



EMPLOYMENT TRIBUNALS

Claimant: Miss Susan Hopkins

Respondent: Department of Work and Pensions

Heard at: East London Hearing Centre

On: 24, 25, 26 and 27 August 2021

Before: Employment Judge Gardiner

Members: Miss S Harwood
Mr D Ross

Representation

Claimant: Mr P Sangha, counsel

Respondent: Mr B Gray, counsel

JUDGMENT

The judgment of the Tribunal is that:-

The Claimant's complaint that the Respondent failed to make reasonable adjustments is not well founded. Accordingly, it is dismissed.

REASONS

1. The Claimant, Miss Susan Hopkins, is registered blind and thereby is a disabled person. Until 31 July 2019 she had been employed by the Department of Work and Pensions as a Band D Manager. Her case in these proceedings is that she has suffered disability discrimination because the Respondent has failed to make required reasonable adjustments. The case is resisted by the Respondent.

2. In these proceedings, the Claimant was represented by Mr P Sangha of counsel. The Respondent was represented by Mr B Gray of counsel. The Claimant gave evidence as did her Deputy Manager, Ms J George. For the Respondent, evidence was given by the Claimant's line manager, Ms L Pettifer, and by Ms Pettifer's manager, Mrs S Fry. There was an agreed bundle of documents, numbering 356 pages at the outset, to which further documents were added during the course of the hearing.

3. The issues to be decided had been identified at previous case management hearings as follows:

"It is accepted that the Respondent proposed to transfer the Claimant to working on Universal Credit. She had previously worked as a leader of a Work Capability Assessment decision-making team. It is accepted that this proposed transfer is capable of amounting to a Provision, Criterion or Practice.

Did it put the Claimant at a substantial disadvantage compared with those who are not blind? Specifically, the Claimant contends that her adaptive software (specifically JAWS, a computer screen reader programme), was not as efficient with the systems used to manage Universal Credit as it was with those use to manage Work Capability Assessment.

The Claimant contends that the Respondent should have made the following adjustments:

- a. Allowing the Claimant to take up a role managing the Band B team;
- b. Allowing the Claimant to take her old Deputy with her as part of that return;
- c. Providing her with suitable alternative employment.
- d. Providing adjustments (a to c) within a timely manner.

Did the Respondent fail to take those adjustments?

Would they have avoided the disadvantage complained of?

Were they reasonable?"

4. At the outset of this Final Hearing, the Respondent clarified that the Respondent accepted both that the requirement to transfer from Work Capability Assessment (WCA) under Job Seekers Allowance to Universal Credit (UC) was a provision, criterion or practice, and that this put the Claimant at a substantial disadvantage. The Claimant was asked by the Tribunal to clarify the suitable alternative employment that was said to be a further reasonable adjustment. In summary, she said she should have been asked to carry out a role involving dealing with the complex HR issues raised by the staff managed by the other Band Ds within her area of operation. This would include managing long term sickness absence, and those with poor disciplinary records.

5. The Respondent argued that the Tribunal should not determine this issue because it was an attempt to change the Claimant's case 'at the eleventh hour', just as the Final Hearing was starting. Following argument, the Tribunal decided that this particular

allegation could be advanced by the Claimant and would be determined at the conclusion of evidence and submissions. Brief oral reasons were given at the time. In summary, the Tribunal took the view that it had been clear to both parties since October 2019 that the Tribunal would need to consider whether the Claimant should have been provided with suitable alternative employment. This is how the issue was fashioned by the Respondent itself when preparing a draft list of issues for the first Preliminary Hearing. The Respondent had never since sought to have the nature of the suitable alternative employment clarified, nor had it applied to strike out this issue for lack of particularity.

6. The Respondent's application had only been made at the point at which the Tribunal had sought appropriate clarification. The Tribunal was not persuaded that the Respondent would suffer prejudice in having to meet such a case. The Respondent would have the opportunity to take instructions and to question the Claimant on this aspect of her present case. The interests of justice favoured allowing the Claimant to advance a case that both sides had accepted was properly part of the Claimant's claim, albeit one that was lacking particularity.

7. The Claimant was able to give evidence, despite her visual impairments, in the following way. When she was asked questions about a particular document, the document was read to her, so that the passage in focus could be viewed in context. On occasions, the Claimant asked for related documents to be read to her, to further enable her to understand the potential import of a particular phrase or sentence. She had a helper present taking notes in addition to her barrister. The Tribunal took breaks mid-morning and mid-afternoon to enable her to check her insulin levels.

8. At the conclusion of the case, both sides made oral submissions. The Respondent's counsel submitted a detailed Chronology of events and Claimant's counsel handed up a written skeleton argument.

Factual findings

9. Up until Spring 2018, the Claimant had managed a team of Band B decision makers, making decisions on entitlement to Employment Support Allowance (ESA), following a Work Capability Assessment (WCA). The decisions were categorised as non-complex, and the Band B decision makers were themselves managed by Band C managers, who in turn reported to the Claimant.

