IN THE COUNTY COURT AT LEEDS

Case No: C04LS762/D00HG084

Chambers No. 1

The Courthouse
1 Oxford Row
Leeds
LS1 3BG

Thursday, 10th January 2019

Before:
DISTRICT JUDGE TROY

B E T W E E N:

PAULLEY

and

LONDON UNDERGROUND LIMITED

MS C CASSERLEY appeared on behalf of the Claimant
MS L BAIRSTOW appeared on behalf of the Defendant

JUDGMENT
(For Approval)

DJ TROY:

1. This is a claim which has been made by Mr Doug Paulley against defendant, London Underground Limited, in respect of the defendant's alleged failure to make reasonable adjustments in respect of his disability under the provisions of the Equality Act 2010, Sections 20 and 21.
2. Although at the outset of the case the defendant had raised some queries as to the terms under which the claimant originally pleaded his case, it was helpfully conceded by the defendant that it sufficiently understood the factual basis of the claim to be able to answer the specific complaints which were made by the claimant.
3. The alleged breaches are in respect of two claims which have been consolidated for the purpose of this hearing. The first, which I will describe as the 'Westminster incident', relates to a journey taken by the claimant on 19 October 2016, and concerns his access to Westminster station. The second relates to journey undertaken by him on 15 May 2017, and is concerned with his egress from the platform at King's Cross, as I understand, from the Victoria Line underground to the ticket area to access the Overground services. I will refer to that as the 'King's Cross incident'.
4. Although there were some discrepancies which were acknowledged with regard to the claimant's written position, and the way in which he gave his oral evidence, as has emerged during cross-examination, the factual matrix is not actually significantly in dispute. It is helpful to record that Mr Paulley was ready to make concessions where it was shown by cross-examination his earlier account could not have been correct.
5. I can then turn to summarise the circumstances behind each individual incident. In respect of the Westminster incident, the claimant had intended to travel by tube from Westminster underground to King's Cross, via Green Park on 19 October 2016. He is a wheelchair user and on that occasion he was assisted on his journey by a carer, who was providing support for him. They arrived outside the front entrance to Westminster tube, where there is an entrance and steps to the ticket hall. There was no dispute that outside the station and visible from the pavement, there were signs erected already warning users that the lift to the ticket hall had been closed for refurbishment, but that step-free access was available via Canon Row. Canon Row itself abuts the back of Portcullis House, and the lift, I think, which was intended to use, is otherwise used as a service or fireman's lift, but was brought into service to provide that alternative option.
6. Mr Paulley therefore went around to access the lift at Canon Row, only to discover that the access there was blocked off, and at that stage there was no alternate signage suggesting what anyone could do to access any alternate means of getting access to Westminster Station. Certainly at the Canon Row entrance, there was no prospect of attracting attention or communicating with staff.
7. The claimant therefore returned to the main front entrance with his carer, and on the claimant's evidence, and the defendant was unable to refute this, there were no staff to be seen at ground level, and so his carer entered the main entrance to the station, and descended some steps to get further assistance. It is clear that the claimant himself would have been unable to do so because that required an able-bodied person to use the steps.
8. When the carer emerged, she believed that she had instructions as to the alternatives which were available, but it turned out that that was not correct. It is not clear whether that confusion arose because the member of staff had given unclear instructions, or whether these were simply misunderstood by the carer. I have heard no evidence during the case from the carer, and the claimant himself cannot depose as to what went on in those discussions so I cannot make any findings about that. What did happen is that, whilst the

carer was inside the station making those initial first enquiries, the claimant made a decision to videotape the incident, and that has provided helpful information to the court in understanding the impact upon him, and the practical difficulties which he faced as a result of that incident.

9. As I have indicated, when his carer emerged from Westminster the first time, she believed she had instructions as to the alternative available, and Mr Paulley and his carer then set off with the intention of finding that alternate access. It is quite apparent however, that they were thwarted in that process. They spent some time in the vicinity of Portcullis House and up and down Embankment, trying to locate the entrance, but could not do so. The video, I think at this point, brought home to all of us in graphic detail, just how difficult it is for a wheel chair user to navigate public spaces generally, and in particular, the crowded streets of London at that time.

