



EMPLOYMENT TRIBUNALS

Claimant

Respondent

Mr Adrian Brown

v

Isle of Wight Donkey
Sanctuary ICO

Judgment With Reasons

Heard at: Southampton

On: 2,3,4,5 August 2021

Before: Employment Judge Rayner
Mrs C Date
Mr P Bompas

Appearances

For the Claimant: In person

For the Respondent: Mr McDevitt , Counsel

Declaration

1. The Claimant was discriminated against for a reason arising from his disability contrary to section 15 Equality Act 2010 in that he was dismissed.
2. The Respondent discriminated against the Claimant contrary to section 20 and 21 Equality Act 2010 in that it failed to make reasonable adjustments for the claimant.
3. The Claimants claim that he was directly discriminated against contrary to section 13 Equality Act 2010 on grounds of disability is dismissed.
4. The Claimants claims of victimisation contrary to section 27 Equality Act 2010 is dismissed.

Compensation

5. The Respondent will pay the claimant the sum of **£31,890.43** as compensation calculated as follows:

Injury to feelings			£15,000.00
Interest on injury to feelings award	8% for each of 2 years and 2 months		£2600
Loss of earnings	From date of termination until end of June 2021	£12398.00	
Loss of pension	£5.79 Pw x 104 weeks	£602.16	
Total loss of earnings	Until end June 2021		£13000,43
Interest on loss of earnings	8% for one year		£1040.00
Loss of statutory rights			£250.00
Total compensation payable			£31,890.43

REASONS

6. Oral judgment with summary reasons was provided to the parties at the end of the hearing on 5 August 2021, following which a remedies hearing was held and judgment on remedy given the same day.
7. Judgment was sent to the parties following which the claimant has requested written reasons. His request was made within time.
8. The reasons for the judgment are as follows;

The background and history of the claim.

9. By a Claim form presented on the 21 October 2019 the claimant brought complaints of discrimination on grounds of disability. A claim in respect of Equal Pay was struck out with a judgement dated 31 December 2019.
10. At a case management hearing by telephone on the 2 April 2020 before Employment Judge Livesey the background and history to the claim were discussed and the issues in the case were identified.
11. The claims before this tribunal for final determination are as follows:

Time limits

- a. were the discrimination/victimisation complaints made within the time limit in section 123 of the Equality Act 2010?

Unfair dismissal

12. The claimant does not pursue a complaint of unfair dismissal under section 94 of the employment rights act but he alleges that his dismissal was an act of discrimination set out below.

Disability

13. Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The respondent admits that the claimant was disabled and that the respondent knew that he was disabled at the material times.

Direct disability discrimination Equality Act section 13

- a. did the respondent dismiss him?
- b. was that less favourable treatment? The claimant says he was treated worse than others who undertook the full FET L role and or hypothetical nondisabled comparators
- c. if so was that because of his disability

Discrimination arising from disability Equality Act 2010 section 15

- d. did the respondent treat the claimant unfavourably by dismissing him?
- e. did the following things arise in consequence of the claimants disability?
The claimant's case is that since the respondent refused to adjust the FVTL in order to avoid the need to address visiting groups he could not undertake it and was dismissed because his old role was redundant.
- f. Was that unfavourable treatment because of that thing?
- g. Was the treatment a proportionate means of achieving a legitimate aim?
- h. Did the respondent know or could it reasonably have been expected to know that the claimant had a disability and from what date ?

Reasonable adjustments (Equality Act 2010 subsection 20 and 21)

- i. Did the respondent know, or could it reasonably have been expected to know the claimant had the disability and if so from what date?
- j. did the respondent have the PCP of a requirement for those in the role of FVTL and to address groups of visitors ?
- k. did the PCP put the claimant at a substantial disadvantage compared to someone without the claimant's disability in that his disability prevented him from addressing groups directly himself?

- l. Did the respondent know, or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?
- m. what steps or adjustments could have been taken to avoid the disadvantage? The claimant suggests that the FVTL role ought to have altered so as to avoid the need for him to have to address visitors directly;
- n. was it reasonable for the respondent to take those steps and when?
- o. did the respondent fail to take those steps?

14. victimisation

- a. Did the claimant do a protected act by issuing a grievance in October 2018?
- b. Did the following things happen?
 - i. managers lied during the grievance investigation
 - ii. the grievance report was biased
 - iii. reasonable adjustments for the FVTL role were refused
 - iv. the claimant was not informed about his right to request reasonable adjustments for the FVTL role when it was initially offered to him
- c. by doing so, did the respondent subject the claimant to a detriment?
- d. if so, was it because the claimant had done protected act?

The hearing

15. The final merits and remedy hearing of this matter took place over four days on the 2,3,4, and 5 of August 2021.

16. The claimant represented himself and gave evidence on his own behalf.

17. The respondent was represented by Mr McDevitt of counsel. The respondent called five witnesses as follows. Mrs Carol Foote and Mr Derek Needham were the employed senior officers of the charity. Ms Janet Newton gave evidence of the investigation that she had carried out in 2018 following the claimant issuing a grievance. The claimant makes several allegations of discrimination in respect of the grievance investigation and report that Ms Newton wrote.

18. Ms Julia Newton, who worked with the claimant unsupervised him during the course of his four-week trial period gave evidence of matters that arose at that point and Ms Tracey Hawkes also gave evidence.

19. On the first day of hearing the respondent clarified that whilst the respondent admitted that the claimant was a disabled person at the material times . Although the respondents denied that they knew or ought to have known that the claimant was disabled at the material times.

20. As set out below the respondents conceded that they knew the claimant was disabled, on the second day of hearing.

Findings of fact

21. The respondent is a charity based on the Isle of Wight and employs around 23 people. The charity's purpose is to provide a home and general care for unwanted donkeys and horses amongst.

22. Carol Foote was employed as the respondent's business manager. She had initially worked on a voluntary basis from 2012 but was appointed to a salaried role in 2016.

23. Derek Needham was employed as the respondent's charity manager. He had also started work on a voluntary basis in 2012 and took up a salaried position in 2014.

24. The claimant was employed by the respondent from 7 May 2006 until his dismissal by way redundancy on 30 June 2019.

25. Throughout the majority of his working time he had been employed as a groom/farm labourer. His role involved animal husbandry; general farm work, including mucking out and feeding the animals; and also assisting with the movement of donkeys and horses around the site .

26. At some point around 2016/2017 the claimant was appointed to a farm manager role. This role involved some staff management. The claimant did not enjoy the role and it coincided with a deterioration in his mental health.
27. During the course of his employment in around 2016, 2017, the claimant's health became increasingly concerning for the respondents and he was signed off on sick leave and after a period of time was referred to occupational health .
28. As a result of discussions following the occupational health report the respondents agreed that the claimant could revert to a role of groom/farm labourer. The claimant remained in this role until his post was made redundant as a result of a reorganisation which took place in 2019.

The claimants disability and its impact upon him

29. in the initial pleaded case, the respondent denied that the claimant was disabled at the material times. The respondent stated that it knew that the claimant suffered from OCD but that it did not consider that to be a disability because it did not have an adverse effect on him being to carry out his normal day-to-day activities or indeed his work the respondent. The claimant alleged that his disability is Anacastic and/or obsessive-compulsive disorder Personality disorder.
30. The claimant was ordered to provide a 1000-word disability impact statement by 30 April 2020.
31. On the 14 May 2020, the respondent wrote to the employment tribunal stating that after consideration of the claimant's medical reports and impact statement the respondent was no longer contesting disability.
32. Following this concession there was some discussion between the parties about which documentation needed to be included within the bundle.
33. The parties by agreement have produced one bundle which is separated into the respondents bundle and the claimants supplementary documents, consecutively numbered from page 260 onwards.

- 34.** The claimant has included his disability witness statement within that supplementary bundle. The claimant has referred to that document within his witness statement for this hearing and he has not been challenged on its assertions or contents. We accept that the claimant's own assessment of his mental health impairment and its impact upon him and his ability to carry out certain tasks is honest and is also a fair and true reflection of how his disability affects him.
- 35.** The claimant explains that he has two mental impairments. He states that these two impairments, whilst sounding similar to one another, are in fact two distinct mental impairments. He states that the effect or impact of his mental impairments are that he has chronic low confidence; finds social interaction problematic and suffers high levels of anxiety in group situations.
- 36.** In his disability impact statement, the claimant states that he suffers intense suicidal thoughts which can be symptomatic of OCD thought process or as a result depression. We find that this is true and that this was known to the respondents throughout the claimant's employment. Both Mr Needham and Mrs Foote told us that the claimant regularly made reference to his suicidal ideation.
- 37.** The claimant describes his OCD as manifesting itself in ruminative and/or intrusive recurrent thoughts, including the fear that he will harm other people either deliberately or inadvertently by everyday decisions he takes. He says these thoughts are often counterintuitive, so for example if he likes somebody or feels close to them, he has a great propensity have impulses to harm them. He states that he feels tormented by these thoughts and gets depressed at his inability to control analytical thoughts and distressing images; that he finds this mentally exhausting and shameful and that he feels isolated in not being able to share stressful thoughts because of the content of them. We accept that he finds that social interaction in any environment can cause stress from sensory overload, which is attributed to OCD and which can lead to invasive thoughts. He says the effect of social interaction on him can either be immediate or arise from being with a group of people or can be cumulative.
- 38.** He describes the isolation he feels as a consequence of his mental illness, and explains that it leads to low confidence and low self-esteem, meaning that he is

unable to live a normal life, having no friendships, relationships or academic developments. He struggles to maintain friendships and says he has never had a relationship with anybody in this lifetime he says he shies away from them.

