



# EMPLOYMENT TRIBUNALS

**Claimant:** Mrs Sonya Nicol

**Respondent:** Ministry of Defence

**Record of a Hearing by CVP  
at the Employment Tribunal  
Audio Recorded by CVP**

**Heard at:** Lincoln

**Heard on:** 15 & 16 January 2025

**Reserved Judgment:** 28 January 2025

**Before:** Employment Judge Hutchinson

**Members:** Ms J Hallam  
Mr C Goldson

**Appearances:**

**Claimant:** Miss Harty, Counsel

**Respondent:** Mr Tinnion, Counsel

# RESERVED JUDGMENT

The unanimous Judgment of the Tribunal is:

1. The claims of disability discrimination fail and are dismissed.

2. The Remedy Hearing set for the 4 July 2025 is hereby cancelled.

## REASONS

### Background

1. The Claimant has been employed by the Respondent since 1 March 2004. She is a Physiotherapist Specialist and is based at RAF Cranwell in Lincolnshire.
2. The claimant presented her claim to the tribunal on 2 February 2024. The claim relates to the period between 2 October 2023 and 2 February 2024 when she was temporarily based at RAF Waddington.
3. The Claimant suffers from endometriosis together with complications which have arisen from a total hysterectomy and ovary conservation operation and the Respondents accept at the relevant time that she had a disability and that they were aware of it.
4. Her claim is of disability discrimination namely, that the Respondents failed to make reasonable adjustments. This related to the provision of auxiliary aids and in particular:
  - A rise and fall desk.
  - A trolley bag.
5. The Respondents accept that they did not provide the rise and fall desk or a trolley bag during the relevant period. They say that the Claimant was not at a substantial disadvantage compared with those not suffering from her disability and that the Claimant had not made any request for the adjustments.

### List of Issues

6. The parties have agreed a list of issues in this case.
7. It is agreed that the Claimant's disability is complications arising from a total hysterectomy and ovary conservation and endometriosis removal and the Respondents accept that that amounts to a disability within the statutory meaning of disability under Section 6(1) of the Equality Act 2010. They also accept that they knew the extent of her disability at the time.
8. As to the reasonable adjustments; the question for the Tribunal is, whether a disabled person in the Claimant's role, but for the provision of an auxiliary aid, be put to a substantial disadvantage in relation to relevant matters in comparison with a person who is not disabled?

9. The auxiliary aids relied upon are:

- A trolley recommended by Occupational Health for purposes of carrying a heavy laptop.
- A suitable desk (high/low) when she was relocated to the Waddington site on or around 25 September 2023.

10. The Tribunal has to be satisfied that the Claimant was put at a substantial disadvantage compared to someone without her disability in that she could not complete an assessment fully and that it increased the likelihood of her experiencing pain when performing desk bound tasks in her day to day role at RAF Waddington.

11. If we are satisfied that she was put to that substantial disadvantage we must go on to consider whether the Respondent knew or ought to have known the Claimant was likely to be put at a substantial disadvantage.

12. Finally, we must ask did the Respondent fail in its duty to take such steps as it would have been reasonable to have taken to avoid the disadvantage namely providing the auxiliary aids referred to above.

### **Evidence**

13. The Tribunal heard evidence from

- The Claimant.
- Flight Lieutenant Bamrah, Officer in Command of the Primary Care Rehab Facility in Waddington.
- Kathy Broughton, Physiotherapist and the Claimant's Line Manager.

14. There was an agreed bundle of documents provided and where page numbers are referred to it is from that bundle.

### **The Facts**

15. The Claimant has been employed by the Respondent since 1 March 2004 as a Physiotherapist Specialist and is normally based at RAF Cranwell. She suffers from a disability which arises from a full hysterectomy operation that was conducted in early 2023 although she had been suffering with headaches since 2017/2018.

16. In an Occupational Health Report dated 3 October 2018, page 84, it referred to the difficulties that she was having at the time from viral neuritis affecting her lower limbs and back. The report made several recommendations at page 87, namely:

- 16.1 An alternative larger desk.
- 16.2 A standard footrest.
- 16.3 A suitable chair which would be ergonomic.
17. It was also recommended that she should take regular breaks and changes in posture.
18. When a desk was provided for her, she was given a colleagues desk which was larger but was also a rise and fall desk.
19. She was also provided with a footrest and suitable chair.
20. The Claimant had the hysterectomy operation in early 2023 and she was off work for approximately 3 months and when she returned in April 2023 it was on a phased return. Her employers were fully supportive of her return.
21. On 28 June 2023, Mrs Nicol had to attend Accident and Emergency suffering from urinary retention.
22. When she returned to work on 13 July 2023 she had a meeting with her Line Manager, Kathy Broughton. It was agreed that they should have a further Occupational Health Report and the referral is at page 125.
23. On 20 July 2023, she had a meeting with her own Consultant about her gynaecological issues and she discussed this with Kathy Broughton on the following day the 21 July. A note of their discussion is contained in the email that was sent to her on that day from Kathy Broughton which is at page 455.
24. Mrs Nicol met with the Occupational Health Consultant on 26 July 2023. The report is at page 413 – 414.
25. The report detailed the Claimant's current health issues and that she had been referred to Specialist Services to review her health problems and for additional support to aid her recovery. It referred to the fact that it took several months to obtain the support and that in the meantime she had been advised to avoid any activity that strained her core muscles.
26. In respect of her current capacity for work it said:

*"In my opinion Mrs Nicol is fit to continue working if she can avoid any activities that strain her core muscles. I understand Mrs Nicol performs a range of duties. When she is looking after a specialist group of patients she's working with a colleague. Mrs Nicol is able to assist and ask her co-worker to do any duties that are potentially heavy. When Mrs Nicol is doing other clinical casework she is currently avoiding any back and hip cases. She tells me she is okay with ankles and necks. Knee cases can be challenging. I recommend when she is*

*working she does a mini manual handling risk assessment and always uses her discretion who she sees.*

*Mrs Nicol informed me that she is a mobile worker and, therefore, carries her laptop and other equipment with her. Her work bag can be quite heavy. We discussed the benefits of only carry the kit she needs and leaving excess kit in her car. A suitable trolley would also be good when carrying her heavy laptop. Please can you source one of these via MOD equipment catalogue.*

*Mrs Nicol tells me she currently has a specialist desk and chair at work. If she moves office please can you do another DSE Assessment to make sure her workstation is set up correctly.”*

27. On 10 August 2023, Kathy Broughton conducted Mrs Nicol’s mid-year review. Her notes are at page 241-252. It can be seen from the comments at pages 251-252 that the review was positive and referred to her being well on her way to achieving all her goals for this reporting year and that she had continued to be an active and supportive member of the team.
28. There was no discussion in that report about any capability issue. At the end of the meeting, they discussed the Occupational Health Report and Ms Broughton agreed that she would seek to source a trolley for the Claimant.
29. They did have some further discussions about gynaecological treatment that the Claimant needed. There was no indication of any concerns about the Claimant’s job being at risk.
30. It was in this late summer period that it proved necessary for the Physiotherapists including the Claimant to transfer their activities to RAF Waddington whilst repairs were being undertaken to their facilities at RAF Cranwell. It would only be a temporary move for a matter of months.
31. Following the discussions between Ms Broughton and Mrs Nicol, Mrs Nicol was concerned about her employability. She wrote to Ms Broughton on 14 August (pages 298-301) setting out her concerns and on 15 August she telephoned Stacey Robinson at Human Resources to discuss further these concerns. She was concerned:
  - 29.1 About issues of her capability.
  - 29.2 Her meeting with Ms Broughton.
  - 29.3 Adjustments that were being made regarding treating certain patients due to heavy lifting.
  - 29.4 She said that she could do the work with the current adjustments.

- 29.5 She raised the issue of a possible grievance.
- 29.6 A further Occupational Health referral was raised.
32. We understand that subsequently the Claimant raised a grievance which we have not seen but it had nothing to do with the desk or the trolley.
33. In respect of the move to RAF Waddington there was a concern over the car parking and whether the physiotherapist would have to walk a considerable distance from the car park to the offices but ultimately this was not a problem.
34. Each Physiotherapist was supposed to complete a DSE (Display Screen Evaluation) but Mrs Nicol did not complete this. It was not chased up by her Line Manager.
35. Ms Broughton, when she had seen the Occupational Health Report, appreciated that the Claimant may need a trolley for transporting her heavy laptop. We are satisfied that this was not seen as a substantial problem to the Claimant. She did not work from home and all her consultations would take place at the RAF Waddington site, so she was not expected to be mobile in any way.
36. When the relocation took place to RAF Waddington, she was sharing an office and we have seen the photograph in respect of the office which has a lockable cupboard. There is also a filing cabinet which was under the desk which was lockable and could be used by the Claimant. There were also lockers in the changing rooms.
37. When Mrs Nicol discussed the issue of the trolley at the end of July with Ms Broughton, she had told her that she did not want her to order a trolley as it wasn't needed.
38. Despite this Ms Broughton had investigated the possibility of obtaining a trolley in August but had not followed this up.
39. In Ms Broughton's meeting with Mrs Nicol on 10 August when they undertook the mid-year review whilst at the end of it they discussed the Occupational Health Report the issue of the trolley and desk was not raised.
40. This did not prevent Ms Broughton looking into the trolley situation as I have described above, and she had emailed Rob Tapscott about obtaining the trolley on 24 August 2024 at page 150. Ms Broughton accepts that she did not follow this up.
41. This issue of the trolley though disappeared when early in the week commencing 18 September 2023 Mrs Nicol attended with a trolley bag that she had sourced herself. There was a discussion between Ms Broughton and Mrs Nicol and Mrs Nicol told her that she did not need Ms Broughton to pursue the trolley as she was happy with the one, she had sourced herself.

