

S.15 Disability Discrimination based on mistaken belief

By [Craig Ludlow](#)

3PB Barristers

IForce Ltd v E Wood [2019] 1 WLUK 508

(HHJ Eady QC – published 19th March 2019)

The Facts

1. C was employed by R to work in its warehouse. She was a disabled person for the purpose of the Equality Act 2010 ('EqA') by reason of suffering from osteoarthritis. It was her perception that her symptoms worsened in cold and damp weather. When R changed its working practices with a view to improve its productivity, and asked that C (and other warehouse workers) be prepared to move between benches, including those situated nearest the loading doors, C refused because she believed this would require her to work in colder, damper conditions and exacerbate her symptoms. R's investigations showed that this was an erroneous belief – in fact, the temperature and humidity levels were not materially different throughout the warehouse – and R considered C's refusal to obey the instruction as unreasonable and issued her with a final written warning (subsequently downgraded on appeal to a written warning).
2. C brought ET proceedings, complaining that this amounted to disability discrimination contrary to section 15 EqA.

The ET Decision

3. The ET upheld C's section 15 EqA claim, finding that R subjected C to a detriment in issuing her with a final written warning which was unfavourable treatment because of something, her refusal to comply with a management instruction, which arose in consequence of her disability of osteoarthritis. R appealed.

The EAT Decision

4. The EAT allowed R's appeal and set aside the ET's judgment.
5. It restated that the correct approach to section 15 was considered by the CA in **City of York Council v Grosset** [2018] EWCA Civ 1105, where Sales LJ provided the following guidance:

"36. On its proper construction, section 15(1)(a) requires an investigation of two distinct causative issues: (i) did A treat B unfavourably because of an (identified) something? And (ii) did that "something" arise in consequence of B's disability.

37. The first issue involves an examination of A's state of mind, to establish whether the unfavourable treatment which is in issue occurred by reason of A's attitude to the relevant "something"...

38. The second issue is an objective matter, whether there is a causal link between B's disability and the relevant "something"..."
6. Specifically, the CA rejected R's argument that it was necessary to show that the employer knew of the causal link between the "something" and the employee's disability.
7. The EAT went on to state that the case law makes plain that the causal connection required for the purposes of section 15 EqA, between the "something" and the underlying disability, allows for a broader approach than might normally be the case. The connection may involve several links: just because the disability is not the immediate cause of the "something" does not mean to say that the requirement is not met – it is, after all, something that only needs to arise "in consequence" of the disability and that is a very broad concept¹.
8. Moreover, providing that R knows of the underlying disability, it does not matter that it does not accept the link between the disability and the "something". The test is an objective one².

¹ Paragraph 35 of the Judgment.

² Paragraph 36 of the Judgment.

9. Here, the ET did not find that there was an impairment in C's judgement arising in consequence of her disability, nor, significantly, was it part of C's case. The most the ET might be said to have found was that C's belief was based upon her GP's earlier confirmation that colder temperatures impacted upon her symptoms. That, however, could only go to C's belief in the link between cold and damp conditions and the exacerbation of her symptoms. It said nothing about why she should erroneously believe that particular parts of the warehouse were colder and damper than others. There was simply nothing in the ET's reasoning that explained why there should be any link in this case between the holding of a false belief and C's disability. That is not a mere failure to provide adequate reasons: on the ET's findings there is no causal link and the section 15 claimed must fail³.



Craig Ludlow

Barrister
3PB Barristers

0207 583 8055
craig.ludlow@3pb.co.uk
3pb.co.uk

³ Paragraphs 45 and 46 of the Judgment.