



EMPLOYMENT TRIBUNALS

Claimant: Ms JENNIFER HENRY-WILFRED

Respondent: CENTRAL AND NORTH WEST LONDON NHS FOUNDATION TRUST

Heard at: By CVP video link **On 30 May - 1 June 2022**

Before: Employment Judge Sutton QC

Ms S Campbell

Mr S Godecharle

Appearances

Claimant Mr B Uduje, counsel.

Respondent Mr B Baker, counsel

JUDGMENT

Upon hearing the remitted issue of whether the Respondent unlawfully discriminated against Claimant by failing to make reasonable adjustments required pursuant to s.20(3) of the Equality Act 2010, the Tribunal unanimously determined that the complaint should be dismissed.

REASONS

Introduction

1. The Claimant's claim was originally heard by the Tribunal in 2019, with Judgment and Reasons sent to the parties on 7 August 2019, dismissing each of the Claimant's complaints. The Claimant appealed to the Employment Appeal Tribunal and that appeal was disposed of by consent, with certain issues being remitted for redetermination by a differently constituted Tribunal.
2. These issues are recorded in the Order of His Honour Judge Auerbach, sealed on 2 August 2021, and arise out of the Claimant's complaint that the Respondent breached its duty to make reasonable adjustments arising under s.20(3) of the Equality Act 2010. They are as follows:-
 - a. whether the contractual term of working 37.5 hours per week put the claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled;
 - b. whether the Respondent took such steps as were reasonable to avoid the disadvantage;
 - c. whether the claim was brought in time and if not whether it is just and equitable to allow the claim to be brought; and
 - d. any consequential issue of damages or other remedy.
3. The hearing was conducted by CVP video link with the agreement of the parties. The Tribunal heard evidence from the Claimant and from Ms Jackie Shaw, who was formerly employed by the Respondent in the role of Service Director for its Child and Adolescent Mental Health Service (CAMHS) and Eating Disorders Service.
4. A witness statement was provided by the Respondent on behalf of a further witness, Mr Raj Boyjoonauth, the Claimant's line manager for much of the material period. The Tribunal was informed that Mr Boyjoonauth was, at the time of the hearing, resident in Palestine. Presidential Guidance on taking oral evidence by video or telephone from persons located abroad was issued on 27 April 2022. In order that Mr Boyjoonauth's evidence could be received by those means, the Respondent was required to notify the Tribunal in sufficient time for the necessary administrative steps to be taken.
5. In the event, there was an unfortunate delay on the part of the Respondent's solicitors in providing such notification to the Tribunal from 17 May, when they learnt of the fact that Mr Boyjoonauth was going to be overseas until 27 May, shortly before the hearing was scheduled to commence.

6. In consequence, the Tribunal was unable to receive Mr Boyjoonauth's oral testimony and to hear it tested in cross-examination. The Tribunal was however willing to admit that witness's statement in evidence and attach such weight to its contents as was appropriate, bearing fully in mind that Mr Uduje had not had the opportunity to challenge its contents with the witness himself.
7. The Tribunal was provided with an agreed hearing bundle, written opening and closing submissions prepared by counsel for each party together with certain authorities.

Findings of Fact

8. On 13 February 2006, the Claimant commenced employment with the Respondent in the role of Medical Secretary in Perinatal Mental Health Service at Chelsea and Westminster Hospital. Her contractual hours were 37.5 hours per week.
9. In February 2013, the Claimant was involved in an accident, the consequences of which included a range of effects including, depression; cognitive functional impairment; problems with concentration; claustrophobia and intolerance of noise as well as loss of taste and smell.
10. The Claimant returned to work in June 2013 and needed to take further periods of sick leave in the second half of that year. In 2014, a support plan was prepared for the Claimant to facilitate her ability to resume work, including adjustments to her work location.
11. On 27 April 2015, supported by an Occupational Health recommendation, the Claimant applied for early ill health retirement benefits on medical grounds. This application was initially refused. The Claimant decided to appeal against the refusal.
12. In June 2015, the Claimant experienced further injury following an assault which occasioned a further significant period of sickness absence.
13. In November 2015 the Claimant received notification that her appeal against refusal of her application for early ill-health retirement benefits had been successful, and that her application would be accepted under Tier 1 conditions. The NHS Pension Scheme, under which such benefits are awarded, is operated independently of the Respondent. Under the Scheme's rules, it was open to the Claimant to accept the offer within a non-extendable period of one year.
14. The Respondent wrote to the Claimant on 20 November 2015 instigating the first formal stage of its Sickness and Absence Policy, the Claimant having been absent continuously since June that year. A meeting took place on 22 December 2015 pursuant to that policy, at which the Claimant expressed doubts as to her ability to return to any kind of work, although she was also uneasy about opting for early retirement. Various permutations were explored to facilitate the Claimant's return to work as an alternative to resigning on ill-health grounds.