- 39.** The respondent continued to assert that they did not know or could not have been expected to have known that the claimant was a disabled person at material times at the outset of this hearing. Having read the occupational health report provided to the respondent in 2017, which referred to the claimant having symptoms which were likely to be considered to be a disability under the Equality Act, the Employment Judge queried with the respondent counsel Mr McDevitt the basis of the respondents denial of knowledge and whether the respondents wanted to reconsider their position in issue in light of that occupational health report.
- 40.** Mr McDevitt stated very fairly that the issue may be a question of whether the respondents knew about the impact of any disability and in particular whether the respondents were aware that the claimant's disability impacted on his ability to speak to large groups. This is the PCP relied on by the claimant in respect of the reasonable adjustments claim.
- 41.** At the start of the second day of hearing Mr McDevitt conceded on behalf of the respondents that the respondents had actual knowledge of the claimant's disability from the date that they had received the occupational health report.
- 42.** The occupational health report was included within the claimant's additional documents and is dated 30 January 2017.
- 43.** The reason why the respondents had referred the claimant to occupational health is that they had been concerned about the claimant's health and his mental health towards the end of 2016. Carol Foote had written to the claimant's GP requesting a medical report because of concerns about his absence record and his behaviour at work.
- 44.** In that letter she wrote the description of some of the concerns over the past year. These included that Mr Brown had been found at work sobbing in one of

the fields and *threatening all kinds of self-harm*; stating that he *felt suicidal*; that the claimant had been prescribed medication which he considered was working and that he was, by October 2016 considering returning to work. She alleged that when he did return to work, he remained clearly unwell and that he told staff he had a weapon that he could use to end his life among other matters.

45. In the letter Mrs Foote asked whether or not there were any reasonable adjustments that could be made to ensure the claimant could attend at work more regularly and raised concerns about his persistence absence and his health. She provided information about the job that he was doing and made reference to the claimant stating that he suffered from long-term depression that he had been assessed as a medium to high suicide risk that he had told the respondent that he suffered with autism and also that the claimant told the respondent that he believes that he was an anankastic. In the letter she reports him as saying he has stated that these conditions are the cause of his behaviour in that he feels the need to constantly go through things mentally and that there are times when he seeks support from his farm colleagues. She asked was he suffered from an illness or conditions; was he fit for work; were there any reasonable adjustments and also asked whether or not he might be considered to disability. Unfortunately the claimant's GP was not able to provide the report and therefore a reference was made to occupational health.

46. The claimant attended a meeting with Carol Foote on 3 January 2017. She reported that in that meeting he went into a long and introspective explanation again of his condition, citing his neurosis is best his psychosis as being a part of the problem. At that meeting Mrs Foote had asked the claimant whether he felt well enough to take up his position of assistant farm manager and he was emphatic that he did not want the role. He said he did not want the responsibility that went with it but would like to come back to work in his original 34 contracted hours as a groom/stable hand.

47. The claimant attended at the occupational health meeting and was seen by the occupational health practitioner on the 30 January 2017. At that point he remained absent from work.

- 48.** The occupational health report starts by reciting the claimant's medical history and noting his absence from work since September 2016 and refers to secondary to symptoms consistent with a depressive disorder. It is noted that he has a long history of recurrent depressive symptoms, noted that this does not seem to have been a specific trigger for his recent relapse but makes reference to his awareness of deteriorating symptoms of depression that the last 12 months
- 49.** It states as a facet of his recurrent depressive disorder and/or linked to his personality, Adrian has suffered long-term problems with low confidence and self-esteem. She considered that this may have been a factor in respect of the discussion about the assistant manager role.
- 50.** Whilst she did not consider there to be any significant factors preventing him from continuing working, she did highlight that Mr Brown was uncertain about some expectations of the role and his position and that this may have led to him wanting to step back to the groom role he had done previously.
- 51.** She considered that he remained this capable of performing the assistant manager role as long as he has clear expectations and support and constructive feedback.
- 52.** Under capacity at work it is noted that the primary impact of Adrian's condition on his capacity the work is via reduced stamina and resilience and is via impaired confidence and low self-esteem. There are no specific aspects of his normal role he would not be capable of performing as long as he has appropriate support and encouragement and a clear understanding of the expectations upon him.
- 53.** It was because of the uncertainty coupled with the claimant's low confidence that occupational health recommended regular formal reviews progress following his return to work, with constructive feedback and where appropriate, encouragement and praise.

- 54.** The occupational health practitioner stated that it is very likely that his condition would be considered as a disability in the context of UK disability legislation .
- 55.** At that point the effect of his day-to-day life outside work was described as associated with the loss of energy loss of enjoyment social withdrawal reduced motivation and made reference to the discussion above .Having read the document we consider this is a reference to the claimant's low confidence and low self-esteem .
- 56.** Following that meeting Carol Foote and Derek Needham met with the claimant on 17 February 2017 to consider his capability and his return to work following the occupational health report at that meeting the claimant asked if he could reduce his hours and work part-time. The claimant stated that he wanted to remain working for the sanctuary but not in the assistant manager role he said he would be happy to work as part of the site assistant groom's team .At that point there were no roles available within that area .Following discussion the suggested a 24-hour role and asked if such a role could be created for him .
- 57.** Following the meeting he wrote to the respondent asking whether he could relinquish his present job as assistant farm manager and a possible begin a new role as a group within the organisation.
- 58.** Mr Needham and Mrs Foote discussed the proposal with the trustees of the charity, and it was agreed that this was an acceptable and affordable solution.
- 59.** The claimant has also described his own mental impairment both in his grievance and in subsequent correspondence to the respondents during the course of the restructuring.

Conclusions of the claimants disability and the state of the respondents knowledge.

- 60.** We find that the respondent ought to have been aware that the impact of the claimant's mental impairment on him, which includes both depression and a personality disorder, is that he suffers from very low confidence and poor self-esteem. Part of the disability is that the claimant suffers with suicidal thoughts

and as a result, has stated on many occasions that he finds it difficult and very stressful, to talk or address groups of people. We find that this is true, and that the impact upon him is both substantial and adverse and that the respondents knew of this. We have heard evidence from Mr Needham of his many conversations with the claimant about his wellbeing, and Mr Needham's view that the claimant often talked about his suicidal feelings.

- 61.** The occupational health report refers more than once to the claimants need for support in his job and for clarity around the role that he is doing and in respect of the expectations of his role. The claimant was known to be socially isolated and his grievance set out in great detail his mental health history. Having received his lengthy grievance in 2016, we have no doubt that the respondents were well aware of the claimants low self-esteem and low confidence, as well as the need for clarity, and the impact it that low self-esteem, lack of confidence and OCD can have on him, when he is asked to do things which are he does not believe he can do, or which are unclear to him.

The claimant's Grievance and Victimisation claims

- 62.** On the 15 July 2018 the claimant met with Mr Needham following a report to Mr Needham that the claimant had been *wobbly* during his shift. At that meeting Mr Needham has noted the claimant as raising unfair treatment compared to others. Mr Needham records that the claimant felt this was part of a bigger picture and that Mr Brown sensed he was being treated unfairly generally because of his condition and his personality disorder.
- 63.** Mr Needham records that he had said that everyone had been very supportive of the claimant and that nobody that had an appraisal and that overtime was shared around depending on skills and needs.
- 64.** Mrs Foote and Mr Needham met with the claimant on at least two occasions to try to identify what it was that was upsetting him and to see if they could assist him. These meetings did not resolve the claimants concerns to his satisfaction and, on 15 October 2018, the claimant did submit his grievance.

