EMPLOYMENT TRIBUNALS

Claimant: **Ann Moye**

Respondent: **Shaw Trust Ltd**

Heard at: **Bristol by Cloud Video Platform**

On: **25, 26, 27 August 2026**

Before: **Employment Judge D. C. Gardner**
Mr M. Cronin
Mr P. Lowe

Representation

Claimant: **Ms M. Moye (Claimant's Daughter & Lay Representative)**

Respondent: **Ms Miller (counsel)**

JUDGMENT having been given orally on 27 August 2026, a written copy of the judgment having been sent to the parties on 17 September 2026, the Claimant's request for written reasons having been received on 30 September 2026 and passed to the Employment Judge on 14 October 2026, in accordance with Rule 60 of the Employment Tribunals Rules 2024, the following reasons are provided:

REASONS

Introduction

1. This is a claim brought by the Claimant, Mrs Ann Moye ("the Claimant" / "Mrs Moye"). The Respondent is Shaw Trust Ltd ("the Respondent" / "Shaw Trust"). The Claimant brings three discrete complaints, alleging that she was:

a) Unfairly dismissed by the Respondent.
b) Subject to disability discrimination; and
c) Subject to discrimination by a failure to make reasonable adjustments.

2. In the hearing before us Mrs Moye was assisted by her daughter, Ms Megan Moye and Shaw Trust was represented by Ms Miller of counsel. We are grateful to them both for their assistance and submissions which have helped me in the decisions we have to make.

3. In considering this claim we have had sight of a bundle of some 128 pages and we have witness statements from Mrs Moye, Ms Moye, Mr Hughes (Head of Delivery, Scotland), and Mr Nicolas (Head of Service Delivery). We heard oral evidence from them all we have read and considered all the documents in coming to our decision, but this judgment will only refer to those we consider to be the most relevant to the decisions we have to make.

4. Before hearing evidence we discussed the list of issues for us to consider, which were set out by Employment Judge Self in the Order of 31 December 2025, and which the parties agreed remain pertinent.

5. At the outset, we should make clear that it is agreed by both parties that Ms Moye was dismissed on 29 October 2024 and the reason the respondent gave was on the grounds of capability, namely her ill health.

6. We also pause here to note that all issues of timing were resolved at a preliminary hearing and it was determined that we have jurisdiction to consider all three of Mrs Moye's complaints.

Background

7. The vast majority of the background to the case is agreed. Shaw Trust is a national charity which supports young people and disabled persons into work. It operates over a number of sites across the UK. One of its sites is a Garden Centre at Palmers Gardens in Trowbridge, where the Claimant worked. That site has 20 employees on site.

8. Mrs Moye was an employee of Shaw Trust and she was continuously employed by them between 18 April 2006 until she was dismissed on 29 October 2024. Her role at the time of dismissal was a catering manager, having been appointed to that role on 5 November 2018, which involved receiving and putting away deliveries, preparing and cooking food, making sandwiches, washing up where necessary, supervising 7 staff (4 of whom had disabilities which required additional time and care), dealing with customers and managing the practical operation of the café. She was ordinarily on her feet from approximately 8.30 am until 3.30 pm with the administrative element of her work ordinarily occupied approximately 30 minutes to one hour at the end of the day.

9. On 12 February 2024, Mrs Moye sadly suffered a stroke and she immediately commenced sickness absence.

10. The Respondent obtained an occupational therapy report on 29 July 2024 which concluded that the Claimant was unfit for work for at least a further 3 months but likely capable of future regular service.

11. On 16 August 2026, Mrs Moye attended a formal meeting at Palmers Gardens with her line manager, Mr Tyzack, where Mrs Moye's return to work was discussed in anticipation of the end of her sick leave. The meeting included a discussion regarding phased return possibilities focused on administrative duties. It is worth pausing to note that Mrs Moye did informally drop in to Palmer's Gardens for catch up meetings before and after this meeting, but this was the first formal meeting.

12. On 20 August 2024, the Claimant's SSP entitlement ended.

13. On 15 October 2024, the Respondent invited Mrs Moye to a formal ill-health capability meeting. The invitation expressly identified dismissal as a possible outcome.

14. On 29 October 2024, the capability meeting was conducted. Mrs Moye stated at the meeting that she was not fit to return to work and would be unlikely to return before Christmas. At the meeting her employment terminated on the ground of ill-health capability.

