Appeal No. UKEAT/0173/19/LA
UKEAT/0174/19/LA
UKEAT/0233/19/LA

EMPLOYMENT APPEAL TRIBUNAL

ROLLS BUILDING, 7 ROLLS BUILDINGS, FETTER LANE, LONDON, EC4A 1NL

At the Tribunal
On 5 and 6 March 2020

Before

HIS HONOUR JUDGE SHANKS

MRS M V MCARTHUR BA FCIPD

MRS G SMITH

UKEAT/0173/19/LA & UKEAT/0233/19/LA

MRS S HILL	APPELLANT
LLOYDS BANK PLC	RESPONDENT

UKEAT/0174/19/LA

LLOYDS BANK PLC	APPELLANT
MRS S HILL	RESPONDENT

Transcript of Proceedings

JUDGMENT

APPEARANCES

For Mrs S Hill	MR DANIEL BARNETT (of Counsel) Instructed by: BTU St John's Terrance 3-7 Ampthill Street Bedford MK42 9 EY
For Lloyds Bank Plc	MS JUDE SHEPHERD (of Counsel) Instructed by: Eversheds Sutherland (International)LLP Bridgewater Place Water Lane Leeds Lane

SUMMARY

DISABILITY DISCRIMINATION

Claimant was disabled in that she suffered from a reactive depression which she said resulted from bullying and harassment at work. On her return to work after a period of sick leave she sought an undertaking from her employer R that they would not require her to work with the two colleagues concerned and, if at a later stage there was no alternative, that she would be offered a severance package equivalent to that provided on redundancy. R refused to give any undertaking to that effect.

The EAT held that the ET had been entitled to find for her on a claim of disability discrimination based on a failure to make reasonable adjustments on the following grounds:

(a) that on the facts R had a "practice" of not giving firm undertakings in circumstances like these;

(b) that that practice had put Claimant at a substantial disadvantage in comparison with others not suffering a disability because she suffered a level of anxiety and fear about the possibility that she would be required to work with the colleagues in the absence of an undertaking which a non-disabled person who had been bullied and harassed would not have;

(c) that the giving of an undertaking would have alleviated the disadvantage because it would have alleviated that fear;

(d) that it would have been reasonable for Respondent to give a firm undertaking in the form requested.

The EAT also held that there was no reason in principle preventing the ET, having found for the C on this basis, from making a recommendation under section 124(3) EqA 2010 requiring R to

give a written undertaking along the same lines. The question of a recommendation would therefore be remitted to the ET.

The ET had anonymised the two colleagues concerned in their judgment but without seeking representations, giving any reasons or apparently considering the relevant law (rule 50 of the ET rules and **Fallows v News Group** [2016] IRLR 827; that issue was also remitted to be decided by the ET.

HIS HONOUR JUDGE SHANKS

1. By a Judgment which was sent out on 12 February 2019, the London (South) Employment Tribunal (Employment Judge Martin, Mr Shanks (no relation) and Ms Sadler) upheld a claim of disability discrimination made by Mrs Hill on the basis that her employer Lloyds Bank Plc had failed to make reasonable adjustments, awarded her the sum of £7,500.00 for injury to feelings and made a recommendation that Lloyds give an undertaking, the terms of are dealt with later in this Judgment. The Employment Tribunal ("ET") were invited by both sides to reconsider the recommendation and by a Decision based on written submissions, which were sent out on 13 July 2019, they set aside the recommendation altogether.

2. Lloyds appeals on various grounds against the main finding of liability and against the recommendation as originally made. Mrs Hill appeals against the reconsideration Decision. Mrs Hill also appeals against the ET's Decision, made without any reference to the parties or any express reasons, to anonymise two Lloyds members of staff about whom Mrs Hill was complaining before the ET, but who had played no part in the Hearing. The President allowed these appeals to proceed at an all-party Preliminary Hearing held on 19 November 2019.

