

IN THE COUNTY COURT AT CAMBRIDGE

Case No: D4QZ231M

Hearing Room 4

197 East Road  
Cambridge  
CB1 1BA

Wednesday, 8<sup>th</sup> November 2017

Before:  
DISTRICT JUDGE CAPON  
SITTING WITH DENISE CLARKE AS ASSESSOR

B E T W E E N:

ESTHER LEIGHTON

and

MR YETER KAHRAMAN  
(T/A CARLOS BBQ)

MR N ROBERTS appeared on behalf of the Claimant  
THE DEFENDANT appeared In Person

JUDGMENT  
(Approved)

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DJ CAPON:

1. Having heard all the evidence on Monday and having heard counsel's submissions on Monday, Mr Kahraman not being present on Monday; he said he was not aware of the proceedings although I cannot accept that. This trial date has been notified since 31 July. Mr Kahraman had solicitors acting on his behalf who played a part, it seems, in the preparation of his witness statements. The solicitor said he was instructed on 19 September. I believe he came off the record at some point last week, so I am told. It is somewhat surprising in those circumstances that Mr Kahraman says he was unaware of the trial date. The last letter from Mr Kahraman's solicitors, 20 October:

'Please find enclosed two copies of the witness statements made by the following witnesses: Mr Yeter Kahraman; Mr Stephen Creasey, Mr Mark Dunn. We are filing these statements on behalf of the first defendant, Mr Kahraman, trading as Carlos BBQ. The claimant has declined to include these documents in the trial bundle'.
2. There we are. The directions in this case were that the witness statements be filed by 22 September. It seems to me that the solicitors must have appreciated when they were filing those witness statements on 20 October that this was the trial date. I fail to see how they can take on the proceedings without familiarising themselves with the papers and knowing when the case is. The reference to there being a trial bundle is clearly demonstrable within the discussions with Ms Leighton about this. I simply cannot accept the explanation given by Mr Kahraman.
3. The difficulty I have is that, as I have said, we completed the hearing of such evidence as was before the court on the last occasion. I am conscious that Mr Kahraman has attended today. He just says that I should believe what he says and he has not done anything wrong. The only way that the court could sensibly enable Mr Kahraman to participate in these proceedings would be to start the whole thing again, have the evidence of the claimant, and the claimant's witnesses all over again, to allow Mr Kahraman the opportunity of cross-examining and challenging that evidence and then to hear Mr Kahraman's witnesses and have them be cross-examined.
4. I am conscious of the fact that Mr Roberts is here *pro bono*. It would strike me as being wholly unfair and unjust to start these proceedings again, to enable Mr Kahraman to participate in them. He has had the opportunity of participating and he had not availed himself of that opportunity.
5. I remind myself what the overriding objective says in respect of matters generally. The overriding objective is for the court to deal with cases justly and at proportionate cost. Dealing with the case justly and at proportionate cost includes so far as practicable: ensuring the parties are on equal footing; saving expense; dealing with the case in ways that are proportionate to the money involved; the importance of the case; complexity of the issues; the financial position of each party; ensuring – and this is the important one – ensuring it is dealt with expeditiously and fairly; allotting to it an appropriate share of the court's resources while taking into account the need to allot resources to other cases; and enforcing compliance with the rules, practice directions and orders.
6. To allow this matter to be re-started would be, it seems to me, breaching a number of those principles which are set out there in Part 1, rule 1 Civil Procedure Rules. We would have to find another two days. The whole two days that was allotted to this case would be wasted. Other court users who would use those further two days would be put out, put back, their cases would be delayed and, it seems to me, it would be utterly unfair to do so. Therefore, I

am not going to do that. I am going to proceed to give judgment on the basis that I would have, had Mr Kahraman not attended this afternoon.

7. This is the judgment of the court in a small claim brought by Ms Leighton against Mr Kahraman, trading as Carlos BBQ at 70 Mill Road in Cambridge. Ms Leighton is disabled within the meaning of the Equality Act 2010. That much was conceded by Mr Kahraman at a previous case management conference. There is no issue about that. Mr Kahraman owns and operates Carlos BBQ. It is a food premises on Mill Road in Cambridge. That road has an eclectic mix of independent shops of a wide variety, including food shops, hairdressers, supermarkets, off-licences and very many other establishments.
8. The claim is one under the Equality Act 2010. The claim in basic terms is this: that Ms Leighton, who uses an electric wheelchair to get about, tried to get into Mr Kahraman's premises on two occasions, on 18 August 2016 and 27 September 2016, but was unable to do so, she says, because there is a threshold and she requires level access, or at the very least ramp access, so that she can manoeuvre her electric wheelchair over the threshold which, otherwise, it is not safe or sensible for her to attempt.
9. Her claim initially is one of failure by Mr Kahraman to make reasonable adjustments under sections 20 and 29 of the Equality Act. Section 29 says: 'A person (a "service-provider") concerned with the provision of a service to the public must not discriminate against a person requiring the service by not providing the person with the service'. The relevant sub-section is, 'A duty to make reasonable adjustments applies to a service-provider'.
10. Section 20 says, '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'. It says, 'The duty comprises the following three requirements'. The relevant requirement is sub-section 4:

'The second requirement is a requirement, where a physical feature 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'.
11. 'Substantial disadvantage' means more than minor or trivial, so the word 'substantial' is perhaps not given the same meaning in the Act as it might do to the general public. It simply means more than minor or trivial.
12. In relation to that second requirement, a reference in this section to avoiding substantial disadvantage includes a reference to removing the physical feature in question, altering it or providing a reasonable means of avoiding it. Ms Leighton's case is simply this, that a reasonable means of avoiding substantial disadvantage is to provide a temporary ramp or removable ramp to get her up and over the threshold of the premises. That is the reasonable adjustment claim.
13. There is also a claim for harassment under section 26 of the Act. Under that section a person harasses another if that person engages in unwanted conduct related to a relevant protected characteristic, of which disability is one, and the conduct has the purpose or effect (and in this case it is put as having the effect of), either violating the other person's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for that other person. In deciding whether conduct has the effect referred to in sub-section 1(b) (the purpose or effect), each of the following must be taken into account: the perception of the person to whom the behaviour is addressed, i.e. B, in this case Ms Leighton; the other circumstances of the case, and whether it is reasonable for the conduct to have that effect.
14. The harassment case is put in this way; First there was harassment by the actions of Mr Kahraman in seeking to physically assist Ms Leighton into his premises on 18 August,

