EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100432/2026

Final Hearing held in Aberdeen on 21 October 2026

Employment Judge A Kemp

Mr G Muir	**Claimant** **Represented by** **Ms C Shaw** **Partner**
Pinefield Glass Ltd	**Respondent** **Represented by** **Mr A Hardman** **Advocate** **Instructed by** **Mr S Robertson** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The decision of the Tribunal is that the claims do not succeed and the claim is dismissed.

REASONS

Introduction

1. This was a final hearing into the claims made by the claimant set out below. The claimant was represented by his partner Ms Shaw. The respondent was represented by Mr Hardman.

2. There had been a preliminary hearing held before EJ Whitcombe on 16 July 2026 after which various case management orders were made including for use of written witness statements. The note of that hearing also set out the claims that the claimant pursued, and the basis for each

of them, as well as the issues to be determined. The respondent was required to provide further detail of its defence to the claims, which it did.

3. The respondent admitted that the claimant was a disabled person and that it had knowledge of that, but pleads what is normally referred to as the objective justification defence to the section 15 claim, and that the adjustments argued for by the claimant were not reasonable ones to make in all the circumstances.

4. The claimant has sadly suffered a stroke, which materially affects his ability to communicate. He was able to give his evidence without apparent difficulty however, which was to his credit.

5. I identified a difficulty with all of the three witness statements provided, in that they did not comply with the requirements of the Practice Direction and Presidential Guidance as to use of such statements. The two most material matters were firstly the lack of the declaration from the witness, and for those from the respondent from its solicitor, and secondly the absence of any reference to pages of documents in the file of documents or Bundle. I decided that it was in accordance with the overriding objective to consider these statements nonetheless and allow parties additional questions in examination in chief to identify documents that they wished to.

6. Before the hearing of evidence commenced I explained that under the overriding objective in Rule 3 I could assist the claimant and his partner as his representative to an extent, they not being legally qualified and the respondent being represented by an Advocate, such that the parties were not on an equal footing, but not to the extent of acting as if his solicitor and making arguments the claimant did not himself make. I stated that I would assist to the extent I considered permissible under the overriding objective.

9. I then explained about the process of giving evidence, that the evidence in chief was within the written witness statements but allowing additional questions as to documents, that the other party would then cross examine, that the Tribunal might ask questions, and that the party calling the witness could then give further evidence on re-examination where doing so arose out of cross examination or Tribunal questions. I explained that process would then be applied to all witnesses. I explained that cross examination served two essential functions, firstly to put to the witness any matter in their evidence in chief in the witness statement that was challenged as not being true or accurate, and secondly to put any matter not raised in the witness statement that the witness knew of which may assist the other party or would be, or had been, part of the party's own evidence. I explained that documents would not be looked at unless referred to in the evidence by at least one of the witnesses. I further explained that once all the evidence had concluded the party would be asked to confirm that its

case was closed, and that no further evidence would be permitted to be received save in exceptional circumstances, and that after all evidence had been heard parties could make submissions being arguments as to why they should succeed, but were not required to do so.

Evidence

10. The parties had prepared a file or Bundle of Documents, much but not all of which was spoken to in evidence.

11. Evidence was given by the claimant first, and he did not call any other witness. Evidence for the respondent was then given by Mr Martin Charlesworth, and then his wife Diane Charlesworth, both directors of the respondent. Mr Charlesworth had been permitted to sit in during the claimant's evidence so as to be able to instruct Mr Hardman, without objection.

12. I asked some questions of witnesses to elicit facts under Rule 41. The parties had further agreed a Statement of Agreed Facts. I was grateful both to Ms Shaw and Mr Hardman for dealing with the evidence most effectively and concisely, such that the three day hearing as had been fixed was able to be concluded within one day.

Facts

13. I considered all the evidence led, not all of which is narrated in the Judgment. I found the following facts, which I consider material to the issues, to have been established in addition to those in the Statement of Agreed Facts which are incorporated below:

Parties

14. The claimant is Mr Glenn Muir. His date of birth is 20 May 1975. He is a disabled person under the Equalities Act 2010 and the respondent knew of that for all periods material for the purposes of this case.

