EMPLOYMENT TRIBUNALS

Claimant: **P.**

Respondent: **Yorkshire Ambulance Service NHS Trust**

Heard at: Leeds (in private; by CVP)

On: 3,7,8,10,14,15,17, 21 and 22 May 2024
Deliberations in Chambers: 6,7 and 28 June 2024

Before: Employment Judge Shepherd

Members:
Mr K Lannaman
Mr P Kent

Appearances
For the claimant: **In person**
For the respondent: **Mr R O'Keeffe, Counsel**

RESERVED JUDGMENT

The claims of disability discrimination and victimisation are not well-founded and are dismissed.

REASONS

1. The claimant represented himself and the respondent was represented by Mr O'Keeffe.

2. The Tribunal heard evidence from the following witnesses whose names have been anonymised:

P, The claimant;

A, Emergency Operations Centre (EOC) Call Handling Team Leader ;

B**,** EOC Call Handling Team Leader;

C, EOC Duty Manager;

D, EOC Duty Manager;

E, EOC Call Handling Team Leader;

F, EOC Duty Manager;

G, Deputy Head of EOC;

H, EOC Call Handling Team Leader;

I, HR Business Partner;

J, EOC Operational Service Delivery Manager.

3. It had been determined that first day of the hearing would be a reading day for the Tribunal. The claimant had made an application to strike out the response on the basis that it was vexatious and had no reasonable prospects of success. The matters raised were discussed with the claimant and they appeared to be matters of evidence that needed to be tested. In **Anyanwu v South Bank Student Union 2001 ICR 391** the House of Lords highlighted the importance of not striking out discrimination claims except in the most obvious cases as they are generally fact sensitive and require a full examination to make proper determination. The Tribunal finds that this also applies to the response to a claim.

4. The claimant suggested that the respondent had recently admitted certain matters. This was denied by Mr O'Keeffe on behalf of the respondent and it was clear that the Tribunal had not had the opportunity to consider and read sufficiently to decide whether the response had no reasonable prospects of success or was vexatious. The respondent made it clear that they had not conceded matters in the identified issues and the evidence needed to be heard.

5. In the circumstances, the Tribunal refused the application to strike out the response.

6. It had been ordered in previous preliminary hearings that, as reasonable adjustments, the final hearing would take place by CVP video link and that the claimant would be allowed periodic breaks during the hearing. The case was listed to avoid Mondays and Thursdays when the claimant had to attend hospital for blood tests and treatments. The claimant was allowed breaks whenever they were required.

7. The claimant had been ordered to pay a deposit in respect of complaints of victimisation which were allegations of checking on and deliberately losing the claimant's certification, removing the claimant from the team workforce/channel on 25 September 2023 and interfering with the claimant's IT account/system. Also, the allegation of failure to make reasonable adjustment to requirements, wear standard uniform jacket and a requirement to undertake full contractual duties, including taking calls from patients and the public.

8. The claimant failed to pay any deposit ordered and, as a consequence, those claims were struck out.

9. An anonymisation order was made by Employment Judge Miller on 18 April 2024. This ordered that any identifying matter should be omitted or deleted from the public and Tribunal records that was likely to lead members of the public to identify the claimant. That order would continue in force until the last day of the final hearing. It was also ordered that these proceedings would be heard in private.

10.The claimant applied to make further amendments to his claims. These were refused by Employment Judge Miller on 15 March 2024 and a final list of issues was provided. It was indicated that the claimant was not prevented from making a new claim to the Employment Tribunal in relation to the amendments that had not been permitted. It was stated that such claims should be brought within the appropriate time limit.

11. It is understood that the claimant has since presented further claims to the Tribunal.

12. The claimant remains in the respondent's employment. He is contracted to work three hours a week but is not presently required to attend work. He also has additional full-time employment of 37.5 hours with another NHS Trust. It was indicated to the parties, that, in view of the continued employment relationship and the expenditure of public funds, it would be sensible for attempts to be made to resolve the position between the parties. However, that has not proved possible.

13. A further anonymisation order has been made in respect of the respondent's witnesses.

14. On 10 May 2024 the claimant sent an email to the Tribunal indicating that he was suffering from another deep-vein thrombosis in his leg presenting excruciating pain and swelling. He referred to being concerned about his ability to provide evidence effectively.

15. When this was discussed orally with the Tribunal, the claimant said that he did not wish to apply for an adjournment and wanted to continue to give evidence because he did not know when there would be a better time. He referred to his medical condition which was continuing. The circumstances would not improve. The position was discussed by Tribunal. It was indicated that there was some concern and the claimant was asked again whether he wished to apply for an adjournment.

16. The claimant confirmed that he was fit to give evidence and did not want an adjournment. He said this was unambiguous. He did ask that the Tribunal should take his medical condition into account. This has been borne in mind by the Tribunal when assessing the evidence. The claimant was allowed breaks whenever he required them.

17. Following completion of the evidence, the claimant requested further time in which to provide written submissions because of his medical condition. This was allowed but it has led to inevitable further delays.

18. The Tribunal had sight of a bundle of documents numbered up to 2430 together with further documents within a disclosure document. The Tribunal considered those documents to which it was referred by the parties.

The Issues

19. The issues for the Tribunal to determine at this final hearing were set out following earlier preliminary hearings and the final agreed list of issues were recorded at a Preliminary Hearing before Employment Judge Miller on 15 March 2024. The claimant submitted that he was not aware of the role, scope and significance of the list of issues. It had been made clear at the Preliminary Hearing that these were the issues that the Tribunal would determine. In the record of the Preliminary Hearing before Employment Judge Maidment on 20 October 2023 the issues had been set out and the parties were given a specific date to indicate if they felt they were wrong or inaccurate. The issues that the Tribunal was to determine were discussed at the commencement of the final hearing and they were as follows:

Time limits

1.1. Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 10 November 2022 may not have been brought in time.

1.2. Were the discrimination (and victimisation complaints allowed on amendment, but with some detriments dependent on the Tribunal finding there to be conduct extending over a period) made within the time limit in section 123 of the Equality Act 2010?

The Tribunal will decide:

1.2.1. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

1.2.2. If not, was there conduct extending over a period?

1.2.3. If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.2.4. If not, were the claims made within a further period that the Tribunal thinks is just and equitable?

The Tribunal will decide:

1.2.4.1. Why were the complaints not made to the tribunal in time?

1.2.4.2. In any event, is it just and equitable in all the circumstances to extend time?

Claims

2. Discrimination arising from disability (S15 Equality Act 2010)

2.1. Did the respondent treat the claimant unfavourably by:

2.1.1. J allegedly refusing the claimant's application for the role of enhanced emergency medical dispatcher in October 2022.

2.2. Did the following things arise in consequence of the claimant's disability:

2.2.1. The claimant says that his disabilities require him to work part time hours. The claimant, it is clear from his clarification, he relies on all his disability impairments, which can and do result in a need for treatment or attention and the need for the claimant to take breaks to administer that treatment/attention.

2.2.2. It is said that J told him that the enhanced emergency medical dispatcher role was not conducive to part- time hours.

2.3. Was the unfavourable treatment because of any of those things?

2.4. Was the treatment a proportionate means of achieving a legitimate aim?

2.5. The Tribunal will decide in particular:

2.5.1. was the treatment an appropriate and reasonably necessary way to achieve those aims;

2.5.2. could something less discriminatory have been done instead;

2.5.3. how should the needs of the claimant and the respondent be balanced?

2.6. Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

3. Reasonable Adjustments (sections 20 & 21 Equality Act 2010)

3.1. Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

3.2. A "PCP" is a provision, criterion or practice. Did the respondent have the following PCP:

3.2.1. The requirement to undertake duties with only 10 minute breaks every two hours inclusive of the statutory entitlement to breaks pursuant

to the Working Time Regulations - in fact it is clear that the claimant's case on clarification is that he more straightforwardly required breaks which were not allowed to him, regardless of the length of shifts worked by the claimant and including where there was no entitlement to statutory rest breaks. The PCP ought in such circumstances to be framed as the respondent's policy and practice of allowing rest breaks for staff performing the claimant's role.

3.3. Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that:

3.3.1. the claimant's disabilities caused blood clotting in the claimant's legs. He therefore needed to move around more frequently to avoid blood clotting; the claimant, it is clear from his clarification, relies on all his disability impairments which can and do result in a need for treatment or attention and the need for the claimant to take more breaks, than would an employee who does not share his disabilities, to administer that treatment/give that attention.

3.4. Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?

3.5. What steps could have been taken to avoid the disadvantage? The claimant suggests:

3.5.1. Formally implemented breaks of 10 minutes every two hours during shifts; allowing increased breaks generally including to lessen the risk of DVTs

3.6. Was it reasonable for the respondent to have to take those steps and when?

3.7. Did the respondent fail to take those steps?

4**. Harassment related to disability (s26 Equality Act 2010**)

4.1. Did the respondent do the following things:

4.1.1. On 7 May 2020, A asked the Claimant to justify his disabilities and requirement for additional breaks in front of his colleagues;

4.1.2. On 5 September 2020, H publicly challenged the Claimant on his additional breaks and advised that he was not entitled to them. She also asked the Claimant to clarify the exact nature of his disabilities in front of his colleagues;

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4.1.3. On 5 September 2020*,* C publicly challenged the Claimant on his additional breaks, was rude to him and advised that he was not entitled to them. C asked him to clarify his disabilities and stated that she was fed up with the Claimant and the issues;

4.1.4. On 11 September 2020, a Team Leader told the Claimant that he was not entitled to additional breaks;

4.1.5. On 21 September 2020, D asked the Claimant to clarify his disabilities and told him he was not entitled to alternative uniform;

4.1.6. On or around 22 September 2020, B did not afford the Claimant his statutory and recommended enhanced breaks;

4.1.7. On 3 and 4 October 2020, E publicly humiliated the Claimant and was talking about him to his colleagues, regarding his disabilities, requirements and other issues;

4.1.8. On 7 January 2021, J accused the Claimant of pretending to be a paramedic;

4.1.9. On 22 October 2022, B challenged the Claimant's additional break entitlement, was rude and unsupportive and did not afford him his statutory breaks in addition to his enhanced breaks;

4.1.10. On 23 October 2021, F challenged the Claimant in relation to his additional breaks, asked him to clarify his disabilities and why he was entitled to additional breaks and asked for proof;

4.1.11. In October 2022, B asked the Claimant how he could wear a jacket if he had a clot in his arm and asked him to justify his disabilities and diagnoses.

