimant's suggestion of Plumstead/Welling churches however there was no need there.
158. It was recorded that a health and safety assessment had been undertaken which did not identify a risk to the Claimant's personal safety being based there. The Respondent reiterated that there was a need for the Claimant to work at Brixton; it said this was a reasonable management request; it was 7.4 miles from her home and only 4.8 from her previous church; the move would not affect her pay; all terms and conditions would remain the same; and she would perform the same role. The Claimant was asked to sign and return the letter within seven days confirming that she would accept Brixton as her base, failing which she would be classed as dismissed and notice would be served.
159. The Claimant explained to us in her oral evidence she understood that if she did not move to the Brixton Church she would be dismissed.
160. On 28 April the Claimant was signed off sick due to mixed anxiety and depressive disorder.
161. On 29 April the Claimant wrote to Mr McCormac asking when the grievance meeting would be rescheduled.
162. On 4 May 2020 the Claimant emailed Mr McCormac about his letter of 27 April and she said that she disagreed with the synopsis and conclusion arrived at in the letter.

163. The Claimant did not sign and return the letter of 27 April 2020, and she did not report for work at Brixton Church. On 11 May 2020 Mr McCormac wrote to the Claimant and advised her that her employment had been terminated on grounds that she had failed to follow a reasonable management request. The Claimant was informed that her notice would terminate that day but she would be paid eight weeks in lieu of notice. The Claimant was also paid an ex-gratia payment of £9,109.96. The Claimant was notified of her right to appeal the decision.
164. In his evidence before us, Pastor McCormac reiterated that he believed that the Claimant had been given a full and transparent explanation of why her redeployment was necessary; the vote from 2016 had no material impact upon the Claimant nor her redeployment as a Bible Worker; the Claimant had been given assurances that she would be kept safe; and further the Claimant may have wanted to carry out other duties beyond that of Bible Worker however her deployment did not require her to carry out additional duties. It was clear to us that Pastor McCormac was drawing a distinction between the duties the Claimant was contractually required to perform in her role as a Bible Worker, (the role she was employed to do), as against the duties of an Elder she had been appointed to perform at Croydon church by the members of that congregation which fell outside of her employment.
165. Pastor McCormac's evidence to us was that he did not understand why the Claimant continued to believe that her health and safety was at risk, however he did not consider that her belief was supported by evidence nor reasonably held. It was also Pastor McCormac's evidence that the Respondent had no option but to terminate the Claimant's employment in order to make way for a Bible Worker to be placed at Brixton if the Claimant was unwilling to deploy there.
166. We noted that Pastor McCormac referred in his witness statement to the previous female Bible Worker based at Brixton Church, Ms Rutherford, who retired in 2011. Pastor McCormac says that Ms Rutherford did not raise any health and safety concerns throughout her time, and we accept that evidence as it was consistent with other witness evidence and it has not been challenged by the Claimant.
167. Pastor McCormac had stated in his witness statement that the vote against appointing female Elders *"caused no issues in her capacity as Bible Worker and [sic] had not experienced any negative treatment because of this."* However, Ms Rutherford had retired between five and six years prior to the vote taking place. We therefore reject that part of his evidence.
168. On 15 May 2020 the Claimant wrote to Ms Crawford to appeal the decision to dismiss her. The grounds of appeal were on the basis of lack of due process due to an alleged failure to hold a disciplinary hearing, and that the decision to deploy her to Brixton Church was an unreasonable management request due to the 2016 vote. The Claimant alleged a failure to comply with Occupational Health advice, and she complained that her grievance had not been dealt with. The Claimant alleged a failure to satisfy the duty of care with respect to a risk to her personal health and safety.

169. There were further emailed discussions between the Claimant and Ms Crawford between 20 and 22 May about rearranging the grievance meeting.
170. Ms Crawford attempted to engage with the Claimant in May 2020 to arrange a grievance meeting for 26 May 2020 however there were delays in the Claimant indicating who would accompany her, and on 22 May 2020 the Claimant asked for it to be postponed until a later date to accommodate her companion. The Claimant was asked for alternative dates however we have not been referred to any correspondence where these were provided.
171. The appeal hearing took place on 4 June 2020 and was chaired by Pastor Surridge. The hearing took place by video due to the Covid-19 Pandemic at the time. Pastor Surridge clarified the grounds of appeal as being based upon an alleged lack of due process, and also that it had been an unreasonable management request to move to Brixton. The Claimant also alleged that the decision to dismiss her and the treatment of her had been discriminatory.
172. We have found the appeal hearing to be a review of the previous process rather than a complete re-hearing or hearing the matter afresh. In conducting the appeal Pastor Surridge made enquiries with Ms Crawford in HR and also Pastor McCormac as to the substantive instruction to move to Brixton Church and the rationale behind it, as well as the process followed and the Claimant's objections to going. There was discussion as to whether the move had been a reasonable management request, and whereas the outcome letter did not address this directly we noted that Pastor Surridge reached a decision that the Claimant had not agreed to work under the terms of her contract as a Bible Worker. However at no point was it put to the Claimant that she had committed an act of misconduct.
173. Whereas Pastor Surridge recorded that there had not been a disciplinary process, and the meeting of 1 April 2020 had been described by the Respondent as not formal, he found that it had been a meeting to explore the request to move and to whether the Claimant was likely to accede to that request.
174. There was consideration of the contents of the letter of 27 April 2020 from Pastor McCormac which was essentially a final opportunity to comply with the instruction to move, failing which the Claimant would risk being dismissed. In his evidence Pastor Surridge has explained that he reached out to Pastor McCormac who told him that he had reached an impasse with the Claimant and that prolonging the process further would not have changed her position.
175. We noted Pastor Surridge's finding was that whereas there was no disciplinary hearing he considered that had not been a lack of due process as the Claimant had been asked on several occasions over a 16 month period whether she would move and she had declined on every occasion and the final ultimatum of 27 April 2020 reasonably marked at the end of that consultation period therefore he felt able to reject that element of the appeal.
176. Within the hearing before us there was consideration of whether the decision to dismiss the Claimant had been made on the basis of a

commercial decision. This stems from an email exchange between Pastor Surridge and Ms Crawford where he asked why a disciplinary process had not been followed. Ms Crawford replied that the Claimant had failed to sign the letter confirming her agreement to move; the process had already taken 18 months and the Administrators felt that they had already done all they reasonably could at this point; and they accepted advice to take a commercial decision as an alternative to conducting a disciplinary.

177. Many of the Claimant's questions to the Respondent's witnesses suggested she had interpreted this to mean that she was dismissed as an alternative to redundancy. This is not how the Tribunal understood the situation to be. Rather our interpretation was the Respondent had formed the view that it had done everything that a disciplinary would have involved, and therefore it was a commercial decision not to incur more time and expense going through a disciplinary process which would reach the same result.
178. With respect to the alleged breach of the Respondent's duty of care to the Claimant, this was also rejected by Pastor Surridge on the basis that the Claimant was being asked redeploy as a Bible Worker and not as an Elder, and he considered that Ms Crawford's discussions with the Elders, the Occupational Health assessment and the risk assessment, were sufficient steps to ensure that her wellbeing would be preserved if she moved there. It was also the conclusion of Pastor Surridge that the Respondent had explored alternatives but there were none available. It was clear from Pastor Surridge's reasoning that he considered that Brixton Church would not have been harmful to her health, again noting that she would be deployed as a Bible Worker not an Elder.
179. Pastor Surridge gave consideration to the Claimant's allegation of discrimination but this was rejected on the basis that the Respondent had been supportive of her due to the length of time off since January 2019 and the offer of income protection which she had not taken up.
180. On 11 June 2020 Mr Surridge wrote to the Claimant to inform her that her appeal had been dismissed.
181. On 17 June 2020 Ms Crawford emailed the Claimant about her grievances. The Claimant was notified that there had been numerous attempts to arrange grievance meeting with her however she had either cancelled or was unable to attend planned or suggested meetings for various reasons. Moreover the Claimant was advised that as she was no longer an employee of the Respondent there was no legal obligation to hear her grievance particularly as she had been the one who delayed the hearing of her grievance, however in an effort to hear her concerns she was welcome to put her specific grievances in writing for the Respondent to consider and to respond to in due course however it was noted this would not be an opportunity to reconsider concerns which had already been raised and addressed.
182. On 19 June 2020 the Claimant emailed Ms Crawford and said that she would present her grievances within seven days.

183. On 29 June the Claimant wrote to Ms Crawford with her concerns. This is a detailed five page letter and it is essentially a grievance about the handling of the Claimant's first grievance, and also the decision to redeploy the Claimant. The Claimant alleged sex discrimination and she also alleged a breach of health and safety by forcing her to accept something she does not want to do which she said was not in keeping with the promotion of good mental health and wellbeing because it placed her health and wellbeing at risk. The Claimant made specific reference to s. 100(1)(e) Employment Rights Act 1996 which is the prohibition against automatic unfair dismissal of those who, in circumstances of danger which the employee reasonably believed to be serious and imminent, took (or proposed to take) appropriate steps to protect themselves or other persons from the danger. We record that the Claimant confirmed at the start of the final hearing that the claim was pursued under s. 100(1)(d) of that Act.
184. The Claimant also made reference to the Occupational Health report and she alleged various procedural failings. The Claimant sought a number of outcomes including redeployment to somewhere other than Brixton, and additional training and resources for staff in connection with mental health, stress and stress risk assessments, and other related matters. The contents of this grievance appeared to be a repeat of previous concerns raised by the Claimant which had been considered prior to dismissal.
185. On 3 July 2020 Ms Crawford replied to the Claimant informing her that the matters contained within her letter of 29 June 2020 had been considered in the appeal save for one allegation that there had been some lack of confidentiality in the dealing of her grievance. Ms Crawford asked for additional information from the Claimant however we were not taken to any response from the Claimant.
186. Soon after the Claimant's dismissal the Claimant posted a number of positive Facebook posts where she said she was feeling great and was going out for walks and spending time with her grandchildren which was positive for her wellbeing, including one on 12 June 2020 and others followed from July 2020 onwards. The Claimant also regularly hosted online events such as "Afternoon Tea with Jesus and Me" from at least August 2020 onwards which as the Respondent has said, would involve a level of confidence and resilience in order to deliver them.
187. The Claimant also undertook various Facebook Live broadcasts where she delivered pre-written sermons to help people through the Pandemic. These matters occurred approximately six months or so after the Claimant had been diagnosed with depression, for which the Respondent conceded that the Claimant had been disabled. The Claimant's evidence was that people did not see what it took for her to be able to take part in those things, nor the effect that they had on her afterwards, for example remaining static on the bed or in a chair for hours, or feeling upset and crying, and needing support from others.
188. The fact that the Claimant was able to take part in these activities at the time she did (approximately six months post diagnosis, and soon after her dismissal) was suggestive to us that the Claimant was not suffering from the substantial adverse impact any longer now that the redeployment matter had been resolved due to her dismissal.

