Case Number: 6019505/2025.

EMPLOYMENT TRIBUNALS

Claimant **Respondent**

Mrs S Roberts **v** Health Transportation Group Limited

Heard at: Norwich (in person) **On:** 11, 12, 13 and 14 August 2026

Before: Employment Judge M Warren (sitting alone)

Appearances For the Claimant: In person

For the Respondent: Ms K Hindmarch, Solicitor

JUDGMENT having been sent to the parties on 15 September 2026 and written reasons having been requested in accordance with Rule 60 of the Employment Tribunal Rules of Procedure 2024, the following reasons are provided:

REASONS

Background

1. Mrs Roberts was employed by the Respondent as an Ambulance Care Assistant between 21 June 2013 and 2 May 2025. After Early Conciliation between 16 March and 27 April 2025, she issued these proceedings claiming unfair dismissal and disability discrimination on 26 May 2025. The case was managed by Employment Judge Hunt at a Case Management Preliminary Hearing on 12 March 2026.

The Issues

2. The issues in this case were identified and agreed at the Preliminary Hearing before EJ Hunt as repeated below.

Agreed List of Issues

1) Unfair dismissal

   a) What was the reason or principal reason for dismissal? The Respondent says the reason was capability, (long term absence).

b) If the reason was capability, did the Respondent act reasonably or unreasonably in all the circumstances, including the Respondent's size and administrative resources, in treating that as a sufficient reason to dismiss the Claimant? The Tribunal's determination whether the dismissal was fair or unfair must be in accordance with equity and the substantial merits of the case. The Tribunal will usually have to consider, in particular, whether:

i) The Respondent genuinely believed the Claimant was no longer capable of performing their duties:

ii) The Respondent adequately consulted the Claimant;

iii) The Respondent carried out a reasonable investigation, including finding out about the up to date medical position;

iv) The Respondent adequately considered redeployment as an alternative to dismissal;

v) The Respondent could reasonably be expected to wait longer before dismissing the Claimant; and vi) Dismissal was within the range of reasonable responses.

2) Disability

a) Did the Claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:

i) Did they have a physical or mental impairment: curvature of the spine?

ii) Did it have a substantial adverse effect on their ability to carry out day to day activities?

iii) If not, did the Claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?

iv) Would the impairment have had a substantial adverse effect on their ability to carry out day to day activities without the treatment or other measures?

v) Were the effects of the impairment long term? The Tribunal will decide:

(1) Did they last at least 12 months, or were they likely to last at least 12 months?

(2) If not, were they likely to recur?

3) Reasonable Adjustments (Equality Act 2010 §.20 & 21)

a) Did the Respondent know or could it reasonably have been expected to know that the Claimant had the disability? From what date?

b) A "PCP" is a provision, criterion or practice. Did the Respondent have the following PCPs:

i) The requirement for ACAs to drive a range of vehicles; ii) The requirement for ACAs to drive for more than 45 minutes; and iii) The requirement for ACAs to carry out manual handling.

c) Did the PCPs put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability, in that she was signed off work as sick?

d) Did the Respondent know or could it reasonably have been expected to know that the Claimant was likely to be placed at the disadvantage?

e) What steps could have been taken to avoid the disadvantage? The Claimant suggests:

i) Allocating shorter journeys, and ii) Allocating her a specific vehicle.

f) Was it reasonable for the Respondent to have to take those steps and when?

g) Did the Respondent fail to take those steps?

Evidence

3. I had before me witness statements from Mrs Roberts and for the Respondents, from her manager at the time Mr Jonathan Edge, from an HR Business Partner Mrs Janet Grayson and from the HR Director Mrs Heather Lee.

4. I also had a paginated and indexed bundle of documents running to page 443.

5. At the start of the hearing, Mrs Roberts sought leave to introduce an additional witness statement which she had not exchanged with the Respondents on the date stipulated. Her explanation was that the individual in question, a Mr Richard King, had been in Florida on the date for exchange. The Case Management Record by EJ Hunt on 12 March 2026, show that Mrs Roberts had told him on that occasion she intended to call Mr King, so she knew she was having to do that in March 2026. Exchange was due on 14 July 2026 and the witness statement referred to in the written application, was submitted on 5 August 2026, just a few days before the start of this hearing.

6. Mrs Roberts has had the assistance of a solicitor throughout these proceedings, until very recently. Mrs Roberts told me that Mr King's evidence would be that she used to have the sole use of a vehicle, (that is not in fact disputed) and secondly, he would confirm that she used to drive

   for more than two or three trips a day when at work. That was not evidence I thought I was going to find useful.

7. For these reasons, having regard to the overriding objective, I did not allow leave for Mrs Roberts to rely on the evidence of Mr King and submit his witness statement.

8. I should also record that the Respondent's representative gave Mrs Roberts her written submissions after it was closed at the end of Day 2, so Mrs Roberts had them overnight to consider them before I heard submissions on the morning of Day 3. As a consequence, Mrs Roberts gave some excellent written submissions on the morning of Day 3.

The Law

Definition of Disability

9. For the purposes of the Equality Act 2010 (EqA) a person is said, at section 6, to have a disability if they meet the following definition:

   "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.

10. The burden of proof lies with the Claimant to prove that he is a disabled person in accordance with that definition.

11. The expression 'substantial' is defined at Section 212 as, *'more than minor or trivial'*.

12. Further assistance is provided at Schedule 1, which explains at paragraph 2:

   "(1) The effect of an impairment is long-term if –

   (a) it has lasted for at least 12 months,
   (b) it is likely to last for least 12 months, or
   (c) it is likely to last for the rest of the life of the person affected.

   (2) If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur".

13. As to the effect of medical treatment, paragraph 5 provides:

"(1) An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if –

(a) measures are being taken to treat or correct it, and
(b) but for that, it would be likely to have that effect.

(2) 'Measures' includes, in particular medical treatment …"

14. Paragraph 12 of Schedule 1 provides that a Tribunal must take into account such guidance as it thinks is relevant in determining whether a person is disabled. Such guidance which is relevant is that which is produced by the government's office for disability issues entitled, 'Guidance on Matters to be Taken into Account in Determining Questions Relating to the Definition of Disability'. Although I acknowledge that the guidance is not to be taken too literally and used as a check list, (Leonard v Southern Derbyshire Chamber of Commerce [2001] IRLR 19) much of what is there is reflected in the authorities, (or vice versa).