15. On 24 November 2024, the Claimant filed an appeal, which was heard on 12 December 2024, and was dismissed on 7 January 2025.

16. On 20 January 2025, ACAS Early Conciliation commenced, which did not resolve the claim and on 3 March 2025, an ACAS certificate of completion was issued.

17. On 5 April 2025, the Claimant filed this claim in the Employment Tribunal.

18. On 31 December 2025, there was a preliminary hearing before Employment Judge Self where case management directions were set.

19. On 28 May 2026, a preliminary hearing took place on limitation issues, which determined the Employment Tribunal has jurisdiction to consider the Claimant's complaints.

20. With that chronology in mind, and before we turn to our findings, we briefly set out the relevant law.

The Law

Unfair Dismissal

21. The capability an employee is a potentially fair reason for their dismissal, per s.98(2)(a) the Employment Rights Act 1996 ("the 1996 Act"). The burden is on the employer to show that it was because of the potentially fair reason that the employee was dismissed, per s.98(1) the 1996 Act, which the employer must prove on the balance of probabilities.

22. If that is done, the Tribunal must consider whether dismissal was fair, per s.98(4) the 1996 Act. As per s.98(4)(a), when determining whether the dismissal was fair or unfair, we must consider whether in the circumstances (including the size and administrative resources of the employer) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee and shall be determined in accordance with equity and the substantial merits of the case.

23. Given the reason for dismissal in this case asserted was capability, we have considered and applied the well-known guidance in *Spencer v Paragon Wallpapers Ltd* [1976] IRLR 373, *East Lindley District Council v Daubney* [1977] IRLR 181, and *BS v Dundee City Council* [2014] IRLR 131 as to when dismissal for reason of capability can be said to be fair within the meaning of the 1996 Act.

24. In essence, the authorities make it clear that we must consider:

    a) Whether it was reasonable to expect the employer to wait any longer for the employee to return to work;

    b) Whether the employer has consulted the employee; and

    c) Whether the employer has obtained and considered medical advice on the employee's position and prognosis and when a return to work may be likely.

25. We further pause to note that our role as an Employment Tribunal is not to decide whether we think the employer's decision was reasonable. Our role is to determine whether the employer's decision fell into the band of reasonable response open to the employer (see *Iceland Frozen Foods v Jones* [1982] IRLR 439).

Disability Discrimination

26. Section 15(1) of the Equality Act 2010 ("the 2010 Act") states:

> *(1) A person (A) discriminates against a disabled person (B) if—*
>
> *(a) A treats B unfavourably because of something arising in consequence of B's disability, and*
>
> *(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.*

27. Section 136 of the 2010 Act, places an initial burden on the Claimant to prove the facts from which the Tribunal could decide that an unlawful act of discrimination had taken place. That requires the Claimant to prove, on the balance of probabilities:

    a) that she was disabled,
    b) that she had been subjected to unfavourable treatment,
    c) that there was a causal link between the disability and the "something" that is said to be the ground for unfavourable treatment, and
    d) that there is evidence from which the Tribunal could infer that the something was the effective reason for or cause of the unfavourable treatment.

28. If the Claimant proves those facts, the burden of proof shifts to the Respondent to provide a non-discriminatory explanation or to justify the treatment. This can be to show that the treatment was a proportionate means of achieving a legitimate aim.

29. Guidance which assists is set out the Equality and Human Rights Commission Statutory Code of Practice on Employment ("the Code").

30. In *Williams v Trustees of Swansea University Pension and Assurance Scheme* [2018] UKSC 65, Lord Carnwarth held, at paragraph 27 that the Code suggests that there is "*relatively low threshold of disadvantage which is sufficient to trigger the requirement to justify under this section*".

31. Guidance on the approach to determining complaints under s.15 of the 2010 Act was also given by Mrs Justice Simler (as she then was) in *Pnaiser v NHS England* [2016] IRLR 170 EAT at paragraph 31.

> [31] *In the course of submissions I was referred by counsel to a number of authorities including IPC Media Ltd v Millar [2013] IRLR 707, Basildon & Thurrock NHS Foundation Trust v Weerasinghe UKEAT/0397/14/RN and Hall v Chief Constable of West Yorkshire Police [2015] IRLR 893, as indicating the proper approach to determining section 15 claims… From these authorities, the proper approach can be summarised as follows:*

(a) A Tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises.

