



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Mrs M Saafan**

**v**

**BT Plc**

**Heard at:** Birmingham

**On:** 26 to 30 October 2020  
and 8 December 2020

**Before:** Employment Judge Broughton

**Members:** Mr Liburd  
Mr Morrison

## REASONS FOR JUDGMENT OF 8 DECEMBER 2020

The Claimant's claim of indirect disability discrimination succeeded as did her claims of discrimination arising from disability in relation to the internal recruitment, talent entry and one of the talent acquisition roles.

As a result, there was no need to go on to consider her claims for reasonable adjustments in relation to those roles.

Her other claims failed and were dismissed. A remedy hearing has been arranged.

These reasons were requested by the claimant.

### The Facts

1. The claimant has been employed by the respondent in various roles since 2005.
2. She was referred to Occupational Health in 2012 principally due to an ear condition that was affecting her hearing and causing difficulties working in a call centre.
3. As a result, the claimant needed to work in a quiet environment and she started working in recruitment in a role which she could do from home.
4. At some point, a couple of years later, we heard that the claimant was also diagnosed with fibromyalgia. No further Occupational Health report was

obtained at that stage, albeit the adjustments already in place meant that the claimant was able to continue working.

5. She began working in the respondent's internal recruitment team in September 2017. We heard that there was a location requirement for that role. However, it was not applied in the claimant's case as a further reasonable adjustment.
6. It was common ground that, throughout her career with the respondent, the claimant was, and remains, a good employee.
7. At the time, the respondent divided recruitment into 3 core areas:
  - a. Priority – relating to existing employees in need of redeployment
  - b. Internal – all other internal candidates for vacant roles
  - c. External – filling vacancies from outside the respondent
8. The claimant's evidence was that she also had some experience of priority recruitment and, to a lesser degree, external recruitment.
9. In November 2017 the claimant was asked to go for an updated Occupational Health (OH) assessment and she agreed. However, it was not progressed at that stage.
10. The claimant believed that this may have been delayed because one or more of her senior managers were aware that there was a large scale restructure in the pipeline.
11. Whilst not directly involved at the time, we heard evidence from David Graham, the respondent's head of volume recruitment, who became the claimant's second line manager after the restructure was announced. We also had the benefit of the investigation notes in relation to the claimant's subsequent grievance.
12. We accept Mr Graham's evidence that he, and other managers at or below his level, were unaware of the proposed restructure until April 2018, just before it was published to all affected staff, as they were impacted themselves.
13. When asked why the claimant's OH assessment had not been progressed, Mr Graham's response was that they weren't trying to move the claimant away from homeworking at the time.
14. That is, perhaps, quite revealing. It appeared that, in Mr Graham's mind at least, the principal purpose of such referrals was to achieve company objectives, as opposed to supporting employees with health conditions.
15. The extent to which that view was more widely held within the respondent was unclear. That said, it appeared that the respondent had, at one stage, been very supportive of homeworking. More recently, albeit prior to the

restructure, they had been looking to move teams in certain areas of the business back to office based roles.

16. In April 2018 BT announced that they would be implementing a new strategy to move to hub based working. The intention was to reduce their principal locations from 300 to 30 over a 3 to 5 year period.
17. The first team to be impacted by this proposal, perhaps unsurprisingly, was recruitment.
18. On 24 April 2018, the respondent announced that the proposal was for the resourcing team to work from 3 hubs to be based in London, Bristol and Bedford. It was also proposed that the priority and internal recruitment teams would be merged.
19. We heard that there were 12 employees in internal recruitment at this time. There were a further 8 working in the priority team.
20. All 20 were effectively displaced from their existing roles at that point, although there was obviously still work to be done until the new roles were filled.
21. 14 new roles were created. At this stage, the new roles were still called internal recruiters but were at a higher grade, covering both areas of internal recruitment in a more proactive way.
22. At the time the respondent had what was called a transition centre, which was effectively a package of support measures for displaced employees. The claimant, however, could not, apparently, be moved into the transition centre until she had an up to date OH report.
23. The claimant felt that this put her at a disadvantage. That said, she could not identify any roles that she missed out on as result and, given her role, she would have been aware of them.
24. She was able to identify some short term assignments at the time but her manager still had work for her and so she could not be released. That would have been the case in any event.
25. The transition centre was closed a few weeks later before the claimant had seen OH. However, it was replaced by a different package of support measures.
26. As a result, there was no evidence of any material disadvantage to the claimant in this regard, albeit she understandably felt in limbo.
27. The claimant was assigned a redeployment manager, Louise Coles, but there was nothing she could do until the OH report was received.

