EMPLOYMENT TRIBUNALS

Claimant: Tracy Keown

Respondent: Dr Alma Sarajlic t/a Staines Road Surgery

Heard at: **London South Employment Tribunal**

On: **26 September – 30 September 2022**

Before: **Employment Judge Apted and Tribunal Members Mr Mardner and Mr Peart**

Representation
Claimant: Mr O'Keefe - counsel
Respondent: Mr Williams - solicitor

JUDGMENT having been given orally to the parties on the 29th September 2022 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Introduction:

1. The respondent is a GP surgery situated on Staines Road, Twickenham. The claimant was employed as a receptionist from the 11th November 2019 until her resignation on the 23rd February 2021. The claimant's contract was that she worked 20.5 hours per week, although this appears to have been varied to 21 hours and 15 minutes per week – working on Monday, Wednesday, and Thursday.

2. On the 16th March 2020, the claimant left the respondent's premises and has not returned to work since. Early conciliation started on the 12th August 2020 and concluded on the 10th September 2020. A claim on form ET/1 was presented in time on the 4th October 2020.

3. The claimant has brought claims for disability discrimination, unauthorised deduction of wages and unpaid holiday pay. The claimant's claim is that the respondent subjected her to discrimination arising from a disability (s15),

failed to make reasonable adjustments (s20) and that she suffered a health and safety detriment under s44 Employment Rights Act 1996.

4. On the 2nd September 2021, the respondent conceded that the claimant is and was disabled on the basis of both the physical impairment of microvascular angina and the mental impairment of depression and anxiety.

5. At a case management hearing on the 11th August 2022, an agreed List of Issues was drafted. That List can be found in the bundle at page 1130.

The Law:

6. Section 20 of the Equality Act 2010 reads 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.

(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.

(7) A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty.

(8) A reference in section 21 or 22 or an applicable Schedule to the first, second or third requirement is to be construed in accordance with this section.

(9) In relation to the second requirement, a reference in this section or an applicable Schedule to avoiding a substantial disadvantage includes a reference to—
(a) removing the physical feature in question,
(b) altering it, or
(c) providing a reasonable means of avoiding it.

(10) A reference in this section, section 21 or 22 or an applicable Schedule (apart from paragraphs 2 to 4 of Schedule 4) to a physical feature is a reference to—
(a)a feature arising from the design or construction of a building,
(b)a feature of an approach to, exit from or access to a building,
(c)a fixture or fitting, or furniture, furnishings, materials, equipment or other chattels, in or on premises, or
(d)any other physical element or quality.

(11) A reference in this section, section 21 or 22 or an applicable Schedule to an auxiliary aid includes a reference to an auxiliary service.

(12) A reference in this section or an applicable Schedule to chattels is to be read, in relation to Scotland, as a reference to moveable property.

(13) The applicable Schedule is, in relation to the Part of this Act specified in the first column of the Table, the Schedule specified in the second column."

7. Section 21 of the Equality Act 2010 reads as follows:

"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."

8. Section 15 of the Equality Act 2010 reads as follows:

"15 Discrimination arising from disability

(1) A person (A) discriminates against a disabled person (B) if—
(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability."

9. Section 44 of the Employment Rights Act 1996 reads as follows:

"44 Health and safety cases.

(1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that—
(a) having been designated by the employer to carry out activities in connection with preventing or reducing risks to health and safety at work, the employee carried out (or proposed to carry out) any such activities,
(b) being a representative of workers on matters of health and safety at work or member of a safety committee—
(i) in accordance with arrangements established under or by virtue of any enactment, or
(ii) by reason of being acknowledged as such by the employer,
the employee performed (or proposed to perform) any functions as such a representative or a member of such a committee,
*(ba) the employee took part (or proposed to take part) in consultation with the employer pursuant to the Health and Safety (Consultation with Employees) Regulations 1996 or in an election of representatives of employee safety within the meaning of those Regulations (whether as a candidate or otherwise),**]***
(c) being an employee at a place where—
(i) there was no such representative or safety committee, or
(ii) there was such a representative or safety committee but it was not reasonably practicable for the employee to raise the matter by those means,
he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety,
(d). . . . . .
(e). . . . . .