(b) The Tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a section15 case. The 'something' that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.

(c) Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A's motive in acting as he or she did is simply irrelevant: see Nagarajan v London Regional Transport [1999] IRLR 572. A discriminatory motive is emphatically not (and never has been) a core consideration before any prima facie case of discrimination arises,…

(d) The Tribunal must determine whether the reason/cause (or, if more than one), a reason or cause, is "something arising in consequence of B's disability". That expression 'arising in consequence of' could describe a range of causal links. Having regard to the legislative history of section 15 of the Act (described comprehensively by Elisabeth Laing J in Hall), the statutory purpose which appears from the wording of section 15, namely to provide protection in cases where the consequence or effects of a disability lead to unfavourable treatment, and the availability of a justification defence, the causal link between the something that causes

unfavourable treatment and the disability may include more than one link. In other words, more than one relevant consequence of the disability may require consideration, and it will be a question of fact assessed robustly in each case whether something can properly be said to arise in consequence of disability.

(e) For example, in Land Registry v Houghton UKEAT/0149/14 a bonus payment was refused by A because B had a warning. The warning was given for absence by a different manager. The absence arose from disability. The Tribunal and HHJ Clark in the EAT had no difficulty in concluding that the statutory test was met. However, the more links in the chain there are between the disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact.

(f) This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.

(g) Miss Jeram argued that "a subjective approach infects the whole of section 15" by virtue of the requirement of knowledge in section 15(2) so that there must be, as she put it, 'discriminatory motivation' and the alleged discriminator must know that the 'something' that causes the treatment arises in consequence of disability. She relied on paragraphs 26 to 34 of Weerasinghe as supporting this approach, but in my judgment those paragraphs read properly do not support her submission, and indeed paragraph 34 highlights the difference between the two stages - the 'because of' stage involving A's explanation for the treatment (and conscious or unconscious reasons for it) and the 'something arising in consequence' stage involving consideration of whether (as a matter of fact rather than belief) the 'something' was a consequence of the disability.

(h) Moreover, the statutory language of section 15(2) makes clear (as Miss Jeram accepts) that the knowledge required is of the

disability only, and does not extend to a requirement of knowledge that the 'something' leading to the unfavourable treatment is a consequence of the disability. Had this been required the statute would have said so. Moreover, the effect of section 15 would be substantially restricted on Miss Jeram's construction, and there would be little or no difference between a direct disability discrimination claim under section 13 and a discrimination arising from disability claim under section 15.

(i) As Langstaff P held in Weerasinghe, it does not matter precisely in which order these questions are addressed. Depending on the facts, a Tribunal might ask why A treated the claimant in the unfavourable way alleged in order to answer the question whether it was because of "something arising in consequence of the claimant's disability". Alternatively, it might ask whether the disability has a particular consequence for a claimant that leads to 'something' that caused the unfavourable treatment.

32. When considering whether the actions of an employer are proportionate the exercise the Tribunal undertakes is to conduct an objective balancing exercise between the reasonable needs of the Respondent and the discriminatory effect on the Claimant, per *Hampson v Department of Education and Science* [1989] ICR 179, CA.

33. Part of that consideration may be whether a lesser measure could have achieved the legitimate aim, per *Ali v Torrosian* (2018) EAT 0029/18.

Reasonable Adjustments

34. Under s.20(3) of the 2010 Act, there is a duty on an employer to make reasonable adjustments "*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*."

35. Under s.21(1), "*a failure to comply with the … requirement is a failure to comply with a duty to make reasonable adjustments*" and s.21(2) makes it clear that the same will amount to unlawful discrimination.

36. The burden of proof is on the claimant to establish the facts from which it could reasonably be inferred, absent an explanation, that the duty has been breached. The burden then shifts to the Respondent to establish that the proposed adjustment was not in fact reasonable, per *Rentokil Initial UK Ltd v Miller* [2024] EAT 37.

37. In identifying the provision, criterion or practice (or PCP), the Code at paragraph 6.10, supported by the decision in *Lamb v The Business Academy Bexley* (2015) EAT 0226/15, suggests that a wide interpretation should be given and a PCP can include formal or informal policies, rules, practices, arrangements.

38. The terms substantial disadvantage is defined in s.212 of the 2010 Act as meaning "*more than minor or trivial*". The Code, at paragraph 16, makes it clear that this is an objective test, but as was observed in *Hiliare v Luton Borough Council* [2022] EAT 166, the disadvantage must be linked to the disability.