28. That said, the respondent's explanations for the delay in obtaining an OH report were beyond unsatisfactory and not merely because of Mr Graham's comments referenced above.
29. Both parties needed an OH report as soon as possible after the restructure announcement to facilitate the claimant's redeployment yet it was over 3 months before this was addressed.
30. Mr Graham said the claimant's then line manager had left the business and had failed to action this issue prior to her departure such that he had to do it himself. In fact, she hadn't left the business and processed this herself in July 2018 having, on her evidence to the grievance investigation, been told not to bother previously.
31. The OH report was received on 6 August 2018. It identified the claimant's fibromyalgia and hearing difficulties as disabilities and concluded that she would need to work from home.
32. The claimant had applied for the new internal recruitment role on 31 July 2018.
33. The claimant was adamant that the role was the same as that which she had done previously. She maintained that mistaken view robustly through the internal processes and, to a lesser extent, before us.
34. The job descriptions were similar but not identical. We appreciate that this can sometimes be the case even where employees are acting at a different level, as was the case here.
35. The responsibilities were wider and the pay higher.
36. That said the respondent also sought to contend that the role included external recruitment. That seemed unlikely given the job title and the fact that such duties were not in the job description, albeit there was a brief reference to external recruitment experience in the person specification.
37. It may have been the respondent's future intention to move towards a team of recruiters who could handle all internal and external recruitment but that was not documented at the time.
38. The claimant's application for the internal recruitment role was rejected on 23 August 2018. The only reason given was that she could not comply with the hub location requirement.
39. The claimant wanted to appeal / challenge this decision but was simply told that there was a business justification for moving the team to the hubs and not much more.
40. There was some suggestion that having the team all in one place would lead to more cohesive working but, as mentioned previously, the proposal

was that they would be split over 3 locations, albeit the end result was that they were split between London and Bedford.

41. As the claimant's previous role no longer existed she was transferred to a different team to support Openreach recruitment. This was effectively a temporary role until she was able to secure something more permanent but there was never any suggestion that she may end up being dismissed, whether for redundancy or otherwise.
42. The claimant, therefore, had a new line manager, as well as Ms Coles to support her redeployment efforts, although there was scant evidence of what this involved beyond regular catch-ups.
43. It was for the claimant to identify potential new roles and challenge unsuccessful outcomes.
44. She claimed she felt the respondent did not support her but was unable to identify what she said they should have done. Given her previous role, the claimant was fully equipped to identify and apply for roles and also to challenge outcomes.
45. She was, after all, kept in gainful employment on full pay throughout and was able to apply for numerous roles.
46. Nonetheless, the claimant's allegation that she did not receive support became something of a mantra, both at the time and before us. It appeared that she had unrealistic expectations of the respondent's obligations.
47. The claimant applied for a Talent Entry role in September 2018. Mr Graham rejected her application on location grounds.
48. The claimant challenged this outcome, identifying a couple of roles where she said travel was not a requirement. She also suggested that, if attendance at assessment centres was necessary, she would be able to attend one local to her home if others could do those further afield.
49. Again, she was simply told that travel was an essential requirement of the role.
50. In October 2018 the claimant started to apply for an Infrastructure Delivery role in Coventry but she then decided not to progress this.
51. Nonetheless, her application was still put forward and, when she realised what had happened, she was still encouraged to attend the interview, which she did.
52. At the interview, she explained her limitations and was told she would not be suitable for the role due to her disabilities and the location requirement.