15. A substantial effect is treated as continuing, if it is likely to recur, this is explained at paragraphs C5 and C6 by cross reference to Schedule 1, paragraph 2(2) quoted above. However, it is the substantial adverse effect on the ability to carry out day to day activities that must recur, not merely a re-manifestation of the impairment after a period of remission, but to a lesser degree, (Swift v Chief Constable of Wiltshire Constabulary [2004] ICR 909 EAT).

16. Similarly, on the question of whether an impairment has lasted or is likely to last more than 12 months, it is the substantial adverse effect which must have so lasted.

17. As for what amounts to normal day-to-day activities, the guidance explains that these are the sort of things that people do on a regular or daily basis including, for example, things like shopping, reading, writing, holding conversations, using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, taking part in social activities, (paragraph D3). The expression should be given its ordinary and natural meaning, (paragraph D4).

18. The guidance suggests that whilst specialised activities either to do with one's work or otherwise, are unlikely to be normal day-to-day activities, (paragraphs D8 and 9) some work related activities can be regarded as normal day-to-day activities such as sitting down, standing up, walking,

running, verbal interaction, writing, driving, using computer keyboards or mobile phones, lifting and carrying (paragraph D10).

19. As to what amounts to a 'substantial effect', the guidance is careful not to give prescriptive examples but sets out in the Appendix a list of examples that might be regarded as a substantial effect on day-to-day activities as compared to what might not be regarded as such. For example, *'difficulty picking up and carrying objects of moderate weight, such as a bag of shopping or a small piece of luggage, with one hand'* which would be regarded as a substantial effect, as compared to, '*inability to move heavy objects without assistance or a mechanical aid, such as moving a large suitcase or heavy piece of furniture without a trolley'* which would not be so regarded. Also compare, *'a total inability to walk, or an ability to walk only a short distance without difficulty'* which is a substantial effect to, *'experiencing some tiredness or minor discomfort as a result of walking unaided for a distance of about 1.5 kilometres or one mile'*.

20. The word, "likely" in the context of the definition of disability in the Equality Act 2010, means, "could well happen", or something that is a real possibility. See SCA Packaging Ltd v Boyle [2009] ICR 1056 HL and the Guidance at paragraph C3.

21. A claimant must meet the definition of disability as at the date of the alleged discrimination. The same applies in assessing the likelihood of reoccurrence. (See Richmond Adult Community College v McDougall [2008] ICR 431 CA, Tesco Stores Ltd v Tennant UKEAT0167/19 and All Answers Ltd v W [2021] EWCA Civ 606).

22. In Sullivan v Bury Street Capital Limited [2022] IRLR 159 the Court of Appeal confirmed that an Employment tribunal should address the following questions:

    22.1. Was there an impairment?

    22.2. What were its adverse effect?

    22.3. Were they more than minor or trivial

    22.4. Was there a real possibility that they would continue for more than 12 months or that they would recur?

23. In J v DLA Piper UK LLP [2010] IRLR 936 Mr Justice Underhill, President of the EAT at time, observed that it is good practice to state conclusions separately on the one hand on questions of impairment and adverse effect and on the other hand on findings on substantiality and long term effect. However, Tribunals should not feel compelled to proceed by rigid consecutive stages; in cases where the existence of an impairment is disputed, it makes sense to start by making findings about whether the Claimant's ability to carry out normal day-to-day activities is adversely

effected on a long term basis and then consider the question of impairment in light of those findings. It is not always essential for a Tribunal to identify a specific 'impairment' if the existence of one can be established from the evidence of an adverse effect on the Claimant's abilities. That is not to say that impairments should be ignored, the question of impairment can be considered in light of findings on day-to-day activities.

Disability Discrimination

24. Disability is a protected characteristic pursuant to s.4 of the Equality Act 2010.

25. Section 39(2)(c) and (d) proscribes discrimination by an employer by either dismissing an employee or subjecting him to any other detriment.

26. Section 39(5) imposes a duty on an employer to make reasonable adjustments.

27. In respect of the burden of proof, s.136 reads as follows:

> *"(2) 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;*
>
> *(3) But subsection (2) does not apply if A shows that A did not contravene the provision."*

28. Section 20 defines the duty to make reasonable adjustments, which comprises three possible requirements, the first of which might apply in this case set out at subsection (3) as follows:-

> "(3) The first requirement is a requirement, 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, to take such steps as it is reasonable to have to take to avoid the disadvantage

29. Section 21 provides that a failure to comply with such requirements is a failure to make a reasonable adjustment, which amounts to discrimination.

30. There are five steps to establishing a failure to make reasonable adjustments (as identified in the pre-Equality Act 2010 cases of Environment Agency v Rowan [2008] IRLR 20 and HM Prison Service v Johnson [2007] IRLR 951). The Tribunal must identify:

    30.1. The relevant provision criterion or practice applied by or on behalf of the employer;

    30.2. The identity of non-disabled comparators, (where appropriate);

30.3. The nature and extent of the substantial disadvantage suffered by the disabled employee;

30.4. The steps the employer is said to have failed to take, and

30.5. Whether it was reasonable to take that step.

31. The duty is to make "reasonable" adjustments, to take such steps as it is reasonable for the employer to take to avoid the disadvantage. The test is objective. Our focus should be not on the process followed by the employer to reach its decision, but on practical outcomes and whether there is an adjustment that should be considered reasonable. It is for the tribunal to determine, objectively, what is reasonable. It is not a matter of what the employer reasonably believed. Unusually, the tribunal may substitute its view for that of the employer and it is permissible for the tribunal to conclude that different adjustments would have been reasonable from those contended for by the Claimant: see Smith v Churchills Stairlifts Plc [2006] ICR 524 CA; Royal Bank of Scotland v Ashton [2011] ICR 632 EAT; Garrett v LIDL Ltd UKEAT 0541/08; Southampton City College v Randal IRLR 2006 18; Project Management Institute v Latiff [2007] IRLR 579.

32. In Cordell v Foreign and Commonwealth Office 2012 ICR 280 EAT the EAT gave useful guidance on the significance of the cost of a proposed adjustment. That might include the size of any budget allocated to reasonable adjustments, how much has been spent in similar situations, what other employers are prepared to spend in similar situations, and any policies set out in collective agreements. The tribunal makes a judgment on what it considers right. The significance of cost might also depend on what the Respondent might otherwise have to spend, for example in retraining or recruiting others.

33. A trial period in a new role may be a reasonable adjustment, whether it is or not will depend on the facts of the case, see Rentokil Initial UK Limited v Miller [2024] EAT 37.