15. The respondent is Pinefield Glass Ltd. It is a limited company with factory and office premises. It manufactures and sells double glazing units. It has about 90 employees in the factory and about 12 in the office.

Work and stroke

16. The claimant was employed by the respondent from 19 May 2025 as an HGV driver. On his first day at work he underwent induction and training.

17. On the following day the claimant suffered a haemorrhagic stroke. He was admitted to hospital on 21 May 2025, and discharged on 12 June 2025. He suffers from aphasia as a result of the stroke. That affects his ability to communicate including to find the correct word. He was signed off work

as a result of the stroke, and commenced to receive Statutory Sick Pay (SSP).

18. When the claimant was absent from work the respondent hired another driver through an agency on a temporary basis. The cost of such an agency driver was greater than the salary that would have been paid to the claimant had he been fit for the work. The respondent did not replace the claimant with another full time employee at that time, as it was awaiting developments in relation to the claimant.

19. The claimant's HGV licence was revoked on 15 September 2025, for a period of 12 months, by DVLA.

20. The claimant's entitlement to SSP expired on 2 December 2025.

21. The claimant was invited to a welfare meeting by the respondent on 16 January 2026, with the meeting to be held on 26 January 2026.

22. The claimant was asked to sign a consent form for a medical report and did so on 26 January 2026, and on that date the respondent wrote to the claimant's GP for a report.

Termination meeting

23. A meeting was held between the claimant and two of the respondent's directors Mr Martin Charlesworth and Mrs Diane Charlesworth on 26 January 2026. That meeting was recorded and a transcript of it then automatically generated which is a reasonably accurate of what was said.

24. Following the meeting Mr and Mrs Charlesworth met with their two fellow directors and relayed to them what the discussion had been. The directors collectively took the decision to terminate the claimant's employment. They did not consider that he was fit to undertake the role of HGV driver, and would not be able to so for at least a material period of time thereafter. That role involved an element of lifting. They did not consider that there was any alternative role that could be offered to him. All roles in the factory of the respondents involved lifting, and there was a concern expressed by the claimant that heavy lifting may lead to another haemorrhage. The respondent did not consider office-based roles as there were no vacancies, and they did not have space for any further person to work in such a role at that time.

25. The claimant did not have office-based experience. He holds a University degree.

26. Mrs Charlesworth wrote to the claimant to inform him of the termination of his employment on 30 January 2026.

Other matters

27. On 11 February 2026 the claimant's GP wrote a letter to the respondent with regard to the claimant.

28. The claimant has been advised that heavy lifting might cause a second stroke.

29. On 9 March 2026 an HGV driver was employed by the respondent.

30. During February 2026 a Senior Estimator of the respondent resigned, and he was replaced with an experienced estimator in March 2026.

31. In August 2026 the respondent converted premises in another yard to include some office space, and two additional employees were employed. The person who had earlier resigned returned to work and another employee was taken on.

32. The claimant has applied to have his licence to drive HGVs restored. He underwent an exercise test at Aberdeen Royal Infirmary on 6 October 2026, which he passed. He is awaiting a decision from DVLA on whether he will be able to return to driving HGVs and if so when.

33. The claimant applied for a role as a part time library assistant in August 2026, but was not successful. He is not able to undertake shop or retail roles because of his disability. He is not able to undertake full-time work, but may be so in future if able to work part-time successfully. He continues to seek employment on a part-time basis.

Early Conciliation

34. The claimant commenced Early Conciliation on 4 February 2026. A Certificate therefor was issued on 10 February 2026. The claim form was presented on 4 March 2026.

Submission for claimant

35. The claimant's partner argued, in very brief summary, that the Tribunal should find for the claimant. She argued that the respondent had not proved that the dismissal, which was the last option, was a proportionate means of achieving a legitimate aim. She referred to issues over the evidence in the witness statements of the respondents. She stated that it was the duty of the respondent to make reasonable adjustments, and that the respondent should have obtained occupational health advice before

dismissing. She stated that the respondent could have provided an office-based role. The respondent could have waited until the licence issue had been resolved.