4.2. If so, was that unwanted conduct?

4.3. Did it relate to disability?

4.4. Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

4.5. If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

5. Victimisation (Equality Act 2010 section 27)

5.1. The claimant did a protected act in bringing this current Employment Tribunal complaint.

5.2. Did the respondent do the following things:

5.2.1. Subject the claimant to increased monitoring and scrutiny in that court [call] records were requested to monitor the time spent on calls. The claimant relies on an email from B in May 2023 to a new team leader with

a list of times the claimant spent on calls and B sending an email asking for the claimant's start and finish times. The claimant maintains that the respondent did not ordinarily look at call records;

5.2.2. The management/well-being team behaving differently towards the claimant, shutting down conversations being instructed not to engage with him. The claimant relies on emails of 31 March, 23 May and 26 May from B, from an unknown sender in April 2023 instructing people that if the claimant called they were not to speak to him at all and from G on 17 April 2023 instructing people not to engage directly with the claimant;

5.2.3. On 11 October 2023 the claimant was asked to meet J for an IT test, but on attending found himself in the presence of a number of senior managers who proceeded to ignore him for 9 minutes;

5.2.4. On 11 October 2023, having been taken into the IT test, the claimant found there was an additional attendance by a member of human resources. J placed the claimant on 2 months paid leave having said that the claimant was "evading things" and that it was very easy for him to make allegations of staff shortcomings without understanding the implications on him as a manager. J is said to have said that people could say he had "done stuff late", when that was not true. He had been interviewed five times and queried how the claimant thought that a sixth interview would make any difference; and

5.2.5. The claimant received an email from I of HR on 16 October 2023 saying that the only point of contact for the claimant with the management team was to be herself and not anyone else and that, as regards the claimant's live grievance, he was only to discuss this with people dealing with that grievance.

5.3. By doing so, did it subject the claimant to detriment?

5.4. If so, was it because the claimant had brought these tribunal proceedings?

6. Remedy for discrimination or victimisation

6.1. Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

6.2. What financial losses has the discrimination caused the claimant?

6.3. Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

6.4. If not, for what period of loss should the claimant be compensated?

6.5. What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

6.6. Should interest be awarded? How much?

Background/ Facts

20. Having considered all the evidence, both oral and documentary, the Tribunal reached findings of fact on the balance of probabilities. These written findings are not intended to cover every point of evidence given. These findings are a summary of the principal findings that the Tribunal made from which it drew its conclusions.

21. Where the Tribunal heard evidence on matters for which it makes no finding, or does not make a finding to the same level of detail as the evidence presented, that reflects the extent to which the Tribunal considers that the particular matter assists in determining the issues. Where correspondence and email exchanges are included the page numbers in the Tribunal bundle are set out in brackets for ease of reference.
Some of the Tribunal's findings are also set out in its conclusions, to avoid unnecessary repetition and some of the conclusions are set out within the findings of fact.

22. The claimant suffers from a number of complex medical conditions including Von Willebrand's Disease which has required specialist input from a number of Haematology specialists and multiple hospital admissions.

23.The claimant's GP practice indicated that the claimant's medical condition has been incredibly difficult to manage. He had undergone a Port-a-Cath insertion under general anesthetic. He has had emergency bilateral fasciotomy surgery to his right leg. He has suffered multiple unprovoked DVTs, Asthma, Epistaxis and is under the care of multiple specialists. The conditions the claimant suffers from are chronic and will require continued monitoring and treatment.

24. The claimant commenced employment with the respondent as an Emergency Medical Dispatcher (EMD) on 25 March 2020. The claimant remains in the respondent's employment.

25.The claimant initially worked 37.5 hours per week for the respondent.

26. The claimant said that on 7 May 2020 he was challenged by A, Call Handling Team Leader, and that she said that she could not see what disability the claimant had. The claimant said that he felt extremely uncomfortable that he had to explain his medical condition in front of everyone.

27. A cannot recall a conversation on that date but says she would have asked all call handlers to record their breaks. It would have been the first time she was working with the claimant and may have asked him why he required breaks.

28. The claimant sent an email to Linden Horwood, EOC Development and Quality Team Leader on 7 May 2020 (489) in which he referred to the issues that had been raised that day. He stated:

> "…I have been on shifts and been in the EOC for over two weeks now. I have aimed at ensuring that I schedule this around my breaks, as efficiently as possible. I had assumed that everyone was aware of my arrangements as no Team Leader/Supervisor etc. has raised this with me. Everybody has been more than accommodating and, therefore, I just assumed information passed on and it was okay. Today was the only occasion it had been raised by A.
>
> When A raised this issue with me, it was at my desk and her desk. I found it very uncomfortable to have to, in front of everyone, be made to justify and explain the circumstances of my condition and requirements. Today is the only day this has been challenged and raised with me. It made me feel very awkward as I regard my personal circumstances as quite sensitive to me and I feel like I am having to re-explain something I already find difficult discussing.
>
> A has informed me that you have referred me to Occupational Health and, in the meantime, I will endeavour to obtain a written letter from my doctor just so there is written documentation of my circumstances and health requirements.
>
> I would like to, again, apologise for any inconvenience and for any breakdown in communication."

29. Also on 7 May 2020 A, sent an email to Linden Horwood (487), in which she stated:

> "I have rearranged P's breaks today to make sure he is getting a break every 2 hours and explained the break list to him. P did say he discussed it with Cat and Linden and thought he was allowed extra breaks. He mentioned getting a letter from his Dr to get this arranged. I told him an OH referral would be made asap to make sure we are supporting him the best way we can and to let me know if he has any problems in the meantime.
>
> Let me know if there's anything else I can do…"

30. On 15 May 2020 the respondent received an Occupational Health report (498) in which it was stated:

> "… (The claimant) has been diagnosed with blood clotting conditions which contradict each other, as one causes bleeding, the other causes clotting. This is a very unusual situation which his specialists are trying to help him manage. The bleeding/clotting has resulted in various complications, including potentially life-threatening blood clots to his veins and bruising and repeated nosebleeds. He receives medical intervention every 2 days and is awaiting further tests, and options from other specialists. Unfortunately these have been delayed due to the Covid-19 pandemic.
>
> … Has needed surgery to his right leg and has dressings in place for this as has open wounds. He cannot weight bear on his right leg so mobilises with crutches. His right leg is painful and he manages this with strong painkilling medication.

> He is in work in his full capacity. He works 3X12 hour shifts each week at his own request. He has found this helps him manage his medical appointments and work life balance. On occasions he needs to leave work early for treatment; he tries to arrange this to ensure this has minimal impact on his work. He takes short breaks to mobilise, at his specialist's instruction, to help prevent blood clots.…
>
> I recommend he continues to take breaks, to mobilise, to prevent further blood clots. I recommend at least 10 minutes every 2 hours. He should also make regular postural changes as required.
>
> As his condition is ongoing and not fully controlled he needs regular medical attention. I recommend you continue to support him by allowing him time away from work to attend medical appointments. He may be advised regarding these at short notice, some may be prolonged and some delayed due to waiting times in the hospital. Time away from work to attend medical appointments should be managed in line with your internal policies.…"

31. On 3 June 2020 B, EOC Call Handling Team Leader, sent an email to the EMD management team (517) in which she stated that she had taken on the claimant as a team member and informed the management team:

> "P has 2 contradictory conditions relating to his blood; one that causes clotting and prevents it. He has also had an operation on his right leg, cannot weight bear and so uses his crutches, alongside painkillers. P presently has a blood transfusion 3 times a week (generally every 2 days) and his appointments are somewhat up in the air at the moment due to the pandemic, in terms of which department on which day he needs to attend; hence he tends to receive telephone calls to advise him, once the hospital has arranged it.
>
> P will be informed by me that any such telephone calls must be taken on Management Approved, so that we know where he is, if we do not see him leaving the room at the time.
>
> Please can we ensure that we support his need to take these telephone calls, away from his desk.
>
> An Occy Health assessment has been completed and, alongside with a letter from his GP, it has been recommended that mobilises every 2 hours to prevent a DVT; P is aware that these breaks need to be incorporated into his daily break allowance, alongside a 20 minutes 'meal' break, so again, please can we ensure that we accommodate these breaks as best as possible.
>
> I am aware that some of this information has not been distributed previously, however, going forward I will let you know anything else that has an impact on his working day so that we are all consistent in our approach and support of P.
> P is presently completing a 2 week EMD training course, after which he will be mentor for approximately 10 shifts before assessment (the same as the rest of the group) and is working a temporary rota which is due review at the end of June; he is also aware of this review.

> I am conscious that he does not have the best start in the room, in part due to the lack of information we've been given regarding his conditions and needs, so please can I ask that you support him where necessary and deal with any on-day issues directly with P, as you would with any EMD, however, please also let me know if it relates to any of the above, so that I can address it with him too."

32. On 6 January 2021 an Occupational Health report was provided to J (784). This confirmed that the claimant was working on previously agreed adjusted duties.

> "Today P confirms that he has a diagnosis of von Willebrand disease (VWD). This is a condition where a person can bleed more easily than normal. People with VWD have a low level of substance called von Willebrand factor in their blood, or it does not work very well. von Willebrand factor helps blood cells stick together (clot) when you bleed. Unfortunately, P also has issues with his blood clotting factor. In my opinion, it's these two conditions that make P's health so complex and difficult to manage. P also reports that he has been diagnosed with a pulmonary embolism (PE). This, in my opinion, is a serious medical condition. A pulmonary embolism is a blockage in one of the pulmonary arteries in the lungs.
>
> In my opinion, this case needs to be carefully managed in order to reduce any further ill-health. The answer, in my opinion, is to allow a reasonable adjustment of P to take breaks already outlined in his last Occupational Health report. Not to do so could, in my opinion, increase the risk to P of further health problems and further period of absence.
>
> P also reports that he requires to have medication, via an injection, during his working day. He finds he struggles with the supplied jacket due to the Velcro. If possible, could you please consider replacing his two issued jackets with ones that have a zip?
>
> Please note that this is a recommendation only. Implementation of the recommendation, which will be required in the long term, is ultimately a management decision. I leave it to you as the manager to decide if the recommendation and the recommendation about additional breaks are feasible for the business to support.

33. On 15 January 2021 (802) J wrote to the claimant stating:

> "I am writing to confirm the outcome of our meeting to review the advice from our Occupational Health team which was held on 7 January 2021 via Microsoft Teams. Also present on the call were Sharon Clothier, Unison representative and Michelle Woodger, Senior HR Advisor
>
> The meeting was convened following some email correspondence between ourselves and the subsequent OH report that was received on the back of the emails. The meeting was to allow us all to fully review any advice/guidance and look at the reasonable adjustments that could be made within the working environment.