10. Having failed to locate the alternative, eventually the decision was made to return to the main tube entrance for further guidance. On the second occasion, the carer was able to clarify the instructions and they then established that what they needed to do was to gain the step-free access to the tube at Westminster Station, via the subway from Westminster Pier, on the far side of Embankment. From there on in Mr Paulley was able to make use of that alternative without too much difficulty, although it involved a not insignificant detour.

11. The following matters are noteworthy arising from the evidence; First of all, that the claimant's pleaded case was that he had missed his train from King's Cross as a consequence of the delay which he suffered, however, on the video, the recording clearly states that his train had already left five minutes ago. Therefore, I am satisfied it is abundantly clear that he had not allowed himself enough time to catch the train he had in mind, even if he had enjoyed seamless access to Westminster Tube. It also emerged subsequently, that he had in fact purchased an open ticket, and simply caught a later train, and therefore that he was not inconvenienced to the extent of missing a particular service.

12. Secondly, there is no dispute at all that the transport for London website recorded that the Westminster lift itself was going to be out of action from 4 September until late December. However, the problem for the defendant, as is clearly understood by them, that the information given was that the Canon Row lift should be used as an alternative, and the difficulty is that on the day in question, the Canon Row lift was also out of service.

13. It is clear that the defendant was aware of the failure of the Canon Row lift from at least 17 October, that is some two days before the incident, because the defendant had produced a sign on 17 October, which was intended to supersede the signage actually posted at Westminster entrance, to the effect that assistance should be sought as to the alternate access, either by speaking to a member staff, if step-free access was needed, or on the alternative a telephone number was given.

14. It has been accepted by the defendant, that although this sign had been produced, that it was not displayed at the time of the incident. The defendant, however, contends that in fact the impact on the claimant of the failure to display the sign was minimal, because in fact what the defendant chose to do to resolve the case, was indeed to speak to a member of staff for assistance, albeit via his carer. That is exactly what he would have done if the sign had been displayed. To this extent, the defendant submits that if there has been any detriment at all, it results from the time wasted going up and down Canon Row and returning to the main entrance, and that as a consequence of that, if I am to find that there has been any breach on behalf of the defendant, that any damages flowing from that should be de minimis.

15. The defendant submits that I cannot make any findings at all in respect of any inconvenience caused by the misunderstanding of any original instructions, because I have no direct evidence about that, and I think I have indicated that I already accept that that is

the position.

16. The defendant's primary submission therefore, on this matter is that within a short period of time, the claimant was in receipt of all the information he needed to get step-free access to Westminster, and the defendant also submits that the provision of the access through the Westminster pier was a reasonable adjustment to the problems which he had encountered that day, and a few days previously in terms of the breakdown of the Canon Row lift.

17. In fairness to the Claimant, he conceded that the use of the Westminster pier access was a reasonable adjustment, clearly it is not ideal requiring as it does any wheelchair user to double back on themselves along Embankment to achieve the ramp-free access, but it is accepted that the physical features on site would have made any other solution impossible.

18. I am sure that Mr Paulley will have made note of that entrance as a possible alternative for the future. What we do know is that actually he had already been at that point on Embankment earlier on in the day because he had used a riverboat to depart at Westminster Pier, but I think his evidence was to the effect that at the time of getting the information from the staff at the tube station, he had not put two and two together to realise that that was the point he needed to go back to. As I say, no doubt he will make his own mental record about that for the future.

19. Having taken those matters together, I find that in respect of the Westminster incident, that in fact, the only practical disadvantage suffered by the claimant, was the time spent ascertaining that the Canon Row lift was out of action. From the video, when he did the re-run of that, I timed that at some 2 minutes 24 seconds. However, that also has to be coupled with the impact upon him of the frustration of not having clear guidance as to what to do next. For the avoidance of doubt, however, I specifically find that he did not miss a train which he would otherwise have been capable of catching, and that will clearly be relevant to any assessment of damages in so far as I am satisfied that the defendant is in breach, and that an award should be made.