53. It was acknowledged by the respondent that the claimant should never have been put forward for this role and that the whole scenario was very distressing for her. The claimant acknowledged that Louise Coles did give her appropriate emotional support on her return journey.
54. The claimant had sought to amend her claim to include her treatment in relation to this role but that had been refused at a previous hearing.
55. The claim before us was solely in relation to not being offered the role but, as she didn't want it, there was no unfavourable treatment or disadvantage in that regard.
56. It is worth noting, however, that this episode did demonstrate that she could travel, on occasion, for work albeit the claimant acknowledged that she would not be able to do this regularly (no more than once or twice a month) due to fatigue.
57. It was at this stage that the claimant raised a grievance. There were no specific claims about that process albeit the claimant relied on certain matters as background. There were failings in the grievance process and, to a greater degree, in the subsequent appeal.
58. To his credit, these were readily acknowledged by Agus Thompson, the appeal officer, who had never heard an appeal before.
59. The failings were, in essence, related to an inadequate investigation that did not really challenge any of the respondent's managers' assertions. Looking more widely, the possibility of making adjustments to the hub strategy in individual circumstances was barely countenanced.
60. As was confirmed, the strategy was viewed as almost sacrosanct.
61. The claimant entered early conciliation in early 2019. Whilst those processes were ongoing the respondent identified a role for her, Screener, that could be done from home.
62. The claimant said she felt under pressure to accept this role and drop her grievance and not pursue her claim. She even felt the offer may not have been genuine and that this was demonstrated by the respondent's delays in responding to her queries about the specifics of the role.
63. We accept, however, the respondent's contention that they have various internal processes to complete when finalising the details of a new role. It may be that they raised the prospect of this role with the claimant whilst it was still in a formative stage as an attempt to head off her complaints but, if so, that is not unreasonable. They were, after all, trying to secure a role for her.

64. The claimant had queries and concerns about the likely increased call volumes and whether she may be able to cope. It also appeared to be a lower level role, albeit with pay protection.
65. The claimant had asked about adjustments but received no specific response.
66. There was no contemporaneous evidence that the claimant chased answers in relation to this role and we accept that the respondent believed that she wasn't interested in it.
67. That said, the claimant should have received what the respondent called an Enable Assessment. This was like an OH assessment but focussed on appropriate equipment to assist employees in their role.
68. The claimant had previously received an appropriate chair and other items for her home office but we heard that there was equipment available, primarily a specialist speaker box for her phone and computer, which would have dramatically assisted her. This was not provided until a few months after the claimant had secured a new role.
69. The respondent could offer no explanation for that failing. It was not, however, a specific claim before us.
70. The claimant was not rejected for the screener role, nor did it have a location requirement, so her claim, as it was put before us, could not succeed.
71. There were 2 further specific roles which the claimant referenced in her claim as ones she said she should have been offered with adjustments. The first was a Case Management Specialist based in Bristol and the second a Core Network Change Analyst based in Ipswich.
72. In relation to both of these roles the entire team were based in a single location. In addition these roles were significantly different from the various recruitment roles which the claimant applied for, such that she was a less obvious fit for them.
73. The claimant did not challenge the respondent's justification defences for these roles and we had no reason to doubt their business case for the location requirement. For example, the Ipswich role required the team to work together to provide network cover 24 hours a day, 7 days a week.
74. Moreover, the claimant secured a role shortly thereafter. with the necessary adjustments. It is a role she is happy with and one in which she remains to this day. As a result, there was no disadvantage in being refused for less suitable roles a few weeks earlier.
75. The claimant had also applied for a Talent Acquisition Professional role. This caused considerable confusion as this was a job title which had

previously applied to a few roles but which was being rolled out more widely to include, for example, the internal recruiter role that the claimant had unsuccessfully applied for.

76. The respondent had claimed that all of these roles had a location requirement and / or required regular travel and attendance at assessment centres, both of which, it was claimed, would preclude the claimant.
77. It was only after Mr Graham was pressed on this that he acknowledged that the position described in his witness statement was untrue and there was no need for anyone in the internal recruitment role to attend such centres.
78. We would accept his evidence that assessment centre attendance was a regular requirement for his Darlington team.
79. However, there was another TAP role for which the claimant applied. She was again refused on location grounds and Mr Graham was unable to offer any cogent justification defence in that instance.
80. The claimant secured an alternative role working from home on the same terms and conditions of employment in July 2019. She secured the additional equipment to assist her in doing so a few months later and remains happy in that role.
81. The claimant also raised a concern that, on a couple of occasions, she became aware that she had been considered for the respondent's adjusted job search policy.
82. This was a policy that gave additional priority to employees displaced by reason of disability but, if they were unsuccessful could lead to dismissal.
83. Whilst the purpose of this policy could, potentially, have benefitted the claimant, it is understandable that, had it been implemented she may have been concerned that there was, ultimately, a possibility of dismissal.
84. It was common ground, however, that this policy did not apply and was not applied. As a result, at no stage was there any suggestion that the claimant may be dismissed in the circumstances of this case.