- contrary to her intentions, and he was getting frustrated by that and effectively accusing Ms Leighton of not trying hard enough, in other words being difficult about it.
14. Secondly, what occurred on 27 September, where it is alleged there was an altercation inside Mr Kahraman's premises between himself and Dr Gamwell when Dr Gamwell says she sought or enquired as to whether there was a ramp available, being told there was not and handing a further letter to Mr Kahraman alleging a breach of the Equality Act and seeking compensation from Mr Kahraman or a donation to charity. Ms Leighton was outside the premises and while she could not hear what was being said, could see through the glass that there was an altercation going on and was told about it afterwards by Dr Gamwell as they proceeded down Mill Road.
  15. There is a second element to that, the claim for harassment on 27 September, in which it is said that Mr Kahraman approached Ms Leighton five or ten minutes later, waving his arms about and carrying the letter, or the two letters, saying it had nothing to do with him, and effectively trying to force Ms Leighton to take the letters back, being intimidatory, invading her personal space and then putting the letters into her electric wheelchair, behind the backrest.
  16. In the alternative, it is alleged that those actions, which are also claimed to be harassment, were victimisation under section 27, which is where a person subjects someone to a detriment because that person does a protected act, or they believe they have done or may do a protected act. A protected act is:
    - (a) bringing proceedings under this Act;
    - (b) giving evidence or information in connection with proceedings under this Act;
    - (c) doing any other thing for the purposes of or in connection with this Act;
    - (d) making an allegation (whether or not express) that A or another person has contravened this Act'.
  17. Further in the alternative, there is a claim under section 15 for, if I can put it this way, more straightforward discrimination, treating Ms Leighton unfavourably for something arising in consequence of her disability and that person cannot show that the treatment is a proportionate means of achieving a legitimate aim. Therefore, those are the nature of the claim, the last three, as I say, largely in the alternative.
  18. I have explained already, and I will give a short summary of the facts of Mill Road: lots of independent retailers. There are some national chains down there but, generally speaking, it has a lot of independently-owned businesses, of which Mr Kahraman is an owner/operator and has been for a little while.
  19. Ms Leighton lives in Cambridge. She likes Mill Road; she likes the shops in Mill Road. She is a student at the University of Cambridge and has been in an electric wheelchair for some time because of her disabilities, which are set out in her witness statement, which I need not go into. It is quite clear, and Mr Kahraman accepted on a previous occasion when he attended court, that Ms Leighton is clearly disabled within the meaning of the Equality Act.
  20. I have explained the nature of Mr Kahraman's premises. He serves a variety of different types of food there; it operates, as I understand it, as both a takeaway and premises where people can sit down and eat.
  21. On 18 August, Ms Leighton and Dr Gamwell were in Mill Road to visit a number of the shop premises. I am aware that Mr Kahraman believes that this is part and parcel of a concerted plan, if I can put it this way, to target independent retailers down Mill Road, effectively to extract money from them because of allegations made of breaches of the

Equality Act.

22. In one sense, it really does not matter because either Mr Kahraman is the service-provider, and I do not really think anyone is suggesting to the contrary, in which case he is under a duty to comply with the obligations of the Act, or he is not. If someone comes along and points out that he is not complying with the Act and demonstrates that he is not and is effectively discriminated against because of that failure, then it is not a defence, it seems to the court, to say that that individual is simply going down Mill Road to one premises after another in order to bring such claims. The court expresses no view about that because the court does not feel it is necessary or relevant given the evidence that we have heard.
23. However, on 18 August, Mr Kahraman's premises was one of those premises that Ms Leighton sought to visit. She has given evidence in her witness statement that she has been to those premises previously, not frequently, maybe on a couple of occasions before, and wanted to do so again. There is a threshold, a wooden threshold. I have seen photographs of it in the court bundle and there is a report from Mark Taylor from the local council, which I allowed into evidence on a previous occasion, which indicates that that threshold was in the order of five centimetres. It is not chamfered in any way. There is a definite vertical lift from the pavement and it has to be negotiated to get into the shop. I am told that there is a similar, if not larger, drop on the inside, but that is not really a relevant consideration for the purposes of this hearing.
24. Enquiry was made as to whether there was a ramp. There clearly was not a ramp at that stage, Mr Kahraman came out and said that he would assist Ms Leighton to get in by assisting her with her electric wheelchair by pushing it over the threshold if that was what was required. That was not what was required. What was required, Ms Leighton said, was something to enable her to access the premises independently. That was the issue. There was no ramp. Ms Leighton says there should have been a ramp. Mr Kahraman says, 'There is no need for a ramp because I could have assisted her to get in'. To put words in Mr Kahraman's mouth, his case is that that was a reasonable adjustment to make: Ms Leighton could get in, I could assist her in and that satisfies the Act.
25. When Ms Leighton declined help, her case is that Mr Kahraman became frustrated with her, felt that she was not making sufficient effort in order to enter the premises and sought to approach her wheelchair, whereupon she reversed up against a wall so he could not physically take hold of it and try and push her into the shop.
26. Following that encounter on 18 August a letter was sent to Mr Kahraman at the premises. I will read it out: '22 August, letter of complaint. I would like to complain about a problem that I have experienced accessing your premises, 70 Mill Road, Cambridge, on 18 August 2015 [it says 2015; it should be 2016] I believe I have been prevented from accessing your premises because you have failed to make a reasonable adjustment as required by law'. I am not going to read it out word for word because it is two pages closely typed. It says, 'I am writing this letter in accordance with the pre-action protocols. If I do not have a response within 14 days, I am going to issue proceedings in the county court'. It makes reference to insurers. It says, 'I am disabled within the meaning of the Equality Act. I need a powered wheelchair. I was not able to gain admission because there was a step'.
27. The letter explains the provisions of the Act that I have been through, and that no reasonable adjustments have been done. It makes reference to the statutory code of practice, the Services, Public functions and Associations code, paragraphs 7.3 and 7.4:

"The duty to make reasonable adjustments requires service providers to take positive steps to ensure that disabled people can access services. This goes beyond simply avoiding discrimination. It requires service providers to anticipate the needs of potential disabled customers for reasonable

adjustments.

