



# EMPLOYMENT TRIBUNALS

**Claimant:** Mr C Lakey

**Respondent:** DHL eCommerce Ltd

**Heard at Leeds**

**ON:** 7, 8, 9, and 28 July 2026  
27 July 2026 (in chambers)

**BEFORE:** Employment Judge Brain  
Mrs K Knapton  
Mrs N Arshad-Mather

## **REPRESENTATION:**

**Claimant:** Mr J Boyd, counsel  
**Respondent:** Mr A Ohringer, counsel

## **WRITTEN SUMMARY REASONS**

### *Introduction*

1. These reasons are supplied at the request of the claimant.

### *Findings of fact*

2. The claimant ('C') was employed by the respondent ('R') from 2 January 2015 until 27 June 2025.
3. A contract of employment dated 1 September 2019 is at pages 88 to 102 of the bundle. His job title from this point until the end of the employment was head of print logistics. He worked as part of corporate print logistics. This was a grade G post, which is a senior post within the respondent.
4. C explained in paragraph 3 of his witness statement that the role is in print logistics as opposed to in printing. His role with R was operational. The logistics involve moving print and point of sale material to retail stores. C spoke eloquently and passionately about this role when asked by the Tribunal. He said that he and his team of eleven were acknowledged experts in this field. C had two people directly reporting into him: Richard Parish and Beth Crocker.

5. R is part of a wider corporate structure with several well-known operations. It is part of the Deutsche Post DHL Group. R became part of Evri on 1 October 2025.
6. R has a redundancy policy (pages 103 to 108). The policy is non-contractual. It provides in a policy statement that *"Where colleagues are potentially impacted by redundancy, the company will make every effort to find suitable alternative work for those affected either through redeployment or retraining. Only when all other possibilities have been exhausted with the Company resort to compulsory redundancy."*
7. In clause 6, the policy says that R will take all reasonable steps to seek suitable alternative employment and whenever possible provide the colleague with details of an alternative role. By clause 7, R's policy is to stay in touch with a colleague on garden leave and notify them of any suitable alternative employment.
8. R accepts that at the material time with which the Tribunal is concerned, C was a disabled person within the meaning of section 6 of the Equality Act 2010 and that they had knowledge of the disability. There is an issue about knowledge of the relevant disadvantage caused by the disability.
9. The disability is impairments arising from an acquired brain injury following neurosurgery and related complications. C's ability to retain information, particularly in fast moving situations, is substantially adversely affected, as described in paragraphs 13 and 14 of his witness statement. It was put to C in cross examination that to compensate for his memory impairment, C had adopted a practice of making notes of meetings. This questioning was in the context of the occupational health reports in the bundle making no recommendations for adjustments about or in reference to the need for memory aids.
10. On 26 November 2024, R made a commercial announcement (pages 197 to 210). This was made by Catherine Mill, director of key accounts and field sales. She was C's line manager at the time. She remains an employee of R. The tribunal did not have the benefit of evidence from her. No satisfactory explanation for her absence was forthcoming.
11. C's account of adapting post-operation to memory issues in starting to take meeting notes is credible. There was nothing to gainsay this evidence. R's failure to call C's line manager who would be familiar with his practices before and after the operation left no scope to challenge C's credible account. The premise of the cross examination of C on this issue (that he could take a note of consultation meetings as he did for client meetings) infers an acceptance and knowledge by R of C's adopted practice.
12. The announcement was about the removal of corporate print logistics and its incorporation within the commercial team structure (page 210). The proposed new structure was presented in diagrammatic form at the on-line meeting which took place that day (26 November 2024). These were shown to the affected employees as part of a slide presentation.
13. The corporate print logistics team's roles were therefore to be absorbed by the two key account directors and eight senior key account managers referenced in page 201.
14. The slideshow included (in page 208) the vacancies for affected employees. This list included three at grade G of head of account development, head of field sales

north, and head of field sales south with reference to a link '[careers.dhl.com](https://careers.dhl.com).' A copy of the slides was not sent to C.