I enquired about your current health, as you had put in your email your health had considerably worsened and was more serious. You advised that you had a PE, which resulted in a CT scan. Fortunately the clot hadn't got to your lungs but you were informed that you are now high risk of having a stroke. You are currently self isolating due to a Track and Trace contact due to coming into contact with someone who had a Covid Positive test.

You had been trialling a new medication which is administered orally drug, but this didn't have the desired effect so you reverted back to the twice daily injection. We then reviewed the OH report that had been received.

Jacket

You explain that the amendments to the current EOC jacket, where Velcro were added to the pockets, still wasn't fit for purpose, as you struggled to open the Velcro whilst using your crutches. You confirmed the need for pockets that can be closed, is to allow you to carry your injection vial. At this point you identified that the medication was a controlled drug, so we advised that this must be locked away in a locker whilst on shifts due to the associated risks. This information potentially has not been captured previously. It was still confirmed that a jacket with zips was still required for you to move around with the vial safely, so an order for the jacket will be placed (I can confirm this order has been sent to procurement).

Breaks

After discussing how best to accommodate the reasonable adjustments highlighted in the OH report, I felt there needed to be more consideration into the timeframe suggested. The time suggested would leave little margin for any delays, linked to you moving around the premises, and also when you need to administer the injection. To support you we agreed the below for your breaks, which needs to include you taking a contractual 20 minute break the below is more supportive than the OH report initially advised.

> Breaks – going forward 15 mins break every 2 hours plus a 20 mins break, which will be set at 1000/2200 hours (15 mins break), 1200/0000 hours(15 mins break) 1400/0200 (20 mins break), 1600-0400 hours (15 mins) and 1800/0600 hours (15 mins)

These will be added to the daily break list by the on Duty Team Leader, whenever you are on shift.

We discussed your health condition in relation to the current government guidance for extremely vulnerable people. You advised that you hadn't received a letter to shield, but due to recent PE and medical condition, we agreed I would organise for an YAS shielding risk assessment to be conducted by a Clinical Duty Manager. Following this meeting I can confirm the assessment was conducted and the advice from it is that you need to shield, which you have subsequently done.

> You confirmed that since we last met, you have been in on shift and you have positive experiences with the management team, they felt it was time to leave previous issues in the past and move forward within the team. You highlighted that your direct line manager, B , had been extremely supportive you are happy she would be a link to the wider Team leader group."

34. The claimant obtained secondary employment with Bradford District Care NHS Foundation Trust. He completed a secondary employment form and send it to D on 17 August 2021 (930).

35. On 29 August 2021 (938) D sent an email to the claimant following a discussion in respect of the secondary employment. It was indicated that the claimant had applied for a full-time position for several reasons:

> "… specifically due to the drop in wage that you had encountered since reducing your hours for your EMD position, and the inability to be able to work from home in your role as EMD…
>
> We discussed your current health condition and treatment requirements, which were the reasons for your drop in full time hours as EMD, to the 11.15 per week that you work currently. I asked whether this was still manageable for you, in conjunction with your new position, and you advised that it was. We discussed the options available to you either to remain in your current contracted hours, reduce your hours further or move on to a bank contract where there would be greater flexibility for you. You advised that you have sought advice from both Unison and HR with regard to the hours and fulfilling both requirements, and you are happy to maintain your current working conditions as EMD – i.e. working 11.15 hrs per week.…"

36. On 21 September 2021 J sent an email to the claimant (945) referring to the reduction in hours and indicating that if it was 12 hours a month, it would be a 3 hour a week contract and the claimant would need to complete two 6 hour shifts per month. 6 hour shifts do not get a meal break so the respondent would need to understand the claimant's additional break requirements.

37. The claimant sent an email to J on 22 September 2021 indicating that he was starting to recover from an operation and, if there were no further complications he could not see any reason to prevent him from attending work. He referred the option of two 6 hours shifts per month. With regard to breaks he referred to the previous OH report and hoped that was sufficient in detailing the position. He also requested flexibility to ensure that the shifts did not clash with his treatment.

38. On 21 October 2021 B (1094) sent an email to the duty managers referring to the claimant and asking:

> "Has anyone picked up the gauntlet yet, as DM?
> I am happy to have a conversation/email with P regarding the 3 monthly updates and take it from there, however I need the backing of a single point of contact i.e.

> a DM, as P likes to play us off one another and tell different stories, hence the reason why it was supposed to go through (D) or I only.
> Unfortunately, I did think that P was on set shifts each month social responsibility lies with me and for that I am sorry.
> Please let me know who was going to be my POC and I will in the meantime start the conversation with P via email (traceable and undisputable).

39. The claimant said that this showed contempt and showed that he was a problem. B said that she didn't think it was a problem and she had no contempt for him. The claimant appeared to misunderstand the reference as he repeatedly said that he had been referred to as a gauntlet. He also stated this in his submissions to the Tribunal.

40. On 31 October 2021 B sent an email to the EMD management team (1096) in which she indicated that the claimant had dropped his contracted hours to 12 hours per month which he generally worked over 2 times six hour shifts. It was stated that it had been agreed that he was entitled to a 20 minute scheduled break per six hour shift.

> "… Aside from that, as per OH advice, P still requires mobility breaks every 2hrs (10 mins) I've asked P use comfort break in pilot for these. P will therefore be taking x2 comfort breaks & x1 scheduled break on a 6-hr shift… "

41. On 24 April 2022 an Occupational Health report (1029) referred to the claimant's increased levels of stress and anxiety due to personal issues. It was advised that the claimant was fit to work with a restriction on emergency calls which the claimant found stressful for a period of three months or when his personal issues had been resolved.

42. The claimant was removed from emergency calls as a temporary adjustment from 1 May 2022 and temporarily redeployed to the role of Urgent Call Handler (UCH).

43. On 22 October 2022 the claimant sent an email to B (1108) indicating that his break allocation had been agreed in the letter from J dated 15 January 2021 where his break allocations had been agreed as 15 minutes every two hours. There had been no change in circumstances or need for the allocation to be adjusted and he said he was at a loss to understand why this had now changed to 10 minutes.

44. On 27 October 2022 B spoke to the claimant and sent an email to him (1118) confirming what had been agreed. The claimant was to take a 10 minute break at either 20:00 or 14:00 hours and a discretionary 15 minutes would be taken at 22:10/14:10 and the claimant was to put these breaks on the sheet himself.

45. On 29 November 2022 (1159) an Occupational Health report was provided to B in which it was indicated that the claimant medical conditions had resulted in a multitude of very severe and difficult to manage complications. The claimant seriously struggled with having to speak to patients in distress requiring assistance. He had no difficulties undertaking the rest of his duties. It was advised that the claimant should not be required to undertake that aspect of his role.

46. The claimant met with Michelle Woodger, a senior HR Adviser on 15 December 2022

47. On 15 December 2022 (1182) the claimant sent an email to Michelle Woodger and G in which he set out concerns that he had been placed on alternative duties (UCH) and had been for three months due to personal circumstances. He also referred to an expression of interest in respect of an Advanced EMD role for which he was unsuccessful. The claimant referred to being offered the Dispatcher post and that a reasonable adjustment should be made to the training length. He went on to indicate that they had discussed whether it was feasible to take a temporary leave of unpaid absence.

48. On 24 December 2022 (1191) the claimant sent an email to G indicating his understanding of the current position:

> "– Breaks: 10 minute breaks, every two hours, in addition to the normal break provisions i.e., if I work a 6 hour shift it would carry a 10 minute break every two hours, along with the discretionary 15 minutes. It is now my responsibility to put these shifts into the break sheet, escalating to team leader if there are any issues…"

49. On 29 March 2023, Darren Deakin, an EOC Clinical Duty Manager sent an email to the Room Management Team and EMD Management Team (1322) in which it was stated:

> "P is due back to work on 14 April 2023, following a recent absence.
> To support P's return to support his health and well-being, it has been agreed that P will receive urgent calls and those from Police and Fire.
>
> P has a complex medical history, and to support his needs and his health and welfare he has a preplanned break arrangement in addition to his statutory breaks, P has also been granted an extra 10 minutes every 2 hours. This should be planned in at the beginning of this shift to ensure cover is maintained.
>
> These arrangements have been agreed with G , so P should not be challenged on them, as the challenges have caused P concern in the past.
>
> Due to P's working pattern he has been advised to liaise with Scheduling about what shifts he needs to cover. P may also phone into EOC to ask if there are any shifts to cover at short notice. He is aware that if he calls at short notice we may advise him we don't need him in, based on numbers within the EOC at the time.
> If there are any queries from P that can be managed by the on-shift management team, they need to be escalated to G."

50. On 24 March 2023 the claimant presented a claim to the Employment Tribunal. He brought claims of disability discrimination.

51. On 23 May 2023 (1422) the claimant submitted a formal grievance. He stated:

> "Issues:
>
> 1. Treatment to date: I believe I have been discriminated against, consistently, throughout my employment with Yorkshire Ambulance Service NHS Trust. I believe there has been failures in supporting me with reasonable adjustments, and where these adjustments have been provided, I have been subject to inappropriate barriers and constraints.
>
> 2 I have received the Grounds of Resistance to my claim that an employment law Tribunal by Yorkshire Ambulance Service NHS Trust's instructed solicitors, Capsticks. Despite repeatedly accessing the Freedom to Speak Up process and formally escalating concerns throughout my employment, the Grounds of Resistance state that the issues I have documented do not exist, despite me having clear evidence that these incidents occurred. While I acknowledge that the Trust is entitled to defend my claims, I do not believe that it is appropriate, or justifiable, to deny that these incidents occurred…"

52. A grievance meeting took place with Claire Lindsay, the Head of Service Central Delivery on 8 June 2023. The claimant was accompanied by his Trade Union representative.

53. On 28 June 2023 Claire Lindsay wrote to the claimant confirming the outcome of his grievance (1468). The grievance outcome went through the concerns raised by the claimant and set out the five elements:

1 Uniform
2 Breaks
3 Enhanced EMD role
4 Comments (made to you by others)
5 Reasonable adjustments.

54. The outcomes were that the claimant's grievances were largely not upheld. The grievance in relation to E was partially upheld. It was found that E's behaviour was not acceptable but it was concluded that D had responded appropriately and dealt with it at the time which was more than three years earlier.

55.On 8 July 2023 the claimant appealed against the grievance outcome. The appeal was heard by Jackie Cole, the Deputy Director of Operations over two days, 15 August 2023 and 29 August 2023. The outcome was provided to the claimant on 20 September 2023 (1607). The claimant had been accompanied by his trade union representative.

56. In the outcome letter it was stated:

> "… It is my understanding that the "unfounded allegations" you refer to are;

a. That in 2020 concerns were reported that you had worn Ambulance uniform to hospital appointments (for which you later received an apology) and;

b. That in 2021 you were given Clinical Duty Manager epaulettes in error.