20. The claimant has today submitted to me, that these matters have had an ongoing impact upon his confidence in using the underground system as a whole, and future travel arrangements. However, his original case, at the time his case closed was not put to me on this basis, and I have not heard any evidence about that, and I certainly do not propose to make any findings about that or for the damages to reflect any element of that.

21. In respect of the King's Cross incident, as I have already indicated, this occurred on 15 May 2017; again, the factual matrix is not substantially disputed. On this occasion the claimant had booked a particular train for his ongoing travel from King's Cross back to York at 7.18pm in the evening. It is also a fact, that despite the difficulties he encountered on his journey, he was able to catch that train. The problems arise in respect of his travel to King's Cross mainline station by Underground. The particulars of claim at Paragraph 6, highlight that it was his intention to travel from Westminster to Green Park on the Jubilee Line, then changing for the Piccadilly Line to King's Cross. However, on arrival at Green Park, the lift to the Piccadilly Line was out. A whiteboard had been placed across the entrance to the lift, giving the date of the incident as 15 May, and simply saying 'this lift is out of order'.

22. On the claimant's case, there had been no announcements of that made by the PA, either at Westminster Station, or Green Park, or on the Jubilee tube line when he was on it. Nevertheless, he was able to work out that there was an alternate route available from King's Cross to Green Park, via the Victoria Line, and he therefore took that instead, arriving at King's Cross at approximately 6.40pm, some 40 minutes or so before his train's departure.

23. Unfortunately, on arrival at the platform at King's Cross, he found that the lift there was broken. The access to the lift had been boarded off by a concertina-style gate, and there

appeared to be no sign at that point to explain why the lift was closed, or what to do if anyone needed step-free access, as an alternative. It is also the claimant's case that there had been no warning announcements made at Westminster or Green Park, concerning the lift being out of order at King's Cross. The claimant therefore used an intercom close to the lift to contact a member of staff, and all this is recorded on another contemporaneous video, which Mr Paulley made.

24. Mr Paulley certainly did not perceive from the interactions he had with the staff, that his situation was being taken serious enough, and communication became difficult and was cut off at various points in the conversation. This caused Mr Paulley to push an emergency button to try and gain some further assistance, but rather than connecting him with a member of staff, this simply relayed an automated message to him saying that no British Transport Police lines were available; no doubt something which would have added to his distress. Unsure as to what he should do, he continued then to press the button on the emergency call repeatedly until eventually it became stuck.

25. In terms of the communications which he had with the defendant's staff at that point, he had been told that the only solution to his problem was for him to take the train back to Caledonian Road, and then return by bus over land. That would appear to have been something like a three mile round trip, and although I have not heard any evidence on the point, I am certainly able to conclude that that would have substantially eaten into the margin of 40 minutes or so which Mr Paulley had allowed to catch his train; it may well have led to him missing his train. Certainly, I am entitled to conclude, that it would have heightened his tension and frustration for the incident.

26. Mr Paulley was, therefore, obviously unhappy with that as a solution, and asked repeatedly for staff to come down to assist him. He also requested whether or not there might be some alternative lift available, for example, a fireman's lift or something of that nature. That request was refused on the basis, it was said, that there were insufficient staff available. When it was suggested that he could travel to Caledonian Road, Mr Paulley, I think had said that he would want someone who was able to travel with him, or at least someone he could speak to face-to-face, and it was at that point that I think the connection was lost.

27. It is also fair, I think, to point out that Mr Paulley's communications were hampered by the fact that there was a particularly loud busker playing an electric guitar through an amplifier at the foot of the escalators, all of which served to heighten the tension in respect of the incident. I am satisfied that that would have been a potentially stressful situation.

