EMPLOYMENT TRIBUNALS

Claimant:	**Mr C Simpson**
Respondent:	**City of Bradford MDC**
Heard at:	**Leeds On: 4, 5, 9, 10 and 11 May 2017**
Before:	**Employment Judge Rogerson**
Members:	**Dr P C Langman**
	Mr M Brewer
Representation	
Claimant:	**Mr S Coates, Solicitor**
Respondent:	**Mr J French, Counsel**

JUDGMENT

The unanimous Judgment of the Employment Tribunal is that:

1. The complaint of a failure to provide written particulars of employment made pursuant to section 38 of the Employment Act 2002 is withdrawn and is dismissed.
2. On 3 occasions in the period 19 January 2016 to 19 May 2016, the physical features of the premises at Newholme (toilet facilities) placed the Claimant at a substantial disadvantage compared to non disabled persons. The Respondent failed to make reasonable adjustments to remove the disadvantage and that complaint therefore succeeds and the Claimant is awarded compensation for injury to feelings in the sum of £3240 (including interest in the sum of £240).
3. Additionally the Respondent is ordered to pay the Claimant costs in the sum of £1200 in respect of the Tribunal fees paid by the Claimant in respect of this claim in accordance with rule 75(b) and 76(4) of the Employment Tribunals Rules of Procedure.
4. All other complaints of a failure to make reasonable adjustments fail and are dismissed.
5. The complaint of unlawful deductions from wages in relation the alleged failure to pay a salary increment for the post of Senior Residential Practitioner from March 2015, onwards, fails because the increment was not properly payable. That complaint therefore fails and is dismissed.
6. The complaint made pursuant to Regulation 30 Working Times Regulations 1998, relating to the refusal of the right under regulation 10 of the Working

Time Regulations 1998, to a rest period of not less than 11 consecutive hours in each 24 hour period during which the Claimant worked for the Respondent, fails and is dismissed.

7. The complaint of direct sex discrimination made pursuant to section 13 of the Equality Act 2010 fails and is dismissed.
8. The complaint of victimisation made pursuant to section 27 of the Equality Act 2010 fails and is dismissed.
9. The complaint of direct disability discrimination made pursuant to section 13 of the Equality Act 2010 fails and is dismissed.
10. The complaint of discrimination arising from disability made pursuant to section 15 of the Equality Act 2010 fails and is dismissed.
11. The complaint of disability related harassment made pursuant to section 26 of the Equality Act 2010 fails and is dismissed.

REASONS

Background

1. The Claimant was employed by the Respondent as a Residential Practitioner in the department of social services from 16 May 2005 and is still employed by the Respondent.
2. The Respondent operated 12 children's homes until 2015 when the home where the Claimant worked (Edgefield) closed. Of the remaining 11 homes 10 are accessible by public transport from the Claimant's home. All involve a bus journey into Bradford city centre and then a bus journey out to the home. Only one home, Rowan House is within walking distance of the Claimant's home.
3. The Respondent is a large public sector employer with access to human resources and to occupational health support and advice, as and when it is required.
4. The Claimant suffers from IBS and it was accepted that he is/was a disabled person within the meaning given by section 6 of the Equality Act 2010. Whilst it was accepted that the Respondent has had knowledge of disability at the relevant time it was not accepted that the Respondent had knowledge of any substantial disadvantage that the Claimant relies upon for the purposes of his failure to make reasonable adjustments complaint.
5. The Claimant complains of a breach of the Working Time Regulations 1998, unlawful deduction of wages, sex discrimination, direct disability discrimination, discrimination arising from disability, disability related harassment and victimisation. The applicable law in relation to those complaints and the questions for the Tribunal to decide were summarised in the list of issues agreed by the parties.
6. On the first day of this hearing the Claimant applied to amend his claim to add a further alleged act of victimisation in relation to his suspension on 6 January 2017. That application was refused and full reasons for the refusal

were given orally to the parties. They are not repeated now and written reasons for the refusal have not been requested.