10. On 22 March 2018 she attended Occupational Health, where the current issues were noted as follows:

“As you are aware Susan is registered blind and has epilepsy. She advises me that in her current role and way of working she has no issues. She states she has all the support measures she needs to undertake her role. She advises me that recent changes in the workplace have led to a pending move of where she would work. She advises she finds change stressful and stress is a trigger to her experiencing increased epileptic seizures. On a practical level, she advises she relies significantly on her memory along with routine and familiarisation to undertake her

activities of daily living including work. Any change to her routine would require her to unlearn what she does and relearn another way. This would also apply to her guide dog Petra. Susan has told me that she feels under pressure to go along with proposed changes in the workplace despite the negative impact it may have on her health. Susan has advised me she has a current letter from her specialist dated 22.2.18 (not seen) that advises any change to her current working environment would be detrimental to her health. Susan has advised me she has 4 monthly reviews regarding her diagnosed conditions, and these will continue long term.”

11. From April 2018, the Claimant transferred to be one of the managers managing the Band C decision making team who were making decisions in complex cases. Again, the decisions were decisions as to entitlement to Employment Support Allowance, following a Work Capability Assessment. Despite the extent of the Claimant’s visual impairment, the Claimant was able to carry out the particular demands of the role because she was working on the same state benefit and the same software as she had been when she was fully sighted. In addition, the JAWS adaptive software enabled her to understand what was shown on her computer screen, which was in the same format as it had previously been when the Claimant was fully sighted. The Claimant had lost her sight around 2007. In addition, she had the benefit of a Deputy Manager, Miss J George, who would carry out those tasks that it would be difficult for the Claimant to achieve. Miss George assisted the Claimant in this way, in addition to being a decision maker herself. Furthermore, she had help from an aide for half a day a week.

12. From about 2015, the Respondent knew that claimants in receipt of Employment Support Allowance would be gradually transferred onto Universal Credit (UC). As this took place, employees making benefit decisions would migrate from making decisions in relation to Employment Support Allowance to making decisions in relation to entitlement to UC.

13. On 14 February 2019, the Claimant and other Band D managers working in the Respondent’s Stratford office received a letter in the following terms:

“Transfer of Stratford Service Centre WCA Colleagues and Support Roles to UC Decision Making

As you know, our work is changing. Our legacy caseloads are declining as Universal Credit rolls out, and we have now largely stopped taking new claims to IS and new income related claims to ESA and JSA. This means we need to work flexibly to ensure we have the right people in the right places to best serve our customers. In some instances, this will include our people moving between Directorates within DWP.

In this context, we are now ready to move some of our colleagues in Working Age over to Universal Credit.

If you are a part of WCA or any non-business critical support roles, in Stratford Service Centre, you will move on a permanent basis to join Universal Credit Decision Making.

From the end of February 2019, we will start to move colleagues to Universal Credit, which will be done in stages.

The leadership team in Stratford will provide further details about the move in due course, including information about the training that will be offered and who will be included in each tranche.

We'd like to thank you for everything you have done for us and thank you all for your continued flexibility and support in helping us deliver a first-class service to our customers."

14. In advance of this letter being sent, no particular thought had been given to whether the Claimant would be able to adjust to the transition from Employment Support Allowance to Universal Credit. The computer software used to make decisions in relation to Universal Credit, and to prepare statistical information for managers about those decisions, assumed an ability to work efficiently with Excel spreadsheets. The Universal Credit platform contained huge Excel documents which in practice the Claimant was not able to access using the JAWS programme. A JAWS user would need to learn numerous shortcut keystroke commands to use it efficiently. This was particularly difficult for the Claimant given her significant reliance on memory as recorded in the Occupational Health advice. No other equivalent system to JAWS had been developed or introduced by the Respondent to assist those such as the Claimant who had visual impairments and may have difficulty learning shortcut keystrokes.

15. On Monday 18 February 2019, the Claimant sent Ms Pettifer as her line manager the following email, titled "Retirement":

"Following discussions with 2 of the Consultants at the Hospital last week (Neuro Ophthalmology and Epilepsy) and weekend discussions with my family I have decided that now is the time for me to take up my Retirement.

My Health is not going to improve and I am on a "If things change at all you must come straight to the hospital" warning.

The little remaining sight I have is reducing and becoming blurred and day in and day out I do find tasks much harder and longer to complete.

I rely more and more on my aide and my deputy and my team in work, and my family and friends outside of work, and I suppose I have just been putting off what was going to be inevitable for as long as I could.

I was hoping to go at the end of June but having checked the guidance I have to give 5 months' notice so I would like my last day of service to be 31/7/2019.

I know telling you by email is not ideal but if I spoke to you face to face I would get upset.

I would be grateful if this could remain just between you and I at this time although I do understand from a business perspective that you may need to keep Susan in the loop.

Thank you for your understanding.”

16. The Tribunal notes that nowhere in this email does the Claimant make any reference to the proposed move to Universal Credit. The sole reason given for the Claimant’s decision to retire is a deterioration in the Claimant’s health. In addition, the Claimant did not say that her decision to retire would depend on an estimate of the pension benefits would receive if she left on 31 July 2019 as indicated in the email.

