

Neutral Citation Number: [2026] EAT 142

Case No: EA-2025-SCO-000051-SH

EMPLOYMENT APPEAL TRIBUNAL

52 Melville Street
Edinburgh EH3 7HF

Date: 24 September 2026

Before :

THE HONOURABLE LADY POOLE

Between :

KAREN STEEDMAN

Appellant

- and -

EAST LOTHIAN COUNCIL

Respondent

Mark Allison, Advocate (instructed by Legal Services Agency) for the **Appellant**
Brian Napier KC (instructed by Harper Macleod) for the **Respondent**

Hearing date: 27 August 2026

JUDGMENT

DISABILITY DISCRIMINATION

SUMMARY

An award was made by the Employment Tribunal in respect of an earlier tribunal's finding that the respondent had discriminated against the appellant due to a failure to make reasonable adjustments. The appellant argued the earlier tribunal's finding in relation to reasonable adjustments had been impermissibly recast, and in any event that the award for financial loss should have reflected the chance she might have returned to work had the adjustment been made.

Held: The Employment Tribunal did not err in law. It had permissibly interpreted the earlier tribunal's findings about reasonable adjustments. It had properly made an award in respect of injury to feelings and psychiatric injury, and was entitled to conclude on the facts found by it that no financial loss flowed from the failure to make reasonable adjustments.

THE HONOURABLE LADY POOLE:**Background**

1. This is an appeal about reasonable adjustments and compensation. The appellant was employed by the respondent from 21 August 2001. She was dismissed on 11 October 2017 on grounds of capability, following a lengthy period of absence. Prior to her dismissal, she had worked as an employment support worker in the East Lothian Works (“**ELW**”) team within the respondent. She brought claims in the Employment Tribunal (“**ET**”) in respect of unfair dismissal, disability discrimination and harassment. On 10 March 2020, following a five-day hearing, the ET issued a decision which upheld the appellant’s claims (“**decision 1**”). One of the bases on which the appellant succeeded was a failure to make reasonable adjustments, in that the appellant’s work had not been moved away from the management of a particular manager (“**JS**”) to another team or different manager.

2. An appeal was taken against some (but not all) aspects of decision 1. On 5 April 2022 the Employment Appeal Tribunal (“**EAT**”) allowed the respondent’s appeal against decision 1 in respect of claims of unfair dismissal and discrimination arising from disability. It remitted the case to a different tribunal for re-hearing of the claims which were the subject of the appeal. The findings in decision 1 in relation to harassment and the reasonable adjustment with which this appeal is concerned remained standing, as they had not been appealed.

3. On 1 April 2025, a second ET issued a decision on the remitted case (“**decision 2**”). That ET was tasked not only with re-hearing the unfair dismissal and discrimination arising from disability claims, but also assessing compensation in respect of the finding about reasonable adjustments in decision 1 which had not been appealed. The ET held a hearing over seven days in 2025, which included evidence being led from a number of different witnesses. In a 240-paragraph decision, the ET dismissed both the claims for unfair dismissal and discrimination arising from disability, and made an award of compensation of £15,250 plus judicial interest of £10,178 in respect of the failure

to make reasonable adjustments.

4. In this second appeal to the EAT, the appellant challenges the way in which decision 2 approached the findings in decision 1 about the failure to make reasonable adjustments. The award is also challenged on the basis that there was no proper acknowledgement of the possibility that the appellant might have returned to work had the reasonable adjustment been made, for example in some sort of lump sum award following principles in **Smith v Manchester [1974] EWCA Civ 6** or **Blamire v South Cumbria Health Authority [1992] EWCA Civ 20**. The respondent, on the other hand, argues that there is no error on a point of law in decision 2. Both parties provided helpful skeleton arguments, authorities and oral submissions, all of which have been taken into account.

5. Although there are four grounds of appeal, it is a matter of agreement between the parties that the conclusions on grounds 2, 3 and the first part of 4 follow from the decision on ground 1. It is necessary in those circumstances only to consider grounds 1 and 4 in detail.