The policy of the Act is not a minimalist policy of simply ensuring that some access is available to disabled people; it is, so far as is reasonably practicable, to approximate the access enjoyed by disabled people to that enjoyed by the rest of the public. The purpose of the duty to make reasonable adjustments is to provide access to a service as close as it is reasonably possible to get to the standard normally offered to the public at large.”

28. Paragraph 7.21 further provides:

“When disabled customers request services, the service provider must already have taken all reasonable steps to ensure they can be served.”

The letter says, ‘If you dispute this claim, I will require you to provide the following: policies and procedures relating to access at the premises; any relevant assessments in respect of possible adjustments to the premises and all related documentation’.
29. Ms Leighton seeks an apology, ‘an agreement that you will purchase a threshold ramp and a doorbell to improve access to your premises’ and Mr Kahraman’s proposals for ‘reasonable compensation’. Ms Leighton refers to the lower band set out in the case of *Vento v Chief Constable of West Yorkshire Police (no 2)* [2003] ICR 318. I will refer to that in due course. There is proof of postage of the letter.
30. Mr Kahraman has accepted in his witness statement that he received that letter. On 27 September, Ms Leighton and Sophie Gamwell returned to Mill Road. There were 18 premises, I am told, for which such letters were written, of which 16 were posted. Dr Gamwell’s evidence was that she went into the premises and saw Mr Kahraman behind the counter. Dr Gamwell’s evidence was that she asked Mr Kahraman whether he had a ramp so that Ms Leighton could get into the restaurant. She said he was quite agitated. He said he did not need a ramp as he was able to help Ms Leighton get into the shop. There was then an altercation and it really does not matter for current purposes, other than he kept on saying that he could help her in and the step was not a problem.
31. Dr Gamwell then handed him a letter, I think it was felt appropriate at that stage to do that in person. The letter was handed over and that letter says this, ‘As you know, I sent you a letter on 22 August [it then makes reference to the typographical error of the date and the fact it should have read 2016]. As a result, I have decided to send you a further letter with another opportunity to settle this dispute’. It makes reference to the visit on the 18<sup>th</sup>:

‘I attempted to access your premises. I was unable to get in due to a step which you did not have a ramp for. My wheelchair weighs over 140 kilos plus my own weight; therefore it is not safe to lift over any steps. Being assisted over a threshold is also physically painful for me so while some other wheelchair user may be able to access your premises without a ramp, I am unable to do so. As I outlined in my last letter, you are under an obligation to make anticipatory adjustments to enable disabled customers to enjoy the goods and services you provide on an equal footing with non-disabled customers’.
32. Then she repeats what was said in the last letter:

‘Should you wish to settle this matter and avoid court action, I would be

willing to accept the following: you getting the ramp and the doorbell, you paying a settlement of £500 or you making a donation of £750 to the Turbo Trust. As you are likely to be aware, my request to settle is less than a court would award’.

33. It says £750 is the least that nowadays may be awarded for the very slightest injury to feelings deserving of damages caused by discrimination on the grounds of disability:

‘This is in addition to legal costs which I incurred in bringing the claim. Should this settlement be acceptable, would you please email me on this email address or reply to this letter at my address. If I have not heard from you by this date, 4 October, I will issue proceedings in the county court’.

34. The evidence from Ms Leighton and Dr Gamwell is that, having left those premises and visited the Café de Paris, Ms Leighton was outside the Al Casbah restaurant when Mr Kahraman came down the street in an agitated fashion, waving his hands about, and approached Ms Leighton. Ms Leighton says he invaded her personal space, and repeatedly told her the letter was not for him, wanting her to take it back, which she refused, and then he placed the letter in the mechanics of her electric wheelchair, which she found distressing and intimidating.

35. The proceedings were brought in February of this year. The Particulars of Claim sets out the claim in a detailed fashion. They are Amended Particulars of Claim. Mr Kahraman’s Defence is somewhat unusual. It is in the form of an email. It says, ‘I write in reference to your claim number, which I wish to defend’. It makes reference to the fact that Mr Silah was named; he is a deceased uncle of the defendant so not relevant. The e-mail says:

‘I defend this case as I have many wheelchair customers and I have never had a problem with wheelchair access at any time before. Ms Leighton did not attempt to access my shop. On her second visit when I returned her unsigned letter to her (after she refused to have it returned) Ms Leighton verbally abused me. I did not reply back other than to say, “not for me.” When I returned to my shop, Ms Leighton was arguing with the owners of Al Casba restaurant, swearing at them.

I had a visit from the police around a few weeks after her second visit stating that Ms Leighton had made a complaint. The police found that I had done no wrongdoing and requested I make a complaint about Ms Leighton’s harassment, which I did so.

I have attached all the documents relating to this case to this email including: Covering letter from Mill Road Traders; Letters from existing customers; Photographs; News Article’.

36. The letter from the Mill Road Traders’ Association, dated 27 February 2017, relates to five claims, all brought by Ms Leighton, some of which are proceeding in this court. It says, ‘We are writing to you in reference to the above claim number’, and that was addressed to Money Claims Online in Northampton. ‘The above claim numbers relate to the claims, Ms Esther Leighton v numerous Mill Road Traders. We hereby request the claimant consolidate her almost identical claims into the same claim to save court time’. It describes Mill Road. It says, ‘On 18 August Ms Leighton states she approached a number of independent stores and was unable to access the premises ... On 22 August, at least sixteen

shops received a hand-delivered, unsigned letter from Ms Leighton' and it makes reference to that letter.