- 65.** The grievance was extremely lengthy. It was 148 pages of handwritten text. The first 10 pages outlined the claimant's past in terms his mental health and the effect that it had on him and then went on to discuss the way that he felt he had been treated.
- 66.** Mrs Foote recorded in a file note that whilst she had dealt with a number of grievances in her working life, she had not come across anything of this order. To ensure that the charity handled the situation objectively, she contacted the respondent's employment law providers for guidance.
- 67.** Following advice, Mrs Foote and Mr Needham met with the claimant to discuss the process for the investigation of his grievance. Mrs Foote explained that because both herself and Mr Needham were named within the grievance that they would appoint somebody from outside the organisation to carry out the investigation. Following that discussion, the organisation appointed Janet Newton as an investigating officer. Mrs Newton set up some interviews with various people mentioned in the claimant's grievance and also arranged to interview the claimant.
- 68.** The respondent accepts that this grievance was a protected act for the purposes of the Equality act 2010.
- 69.** The four complaints of victimisation flow from this grievance.
- 70.** The claimant alleges that Mr Needham and Mrs Foote lied when they were interviewed for the purposes of the grievance investigation and that the reason they did so was because he had raised his grievance about disability discrimination.
- 71.** Secondly he alleges that the report itself was a biased report and that the reason for this was making the grievance itself.
- 72.** Thirdly complains that reasonable adjustments for the FVTL role were refused . He puts this is a claim of victimisation

- 73.** He also alleged that he was not informed about his right to request reasonable adjustments for that role when it was initially offered to him, and again he says this is an act of victimisation flowing from his 2018 grievance.
- 74.** The respondents accept that the grievance was a protected act for the purposes of the Equality Act 2010.
- 75.** We have been referred to the evidence that Mrs Foote and Mr Needham gave in the course of the grievance investigation, and during cross examination Mr Brown pointed out a number of inconsistencies in the evidence of both individuals.
- 76.** We find that both Mr Needham and Mrs Foote did make a number of errors in the information that they provided to the investigation in their answers to questions in respect of the claimant's grievance.
- 77.** We find that Mr Brown is correct in pointing out that in places, certain things they have said are incorrect. The victimisation complaint made by Mr Brown is that both Mrs Foote and Mr Needham lied during the investigation of his grievance.
- 78.** We have therefore considered whether or not the errors and mistakes made were lies or not.
- 79.** During the course of the investigation Mr Needham is recorded as having made a remark to the investigator in which he likens the claimant to the Guildford Four, in that he was very persistent in pursuing his grievance and seeking justice. The remark was not made to Mr Brown, and we accept Mr Needham's evidence that this was not intended to upset Mr Brown but was more by way of explanation of how Mr Needham felt about the claimant's complaints.
- 80.** Whilst we observe that few people welcome a grievance being brought against them, and accept that Mr Needham believed his remark was made in the context of the grievance, generally, and not because the grievance was anything to do with the claimant having a disability, we consider that this remark was unnecessary, inappropriate and disrespectful and that it indicated

that Mr Needham was not thinking kindly or supportively of the claimant at that point.

81. We have also considered Mr Needham's explanations and we have also looked at the evidence that was recorded at the time.

Conclusion on victimisation claim against Mr Needham

82. We find that overall, the evidence given by Mr Needham was very full and was careful and considered. Whilst Mr Needham has given evidence that is wrong, when matters were pointed out to him in cross examination, he accepted that he had been mistaken. He said he had genuinely believed what he said at the time and we accept his evidence.

83. We find that Mr Needham was trying to be honest and truthful and that when he gave his evidence to the investigation, he believed what he said.

84. We find that he did not lie to the investigation, but he did make errors.

85. We have then considered why Mrs Foote gave incorrect information in her evidence to the grievance.

Conclusion on victimisation claim against Mrs Foote

86. Having considered Mrs Foote own explanations of the process we find that Mrs Foote had tried hard to understand the effect the claimant's disability had on him and had tried hard to help him resolve his difficulties informally. Her frustration with the fact of a grievance was because it was lengthy and complicated, and she was at that point overwhelmed by the demands of running a small charity with very little in-house support. We find that despite this did she did her best to provide full and truthful answers when she was interviewed. Looked at overall, we find that her evidence is careful and considered . We find that she made a number of mistakes in giving evidence, but that she did not deliberately lie to or mislead the investigator.

- 87.** Her errors and mistakes were made in the context of a long and complicated grievance and were not lies told on grounds of the grievance. We conclude that she did not lie to the investigation.
- 88.** We conclude that the actions of both Mrs Foote and Needham, did not amount to lies. Whilst giving wrong information to the investigation may be considered as a detriment for the claimant, in this case we do not find that it is provided as having been lies further we do not find that the errors were on grounds of the protected act, but were honest mistakes.
- 89.** We conclude that there was no victimisation by Mr Needham or by Mrs Foote. In this respect. We therefore dismiss the first part of the victimisation claim.
- 90.** We find that the claimant honestly believed that Mr Needham and Mrs Foote had been dishonest and that the report was biased and we understand that the disability that he has and the errors and inaccuracies that he has highlighted mean that it was not unreasonable for him to form those views, even if others who did not have his disability may not have done so.
- 91.** The second issue that we have considered is the allegation that that the investigation itself and the report outcome was biased.
- 92.** We have heard evidence from Mrs Newton who was appointed to carry out the grievance investigation. She explained the process she followed, including who she spoke to and what information she considered.
- 93.** We accept the claimants criticism that her report appears not to have dealt with every aspect of the claimant's grievance and we accept the criticism made by the claimant that there are, in places, matters recorded which we consider may not be factually correct. However, these criticisms are within the context of a complicated grievance, in which many issues were raised , and of which most were dealt with appropriately and fairly .
- 94.** The process followed by Mrs Newton was overall a fair one.
- 95.** We find that Mrs Newton was an independent person, and that her approach to the grievance; her decision making and the report which she produced reflected

an honest and reasonable attempt by her to deal with a difficult and complicated grievance. We have reminded ourselves that when dealing with a discrimination complaint of victimisation the question we must ask ourselves is whether or not any unfavourable treatment found has been done or occurred because the claimant did protected act.

96. In this case the detriment relied on is that the report was biased . Whilst We find that there were failings to address each and every criticism and that there were on balance of probabilities some inaccuracies in the report, there is no evidence before us that the reason for this is bias on the part of Mrs Newton.

97. Whilst we accept that a different person may have reached different conclusions to the ones that Mrs Newton reached we have no evidence before us that her process was anything other than fair and independent and unbiased.

Conclusion on second victimisation claim against Mrs Newton

98. For this reason, on the evidence before us we find that the respondent's explanation of the process and the explanation of the reasons for any errors is a truthful, full and non-discriminatory reason and that the claimants claim of victimisation is therefore dismissed in this respect.

99. The claimant's third and fourth victimisation claims are made in respect of the respondent's failure to make reasonable adjustments during the restructuring process.

100. Apart from the victimisation claims, all the other allegations all arise from the restructuring process and we make the following findings of fact about that process.

Findings of Fact In Respect of The Restructure

101. Both Mrs Foote and Mr Needham explained the reason for the restructuring of the staffing at the donkey sanctuary in 2019.

102. During 2018 it had been identified that the charity would not be able to keep operating as it had been, if it wished to remain viable in the long term. The respondents approached an independent consultant who had assisted other

donkey sanctuaries, to consider changes that might be made to make the charity more sustainable long-term.

- 103.** One of the main proposals was that the donkey sanctuary should change its focus from caring for animals, to becoming a more interactive visitor centre, open to the public. It was proposed that the public would be encouraged to visit and learn about the animals being cared for and that more volunteers would be recruited to assist the charity; that the old job roles would be replaced with newly designed roles and a new staff structure.
- 104.** Because of the emphasis on working with the public, many of the new staff roles would require work with volunteers and the public, and there was an expectation that those who remained employed would interact on a regular basis of the public and would take on tasks such as leading and talking to groups of visitors, including groups visiting from schools, and would work with and lead groups of volunteers.
- 105.** The proposals resulted in a proposed new business plan and staffing structure. The new staffing structure was based on a reduction in the number of paid posts and therefore the proposal was that a number of staff would be made redundant.
- 106.** All employees were invited to an initial restructure information meeting to discuss the implications of the proposals on the existing job roles on the 14 March 2019. The claimant attended and Mrs Foote gave a presentation setting out the vision; the process of consultation that had been followed in reviewing the structure; the outcomes of that consultation process; what the proposals were and what they hoped to achieve for the charity, and what this meant for staff.
- 107.** One of the factors underpinning the process was a statement that all those earning a salary would be expected to hold a level of responsibility and accountability, whether in achieving targets or leading a team of staff or volunteers.

- 108.** One proposal was that the existing posts of groom/site assistant would be replaced by a post that had a wider remit, incorporating the visitor educational therapy and fundraising programmes. These had been identified as the areas of work that would bring revenue into the charity. It was proposed that a number of new appointments would be made.
- 109.** One of the new roles was described as a Farm and Estate Manager and would have overall responsibility for the welfare of the equines and for maintaining and developing the 55 acres of the estate. The claimant told us, and we accept that he believed that this was a job which the existing farm manager would apply for and would be likely to be appointed to. The claimant did not therefore consider applying for it.
- 110.** The second new role was that of visitor service manager, and it was proposed that these employees would manage all the visitor operations.
- 111.** Thirdly, there were roles of equine managers, who would be responsible for the welfare provision of all the animals, taking into consideration the requirements of the charity in terms of on-site and off-site activities.
- 112.** Other roles were fundraiser; sales and marketing design managers and business administrators and a retail manager.
- 113.** Following this meeting it was proposed that there would be individual consultation meetings with all staff individually, when their views would be heard and any expressions of interest in the described roles noted and job descriptions issues where requested. At this point on 14 March 2019 no job descriptions had been issued and no one at the meeting was therefore aware of the precise content or requirements of any of the new roles.
- 114.** Following the first individual consultation meeting it was proposed that there would be a second meeting which would allow staff to express the roles that they were interested in. Staff were told that where more than one person

applied for a role, the matrix would be used to determine the most appropriate candidate.

