Case No: 6022874/2024

EMPLOYMENT TRIBUNALS

Claimant:	**Ms J Bassford**
Respondent:	**Devon County Council**
Heard at:	**Exeter Employment Tribunal**
On:	**21 to 25 September 2026**
Before:	**Employment Judge Volkmer**
Representation	
Claimant:	in person
Respondent:	Mr Short, Counsel

JUDGMENT

1. The complaints of direct disability discrimination by association are not well founded and are dismissed.
2. The complaints of indirect disability discrimination by association are not well founded and are dismissed.
3. The complaints of indirect sex discrimination are out of time. It is not just and equitable to extend time. These complaints are dismissed for want of jurisdiction.

REASONS

1. The Claimant brings complaints of direct disability discrimination by association, indirect disability discrimination by association and indirect sex discrimination.

2. The Tribunal heard witness evidence from the Claimant, Tony Custerson and Stephen Walters (who also gave evidence on behalf of the Claimant) and

Stephen Spratling for the Respondent. The Claimant submitted a witness statement given by Alison Donavon, but Ms Donavon was unable to attend the hearing to be cross-examined. Accordingly, I give her statement lower weight.

3. I also considered the agreed Hearing Bundle of 946 PDF pages. Regrettably (and contrary to express case management orders), the pagination on the hearing bundle does not accord with the electronic page numbers. As such, references to the hearing bundle use the relevant pagination (e.g. page D24 or G3). The Claimant submitted a further additional bundle with page references which are prefixed by "SB". This was not submitted electronically. She also submitted a further document which was the preference form of another individual affected by the consultation. This latter document does not have page numbers. The Respondent did not object to these documents being considered, and I therefore permitted them to be added to the documentation. However, I informed the parties at the beginning of the hearing that I should not be assumed to read any documents to which I had not been referred in cross examination or submissions, given the volume of documentation.

4. I declined to allow the Claimant's son's autism assessment to be allowed into the documentation to be considered. The Respondent had conceded that the Claimant's son was disabled, and I considered that it was not relevant to the issues for me to determine.

5. At the beginning of the hearing the Claimant raised that she had asked for a recording which had been made on MS Teams of the meeting on 13 August 2024, but the Respondent had not disclosed it to her as they said it could not be retrieved. Ms Small confirmed that his instructions were that the Respondent did not have this and could therefore not disclose it. On that basis I could take the matter no further. The Claimant showed me the data subject access response letter, which also referred to some documents being withheld on the basis of legal advice privilege. It appeared that the Claimant had been confused by the proximity of this point to another sentence which stated that the recording could not be disclosed because the Respondent did not have it.

The Issues

6. The following List of Issues was set out in the Case Management Order ("CMO") of Employment Judge Bax following the hearing on 9 October 2025. The CMO was sent to the parties on 22 October 2025.

1. Time limits

1.1. The claim form was presented on 22 December 2024. The Claimant commenced the Early Conciliation process with ACAS on 6 November 2024 (Day A). The Early Conciliation Certificate was issued on 18 December 2024 (Day B). Accordingly, any act or omission which took place before 7 August 2024 (which allows for any extension under the Early Conciliation provisions) is potentially out of time so that the Tribunal may not have jurisdiction to hear that complaint.

1.2. Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide the

following.

1.2.1. Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act or omission to which the complaint relates?

1.2.2. If not, was there conduct extending over a period?

1.2.3. If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?

1.2.4. If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:

1.2.5. Why were the complaints not made to the Tribunal in time?

1.2.6. In any event, is it just and equitable in all the circumstances to extend time?

2. Disability

2.1. The Respondent accepts that at all material times the Claimant's son was disabled.

3. Direct disability discrimination by association (Equality Act 2010 section 13)

3.1. The Claimant describes herself as the carer of her adult son who was disabled.

3.2. Did the Respondent do the following things:

3.2.1. On 13 August 2024, the Claimant was misled and pressurised into a change of work base to Tavistock. In that she was told by Ms Combe, that if she did not accept the change, she could be made redundant without pay.