Respondent's submission

36. Mr Hardman argued, again in very brief summary, that the respondent had proved that dismissal was a proportionate means of achieving a legitimate aim, and that the adjustments argued for by the claimant were not reasonable in the circumstances. He referred to the cases of *Archibald v Fife Council* [2004] ICR 954 and *Southampton City College v Randall* [2006] IRLR 18, contending that there was no case holding that there was a duty to create a vacancy, with the second case being one where there was a reorganisation being undertaken. He argued that no reasonable adjustment required to have been made.

Law

37. The law relating to discrimination is found in statute and case law, and account may be taken of guidance in a statutory code.

(i) Statute

38. Section 4 of the Equality Act 2010 ("the Act") provides that disability is a protected characteristic.

39. Section 15 of the Act provides as follows:

> "**15 Discrimination arising from disability**
>
> (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.
> (2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability."

40. Section 20 of the Act provides as follows:

> "**20 Duty to make adjustments**
>
> (1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.
> (2) The duty comprises the following three requirements.
> (3) The first requirement is a requirement, where a provision, criterion or practice of A'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……
(13) The applicable Schedule is, in relation to the Part of this Act specified in the first column of the Table the Schedule specified in the second column

Part of this Act	Applicable Schedule
……Part 5 (work)	Schedule 8”

[Part 5 includes section 39]

41. Section 21 of the Act provides:

> “**21 Failure to comply with duty**
>
> (1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.
> (2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person….”

42. Section 39 of the Act provides:

> “**39 Employees and applicants**
>
> An employer (A) must not discriminate against a person (B) –
> ……..
> (c) by dismissing B;
> (d) by subjecting B to any other detriment.”

43. Section 136 of the Act provides:

> “**136 Burden of proof**
>
> If there are facts from which the tribunal could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned the tribunal must hold that the contravention occurred. But this provision does not apply if A shows that A did not contravene the provision…..”

44. Section 212 of the Act defines “substantial” as “more than minor or trivial.”

45. The provisions of the Act are construed against the terms of the ***Equal Treatment Framework Directive 2000/78/EC***. Its terms include Article 5 as to the taking of “appropriate measures, where needed in a particular case”, for a disabled person, “unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned.”

46. The Directive is assimilated law by the Retained EU Law (Revocation and Retention) Act 2023.

(ii) Case law

(a) Discrimination arising out of disability

Proportionate means of achieving a legitimate aim

47. The test in section 15(1)(b is similar to that under section 19, which is addressed more fully below and should be taken as repeated in this context for the sake of brevity. That includes the issues summarised in the case of *MacCulloch*. It is however not in the same circumstances as an indirect discrimination case, as the EAT stated in *Stott v Ralli Ltd* [2022] IRLR 148:

> "Whilst much of the section 19 defence jurisprudence readily maps across to the section 15 defence, it is important not to lose sight of the fact that what the employer is seeking to justify in each case is a different type of thing. A complaint under section 15 does not involve the application of a provision, criterion or practice giving rise to group disadvantage; and passages in the authorities on section 19 which focus on how the aspect of group disadvantage feeds into the justification test, such as the passage cited to me from *Barry v Midland Bank*, are therefore not of direct assistance in considering the defence in a section 15 case. Mr Davidson submitted that the law was, as it were, there to protect all people with the given disability. As to that, of course it must be kept in mind by the tribunal that what the employer is seeking to justify in a section 15 case is conduct that is because of something arising from disability. Nevertheless, group impact is not a consideration in this context."