17. Thereafter, in subsequent emails during the period to 25 March 2019, the Claimant made it clear that she had decided to retire in any event at the end of July:

- a. In an email on 7 March 2019, she said “I would be grateful if you and the Senior Managers could look at a possible role for me to undertake between now and my Retirement that does not involve UC especially at a delivery level”. She indicated that had she been trained at the same time as her team she would have had at least four months before retiring;
- b. When Ms Pettifer responded to this email on the same day, referring to potential work “to allow you to continue until end of July”, the Claimant did not dispute that this was her timescale in her subsequent reply, again sent on the same date;
- c. On 18 March 2019, the Claimant emailed Ms Pettifer saying “you are correct in your assumption that I have definitely made up my mind to go and I will not be changing that decision, in fact if I could go sooner I would”.

18. The Tribunal rejects the Claimant’s assertion in her evidence that the only reason why she originally set a retirement date was to obtain a statement of her potential pension benefits and in order to give herself the option of leaving if a suitable role was not found for her to take on until the Stratford office was due to close in 2023. There is no evidence she told the Respondent during this period to 25 March 2019 that she was undecided as to whether to retire. The clear indication given in several emails is that she had decided to leave the Claimant’s employment at the end of July 2019.

19. The intention was that all Band C decision makers and their managers would receive overview training on Universal Credit and that this training would take place over nine consecutive days in groups. Given the number of individuals that needed to be trained, groups of 10 were to be trained on a rolling programme which started on about 27 February 2019. The Claimant expressed an interest in receiving her training at an earliest stage and was assigned to the first training group with some of her team. The intention was that decision makers would receive separate further training subsequently on the more technical aspects of the role of being a UC Decision Maker.

20. The Claimant struggled with the first day of the training and raised her concerns about her ability to access this training at the end of the day. As a result, it was decided that the Claimant should withdraw from the training whilst a solution to these difficulties was explored.

21. By 6 March 2019, the Claimant had not been provided with any update on how she was to be trained on the new Universal Credit system. She asked for an update in an email sent to Rebecca Collins on this date. In a separate email sent to Ms Pettifer, she said that her disability was again proving to be a barrier to her doing her job. She added that she wanted to learn about Universal Credit and she wanted to be able to aid and support her team as well as do a worthwhile and meaningful job, but “clearly my need is not considered that important in the bigger picture”. She clarified that this was not a reflection on Ms Pettifer “as I know you have tried to get training sorted out for me”.

22. In her reply the following day, Ms Pettifer acknowledged it was unfortunate that efforts to have her in the first group of classes had failed. IT would attend site the following day to bring specialist kit, which would include the Claimant’s PC. She confirmed that Rebecca Collins had told her that the Claimant would be provided with 1:1 training on 9 April 2019. In a subsequent email on the same day, Ms Pettifer indicated that she would explore whether there was an alternative way for her to learn the UC Band D role “without the full training, to enable you to continue until the end of July”.

23. There then followed a lengthy exchange of emails discussing what the Claimant could do during the remaining four and a half months. The Claimant expressed a reluctance to undergo training, because of the limited time left to implement the training. She expressed the difficulties that she would have with Universal Credit in the following terms:

“I have always anticipated struggling with UC following 3 Brain Surgeries I do not take new information on board as quickly as I used to. I remember Richard Vianello and I having a conversation about this and he assuring me not to worry as the Department would find me something to do. Also with WCA I already had the knowledge before being registered blind and so have relied a lot on that. UC will be completely new to me.”

24. The Claimant asked for her manager and Senior Managers to look at a possible role for her to undertake before her retirement. She did not at that stage specify a particular role that she considered appropriate. In her email dated 18 March 2019, she recognised that it may not be possible to find her another role: “If an alternative role cannot be found for me for the next few months then fine and I will get by as best I can”.

25. On 25 March 2019, the Claimant wrote that she was going to revisit the decision to retire, following a frustrating meeting with Ms Pettifer that morning which left her upset. She said she would await figures from the pension team, thereby indicating for the first time that her decision to retire might depend on the amount of pension that the pension team advised she was entitled to receive following retirement.

26. On 27 March 2019, the Claimant had a chat with Ms Pettifer. She said she had tried to come up with a reasonable solution but without any success. She declined to meet with Ms Pettifer to discuss her role. She ended her email by acknowledging that “neither of us could come up with a solution”. On 29 March 2019, in a further email to Mrs Fry, the Claimant wrote that “the Department insists on putting so many documents into Excel and Jaws is not compatible with Excel. It is the same with PowerPoint presentations.” She added that making more use of her aide would not be a real solution. She wrote that “Even that would not cover all the issues that UC is throwing up as I would be unable to carry out the Quality Checks on the staff either”.

27. On 29 March 2019, the Claimant attended a group training session titled the Leadership Academy. She struggled to participate given that no particular adjustments had been made in relation to the course materials to allow for her visual impairment. In an email at the end of the day on 29 March 2019, the Claimant stated: “all I am asking for is a meaningful role away from UC for 12-15 weeks”. She said that if there was not a role then she knew that her GP would sign her off sick. Her email ended “I have to be realistic about living in UC world and what if any role might be available”.