- 115.** The first stage of the process would be individual meetings with employees where they would be either appointed to a job that they had applied for or invited to interview for a new post or both.
- 116.** If they had not been successful, then they could apply for another post or they would be offered redundancy.
- 117.** The proposal was to have all new appointments in place by 1 July 2019.
- 118.** At the meeting it was explained that a number of current posts would go, but that this did not necessarily mean that the people doing those jobs would be made redundant. The employees were told that the Volunteer and Equine Training Manager and the on-site assistant and groom posts would be tweaked to reflect the work required by those areas. Staff were told that all the posts were available to everyone, and everybody would be offered the opportunity to meet with Mrs Foote and Mr Needham. All posts were being deleted and everybody needed to apply for a job if they wanted to remain employed by the organisation.
- 119.** The claimant was invited to an individual consultation meeting on 21 March at 9.00am. The purpose of the meeting was stated as giving him the opportunity to express his views on the restructure and any concerns he may have. He was also invited to express an interest in the described posts. Job descriptions were to be available at the meeting.
- 120.** The claimant attended that meeting with Mr Needham and Mrs Foote. At that meeting and the parties agree that they discussed the proposed new structure; the recruitment of volunteers and the areas that the volunteers would work in.
- 121.** In this meeting the claimant asked if job sharing would be a possibility , as he would like to do part of the job, part time. He was told that it was not. He

was told there was a need for the full-time role to be done, but there was no consideration of whether or not this may be a reasonable adjustment for him as a disabled person. Mrs Foote added that continuity was needed both for staff and volunteers, but there was no discussion as to about why the claimant had asked about this, or whether he had concerns about the posts on offer, or whether this may be a way of avoiding a redundancy. At the end of the meeting the claimant asked for the job description for the Estate Manager Farm Visitor Team Leader posts.

122. At the meeting on 21 March 2019 we find that Mr Brown made enquiries about the scope of the farm visitor team leader role and how it would work in practice. Mrs Foote is recorded as giving some examples, but the notes do not say what the examples were. The notes are not a full record of everything that was discussed at that meeting.

123. Mr Brown also told us that he was told that meeting that he could only apply for one role. The respondent says this is not true, but the claimant is adamant that that was what he understood following that meeting. We accept that the claimant came away from the meeting with an understanding that he could only apply for one role. We find that this was because the respondents were unclear in what they said to the claimant, and not because the claimant was in the wrong.

124. The claimant was not told at this meeting in any clear or express terms that the role of the farm team visitor leader was flexible or that the role would be subject to any review.

125. We accept that there was a four-week trial period put in place for all new posts, but this was not, as has been suggested by the respondent, anything specific to the claimant and did not of itself involve any adjustments to the role which the claimant was applying for. We find that this was not discussed as an adjustment for the claimant at this meeting. There was no suggestion that any changes would be made to role if the claimant was unable to do it or if the claimant was unhappy the role. We find that the purpose of the four-week trial, which was discussed subsequently with the claimant, was simply for individuals to identify whether they wanted the role. Whilst the respondents may

subsequently have thought that the purpose of the trial period was to find that this was never expressed in any of the written documentation and that nobody ever said this to the claimant.

126. Respondent Counsel suggested to the claimant that the job did involve communication with visitors and the delivery of some educational workshops, and it was in this context and knowing this, that the claimant had applied for the job. The claimant responded that he was not entirely sure what the role involved because it was not explained to him. He told us and we accept that he did say, at the first meeting, that he could not lead educational tours or address large groups.

127. We also accept that this is not recorded in the minutes. We find that the minutes are not a full record, and that some things that the claimant said were not recorded. We note that he agreed they were accurate, but do not draw the conclusion that this means that the claimant is wrong about this statement. An agreement that notes are an accurate reflection in broad terms of what was said is not necessarily a statement that the notes made are a full or complete record of everything said. There is a difference, and this is the distinction the claimant makes. We accept his evidence.

128. The claimant was also asked in cross examination if he knew what was involved in the task of leading, and it was suggested to him that leading could have meant that he could delegate the tasks of talking, or addressing groups to others. He was asked if he understood that. He said that he had not understood that to be the case and that as far as he was aware there was no precedent for delegating tasks of leading. He understood that when two people were working, one would be leading one and would be assisting that he had not understood that it was intended that the person leading could delegate their responsibilities of addressing the group to another person.

129. We find that this was not in fact discussed or explained to the claimant at this meeting or indeed at any other meeting prior to the claimant starting his trial period. We do find that Miss Newton talked to the claimant about what he might do on the one occasion when he was designated to lead a group, and that she did suggest to him that he could delegate the task of addressing the group to

the other person. This discussion did not take place until the claimant was within his trial period, however.

130. We find that there are no records of the respondent ever discussing with the claimant what leading would mean or what would be expected of him. We find that the only explanation is in the job description. We find that the claimant was not told at the meeting that the task of leading did not require him to talk to or address groups.

131. The claimant raised his concerns about what he could do in the context of the job role and while the respondent may not have been clear about the exact role on offer, they certainly did not seek to reassure the claimant that he would not be required to carry out those parts of the role that he was expressing concerns about.

The second individual consultation meeting- 2 April 2019

132. The second individual meeting took place with the claimant on 2 April 2019 with Mr Needham and Mrs Foote and notes were taken by Jean Elwin.

133. At the start of the meeting the claimant was asked if he had any comments or questions regarding the minutes of the first meeting and he stated that they were correct.

134. At the beginning of the meeting the claimant was asked whether he was interested in or had any questions about the job description of Estate assistant or farm volunteer team leader that he had taken the last meeting.

135. In the minutes of the meeting, the respondent noted that the claimant said that he understood the rationale behind the restructure but that he would rather work as a volunteer and was interested in doing care work again. He added that he could not do the amount of interaction with the public that the post of F&VTL required. We accept his evidence that he said he would not be applying for the role because of his problems with orally addressing visitor groups.

- 136.** Mr Needham is recorded as saying that there was a need for public interaction and Mrs Foote reiterated the need for this sort of work in order to obtain legacies. There was no discussion with Mr Brown about any reasonable adjustments or any consideration of any adjustments that might be made to the role for him.
- 137.** Nor we find was there any discussion in the context of the role that was being discussed of the meaning of the word *leading* as not requiring public interaction or not requiring the person to address groups.
- 138.** We find that at this meeting the respondent did nothing to try to understand what it was that the claimant was expressing difficulties with and that there was no discussion whatsoever of any need the claimant may have as a disabled person for adjustments to be made to role so that he could do it.
- 139.** The claimant stated that he would not be applying for any role. The respondent told us that they didn't want to lose the claimant and they wanted him to keep working for them.
- 140.** We find that they did nothing at this stage to try to support him to do the job or to support any or encourage or suggest any application from him for that or any role at all. Mrs Foote in her evidence suggested that it was bizarre that the claimant had not applied for the deputy estate manager role, but there is no evidence that she ever suggested this to him or encouraged him or had any other discussion with him about this or any other application whatsoever.
- 141.** What the respondent did was to accept that the claimant was not applying for a job because he could not do all of it and that he would therefore be leaving. Mr Needham is recorded stating that he explained that it was necessary for all the public interaction to take place, as the revenue earned from those activities constituted the primary source of income for the charity.
- 142.** Following the meeting the claimant told us that he had a further unofficial meeting with Mr Foote and Mr Needham on 15 April 2019 and was asked if he would provide a letter stating when he would be leaving. The claimant was

concerned, following this meeting, that the respondent may be trying to avoid paying him redundancy pay.

143. Following that meeting he therefore spoke to his brother who arranged for the claimant to talk to a friend who was an HR consultant. This individual advised the claimant that he should have been told that he had a right to reasonable adjustments in relation to his mental impairment and helped the claimant to write a letter to the respondents.

144. The claimant wrote to the respondents on the 30 April 2019. In that letter he states *I do not believe my rights have been properly explained to me and had this been the case I feel I would have found the discussions less stressful and would be better placed to articulate my concerns; make informed judgements and request support from my employer.*

145. He then made reference to his underlying health condition and says that this was clearly the reason why he felt he was not able to undertake the degree of interaction with the public as was required by the post of farm visitor team leader and state assist . He said that the respondent would have been sufficiently aware that this was the case, and that they could have suggested exploring reasonable adjustments. He says he understands that he has the right to request adjustments.

146. In this letter the claimant also stated, *my employer has been aware for a long time that I have mental health issues which I believe are encompassed within the definition of disability within the 2010 Equality Act. This opinion was clearly shared by both the occupational health consultant Dr Shand who you engaged to examine and the consultant psychiatrist, Dr Abraham, who I saw prior to this . You will also recall that Dr Shand was clear about the need for support from my employer and recommended regular and formal reviews of progress, which I do not feel has happened.*

147. The claimant then stated, *as you will be aware the Equality Act 2010 states that employers have a duty to take positive steps to ensure that people*

can access and progress in their employment by making reasonable adjustments for disabled employees when a person is at a substantial disadvantage compared with an employee who is not disabled.

I have already explained to you why I feel that the new job role you have offered to me would not be suitable in its current form. I believe that it is reasonable for you to make some changes to this post in order to allow me to continue doing a good job for the sanctuary. I want to be able to do this and making these changes will support me in doing so.

The condition I have is a recurrent depressive disorder and a personality disorder, which has analogies with Asperger's syndrome and manifests itself in obsessive-compulsive thought processes which are exacerbated by stress and cause associated depression. The claimant then made reference to correspondence sent in 2018.