48. The EAT in *Chief Constable of Gwent Police v Parsons and Roberts* UKEAT/0143/18 set out the principles in a case on very different facts to the present claim. In *Department for Work and Pensions v Boyers* [2022] IRLR 741 the EAT stated:

> "In… a case involving dismissal, the ET must undertake the balancing exercise required by section 15(1)(b) EqA by focusing on the outcome – the dismissal itself – but it remains open to the ET to weigh in the balance the procedure by which that outcome was achieved. It will be more difficult for a respondent to show that it acted proportionately when dismissing a disabled employee if, as happened in this case, it has led no evidence on how its decision-makers thought their actions would serve the legitimate aims relied upon. It will also be more difficult for a respondent to show that it acted proportionately when dismissing a disabled employee if it has led no evidence on how, as part of the process culminating in dismissal, its decision-makers considered other, less discriminatory, alternatives to dismissal."

104. The statutory test for justification as to indirect discrimination under section 19 of the Act requires to be read in accordance with case law from the Court of Justice of the European Union. In *Homer v Chief Constable of West Yorkshire Police and West Yorkshire Police Authority* [2012] IRLR 601 decided in the Supreme Court Lady Hale said: “Although the [UK legislation] refers only to a 'proportionate means of achieving a legitimate aim', this has to be read in the light of the Directive which it implements”. She added in summary that “to be proportionate, a measure has to be both an appropriate means of achieving the legitimate aim and (reasonably) necessary in order to do so.”

105. It is for the employer to establish the defence on the balance of probabilities. Evidence is not always required. The EAT in *Chief Constable of West Yorkshire Police and West Yorkshire Police Authority v Homer* [2009] ICR 223 (considered on other grounds by the Supreme Court [2012] IRLR 601) stated:

> "… it is an error to think that concrete evidence is always necessary to establish justification, and the ACAS guidance should not be read in that way. Justification may be established in an appropriate case by reasoned and rational judgment. What is impermissible is a justification based simply on subjective impression or stereotyped assumptions. "

106. The issue of objective justification need not have been considered by the employer at the time of the dispute arising. In *Cadman v Health and Safety Executive* [2004] IRLR 971 the Court of Appeal held that there is no rule of law that the justification must have consciously and contemporaneously featured in the decision-making processes of the employer. But it may be more difficult for an employer to discharge the burden of establishing justification where there is no evidence to show that it ever applied its mind to the question of whether there was another way of achieving the legitimate aim that would avoid or diminish the disparate adverse impact on the protected group: *Hockenjos v Secretary of State for Social Security* [2005] IRLR 471.

107. In *MacCulloch v ICI* [2008] IRLR 846 the EAT set out four principles, later approved by the Court of Appeal in *Lockwood v DWP* [2013] IRLR 941, as follows:

    (i) The means to achieve the aim must correspond to a real need for the organisation;

    (ii) They must be appropriate with a view to achieving the objective;

    (iii) They must be reasonably necessary to achieve that end;

(iv) The Tribunal is to weigh the reasonable needs of the undertaking against the discriminatory effect of the employer's measure and make its own assessment of whether the former outweigh the latter.

108. In applying the test of reasonable necessity there may be more than one option which would constitute a proportionate means of achieving the legitimate aim in question - *Health and Safety Executive v Cadman* [2005] ICR 1546. An employer is not required to prove there was no other way of achieving its objectives - *Hardys & Hansons plc v Lax* [2005] IRLR 726 - but in considering the needs of the respondent the Tribunal must make its own judgement upon "a fair and detailed analysis of the working practices and business considerations involved".

109. Care must be taken by tribunals not to reject a justification case on the basis that a respondent should have pursued a different aim which would have had a less discriminatory impact: *Harrod v Chief Constable of West Midlands Police* [2017] ICR 869.

110. In *Ladele* the EAT and Court of Appeal addressed the issue of proportionality having identified the legitimate aim in the case. The Court of Appeal endorsed the EAT decision, quoting from it and then commenting as follows:

> "Once it is accepted that the aim of providing the service on a non-discriminatory basis was legitimate—and in truth it was bound to be—then … it must follow that [Islington] was entitled to require all registrars to perform the full range of services."