34. Rentokil also assists with the burden of proof. Section 136 requires that the claimant prove that the PCP was applied, and that it placed them at a disadvantage. They should also put forward and identify some potentially or apparently reasonable adjustment. If they do that, the burden of proof then shifts to the respondent that it would not have been reasonable to expect them to have made the adjustment, (paragraph 43 of Rentokil).

Unfair Dismissal

35. The right not to be unfairly dismissed is contained in Section 94 of the Employment Rights Act 1996, (ERA).

36. Section 98(1) and (2) of the ERA set out five potentially fair reasons for dismissal, which include the capability of the employee for performing work of the kind which he was employed to do.

37. If the employer is able to show the reason for dismissal was one of the potentially fair reasons set out in Section 98(1) and (2), the Tribunal must then go on to apply the test of fairness set out at Section 98(4) which reads as follows:

> *"Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) –*
>
> *(a) 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, and*
> *(b) shall be determined in accordance with equity and the substantial merits of the case."*

38. In applying the test of fairness set out in s98(4) the tribunal must not substitute its decision as to what was the right course to adopt and in considering the reasonableness of the employer's conduct, there will usually be a band of reasonable responses the reasonable employer could adopt and it is to that, one should have regard; a decision inside that band is fair, a decision outside that band is unfair, (Iceland Frozen Foods Limited v Jones [1983] IRLR 439).

39. Where an employee is dismissed by reason of lack of capability occasioned by ill health, the question must be, when looking at the fairness of the dismissal, whether in all the circumstances the employer can be expected to wait any longer, and if so how much longer? One should take into account the nature of the illness, the likely length of continuing absence and the need of the employer to have done the work which the employee was engaged to do, see Spencer v Paragon Wallpapers Ltd [1976] IRLR 373.

40. Furthermore, before a dismissal for ill health is effected, one would expect to see consultation and discussion, steps taken to discover the true medical position, see East Lindsey District Council v Daubney [1977] IRLR 181.

41. One would also expect to see consideration given to whether there are options other than dismissal open to the employer and whether there is some other employment that could be provided that is within the capabilities of the employer.

42. These principles were drawn together in BS v Dundee City Council [2014] IRLR 131 and expressed at paragraph 27 as follows as follows:

> "First, in a case where an employee has been absent from work for some time owing to sickness, it is essential to consider the question of whether the employer can be

> expected to wait longer. Secondly, there is a need to consult the employee and take his views into account. We would emphasise, however, that this is a factor that can operate both for and against dismissal. If the employee states that he is anxious to return to work as soon as he can and hopes that he will be able to do so in the near future, that operates in his favour; if, on the other hand he states that he is no better and does not know when he can return to work, that is a significant factor operating against him. Thirdly, there is a need to take steps to discover the employee's medical condition and his likely prognosis, but this merely requires the obtaining of proper medical advice; it does not require the employer to pursue detailed medical examination; all that the employer requires to do is to ensure that the correct question is asked and answered."

43. Tribunals are enjoined to have regard to any relevant ACAS Code of Practice in considering a claim of unfair dismissal. The only potentially relevant code of practice is that on disciplinary and grievance procedures of 2009, which has no application to cases of dismissal on the grounds of long term ill-health as its focus is on misconduct. However, ACAS have also issued a guide entitled "Discipline and Grievances at Work (2009)

which, notwithstanding its title, contains an Appendix on, "Dealing with Absence. Under the heading, "How should longer-term absence through ill health be handled?" includes the following:

> Where absence is due to medically certificated illness, the issue becomes one of capability rather than conduct. Employers need to take a more sympathetic and considerate approach, particularly if the employee is disabled and where reasonable adjustments at the workplace might enable them to return to work.
>
> There are certain steps an employer should take when considering the problem of long-term absence:
>
> - employee and employer should keep in regular contact with each other
> - the employee must be kept fully informed if there is any risk to employment
> - … [series of points about obtaining GP report]
> - the employer is not expected to create a special job for the employee concerned, nor to be a medical expert, but to take action on the basis of the medical evidence
> - …
> - where the employee's job can no longer be held open, and no suitable alternative work is available, the employee should be informed of the likelihood of dismissal
> - where dismissal action is taken the employee should be given the period of notice to which he or she is entitled by statute or contract and informed of any right of appeal.

Findings of Fact

44. The Respondent provides non-emergency patient transportation services taking patients to, from or between, hospitals. It has depots across the United Kingdom with about 900 employees, 187 locally in East Anglia at the

time of the events, about 57 at the depots in Kings Lynn and Kelling, from where Mrs Roberts worked.

45. The Respondent and its competitors bid for contracts with the NHS Integrated Care Boards. The terms of the contracts will change from one time to the next and frequent TUPE transfers between contracts are the norm in this industry.

46. Mrs Roberts was employed as Ambulance Care Assistant, (ACA) based at the depot in King's Lynn since June 2013. She was TUPE transferred between different employers a number of times and to the Respondent on 1 October 2024.

47. Sometimes the role of ACA entailed driving, sometimes sitting in the back of the vehicle tending to the patients needs.

48. Mrs Roberts had a whip lash injury in an road traffic accident in 2003. She hurt her neck again at work in 2014 whilst "incorrect manual handling", (her witness statement at paragraph 4). Mrs Roberts says that she told Mr Edge that she would not be able to travel in the back of the vehicle any more and would not be able to carry stretchers and chairs. She says he agreed that she would have her own winching equipment vehicle and that she would be allocated work requiring a single driver only, transporting walking or wheelchair patients.

49. In April 2021, Mrs Roberts was referred by her then employer EMED to Occupational Health. The referral concerned Mrs Roberts' neck and skin conditions at the time and recorded her contention that she could not drive more than two hours without a break.

50. In the referral the author referred to neck injury while working for the East of England resulting in arthritis, Lichen Sclerosis and wrote,

> "Neither condition would improve and both make it hard to drive for more than two hours at a time without a break."

51. The Occupational Health Report was produced as a consequence and was dated 29 May 2021. This report recommended adjustments including:

    51.1. The allocation of a vehicle solely for Mrs Roberts' use;

    51.2. Limiting journeys to two hours or less;

    51.3. Finishing journeys by 1630;

    51.4. Avoiding vehicle cleaning duties, and

    51.5. Permitting Mrs Roberts to return home during shifts to apply her medication for her skin condition.

52. Mrs Roberts was henceforth allocated on a rota that enabled her to work alone on a, that is any, Wheelchair Access Vehicle, (WAV). The opinion of the OH advisor was that she met the definition of a disabled person at that time.