7. We will deal with the complaints in chronological order setting out our findings of fact and conclusions in relation to each complaint, recognising that some of the complaints are pleaded in the alternative as acts of either victimisation, direct disability discrimination, discrimination arising from disability and disability related harassment.

8. In relation to the credibility of the witnesses we found the Claimant had a tendency to exaggerate his evidence and was less credible than the Respondent's witnesses. Unfortunately his witness statement also lacked relevant details to support his complaints. His account was also unsupported by some of the contemporaneous documents produced at the time which we will refer to in our findings. It is important to remember that the burden of proof provisions of section 136 of the Equality Act 210 apply to the discrimination complaints. It is for the Claimant to prove facts from which the Tribunal could decide in the absence of any explanation from the Respondents that the discrimination alleged has occurred. He has to establish facts from which a prima facie case of discrimination can be made out. That is why the Claimant was required to at least provide sufficient details of the alleged discriminatory acts in his evidence in chief to support his case.

9. Prior to this hearing the issues had been clearly identified and the Claimant had the opportunity of providing further particulars (pages 80 to 84 and 39 to 41). The issues were also clarified and agreed at the beginning of this hearing when Mr Coates withdrew the complaints at paragraph 5.4.2, paragraph 5.4.3 and paragraph 5.4.4 in the list of issues and the complaint of a failure to provide a written statement of particulars. It was clear therefore that the Claimant and his representative were in no doubt, in advance of this hearing, of the issues to be determined at this hearing.

10. We heard evidence from the Claimant. For the Respondent we heard evidence from Mr C Workman, who is the Registered Unit Manager at Newholme, Ms L Hawksworth-Quill who is the Residential and Respite Service Manager, who for ease of reference I will refer to as 'LHQ'. Mrs A Ashworth who was the Interim Registered Unit Manager at Edgefield and who is now the Temporary Interim Unit Manager at Valley View House and Ms Belinda Greene who is the Registered Unit Manager at the Hollies. We also saw documents from an agreed bundle of documents. From the evidence we saw and heard we made the following findings of fact:

Findings of Fact

11. Prior to 2015, the Claimant was working as a Residential Practitioner working nights at Edgefield Home.

12. In June 2014, he applied for one of six vacancies as a Senior Residential Practitioner. In his application form at page 174 he stated that that he has no disability. He required no arrangements to be made for him at the interview to accommodate his disability and he required no reasonable adjustments to be made for the role. This at odds with the Claimant's evidence at this hearing that he considered himself to be disabled with 'significant onset of his disability from 2010/2011'. He told us the reason he

put 'no' on the application form was because he did not understand what 'disability' meant as at June 2014. However in October 2014 he refers to a discussion with Anne Ashworth when he told her that he was on the disability register and his disability was chronic IBS which he had had for five years. The Claimant was not being honest when he answered 'no' to disability when he clearly understood what it meant. We query why he didn't disclose his disability or the need for reasonable adjustments either at the interview process or going forward when his case to this Tribunal, is that the Respondent was under a duty to make reasonable adjustments and has failed in that duty.

13. Originally, the Claimant was not shortlisted for the post because his application lacked sufficient detail. However, after speaking with Anne Ashworth she agreed that he should be interviewed for the position. At the interview she asked about any disability as part of the standard interview questions so that the panel could make reasonable adjustments during the interview or in the post if the candidate was successful. Her record also confirms that the Claimant confirmed he had no disability. As at June 2014 the Claimant was stating that there were, no health issues affecting his current role or for the role applied for of Senior Residential Practitioner (a role that could only be performed on days not nights).

14. The recruitment process provides that no offer of employment can be made until all references are received and are deemed acceptable by the interviewing panel. It also makes clear that high levels of sickness absence are to be considered before an appointment is made and that all NVQ certificates must be provided at interview to confirm the qualifications required for the post.

15. The Claimant had not provided his NVQ certificates at interview and the panel were concerned about his poor sickness record being unaware that disability was an issue.