111. As the EAT had stated, permitting the claimant to refuse to perform civil partnerships "would necessarily undermine the council's clear commitment to" what the appeal tribunal described as their "non-discriminatory objectives which [they] thought it important to espouse both to their staff and the wider community".

112. Ultimately this along with other claims was considered by the European Court of Human Rights, reported as *Eweida, Ladele, McFarlane and Chaplin v The United Kingdom* [2013] IRLR 231 in which it was held that both Ms Ladele who objected to officiating at same-sex civil partnership ceremonies, and Mr McFarlane who objected to providing psycho-sexual counselling to same-sex couples, based their objections on their Christian beliefs. Those manifestations were to be protected unless interference was necessary in a democratic society for the protection of the rights and freedoms of others. The equal opportunities policies of the employers in these cases were designed to ensure the provision of services without discrimination—including on the ground of sexual orientation. The state had not been found to have failed to protect the article 9 rights of either of these applicants in seeking to strike a balance between the rights of the

two employees to manifest their religious belief and the employer's interest in securing the rights of others.

113. Proportionality is considered at paragraphs 4.30 – 4.32 of the Equality and Human Rights Commission Code of Practice on Employment.

(b) Reasonable adjustments

114. Guidance on a claim as to reasonable adjustments was provided by the EAT in *Cosgrove v Caesar and Howie* [2001] IRLR 653, *Royal Bank of Scotland v Ashton* [2011] ICR 632, and by the Court of Appeal in *Newham Sixth Form College v Saunders* [2014] EWCA Civ 734, and *Smith v Churchill's Stair Lifts plc* [2005] EWCA Civ 1220. The reasonableness of a step for these purposes is assessed objectively, as confirmed in *Smith v Churchill*. The need to focus on the practical result of the step proposed was referred to in *Ashton*. These cases were in relation to the predecessor provision in the Disability Act 1995. Their application to the 2010 Act was confirmed by the EAT in *Muzi-Mabaso v HMRC* UKEAT/0353/14.

115. The Court in *Saunders* stated that:

> "the nature and extent of the disadvantage, the employer's knowledge of it and the reasonableness of the proposed adjustment necessarily run together. An employer cannot … make an objective assessment of the reasonableness of proposed adjustments unless he appreciates the nature and extent of the substantial disadvantage imposed upon the employee by the PCP."

116. In *Tarbuck v Sainsbury's Supermarkets Ltd* [2006] IRLR 664 the EAT held that the failure to carry out an assessment did not of itself constitute a failure to make a reasonable adjustment. If the employer makes such adjustment as in fact is reasonable, then whether that is achieved by chance or even in ignorance of the relevant legal duty, there is no breach of the law even though there was no assessment.

117. The duty to make reasonable adjustments does not extend to a duty to carry out any kind of assessment of what adjustments ought reasonably to be made. A failure to carry out such an assessment may nevertheless be of evidential significance. In *Project Management Institute v Latif* [2007] IRLR 579 the EAT stated that:

> "…We observe in passing that we very much doubt whether the burden shifts at all in respect of establishing the provision, criterion or practice, or demonstrating the substantial disadvantage. These are simply questions of fact for the tribunal to decide after hearing all the evidence, with the onus of proof resting throughout on the claimant. These are not issues where the employer has information or beliefs within his own knowledge which the claimant cannot be expected to prove. To talk of the burden shifting in such cases is in our view confusing and inaccurate……

> a failure to carry out a proper assessment, although it is not a breach of the duty of reasonable adjustment in its own right, may well result in a respondent failing to make adjustments which he ought reasonably to make. A respondent, be it an employer or qualifying body, cannot rely on that omission as a shield to justify a failure to make a reasonable adjustment which a proper assessment would have identified…..
>
> We accept, however, that the proposed adjustment might well not be identified until after the alleged failure to implement it, and in exceptional cases, as here, not even until the tribunal hearing. Indeed, in certain circumstances we think it would be appropriate for the matter to be raised by the tribunal itself, particularly if the employee is not represented. To take a simple example, where a code provides an example of an adjustment which on the face of it appears appropriate, that is something the tribunal should take into account. We think that it would be perfectly proper for a tribunal to expect an employer to show why it would not have been reasonable to make that adjustment in the particular case, although of course the employer must have a proper opportunity of dealing with the matter."