53. Mrs Roberts worked alone thereafter on a WAV. The arrangement evolved over time into her having use of a specific vehicle. EMD accommodated this arrangement. Keys were kept in Mrs Roberts locker because other staff were mischievously adjusting the seat settings when she was not there. Mr Edge described this arrangement as operationally difficult, but manageable under the prevailing contract at the time.

54. Between October 2021 and January 2022, Mrs Roberts was on long term absence due to stress. The records referred to in the January 2022 Occupational Health Referral showed continuous sickness absence between 18 October 2021 and at least 26 January 2022 with stress. A GP report was then provided on 22 March 2022. Mrs Roberts' GP reported that in relation to this period of absence, a folic acid deficiency was causing day time drowsiness but the GP expressed the view that Mrs Roberts should be able to return to work without restrictions, whilst recommending Occupational Health advice on other matters.

55. Another Occupational Health Referral was made. The report is dated 28 June 2022. This time there had been a period of eight months absence associated with sleep apnoea. The report noted that Mrs Roberts held an HGV Licence and had been passed fit for that purpose. It recommended a phased return and lighter duties.

56. I note in particular, (page 143) the author of the report writes,

> "Initially I recommend limiting to 45 minutes driving at a time to local calls, increasing as tolerated over a few months, back to a maximum of 2 hours at a time due to the chronic neck problem, if the company can accommodate it."

57. A Capability Meeting ensued on 13 July 2022. Mrs Roberts' employer then was a business known as ERS Medical. They conducted a Capability Meeting in which adjustments, a phased return and vehicle related issues were discussed. It was recognised that permanent lighter duties were not sustainable and Mrs Roberts indicated an intention to return eventually to full ACA duties.

58. On 14 July 2022, ERS Medical issued a letter confirming the agreed return to work arrangements before a Capability Meeting.

59. There is thereafter an absence of documents and therefore no evidence on Mrs Roberts' subsequent absence record until August 2024. Such documents were lost in the later TUPE transfer to the Respondent.

60. In August 2024 the vehicle Mrs Roberts had been using developed a gear box fault and an alternative vehicle was provided. Mrs Roberts reported that the alternative vehicle was painful to drive and that when reaching to release a stored wheelchair, she experienced extreme pain in her neck. She subsequently began a further period of long term absence. At this time a TUPE transfer to the Respondent was pending.

61. On 30 August 2024, Mrs Roberts had a meeting with Mrs Grayson and a Mr Nigel Briggs of the Respondent. She claimed that Mr Briggs told her that he was aware of her adjustments in place, told her not to worry and said that he would ask if she could have a WAV to take home that would be for her sole use. This is denied by the Respondents.

62. The TUPE transfer to the Respondents took place on 1 October 2024. The Respondent won the patient transport contract for this part of East Anglia and the Claimant transferred under TUPE. She was already on long term sickness absence and did not subsequently undertake any duties for the Respondent.

63. When the patient transfer contract came up for renewal, the Commissioning Board changed its terms and the system by which patient transport was booked was changed. Journeys used to be booked by telephone, mostly by the patients themselves for appointments but also by the hospitals for discharge and inter hospital journeys. The transport provider used to get 24 to 48 hours' notice of Out Patient appointments and six hours' notice of discharges and transfers. Under the new system, whilst Out Patient appointments were still mostly booked by patients themselves with a day or so notice, journeys booked by the hospital were now to be done through a portal and the transport provider expected to collect the patient within an hour.

64. This significantly reduces the ability of the transport provider to plan ahead and their flexibility with vehicle allocation and shifts.

65. Fit notes were supplied by Mrs Roberts stipulating the cause of her ongoing absence as neck pain. These formed part of the Respondent's ongoing review into transferred employees that were on long term sickness absence. There was an initial Sickness Absence Review Meeting on 17 October 2024. Mrs Grayson, (an HR BP) met Mrs Roberts off site because she was reluctant to attend the workplace.

66. At this meeting, Mrs Grayson told Mrs Roberts that she would refer her to Occupational Health. Arrangements in this regard were made between 4 and 20 October 2024 in email correspondence between Mrs Roberts and Mrs Grayson concerning those arrangements and her annual entitlement.

67. I note that amongst this correspondence, Mrs Roberts wrote in an email she sent after the Occupational Health appointment, on 20 November 2024, (page 157) that she anticipated in light of the anticipated OH Report, she would not have a job.

68. On 26 November 2024, the Occupational Health Report was produced, prepared by OH Specialist Practitioner Mr Black. He recorded ongoing neck pain symptoms, back pain and restrictions on duties. He concluded that Mrs Roberts could not perform elements of the ACA role, including carry chair, stretcher and bariatric duties. Most ACA duties were said to be likely to exacerbate her symptoms. She was said to be absent from work because she said she did not feel safe driving due to the extreme pain. She had said she could not drive for more than 45 minutes, which meant she could not drive beyond King's Lynn. The report stated her return would require "significant adjustments". It also suggested that Mrs Roberts was not capable of handling the full ACA role and would be more suited to a job which did not have handling demands, (pages 165 and 166).

69. I note Mr Black wrote,

> "In my opinion it is not likely that Mrs Roberts condition will be covered by the provision of the Equality Act 2010 as a disability because her symptoms do not significantly impact on her ability to perform normal day to day functioning when they are not well controlled."

70. A further Fit Note was provided on 12 December 2024 certifying Mrs Roberts as not fit until 5 January 2025.

71. There was an Occupational Health Review Meeting on 20 December 2024. Mrs Grayson and Mr Edge met with Mrs Roberts to discuss the Occupational Health Report and possible adjustments. The Respondent explained that the post transfer contract involved different vehicles, different KPIs and different operational requirements. It maintained that exclusive allocation of a vehicle and a 45 minute driving limit were not operationally feasible. Alternative roles were suggested to Mrs Roberts and she was provided with copies of their job descriptions. There were two alternative roles discussed in this meeting: Renal Co-Ordinator and Patient Transport Liaison Officer. Both roles involved working in the office with no driving or manual handling. Mrs Roberts rejected these out of hand, putting the job descriptions back on Mr Edge's desk as soon as they were handed to her. She made no reference to the terms and conditions of such roles at that time.

72. There are no notes of the meeting, but the points discussed were reflected in later correspondence, (page 194).

73. A further Fit Note was issued on 5 January 2025, recording as the reason for absence, post operative condition.

74. On 15 January 2025, there was a telephone discussion between Mrs Grayson and Mrs Roberts to arrange a further meeting. The purpose was to discuss the Occupational Health Report and possible alternative employment.

