Case Number: 2205716/2023

EMPLOYMENT TRIBUNALS

Claimant: **Mrs Marta Grobarcikova Gonczyova**

Respondent: **Barchester Healthcare Limited**

Heard at: **Bristol by CVP** **On: 6-9 August 2024**

Before: **Employment Judge Walters**
Dr Hole
Ms Fellows

Representation
Claimant: **Mr MacMillan, Counsel**
Respondent: **Mr Peacock, Solicitor**

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The Claimant's claim that she suffered discrimination arising from disability contrary to section 15 of the Equality Act 2010 is dismissed.

2. The Claimant's claim that the Respondent breached its duty to make reasonable adjustments contrary to section 21 of the Equality Act 2010 is dismissed.

RESERVED REASONS

INTRODUCTION

1. The Claimant commenced proceedings in the Bristol Employment Tribunal on 17 April 2023 alleging, inter alia, that she had been the subject of discrimination arising from disability contrary to s.15 Equality Act 2010 (hereinafter referred to as "EqA 2010"), a failure to make reasonable adjustments contrary to s.21 EqA 2010 and disability related harassment contrary to s.26 EqA 2010.

2. The claim was heard at Bristol by CVP on 6-8 August 2024 with a further day being set aside for deliberations on 9 August 2024. These are the reserved judgment and reasons.

3. The Tribunal read all the witness statements which had been disclosed by the parties prior to the commencement of the evidence. On the morning of 7 August 2024 a further witness statement was disclosed on behalf of the Claimant from Mrs. Katherine O'Hagan who had been the subject of a witness summons. No objection was taken to the admissibility of the statement.

4. The Tribunal received oral evidence from the Claimant, Ms Bleasdale and Ms O'Hagan who gave evidence on behalf of the Claimant and from Mrs Sasi Mrs. Sunil, Mrs. Davies and Mrs. Xhao who gave evidence on behalf of the Respondent.

5. The Tribunal had regard to a bundle of documents which consisted of 323 pages and it was provided with a further smaller bundle of additional documents by the parties on the second day of the hearing which we refer to as Bundle B. The documents contained in Bundle B which consist of pages 324-336 had been disclosed on the morning of the first day of the hearing and neither party objected to their late admission. A further single page of Whatsapp messages was disclosed by the Claimant on 8 August 2024 and although there was some objection to its admissibility on the basis of relevance the Tribunal admitted it into evidence because it was potentially relevant to the credibility of Mrs. Sunil. We have numbered it **[337]**.

6. Closing written and oral submissions were delivered by both counsel for the Claimant and the solicitor for the Respondent.

THE CLAIMS

7. It was not in issue that the Claimant was disabled within the meaning of the Equality Act 2010. The Respondent accepted that the Claimant is disabled by reason of two conditions:

    a. hypoglycaemia
    b. Long QT syndrome i.e. a congenital heart condition

8. The Claimant contended that she was the subject of unlawful disability discrimination as set out below.

Unfavourable treatment under s.15 EqA 2010

9. The Claimant brings a claim under section 15 EqA 2010. The Claimant contends that the Respondent treated the Claimant unfavourably by Mrs. Ansitha Sasi making the following alleged comments at a 24 January 2023 meeting:

   a. *"I know from what I seen so far, the previous GM had done lots of adjustments including hours of work, supernumerary hours etc, but I wouldn't be able to do...";*

   b. *"I know your health and your children's health is important to you, so that's why have a think, whether you are able to fulfil these responsibilities withing the given time".*

   c. *"I know you have health problems, so let me know next week, if you are able to fulfil your role".*

   d. *"When the Claimant asked what her options would have been, she claims that she felt that, due to her disability, she was not able to work the excessive amount of hours (60-80) and enquired whether she could go back to her previous Head of Unit position. Mrs. Sasi answered: "since you are not a CP, you cannot...do medication ...so in this care home the next only option is for you to work on the floor as a carer".*

A failure to make reasonable adjustments contrary to s.21 EqA 2010

10. The Claimant brings a claim under section 21 of the EqA 2010 alleging a failure to make reasonable adjustments in circumstances where she alleges PCPs put her at a significant disadvantage compared to someone without her disability in that she would have been caused breathlessness, palpations and been at an increased risk of fainting.

THE ISSUES

11. The issues which the Tribunal was required to determine were finally reduced to a single document on the morning of the first day of the hearing. The Tribunal had previously determined the issues as they stood on 15 January 2024 but as a result of the withdrawal of all the sexual harassment claims and one of the claims of s.15 EqA 2010 discrimination on 1 February 2024 **[323]** plus further concessions by the Respondent on knowledge the agreed issues were reduced to a single document for ease of reference.

12. In so far as the section 15 EqA 2010 claim is concerned the Claimant contends that there were several comments made by Ms. Sasi at the meeting which constituted unfavourable treatment because of "tiredness, breathlessness, palpitations, risk of fainting" which it is contended arose as a consequence of her disability. However, as it transpired the Claimant stated in evidence that the first of the above comments was not said in the meeting but written in an email by Mrs. Sasi to her line manager on 24 January 2023**. [92-93]** The Respondent took no issue with that change of stance and we have, therefore, considered it on that basis.

13. The Respondent contends that if the above contentions are made out then it will rely on the statutory defence of justification.

14. As for the reasonable adjustments claim the Claimant relies on the following "PCP"s:

    a. *That a manager would also need to 'work on the floor' as a carer 24 hours per week, while continuing to fulfil their managerial duties;*
    b. *That employees commence their shift at 8 a.m.;*
    c. *That employees complete their job role within the workplace;*
    d. *The requirement to work contractual hours and/or in excess of contractual hours. The Claimant alleges that the remaining 16 hours of her 40 hour week (after deduction of the 24 which she undertook on the floor), were insufficient to enable her to complete her managerial duties. She alleges that her managerial duties took her 40-50 hours/week before her care work. She therefore understood that she might have been expected to have worked 64-74 hours/week.*

15. The Claimant contends that the PCPs put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability, in that, she would have been caused breathlessness, palpations and would have suffered an increased the risk of fainting.

16. The Claimant contends that the Respondent knew or could reasonably have been expected to know that the Claimant was likely to be placed at the disadvantage.

17. The suggested adjustments which it is contended it was reasonable for the Respondent to have made to avoid the disadvantage are as follows:

    a. Removing the carer/floor work role from her responsibilities, allowing me to focus her efforts on her managerial role;
    b. Permitting the Claimant to commence her shift after 8 a.m. if her duties the previous day ran beyond the normal shift hours and commensurate to those additional hours;
    c. The reissuing of the laptop computer previously provided to her in order that she could carry out some work from home.