118. An adjustment is reasonable if there is a chance that it alleviates the substantial disadvantage – *South Staffordshire and Shropshire Healthcare NHS Foundation Trust v Billingsley* UKEAT/0341/15. On the other hand if there is no reasonable prospect of the adjustment enabling the employee to return to work it would not be reasonable to require it – *Hindmarch v North East Ambulance NHS Foundation Trust* [2025] EAT 87.

119. The Code of Practice includes the following:

6.1 "The duty to make adjustments requires employers to take such steps as it is reasonable to have to take, in all the circumstances of the case, in order to make adjustments. The Act does not specify any particular factors that should be taken into account. What is a reasonable step for an employer to take will depend on all the circumstances of each individual case.

6.2 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.

6.3 Effective and practicable adjustments for disabled workers often involve little or no cost or disruption and are therefore very likely to be reasonable for an employer to have to make. 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.

6.4 Many adjustments do not involve making physical changes to premises. However, where such changes need to be made and an employer occupies premises under a lease or other binding obligation, the employer may have to obtain consent to the making of reasonable adjustments. These provisions are explained in Appendix 3.

6.5 If making a particular adjustment would increase the risk to health and safety of any person (including the disabled worker in question) then this is a relevant factor in deciding whether it is reasonable to make that adjustment. Suitable and sufficient risk assessments should be used to help determine whether such risk is likely to arise.

6.6 The following are some of the factors which might be taken into account when deciding what is a reasonable step for an employer to have to take:

- 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.

6.7 Ultimately the test of the 'reasonableness' of any step an employer may have to take is an objective one and will depend on the circumstances of the case."

120. Paragraph 6.33 gives a series of examples of adjustments. They include:

"**Transferring the disabled worker to fill an existing vacancy…….**

Assigning the disabled worker to a different place of work or training or arranging home working

Example:

An employer relocates the workstation of a newly disabled worker (who now uses a wheelchair) from an inaccessible third floor office to an accessible one on the ground floor. It may be reasonable to move his place of work to other premises of the same employer if the first building is inaccessible. Allowing the worker to work from home might also be a reasonable adjustment for the employer to make."

Observations on the evidence

121. There were some concerns over how the statements for the respondents had been prepared. Firstly, they were late and did not comply with the case management order. No reason for that was given in evidence, although correspondence referred to the respondent's solicitor being on annual leave, in which event an application for extension could and should have been made. Secondly, they had aspects that were nearly identical, but Mr Charlesworth said that he had not seen that for his wife when his was prepared. Thirdly, the footer for the statement of Mr Charlesworth was that for Mrs Charlesworth. Fourthly, the two statements each indicated that the decision followed discussions between Mr and Mrs Charlesworth but in evidence the decision to dismiss was said by each witness to have followed discussions with four directors. Finally, there was a statement in paragraph 9 of the response form both of the witnesses accepted was not true.

122. I have however come to the conclusion that both the witnesses for the respondent were credible and reliable. They accepted matters when appropriate when put to them. It appeared to me that despite the issues identified above those were not a sufficient basis to reject their evidence.

123. I did not have concerns over the evidence of the claimant. I accepted it as credible and reliable as to matters of primary fact, but I have not accepted his evidence so far as being arguments over the issues for reasons I shall come to.

Discussion

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

124. The aim contended for by the respondent was summarised by Mr Hardman at submission as to manage the business efficiently using staff fit for the roles available to them. I consider that that is a legitimate aim.

125. I have concluded that the respondent has proved that it was a proportionate means of achieving that aim to dismiss the claimant under section 15(2). The reasons for that are as follows:

(i) The claimant had been off work by the time of the dismissal for over 8 months. He would not be able to obtain his licence to drive an HGV for a further period of around 8 months at the least. It was not clear if he would then receive it or not. It could not be known whether and if so when the claimant would be able to drive an HGV. As it has transpired he still is not able to do so, and a decision from DVLA is awaited.