75. On 17 January 2025, there was a follow up letter. The Respondent wrote to Mrs Roberts summarising previous discussions and inviting her to a further meeting. The letter confirmed that the Respondent's view was that a designated vehicle and a 45 minute driving limit could not be accommodated and referred to Occupational Health advice stating that Mrs Roberts was not fit for the full ACA role, (page 194).

76. There was a Capability Review Meeting on 20 January 2025. Mrs Grayson, Mr Edge and Mrs Roberts met to discuss her health, the Occupational Health recommendations and her capability. Mrs Roberts reiterated that she could not undertake stretcher, carry chair or significant manual handling duties and she maintained requirements relating to vehicle seating and having shorter journeys. The Respondent again stated that the requested adjustments were not operationally feasible and discussed alternative roles.

77. On 22 January 2025, Mr Edge recorded in an email two discussions with Mrs Roberts. She asked for confirmation that her NHS Gender for Change terms and conditions would be preserved if she changed jobs. She said

she was considering applying for a role as a Health Care Assistant, (HCA) at King's Lynn Hospital, which is surprising given Mrs Roberts stated difficulties with manual handling generally. She also said she was applying for an HGV driving role, which is also surprising if her stated difficulties with driving for more than 45 minutes were genuine. Discussions were also about annual leave, future employment options and her intention to raise a grievance concerning the Respondent's refusal to implement the adjustments previously provided by her previous employer EMD.

78. Mrs Roberts submitted a formal grievance on 23 January 2025, (page 203). I quote from this document as follows:

> "For the past eleven years I have worked as a single manned crew, having sole use of a WAV and for the past three years only driven 45 minutes or less on local journeys. This was put in place as a reasonable adjustment due to my sleep apnoea and menopause which causes me to feel extremely tired. …"
>
> "I do not agree with your Occupational Health Assessment but I am not fit to carry out my role as ACA due to the pain I am in. I am happy to attend further Occupational Health Assessments with an independent physician."
>
> "You offered me two alternative roles which I refused because they are not roles I am contracted to do and I refuse to give up my NHS contract. …"
>
> "Nigel Briggs he promised me I'd be able to carry on with the adjustments that had been made for me by the previous companies, he even went

as far as to ask me which of the two vehicles I find easier to drive and said he would see if I could keep it at my own address."

79. The Grievance Hearing took place on 3 February 2025 before somebody called Mr Paul Mockett. Mr Edge attended as the Claimant's chosen companion. The grievance principally concerned vehicle allocation, journey restrictions and related matters.

80. On 5 February 2025 there were investigation interviews. Mrs Grayson and Mr Briggs were interviewed during the investigation process regarding the alleged assurances concerning Mrs Roberts' working arrangements after the TUPE transfer, both stated they did not recall giving such assurances.

81. Also on 5 February 2025, Mrs Roberts spoke to Mr Edge and indicated an intention to return to work when her current Fit Note expired. The Respondent took the view they could not accommodate her restrictions pending further Occupational Health advice.

82. A further Occupational Health Referral was made on 7 February 2025, (page 256). I note at page 60 the Referral reads as follows:

"Furthermore, in a conversation which happened on 28 January 2025 with Jonathan Edge, Suzie mentioned that she is looking to move to Healthcare Assistant work at the hospital or considering going back to HGV driving. She advised that she has still been having her HGV medical every year, and has a medical licence from the DVLA. Please could you explore this with Suzie as part of your discussion, as this does not make sense to us."

83. An Occupational Health Report was subsequently provided by a different practitioner on 12 February 2025, (page 272). A series of quotes from that report are as follows,

At page 273:

"Having discussed the details of David Black's report with Mrs Roberts she confirmed the information in his report was correct. … On discussion around the suggestion of her considering work as an HGV Driver she confirmed that she has an HGV Licence on annual renewal. Based on her reported symptoms it is my opinion that she would not be fit for this type of work. Mrs Roberts states she raised that she has an HGV Licence as part of a previous organisational discussion around potential redeployment and her refusal to take a non NHS contract. … Mrs Roberts states she disagreed with the opinion that she was not fit for the role of an ACA, however, the opinion was that she is not fit for the role of an ACA without significant adjustments and in a limited restricted capacity which she agreed with."

At page 274:

> "She has had a period of physiotherapy and reports some slight improvement in the loss of sensation in her fingers and toes but otherwise there has been no significant change to her previous reported health symptoms. She advised the reason for her ongoing absence has changed and is associated with post operative recovery. …
>
> Mrs Roberts has a limited level of physical fitness. She feels well enough to drive 45 minute journeys, locally, but would not manage journeys greater than 45 minutes without increased neck pain or fatigue. This means she cannot drive to other locations beyond King's Lynn. She has a preference to drive one specific type of WAV vehicle which minimises her symptoms. She is also limited to the type of prescribed medications she takes for her symptoms.
>
> In my opinion attempts to expose her to the full limit of her role could place her or others at risk of accidental injury and could exacerbate her health related symptoms."

At page 275:

> "In my opinion it is likely that she may be covered by the provisions of the Equality Act 2010 in relation to her neck issues as she reports they can significantly impact on her activities for living.
>
> I am of the same opinion as David Black that Mrs Roberts is not capable of undertaking the full role of an ACA without significant restrictions and in a very limited capacity and that she would be more physically suited to a job which does not have physical demands or prolonged periods of continuous driving. This is a difficult situation to manage as Mrs Roberts feels strongly that she can cope with the work with significant modifications and adjustments, and she wishes to continue to work. The question is whether her employer can accommodate the significant adjustments and restrictions. …"

84. On 14 February 2025, Mrs Roberts attended work and the Respondent placed her on medical suspension. That would have been on full pay, but because she had exhausted her contractual right to full sick pay, she was on half pay, as I understand it. That was pending further Occupational Health advice, because the report I just quoted from had not yet been provided to the Respondent and because the adjustments identified in her Fit Note could not in the Respondent's view, be accommodated.

85. A grievance outcome was provided on 21 February 2025. The grievance was rejected and the outcome letter recorded the Respondent's decision not to uphold the grievance concerning vehicle allocation, shorter journeys and related issues, (page 281). Mr Mockett wrote,

"Following a review of operational data we found:

- On average only eight journeys per day in King's Lynn fall within a 45 minute driving time. These are not fixed and may occur outside of your working hours or simultaneously, meaning they cannot be guaranteed as your sole work allocation.

- External factors such as traffic, road conditions, or weather can also affect journey times, making it impossible to guarantee a fixed duration.