18. The Respondent disputes that it breached the duty to make reasonable adjustments as appears from the Amended Grounds of Response and the List of Issues.

LEGAL PRINCIPLES

Discrimination arising from disability

19. Section 15 EqA 2010 states as follows:

> *"15 Discrimination arising from disability*
> *(1) A person (A) discriminates against a disabled person (B) if –*
> *(a) A treats B unfavourably because of something arising in consequence of B's disability, and*
> *(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim*
> *(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know that B had the disability."*

20. The correct approach to the determination of a section 15 claim was summarised by the EAT in **Pnaiser v NHS England and Another [2016] IRLR 170.** This includes the following:

a. The first stage is to assess the "because of". In determining what caused the treatment complained about or what was the reason for it, the focus is on the reason in the mind of A. This is likely to require an examination of the conscious or unconscious thought process of A;

b. The "something" that causes the unfavourable treatment need not be the main or sole reason, but must at least have 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 not relevant.

d. The second stage is to determine whether as a matter of fact the "something arising in consequence" was a consequence of the disability.

e. The expression "arising in consequence of" can describe a range of causal links. The causal link between the something that causes unfavourable treatment and the disability may include more than one link;

f. This stage of the test is an objective question and does not depend on the thought processes of the alleged discriminator.

g. Knowledge is only required of the disability. Knowledge is not required that the "something" leading to the unfavourable treatment is a consequence of the disability.

h. It does not matter precisely in which order these questions are addressed.

21. A further summary of the legal principles which should be followed by a tribunal in determining a s.15 claim was set out in **McQueen v General Optical Council [2023] EAT 36.**

22. In assessing whether something is "unfavourable" treatment there must be a measurement against "an objective sense of that which is adverse as compared to that which is beneficial"; **Trustees of Swansea University Pension & Assurance Scheme v Williams [2018] UKSC 65**. Furthermore,

23. The respondent will successfully defend the claim if it can prove that the unfavourable treatment was a proportionate means of achieving a legitimate aim. The burden of proof is on the employer to establish objective justification.

24. The supreme court in **Ministry of Justice v O'Brien [2013] ICR 449** restated the general principles of objective justification that:

> (a) firstly, the treatment must pursue a legitimate aim;
> (b) secondly, it must be suitable for achieving that objective; and
> (c) thirdly, it must be reasonably necessary to do so.

25. The Equality and Human Rights Commission Code of Practice on Employment contains guidance on objective justification, to reflect some of the case law in the field. It terms the first issue as being the determination of whether the aim is lawful and non-discriminatory and one that represents a real, objective consideration. In **Bilka-Kauhaus GmBH v Weber von Hartz [1987] ICR 110** it was termed: "*correspond to a real need on the part of the undertaking."*

26. In **Chief Constable of West Yorkshire Police and anor v Homer [2012] ICR 704**, the supreme court reiterated that the measure in question has to be both an appropriate means of achieving the legitimate aim, as well as being reasonably necessary in order to do so. Some measures may simply be inappropriate to the legitimate aim in question or they may be appropriate but go further than is reasonably necessary and so be disproportionate.

27. As to the third stage, the EHRC *Employment* Code notes: "*Deciding whether the means used to achieve the legitimate aim are proportionate involves a balancing exercise. An employment tribunal may wish to conduct a proper evaluation of the discriminatory effect of the provision, criterion or practice as against the employer's reasons for applying it, taking into account all the relevant facts."*

28. In a section 15 claim, it is, of course, the treatment that has to be justified, not a provision, criterion or practice (the terminology from an indirect discrimination complaint).

29. In **Ali v Drs Torrosian, Lochi, Ebeid & Doshi t/a Bedford Hill Family Practice [2018] UKEAT0029/18/0205 the EAT** stated that

    a. Justification of the unfavourable treatment requires there to be an objective balance between the discriminatory effect and the reasonable needs of the employer;
    b. When determining whether or not a measure is proportionate it will be relevant for the tribunal to consider whether or not any lesser measure might nevertheless have served the employer's legitimate aim;
    c. More specifically, the case law acknowledges that it will be for the tribunal to undertake a fair and detailed assessment of the working practices and business considerations involved, and to have regard to the business needs of the employer
    d. As to the time at which justification needs to be established, that is when the unfavourable treatment in question is applied;
    e. When the putative discriminator has not even considered questions of proportionality at that time, it is likely to be more difficult for them to establish justification.

30. In **Hardy and Hansons Plc v Lax [2005] EWCA Civ 846** Pill LJ stated: *"It is for the employment tribunal to weigh the real needs of the undertaking, expressed without exaggeration, against the discriminatory effect of the employer's proposal. The proposal must be objectively justified and proportionate."*

31. Further, Pill LJ said: *"I accept that the word 'necessary' .... has to be qualified by the word 'reasonably'. That qualification does not, however, permit the margin of discretion or range of reasonable responses for which the appellants contend. The presence of the word 'reasonably' reflects the presence and applicability of the principle of proportionality. The employer does not have to demonstrate that no other proposal is possible. The employer has to show that the proposal, in this case for a full-time appointment, is justified objectively notwithstanding its discriminatory effect. The principle of proportionality requires the tribunal to take into account the reasonable needs of the business. But it has to make its own judgment, upon a fair and detailed analysis of the working practices and business considerations involved, as to whether the proposal is reasonably necessary. I reject [the employer's] submission ... that, when reaching its conclusion, the employment tribunal needs to consider only whether or not it is satisfied that the employer's views are within the range of views reasonable in the particular circumstances."*

32. The court of appeal said in **O'Brien v Bolton St Catherine's Academy [2017] EWCA Civ 145**:

    "…it is well-established that in an appropriate context a proportionality test can, and should, accommodate a substantial degree of respect for the

judgment of the decision-taker as to his reasonable needs (provided he has acted rationally and responsibly), while insisting that the Tribunal is responsible for striking the ultimate balance; and I see good reason for such an approach in the case of the employment relationship."

33. The EAT in **Birtenshaw v Oldfield [2019] IRLR 946** repeated the above but added that:

"it does not follow that the tribunal has to be satisfied that any suggested lesser measure would or might have been acceptable to the decision-maker or otherwise caused him to take a different course. That approach would be at odds with the objective question which the Tribunal has to determine; and would give primacy to the evidence and position of the Respondent's decision-maker."

34. Therefore the test is ultimately an objective one and it is open to an employer to justify the treatment after the event, even if in fact it was not properly articulated or thought through by the decision maker at the time see **Harrod v Chief Constable of West Midlands Police [2017] EWCA Civ 191**.

