TRIBUNAL WAS WRONG TO FIND THAT AN EMPLOYEE WHO WAS OFF SICK FOR FOUR MONTHS WITH PTSD WAS NOT DISABLED

```
[et_pb_section bb_built="1" background_color="#ffffff"
fullwidth="on" custom_padding_last_edited="on|desktop"
_builder_version="3.0.99"
custom_padding_tablet="50px|0|50px|0"
transparent_background="off" padding_mobile="off"
custom_padding="|||" next_background_color="#000000"
global_module="136"][et_pb_fullwidth_header
global_parent="136" title="Employment Law News"
_builder_version="3.0.99"
background_image="http://davidk423.sg-host.com/wp-content/uplo
ads/2017/09/bdbf_final-stages-1-4-1.jpg"
background_layout="dark" title_font="||||||||"
subhead_font="||||||||" background_color="rgba(255, 255, 255,
0)" button_one_text_size__hover_enabled="off"
button_one_text_size__hover="null"
button_two_text_size__hover_enabled="off"
button_two_text_size__hover="null"
button_one_text_color__hover_enabled="off"
button_one_text_color__hover="null"
button_two_text_color__hover_enabled="off"
button_two_text_color__hover="null"
button_one_border_width__hover_enabled="off"
button_one_border_width__hover="null"
button_two_border_width__hover_enabled="off"
button_two_border_width__hover="null"
button_one_border_color__hover_enabled="off"
button_one_border_color__hover="null"
button_two_border_color__hover_enabled="off"
```

```
button_two_border_color__hover="null"
button_one_border_radius__hover_enabled="off"
button_one_border_radius__hover="null"
button_two_border_radius__hover_enabled="off"
button_two_border_radius__hover="null"
button_one_letter_spacing__hover_enabled="off"
button_one_letter_spacing__hover="null"
button_two_letter_spacing__hover_enabled="off"
button_two_letter_spacing__hover="null"
button_one_bg_color__hover_enabled="off"
button_one_bg_color__hover="null"
button_two_bg_color__hover_enabled="off"
button_two_bg_color__hover="null"
/][/et_pb_section][et_pb_section          bb_built="1″
admin_label="section"
prev_background_color="#000000″][et_pb_row  admin_label="row"
background_position="top_left"    background_repeat="repeat"
background_size="initial"][et_pb_column type="3_4″][et_pb_text
use_border_color="off"          border_color="#ffffff"
border_style="solid" _builder_version="3.17.6″]
```

Tribunal was wrong to find that an employee who was off sick for four months with PTSD was not disabled

The EAT overturned an employment tribunal's decision that a school had no knowledge of an employee's disability where the evidence showed that it ought reasonably to have known that the employee was a disabled person.

Ms Lamb, a teacher, was off school from 29 February 2012 because of reactive depression and alleged bullying at work. In March 2012, she raised a grievance regarding two incidents: (1) the deputy head informing her that she was responsible for causing an unnamed boy to feel suicidal, and (2) her passing onto the Deputy Head written complaints by some of her pupils

that a particular pupil had used racist language.

Regarding the first incident, the Deputy Head had later informed Ms Lamb that it had been a case of mistaken identity and the child was not, in fact, in her class. So far as the complaints about racist language was concerned, the Deputy Head simply put the complaints in the bin without considering them. After an investigation, the School's Head of HR upheld Ms Lamb's grievance, but her report presented to the School's Chief Executive in July 2012 was regarded as inadequate and set aside. None of the supporting material provided by the Head of HR had been reviewed by the Chief Executive. On 18 July 2012, Ms Lamb met with the Chief Executive and informed her that she was suffering from post traumatic stress disorder (PTSD) caused by childhood experiences, which could be triggered by difficult situations. She was thereafter assessed by Occupational Health (OH).

The OH report dated 21 November 2012 concluded that Ms Lamb's symptoms of reactive depression most likely began in September 2011 and found that she had a good prognosis for full recovery if any outstanding issues relating to her grievance were resolved. The Respondent therefore conducted a fresh investigation, which rejected her grievance in January 2013.

Ms Lamb brought a claim for disability discrimination. Her claim included a claim for failure to make reasonable adjustments. Three adjustments were identified, all connected with the School's handling of the report prepared by the Head of HR:

- The school should have read the report and its supporting documentation with a reasonable degree of care.
- A member of the executive team should have acted promptly on the report and completed this exercise before the end of the summer term.
- The report ought to have been disclosed to Ms Lamb in

any event.

The tribunal held that the school was under no obligation to make these adjustments because it could not have been expected to know that Ms Lamb had a disability at the time. The school could only be considered fixed with the knowledge of disability from November 2012, once it had received the report from OH. The EAT unsurprisingly allowed Ms Lamb's appeal and held that the Tribunal's finding of the school's actual knowledge of the Claimant's PTSD (18 July 2012) was when it became aware that she had a disability and the date from which reasonable adjustments had to be made.

It would also have been reasonable to make the adjustments after reading the report from the Head of HR carefully and using it as a platform for reaching a conclusion by the end of July and for a member of the executive team to have expanded on the report, rectified its defects and completed it by the end of the summer term 2012. However, the tribunal had been correct to find that it would not have been a reasonable adjustment to have disclosed the report to Ms Lamb. To disclose a report that had been set aside and where the whole matter on which it was based was to be re-investigated would not have helped Ms Lamb.

Lamb v The Garrard Academy UKEAT/0042/18

[/et_pb_text][/et_pb_column][et_pb_column type="1_4″][et_pb_sidebar orientation="right" area="sidebar-1″ background_layout="light" remove_border="off" show_border="on" /][/et_pb_column][/et_pb_row][/et_pb_section]