



EMPLOYMENT TRIBUNAL

Claimant: Ms Christine Donnelly

Respondent: NHS North-East London ICB

Heard at: East London Hearing Centre (via CVP)

On: 4, 5, 6 and 7 March 2025 and 28 April 2025 (Decision meeting)

Before: Employment Judge M Craft

Members: Mrs T Jansen
Mrs A Smith

Representation

For the Claimant: Mr R Downey, Public Access Counsel

For the Respondent: Ms D Van den Berg, Counsel

UNANIMOUS RESERVED JUDGMENT

1. The Respondent did not discriminate against the Claimant by reason of her disability for matters arising from her disability within the terms of section 15 Equality Act 2010.
2. The Respondent did not discriminate against the Claimant by reason of her disability by its failure to make reasonable adjustments contrary to sections 20/21 Equality Act 2010.
3. The Claimant's claims against the Respondent of disability discrimination contrary to section 15 and sections 20/21 of the Equality Act 2010 fail and are dismissed.

REASONS

Introduction

1. The Claimant is currently employed by the Respondent in the position of Band 7 Senior GP IT Facilitator (“Senior Facilitator”). The Claimant was diagnosed with multiple sclerosis in 2015. She claims that the Respondent discriminated against her by reason of her disability for matters arising from her disability pursuant to s.15 Equality Act 2010 (“EQA”) and by its failure to make reasonable adjustments to work arrangements pursuant to s.20/21 EQA.
2. The PCP upon which the Claimant relies to pursue her claim under s.20/21 EQA is the requirement for the Claimant to work from the Respondent’s office or conduct site visits to GP surgeries for three days per week. The Respondent accepts that the Claimant was disabled within the terms of the EQA by reason of her multiple sclerosis at the material time. It denies it has discriminated against the Claimant because of her disability as she alleges.
3. The Tribunal was provided with an Index and Agreed Bundle of documents of 1,000 pages (**Exhibit R1**). The Tribunal received evidence from the Claimant and two witnesses on her behalf: Miss Chito Nwulu, GP IT Facilitator Team Lead from **1 March 2024** and Mr Raymond Berry, Band 7 Senior GP IT Facilitator who gave evidence in chief by written statements: **Exhibits C1, C2 and C3**, respectively. The Claimant’s evidence included her Impact Statement.
4. The Tribunal received evidence from four witnesses on behalf of the Respondent who gave their evidence in chief by written statements: Mrs Charlotte Pomery, Chief Participation and Place Officer; Mr Edward Keating, formerly GP IT Facilitator Team Lead and from **1 March 2024** Primary Care ICT Service Delivery Manager; Mr Simon Midlane, Deputy Director of IT Governance and Facilitation; and Ms Petrovina Danquah, former Senior People Adviser (**February – November 2024**): **Exhibits R2, R3, R4 and R5** respectively. There were an agreed cast list and chronology: **Exhibit R6**.
5. The Tribunal was able to receive the oral evidence provided by the witnesses. They did not have time to receive submissions, or to deliberate on their judgment. Mr Downey and Ms Van den Berg were directed to submit written submissions. The Tribunal reserved their Judgment to enable them to meet to make findings of fact and to determine their Judgment on the claims.
6. There are agreed lists of issues initially prepared by the Tribunal following the Case Management Hearing held on **16 September 2024** and then amended and confirmed by the parties themselves which can be read at pages **53-63** and **83-88** of the Agreed Bundle.
7. The Tribunal has made the following findings of fact after consideration of all the oral and documentary evidence presented to them at the hearing and consideration of the written submissions received from Mr Downey and Ms Van den Berg: **Exhibits C4 and R7**, respectively.

Findings of Fact

8. The Claimant commenced her employment in her current job with the NHS North-East London Commissioning Support Unit (NELCSU) in **2013**. In **June 2022** seven Clinical Commissioning Groups, including NELCSU, merged to establish the Respondent. It is based at Unex Tower, Stratford. It provides various services including clinical information technology (IT) to the GP practices/surgeries of seven London Boroughs. The Claimant's employment, and that of Mr Keating, who had been her line manager, at NELCSU since around **2015** transferred to the Respondent on completion of the merger.
9. The Respondent employs a GP IT Facilitator Lead who manages seven Senior Facilitators who are responsible for the provision, delivery and efficient and effective operation of the relevant IT and the support of those working in the surgeries for which they are responsible. The Claimant has responsibility for providing these services to Waltham Forest Borough in which there are 39 surgeries.
10. The restrictions of the lockdown requirements caused by the Covid pandemic required the Senior Facilitators to work mainly, if not entirely, from home from early **2020 into 2022**. This involved them working remotely with GP surgeries and attending team meetings remotely. It is the Tribunal's understanding from the evidence provided to it that the Senior Facilitators had been given discretion to work remotely from home to a limited extent before the pandemic although they have always been contracted to attend team meetings and surgeries in person throughout their working week if that is necessary.
11. By the middle of **2023** with Covid restrictions lifted Mr Midlane was concerned that the continuing extent of home working by the Senior Facilitators needed to be reduced. He concluded that they needed to be reminded of their contractual obligations and the Respondent's expectations of the level of service they should provide to the surgeries for which they are responsible.
12. Mr Midlane's purpose and aim was to improve the extent and effectiveness of the IT services which the Respondent could now offer to GP surgeries following the end of pandemic restrictions. This required the Senior Facilitators to increase the number of personal attendances they made to the surgeries for which they were responsible and at team meetings. These were matters for which he would in due course agree a new Job Description and Framework for the job.
13. The main task for Mr Keating (who reported to Mr Midlane) at the first face-to-face team meeting of Senior Facilitators held at Unex Tower on **13 July 2023** was to explain these requirements to those he managed. In summary, in addition to other matters not relevant to these proceedings, he explained to the Senior Facilitators that they were required if it was necessary to attend personally on surgeries throughout the working week and would now be expected to attend the sites on at least three days a week which would include attending the fortnightly team meeting.
14. Mr Keating had previously agreed flexible working hours for the Claimant to support her external studies for a Diploma in Counselling. The Claimant was

continuing with these studies and Mr Keating agreed with her that she would be able to attend team meetings to be held on Wednesdays remotely while her studies for the Diploma continued.

15. Unfortunately, the Claimant and her two children had endured difficult family and personal issues in the recent past. This resulted in the Claimant and her children moving from their family home in Enfield to Hampshire in **2021**. They continue to reside there. This move means that the Claimant has a much longer journey (on the evidence before the Tribunal approximately 80 – 90 miles each way) to Unex Tower and the GP surgeries in Waltham Borough. However, when she and her family made the move to Hampshire, she was working from home due to Covid restrictions as were her colleagues.
16. On **10 August 2023**, after attending a pension seminar, the Claimant sent an email to Mr Keating in which she requested to be considered for partial retirement to enable her to implement a retire and return work option for which she had been informed she would be eligible within her pension scheme but for which she would need to reduce her working hours/salary by 10% to meet the relevant requirements of the scheme.
17. After acknowledging receipt of the request Mr Keating referred it to Mr Midlane and the Respondent's HR Department. There was a long delay before he was able to reply to the request in early **November 2023**. Mr Keating and the Claimant had established a good working relationship and had continued to meet remotely on a 1-to-1 basis and held such a meeting in the intervening period on **15 September 2023**.
18. Mr Keating kept a note of what was discussed at the meeting which states, inter alia, as follows:

"We discussed the need for attending the office for the bi weekly team meeting and at least three days a week attending sites face 2 face, although Christine feels that this is a little unreasonable as she now lives in Hampshire (due to a change in the family circumstances which her manager is aware of) and much more expensive and difficult to travel in to London. I did explain that equally the org has been very supportive of her, including making allowances around her working pattern to support with her training development and personal family difficulties that Christine has gone through over the past couple of years. However, there needs to be a balance between what the org requires of Christine and her needs. Christine said that she will need to think about her future within NEL. I explained that I would hate to lose Christine as she has been a big part of the team for many years and is respected by her peers and practices."

19. There is disagreement between the Claimant and Mr Keating as to whether the Claimant informed him during this meeting that the new arrangements for Senior Facilitators were having an adverse impact on her multiple sclerosis. Mr Keating's evidence is that the Claimant made no reference to multiple sclerosis in their meeting. The Tribunal prefers Mr Keating's evidence to that of the Claimant for the following reasons.

20. Mr Keating prepared a note summarising their discussion after their meeting which confirms that the Claimant referred him to the expense and the length of the journey to and from London and made no reference to any concerns as to the impact on her multiple sclerosis. There is no evidence before the Tribunal to indicate that the Claimant was having difficulties with her multiple sclerosis up to this date and no mention was made of such concerns in her email of **10 August 2023**. Furthermore, there is no evidence before the Tribunal that the Claimant was required to undertake travel to and from work before, or after, the team meeting held on **13 July 2023**. Mr Midlane's unchallenged evidence was that the Claimant had worked from home since shortly after the commencement of the pandemic and during the hearing it was agreed that she had only made one site visit (in **October 2023**) in the period from **14 June 2023** to **1 February 2024**.
21. Mr Keating was finally able to reply to the Claimant's partial retirement proposal in an email which he sent to her on **2 November 2023**. He explained that with the current level of vacancies and various other relevant factors the Respondent would not be able to agree to the necessary 10% reduction of hours in her current job to enable her to meet the required terms of her pension scheme to enable her to retire and return as she had requested.
22. In his email Mr Keating also explained that the Respondent considered that there was a potential alternative option it could offer to her which would be within the required terms of the retire and return arrangements in her pension scheme. This would be for her to transfer her employment from her Band 7 job as a Senior Facilitator to a Band 6 job. Such a transfer would achieve the required reduction in salary to enable her to take her pension and then take up employment in the Band 6 job which would have to be on a full-time basis. The Claimant's evidence is that she did not want to transfer to a Band 6 job and did not pursue this potential option with Mr Keating for that reason.
23. The Respondent was at this time offering a voluntary redundancy scheme to employees in various areas of their business. The Claimant wrote to Mr Keating on **28 November 2023** to enquire as to whether voluntary redundancy was an option which she could pursue at this time. Her email to Mr Keating stated, inter alia, as follows:

"The requirements of the organization for me to travel to London around the practices four days a week and come to Unex Tower / North House for meetings is not possible as I cannot afford this amount of travel and it would also be physically demanding on me too, my MS is reasonably under control but I have flares when I overdo things or get stressed. I know my job is in London but my circumstances changed, out of my control, nothing prepared me for what I had to endure over the last couple of years.

I can do my job to a high standard, I can carry it out online or by phone, whilst working from home, but I am not able to meet the requirement to travel regularly to London.

I am happy with the work I do and I enjoy working with the practices but if there isn't the option for me to work from home all the time I would need to find a way out but still need to support myself and my family financially, they have suffered tremendous loss and trauma over the last couple of years so I am trying to find a way that works for all, without any more negative impact".

24. Mr Keating referred this email to Mr Midlane who was sympathetic to the Claimant's situation and referred her enquiry to the Respondent's Director of Finance who explained that he could not support the application because the Claimant's job was not redundant. He explained that if the Facilitation Team offered the Claimant redundancy, then Mr Midlane would not be able to recruit a replacement for the Claimant because he would have made that position redundant. This would leave Waltham Forest Borough and its 39 GP surgeries without a Senior Facilitator. There is no dispute between the parties that this would have been the outcome and prevented the Respondent from taking the Claimant's suggestion of redundancy any further with her.
25. Mr Keating explained this to the Claimant in an email which he sent to her on **1 December 2023**. In this email he explained to the Claimant once more that the Respondent might be able to support a retire and return arrangement which would meet the requirements of her pension scheme if the Claimant was prepared to retire and then return to her employment working in a Band 6 job, rather than a Band 7 job, if such a Band 6 job was available. The Claimant was not interested in pursuing that option.
26. The continuing correspondence between Mr Keating and the Claimant during January could not resolve the position. Mr Keating sought to emphasise the need for face-to-face working and the Claimant was adamant that she could not undertake three return journeys from Hampshire to London each week to facilitate face-to-face meetings whether with fellow managers or GP surgeries. Mr Midlane and Mr Keating sought advice from Ms Parks in the HR Department. They were advised to invite the Claimant to submit a flexible working request within the Respondent's available procedure and to seek her consent to be referred to Occupational Health for an assessment of her current medical circumstances.
27. Ms Parks explained this would enable the Claimant to set out the change that she wanted to her contractual working pattern, which could include a request to work entirely from home and that a Report from Occupational Health would ensure that the Respondent would then have a full understanding of the Claimant's medical condition, how it had impacted on her work and whether that would continue. The Claimant agreed to attend a remote consultation with an Occupational Health Consultant. She also took the opportunity to submit two flexible working requests to the Respondent which she submitted on **1 February 2024**.
28. The first request was for a 50% reduction in working hours on a retire and return basis working from home with the hours compressed into two days of the week (Thursday and Friday) but with flexibility for the Claimant to attend meeting remotely with her colleagues on either MS Teams or by telephone throughout the week. Her second request was to work full time from home with the

37.5 hours of the working week compressed into four days a week on Monday, Wednesday, Thursday and Friday. She would be available remotely for her colleagues and the GP surgeries throughout that four-day week.

29. The Claimant was unfortunately signed off from work by her GP on **1 February 2024**. She had experienced paraesthesia which was later confirmed had been a multiple sclerosis relapse, which was her first relapse in ten years. She could not return to work until **22 April 2024** but arranged to attend the remote consultation with Occupational Health on **15 February 2024**. She also agreed to attend a meeting with Mr Keating during her sickness absence to consider her flexible working requests. This meeting took place remotely on **7 March 2024** with Miss Parks and Mrs Danquah from the HR Department in attendance.
30. The Occupational Health Report which was made available to the parties shortly after the consultation explains that the Claimant informed the Consultant that she had been diagnosed with relapsing/remitting multiple sclerosis in **2005**. It also records that she explained that although she had managed her condition relatively well *“feels the commute to and from work since she moved outside of London exacerbates her symptoms”*. The Claimant informed the Consultant that commuting to London *“was exacerbating her pain and fatigue and feels she could manage her own commitments better from home”*. She confirmed that she had been signed off sick since **2 February** due to a relapse for which she had been referred to her neurologist during the previous week.
31. The Consultant’s Report explains, inter alia, as follows:
- “From the information Christine has provided today her symptoms are consistent with an MS relapse. With the use of an appropriate measurement outcome tool her pain seems to range from mild to severe with the latter occurring with driving long distances.”*
32. The Consultant’s management advice to the Respondent was as follows:
- “From a clinical perspective, Christine is fit to return to work and undertake the majority of her duties however this will be dependent on the level of support available to her in terms of adjustments:*
- *As long commutes are a trigger for increased pain and fatigue management is advised to consider home working.*
 - *Additional breaks throughout the working day to help combat fatigue.*
 - *Time to attend medical appointments when necessary.*
- However should this not be operationally feasible re-deployment would be advised to a role where commute times are minimal”.*
33. At the start of the remote meeting on **7 March 2024** the Claimant explained that she was concerned that her position was being considered within the Respondent’s flexible work policy and procedure rather than its reasonable adjustment policy and procedure. Her concern was that she would not be able

to appeal against any decision made within the flexible working procedure but could do so within the reasonable adjustment procedure.

34. Ms Parks assured the Claimant that she would have the right to appeal any decision made by Mr Keating within the flexible work procedure. Ms Parks also offered the Claimant the choice of deferring the meeting so that the HR Department could re-arrange it to be held within the reasonable adjustment policy and procedure. The Claimant declined that offer and the meeting proceeded within the Respondent's flexible work policy and procedure.
35. The Claimant's position during the meeting was that she was able to meet all the requirements of her job as a Senior Facilitator if she worked from home permanently with her full-time hours worked within a four-day week. She emphasised strongly that while multiple sclerosis was presenting some physical difficulties for her it did not impact on her mental ability or prevent her from meeting all the requirements of her job as a Senior Facilitator if she worked from home. Mr Keating reserved his decision at the end of the meeting.
36. The Claimant sent a letter to Mr Keating on **12 March 2024** in which she complained about his conduct towards her at the meeting held on **7 March 2024**. This letter was referred to both Mr Midlane and the Respondent's HR Department by Mr Keating. After discussion with the HR Department the Claimant subsequently submitted a formal grievance complaining about Mr Keating's behaviour at the meeting which was initially referred to Mr Midlane.
37. Mr Keating concluded that he could not agree to either of the flexible working arrangements which the Claimant had requested. He wrote to the Claimant on **15 March 2024** to inform her of his decision and in that letter explained his reasons for making that decision. His letter explained, inter alia as follows:

"I explained that the requirement and needs of the Senior Facilitator is to be able to meet the needs of the service which includes in person face to face site visits, to ensure that our GP clients are provided with the highest level and quality of service, which unfortunately has waned due to Covid. This meant that all staff had to work from home. This has had a detrimental effect on our ability to deliver the service demanded by our GP clients.

I do recognise that your condition that your condition has an impact on your ability to attend work five days per week and suggested as a compromise you attend work in person, three days per week – possibly Monday – Wednesday – Friday, working from home Tuesday and Thursday, which would provide a break from travelling into the office/sites between the days to ensure that the stress of travelling does not impact on you too greatly, yet still allows you to meet and fulfill most aspects of the role.

Your second request is not something that can be considered as we have several vacancies which we are struggling to recruit to and need all the staff we have to deliver the service".

38. The Claimant appealed against Mr Keating's decision on **8 April 2024**. The appeal was referred to Mr Midlane. The Claimant objected to Mr Keating attending the appeal meeting with Mr Midlane which would have been the Respondent's usual practise. This was because of the complaint she had made against Mr Keating. Mr Midlane excluded Mr Keating from the appeal meeting for that reason.
39. The meeting to consider the Claimant's appeal was held on **26 April 2024**. Mrs Danquah, Senior People Adviser, attended this meeting. The Claimant presented a written statement to Mr Midlane to support the oral representations which she made to him. The Claimant did not appeal against the decision to refuse her request for a 50% reduction in working hours to enable her to retire and return to work on that basis. She sought to persuade Mr Midlane that she should be allowed to work entirely from home in a working week compressed to four days.
40. Mr Midlane confirmed the outcome of the appeal in the letter which he sent to the Claimant on **9 May**. In this letter he explained his reasons for the decision which he had reached. In doing so he explained why he considered that face-to-face attendances on site and at management meetings were essential requirements for a Senior Facilitator. Mr Midlane overturned Mr Keating's decision requiring the Claimant to attend the office or on site on at least three days per week. He did not agree that it was a reasonable adjustment for the Claimant to work entirely from home but reduced the requirement for face-to-face attendances on site and at team meetings which would involve the Claimant in return journeys from Hampshire to London and back to no more than two days per week and suggested a phased return to such a work arrangement and proposed to provide more time to the Claimant to complete site visits.
41. Mr Midlane's letter to the Claimant, stated, inter alia, as follows:
- “As a reasonable adjustment I would however be happy to agree to you moving up to two days a week in the office/at practices with a period of adjustment, as a phased return, however I am satisfied there is a clear business need for office/practice attendance, along with face-to-face attendance at team meetings. I would offer full day or two half days in the office for a month, followed by moving to two days. I would also extend the time that you have to do the face-to-face visits to double that of the wider team, so you will have much more time to complete the visits, over an extended period of time”.*
42. Mr Midlane invited the Claimant to consider an alternative option of redeployment which he had discussed with her during the appeal meeting. He explains this as follows:
- “As discussed yesterday, a further option you may wish to consider, is to request redeployment, given your condition and the advice from Occupational Health. I would be grateful if you could confirm if you would like to explore this option, noting the 3-month period to explore alternative roles or if you would like to re-explore the retire and return option for the Band 6 role. If the retire and return option is of interest, can you please*

let me know by COB Friday 17 May please, so we can discuss this. I've held off the recruitment to this role until then.

43. Mr Midlane explained in his letter why he considered person attendances by Senior Facilitators at team meetings and GP surgeries were essential for effective delivery of the service to the highest standard and why this could not be achieved remotely. Mr Midlane also explained his position on this in his evidence to the Tribunal and was challenged on it. Therefore, the Tribunal considers it helpful to provide a summary of this letter to the Claimant and his evidence.
44. The starting point for Mr Midlane is that Senior Facilitators are responsible for the entire delivery of these services to a Borough which is a substantial task. They do not just provide support for assistance but oversee the entire delivery of the service. This involves the Claimant overseeing 39 surgeries which demonstrates the need to attend in person on the surgeries and the employees who are involved in those practices as well as other Senior Facilitators and all those who support them. Person attendances contribute to Senior Facilitators working as a team. They will also provide soft intelligence about the surgeries which they support. They provide on-site interaction with Practice Managers and their staff which enables constructive relationships to be developed. They also provide observation of working practices and ad hoc conversations and enable responses to problems raised with the Senior Facilitators in the practice environment as well as patient flow, broken equipment and the ability to provide an overall assessment of efficiencies, potential improvements and training needs.
45. In his evidence Mr Midlane also provided examples of disadvantages that could arise because of working entirely remotely. He referred to the fact that NHS training cannot be undertaken on the NHS app, and that working remotely means that Senior Facilitators would not meet new members of staff or give them feedback and engagement that personal attendances can provide. He also referred to a GP practice in Walthamstow in the Borough for which the Claimant is responsible which is now operating from two sites neither of which has been seen by the Claimant.
46. The Tribunal's understanding is that Mr Midlane requires his Senior Facilitators to provide an engaged and interactive presence on site to those they support, and a proactive rather than reactive service, which he does not consider can be fully achieved because of the limitations of remote working on a full-time basis.
47. The Claimant's grievance against Mr Keating had been referred to Mr Midlane. He held an initial meeting with the Claimant in respect of the grievance and following that meeting and after pursuing some enquiries after that meeting, he decided that he should recuse himself from the procedure and referred the appeal to the Respondent's Director of Finance. The Tribunal has read that this resulted in the appointment of an independent manager by the Director of Finance to investigate the grievance.
48. The Tribunal has been informed that, firstly, this stage of the appeal procedure was not concluded until **29 January 2025** when Mr Keating and the Claimant were informed of the outcome; and, secondly, that the Claimant has pursued an

appeal against the outcome and that this stage of the procedure was still ongoing at the time of the hearing.

49. There are a substantial number of documents relating to this procedure in the Agreed Bundle. However, the allegations, the investigations and outcomes are not the subject of these proceedings. The Tribunal is aware of the procedure and the stage it has reached. They are satisfied that they do not need to examine or make any findings of fact in respect of it particularly when the procedure is still ongoing and the outcome is unknown.
50. Ms Nwulu was appointed to the position of Team Lead from **1 March 2024** following Mr Keating's promotion to his new job on that date. Ms Nwulu and Mr Keating agreed that he would conclude the formalities of the Claimant's return from sick leave on **22 April 2024** and it was after this that Ms Nwulu took over the Claimant's management.
51. On **10 June 2024** Mr Berry, the Senior Facilitator for City and Hackney, met with Mr Midlane and Ms Nwulu to offer to cover face-to-face site visits required for Waltham Borough for the Claimant. This was a genuine and generous gesture to support a work colleague by Mr Berry. The Tribunal has been assisted by Mr Berry's frank and helpful explanation of the impact of the Covid lockdown on him and his colleagues which resulted in him and his colleagues working remotely from home from early **2020 to mid-June 2022**.
52. Mr Berry explained that Mr Midlane's expectation of management meetings and site visits which would take at least three days a week involved disappointing changes to the arrangements for remote working which he and his colleagues had become used to. However, he emphasised strongly there was a professional appreciation that the increase in face-to-face attendances was necessary. He agreed those areas which Mr Midlane had identified in the revised job description/framework required personal attendance and could not be fully dealt with remotely. It was because of this that he had offered to undertake the required face-to-face visits to Waltham Borough on behalf of the Claimant to assist her with her ongoing medical difficulties.
53. Mr Midlane did not accept Mr Berry's offer because he concluded that with his workload for City and Hackney such an arrangement would place substantial and undue pressure on him. The Claimant in her evidence to the Tribunal stated that she had understood the reasons for that decision at the time and accepted Mr Midlane's reasons for not accepting Mr Berry's offer.
54. The Claimant submitted her claim to the Tribunal on **8 June 2024**. She had not been prepared to accept the adjustment to her contractual arrangements proposed by Mr Midlane, or the redeployment to a Band 6 job which he had offered to her, and which gave her the option of implementing the retire and return option available to her under the terms of her pension scheme. This would have provided her with a job that could be undertaken remotely from home on a full-time basis and what appears to the Tribunal to have had the financial advantage of providing her with an ongoing income (at a fixed rate of pay) and her pension entitlement.

55. The Claimant's evidence has made it clear to the Tribunal that she had never been prepared to accept the redeployment proposal from when it was first offered to her by Mr Keating. The Claimant remained adamant that she could meet the requirements and responsibilities of the Senior Facilitators' job by working remotely from home and with her full-time hours compressed into a four-day week.
56. The Claimant's position remained unresolved after she had received Mr Midlane's decision on her appeal. The Respondent did not take any action to pursue a disciplinary procedure or take any other adverse action against the Claimant who continued to work remotely as before. Mrs Danquah and Mr Midlane agreed to pursue matters by further dialogue with the Claimant.
57. They were aware that the grievance procedure as to Mr Keating's alleged misconduct was ongoing and that the Claimant had applied to the DWP for financial and driving assistance for journeys to and from London. Mrs Danquah wanted to ensure that the Respondent gave further consideration as to whether there could be changes to the Senior Facilitator job description to further address the Claimant's particular circumstances.
58. A meeting was held with the Claimant and Ms Nwulu on **31 July 2024** also attended by Mr Midlane, Mrs Macanas, Head of People Service, Mr Desai, Equality and Diversity Officer and Miss Parks to consider where there could be amendments made to the job description. The redeployment option was also discussed again in this meeting although by this time the Claimant had rejected this option again in a discussion which Mr Desai had held with her. Her position remained the same during this meeting. She was not interested in pursuing that potential option any further.
59. In **August 2024** Mr Midlane wrote to Ms Hamberger, the Head of Primary Care Transformation, one of the Respondent's customers, to seek her view on providing a remote facilitator service. In her reply to Mr Midlane Ms Hamberger agreed that it was essential for personal training and site visits to take place face-to-face. She provided examples of the benefits of such visits. Mr Midlane also made other enquiries of other ICBs who confirmed that they all required staff to undertake site visits and in person team meetings.
60. Mr Midlane prepared an amended job description after this meeting which he sent to the Claimant for her consideration. The Claimant rejected the proposed changes which would have resulted in a job description for her alone. She maintained her position in the written response which she sent on **16 August 2025**. She did not accept that any changes to the Senior Facilitator job description were required because she was able to meet all the requirements of the job working remotely from home. She referred to a letter from her GP dated **7 August 2024** to support this position. This states inter alia:

"She has managed her condition very well but since her last relapse has struggled with more fatigue and pain. This has been significantly aggravated by her commuting.

It is obvious that work adaptation of working from home is advisable and necessary.

I refer to the Occupational Health Report of Feb 2024 which is eminently sensible in its recommendations. Miss Donnelly is very keen to work and look after her Borough's IT needs as she has done for many years".

61. However, these discussions, and her work with, and support from Ms Nwulu who holds the Claimant's ability and work in high regard have apparently resulted in a change to the Claimant's position. By early **November 2024**, the Claimant had agreed with Ms Nwulu to attend Facilities Team Meetings with her colleagues monthly and evidence before the Tribunal indicates that she attended such meetings on **18 November** and **16 December 2024** and **10 February 2025**. The Claimant also agreed with Ms Nwulu to undertake an essential face-to-face visit to facilitate a system migration due to take place at a surgery on **16 January 2025**.
62. The Claimant has apparently accepted that she must attend GP's sites for what have been described by her as essential visits. She has agreed that these would include practice mergers and clinical system mergers (which happen very infrequently). However, when questioned by Ms van den Berg although she accepted that essential visits included requests made by surgeries for her personal attendance (provided she was well enough to do so) she continued to deny that any face-to-face contact with those working in GP surgeries is necessary maintaining that she is able to undertake all necessary tasks working remotely from home.
63. The Tribunal understood from the limited information provided by the parties that the Claimant's application to the DWP was a protracted process which was successfully concluded in **December 2024** with the offer of financial support made to the Claimant. The parties had not provided any documents in relation to this offer to the Tribunal who directed that a copy of the DWP letter of **10 December 2024** should be provided to them. This was not received by the Tribunal until after the hearing had been completed.
64. The Tribunal reads that it provides for 12 journeys a month to and from London by taxi at a cost of £4 per month to the Claimant with this support provided to **9 December 2027**. Such information as the Tribunal has before it indicates that this grant was used to support the Claimant's attendance at the GP surgery in **January 2025**. This appears to provide her with potential support for being taken by taxi to and from London on six days of each month.

Summary of the Law

65. S.15 EQA provides that it will be unlawful for an employer or other person to treat a disabled person unfavourably not because of that person's disability itself (which would amount to direct discrimination) but because of something arising from or in consequence of, the person's disability. However, to be liable, the employer must know or be reasonably expected to know that the disabled person has a disability.
66. In **Secretary of State for Justice and Anor v Dunn EAT 0234/16** the EAT (presided over by Mrs Justice Simler, its then President) identified the following four elements that must be made out for the claimant to succeed in a s.15 claim:

- there must be unfavourable treatment; and
- there must be something that arises in consequence of the Claimant's disability; and
- the unfavourable treatment must be because of (that is, caused by) the something that arises in consequence of the disability; and
- the alleged discriminator cannot show that the unfavourable treatment is a proportionate means of achieving a legitimate aim.

These four elements must be made out together with the separate requirement in s.15(2) that the alleged discriminator must (or should) have known of the claimant's disability.

67. S.15 does not require the disabled person to show that the treatment suffered was less favourable than that experienced by a comparator. A claimant is simply required to show that he or she has suffered something broadly akin to a detriment without having to show that somebody else who does not suffer from the same disability would have been treated differently.
68. Under s.20(3) EQA, where a provision, criterion or practise of the employer puts a disabled person at a substantial disadvantage in comparison with persons who are not disabled, then the employer has a duty to take reasonable steps to avoid the disadvantage. A failure to comply with this requirement is a failure to provide reasonable adjustments. The claimant bears the burden of establishing a prima facie case the duty to make reasonable adjustments has arisen and that there are facts from which it could reasonably be inferred - absence and explanation – that the duty has been breached.
69. The onus falls on the claimant, not the employer, to identify in broad terms the nature of the adjustment that would ameliorate the substantial disadvantage. Having done so, the burden then shifts to the employer to show that the disadvantage would not have been eliminated or reduced by the proposed adjustment and/or that the adjustment was not a reasonable adjustment to make taking account of the relevant circumstances.
70. The Employment Tribunal is obliged to consider the Equality and Human Rights Commission's statutory Code of Practice on Employment ("the EHRC Employment Code") in any case in which it appears to be relevant (s.15(4)(b) EQA). However, the Tribunal is under no duty to address every factor set out in the Code when determining whether adjustments should have been made and/or whether any such adjustment would be reasonable.
71. The Tribunal must identify the relevant PCP before considering other relevant issues (such as the nature and extent of the substantial disadvantage suffered by the claimant). The EQA states that a "substantial disadvantage" is something that "is more than minor or trivial". Tribunals are under an obligation to identify the nature and extent of the disadvantage to which the claimant is subjected with some degree of precision. Since substantial disadvantage must be established via a comparison of "persons who are not disabled", the duty to make reasonable adjustments will only be triggered if it is established that the

relevant PCP causes greater disadvantage to the disabled claimant than it does to non-disabled people, not generally but in relation to persons to whom the requirement is applied.

72. The s.20 duty only arises in respect of those steps that it is reasonable for the employer to take to avoid the disadvantage experienced by the disabled person. The test of reasonableness in this context is an objective one. The reasonable adjustment provisions are concerned with practical results, and the focus must therefore be on whether the adjustment itself can be considered reasonable rather than on the reasonableness of the process by which the employer reached the decision about the proposed adjustment. The focus of the Tribunal must be on whether the adjustment would, or might, be effective in removing or reducing the disadvantage that the claimant is experiencing at work because of the disability.
73. The duty to make reasonable adjustments only arises where the disabled person is put at a “substantial disadvantage” in relation to a relevant matter in comparison with persons who are not disabled. The Tribunal must undertake an assessment of the alleged substantial disadvantage caused by the disability and set out exactly what it considers the claimant can and cannot do because of his or her disability. Any finding of substantial disadvantage must have a proper evidential basis. The questions of whether, and to what extent, the claimant has suffered disadvantage must be assessed in the context of the PCP being relied upon by the claimant.

Conclusions

74. The unfavourable treatment on which the Claimant relies to pursue her claim within s.15 EQA relates to and relies upon the contents of Mr Midlane’s letter of **10 May 2024** informing her of the outcome of her flexible working appeal. The Claimant asserts that Mr Midlane treated her unfavourably by:
- giving her seven days to accept a Band 6 post but not offering any opportunity to discuss the logistics of such a Band and how it might affect her pension.
 - not giving her any information on the offer of “retire and rehire” to a Band 6 role or what the role was.
 - offering her the possibility of a complete re-deployment into a different role but not fully explaining this option to her or following this offer up apart from informing her that there was a 12-week timeline.
75. The Tribunal has found that the Claimant’s evidence establishes that her claims of unfavourable treatment are unsustainable. The starting point is that the Claimant has confirmed that she had no interest in the redeployment proposal when it was first made to her by Mr Keating in his letter of **1 December 2023** (when responding to the Claimant’s request for consideration of retirement and rehire) and, again, when Mr Keating referred to it as a potential option in his letter to her of **15 March 2024**. The Claimant’s own evidence is that she had never been interested in the Band 6 role.

76. The Claimant's claim also misrepresents the content of Mr Midlane's letter. He offered the Claimant the opportunity to reconsider redeployment to the Band 6 role and asked her to let him know whether she wanted to do so or explore any other potential alternative roles. He explained there was a three-month redeployment period during which they could have discussed such matters. Mr Midlane was informing the Claimant that she could have a discussion with him. He did not make an offer of a Band 6 job to the Claimant.
77. Mr Midlane did not give the Claimant seven days to accept an offer. He could not have done so because, as already noted he had not made an offer to her in his letter. He asked her to let him know whether she wanted to explore the Band 6 position and that he had delayed recruitment to a vacant Band 6 role to enable her to do so.
78. The Claimant could have approached Mr Midlane to discuss matters further. She was not provided with any further information because she did not request any further information and from her own evidence had already decided that she did not wish to take up a Band 6 role. Furthermore, the Respondent, through, firstly Mr Desai and then Mr Midlane again in **July and August 2024** gave her the opportunity to consider the Band 6 redeployment again which she did not want to pursue.
79. Mr Midlane's evidence and his letter of **10 May 2024** established that he considered the Claimant's request for flexible working and in doing so considered her representations that she could not undertake commuting to and from London either every day or at all and the advice provided by the Occupational Health Report which included the potential need for the Respondent to consider potential redeployment if the Claimant was not able to agree to any adjustments to her job which the Respondent could offer to her.
80. Mr Midlane provided an offer with a permanent adjustment to the Claimant's contractually required personal attendances in her contract of employment which the Respondent was prepared to reduce to 2-days a week. If that was not accepted by the Claimant Mr Midlane offered her potential redeployment to a job in which any commuting would be minimal. These adjustments were within the parameters of the recommendations made by the OH Report. The Claimant could have sought further information and discussed these proposals with Mr Midlane if she had wanted to do so. It was her choice not to do so. This was not unfavourable treatment. The Claimant's claim under s.15 EQA fails and is dismissed for these reasons.
81. The Claimant's second claim is that the Respondent failed to make reasonable adjustments to her work arrangements. The PCP on which the Claimant relies is that there was a requirement for her to work from either the Respondent's office or her face-to-face attendance at surgeries for three days per week. The Tribunal has already confirmed that the Senior Facilitators were being required to come into the office or attend surgeries for which they were responsible for at least three days, and up to five days if that was necessary in any working week.
82. It was Mr Keating's decision to limit the Claimant's attendance to three days a week thereby limiting any necessary travelling to and from London to three days

per week. Mr Midlane reduced this requirement to two days a week following the appeal hearing. The Claimant's claim that she was not being treated any differently to her colleagues is inaccurate and unsustainable and has caused the Tribunal some considerable concern.

83. This is because the Claimant's colleagues were being required to attend team meetings and sites for at least three days a week and remain bound by their contractual terms to undertake attendances for up to five days a week. The Claimant's application for flexible working had reduced contractual requirements for her following the first meeting with Mr Keating and then these were reduced still further following the appeal which she presented to Mr Midlane. The adjustment made by Mr Midlane was to limit her travelling to two days a week for face-to-face attendances whether at the office or on site.
84. The Tribunal agrees with Ms van den Berg that they must assess whether the Claimant was put to a substantial disadvantage at the material time which is **10 May 2024** when Mr Midlane informed the Claimant by letter of his decision in respect of her flexible working appeal.
85. The Claimant's application for flexible working was based on her submission that she would be able to meet all the requirements of a Senior Facilitator's job working remotely from home with her working hours compressed into a four-day week. The four-day week does not appear to have been pursued by the Claimant at the appeal before Mr Midlane. The evidence before the Tribunal from Mr Midlane is supported by the relevant Job Description and Framework for a Senior Facilitator, Mr Berry's evidence, the correspondence from Ms Hamberger which is that there are areas of necessary and essential work and engagement with those who work at the surgeries that cannot be fully and properly met by a Senior Facilitator working entirely remotely from home and from other ICBs who have the same contractual requirements.
86. When the Claimant moved to Hampshire, she was aware that she would face a much longer journey to and from work. The Claimant was then working remotely from her new home because of the pandemic. She told the Tribunal that at that time she thought that the longer journey would be manageable. However, the difference in terms of time taken and mileage with her previous journey is substantial. The Tribunal understands that the necessary journeys to and from Hampshire to the Respondent's office and/or to the GP surgeries for which she is responsible would amount to approximately 90 miles each way which will involve two to three hours of travelling each way.
87. The Tribunal has concluded from Mr Berry's evidence that a substantial and continuing pattern of home working was continued by the Senior Facilitators from **2022** onwards even after Covid restrictions were relaxed and would have allowed face-to-face attendances. This was a substantial concern for Mr Midlane. It was the reason for the steps he took to ensure that Senior Facilitators were made aware of the expectations for personal attendances which the Respondent needed to have implemented. This required the Senior Facilitators to reduce their home working. These concerns resulted in the meeting which Mr Keating held with them on **13 July 2023**.

88. The parties did not provide the Tribunal with details of the number of journeys which the Claimant made from when restrictions ended in **2022** to **14 June 2023**. The evidence before the Tribunal establishes that she would have made few, if any such journeys. Furthermore, notwithstanding the meeting held by Mr Keating on **13 July** the Claimant made only one site visit (in **October 2023**) between **14 June 2023 and 1 February 2024** when a flare up with her multiple sclerosis required her to take sickness absence until **22 April 2024**.
89. The Claimant continued working from home throughout **December 2023** and **January 2024**. The Claimant suffered her first relapse from her multiple sclerosis for 10 years two weeks before her remote consultation with the OH consultant on **15 February 2024**. The Tribunal has found it difficult to understand how the Claimant could attribute this relapse to the physical demands of commuting to London from Hampshire when she had made only one such journey in the previous eight months and few if any journeys before that.
90. At the end of **November 2023**, the Claimant had raised concerns with Mr Keating about the time and cost of commuting from Hampshire. She had not been complaining in this letter about the impact of undertaking commuting because she had been working from home for some considerable time. She explains that her multiple sclerosis is under control but does also express her concern that she can suffer flare ups by overdoing things or stress.
91. The Tribunal have been faced with a similar concern from the contents of her GP's letter of **7 August 2024** (see paragraph 60 above). This is because her GP explains that the Claimant managed her last relapse (which was in **February 2024**) very well while struggling with more fatigue and pain which he explains has been aggravated by her commuting. This indicates that the GP had not been informed that she had been working entirely from home during this period.
92. The origin of the problem that has resulted in these proceedings was the Claimant's move to Hampshire. The Senior Facilitators were at that time working remotely from home due to the Covid pandemic. The Claimant had underestimated the impact of the length of time, distance and cost that commuting to London might have in a job in which the evidence before the Tribunal establishes there must be an effective combination of on-site and remote working. This became even more essential following the merger and the relaxation of lockdown restrictions.
93. It was the length of her journey, the time it was taking and the cost that the Claimant first raised with Mr Keating during their meeting in **September 2023** when she was already exploring the option of retire and return. When the Claimant raised multiple sclerosis with Mr Keating in **November 2023** it was to explain what the Tribunal accepts was her genuine concern that stress and anxiety could cause a relapse. This is in the context of ongoing discussions between them that were difficult for them both. However, by the time of the relapse she had only undertaken one journey into London in the previous eight months.

94. The Tribunal have concluded that commuting could not have caused the unfortunate relapse which the Claimant suffered on **1 February 2024**. However, it has found that the Claimant had to cope with the stress and anxiety of the necessary ongoing discussions about her position and the uncertainty of the outcome of them together with her realisation of the demands which commuting from Hampshire to London would make on her.
95. The Tribunal find that the Claimant's multiple sclerosis, her unfortunate relapse and the demands that commuting would make on the Claimant were recognised and accepted by Mr Keating and Mr Midlane when her flexible work applications were being carefully considered by them. This resulted in the options which Mr Midlane offered to her and subsequently the further steps taken by Mr Midlane and others to engage in further dialogue with her.
96. The flexible working application offered the Claimant a substantial adjustment to her work arrangements and the terms of her contract of employment. Mr Midlane had reasonably concluded that he could offer no further adjustment at the relevant time. However, in accordance with the recommendation of the Occupational Health report he did consider redeployment and gave the Claimant the opportunity of discussing potential redeployment with him. He also remained open to further discussion and understood that the Claimant would be able to apply for further adjustments in the future. However, the evidence before the Tribunal has established that the demands of a Senior Facilitator's job and the necessary services to the surgeries for which a Senior Facilitator is responsible has a continuing need for face-to-face contact.
97. The Claimant's insistence that all the demands and responsibilities of her job could be met remotely was untenable particularly when work colleagues accepted the necessity of attendance on site. The Claimant had made an application for an unreasonable adjustment. The Tribunal have found that the Respondent did not discriminate against the Claimant by failing to make a reasonable adjustment contrary to sections 20/21 Equality Act 2010. Her claim that it did so fails.

Employment Judge M Craft
Date: 25 November 2025