- We do not have sufficient vehicles to allocate you a dedicated vehicle. Our fleet is used seven days a week across all operational hours, and vehicles may be unavailable due to damage, maintenance or repairs."

86. Mrs Roberts appealed the grievance outcome on 25 February 2025, relying in part on the two Occupational Health Assessments said to confirm her fitness for work with the adjustments in place that she had previously been afforded.

87. On 24 March 2025, there was an Appeal Hearing conducted by Mrs Lee. Mrs Roberts maintained her position regarding adjustments. Mrs Lee considered the Occupational Health evidence, the operational evidence and the previous grievance investigation. She gave an outcome on 4 April 2025. She dismissed the Grievance Appeal and concluded that allocating a dedicated vehicle and restricting Mrs Roberts to short journeys with limited patient categories, were not operationally viable.

88. There followed a further Capability Review Meeting on 25 April 2025. The Respondent reviewed Mrs Roberts' current medical condition, which she maintained remained substantially unchanged, but believed that she could perform her role. The Respondent reiterated that the adjustments sought could not be accommodated. The remaining alternative role identified, a third role, was that of PTS Mentor which unfortunately, entailed working on the vehicles, (whatever they may be) with those she was mentoring, (page 349).

89. At this meeting, Mrs Roberts was warned that the next Capability Meeting might result in her dismissal. The meeting was followed up with a letter that day, (page 350). Mr Edge wrote,

"You advise that you are having physiotherapy to activate realignments in your spine. You advise that your symptoms of dizziness, neck pain, menopause symptoms and sleep apnoea remain the same. Also, that your GP had reviewed your medication for your anaemia and that you had an appointment for a blood test in early May. You are still

having treatment with an Osteopath to realign and find the reason for your neck pain."

90. Mrs Roberts was then invited to a final Capability Meeting on 2 May 2025 when they discussed the PTS Mentor role and the other roles that became available in the meantime. She was warned again in that letter that the meeting outcome might be her dismissal.

91. The final Capability Meeting took place on 2 May 2025. Mr Edge discussed the remaining alternative role as PTS Mentor and the lack of any accommodation considered workable for the ACA role. Mrs Roberts rejected the PTS Mentor role because it would entail in part doing the same duties as an ACA. Mr Edge explained that the adjustments Mrs Roberts was seeking were not, in his view, reasonably practicable and he had therefore concluded dismissal for ill health capability was appropriate, (page 352).

92. The dismissal was confirmed in a letter dated 8 May 2025. The Respondent confirmed dismissal on grounds of ill health capability in writing, (page 363).

93. Mrs Roberts appealed against dismissal on 12 May 2025. Her grounds included alleged availability of wheelchair accessible vehicles, disability discrimination, the history of adjustments under the previous employers

and the contention that she should have been provided with a vehicle for six months to test whether a return to work was possible, (page 365).

94. Arrangements were made for the appeal. Mrs Lee invited Mrs Roberts to attend the Appeal Hearing. Mrs Roberts replied that she had secured alternative employment, which was in fact as an HGV Driver. She was therefore unavailable during normal working hours. It was therefore agreed the appeal would be determined by correspondence.

95. Mrs Lee conducted a paper based review. She considered the capability process, operational evidence and the alternative role. She concluded that the adjustments sought would fundamentally impair the Respondent's service delivery and that suitable alternative employment had been made available to discuss. She gave an appeal outcome dismissing the appeal in a letter of 20 June 2025. Mrs Lee confirmed her conclusion that the requested adjustments were not reasonable or operationally feasible and that dismissal for capability was justified, (page 389).

96. Regarding the Respondent's operations, under the old contract the Respondent's predecessors had 20 vehicles of which 16 would be in use on any particular day. These vehicles did not transfer to the Respondent when it took over the operation. The Respondent has 27 vehicles in the depots in King's Lynn and Kelling, 19 are serviceable at any one time, the rest subject to regular servicing and cleaning. The types of vehicles include WAVs, stretcher vehicles, bariatric vehicles, high dependency vehicles and two

ordinary cars. These vehicles are operated by 58 full time equivalent crew. The vehicles consist of a number of newly purchased or leased vehicles and some from existing stock. Many of the vehicles and the journeys, require two crew; one driver and one passenger who would usually sits in the back with the patients.

97. Evidence of the cost of a new vehicle was imprecise but Mr Edge, whose evidence I accepted, estimated each vehicle would cost between £30,000 and £50,000 for the basic vehicle, followed by a significant cost of conversion to its use and fitting out.

98. Under the terms of its contract, the Respondent was struggling to make a profit at all and is in discussion with the Commission Board about the structure of the contract and its long term viability.

Conclusions

Mrs Roberts' Credibility

99. A short note on Mrs Roberts' credibility. At paragraph 6 of her witness statement, she referred to occupational health advising that she could only drive for 45 minutes and she cross referred to page 133. That is incorrect. The advice was that she should drive for no more than two hours without a break, not that she should only drive for 45 minutes at a time.

100. Mrs Roberts took the position with the Respondent, for example in an email of 8 October 2024, (page 153) that occupational health had advised she only drive for 45 minutes. That is not true. The occupational health report of 28 June 2022, (page 143) said that on her return to work, she should drive only for 45 minutes, increasing over a few months to a maximum of two hours. It has suited Mrs Roberts to keep saying 45 minutes is the occupational health recommendation, when it is not.

101. The fact that after Mrs Roberts' employment ended she went out and started a job as an HGV Driver working long hours is evidence that she did not really need the adjustments at all. That she was contemplating an HCA role raises the same question.

Disability

102. Was Mrs Roberts disabled at the relevant time?

103. The impairment relied upon is curvature of the spine. Not menopause, not a skin condition, not sleep apnoea, (all of which are of course, capable of amounting to a disability). It is the impairment that is important, not the label.

104. Having said that, impairments that are connected to menopause, sleep apnoea or a skin condition are not an issue. The impairments that are derived from or appear to be derived from, a musculoskeletal problem with

the neck are. Mrs Roberts sustained a whiplash injury in an RTA in 2003. She says that resulted in curvature of the cervical spine, in other words, the neck region. She says in her Impact Statement that the effects of this are, (page 44):

> "The injuries I sustained mean that, *(in present tense)* I struggle (and continue to struggle) with hoovering, cleaning windows, skirting boards and cleaning the bath. I can no longer ride my horses. I sold my motorbike as the weight of the crash helmet was too much. I cannot lie down and look under a sofa or bed. I struggle to read a book due to the pain of having my neck in the same position. Trying to get comfortable after sleep is often only achieved by being so exhausted I fall asleep. I cannot drive for long periods at a time and it is worse as a passenger. I cannot watch tv for long or enjoy going to the cinema. I cannot stay seated for much more than an hour."