28. Mr Paulley has produced information to show that the defendant's policy documents as to the management of wheelchair users includes, as an alternative, the prospect that train staff could assist, by placing wheelchairs on escalators in appropriate circumstances. It seems to me, therefore, with hindsight, the initial response of the operative should have been, 'Well you have two choices here Mr Paulley; either we can offer travel via Caledonian Road and back by bus, or secondly we could offer the assistance of you to use the escalator'. It seems to me that if that information had been communicated as a starting point, that Mr Paulley's frustration would have been diminished and he could have then made a choice as to which option he preferred. As it was, the conversation became side-tracked, as the operative insisted that the Caledonian Road was the only option at that time.

29. It was submitted to me by Miss Bairstow, on behalf of the defendant, that whatever might have been happening in the conversation, that nevertheless, clearly the defendant did have in mind the alternate option of assistance on the escalator. This is because, in fact, what happened shortly thereafter, is that at team did attend upon him and after discussions and finding out that it was a suitable alternative, did indeed assist him to use the escalator. The video clearly shows how that procedure was implemented. The escalator was cordoned off

at the bottom to free this up from other users, and then Mr Paulley's wheelchair was placed on it without too much difficulty.

30. It was suggested, by Mr Paulley, that he may have found that a particularly scary experience. It did not seem overly comfortable from the video, but at the same time, Mr Paulley was heard to be conversing normally with the staff, and did not appear to be unduly distressed.

31. It is therefore clear that from a practical point of view, that a solution was found to the problem, but this does beg the question, in respect of the King's Cross incident, as to whether or not Mr Paulley should have found himself in that position to start with. In other words, whether or not there had been a reasonable communication of the lift being out of order, so that he could have altered his journey plans before he even found himself at King's Cross in the first place.

32. Turning then to the lift closure at King's Cross, what the defendant would say is this, is that it began with an unexpected lift closure and that from time to time these things are out of their hands, and I accept that, lifts will break down at short notice. Nevertheless, as soon as practicable, a publication will be put on the station service website. In addition it is their practice to make contact with managers at the nearest adjacent station, so they are able to put up either posters or whiteboards to notify passengers of the difficulty.

33. I heard evidence to the effect that posters can be produced quite quickly using large-scale printing devices on-site, and obviously whiteboards are a very basic method of communication. In addition, the defendant told me that where possible announcements are made at the stations by Tannoy to confirm where there are problems. Similarly that can happen on individual tube trains, depending on the technology available on the service. Some tubes have that facility; some do not. In addition, the defendant explained that they will publish information via an electronic service update board, commonly known as ESUB, which is available at most stations.

34. It is now uncontroversial, that in respect of this incident, the defendant did create an entry on their website, which went up at just 4.15am in the morning, in respect of the Green Park incident, and 6.31am in the morning in respect of the King's Cross incident. These failures were also recorded on ESUB, but it is clear that that did not happen until much later, that was at 4.04pm in the afternoon. I do not know why it takes longer to update the ESUB services, and clearly that is possibly a matter of concern with regard to how quickly information is communicated. Nevertheless, the simple position is if Mr Paulley had checked either the website before embarking, or the ESUB, he would have seen the notification, both in respect of the King's Cross and Green Park incidents.

35. In respect of those matters, Mr Paulley states that he did check the website before he travelled but did not see the information. He was unable to say, however, when he made this check. I suggested to him that it would have been unlikely to have been in the small hours of the morning, but he could not say one way or the other. In view of the difficulties with regard to other key aspects of his evidence, I find he was unreliable on that point, and if he did check the website at all, it would have been after the posting of both incidents, and that therefore should have been apparent to him.

36. I should also perhaps record at this point, that during the course of the hearing and in the presence of the parties, I myself accessed the website to check the ease of operation, and it seemed to me that it was very straight forward and intuitive, even to me as a first-time user, whereas Mr Paulley accepts, that he has used it on occasions in the past. Mr Paulley had also maintained, until challenged in his cross-examination, that the lift could not have been out of order, as he had used it that morning as part of his inbound journey. That caused the defendant to garner information as to the usage of Mr Paulley's oyster card and payment

card, which shows that in fact, on that occasion, he took a different route. Faced with that incontrovertible evidence, Mr Paulley had to accept that, in fact, he had not used that particularly lift on the morning of his travel. As to the use of communication of problems to adjoining stations, however, Mr Paulley makes a very reasonable point that this will not necessarily be of assistance to disabled travellers.

