



EMPLOYMENT TRIBUNALS

Claimant: Mr A McGuinness

Respondent: Mersey Care NHS Foundation Trust

Heard at: Liverpool (by CVP)

On: 20-22 September 2023

Before: Employment Judge Ainscough
Ms J Pennie
Mr A Wells

REPRESENTATION:

Claimant: Mr O Dempsey, Counsel

Respondent: Ms Worthington, Solicitor

JUDGMENT

The judgment of the Tribunal is that the claim for a failure to make reasonable adjustments is successful.

REASONS

Introduction

1. The claimant brought claims for a failure to make a reasonable adjustment including the failure to provide an auxiliary aid to overcome a substantial disadvantage in the workplace.

2. The claimant suffered a brain haemorrhage in December 2016 and as a result has impaired cognitive ability which includes memory loss, lack of concentration, and the inability to multitask. The respondent accepted that the claimant was a disabled person for the purposes of the Equality Act 2010 and that the respondent had knowledge of the claimant's disability for the purposes of these claims.

Evidence

3. The parties agreed a bundle of 411 pages. The Tribunal heard evidence from the claimant, Dawn Billington of the claimant's line management team and Peter

McNulty a co-ordinator responsible for the line management of the claimant on 11 April 2021.

Issues

4. The issues to be determined by the Tribunal are as follows:

1. Reasonable Adjustments (Equality Act 2010 sections 20 and 21)

1.1 A PCP is a provision, criterion or practice. Did the respondent require the claimant to carry out the case holding duties “named nurse/case holder” required of a Band 6 nurse?

1.2 Did the PCP put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that the claimant was unable to make fast paced decisions and multitask because of his memory loss, confusion and concentration problems?

1.3 Did the lack of an auxiliary aid, namely:

1.3.1 Phillips SpeechAir Smart Voice Recorder;

1.3.2 Dragon recognition software and half a day training

1.3.3 Digital Notes Air 3 and half a day training

1.3.4 Noise cancelling headphones;

1.3.5 6 days of coping strategy training

put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that he could not complete tasks due to his memory and concentration problems?

1.4 Did the respondent fail in its duty to take such steps as it would have been reasonable to have taken to avoid the disadvantage? The claimant says that the following adjustments to the PCP would have been reasonable:

1.4.1 The provision of the auxiliary aids

1.4.2 The removal of named nurse/case holder duties.

1.5 By what date should the respondent reasonably have taken those steps? The claimant alleges that the dates when the adjustments should have been made were as follows:

1.5.1 15 May 2020

1.5.2 26 March 2021

2. Time Limits

- 2.1 Given the date the claim form was presented and the effect of early conciliation, any complaint about something that happened before 15 March 2021 may not have been brought in time.
- 2.2 Were the discrimination complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
 - 2.2.1 Was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the act to which the complaint relates?
 - 2.2.2 If not, was there conduct extending over a period?
 - 2.2.3 If so, was the claim made to the Tribunal within three months (allowing for any early conciliation extension) of the end of that period?
 - 2.2.4 If not, were the claims made within such further period as the Tribunal thinks is just and equitable?

3. Remedy

- 4.1 How much should the claimant be awarded?

The Relevant Facts

Claimant's Disability

5. Following the claimant suffering a brain haemorrhage in December 2016, he was told in 2019 that he was suffering from memory loss and impaired cognitive functioning. The claimant had initially returned to work following his brain haemorrhage but by October 2019 he was absent from work again and did not return until February 2020.

Claimant's Employment

6. The claimant was a Senior Nurse Practitioner. The claimant was a Band 6 employee working in the Central Community Team for 37.5 hours per week. The teams were made up of north, south and central teams, and by the time of the claimant's return to work in February 2020 formed part of the Integrated Community Reablement Assessment Service ("ICRAS").

7. The claimant's role was to deliver clinical care in the community. The chain of command was a Senior Nurse Practitioner, Team Leader and then a Coordinator who (at evenings and weekends) was responsible for managing the whole geographical area.

Named Nurse

8. In or around the time that the claimant returned to work in February 2020, the management requirements for his role were "Named Nurse" tasks. This was a phrase that had transferred from the wards when ward staff had moved into community

nursing. Prior to the claimant's return to work, the management requirements were known as "Caseload Holder" tasks.

9. The Tribunal determines that the phrases Caseload Holder and Named Nurse are the same thing and used interchangeably within the respondent's organisation. It is the "Holder" bit of "Caseload Holder" that distinguishes from having a normal caseload of patients. The "Holder" part denotes responsibility for running the team and their various caseloads on a particular day.