3.2.2. On about 10 September 2024 misled and pressurised the Claimant into a change of work base to Tavistock. In that she was told by Ms Combe, that if she did not accept the change, she could be made redundant without pay.

3.2.3. On 1 September 2024, the Respondent changed the Claimant's work base. The Claimant worked under protest.

3.2.4. Rejected her flexible working request made on about 6 October 2024.

3.3. Was that less favourable treatment? The Tribunal will have to decide whether the Claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and those of the Claimant. If there was nobody in the same circumstances as the Claimant, the Tribunal will decide whether she was treated worse than someone else would have been treated. The Claimant says she was

treated worse than Ms HY and Ms SS (who were given the Rushbrook base) or a hypothetical comparator.

3.4. If so, was it because of her association with her son's disability?

3.5. Is the Respondent able to prove a reason for the treatment occurred for a non-discriminatory reason not connected to her association with her son's disability?

4. Indirect associative disability discrimination (Equality Act 2010 s. 19)

4.1. A "PCP" is a provision, criterion or practice. Did the Respondent have or apply the following PCPs:

4.1.1. a provision in the contract that the Respondent could direct the Claimant where to work ("PCP 1");

4.1.2. a restructure/reorganisation in June required some staff to move their work base, using their home address as the primary selection criterion [the underlined was added by agreement between the parties by way of clarification at the beginning of the hearing ("PCP 2")*].*

4.2. Did the Respondent apply the PCPs to the Claimant?

4.3. Did the Respondent apply the PCPs to persons with whom the Claimant did not share the same protected characteristic (those caring for someone with a disability) or would it have done so?

4.4. Did the PCP put persons with whom the Claimant shared the characteristic, at a particular disadvantage when compared with persons with whom she did not share the characteristic?

4.5. Did the PCP put the Claimant at that disadvantage in that she needed to care for her disabled adult son, who had a strict personal routine and lifestyle. The change in work base meant that the Claimant had longer journey times which would affect the times she left and returned home which adversely affected her son's routines which enabled them both to continue working. The change prevented her from working.

4.6. Was the PCP a proportionate means of achieving a legitimate aim?

4.6.1. The Respondent says that its aims were:

4.6.1.1. The need to ensure the provision of cost effective, qualitative, sufficient and appropriate continuity of care to its service users;

4.6.1.2. The need to run and provide an efficient daycare service/provision.

4.6.1.3. The need to re-organise its daycare provision in light of service needs/demands;

4.6.1.4. The need to ensure efficient use of staff to provide appropriate

and sufficient daycare service/provision;

4.6.1.5. The need to ensure the health and welfare of service users by ensuring appropriate and sufficient daycare services at each of its daycare locations.

4.7. The Tribunal will decide in particular:

4.7.1. as the treatment an appropriate and reasonably necessary way to achieve those aims;

4.7.2. could something less discriminatory have been done instead; and

4.7.3. how should the needs of the Claimant and the Respondents be balanced?

4.8. Did the Respondent know or could they reasonably have been expected to know that the Claimant had the disability? From what date?

5. Indirect sex discrimination (Equality Act 2010 s. 19) (this is subject to time limit issues, given that the application to amend was granted on 9 October 2025)

5.1. The same PCPs and legitimate aims are relied on as set out above in relation to indirect associative discrimination. The Claimant says that women are more likely to have caring responsibilities for disabled adult family members than men.

The Facts

7. The Claimant has been employed by the Respondent since 6 May 2013 and remains employed by the Respondent. From 1 January 2015 until 1 September 2024 the Claimant worked as a Support Worker with her work base at Rushbrook Day Centre in Totnes ("Rushbrook"). Her working hours were 8.45am to 4.15 on Mondays, Tuesdays and Thursdays, and 8.45 to 3.45 on Fridays.