35. The more serious the discriminatory impact, the more cogent must be justification for it see **Macculloch v Imperial Chemical Industries plc [2008] UK EAT 0119/08.**

Reasonable Adjustments

36. The duty to make reasonable adjustments appears in Section 20 as having three requirements. In this case we are concerned with the first requirement in Section 20(3):

"(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled to take such steps as it is reasonable to have to take to avoid the disadvantage."

37. Under section 21 a failure to comply with that requirement is a failure to comply with a duty to make reasonable adjustments and will amount to discrimination.

38. Under Schedule 8 to the EqA 2010 an employer is not subject to the duty to make reasonable adjustments if the employer does not know and could not reasonably be expected to know that the claimant has a disability or that the claimant is likely to be placed at a substantial disadvantage.

39. In **Environment Agency v Rowan [2008] ICR 218** it was emphasised that an employment tribunal must first identify the "provision, criterion or practice" applied by the respondent, any non-disabled comparators (where appropriate), and the nature and extent of the substantial disadvantage suffered by the claimant. Only then is the tribunal in a position to know if any proposed adjustment would be reasonable.

40. The words "provision, criterion or practice" ["PCP"] are said to be ordinary English words which are broad and overlapping. They are not to be narrowly construed or unjustifiably limited in application. However, case law has indicated that there are some limits as to what can constitute a PCP. Not all one-off acts will necessarily qualify as a PCP. In particular, there has to be an element of repetition, whether actual or potential. In **Ishola v Transport for London [2020] EWCA Civ 112** it was said:

"*all three words carry the connotation of a state of affairs… indicating how similar cases are generally treated or how a similar case would be treated if it occurred again."*

41. It was also said that the word "practice" connotes some form of continuum in the sense that it is the way in which things are generally or will be done.

42. The PCP must put the disabled person at a substantial disadvantage compared to non-disabled persons. Simler P in **Sheikholeslami v University of Edinburgh [2018] IRLR 1090,** EAT, held:

"It is well established that the duty to make reasonable adjustments arises where a PCP puts a disabled person at a substantial disadvantage compared with people who are not disabled. The purpose of the comparison exercise with people who are not disabled is to test whether the PCP has the effect of producing the relevant disadvantage as between those who are and those who are not disabled, and whether what causes the disadvantage is the PCP. That is not a causation question … For this reason also, there is no requirement to identify a comparator or comparator group whose circumstances are the same or nearly the same as the disabled person's circumstances.
The Equality Act 2010 provides that a substantial disadvantage is one which is more than minor or trivial: see s 212(1). The EHRC Code of Practice states that the requirement that an effect must be substantial reflects the general understanding of disability as a limitation going beyond the normal differences in ability which might exist among people: see para 8 of App 1. The fact that both groups are treated equally and that both may suffer a disadvantage in consequence does not eliminate the claim. Both groups might be disadvantaged but the PCP may bite harder on the disabled or a group of disabled people than it does on those without disability. Whether there is a substantial disadvantage as a result of the application of a PCP in a particular case is a question of fact assessed on an objective basis and measured by comparison with what the position would be if the disabled person in question did not have a disability."

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43. In **County Durham and Darlington NHS Trust v Dr E Jackson and Health Education England EAT/0068/17/DA** the EAT stated:

a. It is for the disabled person to identify the "provision, criterion or practice" of the respondent on which s/he relies and to demonstrate the substantial disadvantage to which s/he was put by it;
b. It is also for the disabled person to identify at least in broad terms the nature of the adjustment that would have avoided the disadvantage; he

need not necessarily in every case identify the step(s) in detail, but the respondent must be able to understand the broad nature of the adjustment proposed to enable it to engage with the question whether it was reasonable;

c. The disabled person does not have to show the proposed step(s) would necessarily have succeeded but the step(s) must have had some prospect of avoiding the disadvantage;
d. Once a potential reasonable adjustment is identified the onus is cast on the respondent to show that it would not been reasonable in the circumstances to have to take the step(s);
e. The question whether it was reasonable for the respondent to have to take the step(s) depends on all relevant circumstances, which will include:
    - The extent to which taking the step would prevent the effect in relation to which the duty is imposed;
    - The extent to which it is practicable to take the step;
    - The financial and other costs which would be incurred in taking the step and the extent to which taking it would disrupt any of its activities;
    - The extent of its financial and other resources;
    - The availability to it of financial or other assistance with respect to taking the step;
    - The nature of its activities and size of its undertaking;
    -

44. In summary the tribunal should identify clearly the "provision, criterion, or practice" the disadvantage suffered as a consequence of the "provision, criterion or practice" and the step(s) the respondent should have taken.

Burden of proof

45. We remind ourselves of the provisions of s. 136 Equality Act 2010. The Equality Act 2010 provides for a shifting burden of proof. Section 136 so far as material provides:

> *"(2) if there are facts from which the Court (which includes a Tribunal) 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 subsection (2) does not apply if A shows that A did not contravene the provision."*

46. Consequently, it is for a claimant to establish facts from which the tribunal can reasonably conclude that there has been a contravention of the EqA 2010. If a claimant establishes those facts, the burden shifts to the respondent to show that there has been no contravention by, for example, identifying a different reason for the treatment.

Standard of proof

47. We have, of course, applied the civil standard of proof when fact finding i.e. the balance of probabilities.

FINDINGS OF FACT

48. The witness statements and the document bundle contained a good deal of unnecessary and irrelevant facts and information. We reminded ourselves that we needed to focus on the issues in the case and, therefore, we have only made findings of fact which we consider are necessary for the proper determination of those issues.

49. The Claimant is an employee of the Respondent. She has been employed by the Respondent since 25 February 2019. She has been absent from work since the 25 January 2023 due to ill health.

50. The Claimant was initially employed in the Beaufort Grange nursing home as Head of Unit. The Claimant has two conditions which render her disabled within the meaning of EqA 2010 i.e. Long QT Syndrome and hypoglycaemia. Her health conditions were declared from the outset of her employment. **[80]** A risk assessment was undertaken on 18 June 2019. **[82]** In that assessment reasonable adjustments for her health conditions were identified and thereafter implemented.

51. After approximately three months at Beaufort Grange the Claimant was promoted to the role of Deputy Manager (hereinafter referred to as DM"). During this time she appears to have worked satisfactorily and there is no evidence that she required any further adjustments to be made by the Respondent at that time. The existing adjustments continued. No adjustments were considered to be necessary either by the Claimant or the Respondent to permit the Claimant to undertake work from home or in terms of the provision of a laptop in order for her to do so.