#### The issues and the law

85. The claimant brought claims of indirect disability discrimination, discrimination because of something arising in consequence of disability and a failure to make reasonable adjustments. These claims were, therefore, brought under sections 15, 19 and 21 Equality Act 2010.
86. The indirect discrimination claim was in relation to the hub strategy generally.



87. The other claims were in relation to the 7 roles the claimant identified:-

- a. Internal recruiter
- b. Talent entry
- c. Infrastructure delivery
- d. Screener
- e. Case management specialist
- f. Core network change analyst
- g. Talent acquisition professional

88. The PCP identified in relation to the indirect and reasonable adjustment claims was the hub strategy or, more specifically as became clear before us, the requirement that certain roles be office based and / or required regular travel.

89. The claimant said that this put her and other disabled employees who needed to work from home at a disadvantage such that it was for the respondent to justify the policy and / or offer reasonable adjustments.

90. In relation to the section 15 claim, the claimant said that her need to work from home arose from her disability such that refusing her for roles with a location requirement was unfavourable treatment.

91. It was common ground that, if she was right, it was for the respondent to justify the requirement and, specifically, to show that they had a legitimate aim which corresponded to a real business need and that they acted proportionately in refusing the claimant access to the roles.

92. We were mindful that a number of the claimant's allegations were not specifically issues before us.

93. We were also mindful that the initial burden was on the claimant to prove facts from which we could conclude that discrimination had taken place.

94. If she were able to do so, it was then for the respondent to show that their actions were in no way tainted with discrimination and / or to show that there were no reasonable adjustments that could be made or that their actions were justified, amounting to a proportionate means of achieving a legitimate aim.

#### Decision

95. We did not lose sight of the fact that, in certain respects at least, the respondent did more than the law may require. The claimant's employment was never at risk and the evidence was that she would remain employed until a suitable role was obtained.

96. That policy significantly mitigated any disadvantage suffered by the claimant, including any alleged lack of support. It did not, however,

preclude her from being disadvantageded by certain roles not being available to her or, indeed, being in limbo for over a year.

97. That said, the claimant appeared to be under the misconception that it was the respondent's duty to make almost all of the adjustments that she may have required or desired to any particular role.
98. The respondent's duty is only to make reasonable adjustments and they only need to do enough to remove any disadvantage suffered. If the adjustments offered remove the disadvantage, it is not open to an employee to argue for different adjustments.
99. Turning to the first role applied for that was before us, internal recruiter.
100. We considered it preferable to consider section 15 first as, if successful, the other claims became somewhat academic.
101. Whilst the job title was the same as that previously held by the claimant, we accept that the roles were, to some degree at least, different.
102. Firstly, the role encompassed priority recruitment. There were some further differences in the job specifications and the respondent was clearly expecting something more by virtue of the higher pay grade.
103. It was not, therefore, unreasonable for the respondent to require those displaced in the restructure, including the claimant, to apply for the new roles. We heard that many did and some were successful, but not enough of them to fill all of the new roles.
104. Given her experience, the claimant was a credible candidate for the roles. That is not to say that she would, or should, have been successful but she was rejected on location grounds before being afforded the opportunity to attempt to demonstrate her suitability.
105. It was clear, therefore, that the claimant was rejected because of the location requirement and that was unfavourable treatment.
106. Her need to work from home was something arising from her disabilities.
107. The respondent, rightly, conceded disability and knowledge.
108. As a result, it was for the respondent to show that the requirement to work from London or Bedford and / or travel was a proportionate means of achieving a legitimate aim.
109. The claimant did not particularly challenge the legitimacy of the respondent's hub strategy as an aim and it is certainly not for us to tell the respondent how to run their business.