8. The Claimant's contract dated 17 June 2013 states under the heading "Place of Work" that "*you may be required to work at any other location/establishment as the Council may reasonably determine from time to time*." (page E453).

9. As set out in the Respondent's consultation document dated 1 May 2024, having reviewed its day services in three locations: Nichols Centre, Abbey Rise and Rushbrook, the Respondent had decided to conduct a restructuring exercise. It was determined that Rushbrook was overstaffed and the other two centres were understaffed for the number of people attending the services. On that basis, it was decided to standardise the staffing levels to 5.5 FTE Support Workers for each location (page B4).

10. It was determined that there would be a decrease in Support Worker hours at Rushbrook and an increase for the Nichols Centre and Abbey Rise. This would affect 12 people (page B5). Based on the Claimant's evidence, this comprised nine women and three men. One other person had caring responsibilities for a disabled adult, Mr PH.

11. A 14-day formal consultation was undertaken by the Respondent, commencing on 13 June 2024 and finishing on 27 June 2024. A meeting took place on 17 June 2024 with employees and trade union representatives. Following trade union feedback at the meeting, all staff were asked to complete a form indicating preferences in relation to the locations.

12. The Claimant completed the form, identifying Rushbrook as her first choice (page B15) and Abbey Rise as her second choice. The Claimant stated on this part of the form that Rushbrook (Totnes) was 21 miles away from her home address, which she said would take her 25 minutes to travel to and from, and that Abbey Rise (Tavistock) was 19 miles away but would take her 40 minutes (i.e. 15 minutes longer) to travel to and from. On the basis that the Claimant finished work at 4.15pm on Mondays, Tuesdays and Thursdays, this would mean she would be home at around 4.55pm, instead of 4.40pm. On Fridays, her finish time was 3.45pm and she would be home at around 4.25pm. The Claimant also added information regarding her additional responsibilities and caring duties (pages E488 and E489). This stated that "*Tavistock would be an added 20 mins each way from home, but the route would be more stressful regarding the traffic etc and would mean a (sic) overall disaster for us as a family…..I have an autistic son, with complex anxiety needs, who relies on me for support and keep him in a good place mentally, and to continue for him to be able to be (sic) remain employed, as he does not have his own transport, relying on me to get him to work for 6am, 5 days a week and pick him up at the end of his shifts."* (page E488). I note that the Claimant's oral evidence was that, in fact, her son finished work at 12.30 each day and she therefore never picked him up at the end of his shifts.

13. Mr PH completed his preference form and sent it to the Respondent on 24 June 2024 (this was an additional document and therefore does not have page numbers). He also chose Rushbrook as his first choice and Abbey Rise as his second choice. He stated that although the Nichols Centre was one mile closer to his house than Abbey Rise, the journey time would be 45 minutes longer. He also stated, "*Although Abbey Rise is about 7 miles closer to my home than Rushbrook, I do not save fuel by driving there because there is more climbing"*, he went on to describe the fuel usage. Later in the individual circumstances section of the form, he stated "*I have caring responsibilities for my wife. Her disabilities leave her mostly unable to do housework or travel to work. Therefore, I must find time to do most of the domestic work, shopping and cooking, as well as supporting her emotionally. Moving my workplace to somewhere which takes longer to get to would have a negative impact on my ability to fulfil these responsibilities. Consequently her and my wellbeing would suffer"*. I consider that this refers to a change to the Nichols Centre, as Mr PH did not state on the form that it would take him longer to get to Abbey Rise.

14. The Claimant's evidence was that she also told Ms Dodd verbally on 18 June 2024 that travel to Abbey Rise would cause issues with her caring for her son, as due to the travel across Dartmoor or via Plymouth, she would be home late.

15. On 4 July 2024, staff were notified that the proposals would be implemented, and that it was hoped that work bases would be confirmed by 26 July 2024 and implemented by 2 September 2024 (page C21).