16. The Claimant was not offered a Senior Residential Practitioner role because the recruitment process had not been completed and there were concerns about his level of sickness absence. Consistent with that the Claimant never received a contract or offer letter, he never moved into a permanent role, he was not paid from December 2014 when he claims he was offered the role. In his witness statement all he says in relation to that alleged appointment is that "*I was eventually offered the position at (which home) by December 2014".* The lack of detail and failure to identify a location in his own statement did not support his case of any definite offer/acceptance of a contract in December 2014.

17. The contemporaneous documents do not support the Claimant. They record that he was offered and accepted a three month trial period in an 'acting up' role to assist Mrs Ashworth at Edgefield. Mrs Ashworth is herself in a temporary 'acting up' role. The email at page 217 expressly refers to concerns the Respondent had about the Claimant's sickness absence and refers to the possibility of a return to his substantive role at the end of the trial period.

18. Consistent with that evidence was the fact that Claimant was subsequently only paid for 'acting up' in the 3 month period 5 January 2015 to 29 March 2015. At page 250 is a letter setting out the wages paid in that period. In

June 2016, at a 'resolution meeting' the Claimant confirms that was the position. The note records "he could take senior responsibilities on a trial basis and/or return to a night post. That is what happened. Chris agreed". Furthermore, in a subsequent application made in June 2016 the Claimant refers to his "previous experience working **within a senior capacity** at Edgefield". If he had been appointed into a permanent role he would have said so. It is also unlikely that the Claimant would have worked for any length of time after March 2015, whilst being paid less than the amount he believed he should have been paid. In those circumstances the unlawful deduction of wages complaint is not made out because no extra salary was properly payable to the Claimant after March 2015 because he was not appointed to a Senior Practitioner Role.

19. He also complains that the position of Senior Residential Practitioner was withdrawn in March 2015 because of:

    a. A refusal to opt out of the Working Time Regulations;

    b. His disability;

    c. A reason connected with his disability;

    d. victimisation

20. All of those complaints fail because we did not find that his position was withdrawn in March 2015 because he was never appointed in the role. He simply completed a period of 'acting up' as had been agreed.

21. The next complaint relates to alleged comments made by Lorraine Hawksworth-Quill (LHQ) and Anne Ashworth in the period October 2014 to February 2015. In the further and better particular document at page 39 the Claimant alleges they both regularly said to him :

    a. Stop moaning

    b. Why are you never happy

22. On one occasion LHQ is alleged to have told the Claimant "man up, sort yourself out and why are you always on the toilet". The Claimant's statement provides no detail of when and in what context those alleged comments were made. The specific comments were not put to LHQ in cross-examination and she denies (paragraph 11 of her witness statement) they were ever made. Only one of the alleged comments by LHQ relates possibly to his disability by referring to him always being on the toilet, but again there is no context provided to the comment which she denies making. We accepted her evidence and the evidence of Anne Ashworth who also denied the comments. The alleged comments were not made and the Claimant has not established any facts from which we could conclude a prima facie case of either direct disability discrimination, disability related harassment, discrimination arising from disability or victimisation.

23. The next event chronologically is January 2015 which is an email sent by LHQ which is relevant to the Working Time Regulations 1998 complaint, the direct disability discrimination complaint and also to the victimisation complaint. It is the email at page 218 which is dated 2 January 2015. The chain of emails before that email starts on 31 December 2014 and is at page