37. There are a number of premises and businesses noted there. In respect of Carlos café takeaway, it says, 'Carlos does not recall Ms Leighton ever attempting to come into his café on Mill Road'. It says:

'Carlos was unsure whether the first letter was a scam letter or not. When Ms Leighton tried to hand deliver the second letter, Carlos went out to give it back to her, stating he has many customers in wheelchair and access has never been an issue. He told Ms Leighton the letter is not for him as it doesn't apply to him. Carlos gave the letter back; however the police were called by Ms Leighton. The police attended and told Carlos there was not a problem as there was no wrongdoing by him'.

38. It goes on to say, picking out the bits relevant to Mr Kahraman, it says:

'We wish you to note that we do not believe Ms Leighton attempted to enter any of the stores that have direct access to the street. In her letter, Ms Leighton demands each shop purchase a small ramp and doorbell plus compensation in the form of a payment of £750 either a named charity or £500 to Ms Leighton'.

In fact that is the letter that was handed in on 27 September.

39. In relation to 27 September, the letter goes on: 'Ms Leighton returned to hand-deliver further unsigned letters to numerous shops on Mill Road. On this occasion, Mr "Carlos" Silah [I think it means Mr Kahraman] returned his letter to Ms Leighton stating he had many disabled customers and therefore was confused as to the reason why he was receiving the letter. Ms Leighton verbally abused Carlos and refused the letter. Carlos placed the letter at the back of Ms Leighton's wheelchair without comment. Mr Silah [sic] has not met or seen Ms Leighton before this day'. That cannot be right. 'Ms Leighton called the police around a month later who visited Carlo's and found no cause for concern. Mill Road Traders have since spoken with the police about Ms Leighton's behaviour and have been advised to report her actions as a matter of harassment. This was done .... Other traders have also made similar individual complaints. Ms Leighton has issued court orders for 7 shops on Mill Road requesting large sums of compensation totalling around to at least £19,000. Ms Leighton has highlighted potential issues with disabled access that Mill Road Traders were not aware, given the many wheelchair users that use their shops. The traders have acted on the complaint to seek advice and follow recommendations so that they know they have done all they can to help wheelchair users know that they can access shops on Mill Road. However, we wish to point out that Ms Leighton has visited some of these shops previously without assistance and in other cases has never attempted to enter or ask if there was a ramp. We defend Ms Leighton's allegation of humiliation and embarrassment towards her in that in some of the cases we confirm Ms Leighton did not attempt to enter the premises or speak to staff to ask for a ramp. Ms Leighton has eaten in one of the restaurants and then she sent a letter to say that she was embarrassed as she could not enter' [that does not relate to this one].

'Ms Leighton She has never brought the issue of access to our attention previously though she states an email was sent to the Mill Road coordinator .... As Mill Road Traders are not Mill Road Coordinator, we cannot confirm this. Ms Leighton could have spoken to each manager properly in regards to access however she failed to do so, instead issuing a number



of letters requesting compensation.’

40. They want the claims to be dismissed and there are various letters in relation to this matter about how Mr Kahraman’s premises are easily accessible to individuals’ wheelchairs, how helpful Mr Kahraman is and has other disabled customers with no problem accessing his premises, and there is a photograph of a lady in an electric wheelchair, it would appear, inside Mr Kahraman’s premises, and so on and so forth.
41. The proceedings were issued. That was the defence. Directions were given and the trial date was fixed on 31 July, for Monday of this week and Wednesday of this week, two days, notwithstanding that it was allocated to the small claims. Both parties filed witness statements. I have already explained that in September Mr Kahraman instructed solicitors who dealt with the production and service of the witness statements. That solicitor came off the record, I am told, in the middle of last week. As to attendance at trial: the claimant attended on Monday with her witnesses and with *pro bono* counsel and no one attended for Mr Kahraman. Attempts were made to contact the solicitors to find out if they had come off the record and counsel told me he had telephoned the Defendant’s premises and could not get through.
42. I have dealt with the law in some detail already, what adjustments means; disability is not an issue in this case; what substantial disadvantage means; the duty to make reasonable adjustments arises if Mr Kahraman is a service provider, which he clearly is; the fact that the duty is anticipatory because it is a duty that in schedule 2 of the Act, paragraph 2(2) it says, ‘Services and Public Functions, Reasonable Adjustments: This schedule applies where a duty to make reasonable adjustments is imposed by this part: (a) the service provider must comply with the first, second and third requirements’, the second requirement being that in respect of physical barriers. ‘For the purposes of this paragraph, the reference in section 20(3), (4) or (5)’, (4) is physical barriers, ‘reference to a disabled person is to disabled persons generally’, and it is quite clear from that and the statutory guidance that it is an anticipatory duty. Therefore, it is not sufficient for a service provider to wait for someone to try to get into their premises and fail. They have to make reasonable adjustments in anticipation.
43. The service provider has to anticipate the difficulties that disabled people generally may have in accessing their premises over physical barriers and make reasonable adjustments in advance. Of course, the service provider necessarily has to anticipate that disabled people are disabled in unique ways. Not everyone in a wheelchair has the same disability. Not everyone who uses a wheelchair uses an electric wheelchair. Manual wheelchairs are very different. There is a variety of manual wheelchairs. There is a huge variety of electric wheelchairs, all of which have different capabilities. These things need to be anticipated and reasonable adjustments made so that anyone in a wheelchair can access premises over the threshold that exists. That is the duty.
44. I will mention briefly the burden of proof in this case, section 136 of the Act. It is rather otiose in this case because of the nature of the attendance at trial, but this says: ‘This section applies to any proceedings relating to the contravention of this Act’, which these proceedings are, ‘If there are facts from which the court could decide, in the absence of any other explanation, that a person contravened the provisions concerned, the court must hold that the contravention occurred unless, as subsection 3 states, that person shows they did not contravene the provision’.
45. Essentially, what that means is if, looking at all the facts that are found by the court, irrespective of the evidence from which it comes, the court could decide that, for example, Mr Kahraman contravened the Act in any particular way, the court must hold that he has