3. Turning to the facts, I adopt the Tribunal's findings of fact for the purposes of this Judgment, which are set out at paragraphs 4 to 9:

> **"4. By way of background, the Claimant is employed by the Respondent as an Analyst and Business Architect. She has been employed for over thirty years. The Claimant had a period of sick leave from 4 July 2016 to 9 October 2017 for stress. She says the stress was caused by the bullying and harassment she received at work. The Claimant brought a grievance against her immediate line manager who for the purposes of this judgment (given that it will be published online) shall be referred to as Ms M. This grievance and the subsequent appeal were not upheld. The Claimant also has issues with Mrs M's line manager, Mr B (who for the same reasons will not be identified in this judgment) but did not raise any formal grievance against him. For the avoidance of doubt the Claimant's claim does not relate specifically to the allegations of bullying and harassment but are**

> **limited to a reasonable adjustment she says the Respondent should have made on her return to work.**
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> **5. It was agreed by both parties that the Claimant did not want to work for Ms M or Mr B, and that they did not want to work with her. When she returned to work, she returned to work in the Bristol office. Ms M worked from the Glasgow office and Mr B worked from London. The Claimant is happy working in Bristol and has no problems with her work, line management or anything else connected to her role there. She is, however, anxious that in the future she may have to work with Mr B or Ms M and her uncontested evidence was that this caused her many issues. She says the prospect of working again with Mr B fills her with absolute dread and fear such that she feels physically sick. She says that the prospect of working with Ms M leaves her in a constant state of fear which leaves her exhausted. In her statement she says she must make herself get out of bed each day and she cannot relax.**
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> **6. The Claimant's trade union representative wrote to the Respondent on 30 July 2018 requesting that the Respondent committed to assuring the Claimant that she would not be placed 'under the control of people with whom she cannot work'. In response, and with the agreement of the Claimant, the Respondent set up a meeting with an Issue Resolution Manager who was an experienced mediator. This meeting took place on 24 April 2018. Sadly, the Issue Resolution Manager passed away the next day and the Respondent does not know what happened at this meeting.**
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> **7. This led to the Claimant's union representative writing to the Respondent on 27 April 2018 requesting an undertaking that at no point in the future would the Claimant be required to work with or under the management of either Ms M or Mr B.**
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> **8. For some reason this communication did not reach the Respondent until June 2018 and in the meantime the Claimant had presented her claim to the Tribunal. The Respondent replied on 9 July 2018 as follows: 'The Group does not want to put Suzanne, or any colleague, in a position which might be detrimental to her personal health and wellbeing, however, whilst we can make some efforts to make sure that Suzanne does not have to work with [Ms M] or [Mr B] in future it is not possible to provide an absolute guarantee of this for a number of reasons…..I can confirm that the Group would not offer redundancy or severance as an alternative as Suzanne's role would not be redundant'. There was no response.**
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> **9. The Claimant has continued working for the Respondent without any problems at work. Ms M was selected for redundancy in a recent reorganisation and will be leaving the Respondent in early March 2019. The Claimant was not selected for redundancy in the last reorganisation. Mr B continues to work in London."**

Ms M in fact did leave the bank's employment as predicted in paragraph 9 in March 2019.

4. There was an agreed list of issues arising out of the claim which formed the structure of the remainder of the Judgment and which is of significance in this appeal. Issue 1 related to whether the Claimant was a disabled person and was not in dispute by the time of the Hearing. It is important to note what issue 1 was recorded as being:

> **1.1 Did the Claimant have a mental impairment at the material time, i.e., following her return to work on or around 9 October 2017, namely reactive depression?**
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> **1.2 At the material time did the Claimant's impairment have a substantial adverse effect on her ability to carry out normal day-to-day activities?**

1.3 At the material time, had the substantial adverse effect of the impairment on the Claimant's ability to carry out normal day-to-day activities lasted for a period of least 12 months or was it likely to do so?

Those issues were effectively agreed in Mrs Hill's favour. There was then an issue whether the bank had knowledge of the disability and that also was not in dispute.

5. The important issues related to the question of reasonable adjustments and they were set out as issue 3, which I will read into this record:

"3.1 Did the Respondent apply the following provision, criterion or practice (PCP) (or was such a PCP applied on behalf to the Respondent)?
Not offering members of staff any undertaking or comfort that it will ensure employees are not placed to work with people who have previously bullied them and/or have been alleged to have bullied them and/or have a real potential to cause (further) injury to the employees' mental health.

3.2 Did the PCP in question put the Claimant at a substantial disadvantage in comparison with persons who are not disabled?

The Claimant assets that the substantial disadvantage was placing the Claimant in a state of constant fear, worry and stress that she may be required to work under Ms M and Mr B, who she alleges had previously bullied her. This exacerbated the Claimant's physical symptoms of inflammation, pain, hypervigilance, inability to concentrate, exhaustion, panic attacks and hair loss, as well as her mental symptoms of shattered self-confidence, low self-worth, low self-esteem, hopelessness, anger, hypersensitivity, isolation and withdrawal.