(ii) When the issue of a role in the factory was raised with him at the meeting on 26 January 2026, which would involve a measure of lifting as would be expected in a factory manufacturing double glazing units, the claimant referred to the advice of his specialist nurse that heavy lifting risked another haemorrhage. The clear indication I take from the transcript of the meeting is that the claimant did not consider that such a role would be safe or appropriate for him, and for the respondent to have proceeded with such a role in the face of such circumstances would have been at the least something that was such a risk that it was liable to be unsafe. Putting it another way it was proportionate not to proceed with such a possibility, although it is relevant that the respondent raised it with the claimant.

(iii) The issue of an office-based role was not raised during the meeting. The claimant did not do so. There is no requirement for the employee to raise what adjustment might be reasonable to take, but the fact that he did not do so is a point to weigh in the balance.

(iv) The respondent did not do so itself essentially for two reasons. The first was that there was no vacancy. The second is that there was no space for another person to work in the office area.

(v) It is relevant that the respondent did not wait for medical advice. That of itself is not determinative, but is one issue to take into account. That is in the context of the respondent initially asking for consent for a report. When the advice from the GP came in it did not offer much by way of an alternative, other than that Occupational Health (OH) advice should be taken. The respondent had not done so, and there was no such advice before me.

(vi) The claimant complains that the respondent did not warn him that the meeting held on 26 January 2026 might lead to termination of his employment, but this is not an unfair dismissal claim. It also did not offer him an appeal, but the part of the Handbook the claimant relied on in this regard is for disciplinary matters, which his case was not. It did not appear to me that the absence of an appeal affected the issue of proof of proportionality under section 15(2). In any event as stated this is not an unfair dismissal claim.

(vii) There are two further factors to consider which I regard as material. The first is that the respondent's business did require an HGV driver. A temporary replacement was taken on, but that was through an agency and at higher cost. The temporary arrangement was maintained to see how matters progressed, but by the time of the decision to dismiss there was no realistic expectation of the claimant being able to return to driving within a reasonable period – it would be at least 8 months, and as it has transpired would have been longer. In any event, even if there had been a restoration of the HGV Licence by DVLA the job involved lifting, which had a potential risk.

(viii) The second is what the claimant said in his own witness statement. Firstly, although he has attempted to have his HGV Licence returned

to him that has not yet taken place. The matter remains with the DVLA. Both the outcome and timing of that are uncertain even now. Secondly, the claimant has made only one application for employment in that time, for a part-time position as a library assistant. It appears to me that that is an indicator that he has at best a limited ability to undertake work. Thirdly, he has aphasia, and that can affect his ability to communicate including by telephone. That clearly makes it more difficult to work remotely, for example. Fourthly, his statement sets out the difficulties he has in being able to work, including that he is not able to work full time and that roles including in shops or retail are not appropriate ones for him. Fifthly, although no OH advice was taken, and the respondent did not wait for the GP report, for reasons I address more fully below that would not have made any difference in the circumstances in my view. The only potential role in the factory was one the claimant did not at the meeting engage with, and what he said suggested that he did not consider himself fit to do, for what were entirely understandable and appropriate reasons. There was neither a vacancy nor space for an office role at the time.

126. In light of all the evidence before me, it appears to me that the respondent has proved that dismissal was proportionate as there was not in my view a realistic alternative. Whilst it was a last resort, and the nuclear option as put in submission by Ms Shaw, I consider that it was a lawful one. It follows that the claim under section 15 does not succeed and is dismissed.

(b) Failure to Make Reasonable Adjustments – Sections 20 and 21 Equality Act 2010.

Proposed Adjustments

Would the following steps have alleviated the disadvantage:

a. Part-time office work
b. Working remotely
c. Not dismissing.

127. It seems to me that they would have.

Reasonableness

If so, would it have been reasonable for the respondent to take those steps?