39. Guidance on some of the factors which might be taken into account when deciding what is a reasonable step for an employer to have to take has been set out in paragraph 6.28 of the Code and includes:

- *whether taking any particular steps would be effective in preventing the substantial disadvantage;*
- *the practicability of the step;*
- *the financial and other costs of making the adjustment and the extent of any disruption caused;*
- *the extent of the employer's financial or other resources;*
- *the availability to the employer of financial or other assistance to help make an adjustment (such as advice through Access to Work); and*
- *the type and size of the employer.*

40. As noted in *Griffiths v Secretary of State for Work and Pensions* [2017] ICR 160 at paragraph 29:

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

41. Under paragraph 6.24 of the Code, it is made clear that:

> *There is no onus on the disabled worker to suggest what adjustments should be made (although it is good practice for employers to ask). However, where the disabled person does so, the employer should consider whether such adjustments would help overcome the substantial disadvantage, and whether they are reasonable*.

42. Further, under paragraph 6.31 of the Code:

> *It is a good starting point for an employer to conduct a proper assessment, in consultation with the disabled person concerned, of what reasonable adjustments may be required.*

43. Furthermore, under paragraph 6.33 of the Code, some examples, such as are relevant to this case, of potential reasonable adjustments are given. They include:

- *Allocating some of the disabled person's duties to another worker.*
- *Altering the disabled worker's hours of work or training, including permitting part-time working or different working hours or a phased return to work with a gradual build-up of hours might also be appropriate.*
- *Arranging home working.*

44. With that summary of the law in mind, we turn to the decisions we have to make, in line with the agreed list of issues.

Discussion and Decision – Unfair Dismissal

What was the reason for dismissal?

45. This is the first question we must answer and we can do so quickly. The Respondent relies on the reason or principal reason for dismissal of capability and in particular ill-health capability. The Claimant's evidence and submissions have not seriously challenged this as the reason. The decision of 29 October 2024 was clearly taken on that basis.

46. In truth, this case turns on the reasonableness of that decision which was the focus of the evidence and submissions before us.

Did the respondent act reasonably in all the circumstances, including the respondent's size and administrative resources, in treating that reason as a sufficient reason to dismiss the claimant?

47. We start by noting that Shaw Trust, whilst a charity with limited resources, is a relatively large, national charity with, we are told, approximately 3500 employees across the UK at the time of the Claimant's dismissal. It may be closer to 2500 today. Whilst it must work to a lean model and be mindful of use of its resources, we are told it does have reserves to act as a buffer for any periods of additional costs or reduced funding. In our view, its resources will stretch further than smaller employers and what is generally considered reasonable for such an employer will be more stringent than for a smaller employer.

48. We also note, as is accepted by the Respondent in its closing submissions, that the Claimant has worked for the Respondent without incident or prolonged absence for a period of 18 years and that as such it is reasonable to expect a degree of latitude or a willingness to go the extra mile on the part of the employer to such a loyal employee.

49. At the time of the dismissal on 29 October 2024, all parties accept that at that point, Mrs Moye could not return to work or fulfil her duties. She

accepts as much in evidence and informed Mr Hughes at the capability meeting, which ended in her dismissal, that she did not consider she could return before Christmas. This said, the real question for the employer and for us is whether she could return in a reasonable period of time.

50. The Respondent had the benefit of an occupational health report, dated 29 July 2024. It is worth pausing to note it was exactly 3 months old at the time of dismissal. That report stated:

> *In my opinion, Ms Moye is not yet fit to return to work. This is likely to be the case for a further three months. She will require a comprehensive and supportive return to work plan once fit, and I would therefore recommend re-referral once she is further recovered.*
> *…*
> *It is still very early in the recovery, however, Ms Moye appears to be recovering well and I would therefore anticipate that she will be capable of regular and effective service, although some ongoing adjustment may be required, dependent on whether there is any residual functional restriction upon return to work.*

51. It is also worth noting that in a meeting with her line manager, Mr Tyazck, on 16 August 2024, Mr Tyzack stated:

> *We discussed what a return to work may look like.*
>
> *I suggested that initially we would look for Annie to return of several half days/week and concentrate on the non-physical side of the role getting a handle on ordering due diligence, cost of sales as well as completing any training requirements. We would review her physical capabilities on an ongoing basis.*

52. At the time of the dismissal meeting on 29 October 2024, Mrs Moye stated:

> *I'm unlikely to return to work this side of Christmas. I really want to come back to work, my passion is my work. But I don't want to come*

back to work and then to fail, but at the moment I am definitely not strong enough to return. If the job was sitting down maybe, but my job is physical. I can do a phased return for 4-6 weeks but after that time I will need to go back to the physical which I can't do at the moment.