3.3 is a question that relates to the bank's knowledge and has not featured as controversial and I will not read that.

3.4 The Claimant asserts that the following adjustment(s) would have alleviated the alleged substantial disadvantage:

The Respondent providing an undertaking to the Claimant in writing that:-

(a) It will not rearrange duties or roles so that the Claimant has to work with or report to Ms M or Mr B; and,

(b) in the event that business demands leave it with no practical alternative, it will offer the Claimant a redundancy/severance payment under the full terms applying to employees of the Claimants contractual status at the time of the offer of dismissal.

3.5 Were the steps at 3.4 reasonable?"

Finally on the list of issues, issue 4.3 was whether a recommendation that the Respondent provide within 14 days the undertaking set out at issue 3.4 would be just and equitable and should be made.

6. The ET found for the Claimant on each of those points and made a recommendation, although in rather different terms to those specified in paragraph 3.4 of the list of issues.

7. The Bank appeals first against the Tribunal's findings in relation to the failure to make reasonable adjustments challenging the conclusions on each stage of the reasoning.

8. First, the PCP. Mrs Shepherd for the Bank said that not offering an undertaking in the form set out in paragraph 3.1 of the list of issues was not a PCP; she said it was a one-off decision in relation to the bank's dealings with Mrs Hill. It is accepted that if that is the proper categorisation of what happened, then it could not be a practice, still less a criterion or provision. But Mr Barnett for the Claimant points out that the ET did in fact make findings of fact on this question at paragraph 26 of the Judgment where they say: "The Tribunal finds it is the practice of the Respondent not to give binding undertakings but to give words of comfort to use best endeavours or best effort". He also referred us to paragraph 33 of the Judgment which comes in rather a different context but is referring to the evidence given by the Bank's witness, Miss[Carey-Smith]. He referred us to the final sentence in that paragraph which says "She [Miss Carey-Smith] said that undertakings were never given but words of comfort such as best effort or best endeavours were." He also referred to another finding at paragraph 45 which was this:

> **"The Respondent's evidence was that it was agreed that the issue is not that they could not arrange for people [not] to work together but more that they did not want to put it into a contract, thus acknowledging that the Respondent can do what is says now it can't do."**

In the light of the clear finding of the ET, we reject the appeal on this point. There was, on the Bank's own evidence, a practice of not giving undertakings that people would not have to work with others and that is a finding of fact which cannot be challenged.

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9. The second area of appeal relates to the question of substantial disadvantage in comparison with people who are not disabled. It is well established in this jurisdiction that an ET should, as part of its reasoning, identify and analyse; (a) the nature of PCP; (b) those who are not disabled, who are the comparators; (c) the nature and extent of the disadvantage that the disabled person is put under and; (d) the steps which it is reasonable to take to avoid or alleviate that disadvantage. The substantial disadvantage alleged in this case is set out under paragraph 3.2 in the list of issues: it basically placing the Claimant in a constant state of fear. The Tribunal's reasoning in relation to substantial disadvantage in comparison with people who are not disabled is to be found at paragraphs 28 to 31 where they said this:

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> **"28.The Respondent's submission was that the Claimant says she is happy at work and has no problems under her current line manager and that essentially, she has no difficulties working on a day-to-day level. Insofar as the potential of working with them arises, the Claimant does not want to work with Mr B or Ms M and they similarly do not want to work with her. It was submitted that they are in different business units and different locations and that she is not involved with them and has never been asked to work with them since she returned to work or to engage in any project with them. The Respondent's position is that the Claimant wants an adjustment now for disadvantage in the future and consequently no substantial disadvantage is shown.**
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> **29.The Claimant submitted that the substantial disadvantage is working in fear that she may in the future be required to work with Ms M or Mr B and that she states in her witness statement that all she wants to do is to feel safe when working. It was submitted that most people do not work in that state of anxiety or fear and this is a substantial disadvantage over non-disabled people.**
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> **30.The Respondent did not challenge the Claimant's evidence about how she felt at work and therefore the Tribunal accepts her unchallenged evidence even though there is no medical evidence to back it up.**
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> **31.The threshold for a substantial disadvantage is not high, being no more than minor or trivial, and on this basis the Tribunal finds that the Claimant was placed at a substantial disadvantage."**

10. Mrs Shepherd says on behalf of the Bank that the "root cause" of the disadvantage, namely of her fear, was Ms M and Mr B and not the alleged PCP and, in any event, that the ET has given no adequate reasons for the decision on the issue they were concerned with in those paragraphs.