15. In February 2016, the Claimant emailed her then line manager, Mr David Bailey, indicating her wish to return to work on a phased basis from the second week in March. An occupational health assessment was conducted by Dr Stern in early March 2016. She recommended that the Claimant should be provided with a quiet environment which would allow her to concentrate accurately on her work.
16. At the same time, Dr Stern referred the Claimant to an organisation called People at Work, which was a staff welfare and support service skilled in undertaking workplace assessments, with the object of identifying any further adjustments which might be needed.
17. Ms Lesley Healey, who was employed by People at Work, became involved in March 2016 to support the Claimant. She wrote to Mr Bailey on 16 March 2016, having liaised with Dr Stern, and observed that, in order to obtain a fuller understanding of the Claimant's competencies and abilities at work, it would be worthwhile to undertake a workplace assessment.
18. About this time, Raj Boyjoonauth took over from Mr Bailey as the Claimant's line manager. A meeting took place between Mr Boyjoonauth and the Claimant on 1 April 2016. At that meeting the Claimant explained that she had not ruled out the option of taking early ill-health retirement. She reported that the return to work plan was proceeding to her satisfaction and that she was open to looking at a range of other administration posts both within CAMHS and across the Trust, so long as these were reasonably proximate to her home from a travel point of view and not detrimental to her recovery and return to work.
19. The Claimant returned on 19 April 2016 and was assigned to work at Beatrice Place, Collingham Gardens. The role to which the Claimant was assigned was a temporary one which was specifically devised in order to provide an environment in which the Claimant could resume her duties in an unpressurised way and on a phased basis.
20. As explained by Mr Boyjoonauth in the course of a meeting on 25 April 2016, also attended by the Service Director Jackie Shaw, it was intended to take a fresh approach to the Claimant's return to work, and to review her progress on a week-by-week basis.
21. Although in May 2016 the expiry of the Claimant's phased return brought her, at least notionally, up to her 37.5 contractual hours, the attitude of management remained highly flexible. There was no pressure upon the Claimant to fulfil her contractual hours or indeed to work beyond the point she felt comfortable with. Ms Shaw explained that, if the Claimant required to leave early, for example because of a migraine, there was no difficulty in accommodating this. At no point was there any reference to contractual hours still less any threatened invocation of any formal process.
22. A further meeting took place on 9 May 2016, attended by Mr Boyjoonauth, the Claimant, Ms Healey of People at Work and Ms Aminata Mansaray, an HR adviser with the Respondent. It was noted that the Claimant was currently in what was described as a 'floating post' and that she was getting on well with light duties. It was pointed

out that this arrangement could not carry on for ever and that other options would have to be looked at. Mr Boyjoonauth noted that the Claimant was feeling better and more relaxed. The Claimant expressed her appreciation for the support and encouragement that had been provided to her and said that she no longer went home every day with a headache.