28. On 1 April 2019, the Claimant met with Ms Pettifer and identified the work that the Claimant could do to support her Decision Maker teams whilst in training, which would not require UC system access. At that point, it was agreed that the Claimant’s last day in work would be approximately one month earlier than the end of July 2019 due to accrued annual leave.

29. On 3 April 2019 the Claimant suggested to Paschal Kane that she trial some HR surgeries. She said she could run them on a 1-1 basis with Team Leaders. She could run 3 sessions every week and talk through HR issues with the Team Leader. Mr Kane responded “I think this is a great idea. Let’s do it!”. He asked Ms Pettifer to liaise with the Claimant about this issue.

30. Also on 3 April 2019 the Claimant had a meeting with Mrs Fry. There was a discussion about the Claimant staying involved in Work Capability Assessment work, which would require the Claimant to move offices to Hackney given that WCA would continue to be delivered from that office until 2023. This would potentially enable the Claimant to continue leading a team. The Claimant noted that this was “not out of the question” but she would need her aide with her to support her and she would need to think through the practicalities of working in a different environment. For the first time, the Claimant raised the possibility of managing the Band B UC team where she felt that the use of spreadsheets/excel would be less onerous. The Claimant said that she was unsure about retirement. There was also a discussion about the HR surgery work that the Claimant had suggested. There was going to be a discussion with another Team Leader called Denyse:

“You told me how you are going to be talking with Denyse about the rapport you have built up with your team, which she has noted and would like to understand what she needs to do to emulate this.”

31. Finally, the Claimant said she now was unsure about getting involved in engagement work, given her approaching retirement but agreed to reconsider this area of involvement. It was agreed the Claimant would meet with Caroline Spensley on Monday 8 April 2019 to see what the Claimant could do.

32. On Friday 5 April 2019, the Claimant emailed Paschal Kane. She said that she had asked to be taken off UC but “that has yet to happen because there appears to be no other role that I could take on”. She said she was looking at retirement primarily because she felt “there was no longer a viable role for me within Stratford”. She ended her email by writing she felt that DWP were discriminating against her as a result of her disability. The following Monday, 8 April 2019, she lodged a grievance in which she complained about the difficulties she had experienced in attending the Leadership Academy given her visual impairment, describing the experience as “totally humiliating”. She also noted that when UC was designed along with the job roles attached to it “very little thought went into staff with severe visual impairment”. Her grievance said that “I may still retire later this year, but I want it to be for the right reasons and not because I feel that the department is moving forward and has no need for someone like me”.

33. In the event, this grievance was not progressed. It was withdrawn by the Claimant, given the outcome of the meeting that the Claimant had with Caroline Spensley on 8 April 2019 and a proposed role for the Claimant that was suggested following that meeting.

34. It was suggested by Ms Spensley that the Claimant should take a lead role within the management structure to manage and monitor site performance. This was described by Ms Spensley in an email on 10 April 2019 in the following way:

“This is purely a facilitator role chairing daily buzz meetings with the management team, reporting on her own team’s daily expectations and clearance as well as recording the outcomes of her peer team’s expectations and clearance. Following discussions with the buzz meetings, Sue will then collate daily communications and feedback to her Line Manager, the G7 and G6 for the site. This will strengthen communications and keep all parties involved with performance related issue etc and I believe drive performance. In retrospect daily Sue will facilitate the follow up actions of previous days agreements and again communicate the outcome to her chain of command. I believe that this addition to her role will not only compensate the shortfall of Sue’s accessibility issues but realign resources with the additional work her peers will take on to compensate Sue’s accessibility issues. Sue will also be in a position to fully utilise her skills and experience and whilst undertaking a tangible meaningful role that will benefit her peers and her site.”

35. It was anticipated that the Claimant’s colleagues would assume responsibility for the data gathering and collation aspects of assessing the performance of her team against wider benchmarks, including ensuring that the number of team members she had available matched the amount of work that her team was allocated. This type of information was inserted into Excel spreadsheets and then forwarded to those who monitored this data. This was a feature of the role that the Claimant’s visual impairment made difficult, because the JAWS software had difficulty in interacting with Excel.

36. Initially, the Claimant's response to this proposal was positive - although, quite reasonably, she asked that it be reviewed both for her and for the team as a whole. Mrs Fry agreed to put a touch point review in place every week so that anything that may not be working could be adjusted, with a wider review at four weeks to consider the next steps. Caroline Spensley's proposal was discussed in face to face meetings with other members of the management team, who agreed that the individual responsibilities for each role had been distributed fairly and equally.