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11. It has to be accepted we think that the reasoning is not as full or clear as it could have been, but Mr Barnett says that like all ET judgments this one must be read generously and he also says that the reasoning must be seen in the context of the submissions that were being made by the parties. He said, and it is not disputed, that the Bank's main submission did not relate to any question of comparison or causation but to the very existence of the substantial disadvantage. That is the point of the recording of the submissions at paragraph 28 and that is why paragraphs 30 and 31 are cast in the way they are. Clearly, in our view, it was open to the ET to find that Mrs Hill was indeed suffering from anxiety and fear at work, so that the Bank's case as outlined in paragraph 28 did not succeed and that was simply a matter of factual finding.

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12. As to the question of comparison/causation, we consider that paragraph 29 makes clear that the ET were of the view that the source of the fear was that she may later be required to work with Ms M or Mr B (if no undertaking was given) and that others who were not disabled (but who had been or had alleged that they had been bullied) would not work in that state of fear. As we say, the reasoning could have been better and more fully expressed and indeed the parts that we have put in brackets above are not really spelt out. However, we consider nevertheless that the reasoning in this respect is understandable and sufficient in the circumstances, particularly given that the real issue was apparently whether in fact she was at any advantage at all, ie whether in reality she was in fear as she said. In those circumstances we reject this ground of appeal.

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13. The next issue relates to alleviation or avoidance of that substantial disadvantage. The Bank says that the ET did not really assess whether the proposed step, namely the undertaking asked for, would have the purpose or effect of avoiding the disadvantage, namely working in a

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state of fear. It is true to say that this point is not expressly addressed in the Judgment, though it is implicit in the finding that the proposed adjustment was one that it was reasonable to make.

14. However, Mr Barnett says, this point about alleviation was not a real issue at all and that is shown by the way the issues were drafted in paragraphs 3.4 and 3.5. He also says that they were drafted that way and it was not really an issue because the receipt of an undertaking by Mrs Hill was obviously going to remove or alleviate to some extent her fear that she may later end up being required to work with Ms M or Mr B and indeed, that was the very thing that she asking for in order to alleviate her fear. We accept Mr Barnett's submissions in this respect. The ET were entitled to find, as is implicit in their Judgment, that the fact that she was able to carry on working was not an answer to the point that she was working in fear and that the giving of an undertaking would have alleviated that fear.

15. The next issue relates to whether the proposed adjustment was reasonable, which is really issue 3.5. The ET analysed at length whether it was reasonable for the bank to be required to take the steps contended for in paragraphs 33 to 49 of the Judgment. They reached the conclusion at paragraph 48 that the giving of an undertaking in the terms the Claimant suggested was reasonable and that consequently the Respondent failed to make reasonable adjustments. At paragraph 49 they said, "This would not create a precedent as the Respondent suggested. This is an adjustment to the normal practice because of the Claimant's disability."

16. The Bank says that it would be unreasonable to require them to undertake to make a substantial redundancy/severance payment some time in the future because (a) the circumstances would be that the employee may not in fact be redundant and (b) the purpose of a

reasonable adjustment is to keep an employee in work and not to make provision for her to leave work. That second submission is placed on a proposition in a case called **Tameside Hospital NHS Foundation Trust v Mylott** UKEAT/0399/10/1304, which is a decision of the Employment Appeal Tribunal before Underhill J, which is at tab 6 in our bundle of authorities and in particular, the proposition comes from paragraph 53 of that Judgment. It is not a controversial proposition, in other words Mr Barnett accepts it as a point of law.

17. We see no reason why reasonable steps should not include the giving of an undertaking to provide a disabled employee with certain benefits if in future certain circumstances arise. The fact this would amount to a special benefit cannot be an objection: giving special benefits is inherent in the whole reasonable adjustments disability discrimination scheme. The purpose of the particular undertaking relating to the severance payment is clearly to give a backstop (to adopt an unfortunate term) which will enable Mrs Hill to work without fear that the main part of the undertaking, namely that she will not be required to work with the two people in question, will be breached. Its underlying purpose is therefore indeed to keep her at work by allowing her to work without fear that she will be working with B or M and to give the Bank an incentive to see that that remains the position.