23. One future option which was discussed was the Claimant accepting the early ill- health retirement offer and returning as a Bank worker. Ms Aminata Mansaray reminded the Claimant that the ill-health retirement offer had to be accepted within one year. At that point therefore the Claimant had around 6 months to make a decision about what she wished to do in that regard.
24. The Claimant said she would like to reduce her hours to 30 per week. Ms Healey agreed that her workplace assessment would look at the question of hours. Ms Mansaray pointed out that a reduction in hours would be addressed under the Respondent's flexible working policy rather than being part of a phased return, which was due to finish the following week.
25. Ms Healey produced a draft workplace assessment in June 2016. A range of challenges were identified. It was noted that the Claimant, in consequence of her health impairments, struggled with public transport where the mode of transport was claustrophobic. She found it difficult to focus on any task for a long time. The Claimant was unable to work at a desk full time. She also found it overwhelming when large numbers of people arrived at reception, or when there was constant activity, noise and work pressure.
26. Ms Healey also observed that the Claimant found it tiring to work full time and would not be able to return to full time hours. Fewer hours (25-30) worked over five days would however be manageable.
27. On 22 August 2016, after it had been reviewed by the Claimant and certain amendments incorporated at her suggestion, Ms Healey submitted her Supported Workplace Assessment to Mr Boyjoonauth. The covering email stated that the Claimant had a positive view of how the organisation has worked to support her recovery, latterly due mainly to Mr Boyjoonauth's involvement.
28. On 24 August 2016, having spoken with the NHS Pensions department, Ms Mansaray emailed the Claimant to remind her that 8th November was the latest date for acceptance of the ill-health retirement offer.
29. At this point, the Claimant sought financial advice on the early retirement option and also advice from a legal advice service called Nucleus, which had been recommended by Ms Healey. She received specific advice from them in relation to her rights as a disabled person, including in relation to reasonable adjustments.
30. The Claimant's health condition appears to have deteriorated somewhat in September 2016, with Dr Simon Fleminger, a Consultant Neuropsychiatrist who had

reviewed her progress over two years, reporting on 12 September 2016 that over the last few weeks and months that she was more disabled both by depression and by chronic pain. He observed that she struggled with daily chores, day-to-day activities and with working full-time

31. It appears from her email to Ms Mansaray on 13 September 2016 that the Claimant had received advice from a financial adviser to the effect that early ill-health retirement would be detrimental to her financial situation. In the same email she requested that she should be given part-time hours with immediate effect. She also wished, by virtue of her status as a disabled person, to remain at Beatrice Place as she was happy at that location and that it matched the suggestions made by both Ms Healey and her treating clinicians.
32. At the end of September 2016, with the date fast approaching when the Claimant would have to make a decision about whether or not to accept the early ill-health retirement option, a meeting was arranged to discuss the various choices available going forward. This meeting took place on 29 September 2016, and was attended by the Claimant, Mr Boyjoonauth, Ms Mansaray and Ms Healey.
33. The first topic which was addressed was early ill-health retirement. The Claimant was reminded that the offer would expire on 9 November 2016. If the Claimant wanted to go down the ill-health retirement route, she was urged to make contact with the Pensions department so the process could be started. The opportunity to register with the Bank was again referred to as it had been several months earlier.
34. Addressing the option of continuing in employment at the Trust, Mr Boyjoonauth stressed that the role at Beatrice Gardens was a floating post and that it could not continue beyond 31 March 2016. At that point the Claimant would return to her substantive post at Chelsea and Westminster Hospital on 1 April 2017.
35. The discussion then turned to adjusted hours. Mr Boyjoonauth noted that the Claimant wished to reduce her hours. Ms Mansaray explained, as she had at the 9 May 2016 meeting, that the process under which this would be progressed was by means of a Flexible Working application, which would go to the Claimant's manager at Chelsea and Westminster Hospital, as any such adjustment would apply to the substantive role. Ms Healey explained that the process would entail an Occupational Health review.
36. It was further explained by Ms Healey that if redeployment to another role was recommended by Occupational Health at any point, this had its own procedural requirements, entailing an 8 week search to secure alternative work, at the end of which, if unsuccessful, a further meeting would take place where termination of employment might result.
37. The Tribunal finds that the matters discussed at this meeting were not new to the Claimant. No persuasive pressure of any kind was placed upon her to accept early ill-health retirement. It was simply discussed as one of the available options, having been

originally proposed by the Claimant herself. The decision was for her to make. The procedure for arranging an adjustment in hours, by means of an application under the Flexible Working policy, was explained in order to ensure that the Claimant was placed fully in the picture as to the steps required going forward, should she decide to remain in employment.