217B. The relevant part of that email from Anne Ashworth is to the employees at Edgefield asking them if they wished to opt out of the 11 hour break between shifts. She offered them a form to complete if they wanted to opt out or the rota would ensure breaks took place. That was sent to all staff. At page 217D she responds to say she has only received two opt forms and therefore states "I'm of the understanding that there is no one else who wants to opt out of the working time directive. Therefore a new rota will be implemented ensuring 11 hour breaks will be accommodated for you after every shift". That email is then responded to by the Claimant (at page 218) to Anne Ashworth and LHQ at 00.18 on 2 January 2015 which states "*I would like to opt in for the 11 hour break between shifts as don't fully understand how it benefits me to opt out? Once this has been fully explained and the policy provided for me to read if it benefits both myself and Edgefield I am more than happy to reverse the decision".* The reply from LHQ on 2 January 2015 at 10.22am is as follows: *"Hi Chris, you asked for the weekend off and got it. The rota is being completed by the team of which you are a part. We have a discussion about working time directive. You don't have to opt in only out. This service is about meeting the needs of the children first. I must say that this is not the attitude I expect of someone who is wanting to be a senior role and should lead by example, especially when the unit has had such a disgraceful Ofsted inspection".* The Claimant's case is that this was a refusal by the Respondent to permit him to exercise his rights under Regulation 10 by requiring him to work a late shift, do a sleep in duty and then work an early shift weekly, from March 2015. There are no details of each and every alleged refusal replied upon and as Mr French has correctly cited the three month time limit applies to each and every refusal relied upon by the Claimant. He must refer to a refusal prior to 19 April 2016 for the complaint to be made out and no details have been provided.

24. It is clear from the Claimant's communications in January that he was opting out so there is no refusal by the Respondent to permit him to exercise his rights. If that was not the case and there were any occasions when the Respondent refused to permit the rest breaks the Claimant has not identified the occasion(s) that refusal took place. He has had the rotas and could have identified each and every occasion if his case is that any of those complaints are made in time.

25. We did not have to decide the time point but if we had to decide whether it was reasonably practicable to put that complaint in time we would have found it was and would not have exercised our discretion to extend time. That complaint fails and is dismissed.

26. The Claimant also relies on the 2 January 2015 email from LHQ as evidence of direct disability discrimination, disability related harassment and victimisation. It is therefore important to understand what LHQ's reason was for sending the email. She makes it very clear that the service is about meeting the needs of the children first. She refers to the Claimant leading by example because he wants to be in a senior role. This email is sent at the very beginning of the three month 'acting up' period. It is reasonable for LHQ to point that out to him, as a measure of her disappointment in those circumstances. That had nothing whatsoever to do with the Claimant's disability which was never raised by the Claimant with LHQ. His response

states that if it benefits him to opt out he would reverse his decision. The email had nothing whatsoever to do with disability and nothing to do with any protected act and victimisation (the protected act relied upon was never put to LHQ nor was it put that she was victimising the Claimant). Furthermore any complaint in relation to this matter is out of time by a significant period of time and we do not extend time on just and equitable grounds because we have no grounds for doing so.

27. Unfortunately, the Edgefield home did close in early 2015 and the Claimant was moved to Newholme on 23 March 2015. He alleges that from March 2015 onwards his colleagues Yaseen Saqib, Sarah Healey and Andrew Fisher referred to him as "sick note" because of his disability related absences and accused him of being a persistent moaner and complainer. These alleged comments were never raised with the Respondent until the further and better particulars were provided on 22 December 2016. Mr Workman thereafter conducted an investigation but at that stage could do little more than ask those individuals if those comments were made. If the Claimant had reported them at the time then a more detailed investigation might have been possible. The Claimant cannot now criticise the Respondent for not doing more now. Again the Claimant's witness statement lacks any detail to support the context in which those alleged comments were made. Which disability related absence does he rely on for the comment and when were they made. How did the individuals know that the reason for his absence was 'disability related' and what was the context in which the comments were made. Again it is for the Claimant to provide evidence from which we could find that that discrimination had taken place and he has failed to do so. That complaint fails and is dismissed.

28. 'Sleep Ins' were introduced at the Respondent's care homes in 2015 as a cost saving measure because of the need to provide 24 hour cover for the care of the children.

29. In the Claimant's application form for a senior role he accepted that need and it was part of his contract that he was required to do 'sleep ins'. On 28 May 2015 he raised issues with 'sleep ins' but only in the context of whether he was being paid correctly, not in the context of his disability or any reasonable adjustments required. It is clear that throughout this time the Claimant also had personal issues around the rota and 'sleep ins' because of his child care responsibilities for his six year old son. He describes himself as a single parent when in reality he shares caring responsibility equally with the mother. This was not the case of an 'absent' parent. It was about shared parental responsibilities. His oral evidence was to exaggerate his childcare responsibilities in a way that did not reflect that reality.