148. He goes on to say , *as I have already made clear I do not feel that my condition would make it possible for me to undertake the amount of public which is proposed. I think some adjustments to make the job role possible which minimises this component would be possible and allow me to continue in employment. This may require reassigning specific duties to other posts within the structure.*

I believe that these changes would allow me to continue to make a significant contribution to the work of the sanctuary which would continue to benefit from my experience and skills

149. The claimant made reference to the duty of the employer under the Equality Act, expressed hope that the reasonable adjustments could be made, but failing that, asked for a written explanation as to why his request would not be possible. He also stated that if his proposals were not considered a reasonable adjustment, then he did not consider any other post on offer constituted suitable alternative employment and that he would anticipate he would then be made redundant.

- 150.** We find that this letter identifies that the claimant considers the public interaction and the addressing of groups as a policy criterion or practice which will place him, as a disabled person, at a substantial disadvantage, because he cannot do it.
- 151.** We find that compared with other nondisabled people he was, at this point, placed at the disadvantage, which was substantial, and that the respondent knew this, and that the duty to make reasonable adjustments ought to have been crystal clear to them at this point.
- 152.** On receipt of this letter we consider that the respondent had a number of options open to it.
- 153.** The respondent could have written back to the claimant telling him that his understanding of the job role was simply wrong and they could have corrected any alleged misunderstanding by assuring him that the role would not require him to undertake work addressing groups or interacting with groups of the public.
- 154.** The respondent could have reviewed the occupational health report which the claimant referred to and sought further advice or discussed the claimant's needs with the claimant himself.
- 155.** The respondent could have told the claimant that it would make reasonable adjustments to the post.
- 156.** The respondent did not do any of these things.
- 157.** Instead they held a second impromptu meeting with the claimant on 2 May 2019. The note of that meeting records the receipt of a letter from the claimant which indicated that he had had a change of mind since the second individual meeting, when he had stated that he would be happy to be a volunteer, and at which he had confirmed that he would not be applying for any of the new posts. The note records that the claimant had now stated that he wished to be considered for one of the four farm visitor team leader roles within the structure.

- 158.** The meeting note then records a discussion about the process of selection of candidates for the role and it is recorded that he was assured that during the selection process his "condition" (sic)would be taken into account in order not to put him at a disadvantage.
- 159.** There is no other written response to the claimant's letter and no acknowledgement of his request for reasonable adjustments to the role itself or of the specific disadvantage that the claimant has expressly stated that he believes he will be subject to. There is no comment from the respondent as to whether or not they considered whether the claimant might be disabled within the meaning of the Equality Act and whether the respondent might therefore have a duty to make reasonable adjustments under the Equality Act. We find this is because nobody from the respondents gave any thought to their responsibility as an employer of disabled staff under the Equality Act or otherwise.
- 160.** Following that meeting the claimant was invited to attend an interview with the respondent on 13 May 2019. No reference is made in that letter to any adjustments that will be made for the claimant in respect of the role or the procedures to be followed in selecting staff for those roles.
- 161.** The claimant attended and was asked if he was confident that he could undertake the role of the post had applied for. The claimant is recorded as responding that yes, he was 95% sure. He was asked if he had any comments and he replied he would need the confidence to do the school visits and that he would need more help with the bigger groups.
- 162.** The claimant was provided the scoring matrix. This matrix set out each of the tasks in the job description for the farm visitor team leader role.
- 163.** Under each heading or skill, a score of 1 to 5 was possible. Against each score there was a description of the standard of skill that the score represented. Score of 1 would represent no or little skill, whilst a score of 5 would suggest the person was fully confident in that skill.

- 164.** At this point the claimant was aware there were five people competing for jobs. The claimant knew that in order to be appointed he needed to be able to demonstrate that he could do the role. He also knew that he had asked for specific adjustments to be made because he was disabled, and he also knew that his employer had told him that his condition would be taken into account.
- 165.** Three of the tasks were *works with schools; therapy visits and visitor interaction*. The claimant had previously stated in his letter to the respondents that he believed he would have difficulties with the amount of public interaction required by the post. We find that these three areas of work are the areas where that public interaction was most likely to take place and we find that the claimant scored himself at 3, the respondent scored him for, *work with schools* as 2, which is *requires considerable direction and support*. In respect of the *visitor interaction*. The respondent scored the claimant as 2, which was *requires considerable direction and support*. We also note that the comment was that the claimant had not been involved in any of these activities to date. This was the simple reason that these were new activities which the centre was not currently running.
- 166.** At this point we find that the respondent was fully aware that these were three areas in which the claimant was marking himself down. The respondent was also marking the claimant down areas and we find that this was because they knew that these were the areas that the claimant would find harder and they knew this because the claimant had told them.
- 167.** The claimant had already told the respondent that he believed that he would find the tasks requiring public interaction harder and that the reason that he would find that harder was because of his disability. We find that the claimant's assessment of his abilities and the reason for them was a fair one. The claimant understood his own disability and how his mental health affected him, and the respondents had received advice from occupational health in respect of the claimant's disability previously.

- 168.** We find that the respondent knew or ought to have known that the claimant was facing a potential disadvantage, and that this was because of his disability.
- 169.** Despite this, there was no discussion about the claimant's disability or his request for reasonable adjustments at that meeting. There was no consideration about whether the role itself might be adjusted or whether some aspect of the role might be allocated to somebody else. No adjustments were made.
- 170.** When she was asked what had been done to take into account the claimant's condition when the claimant was subsequently interviewed in respect of the post or at any later stages, Mrs Foote said nothing had been done at that point. She said this was because at the meeting that followed, the claimant was appointable to the post there was no need to look at making any adjustments at that stage, but that it would be looked at in or after the trial three week trial.
- 171.** We consider that the respondent was in breach of their duty to make adjustments, and was at this point treating the claimant unfavourably because of something arising from his disability, by putting the emphasis onto the claimant, an employee with a disability comprising low confidence and low self-esteem, to reassure the employer that he was able to carry out all the tasks in the post, after he had specifically stated in writing that he required reasonable adjustments.
- 172.** The respondent should have considered whether there were any adjustments which it would have been reasonable for them to make.
- 173.** We consider that at this stage, the respondents should have considered removing the part of the job which the claimant was expressing concerns with, and allocating it to another role.
- 174.** We find that this would have been a reasonable adjustment to make, because it would have removed the disadvantage, including the additional

stress caused by the uncertainty and worry about the prospect of undertaking those tasks.

175. It is unsurprising that the claimant tried to reassure his managers and himself. Having raised the question of reasonable adjustments and having been told that they would be taken into account, it was fair for him to consider that he had done his part and that his employer could therefore be expected to make necessary adjustments for him to the role. The claimant knew that unless he took the role, he would be facing redundancy.

176. We find that at this meeting the claimant did again raised his concerns about his confidence with school visits and help with dealing with bigger groups. We find that there was no particular response from either Mrs Foote or Mr Needham.

177. We find it extraordinary that at this point in time, having received the letter that they had received from the claimant. The respondent continued to do absolutely nothing to investigate the claimants concerns about a job with him.

178. Following the matrix meeting the claimant attended a meeting on 30 May to discuss the outcome and was offered the role of farm visitor team leader, which he accepted.

179. He was told that everyone who was taking up a new role was entitled to a month's trial, whereby they could assess whether the role suited them, and the organisation could assess whether they would be successful in the role.

180. The letter told the claimant that there would be a verbal review within two weeks which would give him the opportunity to say which of the roles or aspects of the roles he may need help with. We observe that the claimant had already identified the areas that he believed that he would require help with. At this stage we find that there was still a lack of clarity over the role, no adjustments had been made or discussed with the claimant. The claimant required one adjustment and that was the removal of the requirement or expectation that he would address or talk to visitors or groups of visitors.

- 181.** Mr Needham then told the claimant that, in his opinion, there was no part of the role that he, Mr Brown could not do and that everyone had different skills. We find that at this point Mr Needham assumed and expected that the claimant would adjust and gain confidence and would be able to do the entire job. Mr Needham told us that he considered that this was a supportive comment to make to the claimant, but we find that Mr Needham simply ignored the fact of the claimant's disability and its impact upon him. The issue for the claimant was not simply that he lacked confidence and needed support to do aspects of the job, the issue for him was that his disability meant that he was unable to do parts of the job without suffering a substantial disadvantage of the deterioration in his mental health, and therefore wanted parts of the job to be removed for him.
- 182.** Following the meeting, the claimant received a letter dated 30 May which set out that he would receive a four-week trial period and stated that, during the trial period both you and the Isle of Wight donkey sanctuary *CIO can assess whether this is a suitable post. The trial period will commence on 1 June 2019*
- 183.** The letter goes on. *If either party concludes that the trial has not been successful, and subject to any discussion we might have to try to resolve any outstanding issues, the original redundancy process will be revived.* Nothing is said about reasonable adjustments.
- 184.** the claimant started his four-week trial. And until the 13th of June matters went well. The claimant was not asked to address any groups nor was he required delete groups a timetable was produced by Julie Newton which was essentially a training plan. we note that she did not know that the claimant had a disability and had not been advised by either Mrs Foote or Mr Needham the claimant may require any form of adjustment to his role .
- 185.** A meeting took place on the 13th of June at which the claimants work and progress was discussed this was a meeting between Mr Needham and Miss Newton at which Mrs Foote apparently, although not attending was also present because she was in the room on occasions .The claimant notably was not present and was not consulted or asked for his views before the meeting.