(1A) A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his or her employer done on the ground that—
(a) in circumstances of danger which the worker reasonably believed to be serious and imminent and which he or she could not reasonably have been expected to avert, he or she left (or proposed to leave) or (while the danger persisted) refused to return to his or her place of work or any dangerous part of his or her place of work, or
*(b) in circumstances of danger which the worker reasonably believed to be serious and imminent, he or she took (or proposed to take) appropriate steps to protect himself or herself or other persons from the danger.**]***

(2) For the purposes of subsection [(1A)(b)] whether steps which [a worker] took (or proposed to take) were appropriate is to be judged by reference to all the circumstances including, in particular, his knowledge and the facilities and advice available to him at the time.

(3) [A worker] is not to be regarded as having been subjected to any detriment on the ground specified in subsection [(1A)(b)] if the employer shows that it was (or would have been) so negligent for [the worker] to take the steps which he took (or proposed to take) that a reasonable employer might have treated him as the employer did.

(4) This section does not apply where the worker is an employee and the detriment in question amounts to dismissal (within the meaning of [Part X]).”

10. Section 13 of the Employment Rights Act 1996 reads as follows:

“13 Right not to suffer unauthorised deductions.

(1) An employer shall not make a deduction from wages of a worker employed by him unless—
(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker’s contract, or
(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

(2) In this section “relevant provision”, in relation to a worker’s contract, means a provision of the contract comprised—
(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or
(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker’s wages on that occasion.

(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.

(5) For the purposes of this section a relevant provision of a worker’s contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.

(6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.

(7) This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting "wages" within the meaning of this Part is not to be subject to a deduction at the instance of the employer."

11. Regulation 14 of the Working Time Regulations 1988 reads as follows:

***"14.**—(1) This regulation applies where—*

(a) a worker's employment is terminated during the course of his leave year, and
(b) on the date on which the termination takes effect ("the termination date"), the proportion he has taken of the leave to which he is entitled in the leave year under regulation 13(1) differs from the proportion of the leave year which has expired.

(2) Where the proportion of leave taken by the worker is less than the proportion of the leave year which has expired, his employer shall make him a payment in lieu of leave in accordance with paragraph (3).

(3) The payment due under paragraph (2) shall be—
(a) such sum as may be provided for for the purposes of this regulation in a relevant agreement, or
(b) where there are no provisions of a relevant agreement which apply, a sum equal to the amount that would be due to the worker under regulation 16 in respect of a period of leave determined according to the formula—

$$(A \times B) - C$$

where—
***A** is the period of leave to which the worker is entitled under regulation 13(1);*
***B** is the proportion of the worker's leave year which expired before the termination date, and*
***C** is the period of leave taken by the worker between the start of the leave year and the termination date.*

(4) A relevant agreement may provide that, where the proportion of leave taken by the worker exceeds the proportion of the leave year which has expired, he shall compensate his employer, whether by a payment, by undertaking additional work or otherwise."

The hearing:

12. In preparation for the hearing, the parties were in receipt of a hearing bundle totalling 1136 pages, a further letter from Professor Fox dated the 22nd September 2022 and witness statements from the claimant, Sarah Butler, and Dr Sarajlic. All parties confirmed that they were in possession of the same documents.

13. The hearing was conducted as a hybrid hearing. Myself, the Tribunal members, both advocates and Dr Sarajlic initially attended in person from a hearing room at the Tribunal centre, whereas the claimant and Ms Butler appeared via video link utilising the cloud video platform. All parties were able to see and hear each other clearly and there were no barriers to communication. We were satisfied that it was in the interests of justice to proceed in this way and that the principles of open justice were secured. (On subsequent days, all parties save the Tribunal panel appeared via CVP).