18. We therefore consider that the ET were entitled to reach the view they did on liability and we reject the Bank's appeal on all the issues relating to liability.

19. The appeal against the assessment of compensation for injury to feelings of £7,500.00 has already been rejected by the President.

20. That brings us to the question on the recommendation. The form of recommendation made by the ET originally was as follows:

> **"The Tribunal makes the following recommendation:**
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> **The Respondent undertakes to ensure that the Claimant does not work or interact in any capacity with Mr B or Ms M and that in the event that this not possible that the Respondent and the Claimant explore suitable alternative employment with the Respondent and if this fails that the Respondent uses its best endeavours to ensure that the Claimant can leave the Respondent with a severance package equivalent to its redundancy payment scheme applicable at the time of her departure."**

That recommendation was, as we have said, set aside by the ET on reconsideration, so that as matters stand there is no recommendation in place. We observe there were plainly problems with the recommendation as made originally and, indeed, we are puzzled as to why the ET did not just make a recommendation in the terms Mrs Hill had asked, which reflected precisely the terms of the reasonable adjustments she was suggesting should have been made. To identify the problems with the recommendation made by the ET very briefly: first, there was no time limit on the requirement to give an undertaking; second, there was no requirement that it should be in writing; third, the undertaking to see that the Claimant did not interact in any capacity with Mr B or Ms M seems to us a rather wide undertaking to require; fourth, the undertaking would have required things to be done by the Claimant exploring suitable alternative employment, which is not really a suitable form of undertaking to be given by the Bank; fifth, there was provision for "best endeavours" to be used which was perhaps rather vague.

21. On those grounds, we would agree that the recommendation as originally made should be set aside and consideration given to a fresh form of recommendation. However, the real issue that arises in this Tribunal is whether a recommendation along the general lines proposed can be upheld in principle. The Bank say that it cannot and in effect they persuaded the ET of that on the Reconsideration Hearing.

22. It is helpful to have regard first of all to what Section 124, which deals with remedies under the **Equality Act 2010** ("the EqA"), says about recommendations. First, it should be noted that that section applies to all cases of contraventions of the **EqA** which come in front of the ET. The section says so far as relevant:

> **"(2) The tribunal may—**
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> **(a) make a declaration…**
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> **(b) order the respondent to pay compensation…**
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> **(c) make an appropriate recommendation.**
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> **(3) An appropriate recommendation is a recommendation that within a specified period the respondent takes specified steps for the purpose of obviating or reducing the adverse effect on the complainant of any matter to which the proceedings relate.**
>
> **...**
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> **(7) If a respondent fails, without reasonable excuse, to comply with an appropriate recommendation the tribunal may—**
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> **(a) if an order was made under subsection (2)(b), increase the amount of compensation to be paid…"**

Before we go any further, we note that in this case the form of the proposed recommendation was of course that the Bank give an undertaking. Breach of that undertaking, if it was given, would not be a matter that would arise or be referred back to the Tribunal under Section 124(7). Such a breach may give rise to a claim for constructive dismissal or some contractual claim but that would be another matter. Therefore, the ET would only be concerned under Section 124(7) if it was alleged that the written undertaking had not been given in compliance with the recommendation.

23. The ET at the Reconsideration Hearing were referred, as was this Tribunal, to two cases on recommendations: **Prestcold Ltd v Irvine** [1981] ICR 777, a decision of the Court of Appeal and a case called [**Fasuyi v London Borough of Greenwich** [1998] UKEAT/1101/97/0607?] a decision of the Employment Appeal Tribunal ("EAT") from [2000?]. Neither of those cases related to an undertaking, but the Bank says in effect that the

requirement for an undertaking in this case would really be a disguised recommendation laying down the requirements in the undertaking. The ET's reasons for revoking the recommendation they originally made are set out very briefly at paragraph 6 of the Reconsideration Judgment on page 11 of the bundle. There are really two reasons in that paragraph.

24. First, it is said that the recommendation includes matters relating to renumeration, i.e., severance pay, which is not appropriate for a recommendation. In the **Prestcold** case, there was a provision about wages to be paid to the Complainant, which the Court of Appeal considered to be inappropriate. However, in that case the period over which the wages was to be paid was not clear and there was at that time a cap on compensation of £5,200.00 in the equivalent provision to Section 124(7). That cap has now long since gone from the legislation and in any event as we have already said any failure to comply with the undertaking would not be the subject of a claim under Section 124(7).