128. I have concluded that it is not reasonable to do so. It seems to me that it was not reasonable to require the respondent to create a vacancy in order to keep the claimant's driving job open for him for the possibility of his being able to undertake it in the future, and find him another role during that process. That is not just because the timing and detail of it were uncertain, although they were and that is a material factor. It is also

because the driving job itself included lifting, and there was a concern over the safety of that being done as expressed to the claimant by the specialist nurse. He informed the respondent of that at the meeting on 26 January 2026. In the interim period, which would have had to have been of indeterminate length, the then present temporary arrangement of having an agency driver cover the claimant's work would have had to continue. The evidence was that that was at a higher cost, and it was not by its nature a permanent solution. The respondent had not taken on a full-time replacement as the claimant was still employed, and they were awaiting developments in relation to him. At the time of the decision there was I consider a degree of prejudice to the respondent of not dismissing in light of those circumstances.

129. The related issue is that of whether an alternative role could be found for him. That was discussed at the meeting on 26 January 2026. There is a transcript for it which was agreed to be reasonably accurate. It is clear from that transcript and evidence before me that the respondent raised the possibility of the claimant working in the factory, but for perfectly understandable and appropriate reasons the claimant did not engage with that possibility. He referred to the advice from his specialist nurse. The factory manufactures double glazed units, and work within it involves lifting. It was not only the issue of the safety for the claimant of such lifting work that appeared to be a part of his responses however, as it was also apparent from what he said that he wished to return to driving. He was hoping to get his licence to do so back, although whether he could and if so when was not in his gift.

130. Ms Shaw argued that he gave a conditional answer as to the issue of factory work, it depending on lifting, but the factory work did involve lifting. Whilst it would have been good practice to obtain occupational health advice it seems to me from the evidence given to me that it would not be reasonable to require a step to be taken that endangered the claimant's safety.

131. The separate aspect was that there were practical difficulties in considering an office role, which was not something the claimant raised at the meeting, and nor was it a matter that the respondent raised. But in my view there was a reason for the respondent not doing so. There was both no vacancy, and no space for the work to be done in the existing office area. Whilst new space was created in August 2026 that was not the position as at the date of termination. It was not a matter in contemplation at that time. That there was no vacancy is also I consider material, and in this case it is highly so. It is I consider instructive that the Code refers to transfer to a vacancy. It does not refer to creation of a role that did not exist.

132. The possibility of working remotely addresses the issue of office space at that time but still required some form of identification of a role that the claimant could be able to perform despite his aphasia, and the absence of a vacancy. I consider that creating such a remote working position given all the circumstances was not reasonable. The claimant had no office experience. He could not work full time. He could not work in a retail type of role. He had aphasia. There was no vacancy for such a remote role. I conclude that there was no remote role that the respondent required to have offered him to fulfil a duty under section 20 as at 30 January 2026.

133. I have taken into account the guidance in the Code of Practice in coming to these conclusions. I have also taken into account the absence of occupational health (OH) advice, which as stated above as a matter of good practice would ordinarily be expected. But good practice is not the test in this regard, and a consideration of the evidence overall has led me to conclude that obtaining OH advice would not have made a difference to the outcome. Sadly, because of the effects of the stroke that the claimant suffered, his ability to work has been substantially detrimentally affected. He was and still is unable to work in the role he really wishes to undertake, being an HGV driver, and there was no reasonably practicable alternative role working from home.

134. I find that the respondent has not failed to take a reasonable step required of it to avoid the disadvantage, and the claim under sections 20 and 21 therefore does not succeed.

Conclusion

135. In light of the findings made above, I must dismiss both claims.

136. I might add two further comments. Firstly, there was no evidence before me of a statement of particulars being provided to the claimant on or before the first day of his employment, a requirement of the Employment Rights Act 1996. That is an issue the respondent may wish to consider for the future. Although it was not raised as a claim even if it had been and succeeded in principle no award could have been made as no other claim succeeded. Secondly, I express the hope that the claimant will be able to source alternative employment and continue with his recovery.

Date sent to parties 27 October 2026