15. R's case is that those affected were pooled for the posts in page 208. By this is meant that the roles were ringfenced and those affected were able to apply for them within a specified timescale, as explained by Mrs Bridges in paragraph 12 of her witness statement. She gives no timescale for when applications were to be made. They were not treated as suitable alternative employment because of the differences in these roles and the substantive roles. C says that he would have applied for the post head of account development had he been aware of it. It is based in Coventry, around 80 miles from where C lives. He had no interest in head of field sales north and south. He accepted in evidence that he had not sourced the link to the vacancies part of the intranet (known as '*careers marketplace*'). He also said in evidence in cross examination that he was uninterested in an alternative position at this time but later *"I needed to take a chill pill and think of things in a more nuanced way."*
16. On the same day of the announcement, Ms Mill invited C to a first consultation meeting (page 127). This was scheduled for 27 November 2024, the next day, with Ms Mill and Sophie Breeze, senior HR business partner.
17. Two hours before the announcement to the commercial team on 26 November 2023, Ms Mill had spoken with the claimant. The script which she read to him is at page 210.
18. The notes of the first consultation meeting are at pages 128 to 130. It is agreed that C was sent these and the other notes of the consultation meetings (although it was not clear when they were sent). It is also agreed that these are not verbatim notes. The record has C as saying: *"I have been in print for 25 years and do not wish to move away from print. I will not apply for any other available roles outside of print. The situation with me is complicated. I have health issues which I have had for the last 5 years which are not going away. Print is all I know and all I've been doing so I'm not interested in doing anything else. It's about the people. I'm 53 and I don't want to learn to do something else. If it involves more travelling and extra stress – it'll give me more headaches and make me ill I will not apply..."*
19. We accept this to be an accurate note as in evidence given in cross examination, C accepted that he would have said that he will not apply for roles with a risk of making him ill. This leads us to conclude that C had no interest in applying for the head of account development role at this stage (at any rate, without adjustments to take account of the distance from his home).
20. In evidence in cross examination, C said that he had raised in the consultation meeting a need for notes because of difficulty with memory retention. However, C then qualified this with the remark that he could not recall mentioning the lack of notes, and that he took the view that R should have known of this and *"put two and two together."* R did not call as a witness anyone who was at the meeting on their behalf. Mrs Bridges and Miss Watson were not present. We find that C did not specifically raise a need for notes in the meeting. However, his reference to his health issues in the passages we have just cited put R on notice of the need for care in its dealings with C.
21. On 5 December 2024, Ms Mill wrote to C (page 131 and 132). C was told that he was at risk of redundancy. Ms Mill said about alternative employment that, *"We discussed redeployment, available roles, your search criteria and additional*

*support available to you. We will continue to share available vacancies with you and it is recommended that you review Career Marketplace regularly.*" A second consultation was scheduled for 12 December 2024.

22. The notes of the second consultation meeting are at pages 133 to 138. This was chaired by Ms Mill with Zena Bridges in attendance. She was at the time employed as head of HR business partnering. (She was made redundant herself on 27 June 2025). The claimant is recorded as saying, that he had *"Struggled to do what I've been doing since health deteriorated, don't want to put myself under more stress learning new skills, more driving which I won't be able to do. Don't know of any counter proposals to put forward to mitigate. I've been told that my role's been made redundant, I don't know what other options there are other than don't make my role redundant."*
23. C was asked if he had received information about alternative roles. He said, *"Don't want to consider any other roles, I don't want to retrain or travel. My experience for the last 25 years is in print."* Mrs Bridges said that she could not *"100% guarantee"* that alternative employment was discussed at the meeting.
24. Ms Bridges told C that the redundancy policy was a HR document and would not be shared. She denied any knowledge of C's disability but did acknowledge that he appeared to be tired in the second consultation meeting and had been seen by occupational health. In evidence in cross examination, she said that she was aware that C had been off sick with the benefit of adjustments. She did not look at or consider the occupational health reports in pages 115 to 126 of the bundle.
25. Had she done so, she would have seen that OH opined that C was fit for his duties with adjustments (in page 118 - in a report dated 26 October 2020) and (in page 125- in a report dated 28 March 2022) that C was able to attend meetings and participate in dialogue. The adjustments recommended by OH did not extend to the need to provide a contemporaneous written record of meetings or anything of that kind.
26. The record of the meeting is that the discussion in the second consultation meeting then turned to the redundancy package. In evidence in cross examination, C said that he was more interested at this point in *"walking rather than staying."*
27. On 16 December 2024, Mrs Bridges emailed C (page 139). She said, *"I just wanted to follow up on your conversation with Catherine [Mill] of last Friday [13 December 2024] regarding alternative roles and current vacancies. I know we discussed at your consultation that you had not applied for the pooled vacancies and did not intend to apply for any of the roles available but we are keen to ensure that you don't miss the opportunity to secure a role."* She said that Ms Mill had offered him a choice of two roles neither of which he needed to apply for. He was told that if he was interested in them then arrangements could be made to start on 1 January 2025.
28. The roles were area field sales manager - north (at grade I - two grades below the claimant's substantive post) and COG manager, which was an ungraded post and temporary, being a six-month term to help transition the print customers into the corporate account team. The roles were offered at salaries substantially below that of C's substantive role- £28,000 and £53,000 respectively. C was asked to let Mrs Bridges know that day but was invited to ask for more time if he needed it.
29. C replied within the hour to ask about reasonable adjustments for each role (page 142). He did not take issue with Mrs Bridges' assertion that she had said in the

consultation meeting of 12 December 2024 that he did not intend to apply for any of the pooled vacancies. This was in reference to the three grade G roles in the slideshow of 26 November 2024 in page 208.