30. In August 2015, an allegation was made that the Claimant and another employee had allegedly been smoking Cannabis whilst at work. The Respondent correctly investigated that allegation and took no further action as a result of its investigation.

31. In November 2015 an allegation was made about the Claimant sleeping whilst on duty. The letter inviting him to a disciplinary hearing, at page 266A, makes it clear why this was a matter that needed to be investigated. On 11 December 2015 the Claimant receives an outcome letter which informs him that no action was to be taken. Those matters were properly

investigated and it was appropriate for the Respondent to take the action it did because of its responsibility and obligations to the children in its care. The investigations/disciplinary process carried into alleged misconduct was not because of the Claimant's disability or for any reason connected with his disability or to victimise the Claimant because of any protected act. Those complaints therefore fail and are dismissed.

32. On 30 September 2015, the Claimant was referred to Occupational Health (OH) in relation to his absences from work. The relevant paragraphs of the OH advice provided to the Respondent are at page 269 and state as follows:

> *"Dealing with irritable bowel syndrome at work can sometimes be a challenge but there are strategies to cope. Planning ahead and avoiding unnecessary stress which may make IBS work and having access to clean toilet facilities.*
>
> *Due to the chronic nature of the symptoms of IBS I would suggest management to support Christopher with flexible working to allow him with enough time to rest in-between his shift patterns and regular breaks as applicable. There is also a recommendation that Christopher will have further exacerbations of his symptoms occasionally. He says he has been proactive in managing the symptoms. However it is impossible to predict the severity or timescale of any future episodes. The recommendation is that a meeting is arranged to discuss this further with the Claimant.*

33. The meeting that follows in January 2016 is important in relation to the reasonable adjustments complaint that the Claimant makes. The first reasonable adjustment (5.15.1 from the list of issues)) complaint is that "the physical feature of the Respondent's home at Newholme put the Claimant at a substantial disadvantage. The substantial disadvantage identified is the "lack of en suite or toilet near to the Claimant's sleeping accommodation" which he says put him at a substantial disadvantage because "he needed quick access to a toilet at all times because of his condition". The OH advice refers to "access to clean toilet facilities".

34. At the return to work discussion in January 2016 Mr Workman accepted that the arrangements at Newholme were not ideal but were due to be improved sometime in the future. Those arrangements involved four flights of stairs between the staff toilets and the sleeping accommodation. Mr Workman recognised that there had to be a plan to create en suite accommodation in the future because of the unsuitable location of the toilets. A suggestion was made at the end of that discussion that the Claimant should "consider a move to another unit if this is of upmost importance to ensure his health and attendance".

35. We agree with Mr Coates submission that if the duty to make reasonable adjustments is triggered it is not up to an employee to try and find a suitable unit with suitable toilets it is the employers responsibility. Mr Workman could have made enquiries because he was put on notice by occupational health that this was an issue for the Claimant. We put to Mr Workman, and he accepted that to remove the disadvantage he could have either found a home that had adequate toileting facilities located close enough to the sleeping accommodation or he could have removed the requirement for the Claimant to perform sleep ins.

36. From the rotas we saw in the period 19 January 2016 to 19 May 2016, whilst the Claimant was working at Newholme he was required to and did perform three sleep ins. On 12 February, 28 April and 6 May the physical features at Newholme placed the Claimant at a substantial disadvantage as a disabled person compared to non disabled persons and the Respondent had failed to make a reasonable adjustment.

37. From 19 May 2016, the Claimant was moved to the Hollies which had toileting facilities located nearby (one flight of stairs) similar to a normal household layout. We found that it was reasonable for the Claimant to perform one sleep in whilst working at the Hollies on 3 June 2016 because those toileting facilities were nearby and he was not placed at a substantial disadvantage as a disabled person.

38. From 9 June 2016, the Claimant went to work at the Willows home which had en suite facilities for staff and access to toilet facilities.