189. Following the Claimant's resignation the Respondent appointed Sindi Mabena was appointed to the role of Bible Worker at Brixton Church from 1 September 2020 and she remains in post now.
190. We understand that during the Covid-19 Pandemic the Claimant (and others) performed their roles, or as much of their roles as they could, via video. This allowed only part of the role to be performed rather than the full range of functions. We understand that the Claimant was off sick for much of the Pandemic in any event.
191. The claim has never been brought on the basis that the Respondent ought to have made an adjustment for the Claimant by allowing her to work remotely, although the Claimant made passing reference to this in her oral evidence and cross examination of the Respondent's witnesses. In any event it was not advanced by the Claimant that remote working would have been a reasonable step to take in connection with the PCP relied upon.

Law

Protected characteristics

192. Disability is a protected characteristic under s. 6 Equality Act 2010. Sex is a protected characteristic under s. 11 of that Act.

Disability

193. Section 6 of the Act provides:

"Disability

(1) A person (P) has a disability if—

(a) P has a physical or mental impairment, and

(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

(2) A reference to a disabled person is a reference to a person who has a disability."

194. Section 212 of the Act defines substantial as more than minor or trivial.
195. Paragraph 2(1) of Schedule 1 of the Act, the effect of an impairment will be long term if:
- i. It has lasted for at least 12 months
 - ii. It is likely to last for at least 12 months
 - iii. Is likely to last for the rest of the life of the person affected.

196. Normal day to day activities are those activities carried out by most people on a fairly regular and frequent basis, and can include walking, driving, using public transport, cooking, eating, lifting and carrying everyday objects, typing, writing (and taking exams), going to the toilet, talking, listening to conversations or music, reading, taking part in normal social interaction or forming social relationships, nourishing and caring for one's self.

Burden of proof – discrimination complaints

197. Section 136 of the Equality Act 2010 provides that if there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred. However this does not apply if A shows that A did not contravene the provision.

198. Guidance on the application of the burden of proof in discrimination complaints was provided in **Igen Ltd v Wong [2005] IRLR 258**:

“(11) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of [the protected characteristic], since no discrimination whatsoever is compatible with the Burden of Proof Directive.

(12) That requires a tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that [the protected characteristic] was not a ground for the treatment in question.

(13) Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof....”

199. It is not sufficient for a claimant to merely to prove facts from which the tribunal could conclude that the Respondent “could have” committed an unlawful act of discrimination. Rather a claimant must establish a prima facie case of discrimination. As was held in **Madarassy v Nomura International Plc [2007] ICR 867**:

“The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal “could conclude” that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination.” (paragraph 56)

200. The court in **Madarassy** indicated that at the first stage the tribunal would need to consider all the evidence relevant to the discrimination complaint such as evidence as to whether the act complained of occurred at all; evidence as to the actual comparators relied on by the complainant to prove less favourable treatment; evidence as to whether the comparisons being made by the complainant were of like with like; and available evidence of the reasons for the differential treatment. The absence of an adequate explanation for differential treatment of the complainant is not relevant to

whether there is a prima facie case of discrimination by the Respondent. The absence of an adequate explanation only becomes relevant if a prima facie case is proved by the complainant.

201. At the first stage the tribunal should take into account all of the relevant evidence from both sides and usually disregard any explanation provided the Respondent. The consideration of the tribunal then moves to the second stage whereby the burden is on the Respondent to prove that it has not committed an act of unlawful discrimination. The Respondent may prove this by an adequate non-discriminatory explanation of the treatment of the complainant. If it does not, the tribunal must uphold the discrimination claim.

202. As regards the “something more” needed to shift the burden of proof onto a Respondent, this will depend upon the facts of each case but it may include evidence of stereotyping, statistical evidence, lack of transparency or inadequate disclosure, or inconsistent explanations. However, mere unreasonable treatment by an employer “casts no light whatsoever” as to the question of whether an employee has been treated unfavourably - **Strathclyde Regional Council v Zafar [1998] IRLR 36**. This has also been followed by the Employment Appeal Tribunal in **Law Society and others v Bahl [2003] IRLR 640** where it was held that mere unreasonableness is not enough as it tells us nothing about the grounds for acting in that way.

203. In **Laing v Manchester City Council and others [2006] IRLR 748** the EAT provided helpful guidance on the application of the burden of proof, and in particular the potential for a tribunal to move direct to the second stage where the evidence suggests that the employer had discriminated against the claimant:

“75. The focus of the tribunal’s analysis must at all times be the question whether or not they can properly and fairly infer race discrimination. If they are satisfied that the reason given by the employer is a genuine one and does not disclose either conscious or unconscious racial discrimination, then that is the end of the matter. It is not improper for a tribunal to say, in effect, “there is a nice question as to whether or not the burden has shifted, but we are satisfied here that, even if it has, the employer has given a fully adequate explanation as to why he behaved as he did and it has nothing to do with race”.

76. Whilst, as we have emphasised, it will usually be desirable for a tribunal to go through the two stages suggested in Igen, it is not necessarily an error of law to fail to do so. There is no purpose in compelling tribunals in every case to go through each stage. They are not answering an examination question, and nor should the purpose of the law be to set hurdles designed to trip them up. The reason for the two-stage approach is that there may be circumstances where it would be to the detriment of the employee if there were a prima facie case and no burden was placed on the employer, because they may be imposing a burden on the employee which he cannot fairly be expected to have discharged and which should evidentially have shifted to the employer. But where the tribunal has effectively acted at least on the assumption that the burden may have shifted, and has considered the explanation put forward by the employer, then there is no prejudice to the employee whatsoever.

77. Indeed, it is important to emphasise that it is not the employee who will be disadvantaged if the tribunal focuses only on the second stage. Rather the risk is to an employer who may be found not to have discharged a burden which the tribunal ought not to have placed on him in the first place. That is something which tribunals will have to bear in mind if they miss out the first stage. Moreover, if the employer's evidence strongly suggests that he was in fact discriminating on grounds of race, that evidence could surely be relied on by the tribunal to reach a finding of discrimination even if the prima facie case had not been established. The tribunal cannot ignore damning evidence from the employer as to the explanation for his conduct simply because the employee has not raised a sufficiently strong case at the first stage. That would be to let form rule over substance."

204. The Supreme Court has held that the burden of proof provisions require careful attention where there is room for doubt as to the facts necessary to establish discrimination, but have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or another - **Hewage v Grampian Health Board [2012] IRLR 870** (at paragraph 32).

205. The Tribunal must ensure that it looks at allegations of discrimination as a whole and it should not therefore adopt a fragmented approach – **Qureshi v London Borough of Newham [1991] IRLR 264**.

Direct discrimination

206. Section 13(1) Equality Act 2010 provides that direct discrimination takes place where an employer treats an employee less favourably because of a protected characteristic than it treats (or would treat) others.

207. Section 39 of that Act provides that an employer must not discriminate against its employee by dismissing them or subjecting them to any other detriment. The term "detriment" should be given its broad ordinary meaning, and a detriment will exist if a reasonable worker would or might take the view that the [treatment] was in all the circumstances to their detriment – **Ministry of Defence v Jeremiah [1980] QB 87**.

208. It is often appropriate to first consider whether a claimant has in fact received less favourable treatment than an appropriate comparator, and then consider whether this less favourable treatment was because of the protected characteristic, in this case that is race. Under s. 23(1), when a comparison is made there must be no material difference between the circumstances relating to each case. A comparison may be made with an actual comparator, or with how a hypothetical comparator would have been treated.

209. Given that a tribunal may take into account a wide range of factors including circumstantial evidence, there may be cases where there is someone who, whilst materially different to a claimant, may be of assistance as an evidential comparator. They may, depending upon the circumstances and in conjunction with other material, justify a tribunal drawing an inference that a claimant was treated less favourably than he or she would have been treated.

210. The victim who complains of discrimination must satisfy the fact-finding tribunal that, on a balance of probabilities, they have suffered discrimination falling within the statutory definition. This may be done by placing before the tribunal evidential material from which an inference can be drawn that the victim was treated less favourably than he or she would have been treated if he or she had not been a member of the protected class: - ***Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285***. Moreover In some cases, particularly if there is only a hypothetical comparator relied upon, it may be appropriate to first consider the reason why the claimant was treated as they were (paragraph 8).
211. Comparators may constitute the aforementioned evidential material but they are no more than tools which may or may not justify the inference of discrimination on the prohibited grounds – ***Shamoon*** (at paragraph 109).
212. Very little discrimination today is overt or deliberate, and those accused of discrimination are usually unlikely to accept that they have done so, and possibly will be unlikely to recognise it in themselves. Usually the grounds of the decision will have to be deduced, or inferred, from the surrounding circumstances. In order to justify such an inference the tribunal must first make findings of primary fact from which the inference may properly be drawn - ***Nagarajan v London Regional Transport [1999] IRLR 572***. If the prohibited grounds had a significant influence on the outcome, then discrimination is made out.
213. In cases of direct discrimination (or victimisation), an examination of the “reason why” someone was treated as they were should not be reduced to a simple “but for” question. It is therefore not appropriate to ask but for the protected characteristic (here it is race) would the Claimant have been treated better? Rather we must conduct a more rigorous inquiry into the mental processes of the Respondent to establish the underlying core reason for the treatment. This might be easier in cases where there is an overt or obvious reason for the treatment, however in other cases are more detailed analysis of the facts will be necessary. As per Sedley LJ in ***Anya v University of Oxford and another [2001] ICR 847***:
- “Very little direct discrimination is today overt or even deliberate. What King and Qureshi tell tribunals and courts to look for, in order to give effect to the legislation, are indicators from a time before or after the particular decision which may demonstrate that an ostensibly fair-minded decision was, or equally was not, affected by racial bias.”* (paragraph 11).
214. The Tribunal may therefore need to consider the mental processes of the alleged discriminator, and whereas this is often referred to as motivation, it is not to be confused with motive as this is not a relevant consideration. It is possible for an employer to discriminate unlawfully even with a benign motive – ***Amnesty International v Ahmed UKEAT/0447/08***.
215. In ***Earl Shilton Town Council v Miller [2023] IRLR 532*** the court provided guidance on the approach to the reason why analysis in discrimination claims. Here HHJ Tayler noted that when considering whether treatment was due to a protected characteristic the tribunal spends much of its time considering the mental processes of the alleged

discriminator in order to ascertain the reason why someone was treated as they were. However, the court held that there are at least two types of cases where it is unnecessary to consider the mental processes of the alleged discriminator, the first is where the reason was obvious, and the second is where a criterion is used which corresponds exactly with the protected characteristic.

216. In ***Chattopadhyay v Headmaster of Holloway School* [1981] IRLR 487** the court noted the special nature of discrimination proceedings and that the person complaining of discrimination may face great difficulties when it comes to proof. The court held that where it may be appropriate to take into account evidence of hostility before and after the event (or act complained of) where it is logically probative of a relevant fact.

217. Even where a Respondent's explanation is not accepted by a tribunal, the tribunal's own fact finding may identify an obvious reason for the treatment, including a non-discriminatory reason - ***Bahl v Law Society* [2004] EWCA Civ 1070**.¹

218. Findings of discrimination or discriminatory intent are serious matters, and as such, care should be exercised before drawing such an inference, not least where there have been a number of interactions between the parties but only a small number are alleged to be tainted by discrimination. The Court of Appeal in ***Bahl*** observed that "*It would be astonishing for a person subconsciously motivated by discriminatory considerations only to act in a discriminatory fashion in such a haphazard way.*" [127]

Reasonable Adjustments

219. Section 20 Equality Act 2010 provides:

"Duty to make adjustments

(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

...