14. The claimant, Ms Butler and Dr Sarajlic gave evidence which we noted in our record of proceedings. Mr Williams on behalf of the respondent and Mr O'Keefe on behalf of the claimant both made submissions which we again noted in our record of proceedings.

15. At the beginning of her evidence, Mr O'Keefe on behalf of the claimant stated that the claimant was no longer relying upon the mental impairment of depression and anxiety and that the claimant was only relying upon the physical impairment of microvascular angina. Otherwise, the parties agreed that the Tribunal needed to determine the issues set out in the agreed List of Issues.

Findings of facts and conclusions:

16. We have taken all of the evidence into account when reaching our decision. The fact that we do not mention a particular piece of evidence does not mean that it has not been considered. We only refer to those pieces of evidence necessary to explain our findings. The findings of fact and conclusions that we have reached are unanimous.

17. The claimant's contract of employment is at page 148. This does not set out what the duties of a receptionist are. It states that her salary was £8.50 per hour, which was just above the national minimum wage at the time. On the 16th March 2020, the claimant left work at the respondent's and has not returned. By this date, she had therefore been employed for approximately 4 months working 3 days per week, or an approximate total of 54 days. Some of this time would have been used for training, as set out in the contract of employment.

18. In her role as a receptionist, the respondent gave evidence that the claimant was required to perform a number of tasks. These include opening and closing the surgery; opening the mail, scanning it, adding it to the patient's notes and forwarding it to the doctor; answering the telephone, making appointments, dealing with patients that came to the surgery; taking

samples, forwarding prescriptions; chaperoning patients, and if necessary performing CPR.

19. Pages 546 - 547 contain a job description for a receptionist at the respondent, dated the 13th August 2020. This document sets out the duties of a receptionist as follows: scheduling, carrying out management requests as needed, maintaining stock and ordering supplies, answering emails and sorting post answering and transferring phone calls. We note that there is no reference within this job description to opening and closing the surgery, chaperoning patients, or performing CPR.

20. Having left work on the 16th March 2020, the claimant sent a text message dated the 17th March 2020, informing Ms Butler that she is seeking advice on whether she needs to self-isolate as a result of her heart condition. In another text message sent on the 17th March 2020 (page 449) the claimant clearly informed Ms Butler that she has microvascular heart disease. In her witness statement (para 6), the respondent states that she was aware that the claimant had informed Ms Butler that she was undergoing investigation into a possible "angina issue". In her witness statement, Ms Butler also confirms that in the autumn of 2019, she was aware that the claimant "…had been investigated for a heart condition" (paragraph 7). In a text message sent on the 23rd November 2019 (page 332) the claimant informed Ms Butler that during an angiogram, she had experienced a fall in her blood pressure. On the 28th May 2020, the claimant's GP wrote to the respondent (page 489) confirming the claimant's diagnosis for microvascular angina and that this places her into the high risk group for COVID 19. The claimant also drew attention to the guidance that she had obtained from the British Heart Foundation and shared a link to their website with the respondent.

21. We therefore find that by at least the 17th March 2020 (and if not by the autumn of 2019), the respondent knew that the claimant had a heart condition and that she was at high risk. The respondent has accepted that the claimant was disabled at that time.

22. The Guidance to General Practitioners issued on the 6th April 2020 (page 384 – 425) at paragraph 3.2 , bullet point 5 states that in order to protect the workforce, staff should be risk assessed to identify those at increased risk from COVID 19 and the shielded group which includes those at highest risk from COVID 19. By this date, the respondent knew the claimant was at high risk. The Equality Act Statutory Code of Practice at paragraph 6.32 states that it would be good practice for an employer to carry out a proper risk assessment, in consultation with the disabled person concerned, of what reasonable adjustments may be required.

23. The respondent accepted in evidence that a formal risk assessment was not carried out in relation to the claimant.

24. There is evidence that the respondent did immediately consider home working. In an email to the claimant dated the 18th March 2020 at page 337 Ms Butler states that there is a chance that they may be given a way for people to work from home. The claimant immediately responds at page 339 that she could definitely work from home. On the 26th June 2020, the

respondent wrote to the claimant (page 531), and again indicated the possibility of working from home.