25. We can see no objection of principle to a requirement by undertaking that a particular employee should be treated as redundant in certain circumstances. The whole point of the reasonable adjustments regime is that it is designed to benefit disabled employees and many recommendations can have financial implications. My colleagues in discussion mentioned provisions about carrying on with sick pay on at a full rate in certain circumstances or provisions that a particular employee is moved from A to B which may have financial implications for both employer and employer. Therefore, we cannot see any objection in principle to a recommendation (or indeed an undertaking) that will have potential financial implications. Also, we have already referred to the fact that the purpose of this particular part of the undertaking was in fact to reinforce the basic undertaking that the Claimant would not be

required to work with B or M. Therefore, we do not consider that this objection to the recommendation in principle is valid.

26. The second reason that the ET relied on in paragraph 6 of their Reconsideration Judgment was that it was not possible to specify a period of time for compliance with the recommendation or to specify the period during which it would apply in the future. The first answer to this point again is that the time limit to be applied would have been a time limit on the giving of the written undertaking which could not involve any problem. However, in any event, we can see no problem with a requirement that "steps" once taken must remain in place indefinitely. That is likely to be case in relation to very many straightforward recommendations. For example, a recommendation that a Claimant's place of work is moved to another place carries with it the inevitable implication that that is a state of affairs which should continue to apply indefinitely, so the fact that a recommendation or an undertaking may go on for an indefinite period does not seem to us to be a valid objection at all.

27. The fact that Ms M had left by the time of the reconsideration, which is also mentioned by the Tribunal, does not seem to us to be relevant at all. At the time of the original recommendation she was still employed by the bank and so that the recommendation as originally made quite properly included reference to her. Once she had gone, we see there was no danger whatever the Bank finding themselves in breach of the undertaking. We therefore considere that the ET's reasons for revoking the recommendation, at least as far as they were points of principle, were flawed.

28. Ms Shepherd also complained about the fact the recommendation or the undertaking contained alternatives. This submission was based again on the **Prestcold** case. We note again that that case related to the terms of a specific recommendation, not to the terms of an undertaking required by recommendation. Furthermore, on a close analysis of the Court of Appeal's reasoning at page 781 of the report of the case, the objection was in fact to a lack of clarity in relation to how the words "in the alternative" were to apply in that particular case and were not to be very concept that a recommendation might involve alternatives in simple circumstances. Therefore, we reject the objection based on that argument.

29. In general, we can see no objection in principle to a recommendation that an employer give an undertaking in suitable (perhaps rare) cases. Here, the ET had found that the very step that was required to alleviate the disadvantage being suffered by Mrs Hill was an undertaking that she could rely on to give her comfort. The failure to give that very undertaking was the basis for her success on the disability discrimination claim. In those circumstances, we see no reason why the ET should not have made a recommendation along the lines proposed. We shall therefore allow the appeal in relation to the Reconsideration Decision and remit the question of what recommendation should be made to be considered again by the ET.

30. That brings us to the final area of controversary, namely the anonymisation of the names of the two members of staff about whom Mrs Hill had complained. The Tribunal as we have already said gave no reasons for doing that beyond the very short observation that the Judgment would be put up on the website. They did not refer to Rule 50 in the **Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013**. It is also fairly apparent that they did not have regard to the Decision of **Simler P**, which is to be found at tab 10 in our bundle of

authorities, **Fallows & Ors v News Group** [2016] IRLR 827 and in particular to paragraph 48 of that Judgment which sets out clearly matters that should be looked at. Nor did they have regard, perhaps unsurprisingly, to an interesting case in the ECHR from Spain which we were also referred to at tab 13 in our bundle of authorities.

31. We consider that once the ET had decided it might be appropriate to anonymise the names, they should have invited submissions before deciding to do so and given some reasons, however brief, if there was an issue about the matter. We think that this question can conveniently be remitted the Tribunal along with the issue of what recommendation should have been made.

32. Therefore, drawing it all together, we allow the appeals in relation to the recommendation made originally and the reconsideration Decision and in relation to anonymity. Those matters should all be remitted for decision by the ET. We would have thought it should be the same Tribunal; we cannot see any sense in a different one, but we will hear submissions. All the other grounds of appeal are dismissed.