- 186.** We find that at this meeting there was a discussion about placing the claimant on the rosta in a leader capacity to deal with a school group. We find that Julia intervened and stated that she did not consider that the claimant was yet ready to do this work and that he should instead be rostered to do work with another person in a support role. whilst there is no note of this meeting produced to us and whilst there is disagreement about the motivation, We find that that it was the respondents intention that the claimant would at some point be ready to take on all aspects of with a job and that at this stage, two weeks in there was no recognition of any need for any adjustment or removal of any particular aspect of the job .
- 187.** The respondent retained the view at this point that with encouragement and support the claimant would be able to lead activities to lead groups and to address groups. This was the reason that the conversation took place. This was the context in which Miss Newton expressed her view that the claimant was not yet ready to do this. She would not have had to make this statement were it not for a suggestion from management that the claimant be put on the roster to do it.
- 188.** We find that following the meeting Julia Newton did speak to the claimant and did tell him that there had been a discussion at the meeting about whether or not he should be rotated to do this work and that she had stated that she did not consider him to be ready to do it yet . We find that what she said to him, did flag up to him that he would be expected to do this at some point in the future , although we accept her evidence, that she sought to offer him reassurance that he could be supported in doing the work .
- 189.** We find that Mr. Brown believed, following this conversation, that he would be required to undertake the leading tasks involving talking to groups himself in the future and in the short term. We find that this was a reasonable conclusion for him to draw given the context of the conversations and given the lack of clarity around the role and expectations on him we also find that at this time this was a true reflection of the respondents expectations of the claimant .

- 190.** At this point there had been no formal conversation with the claimant about how addressing groups or giving health and safety briefings among other things, could be adjusted so that he would be able to carry out his job . We find that he had not been told in clear and unequivocal terms that he would not be expected to ever address groups or to give health and safety briefings ,unless he chose to do so and find that it was not clear to any one, that he would always be able to delegate the task to another person working with him . We find that this was not what Mr Needham was expecting at this point, and that it was not really likely in any event.
- 191.** We find that Julia Newton's evidence is persuasive. She stated that she had formulated the claimants training plan but admitted that she didn't know what his disability was and had not seen the occupational health report, and that she wasn't aware of any need for reasonable adjustments. There is no evidence that it had ever been raised with her. She said she did not consult the claimant over the training plan because it was her plan. She accepted there was no opportunity for him to have an input and we find that therefore there was no opportunity for the claimant to explain to Miss Newton what it was that he felt he could do and what he could not do . Miss Newton was working on the basis that he would be able to do all of his job at some point, because no one had told her otherwise. The reason no one had told her otherwise we find, is because neither Mr Needham, or anyone else, thought that it was necessary.
- 192.** Miss Newton confirmed to us that it would not always be possible for the claimant to simply do the one to one work in the role and not do the group work, because there would not always of two people allocated do the tasks.
- 193.** We find that the respondents had made no adjustments for the claimant at this point and expected that with encouragement and support he ought to be able to carry out all aspects of the role.
- 194.** The claimant was very distressed following his conversation with Miss Newton and started a period of sick leave. He wrote to the respondents on the 16 June.

- 195.** He states clearly what his understanding was of the conversation that had taken place and he states that he cannot deal with or do the leading of the school groups. He says the respondents have ignored his mental health.
- 196.** We found this is a letter which is a cry for help from a really distressed employee who needs some clarity about his role some clear and agreed adjustments from his employer, and some understanding that his reservations about aspects of the role are not simply something that can be boosted by encouragement and confidence building, but which are impairments, or the result of impairments, which have a substantial impact on the claimants ability to do certain tasks. Support and encouragement alone will not remove the disadvantage of the anxiety and low self-esteem leading to intrusive thoughts which the claimant suffered. The claimant knew what he could and could not do and wanted his employer to focus on the parts of the job he could do, rather than insisting that he would be able, if he tried, to do all of the job.
- 197.** The respondent says that it wrote a letter to the claimant on the 19th of June 2019 and there is a letter in the bundle which appears to have been written at the time, but the claimant says that he did not receive this letter. We have no reason to doubt the claimant's evidence in this respect.
- 198.** Whether the letter was sent or not, we find that it is a true expression of the thinking of Mrs Foote at the time.
- 199.** The letter makes reference to the four-week trial, as a period to assess whether the role was suitable for him and repeats an expectation that the claimant will be able to do the whole job when his confidence improves.
- 200.** Nowhere does it say that any adjustment would be made for him and the letter does not suggest that that the respondent did consider any adjustment. We find this letter supports our finding that the respondent thought that the claimant could be helped to overcome the problem of low self-confidence, rather than e]recognising that this was a feature of his disability and something that put him at a substantial disadvantage compared to others doing the role.

- 201.** There is no point at which the respondents have considered their responsibility, as employer, to make reasonable adjustments for this disabled employees, to remove that disadvantage. Instead, the letter admonishes the claimant for writing his own letter and reminds him that he had said that he wanted the job. We find that this demonstrates a level of frustration on the part of the respondents with the claimant, rather than any thinking about how they might adjust the role to ensure that a disabled employee can be retained in work, and a redundancy avoided.
- 202.** A second shorter letter dated the 20 June was sent and received by the claimant. This letter refers to his absence from work and a suggested discussion with him to explore any adjustments to his work.
- 203.** This letter is the first time that the respondent has put in writing that that they will consider exploring or making adjustments for the claimant.
- 204.** The claimant attended the meeting and there are notes of that meeting. The claimant says the notes are incomplete and we accept his evidence that they are not a complete record of everything that was said. We that observe that it is recorded at this meeting that the claimant did raise and refer to his suicidal thoughts. He also mentioned this in a subsequent letter.
- 205.** The respondent made no response at the time to the claimant's comments about his suicidal thoughts. When Mr Needham was asked about this in cross examination, he suggested that the claimant regularly made reference to his suicidal thoughts and that whilst this might be shocking for other people for the claimant this was a regular occurrence. We conclude from this that Mr Needham was aware during much of the claimant's employment that the claimant suffered with suicidal ideation. We find that this was a clear indication to the respondents that the lack of clarity over the requirements of the job and the claimants concerns about the level of social interaction and the probability or possibility that he would have to leave groups either of volunteers or others in the future, was having a substantial and adverse impact on the claimant's ability to carry out those parts of the job. We find that at this point the

claimant ought to have known that the possibility of the claimant having to do these tasks was placing the claimant at a substantial disadvantage compared to others, because the prospect of having to do these things was causing him extreme stress to the point that he felt suicidal.

206. We find that the attitude of Mr Needham to the claimant stating that he was having suicidal thoughts at that point, was dismissive. There is no suggestion that he recognised that this an indication of the serious impact that the concern about speaking to groups was having the claimant. We find that his response to the claimant providing information about his mental health and his disclosure that he was having suicidal thoughts, was extraordinary and entirely inappropriate.

207. Whether or not the claimant suffered sometimes or regularly with suicidal thoughts, this is a significant aspect of his disability and is a factor which is clearly serious. If the thought of addressing groups or dealing with a health and safety briefing is causing the claimant, to have suicidal thoughts as he stated , the respondent ought to have recognised both that this was a serious impact on the claimant and that it placed him at a disadvantage compared to others and that there was a need to consider whether or not adjustments could be made to remove those parts of the job which were having that impact .

208. The claimant says that he was very upset at that meeting. The evidence from the two respondent witnesses suggests that they don't believe he was upset. Prefer the However the respondent has noted that the claimant stormed out of the meeting and had to be encouraged to come back and sit down. We find that this was a clear indication to the respondents that the claimant was extremely upset. We prefer the claimant's evidence and find that the respondent's attitude to him at this meeting was dismissive and unsupportive.

209. We also find that the respondent witnesses made comments at the time which appeared to criticise the claimant for using what they call accusatory language and making reference to disability discrimination. We find that this criticism of the claimant, who is a disabled person seeking to ensure that he can

keep his job by asking his employer to do what they are required to do by law, is indicative of the respondents negative and unsupportive attitude to the claimant, and a willingness to ignore and deny him the rights set out in legislation.

210. We have been told by Mrs Foote and Mr Needham that they had done many things to try and support the claimant over the years and from the evidence we have seen we accept that the claimant had required and been given support over the years.

211. However, we find that during the course of the restructuring and redundancy process, both Mr Needham and Mrs Foote became frustrated with the claimant and ignored his rights as a disabled person. He was entitled to protection as a disabled person, and this involved ensuring that reasonable adjustments were made for him, and that he was not treated unfavourably in the process.

212. We have considered whether in June 2019 it would have been a reasonable adjustment to remove parts of the role which the claimant was finding harder to do.

213. We find that at this stage there was an adjustment which could be made, and that it was the removal of the requirement or expectation or practice for the claimant to address groups of visitors or to give health and safety briefings. We find that this is an adjustment which would have removed the disadvantage to the claimant because it would have essentially ensured that he was able to do the part of the job in which he felt able and confident to do and which the respondent still required . The respondents had in the past makes such an adjustment and we have heard no evidence to suggest that it would not have been possible in June 2019, and much evidence that it would have been possible.

214. We can see we have no evidence that it would not have been reasonable to make such an adjustment and we find that the adjustment should have been made , and should have been made at point that the job was initially

discussed with the claimant and on every occasion that the claimant raised it subsequently .