37. This is because it is accepted that there are only 12 step-free access stations in Zone 1, out of something like, I think, between 50 and 60 stations. In addition, as I understand following observations which I made during the hearing, the defendant now accepts that placing information concerning a lift breakdown at an adjacent station, will not necessarily capture wheelchair and pushchair users, because those categories of persons are likely to be getting access via another step-free station; so putting the notice at the adjacent station does not help. Mr Paulley therefore suggests that the appropriate policy, in addition to other measures, would be to ensure that information is posted on whiteboards at all of the 12 step-free access stations in zone 1, and it seems to me that that would be a reasonable suggestion.

38. Mr Paulley also makes observations that communication via ESUB is not effective. He says this is for two reasons; Firstly that the sheer volume of the information often requires the user to remain, whilst the device scrolls through 18 or more pages of information; secondly, that a user has nothing to alert him to the fact that ESUB should be consulted in the first place. If the defendant is going to convince me that that does provide a suitable alternative method of communicating information, then the implication must be that before embarking on any journey, the defendant considers it reasonable that a traveller should be required to consult the ESUB, just in case there is anything there which is pertinent to his journey; I do not think that is very realistic.

39. I am entitled to take judicial knowledge of my own use of the underground, and I can say that I certainly do not think that I have ever noticed an ESUB device, and I perhaps have never had the need to do so because I find that if I am blocked with my access to a particular platform or lift, I can easily make arrangements to go elsewhere. However, all I am saying is that it is not an option which I think is immediately apparent. I will return to that in more detail later, and the possible alternatives which the defendant is able to employ.

40. I therefore turn to consider the legal principles I must apply in coming to my decision. These are, I think, succinctly set out in the claimant's skeleton argument, and as propositions of law, the manner in which they have been presented is accepted by the defendant.

41. It is accepted, of course, by both that the presence of steps at a location present a physical feature which will serve to put a disabled wheelchair user as a substantial disadvantage and therefore in accordance with Section 20(4) and Section 20(9) of the Equality Act, the defendant is placed under a duty either to remove it, alter it, or provide a reasonable means of avoiding it.

42. I also need to consider, in that context, whether therefore the practices which have been put in place by the defendant when dealing with lift failures, amounts to a provision, criterion or practice, invoking Section 20(3). This being a requirement where such practice puts a disabled person at a substantial disadvantage, in comparison with persons who are not disabled, and then to have to take such steps as reasonable to avoid the disadvantage.

43. Under this provision I also need to consider the adequacy, or otherwise, of the alternatives put in place, and whether as a consequence, reasonable steps have been taken to avoid any disadvantage afforded. A failure to comply with these obligations is regarded, under Section 21, as a failure to comply with the duty to make reasonable adjustments. As to the remedies which may flow from any such finding, I must be satisfied that the claimant has suffered some detriment before awarding damages. I also have a discretion, under Section

119, as to whether any award should be made for damage to feelings. Applying the law therefore, to the facts of these two cases, the common feature, of course, is that they both concern the issue of step-free access, and it is accepted that this was unavailable at the time of both incidents; whether the King's Cross or the Westminster incident.

44. As to the provision of the alternate practice in respect of Westminster, I do not think this arises, because it is accepted that there was nothing on website, ESUB or whiteboards to explain the difficulties with regard to the Canon Row lift. Therefore, in respect of the Westminster incident, the question of considering the reasonableness of the defendant's practice in that regard does not arise, and I am satisfied and find, that in the circumstances of the Westminster case, the defendant was in breach of the obligation to make reasonable adjustments arising from the deficiencies in respect of the signage. I draw the distinction there quite clearly between the signage in respect of the use of the Canon Row lift, as opposed to the alternative access by the Westminster pier, which did provide a reasonable practical adjustment to the problems on site.