220. Section 21 Equality Act 2010 provides:

¹ Paragraph 101, endorsing the approach of the Employment Appeal Tribunal at paragraph 97 of that earlier judgment.

“Failure to comply with duty

(1)A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2)A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

(3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.”

221. Schedule 8, Part 3, paragraph 20(1)(b) of the Act provides:

“Limitations on the duty

Lack of knowledge of disability, etc.

20(1) A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know—

(a) in the case of an applicant or potential applicant, that an interested disabled person is or may be an applicant for the work in question;

(b) in any case referred to in Part 2 of this Schedule], that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement.”

222. In **Gallop v Newport City Council [2014] IRLR 211**, it was held that:

“...the responsible employer has to make his own judgment as to whether the employee is or is not disabled. In making that judgment, the employer will rightly want assistance and guidance from occupational health or other medical advisers”. [42].

223. Whether an employer could reasonably be expected to know of a person’s disability will be a question of fact for the Employment Tribunal – **Jennings v Barts and The London NHS Trust [2013] EqLR 326** [89, 101].

224. The Employment Statutory Code of Practice published by the EHRC does not impose legal obligations however it can be used in legal proceedings brought under the Equality Act 2010 which courts and tribunals must take into account when it appears to them to be relevant to any question arising in proceedings. With respect to knowledge of disability, the Code provides at paragraph 6.19:

“For disabled workers already in employment, an employer only has a duty to make an adjustment if they know, or could reasonably be expected to know, that a worker has a disability and is, or is likely to be, placed at a substantial disadvantage. The employer must, however, do all they can reasonably be expected to do to find out whether this is the case. What is reasonable will depend on the circumstances. This is an objective

assessment. When making enquiries about disability, employers should consider issues of dignity and privacy and ensure that personal information is dealt with confidentially.”

225. In ***Environment Agency v Rowan* [2008] ICR 218** and ***General Dynamics Information Technology Ltd v Carranza* [2015] IRLR 4**, the EAT gave general guidance on the approach to be taken in the reasonable adjustment claims. A Tribunal must first identify:

- i. the PCP applied by or on behalf of the employer;
- ii. the identity of non-disabled comparators where appropriate; and
- iii. the nature and extent of the substantial disadvantage suffered by the Claimant in comparison with those comparators.

226. Once these matters have been identified then the Tribunal will be able to assess the likelihood of adjustments alleviating those disadvantages identified.

227. In ***Project Management Institute v Latif* [2007] IRLR 579** the EAT gave guidance as to how Tribunals should approach the burden of proof in failure to make reasonable adjustments claims. The burden of proof only shifts once the Claimant has established not only that the duty to make reasonable adjustments has arisen, but also that there are facts from which it could reasonably be inferred, in the absence of an explanation, that it has been breached.

228. Therefore, the burden is reversed only once a potential reasonable adjustment has been identified. It will not be in every case that the Claimant would have to provide the detailed adjustment that would have to be made before the burden shifted, but *“it would be necessary for the Respondent to understand the broad nature of the adjustment proposed and to be given sufficient detail to enable him to engage with the question of whether it could reasonably be achieved or not”*. The proposed adjustment might well not be identified until after the alleged failure to implement it, and in exceptional cases, not even until the Tribunal hearing.

229. The case of ***Lamb v the Business Academy Bexley* UKEAT/0226/JOJ** provides guidance as to what may amount to a PCP. It was held that the phrase is to be construed broadly, having regard to the statute’s purpose of eliminating discrimination.

230. A provision can include any contractual or non-contractual provision or policy as well as potentially a one off decision - ***Starmer v British Airways Plc* [2005] IRLR 862**. A criterion means any requirement, prerequisite, standard, condition or measure applied whether desirable or unconditional. A practice means the employer’s approach to a situation if it does happen or may happen in the future. All that is necessary is a general or habitual approach by the employer - ***Williams v Governing Body of Alderman Davies Church in Wales Primary School* [2020] IRLR 589**. In ***Nottingham City Transport Ltd v Harvey* UKEAT/0032/12** Langstaff J referred to “practice” as having an element of repetition.

231. This approach has been affirmed in ***Ishola v Transport for London [2020] EWCA Civ 112*** as the Court of Appeal held that the words “provision criterion or practice” suggest a state of affairs indicating how similar cases will be treated in the future. Whereas a one off act can amount to a practice if there is some indication that it would be repeated if similar circumstances arise in future, nevertheless a one-off flawed application of a process will not – ***Harvey*** [21] and also ***Davies v EE Ltd [2023] IRLR 258*** although here it was noted that the requirement for general applicability does not mean the PCP must be applied to the whole workforce.

232. For the duty to arise, the employee must also be placed at a “substantial disadvantage” in comparison with persons who are not disabled. Therefore, a comparative exercise demonstrating substantial disadvantage is required. Substantial in this context means “more than minor or trivial” according to section 212(1) of the Act.

233. The Tribunal must also be satisfied that the disadvantage would not equally arise in the case of someone without the employee’s disability - ***Newcastle upon Tyne Hospitals NHS Trust v Bagley UKEAT/0417/11*** [87]. There is no requirement in the Equality Act for a strict causation test linking the disadvantage caused by the PCP to the Claimant’s alleged disability. All that is necessary is that the Claimant prove facts from which a tribunal could infer that the PCP simply put the Claimant at either:

- i. a disadvantage compared to non-disabled people because they are a disabled person (rather than because of the disability); or
- ii. that because the Claimant was a disabled person, the PCP, whilst causing a disadvantage to everyone whether disabled or not, put the Claimant at a more severe disadvantage because they were a disabled person when compared to non-disabled people ***Sheikholeslami v University of Edinburgh UKEATS/0014/17 [2018] IRLR 1090***.

234. It is necessary for a reason connected with the employee’s disability to be the cause of the substantial disadvantage experienced - ***Hilaire v Luton Borough Council [2022] EAT 166***. Whether an employee is placed at a substantial disadvantage depends on the actual facts, regardless of what the parties believe the facts to be. The employee does not have to show that the disadvantage arises because of their disability – ***Sheikholeslami***.

235. The next question is whether there were any reasonable steps which the Respondent could have taken to avoid the disadvantage which were not taken. There is no onus on a disabled person to suggest adjustments. The duty to consider making reasonable adjustments falls on the employer. In ***Cosgrove v Caesar and Howie [2001] IRLR 653***, the EAT held that it was principally for the employer to explore the possibility of reasonable adjustments, not for the employee to suggest them, however if the adjustment to be suggested is wholly exceptional then it is for the employee to advance it. When assessing whether a particular step would have been reasonable, this involves considering whether there was a chance it would have helped overcome the substantial disadvantage, whether it was

practicable to take it, the cost of taking it, the employer's resources and the resources and support available to it.

236. Paragraph 6.33 of the EHRC Code provides that:

“An employer should consider whether a suitable alternative post is available for a worker who becomes disabled (or whose disability worsens), where no reasonable adjustment would enable the worker to continue doing the current job.”

237. The question of whether a particular adjustment is reasonable is an objective test - **Smith v Churchills Stairlifts Plc [2006] ICR 524**. The Tribunal must examine the issue not just from the perspective of the Claimant but all the relevant factors including considering wider implications including the operational objectives of the employer - **Udemma Lawrence v Birmingham City Council UKEAT/0182/16/DM**. Ultimately, it is the Tribunal's view of what is reasonable that matters. In assessing what adjustments are reasonable, the focus must be on the practical result of the steps which the employer can take, not on the thought processes of the employer when considering what steps to take - **Bank of Scotland v Ashton [2011] ICR 632**.

238. As to whether an adjustment would be effective, this is a question to be answered on the evidence available at the time the decision was taken whether to implement it - **Brightman v TIAA Ltd EAT 0318/19**. If based on the employee's health position at the time the employer's decision was made, there was no realistic prospect of a particular adjustment being effective, then the employer would not become retrospectively liable for failure to make reasonable adjustments simply because the employee's health unexpectedly improved so as to make the step effective. The question whether and to what extent the step would be effective to avoid the disadvantage will always be an important one to weigh in the balance - **Secretary of State for Work and Pensions (Job Centre Plus) v Higgins [2014] ICR 341, EAT [59]**.

239. In the judgment of the Court of Appeal in **Paulley v First Group plc [2014] EWCA Civ 1573** it was held that: *“This is not a threshold test. The prospects of success in achieving the desired objective are to be weighed in the balance against the cost and difficulty of making the adjustment.”* [44]

240. In **Griffiths v Secretary of State for Work and Pensions [2017] ICR 160, CA**, it was held that *“any modification of, or qualification to, the PCP in question which would or might remove the substantial disadvantage is in principal capable of amounting to a relevant step.”* [29]

241. It was held by the Supreme Court in **First Group Plc v Paulley [2017] UKSC 4** that that there must be a real prospect the step would have made a difference.

242. In **Romec v Rudham [2007] All ER 206** the EAT held that if the adjustment sought would have had no prospect of removing the substantial disadvantage then it could not amount to a reasonable adjustment. However, if there was a real prospect of removing the disadvantage it may be reasonable. In **Cumbria Probation Board v Collingwood [2008] All**

ER 04 the EAT stated *“it is not a requirement in a reasonable adjustment case that the Claimant prove that the suggestion made will remove the substantial disadvantage.”*

243. An adjustment will not be a reasonable one to take if it would be completely futile – **Conway v Community Options Ltd UKEAT/0034/12** [17, 19, and 22] and also **Doran v Department of Work and Pensions UKEATS/0017/14** [43].

244. In **Griffiths** it was held:

“I would accept that whilst a disabled employee may suffer disadvantages not directly related to the ability to integrate him or her into employment, the steps required to avoid or alleviate such disadvantages are not likely to be steps which a reasonable employer can be expected to take.” [68]

245. Put another way, it may not be reasonable to expect an employer to take steps where the disadvantage was not directly related to the ability to integrate the disabled person into employment. The Court in **Griffiths** cited the judgment in **O’Hanlon v Commissioners for Inland Revenue [2007] ICR 1359** where that court had held:

“The Act is designed to recognise the dignity of the disabled and to require modifications which enable them to play a full part in the world of work, important and laudable aims. It is not to treat them as objects of charity...” [69]

246. A failure to consult does not of itself constitute a failure to make reasonable adjustments - **Tarbuck v Sainsbury’s Supermarkets Ltd [2006] IRLR 664** [71, 72].

247. There is no objective justification defence available in respect of an employer’s failure to make reasonable adjustments. The proposed adjustments are either reasonable or they are not.

Unfair dismissal

248. Where dismissal is admitted, the first question for the Tribunal is to identify the real reason for the dismissal (as per the Employment Rights Act 1996 (ERA) s 98). The burden is on the employer to show what that reason was (ERA s 98(1)(a)).

249. As held in **Abernethy v Mott, Hay and Anderson [1974] ICR 323**:

“A reason for the dismissal of an employee is a set of facts known to the employer, or it may be of beliefs held by him, which cause him to dismiss the employee”.

