



EMPLOYMENT TRIBUNALS

Claimant: Mrs. H Fish

Respondent: Financial Conduct Authority

Heard at: Norwich (CVP)

On: 3, 4 & 5 June 2024

Before:

- (1) Employment Judge A.M.S Green
- (2) Mrs. J. Costley
- (3) Mrs. A Bray

Representation

Claimant: In person

Respondent: Ms J Shepherd, Counsel

JUDGMENT having been sent to the parties on 25 June 2024 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

1. For ease of reference, we refer to the claimant as Mrs Fish and the respondent as the FCA.
2. Mrs Fish has a disability, misophonia, which she disclosed during the application process for the position of Senior Editor. An occupational health assessment recommended home working as regular office attendance would exacerbate her symptoms. Despite this, she claims the FCA insisted on a standard 40% office time policy. The FCA's refusal to allow more flexible home working arrangements, despite medical recommendations and Mrs Fish's assertion that such an adjustment would remove the substantial disadvantage she faced, was a failure to make reasonable adjustments. After

Early Conciliation between 17 and 26 May 2023, Mrs Fish issued these proceedings on 26 May 2023 claiming disability discrimination.

3. Misophonia, also known as selective sound sensitivity syndrome, is a disorder characterized by intense emotional reactions to specific sounds that most people find relatively innocuous. The term "misophonia" translates to "hatred of sound," but this definition somewhat oversimplifies the condition. Individuals with misophonia experience significant distress, irritation, or even anger when exposed to certain trigger sounds. Common trigger sounds for those with misophonia include:
 - a. Chewing
 - b. Sniffing
 - c. Tapping
 - d. Clicking pens
 - e. Slurping
 - f. Typing
4. The reactions can vary in intensity, from mild discomfort or anxiety to intense rage and panic. The sounds that trigger this response are often related to body movements or functions, and the reaction is involuntary and immediate. Misophonia is distinct from phonophobia, which is a fear of loud sounds, and it is also different from hyperacusis, where all sounds may be perceived as uncomfortably loud.
5. FCA initially did not accept that Mrs Fish was disabled. Her disability has now been conceded.
6. FCA argues that they proposed several reasonable adjustments to mitigate any disadvantage, including providing a fixed desk, noise-cancelling earphones, flexible working hours, more frequent breaks, and a car parking space. They also proposed a gradual increase in office attendance.
7. FCA claims that the role of Senior Editor involves significant collaboration and training responsibilities, which they believe are best served through hybrid working rather than fully remote arrangements. They contend that fully remote working would not allow Mrs Fish to fulfil essential job functions.
8. FCA denies all allegations of having breached its duty regarding reasonable adjustments. They also deny that Mrs Fish has suffered any financial loss or injury to feelings as a result of the alleged actions.

Agreed list of issues

9. The Tribunal must determine the following agreed list of issues.

10. FCA admits that Mrs Fish was a disabled person within the meaning of Equality Act 2010, section 6 at the relevant time(s), by reason of misophonia.

Reasonable adjustments to PCPs:

11. Did FCA apply a provision, criterion or practice (“PCP”) to Mrs Fish, namely a requirement that employees work a minimum of 40% of their working time in the office?

12. If so, did the PCP put Mrs Fish at a substantial disadvantage compared to non-disabled persons because she experiences an extreme emotional reaction to everyday sounds?

13. FCA admits that, at the relevant time, it could reasonably have been expected to know that Mrs Fish had a disability.

14. Did FCA know, or could it have reasonably been expected to know that Mrs Fish was likely to be placed at a substantial disadvantage in the way set out above?

15. If so, and the duty to make reasonable adjustments arose, did FCA take reasonable steps to avoid the disadvantage? Mrs Fish suggests that a reasonable adjustment would have been to allow homeworking with 5-10% ad hoc office attendance for business-critical meetings/reasons with Occupational Health (“OH”) recommended adjustments when attendance is necessary.

Remedies

16. Has Mrs Fish experienced financial losses as a result of FCA’s acts or omissions? If so, is Mrs Fish entitled to be compensated for those losses and at what level?

17. Is Mrs Fish entitled to an award for injury to feelings and, if so, at what level?

18. Should any uplift or reduction be applied due to either party’s failure to comply with the ACAS Code of Practice?

The hearing

19. We worked from a digital bundle. The following people adopted their witness statements and gave oral evidence:

a. Mrs Fish

- b. Ms Meghan Beller
- c. Mr Alexander Smith
- d. Mr Mike Conway

20. Mrs Fish and Ms Shepherd relied on their written representations and made closing oral submissions. They exchanged their written representations, and they provided copies to the Tribunal.