25. We accept that the failure to carry out a risk assessment does not of itself amount to a failure to make a reasonable adjustment. However, we reject the respondent's evidence that the reasons that she did not need to carry out such an assessment were because as a professional GP who had already taken measures to protect staff, no such assessment was necessary.

26. We have therefore examined what other steps the respondent has taken in order to facilitate the reasonable adjustments identified in the agreed List of Issues.

27. On the 18th March 2020, South West London Health & Care Partnership sent an email (page 590), setting out that guidance had been issued on the 13th March which contained guides on how to change the online booking system.

28. On the 23rd March 2020 (page 587), the NHS Richmond Clinical Commissioning Group (CCG) sent an email making some recommendations. At page 587, they state that GPs should "risk assess all staff and prioritise getting higher risk groups out of the practice and working from home by default. RGPA will prioritise installing the tool for you if this is the case." We repeat, by this date, the respondent knew the claimant was at a high risk. The same email at page 588 sets out the next steps as getting "…electronic prescribing working directly from home and get telephone systems set up to allow forwarding calls (allowing your receptionists to work from home)…"

29. At pages 592 – 600, there are a series of emails concerning the provision of laptops. At page 592 it is stated that each practice will receive 2 devices and these should be prioritised to certain groups, including facilitating those working from home. At page 593 the Trust states that they are procuring more laptops. On the 23rd March 2020 (page 505), Ms Butler enquires about the provision of a laptop as they have a member of staff who they are eager to get set up. At page 598, Ms Butler asks on the 26th and 27th March 2020 if there is any update as to the provision of the laptops. At page 603 Ms Butler sent an email on the 18th March enquiring about the provision of a laptop for the benefit of a member of staff with a health condition and they would like to initiate [home working]. It is therefore clear and we find that when the respondent is raising queries for the provision of a laptop, this laptop is for the benefit of the claimant.

30. Thereafter, there is no evidence before the Tribunal that those laptops were provided, how many and if they were provided, who they were provided to. The only evidence on this topic came from the respondent who stated that two laptops arrived in late April. There was no evidence before the Tribunal about what happened to them. We do of course know that no laptop was given to the claimant.

31. There is therefore no evidence before the Tribunal as to why a laptop was not provided to the claimant and why she could therefore not have worked from home.

32. The Tribunal heard limited evidence about the provision of a telephone line in order to assist the claimant with working from home. In evidence, the respondent stated that there was a single phone line into the surgery. In her evidence, Ms Butler stated that there was a single phone line which could utilise 2 handsets, so that if a patient rang and were put through, another patient who then rang, would be able to get through. At page 581, on the 25th March 2020, an email was sent stating that funding would be applied for, for a phone system that would enable practices to redirect phone lines to staff working from home.

33. There is therefore no evidence before the Tribunal as to why a telephone line was not provided to the claimant and why telephone calls were not and could not have been diverted to her, thus enabling her to have worked from home.

34. There is evidence that at the relevant time, there were many phone calls being received by the respondent. On the 2nd April 2020, the claimant exchanges text messages with the person identified as 'Shirley Work' (page 462), who states that the phones "are going", that it was "not manic" but that it was "full on with phones this morning…" In her evidence under cross examination the respondent stated the phone was "ringing all the time. The crucial time is 8.30 to 10am and then 3-5pm." This is borne out by a further text message from the person identified as 'Shirley Work' on the 10th April 2020 (page 465), who states that there were only appointments by phone, but that things had been "…ticking over…" The respondent also accepted that during this time there were fewer patients attending in person but that they were "…still coming." In her witness statement at para 7, (which the claimant was not challenged about), she stated that her primary role was to answer enquiries, and book appointments over the phone. When considered within the context of the evidence that we have identified regarding the claimant's role, we therefore find, that had a phone line been diverted to the claimant, there was work available that she could have performed from home.

35. The respondent gave evidence that the claimant was unable to work from home because she was required to perform certain tasks: namely opening and closing the surgery, opening the mail, chaperoning patients and CPR. We have therefore considered each of these.

36. Although it was a theoretical possibility that the claimant would be required to chaperone patients and perform CPR, during the course of the claimant's employment, she in fact did not chaperone any patients and did not perform CPR on anyone. In her evidence Ms Butler stated that if a member of staff needed to perform CPR, other members of staff would do so before the claimant, if they were at the surgery.

37. The respondent stated that two members of staff were required in order to open and close the practice. However, the contemporaneous evidence reveals that it was possible for a single member of staff to open and close

the practice. Text messages between the claimant and someone identified as 'Shirley Work' (page 461) reveal that 'Shirley' was working alone in the surgery on the 2nd April 2020, 1st May 2020 (see page 469), and 5th May 2020 (see page 471). Under cross-examination Ms Butler stated that they "…did not require two receptionists to be on site to open and close."

38. Insofar as opening and scanning the post is concerned, Mr O'Keefe on behalf of the claimant accepted that that was a task that could not be performed from home and is a task that would have to be performed at the surgery.

39. We have also considered whether there is any evidence that any employees of the respondent did in fact work from home. The respondent stated that no one worked from home between the 16th March 2020 and the 16th April 2020 (see pages 146 & 147). There is no contemporaneous evidence to show that any employee was in fact working from home during this period. However, at page 714 there is a text message from Ms Butler dated the 25th May 2020 stating that she intends to work from home "tomorrow" (in other words, the 26th May 2020). The following year, there is a text message dated the 21st July 2021 (page 713) and another dated the 2nd December 2021 (page 712) from Ms Butler which reveal that Ms Butler was working from home. We therefore find that members of staff were indeed able to work from home.

40. We therefore find that although the respondent initiated some steps to facilitate home working, none of those steps were completed. We find that the respondent could reasonably have provided the claimant with a laptop, that they could reasonably have diverted a telephone line to her home and additionally and for completeness, we find that the respondent could reasonably have reallocated work amongst other reception staff in order that the claimant could have worked from home.

41. We turn then to consider the invitation to attend a meeting in person.

42. In a letter dated the 23rd May 2020, Mr Barnard – on behalf of the respondent invited the claimant to a meeting in person at the surgery (pages 483 and 484). Upon receipt of that letter, the claimant replied the same day (her response is at page 485). On the 28th May 2020, the claimant provided a further and more detailed response to that letter (page 491 - 500). On the 9th June 2020 (page 515), the claimant proposes that a meeting be conducted virtually. In a further email dated the 26th June 2020 (page 531), the respondent states that they are not prepared to meet with the claimant virtually and gives their reasons why – one of them being that they refused to meet with the claimant virtually because she insisted upon recording the meeting. There is no evidence that the respondent suggested that they would meet virtually with the claimant if she did not record the meeting. When asked about this in evidence, the respondent stated that her motivation for asking for the meeting to be in person, was so that the claimant would go to the surgery and see for herself the measures that had been put in place to protect staff and patients. However, in reply to the claimant's initial response to the letter of the 23rd May 2020, Mr Barnard replied (at page 486) that the purpose of the meeting was to discuss money.

It does not state that the purpose of the meeting was so that the respondent could show the claimant the measures that had been put in place to protect staff and patients.

43. We therefore find, that although there was a "suggestion" that this meeting takes place in person, in fact, the respondent was insisting upon it being in person. The respondent refused to meet virtually and admitted in evidence that she wanted the claimant to attend the surgery. Whilst the respondent may seek to categorise this as a mere "suggestion", she was in our judgment, in fact, insisting upon it being in person.

44. We therefore apply these facts to the issues that have to be decided:

Failure to make reasonable adjustments:

45. We find (and it is accepted by the respondent), that the respondent did apply the provision, criterion or practice requiring the claimant to attend work in person following the outbreak of the pandemic in order for her to be paid. This is referred to as PCP1. For the reasons that we have just given, we also find that the respondent did apply the PCP of insisting that any meeting between the claimant and respondent take place in person in May and June 2020. This is referred to as PCP 2.

46. We find that the claimant was placed at a substantial disadvantage in comparison with persons who are not disabled by the application of both PCPs because the claimant was prevented from attending work in order to earn her normal salary and she was accused of being absent without leave. In a letter dated the 23rd May 2020 (page 483), the respondent states that they could treat the claimant's absence as absence without leave and that she would then not be entitled to be paid. In a further letter dated the 28th May 2020 (page 506), the respondent states that if the claimant fails to contact the surgery to discuss her absence or if the reasons that she provides for her absence are unacceptable, the claimant may be subjected to disciplinary action. We also find that the claimant was further substantially disadvantaged by the application of PCP 2 because she was indeed unable to meet with the respondent to resolve their issues. We find that it should have been possible for this meeting to have been conducted remotely. There was no reason to have insisted upon this meeting being conducted in person and the claimant has suffered a substantial disadvantage, as already stated.

47. We find that the respondent knew that the claimant was disabled and likely to be placed at a disadvantage because of her disability. We have already found, that in our judgment, the respondent knew this from at least the 17th March 2020, and possibly even from the autumn of 2019.

48. In our judgment, we find that a reasonable step that the respondent could have taken to avoid the disadvantage was to have allowed the claimant to have worked from home. Although the respondent initially made some enquiries about procuring a laptop for the claimant, there was no evidence given as to why this did not ultimately happen. It is clear in our judgment from the evidence set out above that laptops were being provided and that the necessary IT support was available. It would therefore have been

reasonable in our judgment for the respondent to have procured a laptop. There is no evidence why such a procurement was unreasonable or impractical. Additionally, for much the same reasons, we find that in order to have facilitated home working, the respondent could have obtained the ability to divert telephone calls to the claimant. Again, the evidence that we have set out above highlights that this was a possibility. It is clear that there was plenty of telephony work that the claimant could have done from home. As we have already stated, from the evidence that we have identified about her job description and from her own evidence, it is clear that the claimant would spend the majority of her time dealing with telephone enquiries. It would therefore have been reasonable in our judgment for the respondent to have diverted telephone calls to the claimant. There is no evidence why this was not done and, in our judgment, it was not unreasonable or impractical for this to have been done.

49. For completeness, we find that it would also have been reasonable for the respondent to have reallocated work to other colleagues. In our judgment, on the basis of the evidence that we have identified, it was not impractical or impossible for one member of staff to have opened the surgery, to deal with post and to deal with the very limited number of patients who were attending the surgery in person during this time. In her evidence, the respondent stated that it was her decision that it was not practical for a receptionist to work from home. We reject that.

50. We also find that a reasonable step that the respondent could also have taken was to have met the claimant virtually. In our judgment, there is no reason why that meeting could not have been held virtually. Even if the respondent did not want the meeting recorded as they suggest, there is no evidence that the respondent suggested a virtual meeting which was not recorded. The respondent knew that the claimant had not attended the surgery in order to protect her health. It was therefore unreasonable in our judgment to expect the claimant to therefore attend for a meeting in person. We therefore find that it was not unreasonable or impractical for that meeting to have been conducted remotely.

51. We therefore find that the claimant's s claim for failure to make a reasonable adjustment under section 20 of the Equality Act 2010 is well founded and is allowed.

<u>Discrimination arising from a disability</u>:

52. As already stated, the respondent knew that the claimant was disabled.

53. As a consequence of the claimant's disability, she did in fact refuse or feel unable to attend the surgery and to meet with the respondent in person in order to protect her health. It is clear from the evidence contained within the text messages and emails, that the claimant was concerned for her health. We therefore find that the refusal to attend work and meet with the respondent in person, were "something" that arose in consequence of the claimant's disability.

54. The respondent's argument is that the "somethings" arising, arose as a consequence of the claimant's need for childcare. In our judgment, this

appears to be an illogical argument. The claimant was a key worker. As such, she would have been able to send her children to school. There are letters from their respective schools at pages 340 and 348 (dated the 20th and 28th March respectively) confirming that each of them can attend. Accordingly, if the claimant's children were in school, then the claimant would have been able to work. It is therefore illogical to suggest that the reason that the claimant failed to attend work was because of childcare. It is clear from the dates of these letters that the claimant rapidly applied for a place in school for her children. The claimant's email to Ms Butler dated the 19th May 2020 at page 475, shows that the claimant was actively requesting a return to work and that she was actively pursuing childcare arrangements. It is clear from the evidence contained in text messages and emails that the claimant was ready and wanting to work. We therefore find that the "something" arising was not as a consequence of the claimant's need for childcare.

55. Unfavourable treatment means that the claimant must have been put at a disadvantage. The claimant has been put at a disadvantage because she was prevented from working and therefore prevented from earning her salary. She was similarly disadvantaged by being unable to meet with the respondent in order to resolve their situation. We therefore find that the respondent did treat the claimant unfavourably by considering her to be absent without leave and failing to pay her because she refused to attend work in consequence of her disability and we also find that the respondent did treat the claimant unfavourably by failing to meet with the claimant virtually.

56. We therefore find that the respondent did treat the claimant unfavourably in this way because of her refusal or inability safely to attend her place of work following the outbreak of the pandemic or meet with the respondent in May & June 2020.

57. The respondent's legitimate aims appear to be that they wanted to ensure that the claimant attended work in person and to recoup payments made to her. This is clear from the respondent's letter dated the 23rd May 2020 (page 483). We find that the unfavourable treatment was not a proportionate means of achieving these legitimate aims. The respondent knew that the claimant was at high risk and that she stayed away from work to protect her health. We find that the claimant could have worked from home and meetings could have been held virtually. These in our judgment would have been less discriminatory ways of achieving a legitimate objective.

58. The respondent has therefore not shown that the treatment was a proportionate means of achieving a legitimate aim.

59. We therefore find that the claimant's claim for discrimination arising from a disability under section 15 of the Equality Act 2010 is well founded and is allowed.

<u>Health & safety detriment</u>:

60. In March 2020, the claimant was aware that she was in a high risk group. There is evidence from her GP, from her medical notes and what she had

been told by the British Heart Foundation (see the printout from their website at page 343), that she was at high risk from COVID 19. We find that in this context attending her place of work would have amounted to circumstances of danger – the respondent appears to accept this – see para 52 of Ms Butler's witness statement. We also find that the claimant reasonably believed the circumstances of danger to be serious and imminent. The respondent argues that the claimant did not open the letter sent to her on the 17th March 2020 which sets out the measures the surgery has taken to ensure the safety of staff and patients. This letter has not been adduced by the respondent and there is therefore no evidence of its content. We reject the respondent's evidence, that an employee, whilst away from work, should be checking their emails.

61. We find that the claimant could reasonably have been expected to avert the circumstances of danger, which she did, by not attending work. In considering her to be absent without leave and failing to pay her, we therefore find that she was subject to a detriment and in doing so the respondent did subject the claimant to the detriments on the ground that she refused to return to her place of work in the circumstances of danger.

62. We therefore find that the claimant's claim for a health and safety detriment under section 44 of the Employment Rights Act 1996 is well founded and is allowed.

Unlawful deduction from wages:

63. Insofar as this head of claim is concerned, the Tribunal has been unable to locate any evidence to show to the relevant standard that the deductions claimed between June and November 2020 have in fact been made.

64. In those circumstances, we find that the claim for unlawful deduction of wages under section 13 of the Employment Rights Act 1996 is not well founded and is refused.

Holiday pay:

65. It is agreed that the claimant is owed unpaid holiday pay in the sum of £417.08.

66. We therefore find that the claimant's claim for failure to pay holiday pay under regulation 14 of the Working Time Regulations 1988 is well founded and is allowed.

Employment Judge **Apted**

Date: 11th October 2022