45. In my judgment, the defendant cannot, in law, rely on the fact that the claimant's carer herself undertook the common sense decision to seek additional assistance, so as to minimise the extent of its own responsibilities. Therefore, any submissions that if the sign had been displayed, Mr Paulley would not have done any different, it seems to me, fall on fallow ground. I am therefore satisfied that, in respect of the Westminster incident, there has been a breach of the defendant's obligations, and I shall turn later in this judgment to the assessment of damages.

46. In respect of the King's Cross incident, it is clear that this was notified on the website, and I therefore have to consider whether or not that by taking that step, the defendant has met the obligations under Section 20(3), so as to have made a reasonable adjustment. I have not been directed to any similar case law affecting TFL or London Underground specifically, as to whether or not there has been any other guidance as to the steps taken for the reasonableness or otherwise the steps taken by the defendant in these cases. Clearly, publication on the website has advantages and disadvantages. The advantage, of course, is that the information can be posted and disseminated immediately, and is kept up to date, and presumably it is relatively straight forward for the defendant to do, therefore not taking up significant resources.

47. However, I have considered that practice within the context of taking the tube, as opposed to travel by other methods, and it seems to me that travel on a tube is a very different scenario. For example, for travel on mainline intercity services, or for example, travel by air, it may be a reasonable expectation for the traveller to check in advance whether or not services had been affected, particularly if there is some general understanding that they may already have been adversely affected. I have referred and take judicial knowledge of my own experience in checking Northern Rail Services on Saturday mornings, because I am aware of ongoing strike action, similarly, over the Christmas periods, travellers at Gatwick would have reasonably been put on notice to check the status of their flight as a result of the drain activity and that is all very well. In those circumstances, publication on the website might be considered to be sufficient.

48. However, any one individual traveller using the tube may undertake several tube journeys in any one day. Those journeys may be of varying length, sometimes between perhaps no more than one or two stops, sometimes over a lengthier journey, and I do not think it is reasonable to expect that on each and every occasion any traveller, whether able bodied or not, should consult a website before they get on each tube train. What is needed, it seems to me, is something more to alert the traveller at the point of access.

49. I therefore come on to the defendant's use of whiteboards and the ESUB system.

Whiteboards could be used at a point of access to provide up to date and varied information. However, the defendant's case is that it is difficult for those to be updated regularly, due to issues of staff resources and communications between individual stations. It is submitted that that can lead to a problem, whereby information contained on a whiteboard is out of date, and that that in itself can lead travellers, and in particular disabled travellers, to undertake unnecessary diversions when services have actually been restored on the ground.

50. As to the ESUB's, it is said that these are updated regularly, and would contain relevant information, however, I have already observed earlier on in his judgment, that in respect of the Kings Cross incident, the ESUB was not actually updated until sometime after 4.00pm in the afternoon. The original posting on the website was at something like 6.40am in the morning, therefore I have my doubts as to how promptly the ESUB's are updated.

51. Also, as I have already observed, if the information on the ESUB is to be accessed, it requires the traveller to remain in front of the screen, while it scrolls through, with no necessary expectation that there would be any information of relevance to the individual journey. It has been suggested and submitted to me, and I was reminded of evidence to the effect, that it can take perhaps only nine seconds to go through the whole. Nevertheless, it does require a traveller to locate the ESUB in the first place, and this it seems to me, can be particularly difficult for wheelchair users to navigate a station concourse for that purpose, particularly at peak times.

52. In addition, we have had some indication of the practical difficulties encountered by Mr Paulley from the video as he was going up and down the embankment. Well he is going to find exactly the same problems, and possibly magnified, at busy times at mainline stations. Again, I have to be mindful of the resource implications for the defendant, but I come to the conclusion that the publication on ESUB on its own, is not a reasonable adjustment.

53. In my judgment, what needs to happen is that it needs to be a combination of all three options working in tandem with each other. I do not accept that it was a particularly onerous task for the defendant to post whiteboards, so as to be of particular assistance to the disabled community, on the 12 or so stations in zone 1 which provide step-free access. I have to have regard to the extent to which disabled users are put at a further disadvantage as a result of the use of these systems. If there remains a legitimate concern that the whiteboard information may go out of date, and therefore may cause further concern, then I think a simple message to the effect that 'The lifts at station X were reported to be out of action, please consult the ESUB or website before further travel'. In that regard, the whiteboard has the immediate impact of alerting the traveller to the fact there is something relevant they will need to look into. The website and the ESUBs can then be updated accordingly and it seems to me that that is the best way of communicating that initial information. The whiteboards can be displayed prominently and they do not rely upon the user being able to access technology, and sometimes basic systems are the best.