Claire's outcome letter details how the concerns as in points A and B were addressed. At no time were allegations of a formal disciplinary matter made against you and it is in my view important the management seek to understand concerns when they are raised. From our discussions I understand that your view is you were given Clinical Duty Manager epaulettes with the intention of subsequently taking action against you on the grounds that you ordered them whilst not entitled to such. It is clear that this is not the case; you are asked if these were in your possession and you return them; the matter was subsequently closed.

Your appeal continues to state that being asked for proof of your jacket having been damaged was further evidence of you having experienced difficulties in obtaining a jacket. Claire's letter details how she believes this is a normal course of action and does not constitute unreasonable scrutiny. In my experience working in management capacities I believe requesting evidence of damaged uniforms a normal course of action.

In summary I conclude that Claire's outcome in relation to this point is fair and reasonable and as such I do not uphold your appeal in relation to this point.

2 Breaks – delays and miscommunications

Claire did not uphold your grievance relating to this matter. In your appeal you state that you were not afforded reasonable adjustment breaks in addition to statutory breaks until late 2022. From the outset this matter appears to have been complicated – this is evidenced by email communication referred to by Claire which makes reference to "confusion on shift" and as *Claire* describes that arrangements related to your breaks have had to be reiterated on several occasions.

On reviewing the information I have available, notwithstanding that Occupational Health advice is just advisory, I can see that you were allocated x 5 15 minute breaks in 12 hours alongside your statutory 20 mins, this is over and above the advice of 10 mins every 2 hours. Once you move to 6 hours shifts this changed to x2 10 minute breaks with no statutory break for 6 hours and under worked. There was also the non-statutory 15 mins VDU break that all staff get regardless of shift length. I therefore do not uphold your appeal to this point.

3.. Recruitment for enhanced EMD role – process and communications

> … In your case following your application audits on your call to sort; it then transpired that insufficient audits had taken place; as such more audits were undertaken, the outcomes of which were failures.…
> You expressed your view that your application was not "materially different to 3 other EMDs" and that the reference from B was a criteria during recruitment. I note that Claire asked you to provide her with the details of those other staff members whose applications were similar to yours and that as of the date of the outcome letter you had not provided those to Claire. I therefore do not uphold your appeal to this point.
>
> 4. Comments made by others
>
> Claire upheld your grievance in part in relation to this matter, specifically in relation to comments made by E some three years prior. You stated at appeal that the emails you provided were illustrative only, and all you could find at short notice.
>
> I have now had time to review the emails Claire had access to and those you provided to myself and believe that these have been dealt with appropriately at the time. As we discussed at the meeting, the emails you provided me with were at some points so heavily redacted that they lacked context and therefore could have contributed to how you were reading them. Having reviewed emails from B I do not believe this shows her to not be upholding the YAS values. I therefore do not uphold your appeal on this point.
>
> 5. Reasonable adjustments
>
> Further to our conversations it is my understanding that you wish to be offered a Band 2 role on Band 3 pay. You explained that you are unable to undertake the full duties of the Band 3 post for personal reasons as you do not agree with the dispositions in the Call Handling scripts, and this causes your ongoing stress. As Claire states in her outcome, the Trust operates a Redeployment Policy and I agree with her that you be supported under this policy appropriately. I recommend that the Trust Pay Protection Policy is also considered in connection to this. As such, I do not uphold this part of your grievance.
>
> This represents the end of the internal mechanism and there is no further right to appeal."

57. The respondent has agreed to commission a further independent investigation into the handling of the claimant's grievances and concerns. This is ongoing.

58. On 16 September 2023, the claimant attended work and became aware that he had access to certain documents and files on his computer which he would not usually be able to access. The claimant advised an EOC Deputy Manager, of

the potential data breach and governance issue. The Deputy Manager reported this to the IT department. The claimant's email account was temporarily disabled to enable an investigation to take place.

59. A controlled IT test took place on 11 October 2023, The Deputy Manager who had reported the issue, an HR adviser and an IT analyst were present so that questions could be addressed.

60. Following the IT test, the claimant had a discussion with J. The claimant suggested that he did not trust J told the claimant that he would hand over his management to another member of staff. J was off work sick with stress after this discussion

61. On or around 12 October 2023, it was agreed by the Head of EOC, that the claimant could take a further two months paid leave following a request from the claimant.

62. On 16 October 2023 I wrote to the claimant(1650) advising that she would act as a single point of contact. She stated:

> "Further to recent correspondence between yourself and various members of the EOC management team. I am writing to put in place a communications plan for you, so that your correspondence with the management team can be managed appropriately moving forward. I am of the view that having a single point of contact will allow the Trust to address the multiple concerns you have raised through a different route more effectively, at the same time as supporting you appropriately.
>
> As you are aware, there are a number of unresolved issues relating to your employment with YAS., some of which are subject to a new grievance which is due to be heard this week by Chris Dexter (Managing Director – PTS). The number of people involved in supporting these processes has meant that communications are taking place in different formats, with several individuals and with a frequency that has become difficult to manage. This is not conducive to wire yes being able to respond to your concerns efficiently or effectively. I am concerned that this may impact on our ability to reach an agreeable resolution in a timely manner and in turn impact on your well-being.
>
> As such, with immediate effect, please only make contact with me until further notice, on any issue that does not pertain to your current life grievance. I will allow time to correspond with you on a weekly basis as necessary and respond to any time critical issues arising as quickly as possible and I will liaise with the EOC management team when necessary. With respect to your live grievance process, I must ask that you also please keep any correspondence limited to Chris Dexter and/or Ruth Davies (HR Business Partner) on this matter.

> This does not affect your ability to raise concerns via the Freedom to Speak Up process however please be assured that you are free to continue to do so. For the avoidance of doubt, none of the above apply to your contact with your trade union representative either and I have shared a copy of this letter with Bryn Webster (UNISON Branch Chair).
>
> I understand Claire Lindsay (Head of EOC) has now agreed to grant you a period of two months' paid leave and you are not expected to attend work during that time, other than planned meetings, such as your grievance hearing. As such, please assume that the above communications plan will remain in place at least for the duration of this period of leave. I will then review this with you when that is due to end.…"

The law

Disability Discrimination

63. Section 6 of the Equality Act 2010 states:

> (1) A person (P) has a disability if—
>
> (a) P has a physical or mental impairment, and
>
> (b) The impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

Under paragraph 2(1) schedule 1 to the Equality Act it is provided:

> Long-term effects
>
> (1) The effect of an impairment is long-term if—
>
> (a) It has lasted for at least 12 months,
>
> (b) It is likely to last for at least 12 months, or
>
> (c) It is likely to last for the rest of the life of the person affected.
>
> (2) If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.

64. Section 212 provides that "substantial" means more than minor or trivial.

Time limits

65. Section 123 of the Equality Act 2010 states:

> (1)...Proceedings on a complaint within section 120 may not be brought after the end of—
>
> (a) the period of 3 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.
>
> ...
>
> (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) a failure to do something is to be treated as occurring when the person in question decided on it.
>
> (4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
>
> (a) when P does an act inconsistent with doing it, or
>
> (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

66. The Court of Appeal made it clear in **Hendricks v Metropolitan Police Comr [2002] EWCA Civ 1686,** that in cases involving a number of allegations of discriminatory acts or omissions, it is not necessary for a claimant to establish the existence of some 'policy, rule, scheme, regime or practice, in accordance with which decisions affecting the treatment of workers are taken'. Rather, what he has to prove, in order to establish 'an act extending over a period', is that (*a*) the incidents are linked to each other, and *(*b*)* that they are evidence of a 'continuing discriminatory state of affairs'. The focus of the enquiry should be on whether there was an "ongoing situation or continuing state of affairs" as opposed to "a succession of unconnected or isolated specific acts". It will be a relevant, but not conclusive, factor whether the same or different individuals were involved in the alleged incidents of discrimination over the period. An employer may be responsible for a state of affairs that involves a number of different individuals.

67. In the case of **Humphries v Chevler Packaging Ltd EAT 0224/06** the EAT confirmed that a failure to act is an omission and that time begins to run when an employer decides not to make reasonable adjustment. In the case of **Kingston upon Hull City Council v Matuszowicz 2009 ICR 1170. T**he Court of Appeal held that where an employer was not deliberately failing to comply with the duty and the omission was due to lack of diligence or competence, or any reason other than conscious refusal, it is to be treated as having decided upon the omission when the person does an act inconsistent with doing the omitted act or when, if the employer had been acting reasonably, it would have made the adjustments. In the Court of Appeal case of **Abertawe Bro Morgannwg University v Morgan [2018] WLR197** it was stated:

> "In the case of omissions, the approach taken is to establish a default rule that time begins to run at the end of the period in which the respondent might reasonably have been expected to comply with the relevant duty. Ascertaining when the respondent might reasonably have been expected to comply with its duty is not the same as ascertaining when the failure to comply with the duty began. Pursuant to section 20 (3) of the Equality Act, the duty to comply with the requirement relevant in this case begins as soon as the employer is able to take steps which it is reasonable for the employer to have to take to avoid the relevant disadvantage. It can readily be seen, however, that if time began to run on that date, a claimant might be unfairly prejudiced. In particular, the claimant might reasonably believe that the employer was taking steps to seek to redress the relevant disadvantage, when in fact the employer was doing nothing at all. If this situation continued for more than three months, by the time it became a should have become apparent to the claimant that the employer was in fact sitting on its hands, the primary time limit for bringing proceedings would already have expired."

68. The Tribunal has discretion to extend time if it is just and equitable to do so, the onus is on the claimant to convince the Tribunal that it should do so, and 'the exercise of discretion is the exception rather than the rule' (**Robertson v Bexley Community Centre [2003] EWCA Civ 576** per Auld LJ *at para 25)*.

. 69. Discretion to grant an extension of time under the just and equitable formula has been held to be as wide as that given to the Civil Courts by Section 33 of the Limitation Act 1980 **British Coal Corporation v Keeble** [1997] IRLR 336. Under that section the court is required to consider the prejudice which each party would suffer as a result of granting or refusing an extension having regard to all of the circumstances, in particular:-

> (a) The length of and the reason for the delay;
>
> (b) The extent to which the cogency of the evidence is likely to be affected by the delay;
>
> (c) The extent to which the parties sued had cooperated with any request for information;
>
> (d) The promptness with which the claimant acted once he or she knew of the facts giving rise to the course of action; and
>
> (e) The steps taken by the claimant to obtain appropriate professional advice once he or she knew of the possibility of taking action.