52. We find that the evidence does not support a finding that the role of DM at Beaufort Grange required any adjustments to be made over and above those which had already been made

53. The Claimant claims that due to the deterioration in her relationship with Mrs. Sunil who was the General Manager (hereinafter referred to as the GM) at Beaufort Grange she relinquished her position as DM and took up her original role as Head of Unit. We do not accept that there was any failure to put in place reasonable adjustments for her at Beaufort Grange. There is absolutely no written corroborative evidence that that was the case and if there were discussions about reasonable adjustments then we find that there would have been some record of it held by either the Claimant or the Respondent.

54. In December 2021 the Claimant requested a transfer from Beaufort Grange to Kingfisher Lodge. She claimed that this was because of her health conditions and the relationship difficulties with Mrs Sunil.

55. None of the documents disclosed in these proceedings which evidence the reasons for the transfer mention any relationship issues with Ms. Sunil but the Whatsapp exchange in December 2021 disclosed by the Claimant definitely does hint at some dissatisfaction with Mrs. Sunil. **[337]** We are prepared to accept that the Claimant's perception of the relationship was not as positive as the perception of Mrs. Sunil: the Whatsapp exchange clearly demonstrates that fact.

56. There was no independent evidence of the Claimant's health conditions at that time but we are prepared to accept that the deterioration in the nature of their relationship might have been stressful and it would have been better to avoid that stress by seeking a transfer. We also find that on any view of it, Mrs. Sunil did not want the Claimant to leave Beaufort Grange. This is evidenced by the Whatsapp exchange referred to above.

57. The Claimant's transfer request was granted by the Respondent. She commenced working at Kingfisher lodge in about January 2022 as Head of Unit.

58. On commencing at Kingfisher Lodge it is recorded in the medical questionnaire that there were no relevant changes in the health of the Claimant. Therefore, that meant that there would be no need for further reasonable adjustments to be made. **[86]** This is further support for the finding of there being no issues with the adjustments at Beaufort Grange. Had there been then we would have expected to have seen the documentation recording a substantial revision of the reasonable adjustments at Kingfisher Lodge on the Claimant taking up the role at that nursing home.

59. In April, Mrs. Katrina O'Hagan commenced working as acting GM at Kingfisher Lodge having previously worked there as the DM.

60. We find that the relationship between Ms. O'Hagan and the Claimant was a strong one and there was clearly a good deal of mutual support.

61. In April 2022 it appears that the Claimant was persuaded to take up the role of DM which she did.

62. It is likely that because the Claimant was promoted to DM on 19 April 2022 Ms O'Hagan reviewed the risk assessment for the Claimant's conditions. **[88]** In doing so she reviewed the reasonable adjustments which had been in place. It is quite clear that in that suite of adjustments there was no reference to any requirement for the Claimant to work at home nor for the provision of a laptop to her for that purpose.

63. It is noted that the risk assessment undertaken by Ms. O'Hagan was signed by the Claimant upon review by the Claimant and she wrote "*no review needed unless changes occur*."

64. The risk assessment review is significant. It clearly demonstrates that neither Ms. O'Hagan nor the Claimant were of the opinion that any further adjustments for the Claimant's health conditions were necessary in her new role as DM. We have heard no evidence that thereafter there was any deterioration in the Claimant's health condition to warrant that risk assessment being revisited and there was no further review of it.

65. Notwithstanding the above, the evidence is clear that with the permission of Ms. O'Hagan the Claimant was not being scheduled to work in a fixed 8 week rota pattern and that at times she was working from home and indeed using a laptop for that purpose. Her attendance at the workplace at set times was sporadic. We find that Ms. O'Hagan was also working in that way.

66. In her evidence to the Tribunal Ms. O'Hagan and the Claimant both asserted that the reason for the provision of a laptop and the ability to work from home was because they were reasonable adjustments for the Claimant's health.

67. However, Ms O'Hagan also stated that the ability to work from home was to permit the Claimant to keep on top of the administration work she was required to undertake as part of her DM duties.

68. We reject the evidence of both Mrs. O'Hagan and the Claimant that working from home and the provision of a laptop to do so were reasonable adjustments for the Claimant's health condition for the following reasons:

    a. firstly, when the Claimant was undertaking DM work in Beaufort Grange she had not needed such adjustments and her health condition had not changed as the questionnaire in January 2022 revealed.

    b. it was the Respondent's expectation and it was a very important part of the role of a DM that they would perform all their duties in the workplace where they are visible and accessible to staff. Any variation in that policy would have been contrary to the expectations of the Respondent as to how its nursing homes should operate and particularly, how a DM should fulfil their role. We accept the Respondent's evidence very important for DM's to work in the workplace at all times.

    c. if it had truly been the case that the Claimant needed to work from home from time to time we cannot conceive that Ms. O'Hagan and the Claimant would not have ensured that both those matters were recorded clearly in the risk assessment in April 2022 or at any time thereafter. The ability to work from home would have been such a departure from the Respondent's expectations of the role of DM and such a departure from the 'norm' the decision would have required transparency and justification.

    d. it is the case, in our experience, that nursing homes are tightly regulated because of the fact that such facilities provide nursing and medical care to extremely vulnerable people. Nursing homes are regularly audited and inspected by the CQC and it would be inconceivable that significant and potentially impactive reasonable adjustments to a DM's role would not have been recorded in writing for potential inspection by the CQC. It would

have been absolutely essential for such an arrangement to have been recorded.

69. We find that while it was clearly convenient for the Claimant to spend periods of time working from home because of her domestic situation (which included caring for her children) and because of the lengthy commute times, we do not accept that she worked from home as a reasonable adjustment for her own health conditions and we do not accept that her health conditions justified or required any such adjustment. We find that the reason the Claimant had a laptop to do work at home was because she had been unable to complete administrative work in her contracted hours at the home. We recognise the fact that the Claimant had a strong work ethic which unfortunately at times meant that she failed to delegate her tasks appropriately. Her desire to work from home had nothing to do with her disability.

70. We are, therefore, satisfied that at all times prior to 24 January 2023 the Respondent had in place a system of reasonable adjustments for the Claimant's health conditions as recorded in the risk assessment of April 2022 and no further adjustments were required.

71. The evidence supports a finding that Kingfisher Lodge was not operating satisfactorily under the leadership of Mrs. O'Hagan. There had been poor results at previous inspections and by January 2023 another inspection by the CQC was fairly imminent.

72. As a result, in early January 2023 the Respondent appointed Mrs. Ansitha Sasi to the role of GM at Kingfisher Lodge. She commenced a two week period of induction and was absent with Covid from the home for a week during which time she undertook some of her duties from her home.