54. In that regard, therefore, I am satisfied that the alternative arrangements which the defendant put in-hand, do not amount to reasonable adjustments to avoid the situation which the claimant found himself when stranded on the platform at King's Cross. Having made that finding, I do not think I need necessarily to go further to deal with the subsequent events, but in order to avoid the need to revisit this judgment, in the event that I am wrong, I turn to consider the steps which were actually taken by the defendant after the claimant found himself stranded on the platform.

55. The defendant submits that ultimately, it took reasonable steps to make adjustments insofar as the claimant was placed on the escalator and still able to catch his train, and I am satisfied that such a solution to the problem would have amounted to a reasonable adjustment. However, as I have said it is arguable that would not have arisen in the first

place if the defendant had made the other adjustments sooner.

56. However, I do find in terms of the assessment of any award of damages, that that solution does not assist the defendant in terms of the impact on this individual claimant, because until he was actually placed upon the escalator, he had no idea that this alternative was being offered to him. I am satisfied and find, that the defendant's operative had adopted an intransigent attitude in his initial dealings with the claimant, when he persistently made it clear that the only alternative that the defendant was able to offer, was that the claimant should take the tube up to Caledonian Road and then get a bus back to King's Cross. As I have said, the claimant specifically questioned whether or not there were alternatives, whether there was a fireman's lift to use, whether anyone could be sent down to assist him, and this was not explored.

57. Ms Bairstow has asked me not to make a finding that there was a refusal to send such assistance down, since this is what actually happened, and that eventually that assistance was provided. I accept that that is the case, and I am not going to find that there was an ultimate refusal to provide that alternative. The difficulty, however, when it comes to the assessment of damages for the defendant, is that that had not been communicated to the claimant. If he had been told at the outset, if that is the alternative that you would like to action, Mr Paulley, a team will be with you in five minutes, then all his worries would have been alleviated, and he could have waited patiently for that team to arrive. It seems to me, therefore in my judgment, that that alternative option for the use of the escalator should have been offered as an alternative at the outset. That would then have avoided the distress, which I accept that the claimant felt, whilst he was left waiting on the platform, uncertain as to what the outcome was going to be for him, and knowing that he had a train to catch.

58. I accept that, again my decision may have resource implications for the defendant, but the simple fact is, that if the defendant is to comply with the obligations under the Equality Act to make reasonable adjustments, then individual employees, it seems to me, should be identified and trained, who are able to undertake these tasks at major stations, of assisting wheelchair users. After all, it is usually at major stations where the escalators are encountered, and certainly those operating the emergency call buttons from the platform, should have their task cards, or whatever training is given updated, to ensure that they are ready to offer this as an alternative. Against that background, I am satisfied that the claimant's primary case succeeds in respect of both the Westminster and King's Cross incident.

59. I then turn to the claimant's case on damages. In respect of both incidents I am satisfied that the claimant has suffered a detriment. In respect of the Westminster incident this was relatively limited, but it is not, in my judgment, to be measured solely in terms of the time which he found wasted in going down the Canon Row entrance. I must also bear in mind, the inevitable frustration which would arise from the fact that his access to the Cannon Row was blocked, and that at that point he was left uncertain as to what other options were available to him.

60. Although he did not have a specific train to catch on this occasion, it would have been a legitimate source of annoyance, no different to an able-bodied person, it seems to me, being sent on a wild goose chase. To be told 'you can get access here', only to walk round and find out that it is not available; it is frustrating, and doubly so for Mr Paulley as a wheelchair user.