250. In **Kuzel v Roche Products Ltd [2008] EWCA Civ 380** the court recorded that it is for the Tribunal to decide what the real reason for dismissal was, and this is not limited to the employer’s asserted reason, nor the employee’s alternative [52-54, 58-60] and specifically:

“59. The tribunal must then decide what was the reason or principal reason for the dismissal of the claimant on the basis that it was for the employer to show what the reason was. If the employer does not show to the satisfaction of the tribunal that the reason was what he asserted it was, it is open to the tribunal to find that the reason was what the employee asserted it was. But it is not correct to say, either as a matter of law or logic, that the tribunal must find that, if the reason was not that asserted by the employer, then it must have been for the reason asserted by the employee. That may often be the outcome in practice, but it is not necessarily so.

60. As it is a matter of fact, the identification of the reason or principal reason turns on direct evidence and permissible inferences from it. It may be open to the tribunal to find that, on a consideration of all the evidence in the particular case, the true reason for dismissal was not that advanced by either side. In brief, an employer may fail in its case of fair dismissal for an admissible reason, but that does not mean that the employer fails in disputing the case advanced by the employee on the basis of an automatically unfair dismissal on the basis of a different reason.”

251. The second question for the Tribunal is whether the real reason for the dismissal was a potentially fair reason within the categories set out in ERA s 98(2) or as some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held. The burden is on the Respondent to show this - s. 98(1)(b) ERA.

252. The third question is whether the dismissal for that reason was fair or unfair, which depends upon whether in all the circumstances (including the size and administrative resources of the Respondent) the Respondent acted reasonably or unreasonably in treating it as a sufficient reason for dismissal. That question is to be determined in accordance with the equity and substantial merits of the case (ERA s 98(4)). Here the burden of proof is neutral.

253. The proper approach in answering the third question under s. 98(4) ERA was summarised in ***Iceland Frozen Foods v Jones* [1982] IRLR 439** (confirmed in ***Foley v Post Office* [2000] IRLR 827**), and ***HSBC Bank plc v Madden* [2000] IRLR 827**:

- i. the starting point should always be the words of s 98(4) themselves;
- ii. in applying that section an Employment Tribunal must consider the reasonableness of the employer's conduct, not simply whether they (the members of the Employment Tribunal) consider the dismissal to be fair;
- iii. in judging the reasonableness of the employer's conduct an Employment Tribunal must not substitute its decision as to what the right course to adopt for that of the employer;
- iv. in many (though not all) cases there is a band of reasonable responses to the employee's conduct within which one employer might reasonably take one view, another might quite reasonably take another;
- v. the function of the Employment Tribunal, as an industrial jury, is to determine whether in the particular circumstances of each case the

decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band it is unfair.

254. In relation to conduct dismissals, in assessing fairness under s. 98(4) ERA it is well established that a tribunal must consider the factors set out in ***British Home Stores Ltd v Burchell* [1980] ICR 303**, namely:

- i. Did the Respondent have a reasonable suspicion amounting to a belief that the Claimant was guilty of the misconduct at the time of dismissal;
- ii. Were there reasonable grounds in the Respondent's mind to sustain the belief in the misconduct; and
- iii. Had the Respondent carried out as much investigation as was reasonable in the circumstances.

255. If the three parts of the ***Burchell*** test are met, the Employment Tribunal must then go on to decide whether the decision to dismiss the employee was within the band of reasonable responses. In ***Sainsbury's Supermarkets Ltd v Hitt* [2003] IRLR 23** it was held that the Tribunal must not substitute its own decision for that of the employer. The band of reasonable responses test applies to all aspects of the dismissal process including the procedure adopted and whether the investigation was fair and appropriate. The focus must be on the fairness of the investigation, dismissal and appeal, and not on whether the employee has suffered an injustice.

256. With respect to reasonable belief, the court in ***Steen v ASP Packaging Ltd* [2014] ICR 56** held that *"It does not matter if the employer dismissed an employee for something which the employee did not actually do, so long as the employer genuinely thought that he had done so."* [12]

257. In determining the fairness of the dismissal, procedural fairness and substantive fairness should be viewed in the round. In ***Sharkey v Lloyds* (2015) UKEATS/005/15** it was held that procedural fairness does not:

"sit in a vacuum to be assessed separately. It is an integral part of the question whether there has been a reasonable investigation that substance and procedure run together" [26]

258. It was further held that:

"It will almost inevitably be the case that in any alleged unfair dismissal a Claimant will be able to identify a flaw, small or large, in the employer's process. It will be and is for the Tribunal to evaluate whether that is so significant as to amount to unfairness". [26]

259. The band of reasonable responses also applies to questions of the fairness of the procedure - ***Whitbread plc v Hall* [2001] EWCA Civ 268**.

260. The entire dismissal procedure, including any appeal, is to be considered as part of the termination and the fairness of the dismissal must be judged accordingly – **West Midlands Co-operative Society Ltd v Tipton [1986] ICR 192**.
261. In the case of **Taylor v OCS [2006] ICR 1602 CA**, it was held that what mattered was not whether an appeal is by way of a re-hearing or review, but whether the disciplinary process is fair overall.
262. As per Donaldson LJ in **Union of Construction, Allied Trades and Technicians v Brain [1981] IRLR 224**, when assessing whether the dismissal was fair:
- “Whether someone acted reasonably is always a pure question of fact. Where parliament has directed a tribunal to have regard to equity – and that, of course, means common fairness and not a particular branch of the law – and to the substantial merits of the case, the tribunal’s duty is really very plain. It has to look at the question in the round and without regard to a lawyer’s technicalities. It has to look at it in an employment and industrial relations context and not in the context of the Temple and Chancery Lane.”*
263. In reaching their decision, tribunals must also take into account the ACAS Code on Disciplinary and Grievance Procedures. By virtue of section 207 of the Trade Union and Labour Relations (Consolidation) Act 1992, the Code is admissible in evidence and if any provision of the Code appears to the tribunal to be relevant to any question arising in the proceedings, it shall be taken into account in determining that question. A failure by any person to follow a provision of the Code does not however in itself render him liable to any proceedings.
264. It is clear from the wording of the Code itself, as well as from the decision in **Phoenix House Ltd v Stockman [2019] EWCA Civ 560**, that the Code does not apply to dismissals on grounds of Some Other Substantial Reason, however its general principles may inform the Tribunal’s assessment of fairness under section 98(4).
265. When determining whether a dismissal is fair on grounds of some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held under s.98(1)(b), there will need to be consideration of whether the reason was substantial, and of a kind capable of justifying dismissal of an employee in the relevant position.
266. Situations where dismissals have been held to be potentially fair on these grounds include a breakdown of trust and confidence; third party pressure; reorganisation not amounting to redundancy; a refusal to accept contractual changes; and impasse situations where the employment relationship cannot continue. In an impasse situation a Tribunal must consider whether the employee took reasonable steps to attempt to resolve the situation prior to dismissal - **Turner v Vestric Ltd [1981] IRLR 23**; and the extent to which the employer had consulted and attempted to avoid dismissal - **Royal Surrey County NHS Foundation Trust v Drzymala UKEAT/0063/17**. Whereas an employer is required to take reasonable

steps to resolve the matter before dismissal, this does not extend to taking “all” reasonable steps – **Matthews v CGI IT UK [2024] EAT 38**.

267. Where a Tribunal finds that the dismissal was unfair because of a procedural failing, the tribunal should consider reducing the amount of compensation to reflect the chance that there would have been a fair dismissal if the dismissal had not been procedurally unfair - **Polkey v A E Dayton Services Ltd [1987] IRLR 503**.

Automatic unfair dismissal

268. Section 100 Employment Rights Act 1996 provides:

“(1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—

...

(d) in circumstances of danger which the employee reasonably believed to be serious and imminent and which he could not reasonably have been expected to avert, he left (or proposed to leave) or (while the danger persisted) refused to return to his place of work or any dangerous part of his place of work...”

Serious and imminent danger

269. As held in **Harvest Press Ltd v McCafferty [1999] IRLR 778**, the circumstances of danger do not need to be limited to the physical features of arrangements in the work place and that:

“We agree with the Employment Tribunal who concluded that the word danger is used without limitation in section 100(1)(d) and that Parliament was likely to have intended those words to cover any danger however originating.” (paragraph 17).

270. In that case the EAT held that the danger in the workplace may arise from the presence or the absence of another employee.

Reasonable belief

271. In **Akintola v Capita Symonds Ltd [2010] EWCA Civ 405, CA**, the Court of Appeal held that an employment tribunal had been entitled to find that the employee (a senior structural engineer) did not hold a reasonable belief that he was in circumstances of serious and imminent danger as he refused to enter a confined space through a manhole. Here it was held that he could not prove that there was a serious and imminent danger in circumstances where they have been a method statement and the landowner had sent in a specialist team to undertake monitoring before anyone else was allowed in.

272. The issue of an employee’s reasonable belief was considered in **Kerr v Nathan’s Wastesavers Ltd EATS/91/95** where it was held that that when considering the reasonableness of an employee’s belief, tribunals should not place an onerous duty of enquiry on the employee, and the purposive

of the legislation is to protect employees who raise concerns about health and safety matters. The fact that a concern could have been allayed by further enquiry does not necessarily mean that the belief was unreasonable. Nevertheless even an honestly held belief may not necessarily be reasonable (page 7).

273. Authority for the proposition that an honestly held belief may not be reasonable appears in ***Miles v Driver and Vehicle Standards Agency [2023] EAT 62***, in the example of the COVID-19 pandemic. In that case, the tribunal found that the employee had a reasonable belief in a circumstance is harmful or potentially harmful to health. However, his belief in serious and imminent danger was unreasonable (paragraph 48).

274. In ***Rodgers v Leeds Laser Cutting [2023] I.C.R. 356*** a case which arose in the context of the COVID-19 pandemic, the Court of Appeal considered the issue of the employee's belief. The Court held that the words of s.100(1)(d) should be construed purposively, rather than literally, and that it would be sufficient for an employee to have a (reasonable) belief in the existence of the danger as well as in its seriousness and imminence (paragraph 17). The Court also noted that it was implicit that s. 100(1)(d) only applies where the employee has left the workplace (or proposes to do so, or has not returned) because of the perceived danger, rather than for some other reason (paragraph 18). Guidance was provided by the Court [at 21] as to the approach in such cases and it set out a five stage approach to determining whether s. 100(1)(d) applies:

- (1) Did the employee believe that there were circumstances of serious and imminent danger at the workplace? If so:
- (2) Was that belief reasonable? If so:
- (3) Could they reasonably have averted that danger? If not:
- (4) Did they leave, or propose to leave or refuse to return to, the workplace, or the relevant part, because of the (perceived) serious and imminent danger? If so:
- (5) Was that the reason (or principal reason) for the dismissal?

275. As regards the particular risk, it will be a matter for the tribunal to decide whether on the particular facts of each case it amounts to a serious and imminent danger.

Initial Submissions

Claimant's submissions

276. The Claimant submits that her dismissal was unfair, automatically unfair under s.100 ERA 1996, and discriminatory under the Equality Act 2010. She contends that the Respondent failed to meet its duty of care, failed to investigate a foreseeable health and safety risk, and ultimately dismissed her for taking protected steps to avoid serious and imminent danger to her psychological health.

277. The Claimant's case centres on her challenge to the decision to redeploy her to Brixton Church, which she says presented a serious and imminent danger to her mental wellbeing. The Claimant relies upon (i) the congregation's 2016 vote excluding female elders; (ii) contemporaneous concerns she raised with the Respondent; (iii) medical and occupational health evidence; and (iv) her deteriorating mental health throughout late 2018–2020.