- 215.** At the end of the meeting, he said he could not do the role. We find the only adjustment that had been made was that he had not at that stage being asked to lead large coach groups. We found there was nothing in writing telling him that from that point on he would not be required to do those aspects of the role that he had difficulty with or alternatively setting out the aspects of the role that he would be required to do . Going back to the occupational health report we remind ourselves of the advice it in 2017 was that the claimant required clarity about the expectations of him in his role.
- 216.** We find at this stage that the expectations communicated to the claimant remained vague and unclear and that the respondents approach remained the claimant should try the job and see how it went.
- 217.** The claimant said that he could not do the role he then left following the meeting the respondents did write to the claimant and they wrote asking him to confirm that he would not be returning to work this letter was sent on the 4th of July 2019 . Then we observed that the respondent's assertion before us that they wanted to retain the claimant services is not supported by their actions in early July 2019.
- 218.** The claimant then wrote back to the respondents on the 5th of July stating that he was leaving by reason of redundancy because the respondents had failed to make reasonable adjustments in relation to leading groups.
- 219.** The respondent replied saying it was confused and invited the claimant to another meeting but the claimant declined to meet with them unless until they gave him some clarity around any adjustments to the role. His letter was written on the 9th of July 2020 and the claimant has indicated that he cannot do the role and that he believes he is being made redundant.
- 220.** On July 11 2019 the respondent wrote a letter to the claimant which sets out adjustments which it says had been agreed.

- 221.** We found that this was in fact the first time that the claimant was told in clear terms with that adjustments would be made to his role.
- 222.** The letter does sets out for the first time things that the claimant will not be required to do. None of these things had been discussed with him in clear and unequivocal terms.
- 223.** We find that the adjustments set out are reasonable but had not in fact been made and are subject to a further paragraph which effectively caveats but the adjustments. The letter states that elements of leading will still be required and refers to leading groups of volunteers as being an essential part of the role that cannot be removed from the role.
- 224.** Further there is no statement within the letter that the claimant will not be required to address smaller groups or the commentary confused to carry out the necessary daily health and safety briefings to school groups for example .these were some of the matters that the claimant remained very concerned about .the respondent has told us that the claimant may well on occasions have been able to delegate these tasks as long as he retained responsibility for the role .
- 225.** We find that even at this stage the PCP that was implicit in the FVTL role of addressing groups of visitors and volunteers remained apart or potential part of the claimants job.
- 226.** We note that it was the view of Julie Newton that whilst it was not possible as the role currently stood that it would be possible to adjust the role so that the claimant did not ever have to do the health and safety briefings .
- 227.** Mrs Foote said that he could do the all the role and that they wanted to work with him so that he could do it. She also accepted that the work of the groom still existed and that the sanctuary has now extended expanded times that there are many more donkeys and also horses in residence.
- 228.** We find that the respondents had previously adjusted a role to enable the claimant content to continue to do the work which he could do and which

the respondents all recognised he did well and worked hard at when it is unclear why the same could not be done for this role .

229. Looking at the job description we find that it would have been possible to allocate some of the tasks to another employee or a volunteer and amend the job so that the claimant could have done it and remained employed.

230. We find that the letter of 11th of July from the respondents was too little and too late .It was not a letter that made the adjustments that were necessary for the claimant and we find that the claimant is right that in any event those adjustments had not in fact been made at any stage previously .

Applicable Legal Principles

231. Section 20 - Duty to make adjustments

“(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

(6) Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps

for ensuring that in the circumstances concerned the information is provided in an accessible format.

232. Section 21 Failure to comply with duty

“(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

(3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.”

233. The duty to make reasonable adjustments as 'a cornerstone of the Act which requires employers to take positive steps to ensure that disabled people can access and progress in employment. This goes beyond simply avoiding treating disabled workers, job applicants and potential job applicants unfavourably and means taking additional steps to which non-disabled workers and applicants are not entitled'. This can, as HHJ Peter Clark said in *Redcar and Cleveland Primary Care Trust v Lonsdale* UKEAT/0090/12, [2013] EqLR 791, involve 'treating disabled people more favourably than those who are not disabled'. The same point was made by Serota J in *Wolfe v North Middlesex University Hospital NHS Trust* [2015] ICR 960, EAT, where he also warned against conflating considerations of 'reasonableness' with the factual question of whether a 'PCP' had in fact been applied to the disabled person.

234. In considering the claims under ss. 20 and 21 of the Act, we have borne in mind the guidance in the case of *Environment Agency v. Rowan* [2008] IRLR 20 in relation to the correct manner that we should approach those sections.

235. The guidance given in *Environment Agency v Rowan* [2008] IRLR 20, [2008] ICR 218 is to be applied, namely that in order to make a finding of failure to make reasonable adjustments there must be identification of:

- (a) the provision, criteria or practice applied by or on behalf of an employer; or
- (b) the physical feature of premises occupied by the employer;
- (c) the identity of non-disabled comparators (where appropriate); and
- (d) the nature and extent of the substantial disadvantage suffered by the claimant.

236. In relation to the second limb of the test, the claimant needs to demonstrate that he is caused a substantial disadvantage when compared with those not disabled. It is not sufficient that the disadvantage is merely some disadvantage when viewed generally. It needs to be one which is substantial when viewed in comparison with persons who are not disabled and that test is an objective one (*Copal Castings-v-Hinton [2005] UKEAT 0903/04*).

237. The adjustments themselves to have been both reasonable and to operate so as to avoid the disadvantage. There does not have to be a certainty that the disadvantage would be removed or alleviated by the adjustment. A real prospect that it would have that effect would be sufficient (*Romec-v-Rudham UKEAT/0067/07* and *Leeds Teaching Hospital NHS Trust-v-Foster [2011] EqLR 1075*).

238. The concept of a PCP is not to be approached in too restrictive a manner; as HHJ Eady QC stated in *Carrera v United First Partners Research UKEAT/0266/15 (7 April 2016, unreported)*, 'the protective nature of the legislation meant a liberal, rather than an overly technical approach should be adopted'.

Substantial disadvantage

239. The Equality Act 2010 provides that a substantial disadvantage is one which is more than minor or trivial: see s 212(1). The EHRC Code of Practice states that the requirement that an effect must be substantial reflects the general understanding of disability as a limitation going beyond the normal differences in ability which might exist among people: see para 8 of App 1. The

240. In *Royal Bank of Scotland v Ashton* [2011] ICR 632, Langstaff J held that 'an Employment Tribunal—in order to uphold a claim that there has been a breach of the duty to make reasonable adjustments and, thus, discrimination—must be satisfied that there is a provision, criterion or practice which has placed the disabled person concerned not simply at some disadvantage viewed generally, but at a disadvantage which is substantial and which is not to be viewed generally but to be viewed in comparison with persons who are not disabled.'

241. *Chief Constable of South Yorkshire Police v Jelic* [2010] IRLR 744, in which the EAT held that a tribunal is not precluded, as a matter of law, from holding that it would be a reasonable adjustment to create a new job for a disabled employee if the particular facts of the case supported such a finding.

242. Para 6.32 of the Code of Practice says that a relevant factor is 'whether taking any particular steps would be effective in preventing the substantial disadvantage'. Under DDA 1995 s 18B(1)(a) it was necessary to examine the *extent* to which making the adjustment would prevent the disadvantage created. As the EAT made clear in *Royal Bank of Scotland v Ashton* [2011] ICR 632, this involved an objective test. Whilst not expressly re-enacted under the EqA 2010, it is submitted that this issue is still of relevance in determining whether any adjustment is 'reasonable' or not, balanced of course with other factors such as any cost or disruption entailed by the adjustment.

243. In *Leeds Teaching Hospital NHS Trust v Foster* UKEAT/0552/10, [2011] EqLR 1075, when the EAT again emphasised that when considering whether an adjustment is reasonable it is sufficient for a tribunal to find that there would be 'a prospect' of the adjustment removing the disadvantage—there does not have to be a 'good' or 'real' prospect of that occurring.

Direct Discrimination

244. s. 13 of the Equality Act 2010 provides that a person is subject to direct discrimination if :

“A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.”

245. Under section 13, a comparison must be made between the treatment of the claimant and another person, actual or hypothetical. When making that comparison, section 23(1) states

“On a comparison of cases for the purposes of sections 13, 14 or 19, there must be no material difference between the circumstances relating to each case.”

246. When considering whether or not direct discrimination had taken place in this case, we considered and applied Equality Act’s provisions concerning the burden of proof, s. 136 (2) and (3):

“(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.”

247. In applying the test and before the reverse burden of proof is triggered, we must consider whether, the facts we have found could lead to a conclusion that the prohibited factor, in this case the claimants disability, may have or could have been the reason for any of the treatment we have found to have occurred.

248. We approached the case by applying the test in *Igen v Wong* [2005] EWCA Civ 142, and took into account that in order to shift the burden of proof to the respondent, requiring a full explanation for any detriment or adverse treatment, the claimant must prove more than a difference in treatment between himself and any comparator, actual or hypothetical, and a difference in protected characteristic. Before the burden of proof will shift, we must make some additional factual finding from which we may draw an inference that his disability was causative of that treatment in some way. Unreasonable treatment alone may not be enough, unless it is connected to the protected characteristic.