16. In the same document, staff were notified that the Respondent would calculate distances from each employee's home to the relevant three centres using the RAC route planner. Geographic proximity was the primary criterion used to determine which staff would be re-allocated to a new work location. The document stated that "*Consideration will also be given of any reasons why employees may not be able to move to the proposed work base, for example, due to excessive additional mileage and travel time*" (page C18). It went on to say that "*If, after discussion with the individuals and trade unions, the location is deemed unsuitable, the employee will be at risk of redundancy and redeployment opportunities will be sought*" (page C18).

17. The document further stated that Support Workers would be required to work full or half shifts and that "*In exceptional circumstances, where mutual agreement to the proposed changes to cover full or half shifts required by the service is not possible (e.g. if an individual staff member is either unable or unwilling to meet service needs) then dismissal on the grounds of Some Other Substantial Reason (SOSR) will need to be considered…Any dismissal in these exceptional SOSR circumstances would not be on the grounds of redundancy and therefore there would be no entitlement to a redundancy payment*" (page C19). The Claimant accepted in cross examination that this document was provided as part of the consultation process.

18. Of the 12 employees affected, three did not get their first choice: the Claimant and two other employees, one was a female employee and one was male, Mr PH.

19. Ms Di Combe (Resource Manager for the Respondent) was not a witness in these proceedings. However, Ms Combe was interviewed as part of the grievance process on 20 November 2024 about the decision making process in relation to the restructuring. Her response was that in order to make the decision as to who should be placed where, they had had regard to preferences in the first instance. Where there was more than one person with a preference for a work base, they then looked at geographical location. Then the distance and people's cited personal circumstances were put into a table and the resource managers and HR advisors made a collective decision based on travel and personal circumstances. All of the people had cited a range of circumstances: heart conditions, osteoporosis, mental health issues, the Claimant's caring responsibilities. One of those considered had been on long term sickness absence for significant lung cancer treatment. If she used public transport she would have had a long walk to get to Exeter, so she was permitted to remain at Rushbrook. Another individual was ruled out because they lived so far away (41 miles). Ms Combe described it as being a very difficult decision because there were many special circumstances which had to be taken into account (pages E524 and E525).

20. There was another individual who lived a similar distance away from Abbey Rise as the Claimant but closer to Rushbrook, Ms SS. This person had been relocated to Rushbrook around 12 months before from another centre and had had a difficult experience with her mental health and needed to have therapy. This individual had stated that there would be a significant mental health impact of moving again (page E528).

21. The Claimant was identified as one of the employees who would be relocated to Abbey Rise. The Respondent used the RAC route planner to calculate times and distances, based on this they calculated that Abbey Rise was 3 miles closer to the Claimant's home than Rushbrook, but it took about 10 mins longer to travel there/back due to the route/traffic conditions.

22. In the morning of 23 July 2024, the Claimant emailed her trade union representative asking her to accompany the Claimant to a meeting being held later that day. In the email, the Claimant states that "*I understand this is being decided on how close each support worker lives to the centres, which I feel is totally wrong, I have worked at totnes (sic) day centre for 11 years now, my record of punctuality speaks for itself, and my experience, even though I am not the closest to totnes (sic) itself, consideration should be made on the staff capabilities and reliability to provide good care to our service users*" (page E24).

23. Later that day, on 23 July 2024 the meeting took place between the Claimant and Ms Combe. The Claimant's trade union representative was also there. In this meeting the Claimant was told she would be asked to go to Abbey Rise. The Claimant was very unclear in her answers in cross examination regarding what had been said by Ms Combe in the meeting, saying at times that Ms Combe had said that she would be made redundant with no pay. This was inconsistent with what was set out in her own witness statement, which said at paragraph 28 that she was told that if she did not accept the change, "*redundancy being the alternative, or dismissal under SOSR*". Eventually the Claimant agreed that Ms Combe said no more than was in the email of 24 July 2024 from Ms Combe. This stated:

    "*I would like to propose that from 1st September 2024 your work base will be Abbeyrise (sic), Tavistock and your working days will be Mon, Tue, Thur, Fri and your hours of work will be 8.45 to 4.15 Mon to Thurs and 8.45 to 3.45 Friday*

    This will be a change of work base for you. If you do decline this proposal, you will need to put forward a case, outlining your circumstances and reasons for declining. This will be considered by the Redundancy panel where a decision will be made as to whether this offer of continued employment is reasonable or not. … I must advise that if you decline this proposal this may result in redeployment, redundancy notice of dismissal possibly without redundancy pay if the panel view it to be a reasonable offer." (page E39).