Claimant's return to work

10. Prior to the claimant's return to work he completed an Access to Work application which was approved on 27 January 2020. Access to Work agreed to pay for coping strategy training in order to assist the claimant in doing his Band 6 role. Access to Work recommended that the respondent make reasonable adjustments of providing and funding a Dictaphone with appropriate training; digital note equipment and software with appropriate training, and noise cancelling headphones.

11. These auxiliary aids were recommended to negate the disadvantage of the claimant's memory loss when in meetings and to act as an aide memoire. The claimant could access notes immediately following a meeting which would assist with multitasking and concentration.

Respondent's Disability Policy

12. The respondent had a policy called HR27 to support staff with mental and physical disabilities. The purpose of this policy was to allow the employer and employee to agree reasonable adjustments that were needed in the workplace.

13. The policy expected employees to provide their managers with the appropriate information about their condition and that there would be an ongoing dialogue to ensure that the appropriate adjustments were in place.

14. The manager was expected to keep in touch with the employee and review the effectiveness of adjustments at regular intervals.

15. In February 2020 the claimant's team manager was Kerry Rea. As a result, on 12 February 2020 the claimant and Kerry Rea met to discuss the HR27 policy.

16. Unfortunately, this document was not completed prior to the start of the pandemic and Kerry Rea was subsequently moved to another department to cope with the pandemic. As a result, Dawn Billington (a Coordinator, and the claimant's second line manager) took over the management of the claimant. The HR27 document was not completed and signed off by Dawn Billington until 5 May 2020.

Chronology of provision of auxiliary aids

17. Following receipt of the Access to Work report, an ICRAS administrator requisitioned the recommended equipment. That requisition was not approved by Dawn Billington until 24 April 2020 when she asked the Procurement Department to process the order.

18. The claimant was then tasked with chasing the Procurement Department and on 10 July 2020 the Procurement Department approved the order. By 11 August 2020 the claimant had been provided with the noise cancelling headphones and the Dictaphone. However, he had not received the digital note equipment or software and was in not in receipt of any dates for coping strategy training or technical training.

19. The claimant was again encouraged to chase the outstanding items and in September 2020 he emailed the Procurement Department who subsequently emailed the supplier of the equipment.

20. The claimant had not heard back from the Procurement Department by the time he was asked to return to community nursing.

21. In the absence of any response, Dawn Billington chased the Procurement Department between 2 December 2020 and 12 December 2020. Dawn Billington received a response confirming that the outstanding equipment had been ordered.

22. By 29 January 2021 the claimant was in receipt of the digital note equipment. The claimant had started the coping strategy training, but the technical training was outstanding.

Claimant's return to community nursing

23. In February 2020 when the claimant returned to work, he was placed in the Intermediate Care Hub with a reduced caseload. The Hub had been created in response to the pandemic and he was able to deal with a caseload in a more stable environment as opposed to in the community.

24. On 6 April 2020 the claimant had his first meeting with Dawn Billington, and it was noted that the Access to Work equipment was still outstanding. It was agreed that the Occupational Health Department would need to be updated but that the claimant would remain in the Hub dealing with a caseload.

25. The claimant met again with Dawn Billington on 1 May 2020 to discuss the completion of the HR27 document. That document was signed off on 5 May 2020. It was recorded that the Access to Work equipment was not in place and more time was required to obtain the equipment. It was agreed that the claimant would double-up with a colleague on shift when seeing patients and would be allocated to a buddy system. It was also agreed that the claimant would be subject to regular supervision and would be left in the Hub dealing with a caseload rather than returning to the community.

26. At a further meeting on 10 July 2020 Dawn Billington noted that the Access to Work equipment was still outstanding and the claimant was to chase this equipment. Dawn Billington agreed to maintain the claimant's position within the Hub and recommended that he have meetings with a Team Leader. Deborah Robson who was filling in the Team Leader role on the central team, subsequently met with the claimant.

27. On 19 August 2020 Dawn Billington emailed the claimant to ask how he was getting on. The claimant responded and informed Dawn Billington that he was not

being supported in the Hub. The claimant complained that he was left alone with patients and felt unsafe at work.

28. The claimant subsequently submitted a flexible working application to allow him to work weekends rather than weekdays in order to care for his wife. Dawn Billington was resistant to the claimant doing this because she felt that he had more support during the weekday. However, in rejecting the claimant's flexible working application Dawn Billington cited unfairness to colleagues and disadvantage to the rest of the workforce as the reasons for refusing the flexible working application.