73. Whilst it is perhaps too strong a word to describe Kingfisher Lodge as being a 'failed home' there were obvious concerns about underperformance and we find that one of the tasks which Mrs. Sasi was required to undertake was to '*stabilise the ship'* and to make improvements in the operation of Kingfisher Lodge not least because of the impending CQC inspection.

74. We accept that the way in which the home was being managed required substantial revision. Mrs. Sasi would have been aware of that as a result of the handover process in January 2023 and from her observations in the first few weeks in her role.. Furthermore, the evidence of Mrs. Sasi, which we accept, was that shortly after her arrival it was made clear to her by her senior management team that Ms. O'Hagan would not be permitted to work there again in any role.

75. We find that senior management needed Mrs Sasi to address the way in which the management of the home was being conducted and that inevitably meant a review of the Claimant's duties and how they were being performed. We also accept the evidence of Mrs. Sasi that questions about the Claimant's working pattern had been raised with the Claimant by senior management in early January 2023. We accept her unchallenged evidence as set out in paragraph 16 of her witness statement. Mrs. Sasi had also observed that the

Claimant's shifts were not on the rota and that she had attended work as late as mid-morning and then not leaving until midnight.

76. Therefore, as a part of the programme of improvement Mrs. Sasi wanted to speak with the Claimant about her duties and how the home could be better managed.

77. In January 2023 Mrs. Sasi had no reason to suspect that at that time that there were any difficulties with the health of the Claimant nor that she required any further reasonable adjustments to permit her to work satisfactorily. That was not surprising in light of the fact that in her handover package no information was provided to her by Ms. O'Hagan about the Claimant but it is also telling that Mrs. O'Hagan did not feel it necessary to mention any reasonable adjustments over and above those contained in the risk assessment and had there been additional reasonable adjustments we find that they would have been highlighted.

78. There had been no progress in addressing the issues of the Claimant's working pattern before the meeting with the Claimant on 24 January 2023.

79. It is not surprising that with a relatively inexperienced GM and the considerable improvements needed that the Respondent should seek to support her at the meeting with the Claimant. We do not accept the criticism made of the attendance of Mrs. Sunil at the meeting. The transfer documentation would not have revealed to anyone reading it that Mrs. Sunil was not an appropriate choice of attendee.

80. In any event, notwithstanding the historic issues with Mrs. Sunil the Whatsapp messages passing between them on 23 January 2023 the messages are overtly friendly and gave no hint of any relationship difficulties between the Claimant and Mrs Sunil at that time. **[324]**

81. We find that whatever the issues had been previously the messages do not portray a fractured relationship. We find it unlikely that the messages were sent to appease Mrs. Sunil or to ingratiate herself to avoid conflict with her.

82. Mrs. Sunil was not the first choice of attendee for the meeting. Her attendance had been secured after others had been unable to attend. We doubt whether Mrs. Sunil truly understood the reason for the meeting other than she was to provide general support to Mrs. Sasi.

83. We do not find that the intention in calling the meeting was to performance manage the Claimant. We accept the evidence of Mrs. Sasi that the meeting was intended to understand what had been occurring in the home, why the Claimant was spending so much time working and how they could best support the Claimant in her role as DM. It was important for Mrs. Sasi to understand how the Claimant spent her time in work. It was also important for the Respondent to ensure that the Claimant was 'on the rota' in order to regularise her working hours.

84. We find that Mrs. Sasi was not intending to discuss reasonable adjustments for the Claimant's health condition at the meeting but inevitably any

discussion about possible ways to lighten the load upon her may have had a beneficial effect on the Claimant's wellbeing and health conditions.

85. In advance of the meeting Mrs Sasi printed off the DM role profile both to inform the discussion and indeed the Claimant about the expectations of the Respondent for the DM role. **[274]**

86. The Claimant prepared lengthy and detailed written notes for discussion. It is noteworthy that therein she asserted that in 2022 Mrs. Sunil had "begged" her to return to Beaufort Grange to undertake the DM role there but that she could not do so because of the hours of work and the effect on her health. We do not accept her evidence that Mrs. Sunil ever begged her to return to Beaufort Grange but we do accept that she implored her not to leave.

87. It is also important to record that although the Claimant says she could not return to work at Beaufort Grange because of the hours she would have to work the Claimant was, however, claiming to work a substantial number of hours at Kingfisher Lodge. In order to prove that was the case she also created a schedule of the tasks and the time taken to achieve them. **[89-90]**

88. The Tribunal does not accept the accuracy of the schedule created by the Claimant. We do not accept that the list of tasks was performed on a weekly basis by the Claimant. We accept the evidence of Mrs. Sunil about the schedule and, quite frankly, even a cursory perusal of it would lead to a degree of scepticism as to its inaccuracy. We find there was clearly a degree of exaggeration by the Claimant. However, we do accept that the Claimant had been undertaking far too many hours of work and in part that was one of the reasons why there were problems at Kingfisher Lodge. We find that she was not being managed by Ms. O'Hagan as she should have been. Her working pattern was clearly unsustainable for anyone let alone someone with the Claimant's disability. We find that a DM working from home was not conducive to the efficient operation of the nursing home. And nor was it sensible or sustainable for someone with the Claimant's disability to have to undertake additional work whilst at home.

89. We also note that in the document the Claimant prepared for the meeting she made no mention of working from home or the utilisation of the laptop as being necessary for her as a reasonable adjustment.

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90. We are satisfied that before the meeting began Mrs. Sunil probably did make a remark about being present to 'performance manage' the Claimant. Such a remark was ill judged. As we have found, the purpose of the meeting was not about performance management.

91. Understandably the Claimant was concerned to hear the comment from Mrs. Sunil. She would have been within her rights to have refused to attend the meeting and to have requested union representation. Instead, the Claimant did attend and also she covertly recorded the meeting with Mrs. Sasi and Mrs. Sunil and also continued to record her conversation with Mrs. Sasi after the meeting. That is regrettable conduct but nevertheless the recording has

provided a degree of certainty about what was discussed and said by the participants. The transcript of the meeting and the subsequent conversation is agreed. **[274-292]**

92. By the time of the meeting we accept that Mrs. Sasi knew something of the Claimant's ill health condition but not the full details. As indicated previously there was no indication at that time that her work was impacting her health and so there was in reality no reason to discuss her health. Although the Claimant did mention her health condition at the meeting it did not feature centrally in the discussion.