24. The Claimant stated that she felt bullied into it and therefore accepted the change in location, "*under protest*" on 29 July 2024 (page E37).

25. A further meeting took place with Ms Combe on 13 August 2024. The Claimant's written statement is unclear in relation to what was said in the meeting on 13 August 2024. There is reference in the middle of page 13, paragraph 39 of the Claimant's witness statement where she says that she felt very intimidated, both by Ms Combe and her own trade union representative who had agreed that her job at Rushbrook was gone. She states that she "*felt they were trying to "wear me down" to accept Abbey Rise, when I'd accepted under protest and duress to Di on the 29/7/2024, which I only did as I had no choice as was threatened with redundancy with no pay or dismissal under SOSR*". The Claimant stated for the first time in oral evidence that her union

representative and Ms Combe were shouting at her that she needed to accept. They wanted her to change her "under protest" acceptance to a full acceptance. Her evidence was that they stated that she needed to accept because otherwise she would be made redundant, and that she was misled because she was told that she would be made redundant with no pay, which was misleading because she was entitled to redundancy pay.

26. In the grievance interview with Ms Combe on 20 November 2024, the notes of which are in the hearing bundle, she stated in relation to redundancy that: "*We hadn't ruled out redundancy as an option. We did see this as a reasonable alternative to the work place. Jo was advised if she declined the offer, the same as everyone else, then that would need to be presented to a redundancy panel. That decision around redundancy wouldn't have been my decision, it would have been a redundancy panel. It didn't go that far as Jo accepted, but under protest*" (page E527).

27. Whilst I consider that the Claimant was an honest witness, I consider that she is mistaken. I consider her evidence has been tainted by her strength of feeling regarding the relocation exercise. In light of the documentation and the Claimant's concession regarding what had actually been said at the 23 July 2024 (see above at 23) and 10 September 2024 meetings (see below at 30), that the content of this meeting was likely to be the same, namely that the Claimant was told by Ms Comb, in line with the email of 24 July 2024 "*If you do decline this proposal, you will need to put forward a case, outlining your circumstances and reasons for declining. This will be considered by the Redundancy panel where a decision will be made as to whether this offer of continued employment is reasonable or not. … I must advise that if you decline this proposal this may result in redeployment, redundancy notice of dismissal possibly without redundancy pay if the panel view it to be a reasonable offer"* (page E39).

28. This is also consistent with the "Response to Formal Consultation" document, signed by Ms Combe, which states "*If, after discussion with the individuals and trade unions, the location is deemed unsuitable, the employee will be at risk of redundancy and redeployment opportunities will be sought.*" (page B18). Further, it seems, as a matter of logic, unlikely that the Claimant would be put under pressure to agree when she had already done so (whether under protest or otherwise).

29. It was agreed during the 13 August 2024 meeting that the Respondent would commission an occupational health report in relation to the Claimant and the change in location. The result was that there were no health related issues which meant that the Claimant could not be relocated (page E494). However, it identified that she had reported work related stress in relation to this change (page E494). A stress risk assessment was undertaken for the Claimant, and supportive measures were identified to be put in place (page C29). The Claimant was absent from work due to sickness from 1 September 2024 until she was offered and accepted a role at Rushbrook in June 2026 following resignations/retirements at Rushbrook (page D37). As such, in practice, the Claimant never worked at Abbey Rise, and the support measures identified in the stress risk assessment were therefore never relevant.