37. On 12 April 2019, Ms Pettifer suggested that there be a swap of team members into and out of the Claimant's team. The thinking behind the suggestion was that the Claimant would assume line management responsibility for team members needing more line management input, given their particular situations. This was in circumstances where she would be less able to get involved directly in UC work, given her difficulties in accessing the software. After a weekend to reflect on this proposal, the Claimant chose to reject it on 15 April 2019. She said that her days were already fully occupied, and she was already managing one of the most complex HR cases, which seemed to have been overlooked. She also stated that she no longer wanted to be involved in anything to do with staff engagement, given what she described as the "new and critical role that had been found for her as Performance Manager, along with continuing to manage my team will keep me fully occupied between now and my departure". She finished the email saying that she used to enjoy her job and coming to work but now she "longed for retirement".

38. Following that email, the Claimant had a meeting with Ms Pettifer and Mrs Fry in which it was agreed that the composition of the Claimant's team would remain unchanged. The following day the Claimant indicated she might be prepared to agree to a switch of team members but noted that work issues were having an impact on her health. In her response, Mrs Fry expressed her concern and asked her to speak to her at any time. The Claimant replied to say that Mrs Fry was not to worry about her, "I will be fine". She said: "I have only a couple of months to go before I am hopefully enjoying a well-earned and probably overdue retirement".

39. On 18 April 2019, Ms Pettifer met with the Claimant alone after the daily Buzz meeting with her team. The Claimant said that the role was "going well" but wondered if it could be a full-time role moving forwards. Ms Pettifer said that the performance lead role would probably be needed until after her planned retirement.

40. On 29 April 2019, the Claimant told her team and the other managers that she would be retiring shortly. On 1 May 2019, the Claimant emailed Mrs Fry. She said that she was still not sure if she was retiring "for the right reasons or because I don't feel I have a meaningful role anymore ... Part of me is actually terrified about retiring especially with Petra [the Claimant's guide dog] being close to retiring as well". She said she was thinking about resubmitting her grievance. She wrote "I have been treated so badly since I became disabled ... maybe it is for me to stay and fight and try to get things changed". She added that "none of the blame for what has happened sits with you". She repeated what she had told Mrs Fry face to face the previous Monday that Mrs Fry was probably the only Senior Manager who she had worked with since becoming disabled that has genuinely tried to help.

41. On 2 May 2019 Mrs Fry emailed the relevant HR Business Partner, writing:

“Yes all of the paperwork has been done and processed as the end of July as the retirement date but Sue continues to say she is waiting to see the quote before she officially says she is retiring, which I understand is sent out to her approximately 6 weeks before her selected date”

42. On 7 May 2019, the Claimant emailed Mrs Fry, indicating for the first time in writing that she was re-considering her decision to retire. She said “It is likely that I will defer my retirement as I need to bring issues related to the way I have and continue to be treated to a satisfactory conclusion for me. If I were to retire as planned, I feel I would be just walking away and I like to see things through to a conclusion”.

43. On 8 May 2019 there was a further meeting between the Claimant and Mrs Fry. At the meeting the Claimant set out her concerns that she said were making her anxious. She said that she did not feel that the performance lead role was not working. As documented by Mrs Fry in her follow up email, the Claimant told her she felt like a made-up role rather than providing a worthwhile contribution. The Claimant indicated that she did not want to change job roles. Because the Claimant appeared to be now rejecting the responsibility of performance lead she had been given, Mrs Fry told her that the Respondent would need to reassess the changes that had been put in place. Advice would be sought from an appropriate professional body, and in the meantime one-to-one training would be arranged for the Claimant, and consideration given to ensuring that the right technical support and equipment was in place.

44. Around the middle of May 2019, Ms Pettifer was absent on a period of around two weeks’ annual leave. She did not return until 29 May 2019.

45. On 13 May 2019, the Claimant lodged a second grievance. Her complaint was that things seemed to have come to a head with the introduction of Universal Credit. She had a particular difficulty with the management documents which were set up in Excel format. She complained about the lack of training and her experience attending the Leadership event. She complained that Ms Pettifer had told her she was too busy to find a role for her. She said that the performance lead responsibility was a non-role. She mentioned the idea of her reverting to managing the Band B Decision Makers, which she had raised before. She said that she found it difficult to understand why “some sort of role could not have been created for me ... a job that was meaningful”. She said that she had less than eight weeks before she would be retiring.

46. The Claimant has not given detailed evidence in these proceedings of a conversation in which Ms Pettifer told her she was too busy to find the Claimant another role. We find it is likely that the Claimant may have thought that Ms Pettifer was too busy, in that she was dealing with the extensive and essential training that was being provided to all staff members on Universal Credit. Given the degree of urgency that attached to this training, this would have inevitably reduced the time that Ms Pettifer had to discuss the Claimant’s concerns about her role. However, the Tribunal finds that Mrs Fry stepped in to

take the lead in conversations with the Claimant about the difficulties she was experiencing in her existing role, the steps that could be taken to overcome those difficulties and the alternative options available.