278. The Claimant argues that the Respondent knew she viewed the location as unsafe, knew she was becoming unwell, and yet insisted on redeployment and ultimately dismissed her for refusing to expose herself to what she believed to be a harmful environment. The Claimant says the Respondent breached its duty of care. The Claimant says the Respondent was aware of (i) the vote; (ii) her repeated concerns; (iii) medical evidence showing anxiety, panic disorder and mixed anxiety/depression; and (iv) the Occupational Health Advisor's confirmation of psychological risk.

279. The Claimant argues the Respondent attempted to compel her to work in an environment known to be distressing to her, failed to conduct any meaningful investigation, and applied pressure through threats of discipline. The Claimant contends that the Respondent's actions materially contributed to her worsening mental health.

280. As regards automatic unfair dismissal, the Claimant submits that all four statutory elements of s.100(1)(d)–(e) are met:

- (i) Belief in serious and imminent danger – the Claimant asserts her belief was grounded in the 2015 vote, longstanding exclusion of female elders, the Pastor's confirmation that such practices remained, her repeated written concerns, the OHA report flagging psychological risk, and her medical evidence.
- (ii) Reasonableness of that belief – the Claimant argues that the Respondent itself accepted risk existed by spending 18 months attempting to avoid deployment, by recognising that no adjustments were available, and by acknowledging they "struggled to understand how the decision would affect her."
- (iii) Taking steps to protect herself – the Claimant says her refusal to sign a contract placing her at BSDAC is said to be a protected step under s.100(1)(e).
- (iv) Causation – the Claimant submits that she was dismissed because she refused to comply with the instruction to redeploy, which was the same step she took to protect herself from danger. The dismissal letter explicitly cites refusal to follow a management instruction.
- (v) On this basis the Claimant contends the dismissal is automatically unfair.

281. The Claimant argues that even if s.100 is not made out, the dismissal is unfair under s.98. The Claimant submits the Respondent attempted to characterise the matter as gross misconduct, yet the facts concern health and safety, psychological risk, and their own inability to redeploy her, and

she says that these fall under capability or “some other substantial reason,” not misconduct.

282. As regards procedural unfairness the Claimant contends that no fair process took place. Specifically:

- i. no allegations were put to her in writing
- ii. no investigation was carried out
- iii. no disciplinary hearing was held
- iv. she was not permitted representation
- v. mitigation was not considered
- vi. the ACAS Code was not followed

283. The Claimant argues that under *Tipton* procedural deficiencies cannot be cured on appeal.

284. As regards substantive unfairness, the Claimant says that a reasonable employer, she maintains, would have investigated the risk, considered alternative locations, acted on medical evidence, and avoided disciplinary action but the Respondent did none of these.

285. Although disability was eventually conceded, the Claimant argues the Respondent knew or ought to have known of her condition from the OH report identifying the Equality Act applied; continuous fit notes; visible anxiety and distress; the management referrals discussing whether her condition met statutory definitions; and she refers to the appeal officer’s failure to explore disability issues.

286. The Claimant identifies the PCPs as:

- i. the requirement to work at BSDAC; and
- ii. attendance at meetings facilitating redeployment

287. The Claimant says that because of her disability, she says she suffered severe anxiety, required support, and could not safely comply with these requirements, and she contends this placed her at a substantial disadvantage.

288. As regards failure to make reasonable adjustments, the Claimant argues the Respondent:

- i. failed to adjust or remove the redeployment requirement
- ii. failed to explore alternative postings among the 8 areas and 230 churches
- iii. discontinued a potential adjustment (a swap with another employee) solely due to that employee’s childcare needs

- iv. failed to involve Occupational Health meaningfully
289. The Claimant submits that “reassurance” is not an adjustment, and an action that worsens her condition cannot be proportionate.
290. As regards direct Sex Discrimination the Claimant contends that the 2016 vote:
- i. excluded women from eldership
 - ii. required serving female elders to step down
 - iii. reflected longstanding practice
 - iv. created a culture hostile to female leadership
291. The Claimant argues that a male Area Bible Worker would not face reduced role scope, limited preaching opportunities, diminished authority or the need for “protection.” The Claimant submits that the Respondent took no steps to mitigate the impact of the vote on her role.
292. The Claimant asserts that her own evidence has been consistent, contemporaneously documented, medically supported and aligned with the chronology. Conversely the Claimant submits that the Respondent’s evidence is internally inconsistent and contradicted by documents. She highlights:
- i. the Respondent’s shifting explanations for dismissal (commercial decision, misconduct, gross misconduct, disciplinary process)
 - ii. Executive Committee minutes incorrectly stating a disciplinary process had taken place
 - iii. mischaracterisation of her conduct, including failure to acknowledge she requested a risk assessment rather than refusing redeployment
 - iv. reliance on her participation in social or faith-based activities, which she argues does not undermine her evidence that redeployment to BSDAC created a specific psychological risk
293. The Claimant argues the Tribunal should place greater weight on the documentary evidence, which shows confusion and inconsistency in the Respondent’s rationale and undermines their credibility.

Respondent’s submissions

294. The Respondent contends that all claims should be dismissed. It submits that the Claimant’s case arises not from any unlawful treatment but from a long-running impasse created by her refusal to comply with a lawful management instruction to work at Brixton Church.

295. The Respondent emphasises that the Brixton Church congregation's vote not to appoint female Elders was made by congregational members and not by the Respondent. Elders are volunteers and not employees, and neither the Claimant nor any employee could have been appointed as Eldership through employment. The Respondent says therefore it had no control over the vote and no responsibility for it.

296. The Claimant was a Bible Worker, a supporting role working under the direction of a Pastor which the Respondent submits was not a leadership position. It says the Claimant's employment contract contained a valid mobility clause permitting redeployment to other churches. When Brixton Church's Intern left on 1 January 2019, the Respondent required a Bible Worker there and exercised its contractual right to redeploy the Claimant.

297. The Respondent denies that the Claimant's refusal to attend Brixton Church was protected under s.100(1)(d). It submits:

- i. There were no "circumstances of danger", and no reasonable belief in such danger.
- ii. The Eldership vote concerned only the voluntary Elder role and had no bearing on the functions of a Bible Worker.
- iii. The Claimant relied on unsubstantiated assumptions and hearsay; she had never worked at Brixton and could not reasonably predict she would be mistreated.
- iv. The Pastor and Elders gave assurances of full support for her deployment.

298. On this basis, the Respondent argues that the Claimant's refusals were not protected steps, and dismissal was for an ordinary conduct reason.

299. The Respondent submits that the Claimant was dismissed for the potentially fair reason of conduct, namely her sustained refusal—over an 18-month period—to comply with a lawful and reasonable instruction.

300. Applying the **Burchell** principles, the Respondent argues:

- i. It held a genuine and reasonable belief in the Claimant's misconduct (her refusal to attend Brixton).
- ii. It had reasonable grounds for that belief, having repeatedly reviewed the safety and suitability of Brixton Church.
- iii. It carried out a reasonable investigation, including a risk assessment, Occupational Health advice, and exploration of redeployment alternatives.

301. As to procedural fairness under s.98(4), and **Sainsbury's Supermarket Stores Ltd v Hitt [2003]** the Respondent recognises that there may not be what the Tribunal considers to be a strict disciplinary

process with an investigation meeting; a disciplinary meeting; and an appeal meeting structure, however the Respondent argues that:

- i. The Claimant was well aware of the need for her redeployment and of the consequences of refusing.
- ii. Numerous meetings and correspondence took place over 18 months.
- iii. Alternatives were genuinely considered but none were viable.
- iv. The Claimant was invited to a final meeting, warned of the possibility of dismissal, and offered an appeal heard impartially.

302. The Respondent submits that dismissal fell comfortably within the range of reasonable responses.

303. The Respondent denies the direct sex discrimination claim. It submits:

- i. A hypothetical male Bible Worker who refused to attend Brixton because of the same Eldership vote would have been treated identically.
- ii. The Claimant's protected characteristic did not influence the Respondent's actions.
- iii. The reason for the dismissal and related steps was the Claimant's refusal to comply with an operational requirement, not her sex.

304. The Respondent therefore argues that neither less favourable treatment nor a causal link to sex has been established.

305. Although the Respondent accepted during this litigation that the Claimant was disabled due to depression, it denies knowledge or constructive knowledge at the material time. The Respondent submits:

- i. Early sicknotes referred only to stress or high blood pressure, with no evidence of substantial functional impairment.
- ii. The Claimant did not describe day-to-day limitations at welfare meetings.
- iii. The Occupational Health report offered only a bare assertion the Equality Act applied and identified the Brixton placement as the sole occupational barrier.
- iv. Any impairment appeared temporary and reactive to the deployment dispute.
- v. After dismissal, the Claimant publicly engaged in activities (online broadcasts, events) which, outwardly at least, suggested capability.

306. The Respondent therefore contends it could not reasonably have been expected to know the Claimant was disabled within the meaning of the Act.

307. As regards reasonable adjustments, the Respondent accepts the existence of a PCP requiring the Claimant to work at Brixton. However, it argues:

- i. The Claimant's refusal stemmed from the Eldership vote, not from the effects of any disability. A non-disabled worker might have reacted in precisely the same way.
- ii. The Respondent lacked knowledge of disability and thus no duty arose.
- iii. In any event, all reasonable steps were explored: alternative churches, swapping Bible Workers, and considering an MA route. No practicable adjustments were available.

308. The Respondent submits that the Claimant did not put her case to the witnesses and that her cross-examination was disorganised and inconsistent. It argues that her objections to the redeployment shifted over time — from divine instruction, to pastoral ambition, to health and safety concerns —which, the Respondent says, were not coherently explained either during employment or before the Tribunal.

309. The Respondent characterises the dispute as a classic battle of wills rather than an instance of unlawful treatment.

Further submissions

310. As the Claimant made reference to the dismissal being for Some Other Substantial Reason (or capability) in her written closing submissions, and as this had not been considered in the hearing, I wrote to the parties on 27 May 2026 inviting further written submissions from them within 14 days on the following:

- I. What was the principal reason for dismissal for the purposes of section 98 ERA 1996?
- II. In particular, whether (on the evidence) the dismissal is more appropriately characterised as: (a) conduct (as contended by the Respondent), or b) some other substantial reason, including (if applicable, and without limitation) a breakdown in relations, an inability to agree redeployment, or an impasse situation.
- III. If the Tribunal were to find that the reason for dismissal fell within "some other substantial reason": (a) what procedure was required in the circumstances; and (b) whether the procedure followed in this case was fair within the meaning of section 98(4) ERA 1996.
- IV. Any consequential submissions the parties wish to make as to the fairness of the dismissal in light of the above.

311. This appeared to the Tribunal to be the fairest way to proceed so that both sides would have sufficient time to address us on this important matter. Both sides produced detailed written submissions of a particularly high quality.

312. Whereas the Claimant had initially applied for an extension time, this did not reach me during the initial 14 days and the Claimant in any event produced 18 page of detailed submissions which addressed the issue, therefore we did not consider it necessary to grant the extension of time.