30. On 10 September 2024 a meeting took place between Ms Combe and the Claimant to discuss the position. The Claimant's written statement did not refer to the alleged comments in this meeting (paragraph 47 of the Claimant's witness statement). In cross examination, it was pointed out that allegation 3.2.2 was that the Respondent had "*misled and pressurised the Claimant into a change of work base to Tavistock. In that she was told by Ms Combe, that if she did not accept the change she could be made redundant without pay*". The Claimant's evidence was that she did not recall this being said in the meeting on 10 September 2024. I find, based on the Claimant's evidence that the alleged comment was not made by Ms Combe during the meeting on 10 September 2024.

31. On 10 September 2024, the Claimant was sent an email from a Recruitment Coordinator for the Respondent stating that the Claimant's permanent work base had changed to Abbey Rise with effect from 1 September 2024 (page C47), by agreement. The Claimant responded on 11 September 2024 to reiterate that she did not agree with the change, and she was working under protest (page E133).

32. The Respondent's position is that during the 10 September 2024 meeting, the Claimant was offered the option of finishing ten minutes earlier each day when she would normally finish at 4.15 (thereby reducing her working hours by 30 minutes per week). The Claimant did not dispute this in cross examination. The offer was repeated in an email dated 26 September 2024, Steve Robinson (Resource Manager for the Respondent) stated that "*The service is willing to offer the option of a permanent change to your hours allowing you to leave 10 minutes earlier on Monday, Tuesday and Thursday, so, a 30 minute reduction in your contracted hours per week (with a corresponding reduction in pay) as a reasonable adjustment to accommodate your caring responsibilities for your son.*" (page D25).

33. The Claimant responded on 30 September 2024, saying in response to this that "*the vicinity of work base change, which is unreasonable and impracticable for me, due to my caring role responsibilities and circumstances at home. Dartmoor is a very unpredictable area with regards to the weather conditions changing very quickly, particularly in the winter months, and the type of roads needing to travel on can be very uncertain and dangerous, due to the livestock on the roads! Travelling in the dark will be very dangerous and I feel you will be subjecting me to unnecessary danger forcing me to do so, bearing in mind most of that journey I would not be able to get a mobile signal, should I need help, The other suggested route would be even more stressful for me, as it would involve going through lots of early morning heavy commuting traffic, through the centre of Plymouth city, which inevitably has many hold ups, and gets gridlocked. Either route is totally inappropriate and unsuitable for me to do on a regular basis, I have no means of replacing my car should it fail, (I can get public transport to Totnes if required, but not to Tavistock.) Whilst I thank you the possible offer of leaving 10 mins early this will not solve the problems.*" (page D30).

34. On 6 October 2024 the Claimant submitted a flexible working request asking to retain the same hours and days but to return to work from Rushbrook (page B24).

35. Ms Dodd, the Claimant's line manager, rejected the request on 20 November 2024 saying that the following.

"*As you know there was formal consultation process where it was decided that there would be reduction of staffing at Rushbrook and an increase at Abbey Rise and the Nichols Centre to meet the needs of the service. This process led to you being selected to move from Rushbrook and your work base was changed to Abbey Rise.*

Unfortunately as there are currently no vacant Support Worker hours available at Rushbrook I am not able to accommodate your request.

The grounds apply in the circumstances because:

I believe the following reasons, as set out in the Employment Act 1996, apply to me rejecting your request:

As we are currently fully staffed and there are no vacant Support Worker hours a retrun (sic) to Rushbrook would incurr (sic) additional costs that are not required to meet the service needs.

A return to Rushbrook would also create additional capacity that is not required by the service so there would be insufficent (sic) work available for you during the periods that you propose to work." (page B26)

36. The Claimant agreed in cross examination that there was no vacancy at Rushbrook and agreed when it was put to her that this was the reason that her flexible working request was rejected.

37. The Claimant submitted a flexible working request appeal, as well as a grievance and grievance appeal. I do not deal with them further as I consider that they are not relevant to the issues to be determined.