39. On 10 July 2016, the Claimant transferred back to Newholme following a complaint by a resident which was subject to a Local Authority Designated Officer (LADO) Investigation. From that date, he was not required to perform any 'sleep ins' because the home did not require this.

40. In September 2016, en suite facilities were available at Newholme providing access to a clean toilet. The Claimant was not placed at a substantial disadvantage as a disabled person compared to non disabled persons. There was therefore a limited period of three occasions in four months when the Claimant was placed at that disadvantage by the physical features of the premises at Newholme.

41. One other aspect of the advice from Occupational Health relating to access to clean toilets involved an allegation made against Mr Workman that he had 'harassed' the Claimant for a reason relating to his disability by making comments regarding cleaning fluids for the toilet at the Claimant's work stress risk assessment and return to work meeting on 19 January 2016. That is how the Claimant puts his complaint in the further and better particulars. At paragraphs 13 and 14 of his witness statement he says Mr Workman's only recommendation was that the Claimant had to "buy more cleaning fluids" and then says at paragraph 14 "it was again agreed that cleaning products would be provided". It is not clear how that is put as an allegation of unwanted conduct which has the purpose or effect of harassing the Claimant. In his evidence to us he said he was being expected to go and buy the cleaning materials which he found to be demeaning to him. The return to work record identified the need for cleaning materials to be available in the location of the toilet. The stress assessment record notes that the Claimant "feels not appropriately equipped with cleaning materials. CSW agreed".

42. Mr Workman (CSW) told us that the cleaning materials had been located in a cleaning cupboard away from the toilet. The photos we saw show that the cleaning materials were then located on a shelf near the toilet after the Claimant had complained. Again we found that the Claimant was exaggerating his evidence to us to support his claim when the contemporaneous evidence that he refers to does not support his account. It was not disability related harassment for Mr Workman to discuss with the Claimant where the cleaning materials were better located as a result of the

occupational health advice and the Claimant's preferences. That was a supportive measure the Claimant requested and Mr Workman acted upon. It was not unwanted conduct that had the purpose or effect of 'harassing' the claimant for a reason related to disability and that complaint fails and is dismissed.

43. The next 'PCP' the Claimant relies upon (5.15.2) is that the toilet facilities for 'daily' use were inadequate and were said to put him at a substantial disadvantage as a disabled person. Again we saw photographs of those facilities at Newholme. There was a toilet, a sink, a shower in a large bathroom with washing facilities for use for the staff during the day. There was nothing to indicate why/how those facilities were not suitable and how/why the Claimant was placed at a substantial disadvantage. The Claimant had access to a clean toilet as advised by occupational health and to washing facilities. The complaint is not made out it fails and is dismissed.

44. The next PCP relates to the hours of work. The Claimant says a PCP was applied to him requiring him to perform one 'sleep in' duty per week. There was no such PCP applied to the Claimant and that complaint fails. His assertion is that he was placed at a substantial disadvantage because a longer shift made it more difficult to manage his diet and sleeping patterns. During a 'sleep in' the employee is expected to sleep in at the home as part of their normal working hours and they are paid normally as well as an extra payment for that sleep in shift. There is usually a shift either side of the sleep in which means a longer shift overall but with a 'sleeping' shift in between. The employee is only paid overtime if they are required to work during the sleep in shift for more than half an hour so the expectation is they sleep while the children are sleeping.

45. Oddly, given the Claimant's case that longer shifts put him at a substantial disadvantage, he was requesting extended double shifts to help him with his childcare responsibilities. This was another area where there was some inconsistency in his evidence. The real issue about the rota for the Claimant was that he wanted it to fit in with his childcare responsibilities which had nothing to do with his disability at all. There is some support for this conclusion because the Claimant alleges less favourable treatment on the grounds of his sex because of the Respondent's refusal to adjust his working hours to accommodate his childcare obligations.