38. Likewise, the reference made by Ms Mansaray to the redeployment process was for the purposes of clarity and to ensure that the decisions which the Claimant was going to have to make imminently about her future employment would be made on a fully informed basis.
39. On 6 October 2016, the Claimant wrote by email to Ms Mansaray requesting a calculation of how many days annual leave she was entitled to if she gave her notice in the following day. In the same email she stated 'I haven't taken any annual (*sic*) leave this year'. The Claimant asserted in her evidence before the Tribunal that she had repeatedly had to use up annual leave whilst based at Beatrice Place to compensate for periods of absence from the workplace brought about by the effects of her disability. The Tribunal considers that the Claimant's recollection was mistaken in this regard.
40. On 7 October 2016, the Occupational Health physician, Dr Stern, wrote a 'to whom it may concern' letter at the Claimant's request, confirming that she was fit to work 25 to 30 hours per week but not full time.
41. On the same day, Ms Healey wrote an email to the Claimant, again at latter's request, stating that the unfortunate events which had led to her sickness absence have 'limited the environments in which she was able to apply [her] skills.' Her request for reduced hours to 35-30 over five days was also noted by Ms Healey.
42. On 10 October 2016, the Claimant notified the Respondent of her decision to resign from her post as 'Perinatal Team Administrator' and opt for early ill-health retirement. She explained that she planned to register on the Bank and to come back to work on the Bank from the second week in November 2016 through to March 2017. Her employment with the Respondent terminated on 7 November 2016.
43. Mr Boyjoonauth had discussed with the Claimant the proposal for her to perform her first Bank assignment at Beatrice Place and it was their combined expectation that this might be possible. It did not comprise any form of binding commitment or assurance made on the Respondent's behalf. The position was accurately explained to the Claimant by Mr Boyjoonauth in his email to the Claimant of 10 November 2016 and by Ms Shaw in her letter of 16 November 2016.
44. Following a period of leave and a trip to visit her mother in India, the Claimant took up a role as a Bank agency worker in November 2016, having registered on 13 October 2016.

45. On 10 November 2016, Sisa Moyo, Interim Deputy director for CAMHS and EDS, wrote to the Claimant confirming that there had been a discussion amongst the team at Beatrice Place and that it had been decided to stay with the Bank administrator that they already had. Other possible Bank vacancies were being explored.
46. In an email of 15 November 2016, Ms Moyo explained that there had been dissatisfaction with the work the Claimant had produced and that the Bank had the option to nominate the person they wished to provide cover for the position. There was no evidence that the opinions of the Bank, the team at Beatrice Place or Ms Moyo about the Claimant's suitability to take up an agency appointment were influenced or affected to any degree by the formerly applicable contractual hours requirement, which comprises the PCP in this case.

Statutory provisions and guidance

47. The provisions of the Equality Act 2010 provide, so far as material, as follows:-
- 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.
- 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.
48. In *Environment Agency v Rowan* [2008] ICR 218, the Employment Appeal Tribunal (HHJ Serota QC), applying the corresponding provisions of the predecessor legislation, gave guidance on the matters that needed to be considered in determining whether there had been a breach of the duty to make reasonable adjustments:-

27. In our opinion an Employment Tribunal considering a claim that an employer has discriminated against an employee pursuant to Section 3A(2) of the Act by failing to comply with the Section 4A duty must identify:

- (a) the provision, criterion 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.

It should be borne in mind that identification of the substantial disadvantage suffered by the Claimant may involve a consideration of the cumulative effect of both the 'provision, criterion or practice applied by or on behalf of an employer' and the 'physical feature of premises' so it would be necessary to look at the overall picture.

In our opinion an Employment Tribunal cannot properly make findings of a failure to make reasonable adjustments under Sections 3A(2) and 4A(1) without going through that process. Unless the Employment Tribunal has identified the four matters we have set out above it cannot go on to judge if any proposed adjustment is reasonable. It is simply unable to say what adjustments were reasonable to prevent the provision, criterion or practice, or feature, placing the disabled person concerned at a substantial disadvantage"

49. In *Sheikholeslami v University of Edinburgh* [2018] IRLR 1090, Simler P. explained the correct approach to comparator and disadvantage questions: -

It is well established that the duty to make reasonable adjustments arises where a PCP puts a disabled person at a substantial disadvantage compared with people who are not disabled. The purpose of the comparison exercise with people who are not disabled is to test whether the PCP has the effect of producing the relevant disadvantage as between those who are and those who are not disabled, and whether what causes the disadvantage is the PCP. That is not a causation question ... For this reason also, there is no requirement to identify a comparator or comparator group whose circumstances are the same or nearly the same as the disabled person's circumstances.