Claimant's further submissions

313. The Claimant submits that the Respondent has wrongly characterised the dismissal as one for misconduct whereas she says the principal reason for dismissal was not culpable conduct, but a prolonged dispute concerning redeployment to Brixton and the resulting impasse when the Claimant declined to agree to that redeployment without appropriate safeguards. The Claimant contends that, if the dismissal falls within section 98(1) ERA 1996 at all, it is properly characterised as some other substantial reason ("SOSR"), namely an inability to agree redeployment, rather than misconduct.

314. The Claimant argues that she did not refuse to work, but instead sought a stress risk assessment and meaningful consultation before agreeing to redeployment and she submits that this was a reasonable, safety-related request. The Respondent, however, treated this as a refusal and maintained throughout that Brixton was the only available option, effectively predetermining the outcome from an early stage. The dismissal is said to have arisen from this entrenched position rather than any misconduct on the Claimant's part.

315. In relation to the Respondent's conduct case, the Claimant emphasises that no disciplinary process was followed: there was no investigation, no formal allegation of misconduct, no disciplinary hearing, and no opportunity to be accompanied. The Claimant also relies on evidence that the Respondent consciously adopted a "commercial decision" route to avoid a disciplinary process. In those circumstances, the Claimant submits that the requirements of a fair misconduct dismissal (including the *Burchell* principles) were not met, and that a refusal to agree to redeployment, particularly where it involved a significant change, could not properly be characterised as misconduct in any event.

316. If, however, the Tribunal considers that the dismissal is better characterised as SOSR, the Claimant submits that the Respondent nonetheless failed to follow a fair procedure. The Claimant contends that there was no meaningful consultation, no genuine exploration of alternative roles, and a clear element of predetermination, with Brixton consistently presented as the only option. The April 2020 meeting is said to have culminated in an ultimatum rather than consultation, and the Respondent is criticised for failing to engage properly with the Claimant's representations or to evidence any structured consideration of alternatives.

317. The Claimant argues that the Respondent failed to take into account medical evidence, Occupational Health input, or the need for reasonable

adjustments when dealing with the redeployment dispute and the eventual dismissal. This failure is said to undermine both the characterisation of the dismissal (whether conduct or SOSR) and its fairness, as a reasonable employer would have considered adjustments, alternative roles, or other steps short of dismissal before reaching a conclusion.

318. The Claimant further submits that the Tribunal should exercise caution before recharacterising the dismissal as SOSR, given that the Respondent did not rely on that reason at the time and dismissed her for alleged gross misconduct. The Claimant argues that it would be unfair and prejudicial to determine the claim on an unpleaded basis, and that if the Respondent has failed to prove the reason it advanced (conduct), the dismissal must be found unfair rather than retrospectively reclassified.

319. In summary, the Claimant's position is that the dismissal arose from a disability-affected redeployment dispute rather than misconduct; that the Respondent has failed to establish conduct as the principal reason for dismissal; and that even if the situation is characterised as SOSR, the Respondent failed to follow a fair procedure or to act reasonably in all the circumstances. The Claimant therefore contends that the dismissal was unfair under section 98(4) ERA 1996.

Respondent's further submissions

320. The Respondent maintains that the principal reason for dismissal was conduct, namely the Claimant's refusal to comply with a lawful and reasonable management instruction to work at Brixton in accordance with her contract of employment. The Respondent submits that the Claimant's case has always proceeded on the basis that she refused redeployment, albeit contending that her refusal was justified on health and safety grounds. The Respondent therefore disputes any suggestion that the dismissal should properly be characterised as capability or SOSR, and contends that such a case was not advanced by the Claimant at the time.

321. The Respondent submits that, on the evidence, there was a clear and repeated refusal by the Claimant to comply with the instruction to relocate. That instruction was contractually permitted and fundamental to the performance of her role. The Claimant's refusal, which was maintained over a prolonged period, amounted to a failure to comply with a core contractual obligation. The Respondent contends that, in those circumstances, the dismissal was plainly one for misconduct.

322. However, the Respondent acknowledges that the case also displays features consistent with an impasse situation. It submits that the Claimant's refusal led to a breakdown in the working relationship which became irreconcilable. The Respondent emphasises that it took extensive steps over an approximately 18-month period to avoid dismissal, including exploring alternative arrangements, attempting redeployment solutions, and engaging in prolonged dialogue with the Claimant. The Respondent characterises this as an unusually extensive effort to resolve the dispute short of dismissal.

323. The Respondent argues that this prolonged engagement does not alter the underlying reason for dismissal, which remained the Claimant's

refusal to comply with a reasonable instruction. Rather, it submits that the impasse was the consequence of that refusal. The Respondent cautions against treating every impasse as displacing the underlying misconduct, noting that in many cases a persistent refusal to comply with instructions will inevitably lead to such a situation.

324. In relation to procedure, the Respondent accepts that the process followed did not resemble a conventional disciplinary procedure. However, the Respondent submits that the process was nevertheless fair when viewed in context and it contends that the Claimant's position was clear, repeated, and unchanging over a lengthy period, such that further formal process would not have altered the outcome. The Respondent relies on authorities addressing breakdown or impasse situations to support the proposition that a dismissal may be fair even in the absence of a formal disciplinary process where an employer has taken reasonable steps to resolve the situation. We were referred to the cases of *Royal Surrey County NHS Foundation Trust v Drzymala* UKEAT/0063/17; *Turner v Vestric* [1981] IRLR 23; and *Matthews v CGI IT UK* [2024] EAT 38.

325. The Respondent further submits that, if the Tribunal considers the matter through an SOSR lens, the fairness of its approach should be assessed accordingly rather than by reference to the stricter requirements of a misconduct dismissal and the ACAS Code. It argues that it would be perverse if its efforts to avoid dismissal and treat the Claimant with patience and flexibility were held against it, rather than viewed as evidence of a reasonable and fair approach.

326. Ultimately, the Respondent contends that the case is best understood as one in which the Claimant's misconduct led to an impasse. It invites the Tribunal, if necessary, to adopt what it describes as a "hybrid" approach, recognising both the conduct element (the refusal to comply with instructions) and the resulting breakdown in the employment relationship. On that basis, it submits that the dismissal fell within the range of reasonable responses open to a reasonable employer and was fair under section 98(4) ERA 1996.

Conclusions and analysis

Automatic unfair dismissal – s. 100(1)(d) Employment Rights Act 1996

327. Our first task is to determine whether the Claimant reasonably believed that there were circumstances of danger at Brixton Church. The Claimant's evidence about this danger was that the Congregation's vote on female Elders would have restricted her and other females in their leadership capacities, and that restriction in turn would be harmful to her mental wellbeing.

328. When asked about her belief in any serious and imminent danger, the Claimant told us that she was certain that her duties would be restricted which would cause her harm, and that this was due to conversations she had with Bible Workers and members of the Brixton Church; and because of her mental health generally; the implication of the 2016 vote itself; as well as bulletins she had seen from the Brixton Church.

329. We are clear that the Claimant is referring to danger to her mental health, rather than forms of physical danger. A risk to someone's mental health could form a danger just as much as a physical risk to health could do so. However, we are not persuaded that there were circumstances of danger at that church at that time.
330. The vote taken in 2016 was taken by the Congregation and not the Respondent itself, moreover the Respondent did not agree with the vote. The vote concerned female Elders, it did not concern Bible Workers. The Claimant was to be posted as a Bible Worker, not an Elder. The vote could therefore not indicate how the Claimant would have been treated as a Bible Worker.
331. We have very little evidence at all on what it is the Claimant says that other people told her at the time about how the vote impacted females working at that Church. We note that Ms Rutherford could not have told the Claimant anything negative about that vote as she left as Bible Worker in 2011 long before the vote was taken in 2016, and she could not comment on what it was like to be working there eight years later in 2019.
332. The Claimant would have performed precisely the same role at Brixton Church as she had at Croydon Church, and there was no threat to her leadership functions as we have already explained she did not have any, save for leading people to God in a spiritual leadership sense, and that would not have changed as that was the same role as she had performed at Croydon. We also noted that Pastor Boldeau had confirmed he would oversee and be responsible for allocating the Claimant's duties, rather than the Congregation who had taken the vote. In addition Pastor Boldeau provided assurances to the Claimant that he would protect her – not from a specific threat of harm, but rather he would ensure that she was treated with respect.
333. The move would also not have impacted the Claimant's ability to continue to act as an Elder either. The Claimant was an Elder at Croydon Church, not Brixton, and she could carry on that role there irrespective of the vote.
334. In addition, as the Claimant never worked at Brixton Church she had no personal experience of what it would have been like for her to work there as a Bible Worker. Moreover the Brixton Church bulletins relied upon by the Claimant in the hearing were not seen by her until after her employment ended, therefore they could not have provided her with any reasonable belief that there was some form of danger at that Church.
335. We noted that a female Bible Worker, Sindi, was posted to Brixton Church after the Claimant declined to go there, and we are told that she remains there now without incident, however that was not of assistance to us as our focus is on what was known about any dangers at the time of attempting to post the Claimant to that church.
336. We are not persuaded that there would have been any negative impact on the Claimant's desire to become a Minister in the future, and therefore we are not persuaded that somehow this represented a danger to her mental health. The Claimant would in any event have had to leave the

Church to go and study her MA in any event if she wished to pursue that path.

337. We are also not persuaded that the comments from Ms Mukwada about her concerns should support an inference that there was some form of danger at that Church – it was clear that Ms Mukwada’s concerns related to childcare and nothing else.
338. The conversations and investigations from Ms Crawford did not identify any dangers, rather the conversations with the Elders at Brixton Church and Pastor Boldeau, were indicative that they would be welcoming of the Claimant and supportive of her.
339. We are therefore not persuaded that the Claimant reasonably believed that there were any circumstances of danger at Brixton Church.
340. We also add that we were not persuaded, based upon what the Claimant has told us, that the alleged danger was serious and imminent in any event. As the Respondent argues, the Claimant may consider that the issue of deployment is what caused her health to decline when it did, however it does not follow that any danger at that Church was both serious and imminent. The evidence does not support such a conclusion. Rather this was simply an assumption on the part of the Claimant that following the vote, her role would have been restricted, which in turn would have damaged her wellbeing. We do not agree that this was somehow a serious and imminent danger. The Claimant’s belief was derived largely from generalised concerns and assumptions rather than from specific or objectively verifiable evidence relating to her ever having performed the role of a Bible Worker at Brixton Church.
341. Whereas the Tribunal accepts that the Claimant believed there were circumstances of danger at the Brixton Church, however, for the reasons set out above, the Tribunal concludes that belief was not reasonably held, and that there were no circumstances which could properly be characterised as serious and imminent danger within the meaning of s.100(1)(d).
342. The Tribunal finds that the Claimant’s refusal or objections to redeployment arose from her views about the 2016 vote and her personal convictions and the impact upon her future career, rather than from a reasonably held belief in serious and imminent danger.
343. The Tribunal therefore concludes that, whilst the Claimant held concerns about the proposed redeployment, those concerns did not amount to a reasonably held belief in circumstances of serious and imminent danger, and the statutory conditions of section 100(1)(d) are not satisfied. We therefore dismiss this complaint.