29. The claimant and Dawn Billington met on 18 September 2020 when it was acknowledged that Deborah Robson was no longer the team lead. The claimant was also informed that it was no longer possible to double-up with a Registered Nurse and he would only be assisted by a Healthcare Assistant. In live evidence, Dawn Billington confirmed that there was one Healthcare Assistant for the Hub, and they were not exclusively assigned to assist the claimant.

30. It was also noted at that meeting that the technical training had been arranged and the goal was to move the claimant back to the community once the new team leader was in place. The claimant declined Dawn Billington's offer to work on a ward because he considered that ward to be more stressful than working in the Hub.

31. On 28 September 2020 Jade Baskeyfield became the claimant's interim Team Leader.

32. On 5 November 2020 the claimant was informed by Dawn Billington's manager, Kathy Baxter, that he would be returning to community nursing. The rationale that was given was that the claimant was needed to support the Band 5 staff within the management part of his role.

33. The claimant's trade union representative wrote to Kathy Baxter querying how this move could have occurred given that at the last meeting it was agreed that the claimant would not move back into community nursing until a new team leader was in place and that there had not been a review of the HR27 agreement. The claimant was particularly concerned that he was being asked to manage Band 5 staff.

34. On 6 November 2020 Kathy Baxter informed the claimant and his trade union representative that a decision had been made to return the claimant to community nursing because it was their understanding that he would be completing community nursing after working in the Hub.

35. On 3 December 2020 the claimant had a meeting with Dawn Billington in which it was recorded that the Access to Work equipment was still outstanding, and the claimant had not been in receipt of any training because of contracting Covid. The claimant informed Dawn Billington that he did not want to go back to being a Caseload Holder and wanted to remain in the Hub dealing with a caseload.

36. On 4 December 2020 the claimant had a one-to-one supervision meeting with the new team leader, Jade Baskeyfield, in which she recorded that the claimant was not to perform any caseload holding duties which included running the shift, holding the phone or allocating patients. It was agreed that she would inform team leaders and coordinators that the claimant would not be caseload holding but would still have

a caseload. Jade Baskeyfield subsequently sent an email to those people informing them that the claimant would not be caseload holding.

37. On 11 December 2020 Jade Baskeyfield and Dawn Billington met with the claimant for a HR27 review. It was officially recorded in that document that the claimant would not be caseload holding but would have a caseload. It was also recorded that the Access to Work equipment was still outstanding and that the claimant would agree to work towards caseload holding duties with the relevant support.

38. In mid December 2020 the claimant started the coping strategy training.

39. On 25 January 2021 Jade Baskeyfield made a referral to Occupational Health in which she asserted that all the Access to Work recommendations were in place but that the claimant was only performing a Band 5 role. The Tribunal determines that because the claimant was not performing Caseload Holder duties, he was in fact performing at a Band 5 level with a caseload.

40. On 28 January 2021 the claimant met with Dawn Billington and Jade Baskeyfield in which the note of the meeting records that he would not have the digital note software until the following day. However, the claimant was still not in receipt of any training to use the equipment or software. Jade Baskeyfield confirmed that it was her view that the claimant was in fact performing at a Band 5 level. Jade Baskeyfield confirmed this in an email on 3 February 2021 in which she also confirmed that the claimant was working towards regaining Band 6 status and becoming a Caseload Holder with the assistance of the Access to Work technology.

41. On 4 February 2021 the Occupational Health Doctor reported that it was not for the Occupational Health doctor to comment on the claimant's banding and that his cognitive functioning would not improve four years post brain haemorrhage. It was also noted that the claimant had only very recently received all the relevant technology but was still awaiting training.

42. The claimant met with Jade Baskeyfield and Dawn Billington on 26 March 2021. There are no notes of this meeting or a follow-up meeting. Therefore, the Tribunal was reliant upon the accounts given by the claimant and Dawn Billington in live evidence.

43. The Tribunal concludes on the balance of probabilities that at the end of this meeting the claimant agreed that he would tell his colleagues that he was not caseload holding. However, the Tribunal also concludes that the claimant had an expectation that Dawn Billington and Jade Baskeyfield would also confirm this position with the rest of the team. In any event, the Tribunal determines that the email sent by Jade Baskeyfield on 4 December 2020 to team leaders and coordinators had not been rescinded.