50. In accordance with the interpretation provided at s.212(1) of the Equality Act 2010, a substantial disadvantage within the meaning of s.20(3) is one which is more than minor or trivial.

51. In *Salford NHS Primary Care Trust v Smith* UKEAT/050710 the EAT observed that: -

Reasonable adjustments are primarily concerned with enabling the disabled person to remain in or return to work with the employer...

and

adjustments that do not have the effect of alleviating the disabled person's substantial disadvantage as we have set it out above are not reasonable adjustments within the meaning of the Act. Matters such as consultations and trials, exploratory investigations and the like do not qualify.

Submissions

Claimant's submissions

52. On behalf of the Claimant, Mr Uduje maintained that the 37.5 hours provision in the Claimant's contract of employment placed her at a substantial disadvantage. The evidence showed that the Claimant struggled from fatigue, mobility issues, back pain, concentration and went home early with migraines.
53. The Respondent was aware that the Claimant required a reduction in hours. The duty was thus engaged. It failed to take such steps as were reasonable to avoid the particular disadvantage, such as agreeing permanently to reduce her hours of work. A reduction in hours of work as requested would have been a reasonable adjustment.
54. It was further submitted on behalf of the Claimant that she was ultimately compelled to resign from her full-time job role to take up ill-health retirement and with a view to obtaining part-time work. It was asserted that the Claimant would not have resigned and/or taken ill health retirement if the Respondent had discharged its duty under s.20 of the Act.
55. Addressing the evidence that the Claimant was permitted to go home from her floating post at Beatrice Place when she was experiencing migraines, Mr Uduje submitted that the steps taken by the Respondent did not alleviate the disadvantage. At best, these steps provided a temporary respite, but it remained the case that the Claimant would have been required to return to her substantive, full-time, post in March 2017 Therefore, the steps taken did not have the effect of enabling the Claimant to remain in work.
56. The Claimant submitted that the mere invitation to make a flexible working application did not discharge the Respondent's duty. It did not alleviate the Claimant's disadvantage but placed the onus upon her to alleviate her own disadvantage. On 29 September 2016, when the Respondent invited the Claimant to make a flexible working application, the Respondent had all the necessary knowledge to make the adjustments without any further exploratory investigation.
57. Applications under the Respondent's Flexible Working policy were open to all employees. It was not a specific policy that dealt with alleviating the disadvantage of disabled employees. It was also subject to a "review", such that the policy did not necessarily provide a mechanism for a permanent adjustment that would alleviate the Claimant's disadvantage.
58. Lastly, submitted Mr Uduje on behalf of the Claimant, it is important to bear in mind the context within which the invitation to make a Flexible Working application was

made. Making the application would result in her permanently losing the option of early ill-health retirement.

Respondent's submissions

59. On behalf of the Respondent, Mr Baker submitted that it was not until 13 September 2016 that the Claimant requested fewer hours; a meeting was then arranged for 29 September 2016 at which the Claimant was given the choice of making a Flexible Working application and requesting part-time hours or retiring and claiming ill health retirement.
60. On 10 October 2016 she chose the latter, on the basis that she would join the Bank. She thanked Mr Boyjoonauth for his support. At no point during the Claimant's employment did she raise any complaint about Mr Boyjoonauth, whether in writing or not. At no point during the Claimant's employment did she say that she had been forced to take annual leave when she was feeling ill at work. This was not in her claim form or witness statement.
61. It was important to focus on the remitted issue specifically: did the contractual term put the Claimant at any disadvantage? If so, how? What disadvantages does she say she suffered? The Claimant did not suffer any loss of pay; she was not exposed to any performance or capability process. The Claimant cannot show she was held to working 37.5 hours a week at any point. The Claimant has not pleaded a disadvantage. She has suffered no disadvantage and her claim should be dismissed.
62. The requirement under 20(3) of the Equality Act 2010 is to take such steps as it is reasonable to have to take to avoid the disadvantage. This requires a close focus upon what the disadvantage consisted of. The Tribunal heard clear evidence from Ms Shaw that between May and September 2016 during the Claimant's work at Collingham Gardens, she was allowed to go home early if she had a migraine or could not complete her hours. She was treated flexibly and was not held to her contractual hours. No capability or disciplinary process was invoked against her at any time. These were all reasonable adjustments.