Direct sex discrimination – s. 13 Equality Act 2010

344. It is not disputed that the Claimant was required to work at the Brixton Church, nor that she was dismissed.

345. Starting with the requirement to work at Brixton, the Claimant has failed to establish a *prima facie* case of direct discrimination. No facts have been established before us whereby we could conclude that the Claimant was treated less favourably than a hypothetical male Bible Worker would have been in posting her to work at Brixton Church. There was no evidence at all which would have supported a conclusion that the treatment was because of the Claimant's sex.
346. We would have dismissed that complaint on that basis alone, however we have gone further and looked at the reason why this happened, assuming for a moment that the burden of proof had passed to the Respondent to provide an explanation for the treatment.
347. It was abundantly clear to us that the reason for the treatment, that is the decision to post the Claimant to Brixton, was because that is where there was a vacancy, and because there was no longer a need for her at Croydon. There was nothing more to it than that. This explanation was entirely non-discriminatory, it had nothing whatsoever to do with anyone's sex, and we therefore dismiss this complaint of direct sex discrimination.
348. However, the situation is more nuanced than a simple direction for the Claimant to work at Brixton Church. In this case the Claimant was directed to go there, the Claimant refused or declined to do so, citing numerous reasons why, including that she informed the Respondent that she considered it to be an unsafe or a hostile place of work for people of her gender. The comparison ought therefore to be with a male Bible Worker, directed to move churches, who refused or declined to do so, on grounds that they considered it to be unsafe or hostile place of work for people of his gender.
349. The likelihood of a male Bible Worker ever being in such a position is perhaps unlikely and unrealistic, however for the purposes of a direct discrimination complaint, there must be a like for like comparison.
350. The Claimant has again failed to establish a *prima facie* case of direct discrimination. No facts have been established before us whereby we could conclude that the Claimant was treated less favourably than a hypothetical male Bible Worker would have been in directing her to work at Brixton Church in circumstances where it was alleged to be an unsafe or a hostile environment due to gender. There was no evidence at all which would have supported a conclusion that the treatment was because of the Claimant's sex.
351. In the Claimant's case, investigations were undertaken at that church and the Pastor and Elders were spoken to and no specific risks were identified. We do not find that a hypothetical male comparator would likely have received any different or any better or more favourable treatment than the Claimant did.
352. We therefore dismiss this allegation of direct sex discrimination.
353. As regards the decision to dismiss the Claimant, again the Claimant has failed to establish a *prima facie* case of direct discrimination. No facts have been established before us whereby we could conclude that the Claimant

was treated less favourably than a male Bible Worker would have been who refused or declined to deploy to Brixton Church having expressed concern that it was an unsafe or hostile environment due to their sex. There was no evidence at all which would have supported a conclusion that the treatment was because of the Claimant's sex.

354. We would again have dismissed that complaint on that basis alone, however we have gone further and looked at the reason why this happened, assuming for a moment that the burden of proof had passed to the Respondent to provide an explanation for the treatment.

355. It was clear to us that the decision to dismiss was taken because the Respondent considered that it had issued a reasonable management instruction to the Claimant to move to that church as it was entitled to do under the employment contract; the Claimant had refused or declined to be deployed for circa 18 months; and the decision to dismiss was in no way whatsoever because of the Claimant's sex. Again, and as set out above, the Respondent conducted investigations at the Brixton Church and spoke to the Pastor and the Elders, and satisfied itself that there were no risks to being posted there as a Bible Worker.

356. It is our conclusion that a hypothetical male Bible Worker who also refused or declined to be deployed for the reasons given by the Claimant, would have been treated precisely the same as the Claimant and been dismissed.

357. We would observe for completeness, the Respondent's comments, that the reason given by the Claimant for not moving may very well have been "related" to her sex, however it does not therefore follow that the action taken by the Respondent was "because" of her sex. The legal test requires us to look at the reason for the treatment. We agree with that conclusion.

358. We therefore dismiss this complaint.

Failure to implement reasonable adjustments – s. 20 & 21 Equality Act 2010

359. The Respondent accepts that the Claimant was disabled and the Respondent also accepts that the requirement to work at Brixton Church was a PCP that was applied to the Claimant.

360. We are required to answer the question of whether the Respondent knew, or could reasonably have been expected to know that the Claimant was a disabled person. The Respondent says that it did not know and that it would not reasonably have been expected to know that the Claimant was disabled.

361. We find that it could reasonably have been expected to know of the Claimant's disability from around 15 August 2019.

362. By this time the Claimant had been off sick from work for eight months, the fit notes provided various reasons for the absence which included stress, blood pressure and chest pains. By July 2019 the fit notes made reference to the Claimant's anxiety. During the welfare meeting with

Ms Crawford on 15 August 2019, the Claimant explained that she was suffering from significant anxiety (which she attributed to the deployment) and she discussed many of her other symptoms, including blood pressure, chest pains, impacted sleep, and waking up with anxiety. The Claimant was visibly distressed in that meeting and we accepted that she experienced what she described as a panic attack in front of Ms Crawford.

363. We consider that there was more than sufficient evidence by mid August 2019 for the Respondent to have known that the Claimant was suffering with anxiety; that it had lasted for a number of months (at least since July 2019 and potentially from January 2019); and the anxiety was having a substantial adverse effect on the Claimant's ability to do day to day activities, for example, getting a full night's sleep; and it was likely to last up to twelve months in total. We acknowledge that the fit notes did not mention anxiety from the start of the Claimant's sickness absence, but a number of those symptoms being experienced overlapped between stress and anxiety, and many people use the terms interchangeably in modern parlance.
364. Nevertheless, we find that from mid August 2019 the Respondent could reasonably have been expected to know that the Claimant was disabled due to anxiety. We do not make the same finding with respect to depression as it was not mentioned at all – either by the Claimant or in her fit notes.
365. We will now consider whether the requirement to work at Brixton SDA Church put the Claimant at a substantial disadvantage in comparison with persons who are not disabled. We have found this to be a challenging question to answer.
366. The Claimant has struggled to explain what the substantial disadvantage to her was. During her employment the Claimant could not explain to the Respondent what the difficulty was, beyond the vote creating a hostile environment for women in leadership and preventing her from flourishing.
367. At the time of the Occupational Health report there was nothing clearly expressed as the substantial disadvantage, and it may have been because the Claimant did not, or could not tell Occupational Health what the difficulty was.
368. The same is true in these proceedings – the substantial disadvantage was not recorded in the list of issues as we might have expected, and it fell to me to explore it with the Claimant. The Claimant's answers were not very easy to follow and often involved a repetition of the symptoms of her disability; reference to a hostile environment; and not being able to flourish (as a female in leadership) at Brixton Church.
369. Where it is alleged that a PCP puts a claimant to a substantial disadvantage it is incumbent upon us to try and identify what that disadvantage is alleged to be. Having considered the contemporaneous documentation setting out the discussions about posting the Claimant to Brixton, including the Occupational Health report; the Claimant's evidence in these proceedings; and the Claimant's responses to me about the

disadvantage, it appeared to the Tribunal that what the Claimant is saying is that she initially did not wish to be posted to Brixton because of the vote; she then prayed and God told her it was not His wish for her to be posted there; upon declining to move and being told by the Respondent that she would be posted there, the Claimant began to feel she was being forced to do something against her will and this triggered previous unspecified trauma which then caused the symptoms associated with her condition which we have listed at paragraphs 38 and 39.

370. It therefore appears to the Tribunal that it was not the requirement to work at Brixton Church itself which put the Claimant to a substantial disadvantage, rather it was the act of telling the Claimant to do something she did not wish to do which caused her feel forced to do something against her will, which the Claimant says then triggered her symptoms, thus putting her to a substantial disadvantage. Those symptoms had a considerable impact upon the Claimant, leaving her feeling breathless with increased blood pressure, and causing her to feel a significant amount of anxiety.

371. Whether it was the requirement to redeploy to Brixton Church, or the act of telling the Claimant to do something she did not wish to do, the end result was the same - it put the Claimant to a substantial disadvantage in comparison with others who do not share her disability as her disability caused her to feel that she was being forced to do something against her will, thus triggering the symptoms at paragraphs 38 and 39 to which we have referred repeatedly.

372. The Tribunal accepts that the requirement to work at Brixton formed part of the context in which the Claimant's symptoms were triggered. However, the evidence shows that the substantial disadvantage arose from the Claimant's perception of being compelled to act against her will, rather than from any intrinsic feature of the workplace or duties at the Brixton Church itself.

373. We should record for completeness that the Respondent views this slightly differently than the Tribunal. The Respondent's argument is that it was not the PCP of being required to work at Brixton Church which placed the Claimant at a substantial disadvantage, rather it says that it was her refusal to attend due to the vote which caused the disadvantage. The Respondent says that the Claimant would still have refused (or declined) to attend even if she had been well enough to attend work, and a person who does not suffer from her disability could also have taken the same stance as the Claimant about not attending that church due to the vote, and the alleged disadvantage would have been the same in both scenarios – a feeling due to the vote, of being unable to attend Brixton Church to work. Accordingly, the Respondent says that the PCP did not put the Claimant to a substantial disadvantage in comparison with others without her disability.

374. The Tribunal acknowledges the logic of much of the Respondent's argument. It was not the posting to Brixton Church that put the Claimant to a substantial disadvantage – the Respondent says it was the Claimant's refusal to attend which did so, whereas we differ and find that having refused or declined to attend, it was the act of telling the Claimant she must go there (against her will) which put her to the substantial disadvantage.

375. We do not agree with the Respondent where it argues that the Claimant would still have refused to go even if she had been well enough to attend work, and that a person without her disability could have taken the same stance and refused to attend due to the vote, thus there was no comparative substantial disadvantage.
376. We disagree with that argument because we recognise that the Claimant felt strongly about the vote, and the Claimant did not wish to attend the Brixton Church because of that vote or matters arising out of it (her concern that her career progression would be impacted), however once she voiced her objections to redeploying and she was directed to attend, the Claimant's disability symptoms were triggered.
377. This much was clear from the Occupational Health report to which we have referred and we have criticised to some degree for its lack of detail. However the report says that the Claimant had been off work due to problems in the workplace; these preceded her cardiovascular symptoms and may have been causative; the problems started when she was asked to move churches which she felt was inappropriate; and then it adds she felt that she was being forced to something against her own will for which she had no choice and felt trapped due to someone else imposing their will on her.
378. Whereas perhaps this could have been expressed more clearly, the report is putting the Respondent on notice that this requirement to redeploy the Claimant to Brixton **against her will** is causing her this negative impact to her health. We therefore find that the Respondent was on notice from the date of receipt of the report, at the end of November 2019, that the duty to make adjustments was engaged.
379. As we have identified a substantial disadvantage, and knowledge of the same, we have gone on to consider the issue of adjustments.
380. We find that the Respondent went to exhaustive lengths to try and explore adjustments for the Claimant, save that it was trying to address a problem it did not properly understand. As regards allowing the Claimant to remain at Croydon Church, this would likely have alleviated the substantial disadvantage to the Claimant however we do not find that it would have been a reasonable adjustment to have made as there was no need for her to work there – the need was at Brixton Church.
381. As regards other churches, Mrs Crawford examined local churches and found no vacancies for the Claimant. We do not find that it would have been a reasonable adjustment to have created a new role especially for the Claimant at an alternative church in the absence of a business need for a Bible Worker. We do not know whether such a step would have had a reasonable prospect of succeeding as it would depend upon whether the Claimant would agree to go there – if the Claimant felt forced to go there against her will then the same difficulties would likely occur.
382. We also do not consider that widening the search further outside of London would have been a reasonable adjustment of itself. As we have recorded, Ms Crawford went to exhaustive lengths to find vacancies

however none existed, and we note that the Claimant has not pointed to any vacancy she says she should have been appointed to.