Direct Discrimination

38. The Claimant has made a complaint of direct discrimination, under section 13(1) of the Equality Act 2010 ("EqA"):

"*13 Direct discrimination*
(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."

39. As set out in *Ayodele v Citylink Ltd & Anor [2017] EWCA Civ 1913*, the following three issues may arise in respect of any specific complaint of discrimination:

"(1) Did the alleged act occur at all?
(2) If it did occur, did it amount to less favourable treatment of the claimant when compared with others?
(3) If there was less favourable treatment, what was the reason for it? In particular, was that reason discriminatory?
Accordingly, there may be cases in which the tribunal never has to address question (3), because it is not satisfied that it has been proved on the evidence

that the alleged act took place at all; or it may not be satisfied that there was less favourable treatment."

40. Direct discrimination is based on comparative treatment. It must be established that the Claimant was treated "less favourably" than someone else, who will be either an actual person or a hypothetical person.

41. In order to establish less favourable treatment, like must be compared with like. The actual or hypothetical comparator must be in materially the same circumstances as the claimant, save that they do not share the protected characteristic. This is set out in section 23 EqA:

"*23 Comparison by reference to circumstances*
(1) On a comparison of cases for the purposes of section 13, 14, 19 or 19A there must be no material difference between the circumstances relating to each case.
(2) The circumstances relating to a case include a person's abilities if—
(a) on a comparison for the purposes of section 13, the protected characteristic is disability"

42. Identifying a comparator is a question of fact for the Tribunal: *Hewage v Grampian Health Board [2012] UKSC 37*.

43. In *Dr Nicholas Jones v The Secretary of State for Health and Social Care: [2025] EAT 76* HHJ Tayler set out the questions which may arise in relation to a direct discrimination complaint as follows.

"35.1. What is the relevant treatment
35.2. Was that treatment different to that of another person
35.3. Were there any material differences between the circumstances of the claimant and any such other person? (where there are no material differences in circumstances the other person is an actual comparator – where there are material differences, but the circumstances are sufficiently similar in a more general sense, the other person may be an evidential comparator, whose treatment may assist in deciding whether to draw an inference of discrimination)
35.4. Was the claimant treated differently to how another person would have been treated? (in such circumstances that theoretical person is often described as a hypothetical comparator)
35.5. Are there facts from which the Employment Tribunal could conclude, in the absence of any other explanation, that the respondent breached the EQA
35.6. If so, has the respondent shown that it did not contravene the EQA"

44. Even if the Claimant is treated less favourably than an appropriate comparator, it must have been because of the protected characteristic. This requires the Tribunal to determine the "reason why" the Claimant was treated less favourably. This does not mean that the comparator issue is a threshold to be crossed before "the reason why" is addressed. "*[T]his sequential analysis can give rise to problems because sometimes the less favourable treatment issue cannot be resolved without, at the same time, deciding the reason why issue. The two issues are intertwined*" [8]: *Shamoon v Chief Constable of the Royal*

Ulster Constabulary [2003] UKHL 11.

45. Discrimination is only made out if the protected characteristic had a "*significant influence on the outcome*": *Nagarajan v London Regional Transport [1999] 4 All E.R. 65*. *Nagarajan* also set out that subconscious intention was sufficient in relation to direct discrimination.

46. Lord Nicholls in *West Yorkshire Police v Khan [2001] ICR 1065* made clear that the "reason why" is very different to the question of causation. The Tribunal must make a finding of fact about why the person acted as they did:

"*29…..Causation is a slippery word, but normally it is used to describe a legal exercise. From the many events leading up to the crucial happening, the court selects one or more of them which the law regards as causative of the happening. Sometimes the court may look for the "operative" cause, or the "effective" cause. Sometimes it may apply a "but for" approach…The phrases "on racial grounds" and "by reason that" denote a different exercise: why did the alleged discriminator act as he did? What, consciously or unconsciously, was his reason? Unlike causation, this is a subjective test. Causation is a legal conclusion. The reason why a person acted as he did is a question of fact."*

47. In relation to a direct disability discrimination complaint in *Cordell v Foreign and Commonwealth Office [2012] I.C.R. 280*, it was found that the disability itself must be the reason for the treatment, not something related to a disability.