53. In essence, her suggestion was that she could return on a phased return in January 2025 which would take place over a 4-6 week period at that point. She also said:

I will continue to try to push myself to get into a place to return to work and a lot will hinge on the appointment on Friday as there is nothing to compare it with and everyone's stroke is different.

54. This is a reference to an appointment with her stroke consultant due to take place 3 days after her meeting. It is agreed by all parties that Mr Hughes did not wait to obtain a copy of the stroke consultant report or obtain a further occupational health report. He stated at the meeting:

I think we have confirmed that there is no reasonable timeframe for your return and even with reasonable adjustments you are not able to return into your current role.

55. Mr Hughes confirmed in the decision letter of the following day that:

Taking into consideration all available information and having spoken to you, we cannot see what further support we could offer to make possible a return to work in the foreseeable future.

56. In our view, the evidence is that Mrs Moye considered that she could return to work in the foreseeable future, specifically, as part of a phased return to work, starting just over 2 months after the date of dismissal. This, in our view, was a quite practicable rather than a fanciful or optimistic position for her to take. It is in line with the continuing progress which the occupational health report suggested was being made and her report to Mr Hughes on 29 October 2024 that she was doing "*a lot better*".

57. It is also clear that, in August 2024, it was considered by her line manager that a phased return to work was a possibility to support her back into the work place.

58. With these facts in mind, we do not consider there would have been, without the step being taken of obtaining further medical evidence, sufficient information before the Respondent in order for it to take the decision that Mrs Moye genuinely could not return to work in the foreseeable future. This position is informed by our views on investigation and consultation, to which I will now turn.

Investigation and Consultation

59. In our view, there is a key flaw in the Respondent's investigation into whether Mrs Moye could return to work in the foreseeable future and that is that no step was taken to obtain an up-to-date medical view of her capacities and prognosis.

60. The Respondent had access to an occupational health report, but that was by that stage 3 months old and expressly made the recommendation for "*re-referral once she is further recovered*." Based on her abilities as described in the occupational health report, where she had only just begun leaving the house and could only do light household tasks for short stints, compared to her own self-report on 29 October 2024 that she "*made huge progress from where I was*", was leaving the house, and was doing longer periods of housework, it appears that she had further, if not fully recovered.

61. In that context, and in our view, an employer acting reasonably would need to have better informed itself as to her current skills and prognosis before determining that she could not return to work in the foreseeable future.

62. At the very least, and certainly without saying this would have been sufficient, but at the very least a reasonable employer, knowing that a stroke consultant was reviewing Mrs Moye in only 3 days time, would have waited for that medical opinion before making its decision.

63. In essence, we accept the submission made by Ms Moye in her closing submissions that "*waiting briefly for further specialist information and obtaining updated Occupational Health advice were obvious and proportionate steps*".

64. In that context, whilst we accept that the Respondent did speak to Mrs Moye and consult with her before dismissal, it cannot have been a reasonable consultation because it was not sufficiently informed. Without being sufficiently informed, the consultation cannot properly and accurately discuss what a phased return to work would look like and how quickly it could be implemented.

65. Further, we note, as Mrs Moye did in her appeal meeting on 12 December 2024, that she "*never had a formal meeting to say that this is what we feel we can offer, what do you think you can do?*". We agree, the onus it appears was always on Mrs Moye to suggest what she could do rather than a meaningful consultation informed by a proposed return to work plan which may have better met the employer's needs.

66. In our view, both the consultation and the investigation fell below that which can be expected of an employer acting reasonably.

Could the Respondent reasonably be expected to wait longer before dismissing the Claimant and could reasonable adjustments have facilitated a return within a reasonable period.

67. Mr Hughes gave evidence before us that Mrs Moye's duties had been passed on to others in her team, but that this was taking its toll on them and on the cafe, which was closing 1 day a week and was producing a reduced offering. As such, he stated, it was making a loss. He gave evidence that his view was that this impact on the business could not be sustained for much longer and by the time of 8 months of absence, the position had become such that Mrs Moye would have to return in the foreseeable future or she would have to be dismissed and a new manager hired. We accept

that evidence in so far as it suggests that Mrs Moye's absence resulted in a strain on the café's operations.