93. At the meeting there was a good deal of discussion about the hours worked by the Claimant. There was considerable discussion of the Claimant's duties and how she might be assisted to discharge them in her contracted hours of 40 hours per week spread over four days.

94. Mrs. Sasi was clear that she did not want the Claimant working excessive hours in future and didn't want her working until late at night. **[275]** It is apparent that Mrs. Sasi wanted the Claimant to work care shifts '*on the floor*' and to do her administrative work. Of course, that was her contractual obligation.

95. Mrs. Sasi wanted the Claimant to attend the handovers from the night shift when she was working on the floor which meant an 8.00 a.m. start on two days. We accept Mrs. Sasi's unchallenged evidence as set out in paragraphs 20 and 23 of her witness statement. We do not accept the Claimant's assertion as recorded in her grievance document that she was being asked to start every day at 8.00 a.m. **[103]** We also accept the evidence of Mrs. Sasi that had it been necessary for reasons related to her health the Claimant could have started at 9.00.a.m.

96. It is obvious from the transcript that Mrs. Sasi was making suggestions as to how the Claimant might reduce the hours she was working.**[275]** As indicated above we accept that she envisaged a degree of flexibility for the Claimant as far as start times are concerned. We do not accept that Mrs Sasi was proposing that flexibility as to hours would be removed from the Claimant in the event she needed to alter her hours due to her disability.

97. We find that the Claimant had needed very little adjustment to start times from a health perspective historically. As she indicated, her condition was well managed.

98. We also accept the evidence of the Claimant that from time to time she would attend work at Kingfisher Lodge as early as 6.00 a.m. without there being any apparent impact on her health. **[103]**

99. On a number of occasions during the meeting, the Claimant indicated that she did not want the DM role in the first place and that it was not her choice to take it on. **[282]** .

100. The Respondent accepts that during the meeting Mrs. Sasi said words along the lines of the following words, *"I know your health and your children's health*

is important to you, so that's why have a think, whether you are able to fulfil these responsibilities withing the given time." **[282, 284, 285]**

101. The Claimant clearly did not make the express comment in the transcript but we note the concession that she had said words to the effect of the alleged comment in three occasions in the transcript and we proceed to consider the matter in line with the Respondent's concession.

102. It is unsurprising that Mrs. Sasi should have said the above words bearing in mind the Claimant's stance that she hadn't really wanted the DM role and she was claiming the role required her to work an excessive number of hours

103. We accept the contention of the Respondent that it was in the Claimant's interest that her working hours were regulated and that Mrs. Sasi was attempting to do so. We find that Mrs. Sasi was cognisant of the fact that an employee should not be expected to work a large number of voluntary hours late into the eventing. That was a matter which had to be addressed by her. During the meeting there was a considerable amount of discussion as to how this could be prevented.

104. We interject here that the transcript does not read as though the meeting was a formal performance management meeting but rather an attempt to scope how the Claimant 's hours could be regularised. It also of importance that Mrs Sunil interjected on occasions with suggestions as to how that objective might be achieved. We find her interjections were intended to support the Claimant.

105. The Claimant confirmed she had no difficulty with working as a carer i.e. ' *on the floor'* and she found it to be *"lovey [sic], the easiest, less stressful*." **[276]** There was considerable discussion was about how best to achieve a balance between the Claimant's floor duties and her administrative tasks. Several helpful suggestions to reduce the burden on the Claimant were made by Mrs Sunil and Mrs Sasi during the meeting.

106. The transcript demonstrates that the Respondent's managers were trying to assist the Claimant to work more efficiently and to remove some of the burden on her. The Claimant, unfortunately, appeared to be entirely unconvinced by their efforts.

107. The conversation inevitably led onto whether in fact the Claimant wished to continue in the DM role and, if not., what other options were available to her. **[282]**. This, in turn, lead to a conversation about potential limitations with alternative roles at Kingfisher Lodge arising from the fact that the Claimant was not qualified as a Care Practitioner ('CP'), and, therefore, they believed that she was unable to administer controlled drugs. This was a key requirement of the Head of Unit role at Kingfisher Lodge, which was primarily a nursing rather than residential home **[285]**. We find that Mrs. Sasi spoke the following words *"since you are not a CP, you cannot...do medication ...so in this care home the next only option is for you to work on the floor as a carer."* **[285]**

108. The problem with the Claimant's qualifications had arisen following an anonymous whistleblowing disclosure to the CQC the previous year. The

difficulty had been resolved by the Claimant undertaking the DM role. **[97-98] [140-141]**.

109. The Respondent has again conceded that during the discussion Mrs. Sasi said words along the liens of *"I know you have health problems, so let me know next week, if you are able to fulfil your role"* **[287]** The exact words were not spoken but we proceed along the lines of the concession made by the Respondent.

110. We accept the submissions of the Respondent that Mrs. Sasi was not intending to remove reasonable adjustments or to refuse to consider adjusting the Claimant's duties. There was no suggestion by the Respondent that the Claimant was unvalued: we accept that the Claimant "was a valued employee with a commendable work ethic."

111. At the meeting Mrs Sasi did not understand why the Claimant required a laptop in her role. She did not believe there was any work that the Claimant needed to routinely do at home and was concerned that it was inconsistent with the need to regulate and limit the Claimant's working hours. There were also GDPR and confidentiality issues with taking documents out of the workplace. The Claimant was, therefore, asked to return the laptop at a meeting to be arranged for the following week. **[284]**

112. If in fact the Claimant needed the laptop as a reasonable adjustment it is surprising that she did not raise it at the meeting on 24 January 2023, or during her grievance meeting with Mrs Davis, or during her grievance appeal meeting with Mrs Zhao.

113. The meeting concluded with the intention to hold another meeting arranged for the following Friday. It was envisaged that the next meeting the Claimant would be supported by a representative. **[289]**

114. We accept that at the next meeting there would have been detailed discussions about the DM role and how the Claimant might be supported to fulfil it if that was her choice.

115. On 24 January 2023 after the meeting Mrs. Sasi updated the regional manager as to how the meeting had gone in the meeting she wrote *"I know from what I seen so far, the previous GM had done lots of adjustments including hours of work, supernumerary hours etc, but I wouldn't be able to do..."* **[92-93]**

116. Mrs. Sasi did not utter those words in the meeting itself as is alleged in the Claimant's claim or in the List of Issues. There is no issue with the accuracy of the transcript of the conversations which occurred and there is no reference to the above therein. We find that the Claimant would not have been aware of the existence of the email until at least the grievance appeal or later.