70. These are checklists useful for a Tribunal to determine whether to extend time or not. Using internal proceedings is not in itself an excuse for not issuing within time see **Robinson v The Post Office** but is a relevant factor.

71. Time limits are short for a good purpose to get claims before the Tribunal when the best resolution is possible. If people come to the Tribunal promptly when they have reached a point where the employer has said it will not take a step which the claimant believes should be taken, then, if it agrees with the claimant, the Tribunal can make a constructive recommendation. Left unresolved, omissions by employers often have devastating consequences when it is too late to remedy in that way.

Discrimination arising from Disability

72. Section 15 of the Equality Act 2010 states:

> "(1) A person (A) discriminates against a disabled person (B) if –
>
> (a) A treats B unfavourably because of something arises in consequences of B's disability, and
>
> (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.
>
> (2) Sub-Section (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.

73. Under section 15 there is no requirement for a Claimant to identify a comparator. The question is whether there has been unfavourable treatment: the placing of a hurdle in front of, or creating a particular difficulty for, or disadvantaging a person; see Langstaff J in **Trustees of Swansea University Pension & Assurance Scheme & Anor v Williams UKEAT/0415/14** at paragraph 28. As the EAT continued in that case (see paragraph 29 of the Judgment), the determination of what is unfavourable will generally be a matter for the Employment Tribunal.

74. The starting point for a Tribunal in a section 15 claim has been said to require it to first identify the individuals said to be responsible and ask whether the matter complained of was motivated by a consequence of the Claimant's disability; see **IPC Media Ltd v Millar [2013] IRLR 707**: was it because of such a consequence?

75. With regard to justification, The EAT in **Hensman v Ministry of Defence UKEAT/0067/14/DM, [2014] EQLR 670** applied the justification test as described in **Hardy and Hansons Plc v Lax [2005] ICR 1565**, CA to a claim of discrimination under section 15 Equality Act 2010. Singh J held that when assessing proportionality, while an ET must reach its own judgment, that must in turn be based on a fair and detailed analysis of the working practices and business considerations involved, having particular regard to the business needs of the employer. In effect the Tribunal needs to balance the discriminatory effect of the stated treatment against the legitimate aims of the employer on an objective basis in considering whether any unfavourable treatment was justified.

76. The statute provides that there will be no discrimination where a respondent shows the treatment in question is a proportionate means of achieving a

legitimate aim or that it did not know or could not reasonably have known the Claimant had that disability.

77. In the case of **Pnaiser v NHS England [2016] IRLR 170** it was provided as follows:

"In the course of submissions I was referred by counsel to a number of authorities including **IPC Media Ltd v Millar [2013] IRLR 707, Basildon & Thurrock NHS Foundation Trust v Weerasinghe UKEAT/0397/14/RN** and **Hall v Chief Constable of West Yorkshire Police [2015] IRLR 893**, as indicating the proper approach to determining section 15 claims. There was substantial common ground between the parties. From these authorities, the proper approach can be summarised as follows:

(a) A Tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises.

(b) The Tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a section 15 case. The 'something' that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.

(c) Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A's motive in acting as he or she did is simply irrelevant: **see Nagarajan v London Regional Transport [1999] IRLR 572**. A discriminatory motive is emphatically not (and never has been) a core consideration before any prima facie case of discrimination arises.

(d) The Tribunal must determine whether the reason/cause (or, if more than one), a reason or cause, is "something arising in consequence of B's disability". That expression 'arising in consequence of' could describe a range of causal links. Having regard to the legislative history of section 15 of the Act (described comprehensively by Elisabeth Laing J in Hall), the statutory purpose which appears from the wording of section 15, namely to provide protection in cases where the consequence or effects of a disability lead to unfavourable treatment, and the availability of a justification defence, the causal link between the something that causes unfavourable treatment and the disability may include more than one link. In other words, more than one relevant consequence of the disability may require consideration, and it will be a question of fact assessed robustly in each case whether something can properly be said to arise in consequence of disability.

(e) For example, in **Land Registry v Houghton UKEAT/0149/14** a bonus payment was refused by A because B had a warning. The warning was given for absence by a different manager. The absence arose from disability. The Tribunal and HHJ Clark in the EAT had no difficulty in concluding that the statutory test was met. However, the more links in the chain there are between the disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact.

(f) This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.

(g) Miss Jeram argued that "a subjective approach infects the whole of section 15" by virtue of the requirement of knowledge in section 15(2) so that there must be, as she put it, 'discriminatory motivation' and the alleged discriminator must know that the 'something' that causes the treatment arises in consequence of disability. She relied on paragraphs 26 to 34 of **Weerasinghe** as supporting this approach, but in my judgment those paragraphs read properly do not support her submission, and indeed paragraph 34 highlights the difference between the two stages - the 'because of' stage involving A's explanation for the treatment (and conscious or unconscious reasons for it) and the 'something arising in consequence' stage involving consideration of whether (as a matter of fact rather than belief) the 'something' was a consequence of the disability.

(h) Moreover, the statutory language of section 15(2) makes clear (as Miss Jeram accepts) that the knowledge required is of the disability only, and does not extend to a requirement of knowledge that the 'something' leading to the unfavourable treatment is a consequence of the disability. Had this been required the statute would have said so. Moreover, the effect of section 15 would be substantially restricted on Miss Jeram's construction, and there would be little or no difference between a direct disability discrimination claim under section 13 and a discrimination arising from disability claim under section 15.

(i) As Langstaff P held in **Weerasinghe**, it does not matter precisely in the whole which order these questions are addressed. Depending on the facts, a Tribunal might ask why A treated the claimant in the unfavourable way alleged in order to answer the question whether it was because of "something arising in consequence of the claimant's disability". Alternatively, it might ask whether the disability has a particular consequence for a claimant that leads to 'something' that caused the unfavourable treatment."

78. In the case of **City of York Council v Grosset [2018] IRLR 746** the Court of Appeal held that section 15(1)(a) requires an investigation of two distinct causative issues: (i) did A treat B unfavourably because of an (identified) 'something'? (ii) and did that 'something' arise in consequence of B's disability?

Failure to make reasonable adjustments

79. Section 20(3) of the Equality act 2010 provides:

> "…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, [there is a requirement] to take such steps as it is reasonable to have to take to avoid the disadvantage."

80. Section 212(1) provides that "Substantial" is defined to mean "more than minor or trivial".

Whilst there is no definition of 'provision, criterion or practice' found in the legislation, and it is left to the judgment of individual Tribunals to see whether conduct fits this description, not every act complained of is capable of amounting to a PCP. In **Simler LJ in Ishola v Transport for London [2020] IRLR 368** Simler LJ stated:

> "In my judgment, however widely and purposively the concept of a PCP is to be interpreted, it does not apply to every act of unfair treatment of a particular employee. That is not the mischief which the concept of indirect discrimination and the duty to make reasonable adjustments are intended to address. If an employer unfairly treats an employee by an act or decision and neither direct discrimination nor disability related discrimination is made out because the act or decision was not done/made by reason of disability or other relevant ground, it is artificial and wrong to seek to convert them by a process of abstraction into the application of a discriminatory PCP.
>
> In context, and having regard to the function and purpose of the PCP in the Equality Act 2010, all three words carry the connotation of a state of affairs (whether framed positively or negatively and however informal) indicating how similar cases are generally treated or how a similar case would be treated if it occurred again. It seems to me that 'practice' here connotes some form of continuum in the sense that it is the way in which things generally are or will be done. That does not mean it is necessary for the PCP or 'practice' to have been applied to anyone else in fact. Something may be a practice or done 'in practice' if it carries with it an indication that it will or would be done again in future if a hypothetical similar case arises. Like Kerr J, I consider that although a one-off decision or act can be a practice, it is not necessarily one."

81. In **Environment Agency v Rowan [2008] IRLR 20**, the EAT provided guidance on how an Employment Tribunal should approach a reasonable adjustments claim The Tribunal 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."

82. In **Bank of Scotland v Ashton [2011] ICR 632**, Langstaff J held:

> " The Act demands an intense focus by an Employment Tribunal on the words of the statute. The focus is on what those words require. What must be avoided

> by a tribunal is a general discourse as to the way in which an employer has treated an employee generally or (save except in certain specific circumstances) as to the thought processes which that employer has gone through."

83. In **Chief Constable of Lincolnshire Police v Weaver UKEAT/0622/07/DM**, the EAT held that a Tribunal must also take into account wider implication of any proposed adjustment, not just focus on the claimant's position. This may include operational objectives of the employer, which may include the effect on other workers.
Schedule 8 of the Equality Act 2010 provides that an employer is not under a duty to make reasonable adjustments unless it knows or ought to know the employee has a disability and is likely to be placed at the substantial disadvantage in question.

Harassment

84. Section 26 of the Equality Act provides

> (1) A person (A) harasses another (B) if--
> (a) A engages in unwanted conduct related to a relevant protected characteristic, and
>
> (b) the conduct has the purpose or effect of--
>
> (i) violating B's dignity, or
>
> (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.
>
> (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
>
> (a) the perception of B;
>
> (b) the other circumstances of the case;
>
> (c) whether it is reasonable for the conduct to have that effect.

85. The test is part objective and part subjective. It requires that the Tribunal takes an objective consideration of the claimant's subjective perception. was reasonable for the claimant to have considered her dignity to be violated or that it created an intimidating, hostile, degrading, humiliating or offensive environment.

86. In the case of **Grant v HM Land Registry [2011] IRLR 748** the Court of Appeal said that:

> "Tribunals must not cheapen the significance of the words "intimidating, hostile, degrading, humiliating or offensive environment". They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment."

87. In the case of **Richmond Pharmacology v Dhaliwal [2009] IRLR 336** the EAT stated

"We accept that not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase."

Victimisation

88. Section 27 of the Equality Act provides as follows:-

(1) A person (A) victimises another person (B) if A subjects B to a detriment because--

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act--

(a) Bringing proceedings under this Act;

(b) Giving evidence or information in connection with proceedings under this Act;

(c) Doing any other thing for the purposes of or in connection with this Act;

(d) Making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

89. In a victimisation claim there is no need for a comparator. The Act requires the Tribunal to determine whether the claimant had been subject to a detriment because of doing a protected act. As Lord Nicholls said in **Chief Constable of the West Yorkshire Police v Khan [2001] IRLR 830**:-

"The primary objective of the victimisation provisions ... is to ensure that persons are not penalised or prejudiced because they have taken steps to exercise their statutory right or are intending to do so".