30. In summary therefore we find that C was told of the pooled roles at the slide presentation on 26 November 2024, was not told of them in the first consultation meeting but was told of them in the second consultation meeting, albeit in the context of not having applied for any of them. He was not told that it was still open to him to do so. He made no enquiries at any stage about reasonable adjustments for the pooled roles.
31. Mrs Bridges replied in the afternoon of 16 December 2024 (page 143). She said she was unable to address the question of adjustments about the junior roles without knowing in which role C may have an interest.
32. In fact, before Mrs Bridges' email in page 139 was sent (at 09:09) C had emailed her two minutes earlier to raise a grievance about the process (pages 145 and 146). He questioned the commercial logic behind the decision. The grievance does not raise an issue about the failure to provide copies of the notes.
33. Mrs Bridges responded to the grievance on the same day, at 4:23 pm (also at pages 144 and 145). She said that R had decided that the grievance should be dealt with as part of the redundancy process as it relates directly to it.
34. R denied targeting C through the redundancy process as he had alleged. She said that C and his two direct reports were impacted by the redundancy exercise. The business need was to have account managers skilled and trained to support key accounts across all products *"to remove the need to operate in silos."* She went on to say that C had been pooled to apply for the three grade G roles in page 208 including that of head of account development, but that C had expressed no interest in any of them or in the two offered by Ms Mill on 13 December 2024. The print logistics operation carried out by C and his two reports was to be distributed amongst the key account managers and directors in page 201.
35. Also on 16 December 2024, C emailed a solution. He said, *"My proposal is that we essentially wind the clock back to how it was and I again resume responsibility for the Print Logistics team in Leeds and continue to perform the function of Director – Print Logistics or Head of Print Logistics whatever the title may be."*
36. Mrs Bridges replied the same day (page 177). She said that she had sought the views of Ms Mill and Gary Hope upon C's suggestion. She said that *"The current structure does not have a vacancy nor any budget to create the role that you are proposing. Unfortunately after consideration it is not feasible to implement this counter proposal."*
37. On 18 December 2024, C was invited to a third consultation meeting to be held on 19 December 2024. The notes for this meeting are at pages 154 to 158. There was some discussion about R making a PILON to C. His preference was garden leave so as not to lose the benefit of the company car. This was agreed by R. Mrs Bridges noted that C did not wish to apply for alternative positions as she marked 'NA' on the relevant section of the form.
38. On 23 December 2024, R served C with notice of redundancy (pages 159 to 161). R said that the consultation process was to end on 27 December 2024. C was served with notice to bring the contract of employment to an end on 27 June 2025. He was reminded that his contract remained *in situ* and he was bound by the terms

and conditions of his employment contract. He was told that he was to remain available to attend to any work-related matters but was allowed reasonable time off to attend interviews subject to line manager approval. The letter also mentioned that R would continue to seek alternative roles during the garden leave period.

39. On 31 December 2024, C exercised his right of appeal (p 162).
40. The appeal hearing took place on 24 January 2025 (pages 168 to 174). It was chaired by Tracy Hodges, head of product, with Claire Watson, senior HR business partner in support. Ms Hodges left R on 30 April 2026 because of redundancy. The Tribunal did not have the benefit of hearing evidence from her.
41. The notes record C reiterating that he was not told of the three grade G posts in the first consultation meeting and that the record makes no mention of this. C added, *"I said at the time I was not interested but I should have been told."* He mentioned his *"memory problems"* (as he put it) and the need for the meeting notes to be full and accurate. C was asked if by Ms Hodges if *"it would have changed things."* Presumably this was in reference to the notes not recording the three grade G posts' availability. C replied that *"I was angry at the time...The consultation was not meaningful. At that point I'd not had time to digest what was going on."* C did not see the appeal notes until he received the bundle for the Tribunal hearing. He does not (in paragraph 74 of his witness statement) take any issue with them.
42. There was then this discussion: *"CL I have been in print logistics for 25 years and that's all I've done. It's my passion and love, it's my niche. I am Mr Print. It's a bit like saying to that tomorrow you are going to be a brain surgeon. TH Is that why you didn't apply? CL Yes, the thought of doing a role travelling up and down the country scares me to death. It would put me in an early grave."*
43. C then said that he had lost trust in Ms Mill. He complained that *"she had stuck the knife in"*. He also said that no adjustments were made to the process. He mentioned that Ms Mill had told C to be honest about his health before the second consultation meeting. By this, C has understood that Ms Mill was encouraging C to be forthright about the limitations upon C arising from his disabilities (such as with driving long distances). He mentioned the possibility of taking his case to the tribunal. This is then recorded: *TH So you're not looking to be reconsidered for one of the roles? CL Nothing is off the table, not completely but any trust I had in Catherine has gone. TH That is Catherine's job now, she would have been part of it but is not the sole decision maker.* We accept therefore that C's position had moved from being uninterested in late November 2024 to a more pragmatic view by this stage after (as C put it) *"taking a chill pill."*
44. Ms Hodges then conducted investigation meetings on 7 February 2025 with Ms Mill (pages 175 and 176) and Mrs Bridges (pages 189 to 191).
45. About alternative employment, Ms Mill said that *"Chris made it clear that he had been in print for 25 years. His head was in print and he had no real interest in looking at the other roles."*
46. The appeal outcome is in pages 179 to 182. Ms Hodges determined that C had been offered the opportunity of applying for the three grade G roles at the first consultation meeting but had decided not to apply. She reached this conclusion after having spoken to Mrs Bridges. C's appeal was not upheld. However, as Ms Watson said in paragraph 17 of her witness statement, the communication with C about the pooled grade G roles *"could have been carried out more effectively."*

This concession does not appear in the appeal outcome letter. Ms Watson was unable to explain the basis upon which Mrs Hodges concluded that C had the opportunity to apply for the three grade G roles. She did however say that Mrs Hodge and C seemed familiar and from this surmised that she (Mrs Hodges) was aware of C's health issues.