Findings of fact

21. The FCA regulates the financial services industry in the United Kingdom. Its role includes protecting consumers, keeping the industry's stable and promoting healthy competition between financial service providers. It employs approximately 4,000 people across its various offices including London (Stratford), Leeds and Edinburgh.

22. For the purposes of these proceedings the following individuals at the FCA are relevant to Mrs Fish's claim:

- a. Meghan Beller – The FCA's hiring manager. Handbook and Fees Policy Team, within the Cross Cutting Policy (CCP) department.
- b. Alexander Smith - Head of Cross Cutting Strategy and Policy at FCA.
- c. Mike Conway - Employee Relations and Wellbeing Manager; now retired.
- d. Lucy Matthews - Resourcing and Talent team at FCA.
- e. Bernie Chan - HR Business Partner at FCA.
- f. Dr Sarah Weston – prepared Occupational Health Report on Mrs Fish.
- g. Joanna Taylor – HR advisor at FCA
- h. Nathalie Gregory - Employee Relations Consultant
- i. Tim Dent - Resourcing Lead at FCA
- j. Frank Williams - Resourcing Manager at FCA

23. This case comprises several key elements, one of these is the nature of the FCA's London office environment and its potentially negative impact on Mrs Fish given her disability. Mr Smith provided reliable and credible testimony on

the physical characteristics of the office, and, from his evidence, we find the following:

- a. The office was purpose-built and the FCA moved into it in 2018. The design of the office was a collaborative effort involving staff feedback, including considerations for disabled employees. This indicates a proactive approach to creating an inclusive working environment.
- b. The office has the following features:
 - i. Height Adjustable Desks: These desks cater to various physical needs, enhancing ergonomic comfort for all employees, including those with disabilities.
 - ii. Quiet Zones and Soundproof Booths: Specifically designed areas to reduce noise pollution, crucial for employees who are sensitive to sound like Mrs. Fish.
 - iii. Spread Out Floor Plan: The office layout allows free movement, potentially reducing noise congestion and providing a less stressful environment for those with misophonia.
 - iv. Collaboration Zones: While these areas are designed to enhance teamwork, they are also part of the inclusive design, allowing for different styles of collaboration and interaction.
 - v. Environmental Considerations: The office features a quiet air conditioning system and air circulation every 30 minutes, which can be significant for creating a comfortable work environment for all, especially those sensitive to sensory inputs.

24. Other elements of this case are the Handbook and the role of the Senior Editor. In this regard we have given particular weight to Ms Beller's evidence. We note the following:

- a. She is responsible for managing the Handbook and Fees Policy Team within the Cross Cutting Policy department. We note the following:
 - i. She is responsible for overseeing the development, maintenance, and updating of the Handbook. This includes ensuring that the Handbook is accurate, up-to-date, and consistent across all areas of financial regulation.

- ii. She is responsible for ensuring that the Handbook aligns with current laws and regulatory requirements, making adjustments as necessary when new regulations come into force or existing regulations are modified.
- iii. Her role involves significant interaction with various departments within the FCA to ensure that updates to the Handbook and fee policies are consistent with broader regulatory strategies and objectives.
- iv. She engages with external stakeholders, including financial institutions, consumer groups, and other regulatory bodies, to gather input and feedback on proposed changes to the Handbook and fee structures.
- v. She is responsible for leading and coordinating the Handbook and Fees Policy Team to ensure that work is completed efficiently and to a high standard. This includes planning, delegating tasks, and overseeing the progress of updates and policy changes.
- vi. She is responsible for providing training and mentorship to team members, ensuring they are well-equipped to handle the complexities of financial regulation editing and policy management.
- vii. Part of Ms Beller's role involves analysing the potential impacts of policy changes on the financial market and advising senior FCA management on strategic decisions related to the Handbook and fee structures.
- viii. She is required to anticipate future regulatory challenges and ensuring the Handbook and fee policies are positioned to address these effectively.
- ix. She is responsible for ensuring that all content within the Handbook is clear, accurate, and easy to understand for its users, who include financial services firms and their compliance teams.
- x. She is responsible for making sure that the Handbook not only complies with the law but also upholds the ethical standards expected of the financial industry.

- b. Given the foregoing it is reasonable to conclude that Ms Beller's role as the manager of the Handbook and Fees Policy Team is crucial for the FCA's function of regulating the UK financial market. It requires a blend of technical knowledge in finance and law, leadership skills, strategic thinking, and an ability to manage complex stakeholder relationships. This role is central to ensuring that the regulatory framework guiding the financial services industry is robust, relevant, and responsive to both market needs and regulatory developments.

