



THE EMPLOYMENT TRIBUNALS

Claimant: Miss L Edmondson

Respondent: Secretary of State for Justice

Heard at: Newcastle

On: 13-17 January 2025

Before: Employment Judge Moss
Mrs D Winship
Mr S J Lie

Representation:

Claimant: Mr McHugh (Counsel)

Respondent: Ms Hogben (Counsel)

JUDGMENT

The unanimous judgment of the Tribunal is:

The claimant's complaint of failure to make reasonable adjustments is dismissed.

The claimant's complaint of discrimination arising from disability is dismissed.

The claimant's complaint of harassment is dismissed.

Judgment and reasons having been given orally on 17 January 2025 and written reasons for the judgment having been requested by the claimant at the conclusion of the hearing on that date, the following written reasons are provided.

WRITTEN REASONS

Complaints

1. The claims adjudicated upon were:

Failure to make reasonable adjustments – ss20-21 Equality Act 2010;

Discrimination because of something arising in consequence of disability – s15 Equality Act 2010;

Harassment related to disability – s26 Equality Act 2010.

Issues

2. The respondent accepts that the claimant is, and was at all material times, a disabled person, and that she satisfies the definition in Section 6 of the Equality Act 2010 by virtue of having a cancer diagnosis.
3. The parties produced an agreed list of issues for use at the hearing which is appended to these written reasons.

Documents

4. The parties produced a bundle comprised of 718 pages. One further document was added to the bundle during the course of proceedings. In addition to the list of issues, the parties also helpfully produced a chronology, cast list and list of acronyms.

Witnesses

5. The claimant gave evidence on her own behalf. The respondent called 4 witnesses – Mr Alan Drummond, Mr David Pilkington, Mr Darren Finley and Mr Peter Jobling.

Findings of fact

6. The claimant commenced her employment with the respondent in January 2009, working initially as a Prison Officer. From December 2020 up until the time of the events giving rise to the complaints, she was a Band 5 Custodial Manager in Safer Custody at HMP Frankland. It was an operational role that required the claimant to carry out control and restraint as part of her duties, bringing her into direct contact with some of the most dangerous offenders within the prison estate.
7. The claimant obtained JSAC (Job Simulation Assessment Centre) accreditation in January 2023, which put her in the position of being able to apply for Band 7 roles.
8. From April 2022 until 1 March 2024 Mr Alan (known as Lee) Drummond was the claimant's functional line manager. He and the claimant enjoyed a strong working relationship until at least the point of disclosure by the claimant of

her cancer diagnosis, if not up until she started a period of sickness absence on 15 May 2023.

9. Mr Darren Finley is (and was at the relevant time) the Governing Governor at HMP Frankland.
10. In February 2023 the claimant was placed on anticoagulant medication, as a result of which she could no longer carry out operational duties due to the risks involved in coming into contact with violent offenders. She was placed on restricted duties following her notifying Mr Drummond on 17 February 2023 that she was on blood thinners. The claimant continued to receive a 20% uplift on her salary as a shift allowance while on restricted duties and unable to work unsocial hours.
11. There is a dispute about whether the claimant disclosed to Mr Drummond that she had been given a terminal cancer diagnosis at the same time as telling him she was on blood thinners. In oral evidence the claimant initially stated she did not disclose the cancer diagnosis at the same time but later stated the opposite, that she had told him at the same time, over the phone when she got back from hospital, that although she could not recall the exact date it was in February rather than March. Mr Drummond's evidence was that the claimant had informed him of the life limiting cancer diagnosis on the telephone on the evening of 22 March 2023 and they had then had a conversation in the office about options the following day on 23 March. Mr Finley in his evidence stated that when Mr Drummond made him aware of the need for the claimant to be taken off operational duties on 18 February due to the anticoagulant medication, he also mentioned something about further tests happening. A meeting then took place between the claimant, Mr Drummond and Mr Finley on 23 March 2023 during which Mr Finley was made aware that the claimant's illness was terminal and she would be on anticoagulants for life.
12. We accept the evidence of Mr Drummond that disclosure of the cancer diagnosis came towards the latter part of March 2023 rather than in February. Aside from the conflicting accounts given by the claimant in oral evidence on the matter, we noted from her witness statement that on learning on 12 May 2023 that the People Hub Band 5 Manager role had been filled by someone else on rotation, at paragraph 38 she states that she was trying to explain to Mr Drummond and Mr Finley that she had been asking for support and adjustments for 6 weeks. Working back from 12 May, 6 weeks would coincide with the end of March rather than February. Mr Finley having been told on 18 February about further planned tests is also suggestive of an unconfirmed diagnosis at that earlier stage.
13. Following the diagnosis, the claimant was adjusting to medication, was suffering from fatigue, and was trying to mentally process the recent information she had been given. She asked Mr Drummond for a laptop to be able to work from home if the need arose. They each agreed in evidence that they were informal discussions or passing comments rather than the claimant making a formal request at this stage. A laptop was not ordered as

Mr Drummond believed it would take months to procure and he did not want the claimant working from home in a state of fatigue in any event. He instead gave the claimant permission to come and go as she pleased, giving her autonomy over her start and finish times. In the event, a need to work from home did not arise prior to the claimant starting the period of sickness absence on 15 May 2023.

14. The claimant says that she would ask Mr Drummond on an almost daily basis to be taken off the role of Safer Custody Manager as it was a pressurised role and was causing stress. She gave as examples of the pressure that she was required to chair Safety Intervention Meetings (SIMs) weekly which was not part of her role, and that she was having to carry out a Band 3 administrative role when the department was short staffed. The latter she said had been happening over a long period of time as an admin grade had been lost in August 2022, and while the department was profiled for 3 officers to be loaned in, there were never 3 there. The claimant was accustomed to chairing the SIMs, having been given the responsibility by Mr Drummond subsequent to her previous line manager failing to afford the claimant any development opportunities.
15. While Mr Drummond acknowledged the claimant had 'good days and bad' and that he knew she wanted to work out of the facilities building (outside of Frankland), it was not apparent to him that she was not coping with the non-operational aspects of the role she had been undertaking since being placed on restricted duties. Prior to meeting with the claimant on 12 May 2023, Mr Finley's perception was that she wished to remain employed at Frankland and that she was fully fit for the non-operational duties connected with the role. He'd met with the claimant on 23 March 2023 during which working outside of Frankland had not been mentioned and again on 26 April 2023 when it was clear she did not want to work in the same room as a colleague openly discussing being in remission from cancer but nothing was said about moving out of Frankland altogether or the role being an issue.
16. A confusing picture was painted during the claimant's evidence about whether it was the pressure of the role causing difficulty or the fact of working from the premises at HMP Frankland. During cross examination about the OH report of 17 April 2023 (referred to at paragraph 18 below) stating she was working in an office that she was coping with, the claimant stated "it was the office I worked from all of the time. I had no complaints working from the office, it was the work that was causing stress". Elsewhere in her evidence however, she stated that she needed time away from Frankland, that she did not want to face people and just wanted time out. Whichever was the issue, or whether it was a combination of both the role and the premises, we do not accept the claimant was as explicit or insistent as she suggests in communicating the pressure she felt under. Had she have been asking to be removed from the role of Safer Custody Manager on an almost daily basis, we are confident there would have been discussion about that with the Occupational Physician and recommendations over and above a disabled parking space close to the office would have been made to alleviate the pressures of the role.

17. The claimant's view was that she could have performed the role of Safer Custody Manager from anywhere, stating that she had access to all files on the system regardless of where she was located and that it would not cause difficulties for those she line managed to get in touch with her. Mr Drummond believed the role had to be undertaken on site because there was a leadership element to it and the fact staff were loaned in meant they needed to be closely supervised. He described the importance of the work involving updating databases with details of reviews of prisoners at risk of self harm or suicide and explained that unskilled staff required the systems to be demonstrated, and that the records compiled by them would be the first documents to be checked if there were to be a death in custody. The claimant was a subject expert on the ACCT (Assessment Care in Custody and Teamwork) process and Mr Drummond considered it would be a very watered down version of the training if it were to be delivered remotely. We accept Mr Drummond's assessment as the person with line management responsibility for the occupier of the role, that the Safer Custody Manager was required to be on site at HMP Frankland, including for the purposes of training and supervising loan staff as required, and that it would not have been feasible for the role to be undertaken offsite.
18. Mr Drummond made a referral of the claimant to Occupational Health, the report from which is dated 17 April 2023. The report states that the claimant has life limiting cancer, the secondary cancer having been confirmed on 23 March 2023. It goes on to say "the main symptom she reports which is relevant to her work is tiredness. She explained that the car park is far from the office block so she finds the walk quite tiring. I think she would benefit from parking her in a disabled parking space close to the office, to cut down on the walking if this can be arranged by management". In terms of capacity for work, the Occupational Physician provides an opinion that the claimant is fit to work in an adjusted capacity as currently arranged. He states "she is working in an office which she is coping with.....If she can be accommodated in the alternative role long term, then ill-health retirement would not be appropriate at this stage". He repeats as part of the current outlook that the claimant is able to work if management can accommodate her in an office environment but if that is not possible long term, consideration could be given to referring the claimant to the pension provider for consideration of medical retirement in consultation with her.
19. A disabled parking space was requested by Mr Drummond but it either did not materialise or its availability was not communicated to the claimant. She was not therefore able to take advantage of such a space.
20. On 26 April 2023, Mr Drummond told Mr Finley the claimant was having a bad day due to an admin colleague, whom Mr Drummond had brought in to address the staff shortages, being vocal about being in remission from cancer. Mr Drummond had offered the claimant a solo office to remove herself from the noise of the main office, but the claimant did not take it up as she felt it would isolate her and give her time to think about her diagnosis. Mr Finley met with the claimant and discussed the potential for a Band 5

non-operational role in the People Hub becoming vacant. While it was clear from Mr Finley's evidence that the job could only be formally offered in a FARM (Formal Absence Review Meeting) and that it would have to go through Workforce Planning, we find that the claimant left the meeting with the clear impression that the job would be held open for her and that she had her heart set on it.

21. A FARM was arranged for 06 June 2023 but was brought forward at the claimant's request and was rescheduled to take place on 19 May 2023.
22. On 12 May 2023 Mr Drummond was informed by the Head of Business Assurance that another Band 5 manager had rotated into the People Hub role and that the open vacancy was now in the Offender Management Unit. The People Hub role was one of six Band 5 Hub Manager roles. Vacancies for the specific roles were not advertised, they were occupied on rotation with the same skill set being required for each of them. Mr Drummond notified the claimant the role had been filled and a meeting was convened that day between the claimant (who was supported by a colleague), Mr Drummond and Mr Finley. A dispute took place about whether the claimant had been promised the People Hub role that had now been filled by someone else and the claimant left work in a distressed state following the meeting. Being denied the People Hub role was the catalyst for the claimant going off sick.
23. On 15 May 2023 the claimant commenced a period of sickness absence. The FARM scheduled to take place on 19 May 2023 was therefore postponed. Mr Drummond made a further OH referral, which appointment was attended by the claimant via telephone on 18 May 2023. The report of the same date includes "Miss Edmondson reports that she found work to be a good distraction, however due to perceived work related stressors, including no adjustments to her role and duties, she found that her mental health started to decline as a result". The Occupational Health Advisor provided an opinion that the claimant was not fit to return to work in any capacity due to complex ongoing physical and mental health symptoms and recommended a work stress risk assessment be completed and a wellbeing action plan be completed.
24. Mr Drummond telephoned the claimant regularly, weekly on average, during her sickness absence in compliance with keeping in touch expectations under the Attendance Management Procedure.
25. On 12 June 2023, Mr Drummond met with the claimant's trade union representative, Mr Scott Coates, to discuss potential job roles. During the discussion Mr Coates referred to the managing terminally ill staff policy as well as making Mr Drummond aware of areas of work the claimant had expressed an interest in such as JEXU (Joint Extremist Unit), MARSCOP (Multi Agency Response to Serious Organised Crime) and Forest House. Mr Drummond thereafter emailed the Ministry of Justice Workplace Adjustment Service (MOJWAS) for advice in connection with opportunities outside the directorate.

26. The following day, 13 June 2023, Mr Drummond telephoned the claimant and offered to look into whether the current Band 5 Hub Manager vacancy could be carried out remotely but at that stage the claimant made it clear she did not want any association with Frankland. Mr Drummond explained he had contacted HR and MOJWAS to assist in finding opportunities and that he would inform the claimant of any updates coming back from those enquiries.
27. On 14 June 2023 Mr Drummond involved Mr David Pilkington (HR Performance Manager) in searching for suitable vacancies for the claimant outside of Frankland. At this stage the job search was confined to non-operational Band 3-5 roles. Any Band 3 or 4 roles would have attracted payment protection for 2 years.
28. On 16 June 2023 Mr Pilkington contacted colleagues in other areas/departments to find out whether there were any suitable vacancies. The HR Business Partner for the North East Probation Service responded providing details of HRBP colleagues working for North East prisons and she followed it up with a link to the new terminal illness support pack that had been launched. Neither Mr Pilkington nor Mr Drummond were familiar with the support pack, although it had been published on the intranet on 12 April 2023. Mr Drummond believed the FARM process was the procedure by which regrading of the claimant should take place.
29. The relevant policies or procedures were not mutually exclusive. The terminal illness support pack co-existed and complemented the FARM process rather than acted in substitution for it. The pack makes it clear that attendance management policies should be followed if the employee is on sickness absence. While Mr Drummond had been ignorant of the support pack, as it turned out he did not act contrary to it. As the pack suggests should happen, OH reports were obtained to help determine the claimant's ability to remain in work and what adjustments might be needed if she could. The report obtained prior to the claimant's sickness absence concluded that she was working in an office she was coping with and ill-health retirement would not be appropriate if that alternative role (ie. non-operational) could be accommodated in the long term. All possible workplace adjustments had to have been adequately considered before offering a managed move in accordance with the support pack and, as far as Mr Drummond could tell, the claimant was coping with the non-operational aspects of her role with the flexibility to come and go as she pleased within reason. That said, it was clear the claimant could not be accommodated in the role long term given it was an operational role and she was unable to fully perform the essential functions of the role while she remained on blood thinners which was expected to be for life. Mr Drummond accepted in evidence he would probably have started searching for alternative roles sooner had he been aware of the terminal illness support pack.

30. Disability leave was not proffered as an option by the respondent nor was it applied for by the claimant. Disability leave is a form of special leave and Mr Drummond had at one stage informed the claimant that she could apply for special leave.
31. On 26 June 2023 Mr Pilkington emailed the HRBP contacts he had been given about possible vacancies, also sending chasing emails over the following days. Vacancies were confirmed as being available at Band 3 and Band 4 in Low Newton on 29 June 2023.
32. On 28 June 2023 a face to face meeting took place at Costa with Mr Drummond, the claimant, her partner, Mr Coates and Mr Dave Ferry (2nd TU representative) in attendance. The 14 day timescale for holding such a meeting in accordance with policy had not been complied with by Mr Drummond, his explanation being that he mistakenly thought the relevant timescale was 28 days, but also that he was giving the claimant space given how upset she had been when she had left work following the meeting on 12 May 2023. At the Costa meeting, the claimant expressed frustration at the length of time the search for an alternative role was taking and Mr Coates suggested she be provided with a laptop to search for jobs at home herself, produce a CV and keep up to speed with work policies etc. Mr Drummond agreed to contact the Head of Business Assurance with a view to obtaining a laptop.
33. On 30 June 2023 Mr Drummond telephoned the claimant for a further update. The vacancies at Low Newton were rejected by the claimant as being below her current band and skill set. She also made it clear that she did not want to work for the National Probation Service. During the call, Mr Drummond kept the claimant apprised of other job searches that were being undertaken, including with JEXU, a unit she had expressed a specific interest in.
34. On 6 July 2023 during a further telephone call with the claimant, Mr Drummond explained that the laptop was not yet finalised but that he had secured a desk at Forest House for the claimant to use a computer there. The claimant indicated she would rather use Low Newton's training department to which Mr Drummond agreed. During a subsequent keeping in touch call however, the claimant asked if she could use Forest House and Mr Drummond provided the necessary contacts for her to be able to access a PC there.
35. By 12 July 2023 Mr Pilkington considered all avenues had been exhausted and contacted MOJWAS for further advice. A Teams meeting was held on 14 July between Mr Pilkington, Mr Drummond and Mr Stephen Davies from MOJWAS. On 17 July, Mr Pilkington sent details of 5 vacancies he had found on Justice Jobs (two at Band 4 and three at Band 6) to Mr Drummond. Mr Drummond telephoned the claimant that day informing her that a FARM was arranged for 02 August 2023 and that an up to date OH report would be needed.

36. The claimant was thereafter referred by Mr Drummond to Occupational Health for a capability assessment and an opinion on ill health retirement, the report from which is dated 18 July 2023. The Occupational Physician's opinion on this occasion was that the claimant was unfit for full and effective service as she requires long-term blood thinning medication, which prevents her from operational work involving control and restraint. The claimant was deemed fit for work with adjustments in place and management were advised to exempt her from direct prisoner contact and any roles that would involve control and restraint as a permanent adjustment. It was stated that the claimant would be more suited to non-operational roles that are office-based in nature. The claimant had reported that the stress risk assessment and well-being assessment had not taken place and the physician encouraged management to carry them out to identify particular areas of concern together with the claimant.
37. On 20 July 2023, unbeknown to Mr Drummond, the claimant emailed Governors at Low Newton to ask whether there was the opportunity for a Band 7 operational grade role they were seeking to recruit into to be non-operational. Governor Stuart Knox responded the following day to explain there was discretion regarding a role in Drug Strategy as to whether it should be advertised as operational or non operational, but that recruitment needed to be by fair and open competition. It was confirmed by HR on 23-24 July 2023 that the claimant could not be mapped into the role but could apply for it. In the end, the role was never advertised.
38. On 2 August 2023 a FARM took place, chaired by Mr Finley. Mr Finley agreed that the department would continue to support the claimant's restricted duties for a further 10 weeks, during which time he would hold the Band 5 Hub Manager role at HMP Frankland open for her as well as arranging for HR leads in the North East and Humber, SOCT/JEXU and Women's Group to be contacted asking to be informed of any vacancies over that 10 week period. Agreement was reached for the claimant's duties to be undertaken at Forest House and for Mr Drummond to undertake an immediate workplace stress risk assessment. Mr Finley explained to the claimant that a further FARM would take place in October 2023 to consider if the adjusted duties could continue to be supported and, if not, consider other available options within the Attendance Management Policy. He explained that he had to make the claimant aware of the potential outcome of dismissal.
39. On 2 August 2023 Mr Pilkington forwarded a link to Mr Drummond to a vacancy for Prison Group Equalities Lead that he thought the claimant may be interested in, while stating she would have to apply, that mapping would not be an option.
40. On 3 August 2023 the claimant raised a formal grievance against Mr Drummond and Mr Finley due to 'lack of care, discrimination and victimisation on the grounds of disability'. Mr Drummond himself chaired the grievance meeting on 4 October 2023. Others in attendance were the claimant, Mr Scott Coates and a minute taker. The grievance was upheld

in part with Mr Drummond accepting that the length of time it took to conduct a home visit was not in line with policy.

41. The claimant appealed against the grievance outcome on 23 October 2023 seeking an outcome that the grievance be upheld in full. Mr Peter Jobling (Deputy Governor, HMP Frankland and Mr Drummond's line manager) chaired the grievance appeal meeting on 21 November 2023. Others in attendance were the claimant, Mr Coates, Mr Adam McGrath (Prison Officer Association panel representative), an HR Case Manager and a minute taker. The appeal panel did not uphold the appeal as explained in an outcome letter issued on 1 December 2023. As with Mr Drummond and Mr Pilkington, Mr Jobling was similarly unfamiliar with the terminal illness support pack, though he did recall the HR Case Manager referring to it during discussions. He considered it to be their area of expertise and that it would have been factored into the panel's decision if relevant to the grievance but it was not.
42. While the grievance process was ongoing, the claimant returned to work on a phased return. On 10 August 2023 a meeting was held between Mr Drummond, the claimant and Mr Ferry, during which Mr Drummond apologised for not completing a stress risk assessment while the claimant was on sickness absence, believing it had to be carried out on return to work. Such assessment was in fact never undertaken given the claimant would not be returning to Frankland to work.
43. On 14 August 2023 Mr Drummond arranged for the claimant to start working for Regional Security Intelligence Manager, Governor Brightwell, based at Forest House but with Mr Drummond continuing as the claimant's line manager and HMP Frankland remaining responsible for her salary.
44. Mr Drummond had also made enquiries on 10 August 2023 about the potential for the claimant to be mapped into an advertised vacancy, CCPU (Corruption, Crime and Policing Unit) Risk Response Manager, but the claimant subsequently informed him she was interested in the Regional Corruption Pursue Manager role at the unit. OH advice was required to see if the claimant was able to travel long distances and stay overnight. Mr Drummond made a further OH referral on 25 September 2023, the report from which is dated 02 October 2023. The Occupational Health Advisor concluded that the claimant would be fit for a non-operational desk/office based role, but unfit for any prisoner facing duties. It was also noted "Miss Edmondson informed me that she remains independent of her daily activities and informed me that she has no restrictions with regards to unsocial hours long distance driving or overnight stays". Further OH reports were obtained on 11 and 13 October 2023 addressing the issue of the claimant needing to interview prisoners as part of the role.
45. The Regional Head of Counter Corruption emailed Mr Drummond on 23 November 2023 to inform him he had spoken to the claimant that day about the fact the role involved spending a significant amount of time in offender facing environments and it would not be reasonable to provide an

escort of an operational member of staff whenever the claimant was in an offender facing environment. He had concluded the OH recommendations were not reasonable adjustments to make.

46. On 24 November 2023, Mr Finley informed the claimant in writing that he was happy to continue to support her restricted duties without reconvening the FARM, as a supportive measure to allow the grievance process to be concluded and while Mr Drummond's attempts to arrange a managed move for her into a vacant role in JEXU as a Communications Manager was ongoing. Restricted duties would not ordinarily be supported for longer than 3 months.
47. On 04 January 2024 Mr Finley wrote to the claimant to advise her that he remained happy to continue to support her restricted duties, having been informed that morning that the offer of a secondment as a National Safety Hub Manager was still awaiting final approval. A FARM that had been scheduled to take place that month was not convened in the circumstances.
48. To facilitate working from home, the claimant initially asked Mr Drummond for an ergonomic chair, which was ordered on 12 December 2023 and implemented on 19 December 2023. On 25 January 2024, the claimant emailed Mr Drummond asking for a desk to go with the chair to enable her to work comfortably from home all day. Mr Drummond responded on 29 January 2024 that he would order it and have it delivered. The claimant then asked if the desk could be adjustable if the order hadn't already been placed to which Mr Drummond responded on 31 January 2024 that he would get an adjustable one sent over.
49. On 19 February 2024 the claimant emailed Mr Drummond asking if he had any idea when the desk would be arriving, stating that she knew 'Chloe' had ordered it as she had emailed her. We heard from Mr Drummond that a procurement issue was responsible for the delay, that he could not say whether the process had changed or whether the correct process had not been followed initially. We accept Mr Drummond's evidence that prompt action was taken to order the desk, particularly in light of the ergonomic chair having been secured so readily, but that procurement issues resulted in the desk having to be reordered. The claimant was then advised by Chloe Ord it had been ordered on 19 March 2024.
50. A FARM was held on 27 February 2024 chaired by Mr Finley and attended by the claimant, Mr Coates, Mr Drummond, an MOJ HR Caseworker and a note taker. Agreement was reached for the claimant to be permanently regraded to a non-operational Band 5 role and for her to be seconded to the HMPPS Safety Group from 1 March 2024. The role was primarily home based though the agreement stated that her main place of work was Jarrow and that she may occasionally be required to travel to different locations. The claimant remained an employee of HMP Frankland though her functional line manager was Emily Hanson as opposed to Mr Drummond.

51. We heard from the claimant that the adjustable desk arrived in April 2024, though the specific date was not confirmed. We take it to be 17 April 2024 from an entry in the bundle at page 647. From the start date of her secondment on 01 March 2024 the claimant was without a desk for use with the ergonomic chair for approximately 7 weeks. In the meantime, the office at Jarrow was available should she have wished to work from there.
52. The claimant notified Mr Drummond on 05 June 2024 that she had been taken off blood thinners and wished to return to operational duties. She successfully applied for a Band 5 Custodial Manager role at HMP Low Newton towards the end of July 2024 and was able to transfer directly into the role at the end of her notice period.

Relevant law

Discrimination because of something arising in consequence of a person's disability.

53. Section 15 of the Equality Act 2010 provides:

- (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.

54. In *Pnaisner v NHS England and anor* [2016] IRLR 170, the EAT summarised the proper approach to section 15. A tribunal must first identify whether there was unfavourable treatment and by whom....no question of comparison arises. The tribunal must determine what caused the impugned treatment, or what was the reason for it, the focus being on the reason in the mind of A but A's motive in acting as he or she did is irrelevant. The tribunal must determine whether the reason or cause is something arising in consequence of B's disability. The 'something' need not be the sole reason for the unfavourable treatment but it must be a significant or more than trivial reason for it. In considering whether the something arose 'in consequence of' the claimant's disability', this could describe a range of causal links. This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.
55. The guidance set out in the EHRC's Equality Act 2010 Code of Practice is helpful in determining what constitutes unfavourable treatment and the threshold the claimant has to meet in order to trigger justification is a low one – *Trustees of Swansea University Pension and Assurance Scheme v Williams* [2019] 1 WLR 93.

Failure to make reasonable adjustments.

56. Section 20 of the Equality Act 2010 refers to the duty to make reasonable adjustments as comprising 'three requirements'. Section 20(3) provides:

"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."

57. Section 20(5) EqA provides:

"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".

58. The employer must take such steps as it is reasonable to take to avoid the disadvantage. It is well established that 'steps' are not merely the mental processes, such as the making of an assessment but involve the practical actions which are to be taken to avoid the disadvantage: The focus of section 20 EqA is on affirmative action: *General Dynamics Information Technology Ltd v Carranza [2015] I.C.R. 169, EAT*.

59. In *Environment Agency v Rowan [2008] ICR 218*, in respect of the duty to make reasonable adjustments under s4A of the Disability Discrimination Act 1995 (the predecessor to s20 EqA but couched in similar terms) the EAT set out matters to be identified by the employment tribunal before it could go on to judge if any proposed adjustment is reasonable. As well as the PCP applied by the employer, it included the nature and extent of the substantial disadvantage suffered by the claimant.

Harassment related to a protected characteristic

60. Section 26 of the Equality Act 2010 provides:

(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

61. Unwanted conduct is just that: conduct which is not wanted or ‘welcomed’ or ‘invited’ by the complainant: see ECHR Code of Practice on Employment, para 7.8. The intention of those engaged in the unwanted conduct is not a determinative factor although it may be part of the overall objective assessment which a tribunal must undertake. It is not enough that the alleged perpetrator has acted or failed to act in the way complained of. There must be something in the conduct of the perpetrator that is related to disability. The unwanted conduct must be related to the protected characteristic. This is wider than the phrase ‘because of’ used elsewhere in the legislation and requires a broader inquiry, but the necessary relationship between the conduct complained of and the protected characteristic is not established simply by the fact that the Claimant is disabled and that the conduct has the proscribed effect.

62. In *Pemberton v Inwood* [2018] IRLR 542 Underhill LJ gave the following guidance on the approach to be adopted when determining whether conduct had the proscribed effect for the purposes of s26:

“In order to decide whether any conduct falling within sub-paragraph 1(a) of section 26 EqA has either of the proscribed effects under sub-paragraph (1)(b), a tribunal must consider both (by reason of sub-section 4(a)) whether the putative victim perceives themselves to have suffered the effect in question (the subjective question) and (by reason of sub-section 4(c)) whether it was reasonable for the conduct to be regarded as having that effect (the objective question). It must also take into account all the other circumstances (subsection 4(b)).”

Submissions

63. Both parties prepared written submissions which were expanded upon orally at the hearing.

Conclusions

FAILURE TO MAKE REASONABLE ADJUSTMENTS

Complaint 1 - Working from the Premises - PCP

64. It is not disputed that the respondent applied a Provision, Criterion or Practice (PCP) that Custodial Managers in Safer Custody at HMP Frankland

had to work from the premises at HMP Frankland. Mr Drummond's evidence was clear that it was not a suitable role for remote working and clearly there was an insistence that occupiers of the role worked onsite at the premises. Nor is it disputed that the PCP was applied to the claimant in practice up until she commenced the period of sickness absence on 15 May 2023 and thereafter while she occupied the role, though she did not return to it following the absence.

65. In closing Ms Hogben did not seek to argue against application of the PCP placing the claimant at a substantial disadvantage as set out in the agreed list of issues, namely that it placed additional pressure on her to carry out work outside of her substantive role when she was adjusting to medication following her diagnosis and would become fatigued and tired impacting her sleep. She instead considered the key issues to be whether the claimant's proposed adjustments were reasonable and whether the respondent took all reasonable steps to avoid any substantial disadvantage. We accept application of the PCP subjected the claimant to a substantial (more than minor or trivial) disadvantage while she was fatigued and reeling from the shock of the diagnosis she had been given.
66. As to knowledge of the disadvantage on the part of the respondent, we are not persuaded the respondent knew or ought to have known of the nature and extent of the purported substantial disadvantage based on the evidence available at the time. The claimant and her line manager, Mr Drummond, enjoyed a strong working relationship and the extent to which the claimant suggests she was struggling with the non-operational aspects of the role was not apparent to him. Mr Finley was further removed from the claimant in his position as Governing Governor but he had meetings with the claimant in March and April 2023 and did not sense she was feeling under pressure in the adjusted role. The solitary recommendation from the Occupational Health report obtained on 17 April 2023 was for a disabled parking space close to the office. There was no reported complaint of finding working at Frankland stressful or any suggestion that being allowed to work remotely would assist. On the contrary, the claimant was said to be working in an office which she was coping with and reference was made to the arrangement being accommodated long term. The respondent was entitled to rely upon that report in deciding what adjustments may be necessary in response to any disadvantage suffered by the claimant from application of the PCP.
67. The adjustments the claimant suggests would have been reasonable are the provision of a laptop to enable her to work from home if required and permission to work from the facilities building. While the claimant's suggestions of what may assist are highly relevant, it is open to the tribunal to conclude that a different adjustment from the one proposed by the claimant was reasonable in the circumstances. We concluded the flexibility afforded to the claimant around her hours of work was a perfectly reasonable adjustment for the respondent to make to mitigate the impact of the claimant having to come into work to undertake a pressurised role, albeit on restricted duties, if she was fatigued. It was a measure open to Mr

Drummond on an immediate basis rather than having to wait for a laptop and we accept he had the claimant's welfare in mind in not wanting her to work at all while fatigued. Regarding any failure to provide a laptop during the claimant's sickness absence, a laptop was not required for work and would not have served to alleviate the relevant disadvantage caused by application of the PCP, but we note that IT facilities were on offer for the claimant to use on site to search for alternative jobs if she so wished.

68. Having preferred Mr Drummond's evidence above the claimant's as to the feasibility of the Safer Custody Custodial Manager role being undertaken remotely, including from the facilities building, we concluded that it would not have been a reasonable adjustment to make in the circumstances. Mr Drummond had also offered the claimant a solo office from which to work more peacefully from the premises but this was not taken up.
69. Whether the respondent took all reasonable steps to ameliorate the disadvantage is to be judged objectively and is to be assessed by reference to the evidence available at the time. With the information available to the respondent at the relevant time, we conclude that it took all reasonable steps to alleviate any disadvantage suffered by the claimant by application of the PCP. The claim is dismissed.

Complaint 2 - Alternative Roles

70. There is no dispute that the respondent operated a PCP that staff had to carry out the essential functions of the role. Ms Hogben submitted that the PCP was not applied to the claimant at the relevant time because she had been placed on restricted duties from 17 February 2023, without detriment financially in that her 20% pay uplift for working unsocial hours was protected. We agree with that submission and conclude that the PCP was not applied to the claimant. She occupied an operational role but was not expected to undertake full duties and was only able to perform the non-operational functions of the role while she remained on anticoagulant medication.
71. Should we be wrong about that, the substantial disadvantage is alleged to be that the claimant would become anxious and stressed, thereby increasing her hormone levels and that application of the PCP put her at risk of dismissal as she was unable to carry out her substantive role due to her condition. In relation to anxiety and distress concerned with undertaking the functions of the role, there is overlap with the pressure complained of in connection with working from Frankland at complaint 1. As we said in respect of that complaint, both Mr Drummond and Mr Finley, from their own assessment but also informed by the OH report of 17 April 2023, believed the claimant was coping with the non-operational role. Fatigue was a known issue and was suitably addressed by the flexibility afforded to the claimant over her start and finish times but stress and anxiety associated with undertaking the restricted role did not manifest such as to give the senior managers cause for concern.

72. Being unable to carry out the essential functions of the role could ultimately lead to dismissal for any employee and we accept the claimant was subjected to a substantial disadvantage in this respect if unable to comply with the PCP as a result of her disability, and that the respondent will have known or ought to have appreciated this.
73. The proposed adjustments the claimant says would have been reasonable to make are a move to the People Hub and redeployment to an RCPM role. We found Mr Finley's evidence compelling about the FARM process, including that decisions about alternative job roles for employees in the claimant's position are taken at those meetings. A FARM had not taken place with the claimant before another Band 5 manager was rotated into the People Hub role but there were other Band 5 Hub Manager roles available into which the claimant could have been moved. While the claimant's preference was for the People Hub role, we concluded that it would have been a reasonable adjustment for the claimant to have been moved into any of the Hub Manager roles that were available, each requiring the same skill set and at an equivalent grade. The People Hub role would have secured a move for the claimant out of Frankland, but prior to the colleague being rotated into the role, we were not persuaded the nature and extent of the claimant's difficulties were apparent to Mr Drummond or Mr Finley.
74. By the time the claimant expressed an interest in the RCPM role, she had been off sick for several weeks with stress and it was now clear to the respondent that she did not want to return to Frankland with ongoing efforts being made to identify an alternative role for her. The RCPM role involved the claimant coming into contact with convicted former staff members and she would have had to be accompanied by a colleague when in an offender facing environment. This was deemed by the respondent to be an unreasonable adjustment to have to make and we agree it would not have been reasonable for the respondent to have to provide an escort, particularly when looked at holistically there were options available not involving risk to the claimant or impacting on a colleague.
75. All of that said, we maintain the PCP was not applied to the claimant. The claim is dismissed.

Complaint 3 - Promotion on Redeployment

76. Although this claim was not withdrawn, Mr McHugh essentially conceded it could not succeed in light of the way the evidence had unfolded. It was fatal to the complaint that the role into which the claimant argues the respondent ought to have moved her didn't become a live vacancy. The claim is dismissed.

Complaint 4 - Working from Home – PCP

77. This complaint concerns the delay on the part of the respondent in providing the claimant with a desk with a riser to alleviate pain and discomfort while working from home in the role she was seconded to from 01 March 2024. All issues were conceded by the respondent other than whether all reasonable steps were taken by the respondent to provide the equipment with a view to alleviating the disadvantage suffered by the claimant by application of the PCP that Safety Group Hub Managers had to carry out the essential functions of their role and work from home. The claimant requested the desk on 25 January 2024, then asked for it to be adjustable on 29 January 2024. She chased it up on 19 February 2024 in readiness for her new role starting. Mr Drummond had taken prompt action to order the desk but it was not obtained successfully due to procurement issues. From formal commencement of the role on 01 March 2024 approximately 7 weeks ensued before delivery, during which time the claimant was prevented from working comfortably at home. Whether adjustments are carried out in a timely manner is a relevant factor for the tribunal to consider. In the circumstances of this case, while the delay was regrettable, we do not consider it was such as to constitute unreasonable delay on the part of the respondent in taking affirmative action to make the adjustment and alleviate the disadvantage. In the interim, the claimant had the option to work from her office base at Jarrow to avoid or reduce pain and discomfort pending delivery of the desk and riser to her home. The role was predominantly home based but the claimant had the ability to travel, as indicated to the OH Adviser for the RCPM role where it was stated she had no restrictions in relation to long distance driving. The claim is dismissed.

Complaint 5 - Application for Vacancies

78. As with complaint 3, Mr McHugh left the matter for the tribunal to determine, and did not advance any argument in support of this complaint being upheld. The claimant had accepted in evidence that any requirement there may have been for employees unable to carry out their substantive role to have to apply for vacancies was not a PCP applied to her. In those circumstances, the claim could not succeed and is dismissed.

Complaint 6 - Working from the Premises – lack of auxiliary aid

79. This complaint mirrors complaint 1 as far as the laptop is concerned but in the context of the respondent failing to provide an auxiliary aid as opposed to applying a PCP to the claimant. For the reasons given in connection with complaint 1, this claim also fails and is dismissed.

Complaint 7 - Working from Home – lack of auxiliary aid

80. This complaint mirrors complaint 4 but in the context of the respondent's failure to provide an auxiliary aid as opposed to applying a PCP to the claimant. For the reasons given in connection with complaint 4, this claim also fails and is dismissed.

DISCRIMINATION ARISING FROM DISABILITY

81. The respondent disputed that the claimant's sickness absence arose in consequence of her disability in that she was prompted to go off sick as a result of stress due to feeling unsupported at work rather than because of the cancer itself. We accept there is a clear and sufficient nexus between the reason for the absence and the claimant's disability and that the absence did therefore arise in consequence of the disability.
82. The claimant was required to attend a Formal Absence Review Meeting (FARM) in August 2023 and one was scheduled to take place in January 2024 but Governor Finley further extended the claimant's period of restricted duties without convening the January FARM. We don't find the requirement to attend FARMs amounted to unfavourable treatment. We heard cogent evidence that the meetings were very much a supportive tool. They were attendance review meetings which are automatic in many organisations, certainly in the public sector, at certain stages of an employee's absence that provide an opportunity to assess progress, consider the wellbeing of the claimant and review the appropriate way forward. The claimant herself had asked for a FARM to be convened or brought forward in the very early stages following being removed from operational duties, and the first meeting was originally arranged prior to the claimant's sickness absence so the process was clearly implemented initially with the objective of finding an alternative role rather than reviewing sickness absence. The continuation of the meetings while the claimant was on sick leave or upon her return did not constitute unfavourable treatment. The records of the meetings indicate they were very much a collaborative affair, designed to achieve a favourable outcome for the claimant. The discussion at the August meeting centred around alternative job roles and the outcome was that Mr Finley agreed to support the claimant remaining on restricted duties for a further 10 weeks. The January 2024 FARM was abandoned with Mr Finley again extending the period of restricted duties.
83. Compulsory parts of the process included communication to the claimant of potential outcomes such as ill health retirement and ultimately dismissal. We consider that providing ill health retirement figures could only help the claimant to make decisions that she must have been contemplating about her future. While mention of dismissal would never be welcome, there would be an obligation in fairness to the employee for the employer to act transparently and inform them of potential outcomes at an early stage but it is clear from the record of discussions that this was not under serious contemplation and we do not consider the claimant could have perceived it as a realistic threat.
84. Should we be wrong about that and the requirement to attend the FARMs did amount to unfavourable treatment, we have no hesitation in concluding that they were a proportionate means of achieving a legitimate aim. To suspend or discontinue them would have hampered the respondent's ability to support the claimant as much as preventing it from applying its

absence management procedure to ensure the organisation was staffed appropriately. As far as other policies are concerned, it is true that relevant managers had acted in ignorance of the terminal illness support pack but, as it transpired, they had not acted contrary to it in following the processes they were familiar with. The claim is dismissed.

HARASSMENT

85. From the point of being informed that another Band 5 manager had been rotated into the People Hub role we do believe that the claimant held a genuine perception of being unsupported by the respondent, specifically by Mr Drummond and Mr Finley. Indeed, this was the catalyst for the claimant's sickness absence. However, the claimant's perception is through the lens of somebody who had been given dreadful news about her health. Looked at objectively, we consider the respondent went to great lengths to support the claimant remaining in employment. Mr Drummond kept in regular contact with the claimant, gave her autonomy around her hours of work in line with her levels of fatigue, informed her that she could apply for special leave, looked into, or caused others to look into, various alternative roles for her at different levels, both internal and external to the prison service, taking and acting upon advice from HR and MOJWAS. Implementing alternative adjustments to those requested by the claimant and some delay in widening the search for job roles beyond Band 3-5 or in obtaining equipment to support home working may constitute unwanted conduct as far as the claimant is concerned, but we did not find the respondent to have failed to make adjustments or provide auxiliary aids over a prolonged period of time as alleged. The requirement for the claimant to attend FARMs which could have resulted in regrading/dismissal did not appear to be unwanted conduct at the relevant time and we found the process to have been supportive in nature. If indeed it was unwanted conduct, we do not consider it could reasonably be regarded as having the effect of violating the claimant's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant, particularly given the favourable outcomes for the claimant of having her period of restricted duties extended to well beyond the usual 3 months while efforts were made to secure an alternative position for her. The claim is dismissed.

JURISDICTION

86. As we had not determined the question of jurisdiction as a preliminary issue, we deemed it appropriate to determine the substantive claims first and if any were upheld to turn our minds to the time limit point at that stage. Given none of the claims were upheld it was unnecessary to consider the issues relating to jurisdiction.

APPENDIX

LIST OF ISSUES

A. Failure to make reasonable adjustments – ss20/21 EqA 2010

Complaint 1 – Working from the Premises

1. Did the Respondent apply a PCP that Custodial Managers in Safer Custody at HMP Frankland had to work from the premises at HMP Frankland?
2. Was that PCP applied to the Claimant between March / April 2023 and August 2023?
3. If so, did that PCP place the Claimant at a substantial disadvantage?
 - a. The Claimant alleges that the substantial disadvantage was that being located in the premises placed additional pressure to carry out work outside of her substantive role when she was adjusting to medication following her diagnosis and would become fatigued and tired, impacting her sleep.
4. Did the Respondent know or could she be reasonably expected to know that it placed the Claimant at such disadvantage?
5. Did the Respondent take all steps as were reasonable to avoid any substantial disadvantage?
6. Did the Respondent fail to make the following adjustments?
 - a. Providing a laptop to enable the Claimant to work from home
 - b. Allowing the Claimant to work from the facilities building
7. Were the proposed adjustments reasonable?

Complaint 2 – Alternative Roles

8. Did the Respondent apply a PCP that their staff had to carry out the essential functions of their role?

9. If so was the PCP applied to the Claimant?
10. If so, did that PCP put the Claimant at a substantial disadvantage as alleged below?
 - a. She would become anxious and stressed, thereby increasing her hormone levels.
 - b. It put her at risk of dismissal as she was unable to carry out her substantive role due to her condition.
11. Did the Respondent know or could she be reasonably expected to know that it placed the Claimant at such disadvantage?
12. Did the Respondent take all steps as were reasonable to avoid any substantial disadvantage?
13. Did the Respondent fail to make the following adjustments?
 - a. Moving the Claimant to a role in the People Hub.
 - b. Redeploying the Claimant to an RCPM role.
14. Were the proposed adjustments reasonable?

Complaint 3 – Promotion on Redeployment

15. Did the Respondent apply a PCP that staff were not able to be promoted when being redeployed?
16. If so, did the Respondent apply that PCP to the Claimant?
17. If so, did that PCP place the Claimant at a substantial disadvantage?
 - a. The Claimant alleges that her condition meant that she was prevented from being placed into roles she would have been capable of and put her at risk of dismissal.

18. Did the Respondent know or could she be reasonably expected to know that it placed the Claimant at such disadvantage?

19. Did the Respondent take all steps as were reasonable to avoid any substantial disadvantage?

20. Did the Respondent fail to make the following adjustments?

- a. Moving the Claimant to a non-operational Band 7 role at Low Newton

21. Was the proposed adjustment reasonable?

Complaint 4 – Working from home

22. Did the Respondent apply a PCP that Safety Group Hub Managers had to carry out the essential functions of their role and / or work from home?

23. Did the Respondent apply this PCP to the Claimant from February 2024 when she started the role of Safety Group Hub Manager?

24. If so, did that PCP place the Claimant at a substantial disadvantage?

- a. The Claimant alleges that sitting all day caused pain and discomfort in her hip and back

25. Did the Respondent know or could she be reasonably expected to know that it placed the Claimant at such disadvantage?

26. Did the Respondent take all steps as were reasonable to avoid any substantial disadvantage?

27. Did the Respondent fail to make the following adjustment / provide the following auxiliary aid?

- a. Provide a desk with a riser (the Claimant accepts that the desk was provided in or around April 2024)

28. Was the proposed adjustment reasonable?

Complaint 5 – Application for vacancies

29. Did the Respondent apply a PCP that employees who were deemed unable to carry out their substantive roles had to apply for vacancies?
30. If so, did that PCP place the Claimant at a substantial disadvantage?
- a. The Claimant alleges that her condition meant that she was unable to carry out her substantive role and put her at risk of dismissal.
31. Did the Respondent know or could she be reasonably expected to know that it placed the Claimant at such disadvantage?
32. Did the Respondent take all steps as were reasonable to avoid any substantial disadvantage?
33. Did the Respondent fail to make the following adjustment?
- a. Redeploying the Claimant to the Band 7 Establishment Support lead role.
34. Was the proposed adjustment reasonable?

B. Failure to make reasonable adjustments Auxiliary Aids – ss20/21 EqA 2010

Complaint 6 – Working from the Premises

35. Was the Claimant, between March / April 2023 and August 2023, but for the provision of an auxiliary aid, namely a laptop, put at a substantial disadvantage in relation to a relevant matter in comparisons to persons who are not disabled?
36. Was the substantial disadvantage that:
- a. being located in the premises placed additional pressure to carry out work outside of her substantive role when she was adjusting to medication following her diagnosis and would become fatigued and tired, impacting her sleep. Without a laptop she was unable to work from home.

37. Did the Respondent know, or could she be reasonably expected to know that it placed the Claimant at such disadvantage?

38. Did the Respondent take such steps as was reasonable to:

- a. Provide a laptop to enable the Claimant to work from home

Complaint 7 – Working from home

39. Was the Claimant, whilst working at a Safety Group Hub Manager from February 2024, but for the provision of an auxiliary aid, namely a desk with a riser, put at a substantial disadvantage in relation to a relevant matter in comparisons to persons who are not disabled?

40. The relevant matter is the Claimant working from home.

41. The substantial disadvantage was that

- a. The Claimant alleges that sitting all day caused pain and discomfort in her hip and back

42. Did the Respondent know or could she be reasonably expected to know that it placed the Claimant at such disadvantage?

43. Did the Respondent take such steps as was reasonable to provide?

- a. Provide a desk with a riser (the Claimant accepts that the desk was provided in or around April 2024)

C. Disability because of something arising in consequence of disability – s15 EqA 2010

Complaint 8 – FARM meeting

44. Was the Claimant required to attend a FARM meeting on or around 3 August 2023 and 9 January 2024?

45. Did this amount to unfavourable treatment?

46. If so, was it because of her sickness absence?

47. Did the sickness absence arise in consequence of her disability?

48. If so, was it a proportionate means of achieving a legitimate aim?

- a. To manage the Claimant to ensure it could properly provide the services and work it was required to do as a public sector organisation
- b. To ensure public money is managed appropriately, including through the efficient and cost-effective running of a public service
- c. Maintaining expected standards of performance and ensuring correct processes are followed

D. Harassment – s26 EqA 2010

Complaint 9

49. Did the Respondent fail to make adjustments or provide auxiliary aids over a prolonged period of time?

50. If so, was this unwanted conduct related to disability?

51. If so, did it have the purpose or effect of violating the Claimant's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

52. Did the Respondent require the Claimant to attend FARM meetings which could have resulted in regrading/dismissal?

53. If so, was this unwanted conduct?

54. If so, did it have the purpose or effect of violating the Claimant's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

E. Jurisdiction

55. Were any or all of the allegations presented in time?

56. Day A was 11 January 2024, Day B was 22 February 2024 and the ET1 was presented on 22 March 2024.

57. If not, did the allegations which pre-date 12 October 2023 form part of conduct extending over a period?

58. If not, should time be extended to such other period as the Tribunal considers just and equitable?

1. Did the Respondent apply a PCP that Custodial Managers in Safer Custody at HMP Frankland had to work from the premises at HMP Frankland?

2. Was that PCP applied to the Claimant between March / April 2023 and August 2023?

3. If so, did that PCP place the Claimant at a substantial disadvantage?

a. The Claimant alleges that the substantial disadvantage was that being located in the premises placed additional pressure to carry out work outside of her substantive role when she was adjusting to medication following her diagnosis and would become fatigued and tired, impacting her sleep.

4. Did the Respondent know or could she be reasonably expected to know that it placed the Claimant at such disadvantage?

5. Did the Respondent take all steps as were reasonable to avoid any substantial disadvantage?

6. Did the Respondent fail to make the following adjustments?

a. Providing a laptop to enable the Claimant to work from home

- b. Allowing the Claimant to work from the facilities building
7. Were the proposed adjustments reasonable?

Employment Judge Moss

**JUDGMENT SIGNED BY EMPLOYMENT
JUDGE ON**

25 March 2025

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