47. Aside for the appeal outcome, the only contact which C had from R during the garden leave period was a text from Ms Mill of 14 January 2025 enquiring of C's welfare and suggesting a catch-up. C agreed to see her but then he heard nothing further. The next contact was from Mrs Bridges on 24 June 2025 concerning the return of the company car (page 186). R did not contact C with any alternative roles during the garden leave period. C says that he would have considered redeployment into any of the four roles in paragraph 57 of his witness statement, had they been suggested to him by R.
48. C obtained a position with DX Network Services as a commercial development manager. This was on a fixed term contract for six months from 20 October 2025 on a salary of £80,000 per annum. The contract is at pages 211 to 220.
49. Before securing this position, C went self-employed making jewellery and registered a hallmark with the Sheffield Patent Office. He said that he had not started to apply for jobs until after the end of the garden leave period. C did not apply for any roles with R or the DHL group during the garden leave period.

*The relevant law*

50. We start with a consideration of the unfair dismissal claim.
51. The question of whether a dismissal is fair or unfair must be determined having regard to section 98(4) of the Employment Rights Act 1996 . Once an employer has established that the reason for dismissal was a potentially fair reason (as set out in section 98(1) of the ERA 1996), the determination of the issue of whether the dismissal is fair or unfair, having regard to the reason shown by the employer for the dismissal, depends on whether, in the circumstances, including the size and administrative resources of the employer's undertaking, the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee. That question must be determined in accordance with the equity and substantial merits of the case.
52. The cornerstone is, as has been stated many times in appellate authorities, an assessment of reasonableness. That means that a Tribunal or Judge must not substitute their own view for that of an employer; rather, what is required is to determine whether or not an employer acted reasonably, focusing on the range of different responses to the particular circumstances reasonably open to a reasonable employer. In redundancy cases, the question is not whether it was reasonable to dismiss 'an' employee, but whether it was a reasonable decision to dismiss this particular employee for the potentially fair reason of redundancy.
53. There is a limitation as to the extent to which the Tribunal can engage with a challenge as to the genuineness of the redundancy situation i.e. that a redundancy situation actually existed: **James W Cook and Co. (Wivenhoe) Ltd v Tipper and ors [1990] ICR 716**).
54. Relevant to the Tribunal's determination and borrowing from Mr Boyd's submissions are the following authorities:

- (a) **Williams and ors v Compair Maxam Ltd [1982] ICR 156** sets out guidelines which the reasonable employer is expected to follow when making redundancy dismissals – the employer must warn the affected employee(s) at the earliest available opportunity, the employee(s) must be consulted with and the employer must consider the question of alternative employment;
- (b) Consultation must be genuine and meaningful: **R v British Coal Corporation ex p. Price [1994] IRLR 72** (see also **Mogane v Bradford Teaching Hospitals NHS Foundation Trust [2022] EAT 139**);
- (c) **Hendy Group Ltd v Daniel Kennedy [2024] EAT 106** demonstrates the extent to which an employer must engage with considerations of alternative employment in order to act reasonably in the context of a redundancy exercise. In **Hendy Group** the following passage was cited from **J Haycocks v ADP RPO UK Ltd [2023] EAT 129**  
*"23. Starting with Compair Maxam [ Williams & Ors v. Compair Maxam Ltd ICR 156 ] the theme surrounding reasonableness in redundancy situations is that it reflects what is considered to be good industrial relations practice; that employers acting within the band of reasonableness follow good industrial relations practice. The substance of what amounts to good practice will vary widely depending on the type of employment, workforce and the specific circumstances giving rise to the redundancy situation. However, there are certain key elements which seem to appear. First amongst those is that a reasonable employer will seek to minimise the impact of a redundancy situation by limiting numbers, mitigating the effect on individuals or avoiding dismissal by engaging in consultation."* In **Hendy**, the EAT added at [26] that "Coming back to first principles, it is important to state that reasonableness is the keystone."
- (d) **Sainsbury's Supermarkets Ltd. v Hitt [2003] IRLR 23**, CA provides authority for the general principle that for each stage of the procedure adopted by the R, the tribunal should consider whether that particular stage fell within the range of reasonable responses available to the Respondent.
- (e) We add to these considerations a couple of cases cited in his closing submissions by Mr Ohringer: **Westminster City Council v Cabaj [1996] ICR 960**, which is authority that fairness will usually require the employer to follow its own procedures. The process is to be looked at in the round including the correction of any procedural defects at appeal stage: **Taylor v OSC Group Ltd [2006] ICR 1602**. Fair consultation means consultation when proposals are at a formative stage, with adequate information and time within which to respond and conscientious consideration of responses *per* **King v Eaton (No 1) [1996] IRLR 199**.