383. We do not find that it would have been reasonable to have forced Ms Mukwada to swap places with the Claimant given the impact of the additional travel on her childcare arrangements. We considered that would have been particularly unfair upon that colleague and her young child, and therefore not a reasonable step to have taken.

384. The Claimant in her evidence made passing reference to having worked remotely by video during the Pandemic. It had not been advanced as part of the Claimant's pleaded case that the Respondent ought to have allowed her to work remotely, although it is not strictly for an employee to suggest adjustments, it is for the employer (or the Tribunal) to identify them. In any event, we did not consider that this would have been of assistance. In the first instance there was not something physical at Brixton Church which was said to be the cause of the substantial disadvantage, therefore working remotely would not have helped to avoid a substantial disadvantage.

385. Moreover, even if remote working could have helped in some way, the Claimant could not have completed the entire range of her duties working from home or remotely in any event – the Claimant would have needed to meet people and attend church at some point. As such we find that (i) this would not have avoided any disadvantage to the Claimant; and (ii) it would not have been a reasonable step to take in any event.

386. To therefore summarise, we have not found that the PCP of requiring the Claimant to work at Brixton Church of itself did put her to a substantial disadvantage in comparison with others who were not disabled, rather it was the imposition of someone else's will on her which did so. Once the Respondent had notice of the disability in mid-August 2019 and notice of the substantial disadvantage in November 2019, the Respondent did take steps to try and avoid the Claimant being put to that disadvantage – it undertook an assessment at the Brixton Church; it spoke to those based at the Church; and it looked at alternative roles for the Claimant.

387. The Tribunal finds that there were no steps which it would have been reasonable for the Respondent to take to avoid the substantial disadvantage. In particular, there were no suitable alternative vacancies; no practicable redeployment options; and no adjustment that would have removed the requirement for the Claimant to perform the role for which she was employed.

388. We therefore dismiss the complaint for reasonable adjustments.

Unfair dismissal

389. Where dismissal is admitted, the first question for the Tribunal is to identify the real reason for the dismissal (as per the Employment Rights Act 1996 (ERA) s 98). The burden is on the employer to show what that reason was (ERA s 98(1)(a)).

390. We are satisfied that the reason for dismissal was the inability to redeploy the Claimant to the Brixton Church. The Respondent has described this as a refusal to be redeployed, the Claimant describes it as declining to attend, but in any event the Tribunal is clear that the reason for dismissal was because the Respondent could not redeploy the Claimant to that church.
391. The second question for the Tribunal is whether the real reason for the dismissal was a potentially fair reason within the categories set out in ERA s 98(2). The burden is on the Respondent to show this.
392. The Respondent has relied upon conduct which is a potentially fair reason for dismissal. The Respondent, during these proceedings, has consistently relied upon that as the lawful reason for dismissal. The misconduct is said to be the failure to comply with a reasonable management request to redeploy to Brixton.
393. The Claimant for her part disagrees, she disputes that she refused to be redeployed and she says that she declined citing the reasons why she was unable to move to that church. The Claimant disputes that the reason was conduct, and towards the end of proceedings in her closing submissions she first started to raise the argument that the potentially fair reason was either SOSR or capability. This was a new argument and it was something we asked the parties to address us on in additional closing submissions. The Tribunal recognises that it is an unusual step to ask the parties for further submissions in this way, however the duty of fairness requires us to do so.
394. There is no dispute that the Respondent had the contractual power to direct the Claimant to move to the Brixton Church. The Respondent reminds us of the eighteen months it spent engaging with the Claimant trying to persuade her to move, listening to her concerns, conducting investigations into whether there were risks to health and safety at that church, before ultimately issuing the Claimant with that final direction to be move or be dismissed.
395. The Tribunal sees the force of the Respondent's argument that this was a conduct case – there was a management instruction, there was a failure to comply, and the employer spent 18 months attempting to secure the Claimant's compliance before ultimately dismissing the employee. In many situations that could fall within a conduct dismissal.
396. The facts of this case are more nuanced than that. This is not a case where a member of staff simply refused to comply with a management request to be redeployed. In this case the Claimant was saying to the Respondent there were health related reasons why she could not move there. The Claimant did not express succinctly why she could not move, and it is fair to say that the reasons developed over time as the matter became more prolonged. The Claimant initially did not wish to move because of the vote. The Claimant did not see the church as somewhere she would be supported as a woman. The Claimant was to be posted as a Bible Worker not an Elder, therefore the vote did not have a direct impact upon her, however initially the Claimant was concerned it would impact her

ability to flourish in her role by which we interpret that to mean to perform her role well and to develop.

397. Following on from that the Claimant said she prayed and was informed it was not God's will for her to move. That is not something we can determine save to record that throughout this process we have found the Claimant to be an honest, reliable and a consistent witness, and we find that her beliefs were genuinely held.
398. Moving on from that, when the Respondent was insistent that the Claimant must move, it was at that point that the Claimant started to feel forced to do something against her will which then had the effect of triggering the disability related symptoms to which we have referred throughout this judgment, including anxiety, raised heart rate and blood pressure and the other symptoms.
399. It is this disability related reaction to being told to do something the Claimant disagreed with, which in our view created an impasse situation. This was not a case of the Claimant simply refusing to do what she was told, this was in reality a situation whereby the Claimant genuinely felt unable to comply with that management instruction which the Respondent had the contractual power to direct.
400. The Claimant felt unable to comply due to the reaction from her disability, and the Respondent was unable to secure the Claimant's compliance. The Respondent no longer had any need for the Bible Worker at the Croydon Church, it had a need for one at the Brixton Church, but it was unable to compel the Claimant to take up that position. An impasse situation had arisen.
401. The Tribunal does not consider that this was, in substance, a misconduct dismissal, as the issue was not culpable wrongdoing but the inability of the parties to agree on a fundamental aspect of the Claimant's role.
402. Although the Respondent described the dismissal as one for misconduct, the Tribunal has considered the substance of the decision and finds that the principal reason for dismissal was the Claimant's inability to agree to redeployment, which gave rise to an impasse.
403. We therefore find that the reason for dismissal was a potentially fair one – however in this case we find that it was not conduct but rather it was Some Other Substantial Reason ("SOSR") due to the impasse which had been created. The Tribunal does not find it necessary to adopt a "hybrid" characterisation as proposed by the Respondent; rather we find that the operative reason was SOSR in the form of an impasse.
404. The third question is whether the dismissal for that reason was fair or unfair, which depends upon whether in all the circumstances (including the size and administrative resources of the Respondent) the Respondent acted reasonably or unreasonably in treating it as a sufficient reason for dismissal. That question is to be determined in accordance with the equity and substantial merits of the case (ERA s 98(4)). Here the burden of proof is neutral.

405. As indicated above, an impasse had been created. There was no longer a need for the Claimant at Croydon Church, she was needed at Brixton Church, the Claimant could not be moved there – not because there was any risk or danger at that Church, but because initially the Claimant did not wish to be posted there due to the effects of the vote, and then once directed she must go there the Claimant felt forced to do something against her will, triggering the disability related symptoms we have identified. Eighteen months were expended trying to investigate the situation and attempting to persuade the Claimant to move, however despite what we regard as exhaustive efforts on the part of the Respondent, including looking at alternative churches and considering moving a colleague, this was to no avail, the Claimant could not be moved and she remained off work on sick leave but in effect she was well enough to work but not to be posted to Brixton Church.
406. We must then move on to consider whether the decision to dismiss the Claimant was within the band of reasonable responses, and we remind ourselves of the need to avoid the substitution mindset – the question is not whether this Tribunal panel would have dismissed the Claimant, the question is whether the decision to dismiss fell within the range of reasonable responses. Our focus must be on the overall fairness of the investigation, the dismissal, and also the appeal, and this includes the procedure adopted, and noting that substantive and procedural fairness must be viewed in the round.
407. We now look at the procedure adopted, noting that whereas the ACAS Code of Practice on Disciplinary and Grievance Procedures does not apply, nevertheless we have kept the principles in mind. With respect to the Code, we find that the Respondent acted reasonably in establishing the facts to the extent that it did – the facts did not appear to be in dispute in any event. We further find that the Respondent informed the Claimant of the problem – the Claimant had been made well aware that she was required to go to Brixton Church. The Respondent did hold a meeting with the Claimant to discuss the problem however it was a meeting which the Claimant had asked to be held. Nevertheless, the meeting was held although the Respondent did not allow the Claimant to be accompanied at that meeting.
408. The Respondent repeatedly engaged with the Claimant on the issue, it referred the Claimant to Occupational Health for advice, Mrs Crawford went to great lengths to investigate the Claimant's concerns by going to the Brixton Church and speaking with the Elders direct and also Pastor Boldeau. The investigations conducted by the Respondent, in particular by Ms Crawford, clearly identified that the Claimant could not be moved and there were no dangers at that church preventing her from attending. The investigation conducted by the Respondent, and the discussions it undertook with the Claimant, were well within the range of reasonable responses.
409. Having attended a meeting with the Administrators, the Claimant was told if she did not sign the letter to confirm she would report for work she would be dismissed. The Claimant did not sign the letter, nor did she attend the Church, and she was then dismissed without a further hearing or meeting – although she had already had a meeting immediately before

where she was made aware of the consequences of not agreeing to be redeployed.

410. The Respondent then provided the Claimant with the opportunity to appeal, the Claimant was allowed to be accompanied on this occasion and the decision to dismiss was reviewed and then upheld.
411. There has been discussion in the hearing about whether this was a dismissal for a commercial decision, however that is erroneous. This was not a redundancy type situation – the references to commercial considerations were in the context of taking the Claimant through a subsequent disciplinary process having spent eighteen months engaging with her. It was not the reason for dismissal, it related to the process of dismissal.
412. We are satisfied that the Respondent acted reasonably in treating the inability to redeploy the Claimant as a sufficient reason for dismissal. Although the Respondent now says that this amounted to misconduct, this was never put to the Claimant explicitly in that way at the time, and we find that this fell squarely within SOSR due to the impasse, rather than conduct.
413. We find that the decision to dismiss in these specific circumstances fell well within the range of reasonable responses open to a reasonable employer in the circumstances, noting that by the time of dismissal the Respondent had done all that it reasonably could to have avoided the dismissal.
414. We further find that the process followed by the Respondent was a reasonably fair one – the Claimant was made aware of the problem; considerable time was spent engaging with the Claimant and investigating the matter; alternatives were reasonably explored; and once dismissed the Claimant was granted an appeal by way of a review of the dismissal. This process was well within the range of reasonable responses.
415. Whereas the Claimant has argued that it is not permissible for the Tribunal to find that the reason for dismissal was one which the Respondent had not argued, we disagree. Firstly, it was the Claimant who raised the issue of SOSR in her closing submissions, but in any event it is for the Tribunal to determine the real reason for dismissal as held in **Kuzel**, and that is what the Tribunal has done.
416. We therefore dismiss the claim for unfair dismissal.
417. All the complaints have been dismissed.

Approved by:

Employment Judge **Graham**

Date 1 July 2026

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON
8 July 2026

FOR EMPLOYMENT TRIBUNALS

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