68. This said, we note that Mr Tyzack had suggested a phased return could be a possibility in his meeting with Mrs Moye on 16 August 2024. That suggestion, on its face, anticipated a phased return starting in October or November 2024. This suggests that the Respondent, at least at that stage, considered a phased return to work was a possibility.

69. Clearly, by October 2024, the Respondent's position had changed. We note we have no updating evidence from Mr Tyzack on his views as to whether a phased return to work could be an option or from the other employees as to what, if any, consultation took place with them and what their views were on a phased return for Mrs Moye. There is no evidence that if a phased return were to have started in January 2025 that the ongoing operations of the café would have been further or materially worse off.

70. The café had by the time of the dismissal been operating without Mrs Moye for 8 months (and by the time of the appeal 11 months). Whilst we accept that situation could not go on indefinitely or without some plan for return, we observe that a phased return can offer some light at the end of the tunnel for the employees who we are told were under strain and gradually increasing support for them may allow the café to continue functioning whilst supporting Mrs Moye back to work. Further, Mrs Moye had suggested a plan where she would return just after Christmas, a relatively short time in the grand scheme of her absence.

71. In our view, and in particular in the absence of any updating medical evidence to suggest that a return to work in January 2025 was not likely to be feasible, or even it being unclear if it was likely or feasible, we consider it was unreasonable for the Respondent not to wait a little longer or to attempt to support Mrs Moye back into work with the reasonable adjustment of a phased return.

72. We further note that there was a further opportunity for the Respondent to analyse and correct these errors. There was a significant gap between the

dismissal, on 29 Octber 2024, and the appeal meeting, which took place on 12 December 2024. At the appeal meeting before Mr Nicolas, Mrs Moye reported further progress in her abilities:

> *They are pleased with my recovery. It is still early days. It is going to be ongoing, every day / week that goes by I get stronger. I am hoping to make a full recovery, but I don't know how long it will take. I still get a lot of stiffness in my arm which is apparently something to do with my shoulder. It is 85% better than it was.*

73. She, further, suggested a return to work in January 2025 with a three months phased return doing 20 hours per week.

74. Despite this progress and the more considered suggestion from Mrs Moye, Mr Nicolas did not take the opportunity to inform himself by obtaining the absent updating medical information.

75. Further, Mrs Moye proposed return date was at that point less than a month away. Indeed, by the time the decision was produced on 7 January 2025, the proposed return date had been reached. In our view, informed by the aforementioned guidance in *Griffiths*, a reasonable employer, lacking any medical information to suggest it would not work, would at least attempt to support Mrs Moye's proposals for a return to work.

No alternatives considered and no vacancies offered

76. We have also considered whether the Respondent took reasonable steps to identify alternative roles for Ms Moye and consider the Respondent fell short of what is reasonably required here too.

77. We accept the submission made by Ms Moye in her closing submissions that "*there appears to be limited documentary evidence demonstrating the extent of that exercise, including what vacancies were considered and how my mother's transferable management, budgeting, compliance and*

supervisory skills were assessed against them". In fact there is no such documentary evidence.

78. Mr Hughes confirmed in his oral evidence that he had considered the internal list of vacancies and determined that none would be suitable for Mrs Moye based on her location and/or skills, but he also accepts that he did not share that list with Mrs Moye or discuss it with her. Whilst he informed us that she would have had access to it, in our view, an employer acting reasonably and in genuinely seeking to explore alternative roles will discuss the potential alternative roles with the employee.

79. We note there is no discussion or assessment with Mrs Moye to see what skills she had and could apply to an alternative role. This falls below the action which we consider an employer consulting and investigating reasonably, would undertake.

Was Dismissal in the Range of Reasonable Responses

80. Based on our conclusions above, we find that dismissal at that time was not within the range of reasonable responses open to the Respondent.

Was the procedure fair?

81. Again, based on the above conclusions, we also find that the procedure adopted by the Respondent, was not a fair procedure.

Would the Claimant have been dismissed in any event?

82. In our view there is no, or at least no sufficient, evidence that the Claimant would have been dismissed if the Respondent had undertaken a fair procedure or that her proposed phased return would not have been successful.