Discrimination Arising from Disability (S. 15 Eqa)

249. When considering a complaint under s. 15 of the Act, the ET will consider whether the employee was “*treated unfavourably because of something arising in consequence of her disability*”. This means that there must first be *something* which arises in consequence of the disability and, secondly, there needs to be some unfavourable treatment which the claimant says was suffered because of that ‘*something*’ (*Basildon and Thurrock NHS-v-Weerasinghe* UKEAT/0397/14). Although there must be some causal connection between the ‘*something*’ and the disability, it only needs to be a loose connection and there might be several links in the causative chain (*Hall-v-Chief Constable of West Yorkshire Police* UKEAT/0057/15 and *iForce Ltd-v-Wood* UKEAT/0167/18/DA). It does not need to be the only reason for the unfavourable treatment but it must have been a significant cause (*Pnaiser-v-NHS England* [2016] IRLR 170).

250. In *IPC Media-v-Millar* [2013] IRLR 707, the EAT stressed the need to focus upon the mind of the putative discriminator. Whether conscious or unconscious, the motive for the unfavourable treatment claim needed to have been “*something arising in consequence of*” the employee's disability.

251. No comparator was needed. ‘*Unfavourable*’ treatment did not equate to ‘*less favourable treatment*’ or ‘*detriment*’. It had to be measured objectively and required a tribunal to consider whether a claimant had been subjected to something that was adverse rather than something that was beneficial. The test was not met simply because a claimant thought that the treatment could have been more advantageous (*Williams-v-Trustees of Swansea University Pension and Assurance Scheme* [2019] ICR 230, SC).

Victimisation (s. 27 Equality Act)

252. Although the Respondent did not dispute the fact that the Claimant had performed protected acts within the meaning of s. 27 (1) in the form of the grievance in 2018, it disputed the allegation that he had been subjected to detrimental treatment because of those acts.

253. The test of causation under s. 27 was similar to that under s. 13 in that it required us to consider whether the Claimant has been victimised ‘because’ he had done a protected act, but we were not to have applied the ‘but for’ test (*Chief Constable of Greater Manchester Constabulary-v-Bailey* [2017] EWCA Civ 425); the act had to have been an effective cause of the detriment, but it does not have to be the principal cause. However, it has to have been the act itself that caused the treatment complained of, not issues surrounding it.

Discussion and conclusions

254. We should start by observing that we consider all of the witnesses who have given evidence to us have given evidence honestly to the best of their ability. We do not agree that all the witnesses have necessarily been correct about certain aspects of their evidence, but we accept that the claimant and all the respondents witnesses have been truthful.

255. Mr McDevitt has invited us to prefer the evidence of the respondents where there is a conflict between the respondent and the claimant on the basis that the claimant’s evidence is unreliable in certain aspects. We do not accept this . We do not find the claimants evidence unreliable in the way that has been suggested.

256. We have taken account of the fact that the claimant is a disabled person, and that he suffers with low self-esteem, low confidence; anxiety and depression. We accept that he may form views which are honest but mistaken.

257. We conclude that by the end of January 2017 the respondents knew that the claimant had a mental health impairment and that the impact of his mental health impairment was that he had suffered long-term problems with low self-esteem and low confidence.

258. We find that the respondents ought to have understood that one of the triggers for the claimant’s deteriorating health issues had been him taking up his farm manager role. It ought to have been obvious to the respondents that the claimant wanted to carry out the role of groom without the management responsibilities. The reason was that the claimant’s disability meant that he

suffered a deterioration in health when required to take on additional responsibilities.

259. We find that it is clear from the occupational health report that the claimant needed He needed a clear understanding of the expectations placed upon him in work on a regular and daily basis, as well as constructive feedback.

260. We find that the occupational health advice remained relevant and applicable throughout the claimant's employment.

261. We observe that the claimant is described as having a personality disorder and that both low self-esteem and low self-confidence are noted by the occupational health report. We observe that the claimant has been able, throughout his employment to express himself, and that he has made clear the requests which he is making in respect of adjustments at work.

262. The claimant has been able to set out his concerns clearly in writing, sometimes with help from other, but has found it much harder to verbally express clearly and concisely what it is that he wants or needs when he attended meetings with the respondent. It is obvious from the notes of meetings, that the claimant has not been able to be assertive and instead, has often simply agreed with the respondent. We conclude that part of the reason for this, is that he lacked the confidence to insist on his rights and did not have the level of self-esteem to express himself as he wanted in a face-to-face meeting.

263. We also find that when he did attempt to assert his rights, he was on more than one occasion criticised by the respondent staff, who described him as aggressive.

264. Following receipt of the occupational health advice, the respondent discussed with the claimant what he needed in order to do his job. At that point the claimant said he did not wish to return to the farm manager role and the respondents made a reasonable adjustments by creating a role for the claimant that meant that he did not deal with the issues of the assistant manager job.

That job was the one which he was doing up until the proposed restructuring was announced in March 2019.

- 265.** We conclude that in 2019 during the course of the restructuring process the respondents knew or ought to have known that the claimant was disabled and knew or ought to have known that the restructuring itself would be difficult and potentially stressful for the claimant but also that the change in role itself posed difficulties for the claimant as a disabled person.
- 266.** Further, we conclude that once they received the claimants letter of May 2019, that the respondent knew or could reasonably have been expected to know that the requirement for the FVTL role to address groups of visitors, was one which put the claimant at a substantial disadvantage compared people who did not have his disability.
- 267.** We have considered whether or not the respondents could have made an adjustment in May 2019 of altering the role so as to avoid the need for the claimant to have to address visitors directly and if they could have done whether it would have been reasonable for them to do so .
- 268.** Regarding the reasonable adjustments claim, we have considered whether or not there was a PCP that was the requirement for those in the role of FVTL a to address groups of visitors.
- 269.** For the purposes of the section 15 discrimination for a reason arising we have considered whether a refusal to adjust the FVTL role, to avoid the need for the claimant to address, was unfavourable treatment of the claimant. We have therefore considered whether or not the need to address visitors was actually part of the job.
- 270.** Mr McDevitt has suggested in his closing submissions that there was no requirement or expectation that the claimant would ever need to address groups of people and states that the job description and person specification to not require this.

- 271.** We disagree. We conclude that there was a clear expectation that the job was going to be a public facing role involving responsibility for leading and/or talking to both large and small groups of visitors.
- 272.** The respondent suggested that a person in the role of farm visitor team leader would be expected to either do the task of leading a group themselves or to facilitate it being done by another person. We do not accept that the fact that this could be facilitated by another member meant in reality that the claimant would never to carry out this task.
- 273.** We find that the respondents were not clear as to whether it would always be possible for the claimant to facilitate another person doing the actual presentation work. The continued lack of clarity and the failure to provide any confirmation to the claimant that he would not have to deal with this aspect of the work caused the claimant a significant level of distress. This distress arose directly from the fact that he is a disabled person suffering with low self-esteem and serious anxiety.
- 274.** We conclude that at the outset the respondents expectation was that the farm visitor team leader role would be forward facing and that anybody in those posts would be speaking to groups of visitors on a regular basis and as required as part of their normal daily activity and that this did not fundamentally change.
- 275.** We conclude from this that there was a PCP which was a requirement for those in the role of FVTL to address groups of visitors.
- 276.** We conclude that the claimant was placed at a substantial disadvantage compared to those who are not disabled because doing the tasks caused him so much stress and anxiety that his health deteriorated with a potential for a serious crisis in his mental health.
- 277.** We conclude that the need for that adjustment arose from the claimants disability and that his inability to do the role without an adjustment also arose from . We conclude that the claimant could not undertake the role for a reason arising from his disability which was linked to the respondents Refusal to adjust the FVTL role.

- 278.** We conclude that an adjustment could have been made, of removing the tasks or parts of the job which the claimant had told his employers he could not do. This could have been done at any point from May 2019 and would have been reasonable. The claimant has been discriminated against by the failure to make the reasonable adjustments.
- 279.** Regarding the section 15 claim. We find that the refusal to adjust the claim was unfavourable treatment. The refusal was both because of a lack of clarity of the roles but also because of the persistent view of both Mr foot and Mr Needham that the claimant could be trained to do the job and a refusal to recognised the real impact that the claimants disability had on him. These arose from a misunderstanding of the claimant's disability and thus from the disability itself.
- 280.** We conclude that there was no justification for the respondent's failure to make the adjustments and that the claimant's section 15 claim therefore succeeds.
- 281.** We have also considered whether or not the failure to make reasonable adjustments or the failure to discuss those or raise them with the claimant was anything to do with him having raised a grievance previously and we find that it was not. We conclude that the respondents failures arose not because the treatment previously raised grievances but because they focused on the wrong matters when carrying out the restructure and the subsequent trial periods .
- 282.** We therefore dismiss the claimant's victimisation claim made in this respect.
- 283.** We find that the cause or reason for the claimants termination of employment was that he was redundant ,but we found the reason that he was redundant was that despite there being suitable available and alternative employment the respondent failed to make adequate or any reasonable adjustments as required by law to ensure that it was suitable for the claimant. But for that discrimination, he would not have been dismissed.

Employment Judge Rayner

Date: 4 November 2021

Reasons sent to the parties: 17 November 2021

For the Tribunal Office