25. Regarding the Handbook, we find as follows:

- a. The Handbook is a substantial, dynamic and key document within the FCA, outlining the regulatory requirements and guidelines that govern the conduct of financial services firms in the UK. It is frequently updated. It is essential for regulating financial services and ensuring compliance with statutory responsibilities. On hearing Ms Beller's reliable and credible evidence we are satisfied that the Handbook's management and updates require a significant degree of collaboration across multiple departments within the FCA, necessitating regular interactions and updates to remain current and effective.
- b. Mr Smith, as the Head of Cross Cutting Strategy and Policy, is heavily involved in overseeing the editorial work on the Handbook. His responsibilities include ensuring that the content is accurate, current, and effectively communicated across the FCA and to external stakeholders.
- c. Mr Smith explained that the editorial work on the Handbook involves collaboration across multiple departments. This process is not only about updating the content but also involves consultations with policymakers, reflecting the dynamic and complex nature of financial regulations.
- d. The implementation of a hybrid working policy, requiring a minimum of 40% office attendance, was partly justified by the needs of roles like Mr Smith's. The hybrid working policy was designed considering factors like organizational effectiveness and the necessity of collaboration for roles managing critical functions like the Handbook.
- e. The management of the Handbook is depicted as a critical function within the FCA, requiring high levels of accuracy, current knowledge, and regulatory compliance.

- f. Ms Beller's testimony emphasized the necessity of collaborative environments that facilitate quick updates and comprehensive reviews, which are easier to achieve with a certain level of in-person interaction.
- g. The hybrid working policy and its implications for roles associated with the Handbook management underline the operational necessity for balancing remote and in-office work to maintain the effectiveness and responsiveness of the FCA's regulatory oversight.
- h. The testimony, particularly from Mr Smith and Ms Beller, underscores the complexity and collaborative nature of managing the FCA Handbook. The operational requirements for managing such a critical document influence the organizational policies regarding workplace arrangements, emphasizing the need for a hybrid working model to effectively meet the demands of the role and ensure regulatory compliance and efficacy. This highlights how the FCA's broader operational strategies are aligned with the practical necessities of its regulatory functions.

26. Having heard Ms Beller's reliable and credible testimony, regarding the role of Senior Editor, we find as follows:

- a. The role of the Senior Editor at FCA is a pivotal position that involves managing the development, accuracy, and upkeep of the Handbook, among other responsibilities. This role is crucial as it ensures that the regulatory guidelines are up-to-date, clear, and effective in guiding the conduct of financial services firms across the UK.
- b. The Senior Editor ensures that the regulations in the Handbook are clear and reflect current laws and policies, which is vital for maintaining the integrity of the financial system.
- c. This role involves significant collaboration with various departments and leading teams to manage extensive editorial projects, which necessitate effective communication and project management skills.
- d. Senior Editors are often involved in training and supporting junior staff and ensuring that editorial standards are upheld across the organization.

27. We also accept Ms Beller's evidence on the differences between the role of Senior Editor and that of publishing. Mrs Fish suggested that they were essentially the same or very similar which is why she got the job as she has a background in publishing having worked for the Royal Society of Chemistry and an organisation called Frontiers. We disagree for the following reasons.

The role of Senior Editor at the FCA extends significantly beyond traditional publishing responsibilities due to the unique nature of the content being managed, namely, the Handbook, and the implications of this content for the broader regulated financial services industry in the UK. In particular we note the following:

- a. The Senior Editor is responsible for overseeing the Handbook, which is a critical regulatory framework that financial services firms must follow. This means that any changes or updates to the Handbook directly affect how financial regulations are applied and enforced across the UK.
- b. Given the legal and regulatory implications of the Handbook, the Senior Editor must ensure that all information is accurate, clearly articulated, and legally sound. Errors or ambiguities in the Handbook could lead to misinterpretation of financial laws, potentially resulting in significant legal and financial consequences for businesses and the FCA itself.
- c. The role involves significant interaction with various departments within the FCA, as well as external stakeholders including financial institutions, consumer advocacy groups, and government bodies. The Senior Editor must be able to navigate these relationships effectively to gather input and consensus on Handbook updates.
- d. Senior Editors at the FCA are not just managing text; they are influencing policy decisions and regulatory strategies. They need to understand the broader impact of their work on the financial markets and the economy, making their role pivotal in shaping financial regulation.
- e. Beyond editing, the Senior Editor is involved in training and mentoring staff, ensuring that the team remains knowledgeable about regulatory standards and effective in maintaining the Handbook. This leadership component requires a deep understanding of both the content and the strategic importance of the Handbook.
- f. In times of financial uncertainty or crisis, the Senior Editor must be able to quickly update the Handbook to reflect new regulations or emergency measures. This aspect of the job requires not only fast and accurate publishing skills but also strategic thinking and crisis management abilities.
- g. The Handbook covers a wide range of complex financial and legal topics. The Senior Editor needs a strong background in law, finance, or