83. We note the point the Respondent makes that Ms Moye said in her email of 10 April 2026 that Mrs Moye was still dealing with ongoing health issues, which impact her ability to search for extra work. We do, however, note that

this email also stated: "*having been dismissed from her role with Shaw Trust, this impacted further on her recovery*".

84. We recognise the impact of a dismissal on Mrs Moye, who had worked for the Respondent for 18 years, and how that would factor into her health. Certainly, at the time of the dismissal and the appeal her health was continually improving and the occupational health report of July 2024 suggested a full return could be possible.

85. On that basis we do not consider that there is sufficient evidence that she would have been dismissed in any event, had a fair procedure been followed.

Did the Claimant contribute to her dismissal?

86. This point was not seriously relied upon by the Respondent and Ms Miller made no submissions on the point. For our part, we cannot see that Mrs Moye did anything which may have contributed to her dismissal. On the contrary, she presented as a dedicated employee, with no incidents of concern or long absence over 18 years, and with a wish and willingness to return to work.

Conclusion on unfair dismissal

87. On the basis of the above, we consider that the Claimant's complaint of unfair dismissal is well founded.

Discussion and Decision - Disability Discrimination

Disability

88. It is accepted by the Respondent that the Claimant was, at all material times, disabled within the meaning of s.6 of the 2010 Act. We accept and agree with this quite proper concession.

Did the Respondent treat the Claimant unfavourably by dismissing her?

89. It is also accepted by the Respondent that dismissal would amount to unfavourable treatment. We agree and further note that paragraph 5.7 of the Code as well as paragraph 15 of *Griffiths* suggests that dismissal will generally be considered to be unfavourable treatment within the definition of the 2010 Act.

Did the Claimant's absence from work arise in consequence of the Claimant's disability?

90. It was also accepted by the Respondent that the Claimant's absence from work arose from her disability. We accept and agree with this quite proper concession.

Did the Respondent dismiss the Claimant because of that sickness absence?

91. It was also accepted by the Respondent dismissed the Claimant because of her sickness absence. We accept and agree with this quite proper concession.

Was the treatment a proportionate means of achieving a legitimate aim?

92. The aim of the Respondent was, as confirmed by Ms Miller in her closing submissions, maintaining the effective and sustainable operation of Palmer Gardens and the café; ensuring appropriate management and supervision of employees and supported colleagues; maintaining the safe and effective operation of the café; and avoiding the continuing operational and financial consequences of leaving the substantive Catering Manager function effectively uncovered, which is effectively to suggest there was a business need. We accept those are legitimate aims.

93. However, when we weigh the reasonable needs of the Respondent against the discriminatory effect on the Claimant, we conclude the decision to dismiss was not a proportionate response.

94. Firstly, we do not accept the Respondent's submission made in its closing submissions that Ms Moye was "*unable to identify any sufficiently certain date by which she would be capable of resuming those duties*." The evidence, as we discussed above, was of a continuing improvement. She set out a plan which in our view had some level of risk, but indeed a risk in our view reasonable employer would deem worth taking, as she had set out her suggestions for how and when she could return. That was to return in January 2025 and she hoped to be back on full duties by March 2025. There was no evidence that this was a fanciful prospect before us. Indeed, as we have said, the Respondent failed to properly investigate this point.

95. There is no doubt that the impact of the decision on the Claimant was significant, she was to lose her employment of some 18 years. Whilst we acknowledge that her absence would have a negative impact on the running of the café, we note that even on Mr Hughes' evidence, it had been running at a loss in the years before she was sick. Further, we note that by the time of the dismissal the other staff members had been stepping in for 8 months (11 months by the time of the appeal).

96. In that context, we consider that less discriminatory approaches were reasonable options. In our view, a more proportionate approach would be to:

    a) Undertake a proper and full assessment of what Ms Moye could do (informed by up to date medical evidence).
    b) Prepare a return to work plan.
    c) Provide in the plan for a phased return.
    d) At least try that phased return plan (with any reasonable adjustments) before coming to a conclusion to dismiss.

97. When coming to this view, as anticipated in *Griffiths* and in the Code, we take into account the positive impact on the business of Mrs Moye's return to work and we take into account the cost of advertising and training up a new person as well as the time it takes to get them onto post. We heard that the new manager did not start until April 2025, which if Ms Moye's

suggested phased return had been successful, she may have been back working full time or working full time with some reasonable adjustments.