117. We find that the use of the word "adjustments" was not in the context of them being required for the Claimant's health. The variation in her hours had nothing to do with her health but it was an accommodation for her to undertake the administrative tasks which she claimed she could not do in the

workplace. The Claimant did not assert at the meeting that her working form home was a reasonable adjustment for her disability so Mrs. Sasi would not have known that it was being claimed to be so.

118. We accept that it was perfectly understandable and appropriate in the circumstances for Mrs. Sasi to communicate her views to her line manager.

119. The Claimant commenced sick leave on 25 January 2023 and she has not returned to work.

THE GRIEVANCE AND GRIEVANCE APPEAL

120. The Claimant lodged a grievance after commencing sick leave and after its determination she appealed the outcome. We need not make any particular findings of fact about it save to record that Tribunal was unimpressed by the manner in which the grievance and the grievance appeal were undertaken. Both processes were suboptimal and whilst there were clearly supportive measures recommended by both the decision-makers neither of them really got to grips with the central issues in the grievance. We were particularly dismayed by Mrs. Zhao's assertion in the grievance appeal meeting that she did not believe the Claimant's conditions met the test of disability despite having had some training in disability matters.

121. Nevertheless we do not draw any adverse inferences from those failings as there were clearly steps taken to support the Claimant however late in the day they occurred.

CONCLUSIONS

DISCRIMINATION ARISING FROM DISABILITY

CLAIM 1

"I know from what I seen so far, the previous GM had done lots of adjustments including hours of work, supernumerary hours etc, but I wouldn't be able to do...";

122. Mrs Sasi did not make this comment during the meeting on 24 January 2023, as is evident from the transcript and her own evidence to the Tribunal.

123. The comment relied upon is an extract from the email Mrs Sasi sent to her regional manager on 24 January 2023, following the meeting earlier that day. **[93]**

124. The words used related to the manner of working which was unrelated to the Claimant's disability. We have already found that those variations from the

norm were unrelated to the Claimant's disability and, therefore, the words written did not arise in consequence of her disability.

125. In any event, if the words used were because of something arising in consequence of the Claimant's disability we do not accept that the words were unfavourable treatment of her. The words used were in fact related to the discussion about the Claimant's working hours and the balance between floor and supernumerary work and it had been entirely legitimate for Mrs Sasi to discuss those matters with the Claimant to understand what she was doing and why. It was not unfavourable treatment of the Claimant to record her views that the business could not sustain such a variation in circumstances where it was envisaged that the Claimant would not need such a substantial variation in her hours in the future.

126. In any event, we are satisfied that the Respondent's need to ensure that the Claimant was capable of fulfilling her role within a reasonable number of hours is a legitimate aim and Mrs. Sasi reporting her views on the sustainability of the existing situation to her line manager was entirely reasonable and proportionate.

CLAIM 2

"I know your health and your children's health is important to you, so that's why have a think, whether you are able to fulfil these responsibilities within the given time"

127. We accept that words along the line of the comment were expressed. These words formed part of a legitimate discussion arising because of the Claimant indicating she had been reluctant to take on the DM role in the first place. When one views the transcript as a whole it is apparent that the Respondent wanted to end the situation whereby the Claimant was working an unsustainable number of hours which might have impacted her health and the Claimant was being somewhat dismissive of their efforts. It was not unfavourable treatment to ask the Claimant whether she would think about whether she could undertake the role as it was envisaged to operate.

128. In any event, we are satisfied that the Respondent's need to ensure that the Claimant was capable of fulfilling her role within a reasonable number of hours is a legitimate aim and it was entirely proportionate in the circumstances to ask the Claimant to consider whether she felt she would be able to fulfil the role as it was envisaged to be.

CLAIM 3

"I know you have health problems, so let me know next week, if you are able to fulfil your role"

129. We accept that words along the line of the comment were expressed. Our conclusions on Claim 2 are repeated.

CLAIM 4

"When the Claimant had asked what her options would have been, she claims that she felt that, due to her disability, she was not able to work the excessive amount of hours (60-80) and enquired whether she could go back to her previous Head of Unit position. Mrs Sasi answered: "since you are not a CP, you cannot...do medication ...so in this care home the next only option is for you to work on the floor as a carer".

130. We find the comment about being unable to provide medication was made. The comment was part of a legitimate discussion in which the Claimant was being informed that there would be steps taken to ensure that she only needed to work her contractual hours with occasional further reasonable hours. The Claimant had been informed that she should take to time to reflect on whether she felt that she could undertake the DM role and inevitably the discussion turned to other options available.

131. As we have found above there had been issues about the Claimant's qualifications previously and following a whistleblowing disclosure to the CQC. The Claimant knew this to be the case. We do not consider making the comment was unfavourable treatment of the Claimant: it reflected the reality of the situation as it was understood to be.

132. Whilst we are satisfied that the Respondent's need to ensure that the Claimant was capable of fulfilling her role as a DM within a reasonable number of hours is a legitimate aim the comment was not made in pursuit of fulfilling that aim: it was made because the Respondent could not offer her anything other than a carer role because of her qualifications. It had nothing to do with her fulfilling her DM role. The statutory defence is not, therefore, made out as pleaded and it would not be appropriate for the Tribunal to consider a different unpleaded legitimate aim.

REASONABLE ADJUSTMENTS

The alleged PCPs

PCP1

That a manager would also need to 'work on the floor' as a carer 24 hours per week, while continuing to fulfil their managerial duties.

133. We accept that this is what the Respondent wanted the Claimant to work and that it amounted to a PCP.

134. We do not accept that it put the Claimant at a substantial disadvantage compared to someone without her disability.

135. The Claimant confirmed during the meeting on 24 January 2023, she was happy to do a mix of 'floor work' and 'supernumerary' work, and particularly liked working on the floor **[276]**.

136. Furthermore, the requirement to do floor work was in the context of the Respondent ensuring that in future the Claimant was not working the considerable number of hours she had worked under the leadership of Mrs O'Hagan. Therefore, simply requiring her to undertake floor work did not impact on her disability adversely. The Respondent's insistence on her undertaking floor work was clearly not a problem for the Claimant in such circumstances.

137. If, however, there was a substantial disadvantage caused to the Claimant we agree with the Respondent's submission that having regard to the known facts about her disability and the required adjustments the Respondent did not know nor could it reasonably have been expected to know that the Claimant was likely to be placed at any disadvantage she can establish simply by reason of the being required to work 24 hours a week 'on the floor'.

PCP 2

That employees commence their shift at 8 a.m.