both, to effectively manage and edit such content. This level of expertise is beyond what is typically required in standard publishing roles.

- h. Financial regulations are constantly evolving, and the Senior Editor must stay informed about the latest developments in the field to ensure the Handbook is up to date. This requires ongoing education and professional development, which is more intensive than in many other editorial roles.

28. In view of the foregoing, it can be said that the role of Senior Editor at the FCA transcends traditional publishing due to the regulatory content managed, the strategic influence wielded, and the high stakes involved in ensuring that the Handbook accurately reflects current laws and effectively guides the conduct of the financial services industry. This position demands a blend of editorial skills, regulatory knowledge, strategic insight, and leadership capabilities, making it a uniquely challenging and impactful role within the organization.

29. There was disputed evidence as to whether the role of Senior Editor could be performed remotely or whether a hybrid arrangement was necessary involving some office attendance. This is fundamental to Mrs Fish's claim. The FCA's hybrid policy requires 40% office attendance. The gist of Mrs Fish's evidence was that an adjustment to this role to accommodate her disability was that it could be performed either entirely remotely or with some ad hoc office attendance to meet business needs. Based on the evidence, particularly from what we heard from Ms Beller, we acknowledge, that while the role of Senior Editor involves tasks that could theoretically be performed remotely, such as editing and communicating via digital platforms, Ms Beller's compelling evidence suggests that there are significant benefits to performing some of the responsibilities in-office. These are as follows:

- a. The role requires high levels of collaboration with other teams, which can be more effectively managed in a face-to-face environment. This is particularly important for urgent updates or complex changes where quick, clear communication is essential.
- b. Training junior staff and managing a team often benefit from direct interaction, which can foster better relationships and more effective mentorship.
- c. Participating in regulatory discussions and meetings can sometimes require a secure and confidential environment that might be more reliably provided in an office setting.

30. Ms Beller was in a strong position to speak of the challenges performing the role of Senior Editor in a remote setting. She had previously performed the role of Senior Editor before being promoted to her current position and she spoke of her experiences working entirely remotely during the Covid 19 lockdown. We find as follows:

- a. Ms Beller highlighted the challenges faced in building and maintaining necessary professional networks while working remotely. The lack of in-person interactions impeded her ability to fully understand and navigate the organizational nuances and the network of relationships that are crucial for the Senior Editor role.
- b. Ms Beller experienced significant difficulties in fostering effective collaboration remotely. She said that In-person interactions typically facilitated quicker resolution of issues and more dynamic brainstorming sessions, which are less effective when conducted virtually.
- c. Ms Beller said that training junior staff and conducting editorial meetings remotely were as less effective than working in person in the office, with challenges in engaging participants and ensuring that training objectives were met comprehensively.
- d. The process of updating and maintaining the Handbook remotely faced delays and inefficiencies. Quick, ad-hoc decisions that are often necessary in regulatory work were harder to coordinate remotely.
- e. The ability to respond swiftly to regulatory changes was likely compromised due to the dispersed nature of the team and the challenges in securing immediate feedback or clarifications.
- f. The lack of physical presence in the office also meant missed opportunities for informal learning and team bonding, which are vital for team cohesion and effective working relationships.

31. Ms Beller's testimony about the challenges of remotely performing the Senior Editor role during COVID-19 convincingly served to underscore the essential need for a hybrid or partial in-office working model post-lockdown. Her experiences illustrated the tangible drawbacks of fully remote work for a role that significantly depends on collaboration, real-time decision-making, and effective communication within a regulatory framework.

32. Ms Beller's evidence supports the idea that while remote work is feasible for certain aspects of the Senior Editor role, the optimal operational efficiency and effectiveness, particularly in a regulatory environment as complex as the FCA, are achieved with a combination of remote and in-office work.