Conclusion on Disability Discrimination

98. In conclusion, we consider the complaint of disability discrimination to be well founded.

Discussion and Decision - Reasonable Adjustments

Disability

99. It is accepted by the Respondent that the Claimant was, at all material times, disabled within the meaning of s.6 of the 2010 Act. We accept and agree with this quite proper concession.

Did the Respondent have the PCP that the Claimant was required to return to work around the date of dismissal or shortly thereafter on her normal terms and conditions?

100. In her written closing submissions at paragraph 74, Ms Miller states:

> *The Respondent's primary submission is that the evidence does not establish that such an inflexible PCP was applied. The August discussions contemplated a reduced or phased return and an initial concentration upon less physical duties. A phased return was considered before dismissal, and the appeal expressly considered reduced hours and a longer phased return.*

101. The problem with this submission, in our view, is that the Respondent did discuss phased return or reduced duties with Mrs Moye in October and December, but made it quite clear that it was not something they would offer. Their requirement was a firm requirement that she needed to be back undertaking full duties in the near future.

102. In our view, giving the wide interpretation required by case law to what may constitute a PCP, the Respondent's requirement to be back in the office on a full time basis was a PCP.

Did the PCPs put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability, in that her stroke only allowed her to come back incrementally?

103. It was accepted by the Respondent that if there was a PCP, it would have put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability. We accept and agree with this quite proper concession.

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

104. It was also accepted by the Respondent that it knew or could reasonably have been expected to know that the claimant was likely to be placed at the disadvantage. We accept and agree with this quite proper concession.

What steps (the 'adjustments') could have been taken to avoid the disadvantages?

105. As confirmed in the list of issues, the Claimant suggests the following would have been reasonable adjustments:

a) A phased return to work.
b) Working from home doing administration tasks.
c) Working reduced hours.
d) Providing a perching stool in the café.

Was it reasonable for the Respondent to have to take those steps?

106. In our view, it would have been reasonable for the Respondent to have taken the proposed steps or a mix thereof as part of a phased return to

work, allowing for some working from home, starting with reduced hours and building up to full time over her proposed 3 month period. To assist her in that, whilst in the café, a stool to support her if fatigued, would be reasonable in our view and would not interfere with her duties as part of a phased return.

107. We note the guidance in paragraph 6.25 of the Code which suggests:

> *Even if an adjustment has a significant cost associated with it, it may still be cost-effective in overall terms – for example, compared with the costs of recruiting and training a new member of staff – and so may still be a reasonable adjustment to have to make.*

108. We also note the guidance in *Griffiths* at paragraph 29 that:

> [I]*t may be that it is not clear whether the step proposed will be effective or not. It may still be reasonable to take the step notwithstanding that success is not guaranteed; the uncertainty is one of the factors to weigh up when assessing the question of reasonableness*.

109. As we have noted in detail above, there is evidence that the Claimant was continually improving and the evidence is that she believed that with the proposed adjustments she could return to work and be back working full time by March 2025. There is no medical evidence to contradict this or inform otherwise and it does not appear to us to have been a fanciful prospect.

110. In our view, it would have been reasonable for the Respondent to have taken the proposed steps and if it had done so we consider that there are reasonable prospects that the steps would have been effective in supporting a valued employee back into work rather than having to incur the time and cost of putting in place a new manager.

Did the Respondent fail to take those steps?

111. The Respondent accepts that it did not take any of the steps suggested by the Claimant and, instead, took the decision to dismiss.

Conclusion of Reasonable Adjustments

112. As a result, we find the Claimant's complaint that she was subject to discrimination by way of a failure to make reasonable adjustments is well-founded

Conclusion

113. In conclusion, and for those reasons:

a) The Claimant's complaint that she was unfairly dismissed by the Respondent is well-founded.

b) The Claimant's complaint that she was subject to disability discrimination, pursuant to s.15 of the Equality Act 2010, by the Respondent is well-founded.

c) The Claimant's complaint that she was subject to discrimination by way of a failure to make reasonable adjustments, pursuant to ss.20 and 21 of the Equality Act 2010, by the Respondent is well-founded.

Approved by
Employment Judge D. C. Gardner

Date: 3 November 2026

REASONS SENT TO THE PARTIES ON
5th November 2026
FOR THE TRIBUNAL OFFICE