46. He complains that two women Samantha Wilsby and Sarah Healey were treated more favourably on the grounds of their sex because the rota was adjusted for them to accommodate their childcare obligations. SW was a full time residential practitioner like the Claimant. SH was a part time worker and not in the same material circumstances as the Claimant. Mr Workman told us that the rota was adjusted whenever possible irrespective of the sex of the employee concerned. If it was adjusted it was the same informal arrangement that was offered to the Claimant when his hours were adjusted. More importantly for the purposes of the sex discrimination complaint Mr Workman points to another comparator Yaseen Saqib, a full time male residential practitioner like the Claimant, who also had his rota adjusted for him. It was not less favourable treatment on the grounds of sex and the complaint of direct sex discrimination therefore fails and is dismissed.

47. The third PCP relied upon (5.15.4) is that of allocating shifts at short notice and at variable times which the Claimant says put him at a substantial disadvantage because it made it more difficult for him to manage his diet and sleeping patterns because of his IBS. The evidence we heard and accepted was that rotas were usually prepared in advance for an eight week period. They were then given to the staff and any changes that could be made were made and it they were then implemented for the following eight weeks. There was only one occasion when the Claimant had to be allocated shifts with short notice. This was when he moved to Hollies and a rota was already in place with two weeks left to run. The Claimant had to be slotted in in at short notice to assist the unit. He knew he was going there to assist the unit which was short staffed and he agreed to that without objection. He said nothing to the home manager Belinda Greene to put her on notice that the times that he was being asked to work caused him a difficulty because of his disability (IBS). She did not know and could not reasonably have known of any substantial disadvantage in relation to the Claimant managing his diet/sleeping pattern because he did not tell her. In fact he told her the rota was fine because he appreciated the circumstances in which he had come to work at the home. He knew his personal preferences would be considered and taken into account when the new rota was prepared. There was no evidence to support that the Claimant's case that the duty to make reasonable adjustments was triggered and therefore no failure by the Respondent. Accordingly that complaint also fails and is dismissed.

48. The final PCP that the Claimant relies upon is a PCP 'requiring him to work at a care home 10 miles from his home'. All homes except Rowan House require a journey of 2 buses if travelling by public transport. The Claimant has never requested a move to Rowan House and he had not raised any difficulty he had with the distance from his home/length of journey. The substantial disadvantage he relies on of an increased risk that he would need to use the toilet or have an accident in consequence of his condition of IBS whilst he on public transport was not raised with the Respondent at any of his return to work interviews when his disability was discussed. He has worked at different locations without raising an issue for example Hollies, Willow, Edgefield and Newholme. In June 2016 he asked to be considered for a senior role at Hollies knowing its location was 10 miles from his home and the required journey by public transport. We therefore found the Respondent had no actual or constructive knowledge of the substantial disadvantage that the Claimant relies upon to support his case of a failure to make reasonable adjustments. Therefore the duty to make reasonable adjustments was not triggered and the Respondent did not fail by making an adjustment of "moving him closer to his home".

49. The two other complaints of discrimination arising from disability and harassment and direct disability discrimination are made against Ms Greene the manager at Hollies and Ms LHQ. The complaints against Ms Greene are that she 'micromanaged' the Claimant in relation to his times at work. Her style of management was to require employees to report to duty on time and not to be late. She ran a tight ship because she was required to in order to meet the needs of the children because of that 24 hour provision of care was the responsibility of the Respondent. Ensuring employees start their shift on time is something she was entitled to require them to do. There was

nothing in Ms Greene requiring an employee to perform the role they are employed to do, at the time they are required to under the terms of the contract unless they were unable to do so for any reason.

50. The Claimant alleges that on 31 May 2016 Ms Greene reprimanded the Claimant at 7.04 am for being in the shower when he should have been on his shift at 7.00am. He says the reason he was in the shower was because it followed an episode of incontinence. He also says he was late at work on an earlier occasion because he needed to use the toilet and had been similarly reprimanded. That is what he says in his witness statement (paragraph 24e). He does not set out when/what he actually told Ms Greene in relation to both of those incidents at the time to inform her that the reason for his lateness on each occasion was linked to his disability. Her evidence was that he made no mention of his condition or the incontinence to explain his lateness. If he had she would have accepted that explanation. We preferred and accepted her evidence. Again the Claimant has failed to set out in his own account sufficient facts to support a prima facie case of discrimination.