55. The concept of a band of reasonable responses prevents the Employment Tribunal from substituting its view for that of the employer. It does not preclude the Employment Tribunal from holding that the employer has acted unreasonably if no reasonable employer would have dismissed. As was said by HHJ Tayler in **Lamb v Teva UK Ltd [2026] EAT 8** the band of reasonable responses is not so elastic that no employer can ever break it. An employment tribunal is entitled to find that dismissal was outside the band of reasonable responses without being accused of placing itself in the position of the employer.

56. Turning to the claims brought under the Equality Act 2010 and starting with the direct discrimination complaint: section 13 provides that “(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.”

and s 23 adds:

“(1) On a comparison of cases for the purposes of section 13, there must be no material difference between the circumstances relating to each case;”

57. It must be shown that the protected characteristic was the cause (consciously or subconsciously) of the less favourable treatment: **Reynolds v CLFIS (UK) Ltd** [2015] IRLR 562.
58. The duty to make reasonable adjustments is in sections 20 and 21 of the 210 Act. The first question is to identify the relevant provision, criterion or practice (‘PCP’). Having identified the relevant PCP, the Tribunal must consider the nature and extent of the substantial disadvantage suffered by the claimant in comparison to non-disabled comparators. ‘Substantial’ in this context means ‘more than minor or trivial.’
59. Upon the reasonable adjustments complaint C must show a *prima facie* case that the duty has arisen and that there are facts from which it could reasonably be inferred, absent an explanation, that it has been breached. There must be evidence before the tribunal of apparently reasonable adjustments which could be made. The claimant must therefore identify in broad terms the nature of the adjustment that would ameliorate or would have a prospect of ameliorating the substantial disadvantage and having done so the burden will then shift to the employer to show that the disadvantage would not have been eliminated or reduced by the proposed adjustment and/or that the adjustment was not a reasonable one to make. There is no requirement for the disabled person to show that on balance the adjustment would ameliorate the disadvantage. There merely has to be a prospect that the adjustment may benefit the disabled person
60. The purpose of the comparison with people who are not disabled is to establish whether it is because of disability that the particular provision, criterion or practice disadvantages the disabled person. Accordingly, there is no requirement (as there is in a direct discrimination claim) to identify a comparator or comparator group whose circumstances are the same or nearly the same as the disabled person’s circumstances. A comparison can be made with non-disabled people generally.
61. The test of reasonableness is an objective one. The Tribunal can therefore substitute its own view for that of the employer as to what would have been a reasonable adjustment to have made (see **Smith v Churchills Stairlifts PLC** 2006 ICR 524 CA).
62. In terms of considerations to be taken into account when determining reasonableness, guidance is contained within the Equality and Human Rights Commission’s *Code of Practice on Employment* (at para 6.28) as including:
- the extent to which taking the step would prevent the effect in relation to which the duty was imposed (i.e. the effectiveness of the step)
  - the extent to which it was practicable for the employer to take the step
  - the financial and other costs that would be incurred by the employer in taking the step and the extent to which taking it would disrupt any of its activities

- the extent of the employer's financial and other resources
  - the availability to the employer of financial or other assistance in respect of taking the step, and
  - the nature of the employer's activities and the size of its undertaking.
63. On the question of knowledge, the ECHR Code provides at para 6.19 that *"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."* This is in Sch. 8, para 20(1)(b) of the 2010 Act.
64. The claimant bears the burden of proof to establish a *prima facie* case of direct discrimination. Upon the reasonable adjustments complaint he must show a *prima facie* case that the duty has arisen and that there are facts from which it could reasonably be inferred, absent an explanation, that it has been breached.
65. In **Hewage v Grampian Health Board** [2012] ICR 1054, Lord Hope said: *"It is important not to make too much of the role of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other"*
66. In **Shamoon v Chief Constable of the Royal Ulster Constabulary** [2003] ICR 337 HL Lord Nicholls considered that the sequential approach to the burden of proof may give rise to needless problems (particularly where the claimant is relying upon a hypothetical comparator). In his words: *"Sometimes the less favourable treatment issue cannot be resolved without, at the same time, deciding the reason why issue. The two issues are intertwined"*. We must therefore ask the reason why the claimant was treated as he was.
67. Where a comparator is required, these can take two forms: actual, real-life ones and the hypothetical comparator. If an actual comparator is used but they are not a statutory comparator as they are in a materially different circumstance for some reason, then that comparator may still have an evidential role. As was said in **Shamoon v Chief Constable of the RUC** [2003] ICR 337, the treatment of the evidential comparator may assist in the construction of a hypothesis as to how a hypothetical comparator may have been treated in comparison with the claimant.
68. Direct discrimination against employees is made unlawful in the workplace by section 39(2) of the Equality Act 2010. By section 39(2) an employer must not discriminate against an employee by (amongst other things) dismissing the employee or by subjecting the employee to a detriment. By section 39(5) a duty to make reasonable adjustments applies to an employer.
69. There is no statutory definition of the word *"detriment"*. The Equality and Human Rights Commission's *Code of Practice on Employment (2011)* provides (at paragraph 9.8) that *"detriment"* could take many forms. Generally, a detriment is anything which the individual concerned might reasonably consider changed their position for the worse or put them at a disadvantage.