- contravened the Act unless he can show that he did not contravene the relevant provisions. Because Mr Kahraman was not here, his ability to demonstrate anything by means of his evidence was severely limited. Whilst the court had his written evidence and the defence and the documents attached to that and the written evidence of his witnesses, he was not here to speak to those or cross-examine or be cross-examined himself or have his evidence tested. Therefore, whilst the court bears that provision in mind, it is of limited benefit in this case or limited applicability in this case given the way the trial has progressed.
46. Harassment: Section 26, 'A person harasses another if he engages in unwanted conduct related to a relevant protected characteristic and the conduct has the purpose or effect of violating B's dignity or creating intimidating, hostile, degrading, humiliating or offensive environment for B'. I have set out what has to be taken into account in relation to that. Victimisation; I have done the same thing; it is pursuant to section 27. Disability discrimination I have dealt with as well. I am not going to spend too much time on disability discrimination and what that means, as it is a further alternative claim to the harassment and victimisation claims, it is only really if both of those fail will the court need to return and consider that.
  47. The facts as we find them to be: as I have said, we have heard from the claimant, Dr Gamwell, Mr Black and the evidence of Miss Sjoberg was taken as read because there was no one here to ask any questions of her and the court did not need to ask any questions of her although the court did ask questions of Ms Leighton and her other two witnesses. As I said, the defendant filed three witness statements and did not attend on the first day of the trial. The defendant's evidence has not been tested.
  48. The defendant's witness statements are, on any view, brief, vague, did not descend into any real particularity about what occurred on either 18 August or 27 September 2016. It really does not deal at all with the issues of whether there was anticipatory compliance with the duty to make reasonable adjustments. In fact, the evidence is there was no ramp on 18 August when Ms Leighton attempted to access the premises. The witness statements claim, for the first time in the proceedings, that a ramp or ramps were available in September, effectively in time for the second visit, but no explanation was given of why, if that was the case, there was the altercation, which Mr Kahraman accepts in part, where he handed back the letters handed to him by Dr Gamwell in the premises; no explanation of why it is not pleaded in his defence that these things were sourced between 18 August and 27 September; no explanation why in the police documentation, as it seems to me is clear, that he was accepting that no such ramps were available.
  49. His witnesses say that they provided ramps to him. However, there is no evidence of the date of purchase of these ramps, which I would have thought would be quite clear. It is really just a bare statement that these ramps were available without anything else.
  50. The court does accept that by the end of March 2017 there was a bell and a ramp available at the premises. That is visible in the photographs and, certainly, Mr Black gave evidence to the court that he was able to access the premises using the bell and the ramp without difficulty at all, in September 2017.
  51. The court's view of the claimant is that her evidence both in her witness statement and in court was cogent. There were no particular inconsistencies or difficulties with her evidence. The evidence that she gave in relation to her electric wheelchair that was in use on both days, as to its capabilities and limitations, did not seem to the court to be in any way disingenuous or creating difficulties for acceptance by the court. She dealt with the capabilities of the wheelchair, the fact that it has no fixed or stated capabilities as such in relation to thresholds, kerbs and the like because, as she explained, it was dependent upon a multiplicity of factors, such as weight, so the weight of the wheelchair, the weight of the

- person in it; the floor surface; the weather, whether it is wet or dry; the angle of approach; the width of any doorway; how the electric wheelchair is set up because the wheelchair she was using raises and lowers, it reclines as well, and obviously that has an impact on its stability, so the weight lifted up is going to make it less stable than the weight lower down.
52. A particular difficulty is that the front drive wheels may get over any particular threshold but the wheelchair may then lack the necessary power or traction to pull the trailing wheels or castors over the same threshold, leaving the wheelchair user stuck, which Ms Leighton says has happened to her in the past. Of course, weight and power have a direct relevance to that. If someone very light is in the wheelchair then the ability of the wheelchair to pull the castors or wheels at the rear over the threshold is going to be greater than if the weight of the person in the wheelchair is up at the maximum capability of the electric wheelchair.
53. I also note the suspension: there is some limited suspension and obviously the greater the weight of the person utilising the wheelchair, the less give there is in the suspension and the suspension declines over the day because of the weight being applied to it. That also has impact in getting over thresholds. She explained the difficulties experienced in the past in getting over thresholds in doorways because of the limited space available; you have to take it at, effectively, 90 degrees. Whereas her evidence was for things like dropped kerbs for roadways, a height of 2.5cm or an inch is achievable if the conditions are good and you take it at a 45-degree angle, so one wheel gets up and then the other one, which is not something you can do accessing a standard doorway.
54. Given that the claimant's evidence was effectively uncontested, there is no reason to disbelieve what she said so that evidence is accepted by the court.
55. On 18 August, what are the facts that we find? It is not disputed that there is a threshold. We have seen pictures of it. The report from Mr Taylor says it is five centimetres. Does that threshold that we have seen in the pictures, which is a physical feature, put the claimant at a more than minor or trivial disadvantage? We find that it did. That is really a matter that could not be seriously contested. The duty is on Mr Kahraman as a service provider to take such steps as is reasonable to have to take to avoid that disadvantage.
56. What steps had he taken or sought to take as at 18 August? There was no ramp, no bell for a disabled person to summon assistance. The only steps that were offered was for the defendant, and presumably in his absence a member of his staff, to physically assist, give physical assistance to the claimant by way of pushing her wheelchair over the threshold. The defendant appears or appeared to be of the view that that was perfectly acceptable and sufficient compliance with any obligations he may have under the Act, whether he appreciated what those duties were at the time or not, which is unclear.
57. The claimant has explained why such physical assistance by way of pushing her electric wheelchair is, at the very least, unsatisfactory. The electric wheelchair in use on the day is not designed or intended to be pushed. It is a sophisticated piece of engineering which is vulnerable to damage if not handled correctly. It is extremely heavy and unsuitable for anyone, let alone someone without specialist knowledge, to even attempt such a thing. It does not have handles at the back, not that that would matter. However, the court takes the view that the fact that it is not designed or intended to be pushed, and there are difficulties in doing so, are incidental to a much more important principle. I have outlined, by reference to the statutory guidance to service providers, the purpose and effect of the Equality Act is to enable disabled people to be placed as far as possible in the same position as more abled people in going about their daily life and accessing services such as the services provided by Mr Kahraman in his premises.
58. It is of crucial importance in the court's view that the independence of a disabled person is preserved and maintained as far as possible. To have to be pushed across a threshold of a

service premises by an employee to access those services is unacceptable. To have that as the only option for a disabled person is a failure to make the reasonable adjustments required by the Act. It may be that a disabled person might accept such assistance and be quite content. Indeed, that appears to be part of the defendant's case in his evidence, that there are lots of people in wheelchairs who access his premises perfectly contentedly and happily. That, however, is a matter of a personal and an independent choice of the persons concerned. It cannot be applied across the board. All people are individuals. All disabled people are individuals and service providers must allow for that. In the court's view, it was perfectly acceptable for the claimant not to wish to be physically assisted to enter the defendant's premises.