47. Also on 13 May 2019, the Claimant wrote to Mrs Fry to say she had told Ms Pettifer that she would be retiring as planned on 31 July 2019, but with leave accrued she would actually be leaving on either 27 or 28 June. She wrote that "I have no intention of deviating from this plan as my health is of paramount importance to me". She referred to the regularity of her nose bleeds recently. Given her time remaining, she indicated that she was not keen to engage in training. She would be carrying out a piece of work she had been given by Ms Pettifer. In relation to the suggestion of managing the Band B team she wrote as follows [262]:

"When I originally suggested I could go back to managing the Band B team this was an option that neither yourself or Lorna seemed keen on. Now it has been brought up as a possible solution but far too late to be a practical solution. Actually had my circumstances been taken into account at the time I would never have had to give up managing the Band B Team. However this was yet another case of Senior Managers ignoring medical advice.

I am not enjoying work at the moment and I feel very isolated. However I am resilient enough to see the next 7 weeks and then to just walk away from what has turned from being a great job to a job which I can't stand."

48. On 4 June 2019, the Claimant emailed Mrs Fry as follows:

"Susan

You may recall a conversation we had a couple of weeks ago re me managing the Band B Command.

I would be grateful if this could be looked at in more detail.

I appreciate that this is not something that can be done overnight but I would hoping we could aim for 1 July.

Ongoing events mean I will be looking at deferring my planned Retirement but I am not sure at this point how long that will be for.

Lorna and I have had a conversation around this and Lorna feels it would be easier to move the Band B command across to the West Wing and for the Band C command to move to the East Wing."

49. Following this email, a further meeting was arranged for 7 June 2019 to discuss this particular proposal. In advance of this meeting, Mrs Fry sent the Claimant a detailed email on 6 June 2019 setting out the considerations that would arise in relation to the proposed role.

50. The meeting on 7 June 2019 was attended by Mrs Fry and Ms Pettifer. Mrs Fry was willing to consider whether the Claimant could swap roles with the current Band B manager, Sharon Gardiner, but would need to consider the impact of such a move on Sharon Gardiner. There is a dispute as to whether Mrs Fry said in this meeting that anyone could be the Claimant's deputy. The Tribunal finds that Mrs Fry did not make such a remark in the terms recorded. It is likely that there was a more general discussion about the possibility that if the Claimant transferred to this role, her deputy might end up being someone other than Ms George, given that there was a current deputy in place in this role. The Claimant agreed to undergo one to one training in Universal Credit which Mrs Fry regarded as an essential requirement if she would be managing Band B decision makers.

51. Following the meeting on 7 June 2019, Mrs Fry took advice from HR. She also had a general conversation with Sharon Gardiner about the possibility of swapping roles with the Claimant. At that point, Ms Gardiner's position was that she was enjoying her existing role, and she was keen to continue.

52. On 11 June 2019, Mrs Fry emailed the Claimant saying that there was not a vacant post for the Claimant to take up to lead the Band B team "and that I feel we had not fully explored reasonable adjustments" in her current post. She asked for the Claimant's consent for an occupational health referral.

53. On 14 June 2019, Mrs Fry emailed to say that before four potential local roles could be explored further, it would be necessary to consider whether there were adjustments that could be made to her current role. The four potential local roles were:

- a. Returning to WCA but based in Hackney where the WCA work will continue until 2023;
- b. Exploring the possibility of bringing WCA work into Stratford for you to oversee/project manage;
- c. A leadership role on the UC telephony Team in Stratford;
- d. Managing a Band B team in UC DMA Stratford.

54. On 17 June 2019, the Claimant replied asking Mrs Fry if she would revisit the decision not to offer her the Band B team leader role. She copied her email to David Foley, who was Mrs Fry's counter signing manager, in that he managed Paschal Kane who was Mrs Fry's line manager.

55. Having received and reviewed this email, Mr Foley asked Mrs Fry to speak again to Ms Gardiner to see if she would be willing to agree to a swap. As Mrs Fry was not in the Stratford office for a couple of days, she asked Ms Pettifer to speak to Ms Gardiner. On 18 June 2019, Ms Pettifer asked Ms Gardiner if she would be prepared to swap roles with the Claimant, which she agreed to do, given the Claimant's apparent difficulties in coping with her current role.

56. At a meeting on Friday 21 June 2019, Mrs Fry offered the Claimant the role of leading the Band B team. The Claimant asked for the weekend to consider her decision. She said that her decision may still be to retire. If that was her decision, then she did not want to be pressed to change it.

57. On Monday 24 June 2019, the Claimant emailed Mrs Fry at 08:22, copying Ms Pettifer into her email. She stated that her final decision was that she would be retiring from the Respondent on 31 July 2019 and her last day in the office would be the following day, 25 June 2019. She stated that she knew in her heart if she changed her mind, she would live to regret it and a clean break at that time was the best thing for her. She asked that her grievance continue to be progressed.

58. On 10 July 2019, the Claimant attended an occupational health appointment with Matilda Baafi, RGN. The record of attendance noted that she had suffered three seizures and several nose bleeds in the last 3 months due to her perception of work-related stress. The document recorded she had decided to retire at the end of July 2019 as her health is more important to her. The record added she was adamant about her decision to retire. An answer to a question, which had identified that it would take about four weeks to site her team with her if she reverted to her previous role, noted that the Claimant would feel isolated. Given her recent frequent seizures it was important that she was not alone.