42. When the Claimant moved into RAF Waddington on or around the 2 October 2023 her rise/fall desk was not in her office. It had not been moved from RAF Cranwell and there is no explanation as to why that did not happen. We are satisfied that there was no specific instruction that it should not be transferred, and the Claimant never raised the issue of it.
43. Shortly after the move on 13 October 2023 there was a further Occupational Health Report which is at pages 417-419. The report deals with her current health issues, in particular, the complications that she had suffered following the gynaecological surgery in January. It explained that she was waiting to access specialised physiotherapy services to help her manager her condition and that there was a waiting time for this service although Mrs Nicol was trying to expedite her treatment because of her ongoing symptoms and the difficulty that the condition had caused her at work.
44. The report confirmed that Mrs Nicol was fit for her role but that she should avoid heavy lifting. It said that:
- “Previously, one of the recommendations from her OH was to use a wheeled bag to move her equipment between work sites. Mrs Nicol told me she has purchased one for herself, and I support that she continues to use it”.*
45. It went on to say that there was no need to restrict her work to certain parts of the body but that she should not be lifting patients who are too heavy. That she was able to manage treating most patients by exercising caution and by modifying her techniques if she needs to. There was no mention at all about any issue regarding the desk.
46. On 14 November, Mrs Nicol had a meeting with Ms Broughton, the notes of which are at pages 226-231. The Claimant was represented by Karina Bunn from the Staff Association. It was agreed that Mrs Nicol would return to full clinical duties and nothing at all was raised about the trolley or desk.
47. As a result of this meeting the Claimant returned to full duties and continued those duties during the rest of the period until the beginning of February when she was transferred back to Cranwell.
48. The first time that she subsequently raised the issue of the desk and trolley was when she made her application to the Tribunal on 2 February 2024.

### **The Law**

49. The claim of failing to make reasonable adjustments is made under section 20 and 21 of the Equality Act 2010. Section 20 provides:

*“(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on*

*whom the duty is imposed is referred to as A.*

*(2) The duty comprises the following three requirements.*

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

*(4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.*

*(5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid."*

50. Mr Tinnion referred us to the case of ***Glasson v The Insolvency Service EAT 2022 00566/LA.***

### **Our Conclusions**

51. There are two pieces of auxiliary equipment that the Claimant says she required because she says she was placed at a substantial disadvantage by them not being so provided by the Respondent.

### **The Trolley**

52. The Tribunal noted that the trolley had been recommended in the Occupational Health Report in July. We are satisfied that the Claimant had said that she didn't really need one but after she had made her complaint in August Ms Broughton had investigated obtaining one for her. This would only have been for the move to Waddington.

53. We are satisfied that by mid-September the Claimant had acquired her own trolley and this is referred to in the Occupational Health Report on 13 October. It is clear from that that the Claimant did not need one any longer.

54. Although the Claimant has subsequently said that the trolley that she had acquired had been broken we are satisfied that she never told her employer about this.

55. In any event the trolley would only have been needed on a limited basis. Physiotherapists are not mobile and so are not expected to either work from home or from other premises other than that at Waddington. At Waddington the Claimant had been provided with a locked cabinet and there was a filing cabinet under the desk that she could have used if she had wanted to.

56. The Respondent never told the Claimant they would not provide her with one and she never asked for one. We are satisfied that there is no reason why she could not have raised it the time and the fact that she raised a complaint about other matters clearly showed that she was quite capable of raising complaints.
57. We are, therefore, satisfied that the Claimant has not been able to establish that the lack of the provision of a trolley by the Respondent amounted to a substantial disadvantage to her in the circumstances of this case.

### **The Desk**

58. We note that there was never any recommendation by Occupational Health that she required a standing/rising desk, the original recommendation in the report on 3 October 2018 was that she should have a larger desk. She had the desk not because it was a standing/rising desk but because it was larger.
59. We acknowledge that it was expected that her desk would be transferred to Waddington, and this was mentioned in the Occupational Health Report shortly before the move and the Respondents accept that they did not move the desk. There is no evidence though that the lack of the desk caused her any substantial disadvantage. And she at no time raised any issue in respect of this even after she had returned to full duties.
60. The Tribunal note that she was a professional person, a physiotherapist who should have known about these matters and that if it was placing her at any disadvantage at all she could have raised it particularly in the meeting on 14 November 2023 when she had her staff representative with her.
61. In respect of this claim we are satisfied that the Claimant has not suffered any substantial disadvantage by the failure of the Respondents to provide these two pieces of auxiliary aids and the claims, therefore, fail and is dismissed.
62. In the circumstances the Remedy Hearing is unnecessary and is cancelled.

---

Employment Judge Hutchinson

Date: 6 March 2025

JUDGMENT SENT TO THE PARTIES ON

.....12/03/2025.....

.....  
FOR THE TRIBUNAL OFFICE

**Public access to employment tribunal decisions**

Judgments and reasons for the judgments are published, in full, online at [www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions) shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

**"Recordings and Transcription**

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

<https://www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/>