44. On 11 April 2021 the claimant was asked to perform the role of Caseload Holder in the absence of a colleague who had taken emergency childcare leave. The claimant was asked to do this by Coordinator Phil Jeanrenaud. The claimant as asked to see how he got on and he agreed to give it a go. Unfortunately, the claimant was unable to cope and on reporting his difficulties to Coordinator Phil McNulty, reported sick with ill health and did not return to work prior to his ill health retirement in February 2023.

Both Phil Jeanrenaud and Phil McNulty were in receipt of the email sent by Jade Baskeyfield on 4 December 2020.

45. The claimant submitted a grievance on 30 June 2021 complaining of being asked to carry out and the lack of provision of auxiliary aids. On 10 August 2021 the respondent resolved the claimant's grievance by apologising for the lack of support.

The Relevant Law

46. Discrimination against an employee is prohibited by section 39(2) Equality Act 2010:

“An employer (A) must not discriminate against an employee of A's (B) –

- (a) as to B's terms of employment;**
- (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;**
- (c) by dismissing B;**
- (d) by subjecting B to any other detriment.”**

Reasonable adjustments

47. Section 20 of the Equality Act 2010 sets out the following duty:

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)**
- (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.**

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.

Code of Practice on Employment 2011

48. The Code of Practice on Employment issued by the Equality and Human Rights Commission in 2011 provides a detailed explanation of the legislation. The Tribunal must take into account any part of the Code that is relevant to the issues in this case.

49. In particular the Tribunal has considered paragraphs 6.23 – 6.29 to decide whether the adjustments suggested are reasonable.

Burden of Proof

50. The burden of proof provision appears in section 136 and provides as follows:

- “(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 sub-section (2) does not apply if A shows that A did not contravene the provision”.

51. In **Hewage v Grampian Health Board [2012] ICR 1054** the Supreme Court approved guidance given by the Court of Appeal in **Igen Limited v Wong [2005] ICR 931**, as refined in **Madarassy v Nomura International PLC [2007] ICR 867** where Mummery LJ held that “could conclude”, in the context of the burden of proof provisions, meant that a reasonable Tribunal could properly conclude from all the evidence before it, including the evidence adduced by the complainant in support of the allegations, such as evidence of a difference in status, a difference in treatment and the reason for the differential treatment.

52. Importantly, at paragraph 56, Mummery LJ held that the bare facts of a difference in status and a difference in treatment are not without more sufficient to amount to a prima facie case of unlawful discrimination. However, whether the burden of proof has shifted is in general terms to be assessed once all the evidence from both parties has been considered and evaluated. In some cases, however, the Tribunal may be able to make a positive finding about the reason why a particular action is taken which enables the Tribunal to dispense with formally considering the two stages.

Time Limits

53. Finally, the time limit for Equality Act claims appears in section 123 as follows:

- “(1) Proceedings on a complaint within section 120 may not be brought after the end of –
- (a) the period of three months starting with the date of the act to which the complaint relates, or

- (b) such other period as the Employment Tribunal thinks just and equitable ...
- (2) ...
- (3) For the purposes of this section –
 - (a) conduct extending over a period is to be treated as done at the end of the period;
 - (b) failure to do something is to be treated as occurring when the person in question decided on it”.

54. In considering whether conduct extended over a period we had regard to the decision of the Court of Appeal in **Hendricks v Metropolitan Police Commissioner [2003] IRLR 96**.

Submissions

Respondent's Submissions

55. The respondent accepted that it applied the provision, criterion or practice of requiring the claimant to perform caseload holding duties. The respondent also accepted that the claimant would be put at a substantial disadvantage by those duties. However, the respondent submitted that it had sent an email on 4 December 2020 to all relevant people to ensure that the claimant did not perform such duties and as a result, it had made the necessary reasonable adjustment.

56. The Tribunal was asked to accept the evidence of Dawn Billington that the claimant did not want an announcement and the respondent had done enough.

57. The respondent submitted that it did enough to provide the auxiliary aids to the claimant. The Tribunal was asked to note that there was a national pandemic and that by 11 August 2020 the claimant had a dictaphone and headphones. The respondent contended it acted immediately when it learned that not all equipment had been delivered to the claimant and that the training was outstanding because the claimant had cancelled due to Covid.

58. The respondent submitted that the claim did not amount to a continuing act because the claimant made no complaint between 29 January 2021 and 11 April 2021. It was the respondent's position that the auxiliary aids claim was out of time. Further, the respondent relied upon the claimant's concession that the respondent should have acted at the very latest by May 2020.

59. The respondent submitted that it relied on the case of **Hendricks and Pugh v National Assembly for Wales UKEAT/0251/06**. The respondent also made submissions about whether it would be just and equitable for the Tribunal to extend time and reminded the Tribunal that it had heard very little, if any, evidence from the claimant as to why he waited until June 2021 before starting ACAS early conciliation.

Claimant's Submissions

60. The claimant submitted that the burden of proof had shifted to the respondent to show that it had taken reasonable steps in both circumstances. It was the claimant's

case that Caseload Holder meant the same as Named Nurse and that allowing the claimant to simply notify his colleagues was not a reasonable approach to take.

61. The claimant submitted that the provision of equipment was only one part of the aids and that without training it was meaningless. The claimant submitted that the respondent had not provided any explanation why there was no enquiry about the provision of the aids.

62. It was the claimant's contention that he had been subject to a continuing state of affairs and that the claim had been brought within time. The claimant also relied upon the case of **Hendricks**.

63. The claimant submitted that it would be just and equitable to extend time. The claimant contended that the case was confusing as a person with a brain injury, he should not be held to a higher standard.

Discussion and Conclusions

Auxiliary Aids Claim

64. The respondent conceded that the recommendations made by Access to Work amounted to auxiliary aids. The respondent also conceded that without the provision of those aids the claimant was at a substantial disadvantage.

65. The Tribunal has concluded that the claimant would be at a substantial disadvantage without the auxiliary aids because of the difficulties the claimant has with cognitive functioning such as memory loss, multitasking and concentration.

66. The Access to Work report was clear that the dictaphone would assist with memory loss following meetings and would allow the claimant to record meetings or record his notes in meetings. The noise cancelling headphones would assist with the claimant's levels of concentration in a busy office. The digital notetaking equipment and software would allow the claimant to write notes which he could immediately upload to his laptop in order to remember what had been discussed and the tasks he was required to perform.

67. The question therefore for the Tribunal is whether the respondent took such steps as was reasonable to take to provide the auxiliary aids.

68. The Tribunal determines that the respondent did not take such steps. The Access to Work report was prepared on 27 January 2020 and whilst the ICRAS administrator had sought authority to order the equipment by 11 February 2020, it took Dawn Billington until 24 April 2020 to authorise the ordering of the equipment. However, Dawn Billington had then to achieve the authority of the Procurement Department which was not provided until 10 July 2020 such that the noise cancelling headphones and the dictaphone were given to the claimant on 11 August 2020.

69. The claimant and Dawn Billington confirmed that Dawn Billington was the Band 8A supervisor who asked the claimant to chase the provision of the equipment in July 2020.

70. The claimant was also encouraged to chase the procurement department about the provision of the equipment in September 2020 and then subsequently chase the

supplier. On learning of his return to the community nursing and the expectation that he would perform a Band 6 role, the claimant again chased the procurement department in November 2020, and it was only on Dawn Billington chasing the same department in December 2020 that the claimant was in receipt of the digital note software and equipment. The claimant never received the technical training in order to use the equipment and software.

71. The Tribunal determines that nobody took ownership of the claimant's need for adjustments in accordance with the requirements of the HR27 policy. A manager was required to review the agreement for reasonable adjustments with the employee, and further make sure that it is implemented. The first time Dawn Billington attempted to do this was in December 2020 but then did not take any ownership thereafter, which meant that once in receipt of the equipment and software the claimant was not trained on how to use it.

72. It is clear from the Occupational Health referral made at the end of January 2021, prior to the provision of the software, that Jade Baskeyfield and Dawn Billington were of the view that the Access to Work equipment and necessary training had been completed. They became aware at the 28 January 2021 meeting that this was not the case but did not take any further action. They did not meet again with the claimant until 26 March 2021 and were again aware that the technical training had not been provided. Neither manager sought to chase it up on the claimant's behalf.

73. Therefore, on 11 April 2021 when the claimant was asked to do the caseload handling role he struggled to do so, and this led to his ill health and an inability to return to work after 11 April 2021.

Caseload Holder duties claim

74. The respondent accepted that it applied the provision, criterion or practice of requiring the claimant to carry out the caseload holding duties of a Band 6 nurse. The respondent also accepted that to do so would put the claimant at a substantial disadvantage because of his cognitive impairment.

75. The question for the Tribunal therefore was whether the respondent had taken such steps as it was reasonable to take to avoid the disadvantage.