138. We find that in fact the PCP was intended to be that employees including DMs would commence their shifts in accordance with the rota prepared in advance (ideally every 8 weeks). We do not, therefore, accept that there was a PCP that the Claimant had to commence her shift at 8.00 a.m. every day. We do accept, however, that when she was doing her floor shifts she needed to be in for the handover for an 8.00 a.m. shift. The evidence of Mrs. Sasi, which we have accepted, was that she could have been scheduled to work between 9-5.

139. We accept that there was a recognition that there would need to be some flexibility when preparing the rota to take into consideration individual circumstances. It was reasonable to expect that she would be scheduled to work via the rota rather than an ad hoc arrangement at short or no notice.

140. The Claimant has, therefore, failed to demonstrate the PCP contended for.

141. In any event had the Claimant been required to attend work at 8.00 a.m. for every shift or even in respect of just the two floor shifts such a PCP would not have put the Claimant at a substantial disadvantage compared to someone without her disability. She did not ever suggest that an 8.00 a.m. shift would have caused her health issues. We have found that the Claimant had on occasion attended work at 6.00 a.m. without complaint or issue. Furthermore, the Claimant could have ensured that the rota was drafted in such a way that she was not scheduled to attend an early floor shift after a longer floor shift the previous day. In any event, she was perfectly able to regularly commence work at 8:00 a.m. or such other time specified on the rota or agreed with her manager.

142. Therefore, we do not accept that as a matter of course an 8.00 a.m. start time would have disadvantaged the Claimant. We have little doubt that if on occasions she could not attend work at 8.00 a.m. because of a disability related issue this would have been acceptable to Mrs. Sasi.

143. Further, if the Claimant was likely to experience a substantial disadvantage by reason of the claimed PCP (which we have found did not exist) the Respondent did not know that she would experience a substantial disadvantage and, bearing in mind the history of her condition as revealed by what she told them about her health condition and its effects and her working patterns the Respondent could not reasonably have been expected to know the Claimant was likely to be placed at any disadvantage.

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PCP 3

That employees complete their job role within the workplace.

144. It is not disputed that there was an expectation that a DM would complete their contractual hours in the workplace having regard to the nature of the role. We accept it was a PCP.

145. The PCP did not put the Claimant at a substantial disadvantage compared to someone without her disability. The Claimant would have been able to complete her contractual hours each day at work, plus whatever voluntary hours she chose to work. She was not being required to work a substantial number of additional hours either in work or at home as she had apparently done.

146. The work the Claimant had undertaken at home was work that she had been unable to complete during her contractual hours and that was no longer necessary.

147. In any event if there was a substantial disadvantage, in light of the information about the Claimant's health issues available to it, and the information about her working pattern the Respondent did not know nor could it reasonably have been expected to know that the Claimant was likely to be placed at any such disadvantage.

PCP 4

The requirement to work contractual hours and/or in excess of contractual hours. The Claimant alleges that the remaining 16 hours of her 40 hour week (after deduction of the 24 which she undertook on the floor), were insufficient to enable her to complete her managerial duties. She alleges that her managerial duties took her 40-50 hours/week before her care work. She therefore understood that she might have been expected to have worked 64-74 hours/week.

148. We do accept that there was a need to work contractual hours and we have already dealt with that above. We do not accept there was an obligation to work excessive hours. The Claimant was under no obligation to work

anything other than her contractual hours and such additional hours as may reasonably be required to fulfil the requirements of the role. There was no PCP requiring employees to regularly work the substantial hours asserted by her.

149. Furthermore, there was no PCP requiring employees to work excessive hours i.e. 64-74 hours a week. As Mrs Sasi made clear at the meeting on 24 January 2024 the Respondent's aim was to reduce the number of hours being worked to the contractual obligation. Therefore, the Claimant's claimed PCP in respect of excess or excessive hours is not established.

150. Had there been a PCP of being expected to work excess hours to the extent alleged then one could readily understand how that would impact adversely the Claimant as she would have been required to work between about 13 hours to 18.5 hours per day in a four day week.

151. If the PCP was to work the considerable number of additional hours as alleged by the Claimant (which we have rejected) then the Respondent would or should have been on notice of the disadvantage being caused. Indeed, the Respondent's attempts to reduce the Claimant's hours was designed to reduce such an impact.

REASONABLE ADJUSTMENT 1

Removing the carer/floor work role from her responsibilities, allowing me to focus her efforts on her managerial role.

152. Having found that expecting the Claimant to undertake floor duties did not place her at a substantial disadvantage compared to someone with disability there was no need for the Respondent to make any such adjustment.

153. There was no breach of a duty to make a reasonable adjustment.

REASONABLE ADJUSTMENT 2

Permitting the Claimant to commence her shift after 8 a.m. if her duties the previous day ran beyond the normal shift hours and commensurate to those additional hours.

154. We have not found the PCP of requiring the Claimant to start at 8.00 a.m. was made out and, therefore, this adjustment falls away.

155. Further, an in any event, the intention of the Respondent at the meeting on 24 January 2023 was to avoid precisely the scenario envisaged by the suggested adjustment arising i.e. the Claimant working late into the evening. Mrs Sasi was proposing ways in which that would be avoided. The discussions had not concluded and making an accommodation for the Claimant had not been disregarded. In the circumstances the situation

envisaged by the alleged adjustment would not have arisen other than in exceptional circumstances.

156. Had the scenario arisen we have found that Mrs Sasi had not ruled out flexibility of start times and there were further discussions to be had about what accommodations could be made.

157. There was no breach of a duty to make a reasonable adjustment.

REASONABLE ADJUSTMENT 3

The reissuing of the laptop computer previously provided to her in order that she could carry out some work from home.

158. As we have found, the Respondent rightly considered that the Claimant undertaking her work in the workplace was important.

159. We have also found that the Claimant undertook the same role in Beaufort Grange without working from home and without requiring a laptop.

160. The Claimant made no mention of the requirement for the utilisation of a laptop from home for health reasons in the meeting in January 2023 or during the grievance and grievance appeal meetings.

161. We have found that the utilisation of the laptop was not related to the Claimant's disability. We have also found that by requiring the Claimant to undertake her duties wholly in the workplace the provision of a laptop from a health perspective or any perspective was unnecessary.

162. There was no breach of a duty to make a reasonable adjustment.

CLOSING COMMENTS

163. For the reasons expressed above we do not uphold the Claimant's claims under s.15 EqA 2010.

164. Furthermore, there was no breach of the duty to make reasonable adjustments under s.21 EqA 2010. The Claimant's suggested adjustments are rejected as being unnecessary and no further adjustments were needed in all the circumstances.

Employment Judge Walters
Date: 14 August 2024

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

4 September 2024

Jade Lobb
FOR THE TRIBUNAL OFFICE