59. The absence of anything which would have facilitated her entry into the premises independently, being the provision of a moveable ramp, which can be sourced at little cost to the service provider, was in the court's view a failure by the defendant to make a reasonable adjustment required by the Act. I make the further point, which we will come on to in due course, that the electric wheelchair has to be regarded as integral to the individual. It is the means by which Ms Leighton has mobility. It is not a piece of equipment that can be regarded as something that anyone else can simply take hold of and move about. It is regarded, and quite reasonably so, as part and parcel of her person.
60. I have already explained that it is not a defence for Mr Kahraman to say, 'Well, I was not aware of the difficulty before Ms Leighton came to the premises'. The duty is anticipatory. Consequently, I find the defendant did contravene the Act in this regard on 18 August 2016 by not having made those reasonable adjustments. We have no doubt that, at least initially, the defendant was trying to be helpful to the claimant in offering to assist her into the premises and we take notice of the documentation from other customers of the defendant as to how helpful and friendly he is. That, however, is not relevant to the issues that we have to decide on the reasonable adjustments case brought by the claimant.
61. It follows that when the claimant experienced the same lack of a ramp on 27 September, that the contravention of the Act was continuing. The defendant in his witness statements, as I have indicated, accepted he did receive the letter sent by the claimant after the first incident, so he was aware, well before 27 September, at that point at the very latest, of the duties under the Act. We do not accept the evidence in his witness statement or that of his witnesses that by this date he had ramps available. There is a lack of evidence as to why they were not deployed or evidence of any dates of purchase or why this matter has got to the point of exchanging witness statements without any reference having been made to the fact that these ramps were available on 27 September. We do not accept that evidence.
62. Moving on to the harassment claim, there are two occasions on which the claimant alleges that she was subject to harassment by the defendant. The first is on 18 August and the second is 27 September when she visited the premises. The allegation on 18 August is that, having refused the defendant's offer of physical assistance, the defendant became, on the claimant's evidence, frustrated and accused her of not trying. This is dealt with in paragraphs 45 and 46 of Ms Leighton's witness statement, which I will briefly read out:
- 'When Sophie [that is Dr Gamwell] asked him [Mr Kahraman] about a ramp, the defendant came out onto the street and wanted to push me in. He went behind my chair as if to try and help and I moved well away so that my back was to the wall and he couldn't try and push me. I said that pushing wasn't okay for my wheelchair and I'd get stuck anyway. He said that I wasn't trying and was clearly very frustrated with me - it was the most difficult interaction of the day. I felt distressed that even with explanation and Sophie trying to help, the defendant was still insisting that

he didn't need a ramp and trying to force me into his restaurant.

This was yet another business that I had attempted to access on multiple occasions in the past and it was clear that they had ignored my requests. I felt humiliated, embarrassed, annoyed and upset that there was no ramp. Other people could just walk in and I could not, even though the front of the property would be simple to adjust with a portable ramp. Despite my previous requests, and asking the Traders' Association to help with access, the café was inaccessible to me. I felt that my needs and those of other wheelchair users had been given no consideration, that I was unwelcome, unimportant and an inconvenience'.

63. Dr Gamwell's evidence in relation to that is this:

'The defendant came out to the front of the shop and told Esther he did not have a ramp but that he could help her by physically pushing her into his shop. Esther moved away from him and told him she did not want to be pushed into his restaurant. The defendant was visibly annoyed and raised his voice. He said that he had other wheelchair users that were happy being pushed into the shop and that she should too. He complained about her refusal to be 'helped' into the shop and insisted that if she just tried to with his assistance, she would be able to access his shop. Other customers were staring by this point as there were several people already eating in the restaurant. I could see that Esther was getting really upset by his insistence that she just was not trying hard enough. I stepped between them and said we did not need help and if he did not have a ramp we would find somewhere else to eat'.

64. I have already set out the test of harassment: 'Unwanted conduct related to a relevant protected characteristic that has a purpose or effect of violating dignity, creating an environment for B that is intimidating, hostile, degrading, humiliating or offensive'. A protected characteristic is a disability, which applies, and we find the conduct clearly related to this.

65. We have not found this particular allegation a straightforward matter to determine. It is quite clear on the evidence that Mr Kahraman was initially trying to be helpful. He became, in our judgement, on the uncontested evidence of the claimant, frustrated with the claimant, insisting, as the claimant's evidence states, that he should be allowed to physically assist her into the premises, that he said he did not need a ramp and the claimant was not trying, which might properly be regarded as an assertion that the claimant was being difficult. It does not, in our judgement, satisfy the test within section 26(1)(b)(ii) of creating an environment that was intimidating, hostile, degrading, humiliating or offensive, for Ms Leighton. I take into consideration all the circumstances of the case, including, in so far as we are aware, this was the defendant's first interaction with the claimant, his genuine desire to assist and, notwithstanding the claimant's perception, our judgement being it is not reasonable for the conduct alleged to have the effect contended for in that subsection.

66. We do, however, find that the conduct, clearly unwanted, did violate the dignity of the claimant, contrary to section 26(1)(b)(i). I rely on the evidence of the claimant, as I have said unchallenged, which is largely self-evident in our judgement, that to seek to place hands on the wheelchair of a disabled person without their consent or, as was the case here, an assertion that this is what could and should be done, is a violation of a disabled person, in

this case the claimant's personal space and independence, which would violate their dignity.