Ground of appeal 1 – reasonable adjustments

The issue

6. In decision 2, the ET decided that the reasonable adjustment which the respondent should have made was:

“a transfer within the ELW team in the period between 12 October and 29 November 2016 (being the period within which the adjustment might reasonably have been made)” (para 103).

In summary, the appellant argues that finding involved an error of law because it involved an impermissible recasting of what was found in decision 1. Decision 1 made an open-ended finding without limit of time, and it was not permissible in decision 2 to restrict the time period and specify that the transfer was within the ELW team. It is argued that error permeates the ET’s approach to unfair dismissal, discrimination arising from disability, and compensation. The respondent on the other hand argues that decision 2 did not involve an error of law. What the ET did was permissible interpretation of the finding in decision 1, in the light of the law governing reasonable adjustments.

The ET was correct to find the reasonable adjustment related to a move within ELW. The adjustment ceased to be reasonable when the appellant indicated she would not go back to ELW.

Governing law

7. A duty to make adjustments may arise under section 20 of the **Equality Act 2010** (“EqA”). The duty includes a requirement under section 20(3) as follows. Where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, A should take such steps as it is reasonable to have to take to avoid the disadvantage. Failure to comply with that duty amounts to disability discrimination under sections 21 and 25 EqA.

8. The “steps” which are to be taken within the meaning of section 20(3) have to be identified (**HM Prison Service v Johnson** [2007] IRLR 951 para 89). In an employment context, the purpose of a reasonable adjustment is to remove substantial disadvantage, to enable a person to work, and the focus is on the practical result of the steps or measures that can be taken (**Romec Ltd v Rudham** [2007] WL 2041870 para 40, **Royal Bank of Scotland v Ashton** [2011] ICR 632 para 23). In assessing what is a “reasonable” step, it is the view of the ET as to what is reasonable on the facts before it that matters (**Smith v Churchill Stairlifts plc** [2005] EWCA Civ 1220 paras 44 and 53).

9. There is guidance on reasonableness of adjustments in the EHRC Code of Practice on Employment (2011). One factor is “whether taking any particular steps would be effective in preventing the substantial disadvantage”. A step may still be reasonable even if not completely effective or success is not completely guaranteed (**Noor v Foreign and Commonwealth Office** [2011] ICR 695 para 33, **Griffiths v Secretary of State for Work and Pensions** [2015] EWCA Civ 1265 para 29). Nevertheless, an adjustment may cease to be reasonable if it would not avoid the disadvantage, for example in an appellant would not have returned to work even if the adjustment were made. It is not reasonable to require a party to make an adjustment that has no prospect of achieving the desired effect (**Johnson** para 96, **Hindmarch v North-East Ambulance NHS**

Foundation Trust [2025] EAT 87 para 61, **Harvey on Industrial Relations and Employment Law**, Division L para [401]).

The relevant parts of the decisions of the ET

10. In decision 1, a concession by the respondent that the appellant was disabled at the relevant time due to depression, anxiety and her brain aneurysm was noted (para 48). The ET did not set out governing law on reasonable adjustments (although it set out governing law on some other bases of the claim). Under the heading “Reasonable Adjustments”, paragraph 75a of decision 1 contained this passage (names have been initialised):

“The Claimant asserted that the provision, criterion or practice applicable was the requirement to work with JS. The Tribunal accepted that this PCP applied to the whole team. The Claimant provided cogent evidence that, particularly between February and April 2016 she found the management style and decision making of JS made her feel anxious. Although JS denied that he had shouted at the Claimant, there was evidence that he had been confrontational, forceful and had remonstrated with the Claimant in meetings.

The Tribunal therefore concluded that such a PCP could place disabled people at a disadvantage and that due to her mental health condition, the Claimant was placed at a disadvantage (ie, increased risk of anxiety and/or depression) as a result of the management style of JS.