90. The Tribunal has to consider (1) the protected act being relied on; (2) the detriment suffered; (3) the reason for the detriment; (4) any defence; and (5) the burden of proof. To benefit from protection under the section the claimant must have done or intended to or

be suspected of doing or intending to do one of the four kinds of protected acts set out in the section. The allegation relied on by the claimant must be made in good faith. It is not necessary for the claimant to show that he has a particular protected characteristic but the claimant must show that he has done a protected act. The question to be asked by the Tribunal is whether the claimant has been subjected to a detriment. There is no definition of detriment except to a very limited extent in Section 212 of the Act which says, "Detriment does not ... include conduct which amounts to harassment". The judgment in **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285** is applicable.

91. The protected act must be the reason for the treatment which the claimant complains of, and the detriment must be because of the protected act. There must be a causative link between the protected act and the victimisation and accordingly the claimant must show that the respondent knew or suspected that the protected act had been carried out by the claimant, see **South London Healthcare NHS Trust v Al-Rubeyi** EAT0269/09. Once the Tribunal has been able to identify the existence of the protected act and the detriment the Tribunal has to examine the reason for the treatment of the claimant. This requires an examination of the respondent's state of mind. Guidance can be obtained from the cases of **Nagarajan v London Regional Transport** [1999] IRLR 572 and **Chief Constable of West Yorkshire Police v Khan** [2001] IRLR 830, and **St Helen's Metropolitan Borough Council v Derbyshire** [2007] IRLR 540. In this latter case the House of Lords said there must be a link in the mind of the respondent between the doing of the acts and the less favourable treatment. It is not necessary to examine the motive of the respondent see **R (on the application of E) v Governing Body of JFS and Others** [2010] IRLR 136. In **Martin v Devonshires Solicitors EAT0086/10** the EAT said that:

> "…The question in any claim of victimisation is what was the "reason" that the respondent did the act complained of: if it was, wholly or in substantial part, that the claimant had done a protected act, he is liable for victimisation; and, if not, not. In our view there will in principle be cases where an employer had dismissed an employee (or subjected him to some other detriment) in response to a protected act (say, a complaint of discrimination) but he can, as a matter of common sense and common justice, say that the reason for dismissal was not the act but some feature of it which could properly be treated as separable. The most straightforward example this were the reason relied on is the manner of the complaint.…

92. In establishing the causative link between the protected act and the less favourable treatment, the Tribunal must understand the motivation behind the act of the employer which is said to amount to the victimisation. It is not necessary for the claimant to show that the respondent was wholly motivated to act as it did because of the protected acts, **Nagarajan v Agnew [1994] IRLR 61**. In **Owen and Briggs v James [1982] IRLR 502** Knox J said:-

> "Where an employment tribunal finds that there are mixed motives for the doing of an act, one or some but not all of which constitute unlawful discrimination, it is highly desirable for there to be an assessment of the importance from the causative point of view of the unlawful motive or motives. If the employment tribunal finds that the unlawful motive or motives were of sufficient weight in the decision making process to be treated as a cause, not the sole cause but as a cause, of the act thus motivated, there will be unlawful discrimination."

93. In **O' Donoghue v Redcar and Cleveland Borough** Council [2001] IRLR 615 the Court of Appeal said that if there was more than one motive it is sufficient that there is a motive that there is a discriminatory reason, as long as this has sufficient weight.

Burden of Proof

94. Section 136 of the Equality Act 2010 states:

> "(1) This Section applies to any proceedings relating to a contravention of this Act.
>
> (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.
>
> (4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or Rule.
>
> (5) This Section does not apply to proceedings for an offence under this Act.
>
> (6) A reference to the court includes a reference to –
>
> (a) An Employment Tribunal."

95. Guidance has been given to Tribunals in a number of cases. In **Igen v Wong [2005] IRLR 258** and approved again **in Madarassy v Normura International plc [2007] EWCA 33.**

96. To summarise, the claimant must prove, on the balance of probabilities, facts from which a Tribunal could conclude, in the absence of an adequate explanation that the respondent had discriminated against her. If the claimant does this, then the respondent must prove that it did not commit the act. This is known as the shifting burden of proof. Once the claimant has established a prima facie case (which will require the Tribunal to hear evidence from the claimant and the respondent, to see what proper inferences may be drawn), the burden of proof shifts to the respondent to disprove the allegations. This will require consideration of the subjective reasons that caused the employer to act as he did. The respondent will have to show a non-discriminatory reason for the difference in treatment. In the case of **Madarassy** the Court of Appeal made it clear that the bare facts of a difference in status and a difference in treatment indicate only a possibility of discrimination: "They are not, without more, sufficient material from which a tribunal 'could conclude' that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination".

97. In the case of **Strathclyde Regional Council v Zafar [1998] IRLR 36** the House of Lords held that mere unreasonable treatment by the employer

"casts no light whatsoever" to the question of whether he has treated the

employee “unfavourably”.

98. In **Law Society and others v Bahl [2003] IRLR 640** the EAT agreed that mere unreasonableness is not enough. Elias J commented that:

> “all unlawful discriminatory treatment is unreasonable, but not all unreasonable treatment is discriminatory, and it is not shown to be so merely because the victim is either a woman or of a minority race or colour … Simply to say that the conduct was unreasonable tells nothing about the grounds for acting in that way … The significance of the fact that the treatment is unreasonable is that a tribunal will more readily in practice reject the explanation given for it than it would if the treatment were reasonable.”

99. A Tribunal must also take into consideration all potentially relevant non-discriminatory factors that might realistically explain the conduct of the alleged discriminator.

100. The Tribunal had the benefit of detailed written and oral submissions provided by the claimant and Mr O’Keeffe on behalf of the respondent. These were helpful. They are not set out in detail but both parties can be assured that the Tribunal has considered all the points made and all the authorities relied upon, even where no specific reference is made to them.

Conclusions

101. The Tribunal has given careful consideration to the identified issues as follows:

Time limits

1.1. Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 10 November 2022 may not have been brought in time.

1.2. Were the discrimination (and victimisation complaints allowed on amendment, but with some detriments dependent on the Tribunal finding there to be conduct extending over a period) made within the time limit in section 123 of the Equality Act 2010?

The Tribunal will decide:

1.2.1. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?

1.2.2. If not, was there conduct extending over a period?

1.2.3. If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.2.4. If not, were the claims made within a further period that the Tribunal thinks is just and equitable?

The Tribunal will decide:

1.2.4.1. Why were the complaints not made to the tribunal in time?

1.2.4.2. In any event, is it just and equitable in all the circumstances to extend time?

102. The claimant submitted that there was conduct extending over a period and, in any event, it is just and equitable for the Tribunal to extend time.

103. The Tribunal is not satisfied that there was conduct extending over a period. Many of the allegations were against different individuals and at different times. They have each been considered individually and the totality of the situation is also taken into account.

104. With regard to just and equitable extension of time, there was no medical evidence of the claimant being unable to present a claim to the Tribunal within time. He submitted that he "physically would not have been able to bring this claim any earlier" and that he did everything he could to try and resolve these issues internally.

105. The claimant has additional full-time employment (37.5 hours per week) in a senior position within the NHS since August 2021 in which he says that he has excelled. He has achieved promotion and he said that he provides detailed reports at a high level. He has continued to engage in detailed and lengthy correspondence with the respondent. The Tribunal is not satisfied that there was any medical reason why he was prevented from issuing proceedings within the time limits.

106. The claimant said that he had been "gaslit" by the respondent. However, the claimant had the benefit of trade union assistance throughout the material time. The Tribunal is not satisfied that claimant has established that it would be just and equitable to extend time.

107. The balance of prejudice has been considered in respect of each of the alleged acts of discrimination.

2. Discrimination arising from disability (S15 Equality Act 2010)

2.1. Did the respondent treat the claimant unfavourably by:

2.1.1. J allegedly refusing the claimant's application for the role of enhanced emergency medical dispatcher in October 2022.

108. J said that he refused the application as the claimant did not score as well as the other applicants.

109. The claimant did not apply for the role in January 2022 but he was asked to and completed an expression of interest form (1076 – 1079) in September 2022. The

respondent did not carry out an application process. Team Leaders were asked to provide supporting statements (1080). This arrangement had been agreed with the trade union representatives.

110. B was the claimant's Team Leader and did not support his application at the time as she said that the claimant was not confident in his own call taking skills and required assistance.

111. B was of the view that the claimant was not undertaking his full range of EMD duties and would need to get up to speed before he could mentor other members of the team. She said that she did not support his application as she did not consider the claimant to be confident enough in his role to be able to safely support and mental other staff. The claimant was not undertaking a full range of his EMD duties and he was not working at the required level of competence and confidence. It was not correct that he was unsuccessful in his application because of his part time hours.

2.2. Did the following things arise in consequence of the claimant's disability:

2.2.1. The claimant says that his disabilities require him to work part time hours. The claimant, it is clear from his clarification, relies on all his disability impairments which can and do result in a need for treatment or attention and the need for the claimant to take breaks to administer that treatment/attention.

112. The claimant works full-time in secondary employment with NHS England. He said that he could manage this work to fit around his medical treatments and his condition.

2.2.2. It is said that J told him that the enhanced emergency medical dispatcher role was not conducive to part- time hours.

2.3. Was the unfavourable treatment because of any of those things?

2.4. Was the treatment a proportionate means of achieving a legitimate aim?

2.5. The Tribunal will decide in particular:

2.5.1. was the treatment an appropriate and reasonably necessary way to achieve those aims;

2.5.2. could something less discriminatory have been done instead;

2.5.3. how should the needs of the claimant and the respondent be balanced?

2.6. Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

113. B had sent an email to J on 10 January 2022 which stated:

> "Trying hard not to send an eye roll...surely the fact that he only works 12hrs a month & this is technically his secondary job, would that not be reason enough for us to discount an application from him for this position? Or would that be putting him at detriment for being part time?…"

114. J's evidence was clear and credible that this comment by B had no relevance to his decision. The fact that the claimant worked 12 hours per month was not relevant.. He gave clear and credible evidence that he did not tell the claimant that the enhanced emergency dispatcher role was not conducive to part time hours.

115. There were 45 successful applicants and 21 of them were part-time. 15 applicants were unsuccessful.

116. The claimant had not been taking emergency calls since April 2022 and it was considered that he was not confident to be able to mentor others taking such calls.

117. The Tribunal is not satisfied that the claimant has established that his part-time hours were the reason or a significant or material influence on the decision not to appoint the claimant to the enhanced emergency medical dispatcher role.

118. The burden of proof did not shift to the respondent and, had it done so, the Tribunal is satisfied that the respondent has established a non-discriminatory reason for not appointing the claimant to the enhanced emergency medical dispatcher role as he was not considered confident or competent to carry out the role.