70. In **Shamoon**, the House of Lords held that a detriment exists if a reasonable worker would or might take the view that the treatment was in all the circumstances to their disadvantage. The House of Lords also said that an unjustified sense of grievance could not amount to a detriment. It is sufficient that a reasonable worker might take the view that the conduct in question was detrimental. Therefore, the situation must be looked at from the complainant's point of view, but the perception of detriment must be reasonable in the circumstances.
71. By section 119 of the ERA 1996, an unfairly dismissed employee shall be entitled to a basic award. By section 122(4)(a) the amount of the basic award shall be reduced by the amount of any redundancy payment made in respect of the same dismissal.
72. By section 123(1) the tribunal shall make a compensatory award in such amount as the Tribunal considers to be just and equitable in all the circumstances having regard to the loss sustained by the employee in consequence of the dismissal in so far as that loss is attributable to action taken by the employer. One such consideration in the just and equitable assessment is the likely longevity of the employment had the employer gone about matters fairly.
73. The **Polkey** principle was helpfully summarised in **Hill v Governing Body of Great Tey Primary School** [2013] ICR 691, Langstaff J(P) said:
- "A 'Polkey deduction' has these particular features. First, the assessment of it is predictive: could the employer fairly have dismissed and, if so, what were the chances that the employer would have done so? The chances may be at the extreme (certainty that it would have dismissed, or certainty it would not) though more usually will fall somewhere on a spectrum between these two extremes. This is to recognise the uncertainties. A tribunal is not called upon to decide the question on balance. It is not answering the question what it would have done if it were the employer: it is assessing the chances of what another person (the actual employer) would have done."* (para. 24)
74. Similarly, if there has been a discriminatory dismissal but there is a chance that a claimant would have been lawfully dismissed in any event, the Tribunal should assess when such a dismissal would have taken place and what the chances were.
- "It is necessary to ask what would have occurred had there been no unlawful discrimination. If there were a chance that dismissal would have occurred in any event, even had there been no discrimination, then in the normal way that must be factored into the calculation of loss."* (**Abbey National Plc v Chagger** [2010] ICR 397, para.57)
75. The underlying question is: what would have happened if the respondent had acted fairly? (**Hill v Governing Body of Great Tey Primary School** [2013] ICR 691, para.24).
76. Elias J (P) stated in **Software 2000 Ltd v Andrews** [2007] ICR 825 how a Tribunal should approach a **Polkey** assessment:
- "The question is not whether the tribunal can predict with confidence all that would have occurred; rather it is whether it can make any assessment with sufficient confidence about what is likely to have happened, using its common sense, experience and sense of justice. It may not be able to complete the jigsaw but may have sufficient pieces for some conclusions to be drawn as to how the picture would have developed. For example, there may be insufficient evidence, or it may be too unreliable, to enable a tribunal to say with any precision whether an employee would,*

*on the balance of probabilities, have been dismissed, and yet sufficient evidence for the tribunal to conclude that on any view there must have been some realistic chance that he would have been. Some assessment must be made of that risk when calculating the compensation even though it will be a difficult and to some extent speculative exercise.” (para.53).*

77. Sums earned in mitigation of loss, or deductions for an unreasonable failure to mitigate, should be taken into consideration before considering whether the overall award should be reduced on account of the chance that the claimant would have been lawfully dismissed in any event. (**Ministry of Defence v Wheeler** [1998] ICR 242).
78. The correct approach for a tribunal to take in answering these questions was set out by Langstaff J(P) in **Cooper Contracting Ltd v Lindsey** (UKEAT/0184/15). The burden of proof is on the wrongdoer; a claimant does not have to prove that he has mitigated loss. What has to be proved is that the claimant acted unreasonably; he does not have to show that what he did was reasonable. There is a difference between acting reasonably and not acting unreasonably. What is reasonable or unreasonable is a matter of fact. The Tribunal is not to apply too demanding a standard to the victim; after all, he is the victim of a wrong. He is not to be put on trial as if the losses were his fault when the central cause is the act of the wrongdoer. The test may be summarised by saying that it is for the wrongdoer to show that the claimant acted unreasonably in failing to mitigate.
79. On the Equality Act claim the measure of damages is such as to put C in the position he would have been in had the discriminatory conduct not occurred. An award of damages may include an award to compensate for injury to feelings, which is an award not open to the tribunal in an unfair dismissal claim.

