

# Tribunal issues landmark decision on disability discrimination and unfair dismissal in Guernsey

**Briefing Summary:** The Employment and Discrimination Tribunal has handed down its first fully-determined decision under the Prevention of Discrimination (Guernsey) Ordinance, 2022 (the "**Ordinance**"), considering both disability discrimination and unfair dismissal in *Cortez v Guernsey Cheshire Home LBG*. The tribunal upheld the claim for unfair dismissal, awarding £6,172.13 (with a 25% reduction), but dismissed the disability discrimination claim.

**Service Area:** Employment, Pensions and Incentives, Employment Law, Workplace Investigations

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The Guernsey Employment Tribunal delivers first disability discrimination decision under the Prevention of Discrimination (Guernsey) Ordinance, 2022.

## Background

The applicant, a carer employed by Cheshire Homes from June 2023 to August 2024, had a history of cancer treatment, ongoing side effects including fatigue and a stoma bag, and multiple periods of sick leave. After returning from a period of absence, she attended a return-to-work meeting where discussions centred on her fitness to work. The employer believed there was a mutual agreement that she would take a break, but she later clarified she had not resigned. The employer proceeded to treat her employment as terminated.

## Issues

The tribunal considered whether Ms Cortez had (a) resigned and (b) if not, whether she was unfairly dismissed. It also considered whether Ms Cortez (a) had a disability; (b) her employer knew of her disability and (c) whether she was discrimination against on the basis of that or because of something arising from that disability.

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## Findings

The tribunal found she had a disability under the Ordinance, and that the employer was aware of her disability, but concluded no discrimination occurred. It had regard to the fact that reasonable adjustments had been made, but capability concerns remained substantiated. It was determined that Ms Cortez was not capable of performing the role for which she was employed. It therefore dismissed the claim of discrimination having regard to section 23 of schedule 1 of the Ordinance – which provides that there is no requirement to employ persons who cannot fulfil the essential functions of their role.

However, the tribunal found that Ms Cortez had been unfairly dismissed because her employer failed to confirm her resignation intentions (finding that Ms Cortez had not resigned) and further that her employer did not follow fair a fair (or any) procedures in effecting her dismissal.

## Compensation

The tribunal awarded Ms Cortez £6,172.13, which amount had been reduced by 25% to reflect that a fair, capability-based dismissal would, on the balance of probabilities, likely have occurred if proper procedures had been followed.

## Key takeaways

- Employers must document any resignation discussions and agreements clearly.
- Fair procedures remain essential, especially where misunderstandings may arise.
- Capability concerns may justify dismissal even where disability exists, provided that reasonable adjustments are first explored and applied before determining that an employee is not capable of fulfilling the essential functions of the role.
- The tribunal will exercise its powers to reduce compensatory awards where the dismissal would have occurred in any event.

## FAQs

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### 1. What was the Cortez v Guernsey Cheshire Home case about?

The case concerned claims of disability discrimination and unfair dismissal brought by Ms Cortez against Guernsey Cheshire Homes, a carer who had ongoing health issues following cancer treatment. The Guernsey Employment Tribunal examined whether she was dismissed unfairly and whether her employer had discriminated against her on the basis of her disability under the Prevention of Discrimination (Guernsey) Ordinance, 2022.

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## 2. Did the tribunal uphold the disability discrimination complaint?

No. Although the tribunal accepted that Ms Cortez had a disability and that her employer knew about it, it held that no unlawful discrimination occurred. Reasonable adjustments had been made, but genuine capability concerns remained, and under Section 23 of Schedule 1 of the Ordinance, the tribunal accepted that employers are not required to continue to employ someone who cannot perform the essential functions of their role. It found that Ms Cortez was not capable of performing the inherent functions of her role and dismissed the disability discrimination complaint.

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## 3. Why was the dismissal ruled unfair?

The tribunal found the employer acted unfairly in dismissing Ms Cortez because it wrongly assumed Ms Cortez had resigned and did not follow a fair or thorough process to confirm her intentions or affect her dismissal on the grounds of capability. The dismissal was therefore found to be unfair on procedural grounds.

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## 4. What compensation was awarded?

The tribunal awarded Ms Cortez £6,172.13, which amount had been reduced by 25% to reflect that a fair, capability-based dismissal would, on the balance of probabilities, likely have occurred if proper procedures had been followed.

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## 5. What lessons should employers take from this decision?

Key takeaways include:

- Always document discussions around resignation clearly.
- Ensure fair procedures are followed in all dismissal situations.
- Explore and implement reasonable adjustments before concluding an employee cannot fulfil essential job functions.
- Be aware that tribunals may reduce compensation if a dismissal would likely have happened regardless of procedural failings.

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*Please note that this briefing is intended to provide a very general overview of the matters to which it relates. It is not intended as legal advice and should not be relied on as such. © Carey Olsen (Guernsey) LLP 2026*



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