110. Moreover, we would acknowledge that, on the face of it, the strategy was not unreasonable in itself although there was scant, if any, evidence to suggest that it was addressing a real business need.
111. That is not to say that it wasn't, merely that the respondent failed to evidence it before us.
112. Mr Graham suggested that the location and travel requirement was essential due to the need for recruiters to regularly attend assessment centres. This turned out to be untrue, although it was only when pressed for details that Mr Graham eventually accepted that his statement was misleading and inaccurate.
113. The respondent suggested that there was also a need to meet with hiring managers but they would be based all over the country so, if anything, the hub strategy would make that harder. In reality, we heard that this primarily happened remotely in any event.
114. At the time the respondent would often just that there was a strong business case for moving to the hub strategy with no more explanation provided
115. Before us, they did attempt to expand this to rely on certain generic justifications, such as teams working more cohesively, sharing information and assisting with training.
116. These may have had some validity, but the respondent was unable to provide any cogent examples of why this could not be achieved with regular team calls and communications, especially as that is a core part of their business.
117. The only specific evidenced example we were offered was from Louise Coles. She explained the difficulties she'd had managing a team based in two locations but that, of course, could not help the respondent, given that is exactly what they were moving to.
118. In fact, we heard that there were only two members of the new team based in London and so their position, based on the justifications advanced by the respondent, was not overly dissimilar from that proposed by the claimant, working remotely from the core team.
119. In addition, the claimant had indicated that she would be able to travel, on occasion, for training and team events and the respondent must have been aware of this as she had done so in the past.
120. There was a significant impact on the claimant by being denied access to certain roles, particularly this first one at a higher grade, based solely on the location requirement.

121. Had she been successful she would have received a promotion and been spared the uncertainty of searching for a new role over the months that followed.
122. The respondent fell well short of justifying this refusal as a proportionate response. The claimant had been able to work successfully from home as an internal recruiter and there was little or no evidence to show that the adjustments that had been in place were no longer reasonable in the new roles.
123. We are satisfied that, on the evidence before us, it would have been reasonable for the respondent to maintain the adjustments in place for the claimant as well as providing the speaker box but, obviously, the duty to do so would only arise if she were successful in her application.
124. That is something to be considered further at the remedy hearing, if the parties are unable to resolve matters before then.
125. It is of little more than academic interest to go on to consider the other roles, talent entry and TAP. The claimant's refusal for those recruitment roles on location grounds also amounted to unreasonable treatment arising from her disability.
126. We have already explained in our findings of fact that the respondent failed to evidence these refusals as a proportionate means of achieving a legitimate aim and hence, for similar reasons to the internal recruiter role, they have failed to justify the location requirement in relation to these roles also.
127. The fact that there were such other roles applied for, spread over a period of around 1 year, and that it appeared that, on occasion at least, the hub strategy was viewed as inviolable, shows that the policy of applying location requirements to roles was conduct extending over a period.
128. In any event, it was reasonable for the claimant to seek to utilise the internal procedures. To the extent necessary, therefore, it would be just and equitable to extend time as the prejudice to the claimant exceeded that suffered by the respondent.
129. To the respondent's credit, it was readily admitted that it was difficult for them to contend that the claims were out of time.
130. The almost sacrosanct nature of the respondent's hub strategy, as portrayed before us, was also capable of amounting to a PCP for the purposes of the indirect discrimination claim.
131. The requirement to work from an office location put certain roles out of reach for the claimant and other disabled employees who needed to work from home. As such, they were, or would have been, disadvantaged.

132. That said, the disadvantage only really manifests where specific roles are identified that would otherwise be suitable.
133. For the reasons given in relation to the successful section 15 claims the respondent failed to show before us that the refusing access to such roles for home workers was a proportionate means of achieving whatever the aims of the strategy were.
134. We wish to stress that we are not saying that the hub strategy, the requirement to be office based and / or the need to travel are not capable of being justified in relation to any particular role, individual or circumstance, merely that the respondent failed to do in the circumstances of this case.
135. It could, perhaps, even be justified more widely but there would still be a requirement to consider individual circumstances and exceptions on a case by case basis.
136. The serious failings in the grievance process could have led to adverse inferences but that was not necessary in this case, for the reasons already given.
137. We explained in our findings of fact why the claimant's claims in relation to the other four roles identified must fail.
138. A remedy hearing has already been set and directions given.
139. If the parties are unable to resolve matters we will need to consider the likelihood of the claimant securing the higher level internal recruitment role, as that is the only potential financial loss. We will also need to consider an injury to feelings award.

Employment Judge Broughton  
18 February 2021