61. Although, I have not had the hard copy of the authority provided to me, nevertheless Ms Casserley has made reference to the comments of Mrs Justice Hale in *FirstGroup PLC v Paulley* [2017] UKSC 4, about the need for transport services to properly address and reflect the needs of wheelchair users as a particular category of society. I was surprised

indeed, as she was making those submissions, as to the statistics in terms of how many people do use wheelchairs and are faced with that disadvantage.

62. I also bear in mind the code of practice to which I have been referred, and the definitions there of disadvantage, to which I have been referred, again by Ms Casserley. Bearing in mind that the service user does not actually have to experience actual loss, but it is enough to say that a person can reasonably say that they would have preferred to have been treated differently. I also take account of the Vento Guidelines, as modified by the presidential guidance supplied in *Durrant v Chief Constable of Avon & Somerset Constabulary* [2017] EWCA Civ 1808, and the submission that if liability and detriment are established, that an award below the minimum bracket is unprincipled.

63. I distinguish the decision which has been made in *Robert Wright v Chiltern Railway*, as being on its own facts, of wholly different order to this case, when looking at the obligations imposed upon the defendant in that case when considering the use and management of unmanned stations. That is a very different scenario it seems to me, to the management of the sophisticated tube station through London, and the obligations at mainline stations.

64. Taking all those matters into account, however, I do agree with Ms Bairstow's submissions that if I am to bring it within the Vento guidelines at all, it should be at the very bottom of the limit, and I assess the Westminster incident at £800.

65. As to the King's Cross incident, I take the view that this was more serious. On that occasion the claimant did have a definite train to catch, and although he had allowed himself, very sensibly, a sufficient margin to do so, this would have been substantially eroded if he had had to take the tube to Caledonian Road and then return by bus. I was also unimpressed by the handling of the incident by the operative, which only served to increase the claimant's limits of frustration. Although ultimately a solution is found, there was a period when the claimant could legitimately say that not only did he suffer some detriment, but also there was an increased frustration and source of worry for him. I am satisfied, therefore, that the award for the King's Cross incident should be higher, and I assess the damages in respect of that incident at £1,000.

66. That, I think, deals with the substantive observations as far as the case is concerned. There was a reference, however, to the suggestion that the claimant was seeking some injunctive relief. I have not troubled to refer back to the pleadings in that regard, because I think that Ms Casserley had to accept that that had not been dealt with as part of the evidence which I heard, by which point of course the claimant's case had closed. In any event, I am uncertain as to my ability to make orders for mandatory injunctions, and I am not inviting counsel to address me further on that. I would merely, however, make some observations, and they are nothing more than observations, and certainly not intended in any way to modify this judgment, or my understanding of the law. That is simply by way of future expectations which may be placed upon the defendant, because I do understand that this decision will have resource implications for them.

67. I have referred to the methodology which is employed in respect of notifying incidents which will affect travellers, and it is apparent from the judgment that I have come to the view that the use of any one of those on its own might be insufficient. Indeed, in respect of the facts of this particular case, a combination of all three is found to be wanting. Certainly, if the ESUBs are to be used, they need to be updated immediately, and there was clear evidence that that had not happened in respect of the King's Cross incident.

68. In respect of the website usage, I am satisfied that for tube journeys, which may be undertaken frequently on a daily basis, several times a day, that it is impractical for the defendant to rely on the website as complying with its obligations, because it is impracticable for users to consult the website before each journey. What, it seems to me, is

probably a combination of these matters, and that certainly as far as the wheelchair and pushchair users are concerned, that the practical solution is to provide some further information on the whiteboards at the point of access. That is only going to involve 12 stations in zone 1, and as I have already observed, to the extent that the defendant is concerned that it is not easily updated, perhaps all that needs to happen is for the whiteboards to say, 'an incident was notified in respect of this lift at 9.00am this morning, please check the website or the ESUBs before further travel'.

69. It seems to me that if that procedure is adopted, that it would alleviate problems for the travelling public, and at the same time it would not in any way place an unreasonable burden upon the defendant's resources. Those comments are entirely obiter, and do not in any way serve to impact on the decision which I have made.

End of Judgment

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This transcript has been approved by the judge.