51. Similarly in relation to LHQ he alleges that when he told her he needed a taxi on 6 May 2016 she refused and told him he was "taking the piss". In his pleadings he says that the request for a taxi home arose because his condition of IBS made him unwell on that occasion. In his witness statement at 24 (f) he states he spoke to Mr Workman to request the taxi then he spoke to LHQ. The Claimant says "owing to my condition I felt very unwell sick extremely fatigued and dizzy. I was due to collect my son but did not feel well enough to make the journey home by public transport. I asked CW if in these exceptional circumstances a taxi home could be arranged as I did not have enough for the fare". Mr Workman denies any conversation with the Claimant and says that he was in hospital on that day and we accepted his evidence. The Claimant then refers to his conversation with LHQ. "She listened to what I had to say about the exceptional circumstances and how my disability was affecting me because of the hours I was having to work and then told me I was taking the piss". LQH denied the comment. She accepts she refused the taxi because that was not the practice of the Respondent to pay an employee's taxi fare home and the Claimant never mentioned his disability when he requested it. If he had she would have authorised the taxi fare. The reason given by the Claimant for the taxi was linked to his childcare and he refers to the need to collect his son. However the Claimant was not due to finish his shift that day until 2.30pm. The Respondent had accepted he was tired because of the disruptions that had taken place that night and they had made staffing arrangements to allow him to leave early at 10.30am. The Claimant said nothing about his disability during the call with LHQ and did not refer to any protected act. That complaint based on our findings of fact is not made out as a complaint of direct disability or discrimination arising from disability or of victimisation.

52. Finally in relation to the victimisation complaint the Claimant has alleged in his further and better particulars that there were 21 protected acts in the period October 2014 to November 2016. He alleges four acts of victimisation which are withdrawing his promotion to Senior Residential Practitioner in December 2014, subjecting him to disciplinary proceedings in November 2015, LHQ telling him he was 'taking the piss' in May 2016 and LHQ's email

of 2 January 2015. We have not found that any of those detriments were made out based on our findings of fact and therefore the complaints fail. However in questioning the Respondent's witnesses as to their motives none of the 21 protected acts relied upon were put to those witnesses as the reason why they had behaved in the way that was alleged. For example in relation to the alleged detriment of withdrawing the promotion in January 2015, the only protected act relied upon before that date was a supervision meeting on 23 October 2014. It was not put to Anne Ashworth that the reason why she withdrew the promotion was because he had made a verbal complaint to her of a failure to make reasonable adjustments on 23 October 2014.

53. Of all of the complaints only one complaint of a failure to make reasonable adjustments succeeds in relation to the physical feature of the premises at Newholme on 3 occasions in a four month period. In his schedule of loss the Claimant claims £25,000 for injury to feeling in respect of all of his complaints. Mr Coates submitted that this reflects the degrading treatment that the Claimant has suffered over an extended period of time and it should reflect the fact that this Respondent has flouted its obligations and has put the Claimant's health and safety in serious jeopardy which resulted in him collapsing in front of his son in May 2016. He confirmed there was no claim for personal injury made.

54. Mr French submits that any claim for injury to feelings should fall within the bottom band of Vento/Dai'bell and should be no more than £8,000 for injury to feelings and not the £25,000 the Claimant puts forward.

55. We decided the appropriate amount which it was just and equitable to award to compensate for the injury to feelings in relation to the one successful complaint was £3,000. We award interest to that sum in the amount of £240 making the total award £3,240. We also order the Respondent to pay the Claimant costs of £1200 in respect of the fees he has paid to bring this claim in accordance with rule 75(1) (b) and 76(4) given that the claim has succeeded in respect of the complaint for a failure to make reasonable adjustments in respect of which that fee has been paid.

Employment Judge Rogerson

Date: 24 May 2017