59. Ms Baafi was asked the following question: “[Ms George] has been [the Claimant’s] deputy for 7 years. [The Claimant] works on routine. If [Ms George were no longer to be [the Claimant’s] deputy, how could we help [the Claimant] to develop a new deputy?”. Ms Baafi answered as follows: “Replacing [Ms George] will be very difficult as [the Claimant] has built a rapport with her over the years. [Ms George] does not only support her in the workplace but outside of work. It will take [the Claimant] a very long time and effort to become accustomed to a new deputy”.

60. It was suggested in the course of evidence that Mrs Fry should have approached the Claimant after receiving the correspondence on 24 June 2019 in an attempt to persuade her to change her mind. The Tribunal notes the way in which the Claimant expressed herself both on 21 June 2019, 24 June and in the OH report on 10 July. We consider that any attempt to persuade her at this point to change her mind would have been inappropriate given the strength with which she had expressed her view.

61. On 20 July 2019, the Claimant attended the grievance complaint meeting. On 20 August 2019, Mr Fleming, the manager hearing the appeal, wrote to the Claimant informing her that the complaint was not upheld.

62. The Claimant had a specific policy entitled: “How to: Manage Moves as a Reasonable Adjustment under the Equality Act”. The relevant sections are as follows:

“This process applies only to disabled employees who are likely to be covered by the Equality Act 2010 and who are no longer able to continue working in their current role and/or current location even with reasonable adjustments in place.

1.3 Our first option is always to retain an employee in their current role. Managers have a duty to ensure that all reasonable adjustments to an employee's current role, equipment and/or workplace are considered before seeking to redeploy them outside of their current team.

1.5 A move can only be arranged where a suitable vacancy exists. The role change is intended to support the employee to remain in the organisation rather than a career change or accommodating a role preference.

2.1 Where no other workplace or reasonable adjustment will enable the employee to continue performing in their current role or location, the line manager should consider whether a suitable alternative role can be identified.

2.4 With the employee's consent, the line manager should seek advice from our occupational health provider, specifically in order to identify what duties the employee is able to perform and what role and/or location may be suitable as a reasonable adjustment;

- At this stage there does not have to be a particular vacancy to determine potential suitability for a role(s) but this may help provide insight into what the employee can do by seeking information about the potential suitability for roles in the right grade and location.

2.5 On receipt of occupational health advice the line manager should seek advice from a senior manager within their business and Civil Service HR Casework."

Law on reasonable adjustments

63. The Tribunal must assess whether the Respondent applied a provision, criterion or practice which placed the Claimant at a substantial disadvantage in comparison to those employees not sharing her disability. If so, the duty to make reasonable adjustments is engaged. The Tribunal must then consider whether a reasonable adjustment might have eliminated or reduced that disadvantage.

64. In order for the disadvantage suffered by the employee to be "substantial" it must be more than minor or trivial: *Griffiths v Secretary of State for Work and Pensions* [2017] ICR 160 at paragraph 21.

65. Paragraph 20 of Schedule 8 to the Equality Act 2010 is worded as follows:

"An employer is not subject to a duty to make reasonable adjustments if the employer does not know and could not reasonably be expected to know ... that the employee has a disability and is likely to be placed at a disadvantage."

66. The burden of proof is on the Claimant to establish the existence of the provision, criterion or practice and to show that it placed her at a substantial disadvantage - see

Project Management Institute v Latif [2007] IRLR 579 at paragraph 45. In other words, to establish that the duty to make reasonable adjustments has been engaged.

67. Thereafter the onus remains on the Claimant to identify the potential reasonable adjustments with a sufficient degree of specificity to enable the Respondent to address them evidentially and the Tribunal to consider the reasonableness of providing them. At the point where the duty to make reasonable adjustments has been engaged, and the Claimant has identified one or more potential reasonable adjustments, the burden of proof is reversed. The Respondent must then show, on the balance of probabilities, that each adjustment could not reasonably have been achieved – *Latif* at paragraphs 53-54.

68. The reasonableness of the steps to be taken to avoid the disadvantage is to be determined on an objective basis: *Griffiths v Secretary of State for Work and Pensions* [2017] ICR 160 at paragraph 73.

69. Guidance as to the considerations that are relevant in assessing reasonableness is provided in paragraph 6.28 of the Employment Statutory Code of Practice. The Tribunal is required to have regard to this Code when considering disability discrimination claims.

Conclusions

70. The parties agree that the decision that the Band C complex decision making team should move from making decisions in relation to Employment Support Allowance to making decisions in relation to Universal Credit was a provision, criterion or practice (PCP) that put the Claimant at a substantial disadvantage. This was because of the difficulties that the existing JAWS programme, which was used to assist the Claimant in reading information, had in interacting with the Excel files used by the Universal Credit system.

71. The sole issue for us to decide in whether the adjustments proposed by the Claimant, as identified in the List of Issues, would have been reasonable steps to take to avoid the disadvantage. What is reasonable depends on the particular facts. This would include the duration for which the adjustment would be required, given the likely length of the Claimant's employment, and the disruption that the proposed adjustment would have caused to others.