33. Another key strand in this case is the FCA's hybrid working policy. Mr Conway's testimony and Ms Beller's testimony on the policy was illuminating, reliable and credible. We note that Mr Conway was the Employee Relations and Wellbeing Manager at the FCA, responsible for handling disciplinary, grievance, capability, and equality matters. He has now retired. His role provided him with insight into the broader policy frameworks and individual accommodation requests at the FCA. His evidence was that the FCA implemented a hybrid working policy post-COVID-19, requiring employees to spend 40% of their working time in the office, with senior leaders expected at 50%. This policy aimed to enhance collaboration and facilitate the integration of new employees, underlining the importance of physical presence to achieve certain organizational goals.
34. Ms Beller's testimony provides an in-depth view of the hybrid working policy at the FCA, her interactions with Mrs Fish, and the considerations involved in determining workplace adjustments for her, particularly in relation to her request to work primarily from home. She described the hybrid working policy implemented post-COVID-19 as crucial for enhancing staff integration and ensuring effective collaboration. The policy required a minimum of 40% office attendance for general staff and 50% for senior leaders, which was seen as essential for maintaining operational continuity and building strong workplace relationships.
35. Mrs Fish applied for the position of Senior Editor. Ms Beller interviewed Ms Fish in March 2023; it was conducted online.
36. On 5 April 2023, Mrs. Fish received an offer for the Senior Editor role and disclosed her condition of misophonia. The FCA promptly acknowledged this and initiated an occupational health assessment to accurately understand the implications of her condition on her work.
37. Mrs Fish indicated that she would prefer to work in the London Office rather than in Leeds or Edinburgh.
38. On 16 April 2023, Mrs Fish made a pre-emptive visit to the office to ease her anxiety about commuting. She drove to London and looked at the outside of the office. As it was a Sunday, she did not go into the office.
39. On 20 April 2023, an occupational health assessment was conducted by Dr Weston, advising that Mrs. Fish's condition could be exacerbated by regular office attendance. The report suggested long-term home working as a potential adjustment.

40. While considering these recommendations, the FCA also assessed the inherent requirements of the role of Senior Editor, which as we have already found involved significant collaboration and training responsibilities which were generally better facilitated through some in-office presence.

41. The FCA made the following proposals for adjustments:

- a. Assigning Mrs Fish a desk in a quieter part of the office, away from common noise triggers like printers or high foot traffic areas.
- b. Providing high-quality noise-cancelling headphones to help mitigate the impact of office noise.
- c. Allowing her to work during quieter times of the day to reduce exposure to triggering sounds.
- d. Permitting breaks as needed to manage her symptoms, providing a way to step away from stressful noise environments.
- e. Offering a parking space closer to the entrance to minimize her exposure to external noises and stressors during the commute.

42. On 27 April 2023, there were detailed discussions with Ms Beller about the need for flexible work arrangements, underscoring Mrs. Fish's preference for extensive home working.

43. On 1 May 2023 Mrs. Fish formally requested reconsideration of the hybrid policy requiring 40% office attendance policy, advocating for more extensive home working to match her productivity levels to those of non-disabled employees. This indicates she was advocating for a significant reduction in office attendance from the outset.

44. On 11 May 2023, the FCA took these recommendations into account but also had to balance them with the inherent requirements of the Senior Editor role, which includes significant collaborative and training responsibilities that the FCA argued were best performed in a hybrid working environment.

45. Throughout the process, the FCA maintained an open dialogue with Mrs Fish, indicating a willingness to adjust the proposed accommodations based on her feedback and any new health recommendations. It is noteworthy that the FCA also suggested that Mrs Fish should visit the office to see the layout of the building as part of the process of considering her requirements for reasonable adjustments. She did not take up that offer. They also offered to keep any adjustments under review. The FCA were willing to have a phased approach to the percentage of time required to work in the office (e.g. starting at 20%).