105. If that is true, then that represents without doubt, a substantial adverse impact on Mrs Roberts' day to day activities which as at the time of the events in question, had lasted more than 12 months. The Respondent says in effect, I should not accept that evidence.

106. Why not? What do the medical records tell me? Let's review the medical records.

107. There is an entry for 28 February 2003 which records and corroborates that Mrs Roberts was injured in an RTA and had subsequent neck pain. There was no relevant contact, it seems, with Mrs Roberts and her GP between 2004 and 2014. Which does not mean, of course, that she is not living with it and getting by with over the counter pain killers.

108. On 11 August 2014, eleven years later, Mrs Roberts visited her GP about her neck again, describing it as a long standing problem since her accident, saying that she finds it hard if the road is bumpy, she says she is taking paracetamol and Ibuprofen.

109. On 21 August 2014, she was reviewed for pain in the neck with a Fit Note issued.

110. On 23 September 2024, she visited her GP and reported pain in the neck which was described as new, certified not fit and it was noted she takes Ibuprofen.

111. There is a report from an Orthopaedic Doctor to Mrs Roberts' GP dated 4 November 2014, (page 57). It says that she reports constant deep pain. She reported cluster headaches about once every year, occasional dizziness, sitting in the back of an ambulance aggravating her pain and relates this back to her RTA in 2003. She was referred for an MRI scan.

112. On 9 January 2015, Mrs Roberts visited her GP and reports getting neck pain and occasional headaches. She says she feels stressed and she was prescribed Amitriptyline.

113. Next is on 3 December 2018, when she reports chronic neck pain, aches all the time and some limitations at work.

114. On 11 August 2021, Mrs Roberts attended the GP again about poor sleep. The GP notes include that she reports dizziness, which is said to be likely be caused by whiplash.

115. On 2 October 2024, Mrs Roberts reported neck pain to her GP saying that she had been suffering from that since 2003, although it was not severe enough to stop her from working but she takes Naproxen. On examination the doctor noted that she was **not** in obvious pain.

116. On 4 November 2024, there is an entry that Mrs Roberts has had a neck MRI, investigating ongoing neck pain since the whiplash in 2003. This corroborates Mrs Roberts account.

117. The Respondent points out that the notes to the MRI scan also say that there is normal vertebral alignment, no suspicious body lesions, no significant disc prolapse, no masses, normal appearance, no soft tissue thickening and no significant pathology noted. In fairness, it does also say that there is observed straightening of the cervical spine denoting spasm, indicating that Mrs Roberts is not making it up when she says she is

    having some problems with her neck and corroborating her description of her symptoms.

118. On 14 November 2024, a GP records Mrs Roberts presenting with neck pain, stiffness, occasional headaches, dizziness at times, ongoing for years, although the doctor has also noted no past episodes.

119. Overall this corroborates that Mrs Roberts has had this problem ongoing for years.

120. The medical records therefore certainly corroborate that Mrs Roberts has suffered with neck pain for many years, since her RTA in September 2003 and that this was affecting her at the material time.

121. The question is, is she exaggerating in her Impact Statement about how that affects her day to day activities?

122. There is no doubt that she has got a problem, but does it have substantial adverse impact on her day to day activities?

123. The Occupational Health report of 29 April 2021, (page 132) describes as her main problem at work, not being able to drive for more than two hours, not having access to her own vehicle aggravating her neck when the chair

is adjusted to somebody else's needs, +-(an issue easily resolved, I observe) and finds it difficult to wash her vehicle when her neck is bad. The causes are said to be her neck pain and skin condition.

124. She is quoted at page 133 as referring to being in extreme pain for several days if she has been on annual leave and somebody else has driven her vehicle. That seems to me to be a clear indication as to Mrs Roberts inclination to exaggeration and embellishment.

125. Occupational Health expressed the view that her neck injury is likely to be considered a disability.

126. There is a further OH Report dated 28 June 2022, (page 142). This was commissioned because Mrs Roberts had been absent from work for eight months due to sleep apnoea. It recommended a phased return to work, starting with 45 minutes driving on local calls, increasing over a few months to a maximum period of two hours, due to a chronic neck pain problem, as noted earlier.

127. As I have previously noted, Mrs Roberts would later refer to this OH advice as being that she could not drive for more than 45 minutes at a time. This particular Occupational Health Practitioner felt that Mrs Roberts met the definition of a disabled person.

128. There were two more recent OH Reports dated 26 November 2024, (page 165) and 12 February 2025, (page 272).

129. Mr Black in November 2024 referred to Mrs Roberts stating she had significant levels of pain. His observation is based on what she has told him. Interestingly, his view is that she is not covered by the Equality Act, because her symptoms do not significantly impact her day to day activities.

130. Ms Yearnshire in February 2025, refers to no significant change to her previously reported symptoms. Her assessment based on what Mrs Roberts reports to her in relation to the impact of her neck injury, is that she would be covered by the Equality Act.

131. Of course, whether or not she is covered by the Equality Act is a matter for me.

132. I have noted Mrs Roberts propensity to embellish and exaggerate. I also note that she obtained an HGV Licence in 2023. She applied for and went to a job at the end of her employment driving an HGV for 60 hours a week, in accordance with her oral evidence, sometimes as a passenger. Her explanation about pneumatic cushioning I found unconvincing. She has continued applying for various jobs as a Driver and a Delivery Driver. She was contemplating during the closing stages of her employment, applying for a job as an HCA. I also note that she has kept horses all of this time,

she says she does not ride them or muck them out, or drive a horse box. I did not find her denials convincing.

133. Mrs Roberts' Impact Statement is undated but I understand it was prepared and filed in January 2026. The job applications in the Bundle going to mitigation are undated, except one where I can see a message from Mrs Roberts as included in disclosure, which is dated 14 January 2026. Mrs Roberts confirmed in evidence that this small collection of job applications were from a time when she was registered for job seekers allowance. The jobs she applied for then, at the time of her Impact Statement, included on her oral evidence, driving a van delivering parts, working as an HCA in the Community which she confirmed would have involved manual handling, HGV Driving and as a Tesco Delivery Driver delivering orders to customers' homes.

134. I refer back to my quotation from paragraph 2 of the Impact Statement, where she says that those impairments described continue, she says she continues to suffer the prescribed impairments to her day to day activities. That is completely inconsistent with the type of jobs she was applying for at that time.