#### *Discussions and conclusions*

80. R has shown on balance of probabilities that there was a redundancy situation at the material time. This needs to be shown as a fact and R has proved their case on this point. This was because R decided to merge the work of the print team into that of the senior key account managers led by the key account directors. The need for employees to carry out the print logistics work had or was expected to cease. This is a redundancy within the definition of section 139 ERA 1996.
81. For the following reasons, we hold that R acted outside the band of reasonable managerial responses in the redundancy process.
82. There being fewer than 20 affected employees, R’s policy envisages a 30-day consultation period. C was told on 19 December 2024 (at the third consultation meeting) that the consultation period was to end on 27 December 2024 yet was informed that day (19 December) that he was to be dismissed, to all intents and purposes bringing the consultation period to an end a good 7 days or so before the expiry of R’s individual consultation period. In this, R acted contrary to its own policy.
83. C was called into the first consultation meeting the day after being told by Catherine Mill of the proposal and the commercial announcement. This gave C no reasonable time to reflect, prepare, seek advice or formulate a response. There was no need to rush headlong into the first consultation meeting. A week or so could have been allowed and the 30 days period could then have been utilised in full. The policy presumably was predicated on the basis of a 30 days’ period to afford a reasonable time for meaningful consultation. This was not done in this case.

84. C was not informed of the three ringfenced posts after 26 November 2024 until 12 December 2024. He was not told of them at the first consultation meeting. He was told of them at the second consultation meeting. He was not provided with any information at any stage in the form of a written job description, role profile per the policy at page 106 or the timescales for responding. This falls short of the policy requiring R to take all reasonable steps to seek alternative employment and discharging its policy obligation to seek suitable alternative work for the employee.
85. R did not share the redundancy policy with C so that C knew parties' relative duties and expectations of one another and the process. This need was particularly apt where C, as R knew full well, had significant health issues.
86. R failed to provide C with full and accurate notes of the consultation meetings. This was a significant procedural failure in the circumstances of C's health and the coping strategy he had adopted in keeping written notes and of which R was aware. The serious procedural defect in not informing C of the pooled grade G posts in the first consultation meeting was cured in the second but that still suffered from the defect (which was never cured) of not furnishing the information which R's policy required.
87. R failed to contact C about any roles in the garden leave period. This was contrary to their policy. This extends not only to roles with R but roles within the DHL group. The document in pages 301 and 302 shows that there were posts available and filled over the garden leave period, but R made no effort to try to match C with anything suitable within R or the wider group.
88. We do not find there to be conduct outside the range of reasonable responses in dealing with C's alternative proposal within a day. Mrs Bridges did consult with CM and Gary Hope and replied with a rationale rejecting the C's proposal. This was properly rationalised.
89. We do not find it to be conduct outside the range of reasonable responses in dealing with C's grievance in the way it was dealt with. Mrs Bridges was right to say that it was inextricably linked to the redundancy process. It made sense and was within managerial prerogative for it to be dealt with as part of the process rather than as a separate grievance.
90. We therefore find that although R has established a fair reason for the dismissal, the procedural failures are such as to render the process unfair.
91. The remedy question then is whether C would have been fairly dismissed had R acted within the range of reasonable responses.
92. On the facts of this case, this turns on the question of alternative employment. The corporate print logistics team was being removed from the structure altogether. Therefore, this was a forward-looking exercise as to suitability for alternative positions as opposed to pooling and selecting for redundancy from a pool of employees in the context of diminishing existing position or structure.
93. C knew of the pooled grade G posts from 12 December 2024. In fact, he was told of them on 26 November 2024 but in the circumstances, it breaks the band of reasonableness for R to rely on that notification given the shock to C from the developments of that day and that the slides were not shared with him.
94. We find that C knew of the pooled vacancies on 12 December, he was reminded of them on 16 December 2024, on 17 December 2024 and on 19 December 2024, at the third consultation meeting where Mrs Bridges noted that C was uninterested. He asked about reasonable adjustments for the junior posts but not the grade G posts.

The whole tenor of C's communication conveyed a lack of interest in the grade G roles and a wish to stay in printing or leave for the good of his health. He negotiated for garden leave to enable him to keep the company car. While having the wherewithal to do that, he did not express any genuine interest in alternative positions with R.