46. The FCA considered the nature of the job role, which included significant collaborative tasks that required interaction with other team members, often best accomplished in a shared workspace.
47. On considering Ms Beller and Mr Conway's evidence we accept that FCA attempted to strike a balance between operational effectiveness and accommodating Mrs Fish's disability, proposing a hybrid model as a compromise between full remote work and the need for physical presence.
48. Mrs Fish could not engage with the FCA grievance procedure and was directed to Mr Conway. Mrs Fish emailed Mr Conway regarding her proposed adjustments. Upon receiving the claimant's email explaining how the hybrid working policy disadvantaged her due to her disability, Mr Conway reviewed the correspondence and Dr Weston's occupational health report. His role involved evaluating whether the adjustments suggested were fair and in line with FCA policies.
49. On 17 May 2023, Mrs Fish contacted ACAS for early conciliation, expressing frustration at the perceived inadequacy of the adjustments.
50. On 23 May 2023 Mr Conway communicated the FCA's final position to her. This included an offer for an initial period of reduced office attendance instead of the permanent home working she requested.
51. On 26 May 2023, The FCA communicated through ACAS that they would maintain the 40% office policy but remained open to ongoing adjustments as needed.
52. On 31 May 2023, Mr Conway followed up to reiterate the FCA's position, emphasizing the need for confirmation from Mrs Fish by 2 June 2023 relating to the job offer.
53. On 5 June 2023, Mr Conway had to withdraw the job offer formally after not receiving a response by the specified deadline, reflecting the operational need to fill the position promptly.
54. Mrs Fish has questioned the identity of the person who ultimately rejected her request for adjustments. She suggests that both Ms Beller and Mr Smith were minded granting her request, but this was ultimately vetoed by Ms Chan in HR. Ms Beller's position is that she sought guidance from HR as part of the process but that it was ultimately Ms Beller's responsibility for making the decision. We accept her testimony for the following reasons:

- a. Ms Beller initially handled the decision-making process concerning Mrs Fish's request for adjustments. Ms Beller's consultations with HR were part of this process to ensure the decision was appropriate, fair, and compliant with legal and organizational standards.
- b. Ms Beller was the direct manager responsible for the team and understanding the Senior Editor's role's demands, she was primarily responsible for assessing the feasibility of the requested adjustments. She had the firsthand experience of the role's requirements and the operational impacts of any changes to working arrangements.
- c. It is unclear how deeply Ms Chan was involved in the decision-making process. However, in typical organizational structures, HR partners like Ms Chan provide advisory support but do not make the final decisions on operational matters. They ensure that the process is handled correctly from an HR perspective.
- d. Ultimately, the decision to reject or approve adjustments lay with the line manager, in this case Ms Beller, because she best understood the operational necessities and the specifics of the role of Senior Editor. HR's role was to advise and support the decision-making process to ensure it aligns with broader company policies and legal requirements.

55. We also note Mr Conway's evidence where he stressed that decisions about workplace adjustments at the FCA are led by experts, including occupational health advisors, rather than solely by HR or line managers. This approach is intended to ensure that any accommodations made are appropriate and based on professional medical and occupational assessments. This is consistent with Ms Beller's evidence where she said that she had also referred to the OH report prepared by Dr Weston.

56. There was disputed evidence regarding Dr Weston's occupational health report as to whether it was stating categorically that Mrs Fish's physical and mental health would inevitably deteriorate were she be required to attend the office (as she claims) or whether it was a possibility (as the FCA claim). We prefer Mr Conway's evidence on this point in that he pointed out that while the OH report did suggest the possibility of exacerbating Mrs Fish's condition with regular office attendance, it also considered her fit for the role with adjustments. We accept that this nuanced view guided the FCA's approach to seeking a balanced solution that attempted to accommodate Mrs Fish's disability while maintaining the integrity of the role's requirements.

57. Mr Conway's involvement was characterized by a careful consideration of both Mrs Fish's health needs and the operational imperatives of her role. His actions underscore the FCA's policy of relying on expert guidance to make

informed decisions about employee accommodations, aiming to balance individual employee needs with broader organizational goals.

58. We found Mr Conway to be a reliable and credible witness. He had significant experience in employee relations over his career before he retired on 2 February 2024. Prior to his role at the FCA, he was an employment relations director at a major bank, managing a large team and overseeing the employee relations for a workforce of 40,000 people. This background provided him with a deep understanding of the financial services sector and the complex regulatory environment in which it operates. Mr Conway spoke highly of the FCA's commitment to diversity and inclusion. He praised the organization as a progressive employer that actively seeks to create an inclusive environment. This includes accommodating employees with disabilities and fostering a workplace that respects and embraces differences. He underscored the FCA's commitment to occupational health, noting significant monthly expenditures to support employee health and wellbeing (some £20,000 to £24,000). This demonstrates the FCA's dedication to maintaining a supportive work environment and addressing the unique needs of its employees. Reflecting on the FCA's operational strategies, Mr Conway explained how the organization manages to maintain high standards of regulatory compliance and effectiveness, which are essential for its role as a financial regulator. On hearing this evidence, it was clear to us that Mr Conway's experience and testimony reveal a professional deeply committed to employee wellbeing and fair workplace practices within a demanding regulatory environment. His insights into working for the FCA reflect a positive view of the organization's efforts to balance operational needs with a strong commitment to employee support and inclusion. This balance is crucial in a high-stakes regulatory environment where the wellbeing of employees directly impacts the effectiveness and reliability of the regulatory work conducted.