135. If Mrs Roberts had genuinely been suffering from the symptoms that she outlines in her Impact Statement, she would not in April 2025 have said, notwithstanding the Occupational Health advice from two different practitioners, that she would go back to work and cope without adjustments. She would not have been able to.

136. On balance, the balance of probabilities, I find that in her Impact Statement Mrs Roberts has exaggerated the extent to which her neck condition, whatever label one puts on it, impacts, impacted at the relevant time, or impacted in the past, on her day to day activities.

137. I accept that she experiences neck pain and I accept that has lasted for more than 12 months at the material time and recurs from time to time. I do not accept that it had and has a substantial adverse, that is more than trivial, impact on her ability to undertake day to day activities at the relevant time.

138. I find that she was not therefore a disabled person at the relevant time.

139. Had I found otherwise, if I had found that Mrs Roberts' neck impairment amounted to a disability, I would have found that the Respondent knew about it from its OH Reports. I proceed to set out what my conclusions would have been, had I found that Mrs Roberts was disabled.

Failure to Make Reasonable Adjustments

140. The Respondent had the PCPs of requiring ACAs to drive a range of vehicles, to drive more than 45 minutes and to carry out manual handling. It is not in dispute they did.

141. I would not have found that the requirement to drive a range of vehicles placed Mrs Roberts at a disadvantage per se. She felt able to train and obtain an HGV Licence during her employment with the Respondent. I did not hear any evidence that suggested to me that it was different types of vehicles that created problems for her, more it was the duties that were linked to those types of vehicles. Either the nature of the patients transported in them meant that they were associated with the requirement to undertake a degree of manual handling and / or to sometimes, ride as a passenger.

142. Nor would I have found that the requirement to drive 45 minutes placed Mrs Roberts at a disadvantage. This was recommended as a temporary measure and Mrs Roberts exploited it to convince the Respondent in her assertion that she could only drive for 45 minutes. It suited her and made her employment more commodious if she was able to stay within the environment of King's Lynn and not in particular, have to do battle with the traffic nightmare that is, or can be, Cambridge, probably an hour and a half's drive away.

143. I would, however, have found that the requirement to carry out manual handling placed Mrs Roberts at a disadvantage and the Respondent knew that to be so. Oddly, on the face of it, the reasonable adjustments contended for, allocating shorter journeys or a specific vehicle, would not alleviate the disadvantage. However, allocating Mrs Roberts a vehicle the duties associated with which, did not require manual handling, namely the WAV, would have alleviated that disadvantage.

144. Had Mrs Roberts met the definition of disabled person, would it have been reasonable for the Respondent to have implemented that adjustment, the allocation to her of a specific vehicle? I find that it would not.

145. At first blush, one might say that this arrangement, (a designated vehicle) had been in place for some time in Mrs Roberts' employment, which must mean that it is reasonable for it to continue. There is some force in that argument and those were my thoughts when I first started reading into this case. It looked like a new employer had come along and looked to play tough with the employees with a poor attendance record it had inherited under TUPE. However, I am convinced by the Respondent's evidence, particularly that of Mr Edge, who I found to be an honest witness, that the changes put in place under a more stringent and demanding contract by the NHS Commissioning Body, meant that the Respondent did not have the headroom or the flexibility to accommodate Mrs Roberts' needs.

146. I wondered whether a bespoke vehicle ought to have been purchased for Mrs Roberts' exclusive use, but concluded that the expense would have been beyond what was reasonable. I find that it would not have been a reasonable adjustment to allocate to Mrs Roberts a specific vehicle.

147. Offering alternative employment on protected terms, or allowing a period of trial, were not reasonable adjustments contended for in the pleaded case or the List of Issues. Of course, the Tribunal can come up with its own reasonable adjustments. However, I find that Mrs Roberts rejected the alternative roles put to her for consideration out of hand, she did not question the terms until later. Had the case been put differently, a question may have arisen as to whether those alternative roles on less favourable terms amounted to a reasonable adjustment; they might have done, but the evidence to decide that question was not before me because that was not an issue in the case.

148. The Respondent was advised by Occupational Health that Mrs Roberts could not safely undertake her role. In the face of that advice it was reasonable not to give Mrs Roberts a six month trial to see how she got on.

149. For these reasons the complaint of failure to make reasonable adjustments fails and is dismissed.

Unfair Dismissal

150. The reason for dismissal was the Claimant's lack of ability due to ill health. That is a potentially fair reason. The question then is whether the decision to dismiss meets the test of fairness in s.98(4) of the Employment Rights Act 1996. Was the decision to dismiss inside the range of reasonable responses?

151. Mrs Roberts had eleven years' service and the Respondents took her length of service into account. She had a history of long periods of ill

health due to a variety of reasons, that does not appear to have featured in the Respondent's decision making although it could have done.

152. Although Mrs Roberts said she was going to return to work and cope, the Respondent had advice from two Occupational Health professionals that she was not fit to work without extensive adjustments. Mrs Roberts had been in receipt of a series of Fit Notes certifying her as not fit to work and she was proposing simply not to go back to her GP for another one. She had stated that her state of fitness to work had not changed.

153. The Respondent took reasonable steps and were clear about the medical position. The Respondent consulted with Mrs Roberts extensively before reaching the decision to dismiss and she was very much aware that the outcome of the process being followed would lead to dismissal.

154. There was at the time, no prospect of Mrs Roberts being able to return to work without adjustments being put in place. I have found it was not reasonable to expect the Respondent to make the adjustments that would have been necessary. With Mrs Roberts' history of absence, there would be every likelihood of further periods of absence due to ill health in the

future. The Respondent could not reasonably be expected to hold this position open for Mrs Roberts indefinitely. She had already been off for eight months and on the information provided to the Respondent by Occupational Health and by Mrs Roberts herself, there was no prospect of her returning safely to work. The Respondent had a demanding contract to perform for the NHS, it needed its operation to perform as efficiently as possible and it needed a reliable workforce.

155. Cross referring to the list of issues: the respondent genuinely believed that Mrs Roberts would not be capable of performing her duties for the foreseeable future, it could not be expected wait any longer, it had adequately consulted with her, it had carried out a reasonable investigation, it had adequately considered redeployment.

156. In all the circumstances, for these reasons, I find the decision to dismiss was inside the range of reasonable responses of a reasonable employer and that the complaint of unfair dismissal must also fail.

Approved by:

Employment Judge M Warren

Date: 16 October 2026

Sent to the parties on: 23 October 2026

For the Tribunal Office.

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