72. The Claimant had given the Respondent written notice that she intended to retire with effect from 31 July 2019. She had never retracted that notice. On occasions she had emphasised her intention to retire in what she had said in emails. Whilst it is true that on fewer occasions she had referred to potentially revisiting that decision, stating that she needed to ensure that her pension entitlement would be sufficient to meet her needs, she had never revoked her written notice that she intended to retire. In these circumstances, it was reasonable for the Respondent to consider the issue of the extent of the adjustments that could reasonably be made on the assumption that the Claimant's employment would end at the end of July 2019.

73. Furthermore, the explanation given by the Claimant for her decision to retire was the medical advice she had received given the state of her health. She had told the

Respondent in her notice of retirement that her health was worsening, thereby reinforcing the rationale for retiring at the end of July 2019.

74. In that context, when considering what particular reasonable adjustments to put in place to enable the Claimant to continue working, it was reasonable for the Respondent to seek advice from occupational health before implementing any proposed adjustment, in order to be sure that the proposed adjustment was suitable in the light of the Claimant's health.

75. Consistent with the Respondent's policy, it was reasonable for the Respondent to consider what adjustments could be made to the Claimant's existing role, before exploring whether there were alternative roles that could have been done by the Claimant – such as taking up a role managing the Band B team. The Respondent did consider what adjustments could be made to the Claimant's existing role, when it was realised that the scheduled nine-day training was not suitable for the Claimant, given her visual impairments. Reasonably the Respondent offered the Claimant the opportunity to undergo 1-2-1 training that would be tailored to her role. This was scheduled to take place on 9 April 2019. In the meantime, the Claimant had a meaningful role in managing her existing team. She had been given the opportunity to take on additional line management responsibilities when a change in the composition of the various teams was discussed with the Claimant.

76. The Claimant's first mention of being given the role of Band B Team Manager was at the start of April 2019. This was part of a wider discussion of potential options which could be explored in due course if adjustments could not be implemented in relation to her existing role. Before other roles were considered, and specifically the role of Band B Team Manager, it was reasonable for the Respondent to offer the Claimant the responsibility of Performance Lead as part of her existing role in return for her relinquishing particular tasks that were difficult for her given the difficulties that JAWS had in interacting with the UC Excel files. This had been discussed and agreed by the management team as a whole. It was reasonable for the Respondent to review how the Claimant fared in this role over a period of four weeks.

77. Shortly after the Claimant indicated that she was not happy with the responsibility of Performance Lead, regarding it as a non-role, she told Mrs Fry that she was not looking for a different role. As a result, it was not reasonable to expect the Respondent to propose other roles at that stage, particularly given that the Claimant appeared unwilling to meet to discuss potential options.

78. When on 4 June 2019 the Claimant proposed a transfer to the Band B Team Manager role, asking the Respondent to look into this in more detail, the Respondent reasonably scheduled a meeting to discuss the logistics of such a move. In advance of that meeting, the Respondent reasonably raised various considerations that would need to be taken into account, including whether Sharon Gardiner, who currently held that role, would be willing to swap roles with the Claimant. Following that meeting, it was reasonable for the Respondent to speak to Ms Gardiner and also reasonable for the

Respondent to subsequently indicate to the Claimant that there was no vacancy available given Ms Gardiner's reluctance to move at that stage.

79. When Sharon Gardiner subsequently indicated that she was willing to swap with the Claimant, it was reasonable for the Respondent to offer the Claimant Ms Gardiner's role, but was also reasonable for the Respondent to make any offer conditional on occupational health advice.

80. It was also reasonable for the Respondent to weigh up whether it would be appropriate for Ms George to move with the Claimant, given that she was a Band C complex decision maker and if she moved with the Claimant she would then be involved in making decisions on non-complex cases. No decision had been taken on Ms George's role, and whether she would move if the Claimant moved, by the time the Claimant indicated that she was no longer willing to take up the Band B Manager role.

81. In all the circumstances there was no failure to consider and propose particular adjustments within a timely manner.

82. The Claimant had volunteered to run HR surgeries on a weekly basis for the other Band C Team Managers. However, despite the Respondent's enthusiasm for this proposal, it had never been progressed. This was because the Claimant wanted to concentrate on the proposed Performance Lead responsibility during April 2021.

83. In the period under consideration, there was not an existing full-time role to provide other line managers with assistance with the HR responsibilities. It would not have been a reasonable adjustment to have created such a role for the Claimant. In order to make effective decisions on complex HR issues, the Claimant would have needed to have the full picture on the individuals concerned. This would have included full access to their personnel files, which we find would not have been possible unless the Claimant was the relevant line manager. The Tribunal is not persuaded that this was a realistic role. As Mr Gray has argued, such a role would duplicate that of HR Business Partner. The Respondent had reasonably taken the decision that these HR Business Partner roles would be undertaken by trained specialists who were part of a central team, rather than embedded within particular offices.

84. For these reasons, each of the proposed reasonable adjustments set out in the List of Issues is rejected. The Claimant's case is therefore dismissed.

Employment Judge Gardiner

28 September 2021