Applicable Law

59. The duty to make adjustments under the Equality Act 2010, section 20 comprises three discrete requirements, any one of which will trigger an obligation on the employer (or other person subject to the duty) to make any adjustment that would be reasonable. Under section 20:

- a. the first requirement applies where a provision, criterion or practice ("PCP") has been applied by the employer that puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled.
- b. the second requirement applies where a physical feature of the workplace puts a disabled person at a similar substantial disadvantage in relation to a relevant matter, and

- c. the third requirement applies where the lack of provision of an auxiliary aid puts a disabled person at a substantial disadvantage in relation to a relevant matter.

60. In respect of all three requirements, a 'relevant matter' is simply any matter concerned with deciding to whom to offer employment and anything concerning employment by the employer.
61. A failure to comply with any of the requirements in section 20 amounts to a failure to comply with the duty to make reasonable adjustments, and an employer will have discriminated against a disabled person if it fails to comply with the duty in relation to that person (sections 21(1) and (2)). However, para 20(1) of Schedule 8 to the Equality Act 2010 provides that a person is not subject to the duty to make reasonable adjustments if he or she does not know and could not reasonably be expected to know in the case of an applicant or potential applicant for work, that an interested disabled person is or may be an applicant for the work in question (para 20(1)(a)).
62. This case centres on a PCP which Mrs Fish claims has placed her at a substantial disadvantage namely the hybrid working policy that requires employees to spend 40% of their time in the office. The FCA accepts that this is a PCP and it places Mrs Fish at a substantial disadvantage.
63. As it is established that an aspect of the section 20 duty has been triggered, the next question is what adjustments could and should be made. The Tribunal will need to identify the 'step' or 'steps', if any, the FCA, could reasonably have taken to prevent Mrs Fish suffering the disadvantage in question. The onus falls on the Mrs Fish, not FCA, to identify in broad terms the nature of the adjustment that would ameliorate the substantial disadvantage. The burden then shifts to the FCA to show that the disadvantage would not have been eliminated or reduced by the proposed adjustment and/or that the adjustment was not a reasonable one to make.
64. Case law has established that the test of reasonableness under section 20 is an objective one and it is ultimately the Tribunal's view of what is reasonable that matters. A claim of a failure to make reasonable adjustments may therefore require the Tribunal to take the unusual step of substituting its own view for that of the employer, in marked contrast to the approach taken in respect of unfair dismissal, where such an approach amounts to an error of law. Similarly, the Tribunal may conclude that a different adjustment from the one that Mrs Fish proposed or preferred was reasonable. Furthermore, the Tribunal's analysis of reasonableness must focus on the practical result of the measures that can be taken, not the FCA's thought processes or the

procedure by which the decision to make (or not make) an adjustment was taken.

65. A significant change brought about by the Equality Act 2010 was the omission of specific factors to be considered when determining reasonableness. The Disability Discrimination Act 1995, section 18B(1) (“DDA”) stipulated that, in determining whether it was reasonable for an employer to have to take a particular step in order to comply with the duty, regard should be had, in particular, to:

- a. The extent to which taking the step would prevent the effect in relation to which the duty was imposed (i.e. the effectiveness of the step).
- b. The extent to which it was practicable for the employer to take the step.
- c. The financial and other costs that would be incurred by the employer in taking the step and the extent to which taking it would disrupt any of its activities.
- d. The extent of the employer’s financial and other resources.
- e. The availability to the employer of financial or other assistance in respect of taking the step.
- f. The nature of the employer’s activities and the size of its undertaking.
- g. where the step would be taken in relation to a private household, the extent to which taking it would (i) disrupt that household, or (ii) disturb any person residing there.

66. These factors are not mentioned in the Equality Act 2010 and so it is no longer an error of law for the Tribunal to fail to consider one of these factors, so long as it has adequately considered whether the proposed adjustment would be reasonable. However, they are well known by Tribunals and are still treated as relevant in many cases. Indeed, all but the last factor are listed in the Equality and Human Rights Commission’s Code of Practice on Employment (2011) (‘the EHRC Employment Code’).

67. Where a number of adjustments interact or might work in combination to potentially ameliorate the disadvantage suffered by the disabled claimant, it is necessary for the tribunal to adopt a holistic approach when considering the reasonableness of the adjustments overall – **Burke v The College of Law and anor 2012 EWCA Civ 37, CA**. In that case the Court of Appeal accepted that where an employment tribunal concluded that it was difficult to consider the various adjustments the respondents had made as regards supervision,

work location and time requirements in isolation, because each had a bearing on the other two, it was entirely appropriate for the tribunal to consider the adjustments as a whole.