119. The claim of discrimination arising from disability was, in any event, out of time. The claimant had been informed that he had not been successful in this application, together with others, on 18 October 2022. The claim should have been presented by 17 January 2023 and was therefore two months out of date when it was presented on 24 March 2023. The claimant provided no reason for the failure to present the claim in time.

120. The Tribunal is not satisfied that it would be just and equitable to extend time.

3. Reasonable Adjustments (sections 20 & 21 Equality Act 2010)

3.1. Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

121. The respondent accepted that the Claimant was disabled at the relevant times within the meaning of the Equality Act 2010 by way of Von Willebrand's Disease, Factor VII Deficiency, Compartment Syndrome, Unprovoked DVTs, Recurrent Epistaxis, Anaemia and Asthma.

122. The respondent was aware of claimant's disability at the material time

3.2. A "PCP" is a provision, criterion or practice. Did the respondent have the following PCP:

3.2.1. The requirement to undertake duties with only 10 minute breaks every two hours inclusive of the statutory entitlement to breaks pursuant to the Working Time Regulations - in fact it is clear that the claimant's case on clarification is that he more straightforwardly required breaks which were not allowed to him, regardless of the length of shifts worked by the claimant and including where there was no entitlement to statutory rest breaks. The PCP ought in such circumstances to be framed as the respondent's policy and practice of allowing rest breaks for staff performing the claimant's role.

123. The respondent accepts that it has PCP consisting of rest breaks applied to Emergency Medical Dispatchers and that this was applied to the claimant subject to adjustments.

3.3. Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that:

3.3.1. the claimant's disabilities caused blood clotting in the claimant's legs. He therefore needed to move around more frequently to avoid blood clotting; the claimant, it is clear from his clarification, relies on all his disability impairments which can and do result in a need for treatment or attention and the need for the claimant to take more breaks, than would an employee who does not share his disabilities, to administer that treatment/give that attention.

124. Following a meeting with the claimant, Linden Horwood instructed the managers that the claimant was entitled to four 10 breaks and a fifth 20 minute break (503).

125. On 30 August 2020 C informed the management team that the claimant would be taking 15 minute break every two hours and break to make a cup of tea strange (624).

126. There were further agreed working practices following this in respect of the claimant's breaks until the arrangement agreed with J when he reduced his hours to 12 hours a month from 1 October 2021 (948).

3.4. Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?

127. The claimant was provided with appropriate rest breaks and there was no evidence that he experienced a substantial disadvantage.

3.5. What steps could have been taken to avoid the disadvantage? The claimant suggests:

3.5.1. Formally implemented breaks of 10 minutes every two hours during shifts; allowing increased breaks generally including to lessen the risk of DVTs

3.6. Was it reasonable for the respondent to have to take those steps and when?

3.7. Did the respondent fail to take those steps?

128. The claimant was entitled to two 10 minute breaks and the adjustments requested were put in place. There were some communication problems and difficulties with messages between the managers, some involving the claimant, which were repeating the arrangements for breaks.

129. There was no evidence that the claimant was prevented from taking breaks. The claimant was concerned that he had been questioned on a number of occasions by managers at the time.

130. The claim of failure to make reasonable adjustments was considerably out of time. The claimant made allegations relating to May 2020. Mr O'Keeffe submitted that the respondent was clearly prejudiced in its ability to provide evidence on (i) what disadvantage, if any, the claimant appeared to experience by the respondent's system of rest breaks, (ii) what it knew or ought to have known about the same, in particular, on the basis of what the claimant did or did not tell the respondent's employees and (iii) whether any adjustment to that system of breaks would have avoided the disadvantage in light of the claimant's practice in relation to his breaks.

131. The Tribunal is not satisfied that the claimant has established that he was placed at any substantial disadvantage by the system of breaks applied by the respondent and, in any event, this claim is substantially out of time and it is not just and equitable to extend time for the reasons set out in respect of time limits and that the balance of prejudice was against the respondent.

4**. Harassment related to disability (s26 Equality Act 2010**)

4.1. Did the respondent do the following things:

4.1.1. On 7 May 2020, A asked the Claimant to justify his disabilities and requirement for additional breaks in front of his colleagues;

132. A said that she did not recall this incident however, she appears to raise it in an email on that day (487). The claimant said that he was asked to explain his disability in front of everyone. Also C (510) referred to the claimant having a problem with A.

133. When the claimant was cross-examining A she denied requiring claimant to justify his disabilities. She agreed that she had queried the arrangements for breaks. She said that she would not question the reason behind it or discuss it publicly. The claimant then said all he could do was to explain his disability.

134. The Tribunal finds that the claimant felt obliged to volunteer information about his disabilities rather than being asked to justify them.

135. The Tribunal is not satisfied that this had the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant taking into account whether it was reasonable for the conduct to have that effect when considering the perception of the claimant and the other circumstances of the case.

136. Also, taking into account the other allegations of harassment, it was not conduct extending over a period time. A said that that she was struggling to remember what had happened and her evidence was based on what she could from the contemporaneous documents. The claimant was also struggling to. There was demonstrable prejudice to the respondent and it is not just and equitable to extend time.

> 4.1.2. On 5 September 2020, H publicly challenged the Claimant on his additional breaks and advised that he was not entitled to them. She also asked the Claimant to clarify the exact nature of his disabilities in front of his colleagues;
>
> .

137. H denied this. She was not working on 5 September 2020. The claimant modified this to around 5 September 2020 and that it was likely to be 3 September 2020. H commenced that shift at 16:00 that evening. She had recently returned to work following a period off work shielding. The claimant completed his shift at 18:00. H said that the claimant approached her to introduce himself and gave details of his blood condition that put him at risk of DVT. She did not challenge the claimant on his breaks or advise him that he was not entitled to them.

138. The Tribunal is not satisfied that this had the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant taking into account whether it was reasonable for the conduct to have that effect when considering the perception of the claimant and the other circumstances of the case.

139. It was submitted by Mr O'Keeffe that this is a stark example of the claim in relation to which time should not be extended. Neither the claimant nor H were clear about the incident or when it took place. It was submitted that the best that could be done was that the incident likely played out in a similar way to the incident involving A in which the claimant unreasonably expected a member of staff recently returned from shielding to be aware of his particular breaks. The claimant then felt obliged to volunteer details of his condition in response to a question about the agreement that was in place.

> 4.1.3. On 5 September 2020, C publicly challenged the Claimant on his additional breaks, was rude to him and advised that he was not entitled to them. C asked him to clarify his disabilities and stated that she was fed up with the Claimant and the issues;

140. The Tribunal is not satisfied that the claimant has established that he was informed by C that he was not entitled to additional breaks. C had been aware of why the claimant required the breaks and any discussion was with regard to the issue of how the claimant was recording his breaks. The Tribunal is not satisfied that the claimant was asked by C to clarifies disabilities or stated that she was fed up with the claimant and the issues.

141. There was no credible evidence that C had acted in a way that violated the claimant's dignity and, taking into account all the other circumstances, that it was reasonable to have the proscribed effect of harassment.

> 4.1.4. On 11 September 2020, a Team Leader told the Claimant that he was not entitled to additional breaks;

142. The Team leader was not identified.

143. It was submitted by Mr O'Keeffe that this was a clear example of forensic prejudice and that time should not be extended.

144. The break arrangement which was in place as set out in the email from C (624). This was a further example of an ordinary management enquiry and not such as to violate the claimant's dignity.

145. The Tribunal is not satisfied that the claimant has established that he was subject to harassment as alleged.

> 4.1.5. On 21 September 2020, D asked the Claimant to clarify his disabilities and told him he was not entitled to alternative uniform;

146. It was submitted by Mr O'Keeffe that the respondent was prejudiced in responding to this allegation by the claimant's delay in raising it. Although there had been reference to the jacket in the grievance outcome, there was no suggestion of an allegation of harassment against D and if it had been it would have been at least two years after the event.

147. The claimant alleged that D accepted that she had asked the claimant to provide the reason why he needed non-standard EOC uniform. This does not establish the proscribed elements of harassment.

148. There was an issue with regard to the claimant's uniform. D received an email from the claimant on 28 September 2020 in which he mentioned this and that they had discussed the need for a jacket with pockets. She passed this on to J deal with in an email of 29 September 2020. J said that there had been some initial difficulties procuring the jacket due to the respondent's internal procurement system and, whilst these difficulties were worked through, he took the claimant's existing jacket to a tailor for modifications which he paid for personally in order to try and support him.

149. The Tribunal is not satisfied that the claimant has established that he was subject to harassment as alleged.

> 4.1.6. On or around 22 September 2020, B did not afford the Claimant his statutory and recommended enhanced breaks;

150. The claimant submitted that he had reported this incident to D and it would be unfair for him to not succeed with this allegation on the basis that his line manager failed to document and record his concerns.

151. Mr O'Keeffe, on behalf of the respondent submitted that B was not on shift that day and the only contemporary evidence relied upon by the claimant is an email he sent to D which he said followed a discussion in which he mentioned B's behaviour.

152. It is submitted by Mr O'Keeffe that it is not clear why the claimant believes that to be the case. He said that this allegation gets nowhere should not be allowed to be determined on its merits in light of time limits.

153. It was not established the claimant was not afforded his breaks.

154. The Tribunal is not satisfied that this allegation of harassment has been established and it is considerably out of time and it is not just and equitable to extend time.

> 4.1.7. On 3 and 4 October 2020, E publicly humiliated the Claimant and was talking about him to his colleagues, regarding his disabilities, requirements and other issues;

155. The Tribunal heard evidence with regard to E's treatment of the claimant in that he was not happy with the claimant talking to another employee and E ordered him to return to his desk.

156. The claimant sent an email to D on 5 October 2020 (711). He complained about E stating that he found that it was a problem with new members of staff who have no idea of the hierarchy within the room and that he was "fed up of having to manage certain people who get away with things." The claimant said that E referred to individuals who are protected by policies and procedures and run to management when things said and discussed. The claimant said that E looked at him and then referred to another EMD and discussed staff members shielding and named a Team Leader.

157. This was a complaint about the claimant feeling uncomfortable. It was found that the claimant raised it with D and it was dealt with informally.

158. The claimant relied upon the outcome of the internal grievance where it was found that E's behaviour was not acceptable but no further action would be taken as it was found that it was dealt with appropriately at the time which had occurred more than three years before.

159. This allegation is out of time and, as set out above, it is not just and equitable to extend time

160. There was no finding in the grievance outcome that there had been harassment relating to disability.

161. The Tribunal heard no evidence in respect of E talking to the claimant's colleagues and humiliating him about his disabilities. Claire Lindsay in her grievance outcome found that Ashley Bond had acted inappropriately but there was no finding that there was any harassment relating to the claimant's disability.