The Claimant further asserted that it would have been reasonable to move her work away from the management of JS to another team, or a different manager. The Claimant particularly submitted that following the incidents of alleged harassment and in particular after the Claimant raised her grievance with regard to his bullying and harassment, a move could have been made. The Tribunal accepts that this issue was raised by SO at the meeting on 12 October 2016, although no agreement to do so was reached at that time.

The Tribunal noted that it appeared that a similar type of move had been engineered in 2014, when the Claimant raised a grievance against her then manager AH. It appeared that such a move would therefore have been practicable. Further, there seemed to be no reasonable explanation provided by the Respondent as to why the same type of move could not reasonably have occurred in 2016.

The Tribunal therefore concluded that a reasonable adjustment of this kind would have alleviated the disadvantage to the Claimant and that this claim was made out in relation to the first PCP”.

11. In decision 2, the ET considered decision 1, which it called the Cowen judgment. It described people by initials, and said this:

“98. The prior findings of the Cowen Tribunal judgment on harassment and failure to make

reasonable adjustments are relevant to the issues to be determined in this judgment.

.....

100. The Cowen tribunal found the following to be a failure to make a reasonable adjustment: Failure to move the claimant (KS) “away from the management of JS to another team or manager”– “this issue was raised by SO at the meeting on 12 October 2016”. The move was considered reasonable because “a similar type of move had been engineered in 2014” and no reasonable explanation was given as to why the same type of move could not reasonably have occurred in 2016.

101. The Cowen judgment does not specify either the “team or manager” or the date of the failure and it is therefore necessary to determine this by reasonable inference.

102. In 2014 CF had arranged a transfer of the claimant’s line management from AH (whose team was responsible for young people) to JS’s team (whose team was responsible for adults). Both AH and JS reported to CF. In 2016 CF continued to manage ELW and whilst AH continued to be responsible for the young person team, SN was now responsible for the adult team. KS reported to JS who now reported SN. SN reported to CF who in turn reported to EW. It was therefore inferred that “a similar type of move” would be a transfer CF could effect within the ELW. The claimant submits it was a move to either to SN or another manager. Although the submissions on unfair dismissal reference EW as the other manager, and this was the manager proposed by SO on 12 October, the Cowen judgment does not identify EW as the other manager. A move to EW could not be described as “a similar type of move” given that this would have entailed a transfer by CF to his own line manager who was three levels of management above KS and who did not have any day to day involvement in either team. In the circumstances it was inferred that the adjustment was a move away from JS’s line management to management by SN or CF.

103. The proposal for a change of line management was first made by SO on behalf of KS on 12 October. There was no finding of a deliberate failure to comply and there was no finding of an inconsistent act. By 29 November KS had explicitly stated that she could not return to her substantive post. It was therefore inferred that the adjustment was a transfer within the ELW team in the period between 12 October and 29 November 2016 (being the period in which the adjustment might reasonably have been made”).

12. Decision 2 had earlier set out the agreed list of issues before the ET at that stage (para 10). In relation to the matter of reasonable adjustments, it recorded as issues for determination:

“Issues of remedy arising from the Cowen Tribunal Judgment

Failure to make reasonable adjustments contrary to sections 20, 21 and 22 of the Equality Act 2010

Paragraph 75(a) of the Cowen Tribunal’s original judgment of 10 March 2020 is undisturbed. The Tribunal is asked to decide remedy for this issue. If they consider they do not have sufficient information to do so, the Cowen Tribunal has indicated it will deal with this matter at a further hearing. (Given the significant passage of time both parties were in agreement that this issue should be determined by this tribunal if at all possible.)

This contains the following findings that

1. The Respondent applied a PCP in the form of requiring the whole team to work with JS whose management style and decision making was confrontational and forceful.

2. The application of this PCP placed the Claimant, as a disabled person, at a substantial disadvantage in comparison to persons who are not disabled because his management style and decision making caused her to feel anxious giving rise to an increased risk of anxiety and/or depression.

3. The Respondent knew (or reasonably be expected to know) that the Claimant in light of her disability was likely to be placed at the disadvantage referred to above because the claimant had raised a grievance against JS and the issue of her move was raised by SO at the meeting on 12 October 2016. [4]. It was reasonable for the respondent to take the step of “move her away from the management of JS to another team or a different manager” to avoid this disadvantage. “There seemed to be no reasonable explanation provided by the Respondent as to why the same type of move could not reasonably have occurred in 2016”.

The ET also recorded a long list of agreed issues in relation to loss, including financial loss, injury to feelings and personal injury.

Decision

13. The EAT does not find the approach taken to reasonable adjustments in decision 2 involved an error of law. It is accepted that the agreed list of issues recorded that, if the ET considered it did not have sufficient information to determine remedy for failure to make reasonable adjustments, it could go back to the first ET. But, if there was sufficient information, decision 2 was to determine remedy on failure to make reasonable adjustments. As recorded in decision 2 “Parties were in agreement that this approach should be taken if at all possible given the protracted litigation and the overlapping factual and legal issues” (para 212). The ET decided that it was possible for it to determine the issue, and was entitled to do so. The ET in 2025 was in a good position to assess remedy, having held hearings over 7 days and held meetings of members on two further days, as well as having decision 1 before it. The EAT finds that the approach to reasonable adjustments in decision 2 involved permissible interpretation of findings made in decision 1, as opposed to opening up an issue not before the ET and improperly making findings on it. There are a number of reasons why the EAT has come to that conclusion.

14. The context is one in which the ET had to determine remedy for a failure to make reasonable adjustments. As part of the ET’s function, it had to consider how to put the appellant in the same position she would have been in had that discrimination not occurred (as observed at para 215 of

decision 2). It was accordingly necessary for the ET to look at the act of discrimination that had been found in decision 1. The ET correctly turned to decision 1 and set out the findings made (para 100). The ET was entitled to engage in a process of interpretation of the findings that were made in decision 1, interpretation and application of judicial decisions being part and parcel of its adjudicatory role. The interpretation reached was one open to the ET, and did not involve an error of law.

15. First, the ET was entitled to find the reasonable adjustment concerned a move within ELW. The background is that there were in principle different moves possible within the respondent. One was to stay within ELW, but move management or team. There were factual findings that ELW was a team with other teams within it, including a team for youth employability and a team for adult employability, with other teams within them (decision 2 paras 24 to 25). Alternatively there might be redeployment, to a different post elsewhere in the Council outside ELW. These were different steps (see for example the distinction between transfers within ELW and redeployment, in decision 1 paras 9, 10 and 27, or decision 2 paras 18 and 21).

16. Turning from the general background to the language used by the ET (para 75a), it is accepted that it was primarily for the appellant to identify the provision, criterion or practice relied on, and suggest what reasonable steps might be taken (**Johnson**). But it is for the ET to decide the issue of reasonableness; what the reasonable steps are which ought to have been taken in all the circumstances (**Churchill Stairlifts**). In decision 1, in the context of reasonable adjustments, the ET did not refer to redeployment in a different role, but movement of the appellant from the management of JS to another team or manager. The need for a move is linked by the ET into a move the appellant had made in 2014. The language used in para 75a is “a similar type of move had been engineered in 2014”, “such a move” or the “same type of move” and “a reasonable adjustment of this kind”. The language used is not of general redeployment but related to the type of move which had occurred in 2014. From the factual findings, that was a move within ELW (paras 9 and 10). Other indicators are that the ET describes such a move as being “practicable”. Given that the appellant had been offered three separate opportunities to participate in the redeployment process and declined them (decision 2

para 205), it appears unlikely that the ET was referring to general redeployment as practicable, its fact finding being limited in relation to that matter; rather it was referring to the type of move in 2014 that it made factual findings about as being practicable. The inference drawn by decision 2 that the reasonable adjustment was a move within ELW was one that the ET was entitled to draw, and did not involve an error of law.

17. Second, and turning to the issue of the dates identified in decision 2 during which the reasonable adjustment ought to have been made, the ET had to act in accordance with the law governing reasonable adjustments. The exercise in which the ET was engaged was determining how to put the appellant in the position she would have been had the unlawful act – failure to provide a particular reasonable adjustment - not happened. To do so, the ET had to consider the nature and extent of the failure or breach of duty. The word “reasonable” is part of the statutory provisions in section 20(3) **EqA**, governing when a duty to make reasonable adjustments arises. There is no unlawfulness requiring redress if it was not reasonable to provide the adjustment.

18. The start date of the failure identified was taken in decision 2 to be 12 October 2016. The appellant had submitted that a move could have been made after a grievance had been raised, which the ET accepted was done by the appellant’s partner at a meeting on 12 October 2016 (decision 1, para 75a). Given that finding, it was a reasonable inference that from 12 October 2016 the adjustment of moving the appellant should have been made.

19. As far as the end date of the period during which the reasonable adjustment should have been made is concerned, as already identified, if an adjustment is no longer reasonable, failure to provide it is not unlawful discrimination (see the passages in **Johnson**, **Hindmarch** and **Harvey** referred to in the governing law section above). The adjustment identified in decision 1 was moving the appellant from the management of JS to another team or a different manager. An express finding in fact, made on evidence led, was made that at a meeting on 29 November 2016 the appellant “advised that a return to her substantive post was not an option, and they agreed to progress the redeployment process” (supported by a finding that in February 2017 the appellant said under no circumstances

would she ever want to return to her substantive post (decision 2 paras 55 and 123)). The ET was entitled to find that the reasonable adjustment was time limited so that there was no duty to make it after 29 November 2016 (decision 2 para 103). Moving the appellant from the management of JS to another team or different manager would not have achieved the desired effect of the adjustment, because she would not in any event have returned to her substantive post. The intimation by the appellant that she would not return to her substantive post was a significant change of circumstances, resulting in the adjustment no longer being “reasonable” to avoid the disadvantage.

20. Third, other parts of decision 1 support the interpretation reached in decision 2 that the adjustment was no longer reasonable after 2016. The approach in decision 1 to the claims of unfair dismissal (paras 76 to 81) and discrimination arising from disability (the latter being under section 15 **EqA**) (paras 57 to 74) is instructive in understanding what is said in relation to reasonable adjustments, given that decisions must be read as a whole. Although dismissal was found to be unfavourable treatment arising from disability (as it was due to sickness absence, something arising in consequence of the disability), the section 15 claim was rejected in decision 1 because dismissal was not proportionate (a conclusion overturned on appeal). The lack of proportionality found in decision 1 arose because there had not been full consideration of other ways to cover for absence without the need to dismiss the appellant, such as hiring a temporary replacement. The unfair dismissal claim was rejected in decision 1 on the basis it was not reasonable to rely on capability as a reason for dismissal (a finding overturned on appeal). In decision 1, that finding was made on the basis there were failures to explore alternative employment (which meant redeployment elsewhere within the respondent when paras 78 and 79 are read together) and ill health retirement. What was not mentioned as part of the reasoning for the claims of unfair dismissal or section 15 discrimination succeeding in decision 1 is the particular duty to make a reasonable adjustment found to have been breached in that decision. If moving the appellant away from the management of a particular employee to another team had been part of the reasoning, then a permissible inference might have been that there was a continuing duty, still required to be met at the time of the dismissal. But the

omission points towards that reasonable adjustment no longer being relevant to the circumstances at the time of the dismissal on 11 October 2017. That is consistent with the adjustment having ceased to be reasonable in 2016, and what was said about it in decision 1. Decision 1 stated that “there seemed to be no reasonable explanation provided by the Respondent as to why the same type of move could not reasonably have occurred **in 2016**” (para 75a). It did not mention 2017.

21. On these bases, there was sufficient information before the ET when making decision 2 to be able to reach the conclusions it did about reasonable adjustments, and fairness did not require it to refer the matter back to the ET which had made decision 1. The ET did not err in law in making the findings it did in relation to reasonable adjustments in decision 2. Accordingly, the first ground of appeal fails. It follows, by agreement of parties, that grounds 2 and 3 (about the application of the ET’s findings as to the reasonable adjustment in the context of unfair dismissal and discrimination arising from disability claims) also fail. So too does the first part of ground 4.