Conclusions

63. The Claimant's case that a requirement that she should work 37.5 hours put her at a substantial disadvantage within the meaning of section 20(3) of the Act has not been established in evidence.
64. Whilst it is correct to say that her contract of employment provided for such hours and that, when her phased return to work came to an end in May 2016, her full contractual hours were at least notionally reinstated, the reality of the situation is that the Claimant was not 'required' to work such hours during her time at Beatrice Place.
65. The purpose for which the Beatrice Place role was created was to enable the Claimant to undertake an adjusted role in a sympathetic and supportive environment, where her ability to function in the workplace could be assessed.

66. There was no question of the Claimant being held to any hours requirement at any point. She was able to leave the workplace if the effects of her health condition made this necessary. There was no evidence to support the Claimant's contention that she experienced a disadvantage in the period up to the termination of her employment in consequence of the hours provision in her contract of employment. The evidence does not show that the occasions when the Claimant left early or otherwise struggled in the performance of her tasks were triggered by a perceived requirement on her part that she fulfil any stipulation as to working hours.
67. The Tribunal rejects the suggestion that the Claimant was required to draw upon her annual leave entitlement to facilitate periods of absence from the workplace. Neither does it accept that the Claimant complained to her manager Mr Boyjoonauth about challenges posed by her working hours, aside from the instances detailed in our findings of fact. The Claimant found the working environment at Beatrice Place congenial, and commended Mr Boyjoonauth on more than one occasion for his sympathetic and supportive approach.
68. The Claimant was faced with a choice whether or not to accept of the early ill-health retirement offer. She approached that decision with open eyes and with the benefit of financial and legal advice. In reaching that decision, she was subject to no persuasive pressure of any kind by the Respondent. She elected to accept the offer knowing that, following her return from her vacation and trip to India, she would be taking up an agency role with no assurance as to what her assignment would consist of, or for how long it would last.
69. The decision was taken in the knowledge that there were advantages and disadvantages. The loss of secure employment set against the receipt of a financial benefit and the prospect of being able to work more flexibly as an agency worker in the future. If she had decided to reject the offer and remain, the Claimant had no basis for assuming that her rights as a disabled person would not have been respected in the Respondent's approach to flexible working and any future role she might perform.
70. There was no suggestion from any quarter that, had she decided to remain in employment, the Claimant would be held to the hours stipulated in her employment contract or that the advice of her clinical and workplace advisers would be ignored or discounted in devising an appropriately adjusted role for her going forward.
71. Contrary to the assertion made on her behalf, the Tribunal does not consider that the references made by the Respondent to the Flexible Working policy in May and September 2016 were inconsistent with the requirements of the Act in terms of reasonable adjustments or that its procedural requirements should have been bypassed by virtue of the Claimant's disabled status. The Claimant had no basis for supposing that her status would have been ignored in the application of the policy. Her decision to resign pre-empted that procedural step and any arrangements that might have been implemented as a consequence.

72. Whilst she was hopeful of being able to work at Beatrice Place as a member of Bank agency staff following her resignation, the decision that this would not be possible was not the product of any application of the PCP. The contractual hours provided for under her former contract of employment were of no application to her role as a Bank agency worker and neither did they have any bearing, direct or indirect, upon the decision that she could not return to Beatrice Place following her resignation as she had wished.
73. Having taken account of the full circumstances of the case, the Tribunal unanimously finds that the Claimant's complaint fails and should be dismissed.
74. The issue of whether the Claimant's complaint was time-barred, which was addressed in the course of the parties' submissions, does not arise for determination in the light of the Tribunals' conclusions on the substantive merits of the complaint.

Employment Judge Sutton QC

9th June 2022

Date sent to the parties:

09/06/2022