67. As I have indicated earlier, such a wheelchair is properly to be regarded as an extension of the individual and not merely an aid or a tool for use by that person. To insist on placing hands on it contrary to the wishes of the claimant and asserting that the claimant was not trying or being difficult when that was not the case was in clear violation of her dignity as the claimant is in no physical position really to have prevented the defendant from doing it to the claimant, i.e. trying to force her into the premises and the claimant was clearly concerned that this might happen.

68. The allegation of 27 September in relation to harassment is in two parts. The same test applies. The first relates to the altercation which is alleged to have occurred between Dr Gamwell and the defendant inside the premises while the claimant remained outside and, whilst visible, was out of earshot. The second is the allegation that having moved away from the defendant's premises some five to ten minutes later, the defendant approached the claimant. This is dealt with in paragraphs 65 to 67 of the claimant's witness statement. The claimant and Dr Gamwell had been to Carlos BBQ. They had been to Café du Paris and they were then at the Al Casbah, 62 Mill Road. She says:

‘While Sophie was inside Al Casbah and I was waiting outside, I saw the defendant coming down the street. Initially, I thought the back of my wheelchair was in his way as it protrudes out behind me, so I went to move into the side of the pavement. Then I realised he was coming towards me, trying to get around me and looking very angry. As I moved out of the way, he began moving faster towards me and was waving his arms around angrily. I was afraid of him and confused as to why he was coming towards me. He loomed over me, saying that the letter was not for him and trying to give it back to me. He was over the top of my thighs in the personal space around my chest, trying to give back the letter. I felt like my space was being invaded and there was no way to escape. It was very intimidating. He said that the letter was not for him and I said that it was. I put my hands in the air either side of his hands and said, “You have it now, your choice what you do with it”, and I tried once again to move away from him backwards. The defendant then stormed around the back of my wheelchair and shoved my backrest. My torso moved through the backrest. I was not sure if he had just pushed me or put some things down the back or what. It did not occur to me he had put the letter there. I was afraid it was some object which would entirely obstruct a mechanism. I was extremely scared, shaken and upset. I was horrified that trying to get access to a restaurant could result could result in such anger and confused about why he was treating me like this’.

69. Mr Kahraman's evidence says this in relation to this incident:

‘I met Ms Leighton on one further occasion. She states this was on 27 September 2016 and I do not dispute this. A lady who was accompanying Ms Leighton gave me a letter. Ms Leighton states that I chased her down the road, waved my arms in a threatening manner and shouted at her. I strongly deny that I did any of these things, or that I did anything else to intimidate or threaten Ms Leighton or her friend’.

That is as far as it goes.

70. What Mr Kahraman does not do in that witness statement is give any account of his own as to what he says took place, how he returned the letter, where he returned the letter, why he

returned the letter and the circumstances of that. In the court's judgement, the claimant's evidence is, as I repeatedly said, effectively unchallenged and it is consequently accepted as to what took place and Mr Kahraman's evidence is really most unsatisfactory in that regard. It amounts to a bare denial and that is really all there is contained within it.

71. Thus, the claimant's evidence is accepted by the court and supported by, again, the unchallenged evidence of Dr Gamwell, although that is somewhat limited because she was at the other premises during the actual interaction.

72. As to what took place in the defendant's premises and the report to the claimant by Dr Gamwell when she came out and what the claimant observed through the window, it is set out in paragraph 59 of Ms Leighton's witness statement. It says, 'At Carlos BBQ, Sophie went in and asked if there was a ramp. I did not think that he sold pudding but was not sure. I also wanted a soft drink. The defendant said there was no ramp, so Sophie put the second letter on the counter as he refused to accept it'. Obviously, some of that must be what Dr Gamwell had told Ms Leighton as Ms Leighton could not hear what was said:

'He was very cross with Sophie although I could not hear what was said and was talking/looking at his friend on the other side of the counter for backup as to how unreasonable he considered she and I were.

When Sophie came out she said it had been very unpleasant and I said, "Sorry." Sophie was visibly shaken and was clearly unprepared for the level of hostility that she had received. I was upset by this too. Having someone I love shouted at because they are helping me to get access to a shop is really soul destroying and deeply upsetting.

As we walked down the road, we discussed the conversation Sophie had had with the defendant in the shop and the things he had said: that he could help me in, that others could get in, that the letter was not for him as others could get into the shop. I felt quite concerned and upset at the hostility and told Sophie I was not sure about her 'in person' idea [that is the idea of delivering these letters in person]. I was also frustrated he was still not listening even a little bit.

I felt humiliated, embarrassed, annoyed and upset. I was frustrated and demoralised'.

73. This, again, is a difficult issue before the court because the claimant herself did not hear any of what Mr Kahraman said in the shop. She was not in the shop when that took place and merely observing the interaction through the window is not, in our judgement, sufficient to satisfy the test that there had been a violation of the claimant's dignity. As to whether the defendant's conduct had the effect of creating the necessary environment for the claimant, which was intimidating, hostile, degrading, humiliating or offensive, we likewise do not consider the circumstances sufficient for that claim to be made out. The claimant remained outside the premises and did not experience what happened save for vicariously after the event as she was proceeding down the road with Dr Gamwell. Whilst in closing, Mr Roberts for the claimant said that the customers inside were looking at the claimant as a result of the altercation going on inside. That was not part of the claimant's evidence to the court, or indeed Dr Gamwell's evidence to the court. It was clearly upsetting and distressing for the claimant to hear what had transpired but in the court's judgement that does not satisfy the test under section 26 for harassment.