68. Case law on section 20 suggests that one factor above all others is crucial: the effectiveness of the proposed step or steps. It is most unlikely to be reasonable for an employer to have to make an adjustment that involves little or no benefit to the disabled person in terms of ameliorating the disadvantage to which he or she has been subjected by the PCP, physical feature or lack of auxiliary aid. But this is not to say that there has to be absolute certainty – or even a good prospect – of an adjustment removing a disadvantage in order for that adjustment to be regarded as a reasonable one. Rather, it is sufficient that a tribunal concludes on the evidence that there would have been a chance of the disadvantage being alleviated. The focus of the tribunal must be on whether the adjustment would, or might, be effective in removing or reducing the disadvantage that the claimant is experiencing at work as a result of the disability and not whether it would, or might, advantage the claimant generally or, indeed, disabled people as a whole.

69. A measure that, taken on its own, may be ineffective might nevertheless be one of several adjustments which, when taken together, could remove or reduce the disadvantage experienced by the disabled person. The EHRC Employment Code provides the example of a blind woman who is given a new job with her employer in an unfamiliar part of the building. Reasonable adjustments in these circumstances might include: (i) arranging facilities for the employee's guide dog in the new area; (ii) arranging for her new instructions to be in Braille; and (iii) providing disability equality training for all staff (see para 6.34).

Discussion and conclusions

70. The FCA admits that Mrs Fish was a disabled person within the meaning of Equality Act 2010, section 6 at the relevant time(s), by reason of misophonia.

71. The FCA applied a PCP to Mrs Fish namely a requirement that employees work a minimum of 40% of their working time in the office.

72. The PCP put Mrs Fish at a substantial disadvantage compared to non-disabled persons because she experiences an extreme emotional reaction to everyday sounds.

73. The FCA admits that, at the relevant time, it could reasonably have been expected to know that Mrs Fish had a disability.

74. The FCA knew that Mrs Fish was likely to be placed at a substantial disadvantage in the way set out above.
75. The duty to make reasonable adjustments arose. The FCA suggested reasonable steps to avoid the disadvantage. The claimant did not, at the material time suggest that she should be allowed to work from home with 5-10% ad hoc office attendance for business-critical meetings. The facts support the conclusion that the claimant wanted a permanent contractual variation permitting her to work from home with occasional time spent working in the London office for business-critical meetings. The percentage of office time was not specified.
76. The FCA engaged with Mrs Fish's disability. Misophonia entails triggers in the workplace would likely include typical office noises such as conversations, phone rings, typing sounds, people eating and others which can cause severe discomfort or distress to Mrs Fish. The proposed adjustments could significantly reduce these triggers or a means to manage reactions effectively. The proposed adjustments included:
- a. Noise-Cancelling Headphones: To help block out ambient office noise, allowing Mrs Fish to work in quieter conditions even within an open-plan office such as the FCA's office.
 - b. Dedicated Quiet Zones: Areas within the office designed to have lower ambient noise and less foot traffic, providing spaces where Mrs Fish could work with fewer disturbances. The FCA's London office has such zones.
 - c. Flexible Working Hours: Permitting Mrs Fish to work during hours when the office is generally quieter, such as early mornings or late evenings. This could also reduce Mrs Fish's commuting time.
 - d. Remote Work Flexibility: allowing Mrs Fish to work from home a certain percentage of the time to minimize exposure to office noise. A phased approach was suggested by the FCA rather than simply starting at 40%.
77. These were reasonable adjustments as the combination of noise-cancelling headphones and quiet zones effectively reduce the noise to a level that Mrs Fish could find manageable. Objectively speaking sound isolation is sufficient to prevent distress. Quiet zones were available and flexible hours could consistently coincide with quieter times in the office. There was also the possibility of remote working. The FCA also offered to review the arrangements to evaluate their effectiveness and make changes based on

Mrs Fish’s feedback. She would still be able to meet the requirements of the role of Senior Editor.

78. In our opinion, these adjustments would effectively minimize the impact of noise and other triggers, allowing Mrs Fish to perform her job functions comparably to non-disabled colleagues and they can be considered sufficient.

79. For these reasons, the claim is dismissed.

Employment Judge Green

Date 1 July 2024

REASONS SENT TO THE PARTIES ON
.2 July 2024.....

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FOR THE TRIBUNAL OFFICE