76. The Tribunal has determined that the reasonable steps to avoid the disadvantage would have been to provide the claimant with the equipment recommended by Access to Work and the relevant training in order that he could work towards performing a Band 6 role which included the Caseload Holder functions. The Tribunal has already determined that the respondent failed in its duty to do this and therefore, it did not take steps it was reasonable to take to avoid this disadvantage.

77. The Tribunal also concludes that the respondent should have ensured that the claimant did not perform such duties until he had received all the necessary equipment and training in order to perform the Band 6 caseload holding role. Therefore, the adjustment required was to ensure that the claimant did not perform that role until the equipment and training was in place.

78. The Tribunal has determined that the claimant did tell the respondent that he would inform people that he was not performing the role. The Tribunal determines that

this was not a reasonable position for the respondent's managers to rely upon. Dawn Billington admitted in evidence that Jade Baskeyfield's email of 4 December 2020 was far from clear. Phil McNulty gave evidence that he may have received the email but did not read it. In particular, the email did not set out what should happen if, at short notice, the allocated Caseload Holder was unable to perform the duties.

79. Unfortunately, what happened was that the claimant felt pressurised into doing the caseload holder duties and became overwhelmed. Had Dawn Billington given specific directions to the team leaders and coordinators, that scenario would have been avoided. As it was, Phil McNulty claimed that he was unaware of the claimant's restriction and at worst Phil Jeanrenaud ignored it.

80. It is clear, that asking the claimant to inform his colleagues of his restriction was not good enough. The team leaders and coordinators needed specific directions that the claimant should not perform caseload holding duties.

81. The Tribunal therefore concludes that a reasonable step would have been for the respondent to follow-up the email of 4 December 2020 with a clearer email confirming that the claimant was still not caseload holding and even in emergency circumstances, should not be asked to do so.

82. The Tribunal therefore determines that the respondent did not take such reasonable steps to avoid the disadvantage.

Time Limits

83. The Tribunal takes note of section 123(3) and (4) of the Equality Act 2010.

84. With particular regard to section 123(3)(b), the Tribunal determines that on 26 March 2021 Dawn Billington and Jade Baskeyfield decided not to take any further action to inform fellow team leaders and coordinators that the claimant would not be caseload holding and was a failure to take a reasonable step to avoid the disadvantage. The claimant began ACAS Early Conciliation on 14 June 2021. The claim for a failure to make reasonable adjustments pursuant to section 20(3) of the Equality Act 2010 was brought within the prescribed time limit set out at section 123.

85. The Tribunal has determined that Dawn Billington had a duty from 24 April 2020 to chase the provision of the aids. However, the Tribunal also concludes that on each occasion that the claimant informed Dawn Billington that he was not in receipt of the aids, she had a fresh duty to chase up the provision of the aids in accordance with the respondent's own HR27 policy.

86. The claimant informed Dawn Billington of the outstanding aids at the HR27 review meeting on 1 May 2020. He further updated her at the meeting on 10 July 2020 and was told he must chase the provision of the aids.

87. On 19 August 2020 Dawn Billington asked the claimant whether he was in receipt of support. The claimant told Dawn Billington that he was not and equally not in receipt of the aids.

88. At the meeting on 18 September 2020 Dawn Billington recorded that the claimant was still not in receipt of the aids and was aware from the correspondence

that the claimant was still seeking an answer from procurement by the time he was asked to transfer back into the Band 6 role and community nursing.

89. Eventually on 2 December 2020 Dawn Billington did chase the provision of the aids and the claimant was in receipt of the equipment and software by 29 January 2021. However, the claimant's technical training was still outstanding.

90. The Tribunal determines that Dawn Billington failed to provide auxiliary aids each time she failed to chase the provision up to and including 8 April 2021, being a month after the coping strategy training had been completed by the claimant on 8 March 2021 and a reasonable time frame within which Dawn Billington should have chased up the provision.

91. As it was, neither Dawn Billington nor Jade Baskeyfield chased the claimant's technical training between the provision of the equipment and software on 29 January 2021 and a month after the completion of the coping strategy training on 8 April 2021. The Tribunal has determined that the claimant was required to start ACAS Early Conciliation within three months of 8 April 2021.

92. Therefore, the Tribunal concludes that the failure to provide auxiliary aids claim was brought within the prescribed time limits of section 123 of the Equality Act 2010.

Employment Judge Ainscough

Date: 10 November 2023

JUDGMENT AND REASONS SENT TO THE PARTIES ON
Date: 13 November 2023

FOR THE TRIBUNAL OFFICE

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