74. The second element of the harassment claim, what happened outside the Al Casbah, we do find to have been established by the claimant. The claimant's effectively unchallenged evidence demonstrated that behaving in an intimidatory manner, physically putting letters in the claimant's electric wheelchair was clearly unwanted conduct which related directly to the claimant's disability, a protected characteristic. Taking into account all the circumstances of the case and the perception of Ms Leighton, was it reasonable for the conduct to have that effect? We find it is reasonable for the conduct to have the effect of creating an intimidating and hostile environment for the claimant. There was simply no reason or purpose or justification for that conduct on the part of the defendant.
75. The victimisation claim, which was put as an alternative to the harassment claim; having allowed the claim for harassment in respect of 18 August and the second part of 27 September, the victimisation claims fall away as detriment under the Act, which is a necessary requirement of the victimisation claim in Section 27 is something other than harassment. We are not satisfied that the conduct of the defendant inside the premises on 27 September resulted in the claimant suffering a detriment under the Act.
76. The section 15 claim, we do not need not consider given our findings on the harassment and victimisation claims. The only outstanding matter was what happened inside the shop on 27 September and we do not consider there was a detriment within the meaning of the Act in relation to that.
77. That brings us to the question of the remedy in this case. The claimant seeks damages and a declaration. In light of the decisions made, the court is prepared to make a declaration as follows:  
 "It is declared that the defendant discriminated against the claimant, a disabled person within the meaning of the Equality Act 2010, in failing to make reasonable adjustments in order to enable her to access the defendant's premises on 18 August and 27 September 2016.  
 It is declared the defendant subjected the claimant to harassment contrary to section 26 of the Equality Act 2010 relating to her disability on 18 August and 27 September 2016."
78. The claimant also seeks damages for injury to feelings. The guideline case is that of *Vento v Chief Constable of West Yorkshire Police* (no 2) [2003] ICR 318 in the Court of Appeal. The lower band, appropriate for less serious cases such as where the act of discrimination is an isolated or one-off occurrence, that has now been increased to a band of £800 to £8,400. The middle band, £8,400 to £25,200, should be used for serious cases which do not merit an award in the highest band. The upper band is £25,200 to £42,000. Sums in this range should be awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment on the grounds of sex or race.
79. Mr Roberts sought to rely on three cases, *Fogerty v Keaz Limited*, a decision of District Judge Lettall, 13 July 2015, a single occasion and the claimant was unable to access a restaurant because it had steps and he used a wheelchair. No ramp was available. He was offered to eat outside. The defendant refused to accept liability. The court considered that the litigation approach exacerbated the injury. The award was £5,000, which applied over two years ago and is now worth £5,850.
80. *Campbell v Thomas Cook Tour Operators* [2015] 1 WLR CA, the claimant had arthritis, difficulty standing, not provided with seating in airport whilst he waited for four hours for the delayed plane; suffered a migraine as a result of extreme discomfort the following day. The award at first instance, not appeal, was £7,500; £9,000 in today's money.
81. *Royal Bank of Scotland Group Plc v Allen* [2009] EWCA Civ 1213, the claimant unable to use the main branch of his bank; he could use other branches but not the main branch because his wheelchair prohibited him from ascending the entrance steps. He was able to



- use a combination of Internet and phone banking, rather than in person. The award at first instance, not challenged on appeal, £6,500 back in 2010, in excess of £9,000 now.
82. Therefore, significant sums of money are awarded for injury to feelings in cases such as this. There are in the claimant's documents filed with the court reference to two additional cases, *Fogerty v Farjampour*, the same Mr Fogerty as in *Fogerty v Keaz* and the same district judge, two instances a month apart. That was another case of a single instance of failing to access restaurant premises because of the absence of a ramp; £2,500. *Hosegood v Khalid* is simply an extract from a website (spencerkeen.co.uk) said to be from Scunthorpe County Court, before a deputy district judge, who awarded £3,000, again no ramp available. In this latter case the defendant's manager insisted on wheeling the claimant up the steps. He found it humiliating; he tried to be as independent as possible. His chair was designed without handles and he only let his wife touch it; £3,000 there.
83. Those are very simple and straightforward cases. It is difficult, if not impossible, to separate out the injury to feelings for the failure to make reasonable adjustments from the related harassment claims. The court is aware that there was more than just this premises that the claimant had issues with on 18 August and 27 September. We have heard about the incident outside the Al Casbah which the claimant said likewise was extremely distressing for her. There were 18 premises that she had issues getting into on 18 August and nine premises where letters were handed out on 27 September. Isolating injury to feelings over what must have been very stressful days, isolating injury to feelings in relation to just one premises on days when all this was going on is likewise a very difficult, if not impossible, task.
84. Overall, however, the injury to feelings in this case put it beyond the circumstances of one-off failure to access the shop or restaurant. The court bears in mind it is almost axiomatic that cases which come before the courts are those where the defendant seeks to defend proceedings and in some of the cases the conduct of the defendants and the way they defended them was relevant to the award for injury to feelings. As I say, the continued conduct of the defendants is relevant although nothing should be taken in this judgment as indicating that the defendants are to be in any way penalised for exercising their rights before the court to defend cases.
85. Here we have two incidents of failing to make reasonable adjustments, over a month apart, and the defendant accepts he received the letter sent after the 18 August visit. The incident on 27 September ought not to have happened at all and it is an aggravating feature of the case as is, I have to say, the defendant's conduct in this litigation. It is entirely unclear from his case what has happened. He simply pursues the matter on the basis that he has done nothing wrong, even today he says 'I have done nothing wrong; I have done nothing wrong'. What he fails to understand is he is under a positive obligation to actually do something which he has failed to do.
86. The court is likewise aware that reference to other decided cases is of very limited assistance in determining the award for injury to feelings. We bear in mind the guidance in *Vento*. We have regard to some of the other decisions that have been put before us. The Assessor in this case, Ms Clarke, has a great deal of experience of awards in the Employment Tribunal in relation to disability and discrimination at work. In all the circumstances, the appropriate award we make is one of £6,000. We feel that accurately and fairly reflects the injury to feelings that are set out in the claimant's evidence, bearing in mind the other factors in the case, bearing in mind the additional aggravating features of the harassment that we find have been made out, the violation of Ms Leighton's dignity on 18 August and the creation of an intimidating and hostile environment for her on 27 September, culminating in the putting of the letter in her electric wheelchair.

87. That is the decision of the court.

**End of Judgment**

Transcript from a recording by Ubiquis  
291-299 Borough High Street, London SE1 1JG  
Tel: 020 7269 0370  
legal@ubiquis.com

This transcript has been approved by the judge.