> 4.1.8. On 7 January 2021**,** J accused the Claimant of pretending to be a paramedic;

162. The evidence of J was that other colleagues had reported to a manager that the claimant had suggested in conversation that he wore his uniform to hospital

appointments and J suggested that the claimant might be mistaken for a paramedic if he attended hospital in his uniform. J apologised to the claimant after the meeting. The matter was dropped as it was gossip from the room with no substance.

163. There was no credible evidence that this was harassment related to disability.

> 4.1.9. On 22 October 2022, B challenged the Claimant's additional break entitlement, was rude and unsupportive and did not afford him his statutory breaks in addition to his enhanced breaks;

164. The claimant had changed his shift patterns in October 2021 and B sent an email (1096) setting out, on the basis of Occupational Health advice that the claimant still required 10 minute mobility breaks every two hours. He was to work two six hour shifts and he would be taking two comfort breaks and one scheduled break on a six hour shift. It was also stated that the claimant had been picking up additional hours and the same break principles should be applied.

165. B sent the claimant an email on 21 October 2022. She asked him to return to the agreed process. This was not rude and unsupportive. The email did not challenge the claimant's additional break entitlement or not afford him the breaks.

166. It was not established that there had been harassment by B. This allegation was also presented two months out of time and it was not just and equitable to extend.

> 4.1.10. On 23 October 2021, F challenged the Claimant in relation to his additional breaks, asked him to clarify his disabilities and why he was entitled to additional breaks and asked for proof;

167. F said that the claimant had been asked by a Team Leader to make a note of his breaks and the claimant had refused. He had told F that he did not need to write his name on the break sheet as he had an arrangement that a Team Leader do it. He volunteered information about his disability. She informed him that she was not disputing his break arrangement but he needed to complete break sheets. The claimant sent a copy of the agreement to F (955).

168. It was important that all staff should provide details of their breaks as it was necessary for the managers to assure that there were enough EMD's to take emergency calls as neglecting them would put patients at risk. The email from F (955) showed that she was not aware of the prior agreement and asking the claimant to write his breaks on the break list and it was not established as harassment relating to disability by creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant taking into account the claimant's perception and other circumstances of the case and it was not reasonable for the conduct to have that effect.

> 4.1.11. In October 2022, B asked the Claimant how he could wear a jacket if he had a clot in his arm and asked him to justify his disabilities and diagnoses.

169. The claimant said that B had asked him if he had a clot in his arm how could he wear a jacket. She had been asked by an EOC Duty Manager to review the situation

(1106) as the claimant had informed him that he now had a DVT in his arm. B had indicated that the jacket was fine and was thin enough material to use with a crutch.

170. It was not established that this was an act of harassment. There were delays in providing the claimant with a suitable jacket. These were procurement delays and not discriminatory.

4.2. If so, was that unwanted conduct?

4.3. Did it relate to disability?

4.4. Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

4.5. If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

171. It is accepted that various Duty Managers and Team Leaders queried the claimant's breaks. There was a lack of communication and it must have been a concern to the claimant that he had to keep informing them of his breaks. However it was not established that they amounted to harassment.

172. It was not shown that the conduct had the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant taking into account the claimant's perception and other circumstances of the case. It was not reasonable for the conduct to have that effect.

5. Victimisation (Equality Act 2010 section 27)

5.1. The claimant did a protected act in bringing this current Employment Tribunal complaint.

5.2. Did the respondent do the following things:

5.2.1. Subject the claimant to increased monitoring and scrutiny in that call records were requested to monitor the time spent on calls. The claimant relies on an email from B in May 2023 to a new team leader with a list of times the claimant spent on calls and B sending an email asking for the claimant's start and finish times. The claimant maintains that the respondent did not ordinarily look at call records;

173. The claimant submitted that any shifts worked since bringing this claim are planned in great detail with people watching over him and monitoring him.

174. The respondent R did this to ensure the breaks routine was working. This was not shown to be because of his claim to the Tribunal.

> 5.2.2. the management/well-being team behaving differently towards the claimant, shutting down conversations being instructed not to engage with him. The claimant relies on emails of 31 March, 23 May and 26 May from B , from an unknown sender in April 2023 instructing people that if the claimant called they were not to speak to him at all and from G on 17 April 2023 instructing people not to engage directly with the claimant;

175. B was absent from work being treated for cancer from April 2023 and the claimant has confirmed that he does not bring any allegations of victimisation against her.

176. The email from Darren Deakin of 29 March 2023 (1322) was with regard to the claimant returning to the EOC on 14 April 2023 and providing details of breaks of 10 minutes every two hours in addition to his normal break that should be planned the commencement of the claimant shifts to ensure cover is maintained. It was indicated that the arrangement had been agreed with G so the claimant should not be challenged on them as these challenges had caused the claimant concerning the past.

177. The email from G on 17 April 2023 (1320) was an email indicating that the claimant had raised concerns about a lack of awareness and constant challenge about his breaks. This referred to the required breaks of 10 minutes every two hours in addition to his normal break and that the claimant was undertaking altered duties.

178. The claim was presented to the Tribunal on 24 March 2023. The claimant had informed G that he had approached ACAS on 16 February 2023 (1280).

179. This was management action to support the claimant on his return to work. There was no evidence that this was victimisation because of his protected act of bringing a claim to the Tribunal.

> 5.2.3. on 11 October 2023 the claimant was asked to meet J for an IT test, but on attending found himself in the presence of a number of senior managers who proceeded to ignore him for 9 minutes;
>
> 5.2.4. on 11 October 2023, having been taken into the IT test, the claimant found there was an additional attendance by a member of human resources. J placed the claimant on 2 months paid leave having said that the claimant was “evading things” and that it was very easy for him to make allegations of staff shortcomings without understanding the implications on him as a manager. J is said to have said that people could say he had “done stuff late”, when that was not true. He had been interviewed five times and queried how the claimant thought that a sixth interview would make any difference;

180. The claimant alleges that he attended the EOC to meet J and that he found himself in the presence of senior managers who ignored him for 9 minutes.

181. It was submitted by Mr O’Keeffe that there was no case to answer. These individuals were not identified when the allegation was introduced by amendment on 24

October 2023 (150). No disclosure exercise could therefore be undertaken relating to them or their knowledge of the claimant's Tribunal proceedings.

182. J had invited HR to the IT test because the claimant had copied in his trade union representative when arranging the meeting. J did not place the claimant on two months' leave. J said that the reference to him having been interviewed five times was an expression of frustration by J.

183. J had expected the claimant to wait in reception rather than going into the Senior Management Team Office. There was no evidence that the J or any senior manager had ignored him or subjected him to a detriment because of the protected act.

184. The Tribunal finds it was not established that that these were actions of victimisation because the claimant had made a claim to the Tribunal. They related to issues raised by the claimant in respect of when he had identified that he had somehow been given access to browsing documents.

> 5.2.5. the claimant received an email from I of HR on 16 October 2023 saying that the only point of contact for the claimant with the management team was to be herself and not anyone else and that, as regards the claimant's live grievance, he was only to discuss this with people dealing with that grievance.

5.3. By doing so, did it subject the claimant to detriment?

5.4. If so, was it because the claimant had brought these tribunal proceedings?

185. I was to be the single point of contact for the claimant. She wrote to him on 16 October 2023 with a "communication plan" (1650). It was stated in the letter that the number of people involved supporting these processes had meant that communications were taking place in different formats with several individuals.

> "…with a frequency that has become difficult to manage. This is not conducive to YAS being able to respond to your concerns efficiently or effectively. I am concerned that this may impact our ability to reach an agreeable resolution in a timely manner and in turn impact on your well-being.
>
> As such, with immediate effect, please only contact with me until further notice, on any issue that does not pertain to your current live grievance. I will allow time to correspond with you on a weekly basis as necessary and respond to any time critical issues arising as quickly as possible and I will liaise with the EOC management team when necessary.
>
> With respect your live grievance process, I must ask you to also please keep any correspondence limited to Chris Dexter and/or Ruth Davies (HR Business Partner) on this matter.
>
> This does not affect your ability to raise concerns via the Freedom to Speak Up process however and please be assured that you are free to continue to do so. For the avoidance of doubt, none of the above applies to your contact with your

> trade union representative either and I shared the top of this letter with Bryn Webster (Unison Branch capture).
>
> I understand that Claire Lindsay (Head of EOC) has now agreed to grant you a period of two months' paid leave and you are not expected to attend for work during that time, other than planned meetings, such as your grievance hearing. As such, please assume that the above communications plan will remain in place at least for the duration of this period of leave. I will then review this with you when that is due to end."

186. It was not established that this was a detriment relating to the protected act of issuing the Employment Tribunal proceedings.

187. The letter was sent in response to the incident with on 11 October 2023.

188. Jackie Cole, Deputy Director's had requested (1647) :

> "… senior HR support to construct a plan that will support our EOC management team and give P assurance that his reported issues are being dealt with appropriately. As discussed, it will be really helpful especially to P that he has one point of contact within the Trust that all emails and phone calls can be directed to.
>
> Can I suggest that it is not anyone from the operations/EOC team please to ensure P has confidence in the process."

189. The claimant was concerned that he was cast adrift and could not speak to anyone in the EOC team so this may not have achieved Jackie Cole's purpose that the claimant would have confidence in the process. It was because the claimant's contacts with various managers and team leaders have become unmanageable.

190. The Tribunal finds that it was a policy put in place to assist the management of the claimant's contacts and was also intended to be a supportive measure to assist the managers and claimant.

191. The respondent did not subject the claimant to a detriment because of the protected act of bringing the Employment Tribunal proceedings.

192. The Tribunal has spent a great deal of time and put a lot of thought into these issues. The Tribunal has an immense amount of sympathy with the claimant who continues to suffer from very serious medical issues. However, he appears to have got into the mindset whereby he misinterprets every management action as discrimination or victimisation. When these are identified individually and analysed, the Tribunal finds that they were no more than the respondent's managers seeking to deal with the claimant, his disability and to put in place reasonable adjustments.

193. There were clear issues that could have been improved with regard to communication difficulties between managers in respect of the claimant's breaks but these were indicative of continuing problems within a busy department providing emergency medical referrals. There were delays in respect of the procurement of the

uniform but it was not shown that these were by reason of discrimination. The Occupational Health recommendations were followed. The Tribunal finds that the respondent was doing its best in respect of the allocation of breaks and provision of uniform. It is notable that J actually sent the claimant's jacket to a tailor and paid for this himself in order to assist the claimant.

194. For the reasons set out above, the claims of disability discrimination and victimisation are not well-founded and are dismissed in their entirety.

Employment Judge Shepherd

28 July 2024
Sent to the parties on: