



EMPLOYMENT TRIBUNALS

Claimant

Ms H Codling

Respondent

(1) Linda Biggs (2) Steven Biggs for Matthew Biggs

Heard at: Watford (CVP)

On: 20-22 July 2026

Before: Employment Judge S Moore
Mr S Holford
Ms E Deem

Appearances

For the Claimant: In person/Mr Rose, of the Citizens Advice Bureau

For the Respondent: Miss S Sheerin, counsel

JUDGMENT

The claim of failure to make reasonable adjustments (ss 20 & 21 Equality Act 2010) is dismissed.

REASONS

Background

1. The Claimant was employed as a Care Assistant for the Respondents' disabled son, Matthew, between 29 November 2022 and 16 June 2024.
2. ACAS Early Conciliation took place between 4 July 2024 and 2 August 2024.
3. On 30 August 2024 the Claimant brought a claim for disability discrimination. In box 8.2 of the claim form she stated that Mrs Biggs had refused to make a reasonable adjustment to her shift pattern and set out the nature of that complaint in some detail. The Claimant also stated that by refusing to allow her to remain on her existing shift pattern Mrs Biggs had treated her unfavourably because of something arising in consequence of her disability.

4. A Case Management Preliminary Hearing (CMPH) took place on 25 April 2025 before EJ de Silva KC. He set the matter down for a Public Preliminary Hearing (PPH) to determine the question of disability.
5. He recorded that the Claimant had withdrawn her claim for disability-related discrimination pursuant to s. 15 Equality Act 2010 (EqA) and issued a judgment to that effect, which was sent to the parties on 7 May 2025.
6. The record of the CMPH identified the issues for determination in the case as being in relation to disability and the complaint of failure to make reasonable adjustments pursuant to ss 20 and 21 EqA.
7. At a PPH on 4 December 2025 EJ Laidler determined that at the material time the Claimant was a disabled person by reason of overactive bladder syndrome (OBS) and anxiety and depression.
8. The record of the PPH also records that EJ Laidler queried with the Claimant whether she had intended to withdraw her complaint under s.15 EqA. However, she noted that she could not interfere the decisions of the previous judge, and that the matter proceeded as one of failure to make reasonable adjustments.
9. On 17 December 2025 the Claimant wrote to the Tribunal stating that she had become confused and mistakenly agreed to withdraw the section 15 claim and requested that the judgment of 25 April 2025 be rescinded. She stated that she considered she had been treated unfavourably because of something arising in consequence of her disability in that she had been dismissed from her employment.
10. On 6 March 2026 EJ De Silva KC directed that he did not consider that the Claimant's application had no reasonable prospect of success for the purposes of rule 70(1) of the Employment Tribunal Rules 2025. The Respondents were therefore required to make any representations in response to the Claimant's application by 27 March 2026 and both parties required to state whether the application could be determined without a hearing
11. By letter of 26 March 2026, the Respondent strongly refuted the application. It pointed out the application was made 210 days out of time, and that pursuant to the authorities of **Khan v Heywood & Middleton Primary Care Trust [2007] ICR 24**, and **Segor v Goodrich Actuation Systems Ltd UKEAT/0145/11** the complaint could not be revived.
12. Both parties submitted the application could be determined without a hearing.
13. At this substantive hearing the Tribunal was informed that a few days beforehand the Claimant's application had been determined and dismissed. Accordingly, the claim before us was of failure to make reasonable adjustments only.
14. We heard evidence from the Claimant and, on her behalf, from Ms Emma Marchant. We also heard evidence from the First Respondent, Mrs Biggs, and were referred to a bundle of documents.
15. On that basis of that evidence, we make the following findings of fact:

Facts

16. The Claimant started working for the Respondents in November 2022 as a Care Assistant for the Respondents' severely disabled adult son, Matthew. The Respondents employed four Care Assistants for Matthew, with two carers on shift at any one time. Any hours not covered by the four Care Assistants were covered by carers supplied by an agency.
17. At first the Claimant worked part-time. The Claimant's normal working hours were 72 hours per a four-week period (an average of 18 hours per week).
18. In July 2023 the Claimant's hours were amended to full time, alternating between 36 and 48 hours per week. Her contract provided that the times she would work may vary and would be agreed with the Respondents in advance.
19. As from July 2023 the Claimant was working shifts as follows:
week one: Monday, Tuesday, Saturday, and Sunday;
week two: Monday, Tuesday, and Friday.
20. This meant that every two weeks the Claimant was working four consecutive shifts from Saturday to Tuesday.
21. Each shift was 12 hours long.
22. Prior to 7 June 2024 the Claimant and the Respondents had a very good working relationship.
23. On Friday 7 June 2024, Mrs Biggs informed the Claimant that she intended to change her shift pattern, swapping the Monday of week two for a Thursday. The Claimant was told the change would happen in one month's time.
24. This change meant that in week two the Claimant would work Tuesdays, Thursdays and Fridays, with the result that she would have one single day off (Monday) between working the Saturday and Sunday of week one and the Tuesday of week two, and another single day off (Wednesday) between working the Tuesday and Thursday/Friday of week two, before having two consecutive days off at the weekend.
25. The reason for the change was because Mrs Biggs had become concerned that requiring the Claimant to work four consecutive shifts from Saturday to Tuesday every second week was too tiring for her, and that it was affecting her ability to care for Matthew, particularly by the fourth shift. Mrs Biggs said she had come to this view because of comments the Claimant had made to the agency, comments made by other Care Assistants, and a number of incidents the Claimant had experienced while driving Matthew in the vehicle adapted for his wheelchair.
26. The Claimant strongly disputed that she had ever struggled to cope with four consecutive shifts and maintained her comments to the agency had been taken out of context.
27. Given the limited issues before us it is not necessary for us to decide whether Mrs Biggs' view was justified or reasonable but we merely record that her perception that the Claimant was struggling with four consecutive shifts, and her

natural priority that Matthew should have the best care, was the reason why she wanted to change the shift pattern.

28. The Claimant told Mrs Biggs that she could not work the proposed new shift.
29. On Monday 10 June 2024 the Claimant asked Mrs Biggs if she had changed the shift pattern back to how it had been before and Mrs Biggs said that she hadn't, and they barely spoke to each other for the rest of the day.
30. On Tuesday 11 June 2024 the Claimant spoke to Mrs Biggs again. She said the new shift pattern wasn't suitable for her because in the second week she had only single day gaps on a Monday and a Wednesday, which wasn't sufficient time for her to do her washing and meal preparation, especially since she spent Wednesdays with her granddaughter (then aged 3 years). The conversation became confrontational and the Claimant became upset. Mrs Biggs then fetched her husband, Mr Biggs, and there was another conversation between them and the Claimant in the course of which Mr Biggs suggested the Claimant "give [the new shift pattern] a go". However, the Claimant was adamant it wouldn't work because she wouldn't have time to rest and see her granddaughter.
31. Precisely what happened next is disputed. The Claimant said she had become very upset and had a urinary accident. That the other Care Assistant also on shift, Emma Marchant, told her she should go home said that Mrs Biggs said "I don't care whether you go or not." Mrs Biggs evidence was that the Claimant kept calm and threatened to leave, at which point she said to the Claimant, 'You're not seriously about to walk out of your job?' to which the Claimant responded that she was and then left.
32. In any event the Claimant left the workplace.
33. On 12 June 2026 she was invited by email to participate in a Zoom phone call to discuss possible gross misconduct, as a result of having left her workplace in the middle of a shift.
34. The Claimant replied to say she was not mentally or physically well enough to attend a disciplinary meeting and on 16 June 2026 she was dismissed, in her absence, for gross misconduct.

Conclusions

35. The claim is of failure to make reasonable adjustments pursuant to ss. 20 and 21 EqA.
36. Turning to the list of issues agreed at the CMPH on 25 April 2025, the first question is, did the Respondent know or could it reasonably have been expected to know the Claimant had the disabilities in question?
37. The Claimant says that Mrs Biggs knew of both her conditions. Mrs Biggs says that while she knew about the conditions she did not know they were significant enough to amount to disabilities within the meaning of the EqA.
38. In this respect there are WhatsApp messages from the Claimant to Mrs Biggs in April 2024 in which she refers to her doctor putting up her antidepressants and being "more worried about her... mental health as it's being going on so long", and to her being referred to the "incontinence team". The Claimant also gave

uncontested evidence that she had kept Mrs Biggs updated of her health conditions, GP and hospital appointments, and medical treatments, and that Mrs Biggs had offered to give the Claimant some pads to use for incontinence that she kept for Matthew.

39. Accordingly, we consider that while the Claimant may not have used the word “disabled” or “disabilities”, Mrs Biggs would have known enough to realize that the Claimant was suffering from long term and substantial adverse effects of both a mental and physical impairment, namely anxiety and depression and OBS, and therefore had actual or constructive knowledge of the Claimant’s disabilities by June 2024.
40. The next question is whether the Respondent had the provision, criterion or practice (PCP) of requiring the Claimant to work the new shift pattern.
41. In this respect Ms Sheerin argued that there was no PCP because the shift change was a proposal, which had only been discussed verbally and had not yet been implemented.
42. We do not accept this argument, a PCP may include decisions to do something in the future, such as a future change to a rota or shift pattern. Further, we do not accept that the change being made to the Claimant’s shift pattern was only a proposal, which was still up for discussion. Matters had come to a head very quickly and despite the Claimant being adamant that she would not accept the change, the Respondents plainly remained adamant that the change should and would be made. We note that Mr Biggs suggested the Claimant should “give it a go”, however this does not suggest that the Respondent was, at that stage, open to further discussions on the point, rather that the change would be made until the Claimant had at least tried to work under the new arrangement.
43. We are therefore satisfied that the Respondent had a PCP of requiring the Claimant a requirement to work the new shift pattern within the meaning of ss 20 & 21 EqA
44. However, the next question is whether the new shift pattern put the Claimant at a substantial disadvantage compared to someone without her disabilities.
45. In the list of issues the substantial disadvantage identified is that the new shift pattern did not give her time to rest.
46. In the hearing the Claimant said that because of her disability of OBS she had to wash her bedlinen every day, and also wash her clothes more frequently, and that she did not have time to do that if she only had gaps of a single day between shifts. Also, she did not have for adequate rest, given the other chores she had to complete like meal preparation, housework and shopping.
47. We have to say that we have found it difficult to understand the Claimant’s case as regards substantial disadvantage.
48. The change in shift pattern only affected every other week, and while, in that second week, the Claimant only had single days of rest on a Monday and Wednesday, she then had two consecutive days of rest on a Saturday and Sunday. We find it difficult to understand how, if the Claimant could cope with changing and drying her bed linen on four consecutive days of work (as she

had to do under the previous shift pattern), she could not cope with doing so on a single day when she was not at work.

49. Further as regards tiredness and needing to rest, again we find it hard to understand how the Claimant could (she says) cope with four consecutive shifts, notwithstanding her disabilities, yet would struggle to cope with a change in shift pattern in which the total number of days she worked did not increase and she was only ever required to work two consecutive shifts. We also note that under the new shift pattern, as well as having three consecutive days off in week 1 (as before) she still had 2 consecutive days off in week 2 (on a Saturday and Sunday).
50. In her evidence the Claimant also referred to her need to make and attend medical appointments. However again we do not see how the change to the shift put her at a substantial disadvantage in that respect either. The switch from a Monday to the Thursday left her with the same number of weekdays to make medical appointments as she had, had before.
51. We note that in her evidence the Claimant referred frequently to spending time with her young granddaughter on Wednesdays and at one point suggested that the problem with the new shift pattern was that it did not give her time to rest between her Tuesday and Thursday shift *and* see her granddaughter. However, if the change to the shift pattern gave her adequate time off between shifts to rest (as we consider it did), the fact that she chose to spend that time with her granddaughter rather than rest or do washing or other chores is a matter of personal choice and does not mean she was put at a substantial disadvantage by reason of her disabilities.
52. Ms Sheerin submitted the Claimant's case on substantial disadvantage was purely a matter of bald assertion, and we accept this submission.
53. There is no medical evidence to suggest the new shift pattern substantially disadvantaged the Claimant, nor, since she did not try to work under the new shift pattern, any evidence of her actually struggling with it. Further, as stated above, we do not even consider that the bald assertions made by the Claimant are logical or reasonable ones.
54. It follows that since the Claimant has failed to show the PCP – the new shift pattern – put her at a substantial disadvantage in comparison with persons who are not disabled, the claim of failure to make reasonable adjustments fails and must be dismissed.

Outcome

55. The claim of failure to make reasonable adjustments is dismissed.

Approved By:

Employment Judge S Moore

Date:

22 July 2026

Case Number: 3310814/2024 (CVP)

Sent to the parties on:
19 August 2026

For the Tribunal:

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