Ground of appeal 4 – insufficient award

22. There is one final ground of appeal to be addressed, in the second part of ground 4. The appellant argues in summary that the ET should have taken into account the chance that the appellant would have returned to work had the adjustment been made, because reasonable adjustments are primarily concerned with enabling disabled people to remain in or return to work. Had the move been offered between 12 October and 29 November 2016, there was a chance the appellant would have been able to return to work, and would not have gone through the incapacity process. That would have affected the assessment of compensation. Any uncertainties involved in this aspect of the claim could be recognised by making a **Smith v Manchester** or **Blamire** type of award. If the ET thought there was no chance it should have said so. This aspect of the claim should be remitted to the ET to decide how likely the appellant was to return, and the amount of any award. The respondent on the other hand argues that the ET took the correct approach to compensation, and did not err in law. There was no basis to maintain that if the adjustment had been made that the appellant would have returned

to work in her substantive post due to other findings made by the ET.

23. In approaching this ground of appeal, the EAT reminds itself of the approach to appeals set out in **DPP Law v Greenberg** [2021] EWCA Civ 572 paras 57-58. The decision of the ET must be read as a whole. Reasons are not intended to include a comprehensive analysis of the case; reasons are to tell parties in broad terms why they lose or win. What is out of sight in the language or the decision is not to be presumed to be out of mind. Where a tribunal has correctly stated the legal principles to be applied, an appellate tribunal or court should be slow to conclude that it has not applied those principles, and should generally do so only where it is clear from the language used that a different principle has been applied to the facts found.

24. In decision 2, ET set out a detailed agreed list of issues for determination (para 10). The list included agreed issues for determination about financial losses, including issues of past and future loss, and whether awards should be limited or subject to a percentage reduction (although did not expressly mention **Smith v Manchester** or **Blamire**). The ET set out its reasoning on remedy for failure to make a reasonable adjustment (paras 211 to 239). It correctly set out the legal principles governing compensation, including that the appellant had to be put in the same position she would have been in had the discrimination not occurred (paras 213 and 216). The ET then proceeded to assess loss under three headings; injury to feelings, psychiatric injury and financial losses. It analysed the effect of the failure to make reasonable adjustments and other contributing factors, and found that awards should be made under the first two of these headings. It then made findings about financial loss, including discussion of the effect of sick pay. It concluded that “no financial losses flow from the failure to make the reasonable adjustment” (para 239).

25. Approaching the ET’s findings in the light of the **Greenberg** principles, it cannot reasonably be inferred that the ET failed to take into account the issue of financial loss resulting from the failure to make a reasonable adjustment, including any future loss, given the list of agreed issues it set out and the terms of its decision. The ET made a number of findings of fact bearing on the issue of whether there was any financial loss arising from the failure to move the appellant within ELW

between 12 October and 29 November 2016 in decision 2. The ET found that the appellant was not fit for work for about 4 months following the tragic death of her son in October 2016 (paras 118-120), and received sick pay at that time (para 239). Return to her substantive post was not an option from at least 29 November 2016 (paras 55 and 67), and she had lost all faith in the respondent at the latest by 26 September 2017 (para 87). She was unwilling to participate in exploring redeployment despite being given three opportunities to do so (para 136-144, 184, 205). However, she became fit for other work in 2017 (para 130, 134). Reading the decision as a whole, the findings at para 239 are based on these earlier factual findings. It is to be inferred from the findings and conclusion that the ET did not consider that, had the reasonable adjustment been made, there was a chance that the appellant could have returned to work with the respondent which sounded in a financial award. It was therefore not appropriate to make the type of award the appellant suggests. The ET's conclusion that no financial losses flow from the failure to make the reasonable adjustment was one it was entitled to reach, and discloses no error in law. The reasons it gave are proper and adequate to explain its decision.

Conclusion

26. No grounds of appeal have succeeded, and it follows that the appeal must be refused.