95. A similar message was conveyed at the appeal hearing. The nearest things get to an expression of interest in alternative employment is the suggestion that "*nothing was off the table*." Yet C, after taking a "*chill pill*" did not make any applications, even by this stage, getting on for two months from the commencement of the process. We agree with Mr Ohringer that saying "*nothing is off the table*" is at its very highest a cryptic way of expressing an interest in a role, and R was entitled to the view that C was uninterested.
96. From this, we conclude that had matters been dealt with fairly, C would have been notified of the pooled grade G roles with the associated documentation in the policy at the first consultation meeting. He would not have applied for any of the roles. He would have adopted the same approach. He did not access the jobs portal and not apply for any roles of his own volition, indicative of a lack of interest.
97. It follows therefore R's suggestion in the counter schedule of matters been fairly dealt with over an additional two weeks is reasonable given the festive break and the 30 days' consultation period policy.
98. We therefore award two weeks loss of remuneration to C. There shall be no reduction for failure to mitigate. The burden is on R to show failure to mitigate. There can be no proper basis to suggest that by mitigating C would have found an alternative position within two weeks of 27 June 2025. R has not produced any evidence of roles which C could have applied for and obtained by 11 July 2025 or thereabouts. C had a duty of fidelity to R until 27 June 2025 and was obliged to make himself available for work which may have inhibited job seeking. In any case, it is for R to show he acted unreasonably and not for C to show he acted reasonably.
99. We now turn to the direct discrimination claim brought pursuant to section 13 of the Equality Act 2010 when read with section 39(2)(c) and (d).
100. It is not in dispute that R subject C to the treatment in paragraph 3 of the list of issues. The question is whether he was less favourably treated in these respects because of disability. The case law establishes that we may focus on the reason why C was treated as he was. The reason why C was notified of his position being redundant is because of the redundancy situation. We have evidential comparators in the form of his two reports from which we may conclude that a non-disabled person in C's position would have been treated the same. The whole print logistics section was closed. That was the reason why C was treated as he was.
101. Cross checking this finding by reference to comparators, there was no evidence that the process was any different for the evidential comparators or that he was in some way being singled out. Indeed, Mr Boyd in paragraph 25(a) of his submissions says that C does not put the case as highly as a conspiracy to remove him. However, this was C's position at the time (describing himself for example at the second consultation meeting as the '*problem child*'). There is simply nothing to suggest anything other than a genuine redundancy following a business decision falling within R's managerial prerogative. It was the same for others affected,

working to the same timescale and Mr Parish took up one of the two junior roles from 1 January 2025.

102. There is simply nothing to shift the burden of proof. R used a pro-forma for the consultation meetings indicative that the same process was used for all. There was unreasonable conduct at least in C's case but that is insufficient to shift the burden without evidence of more favourable treatment of others.
103. We now turn to the reasonable adjustments claim brought under sections 20 and 21 when read with section 39(5). It is agreed that the service of summary notes was a PCP. This disadvantaged C as he was less able to retain information than a non-disabled comparator. R knew of C's disability. We also find that R knew that C had taken to making notes of client meetings and why. This was expressly put to him in cross examination. He had not had to do this before. There was sufficient to put them on notice that C, who had a serious operation, was disadvantaged to a substantial degree - (one that is more than minor or trivial). That C had little or no interest in applying for roles is a remedy issue. There was a disadvantage as he needed to be informed and retain the information, about alternative roles and the redundancy exercise generally. Not providing him a full record is something which C was reasonably entitled to consider put him at a disadvantage. Given R's resources, a full recording could easily have been made and transcribed as a reasonable adjustment which came with a prospect of ameliorating the disadvantage.
104. Dealing firstly with remedy on the unfair dismissal claim, there shall be no basic award as this was a redundancy and he has been paid the redundancy entitlement.
105. Turning to the compensatory award, it is just and equitable to award by way of remedy two weeks' net pay of £2169.24, two weeks' loss of employer pension contributions in the sum of £188.94, and two weeks' loss of employer benefits (by way of car and health benefits) in the sum of £459.69. The compensatory award is £2817.87. There is no award for loss of the statutory right not to be unfairly dismissed as C would have been dismissed but two weeks later than he was had R gone about matters fairly.
106. There shall be no reduction for failure to mitigate as R has not shown an unreasonable failure to mitigate on C's part. There shall be no Acas uplift, the Acas Code not being applicable in redundancy cases and the case giving rise to no issues arising from employee conduct.
107. Turning to the successful Equality Act claim, we must as best we can identify injury to C's feelings caused by the failure to provide him with full notes by way of reasonable adjustment as distinct from the doubtless much greater hurt he suffered from being made redundant. He did not mention in his grievance the absence of the consultation meeting notes. These are not mentioned in his witness statement either save in about the notes of the appeal were not being sent to him.
108. We award an amount for injury to feelings in the lower **Vento** band in the sum of £5000. We accept that given C's health, R's failure to adjust their practice of sending summary notes added to an already very stressful situation, leaving C ignorant of the availability of the grade G roles until 12 December 2024 and reliant on what had become a less than reliable memory as to the process generally. R

must take C as they found him. He had been through a serious health issue entailing surgery which had unfortunately led to the breakup of his relationship at home. R was aware of the health issues from the OH reports.

109. That C was not interested in the roles mitigates R's position but still leaves C with a justified sense of grievance amounting to detriment as it deprived him of information which R's policy says should be provided and moreover about the progress of the redundancy exercise more generally where C had already suffered two major adverse life events. The claim in the agreed list of issues refers to an adjustment of providing full notes including (but not exclusively) about alternative posts. We accept that the loss of the role was more injurious to C than the failure to provide full notes. However, that failure did not help an already stressful position and pertained across the exercise from 27 November 2024 until the appeal two months later.
110. Interest upon this sum is awarded at 8% from 27 November 2024 to today's date, 20 months interest in the sum of £666.67.

*Approved by Employment Judge Brain*

Date: 7 August 2026

### **Note**

Written full reasons will not be provided unless requested by any party by a written request received by the Tribunal within 14 days of the sending of the written summary reasons.

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