Indirect Discrimination

48. Indirect discrimination is defined by section 19 EqA as follows.

"*(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.*

(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—
(a) A applies, or would apply, it to persons with whom B does not share the characteristic,
(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,
(c) it puts, or would put, B at that disadvantage, and
(d) A cannot show it to be a proportionate means of achieving a legitimate aim.

(3) The relevant protected characteristics are—
…disability… sex; …"

49. The EqA implements into UK law the EU Equal Treatment Framework Directive (No.2000/78) (the "Directive). It is noted that the drafting of section 19 EqA appears to require the Claimant to have the relevant protected characteristic themselves. However, this Tribunal is required to interpret the provisions of the

EqA compatibly with European law. In this case, this relates to the pre-Brexit position. The case of *CHEZ Razpredelenie Bulgaria AD v Komisia za zashtita ot diskriminatsia (C-83/14)*, although it was not a case relating to indirect discrimination, made clear that the Directive was intended to benefit those who have a protected characteristic, and those who are *associated with* those with a relevant protected characteristic. Whilst the case, post-dates Brexit and is therefore not binding, I may also have regard to the case of *GL v AB SpA Case C-38/24, ECJ*, which supports the interpretation of the Directive as prohibiting indirect discrimination on the grounds of association with someone with the relevant characteristic. As such, I conclude that, reading section 19 EqA compatibly with the Directive, it is possible to bring an indirect discrimination case based on an association with a protected characteristic.

PCP

50. The first stage of an indirect discrimination complaint is to identify the provision, criterion or practice relied on.

51. In *Nottinghamshire City Transport Ltd v Harvey [2013] EqLR 4 EAT*, the EAT found that the Tribunal had erred by identifying the one-off application of a flawed disciplinary process to the Claimant as something falling within a PCP:

"*"Practice" has something of the element of repetition about it. It is, if it relates to a procedure, something that is applicable to others than the person suffering the disability. Indeed, if that were not the case, it would be difficult to see where the disadvantage comes in, because disadvantage has to be by reference to a comparator, and the comparator must be someone to whom either in reality or in theory the alleged practice would also apply….*
19. Given the fact, as it is conceded by Mrs Parkes to be, that there was no evidence here that the employer made a practice of holding disciplinary hearings in a way that eliminated consideration of mitigation or in a way in which there was no reasonable investigation, it seems to us that there was no sufficient evidence to show that the application of the Respondent's disciplinary process in the case of the Claimant was a provision, criterion or practice. It was something that represented unfair treatment of him, as the finding by the Tribunal in respect of unfair dismissal recognises, but not all unfair treatment involves a failure to adjust that which is a provision, criterion or practice.
20. … A one-off application of the Respondent's disciplinary process cannot in these circumstances reasonably be regarded as a practice; there would have to be evidence of some more general repetition, in most cases at least.".

52. In *Ishola v Transport for London [2020] EWCA Civ 112*, the Court of Appeal confirmed this approach:

"*37. In my judgment, however widely and purposively the concept of a PCP is to be interpreted, it does not apply to every act of unfair treatment of a particular employee. That is not the mischief which the concept of indirect discrimination and the duty to make reasonable adjustments are intended to address. If an employer unfairly treats an employee by an act or decision and neither direct discrimination nor disability related discrimination is made out because the act or decision was not done/made by reason of disability or other relevant ground,*

it is artificial and wrong to seek to convert them by a process of abstraction into the application of a discriminatory PCP.

38. In context, and having regard to the function and purpose of the PCP in the Equality Act 2010 , all three words carry the connotation of a state of affairs (whether framed positively or negatively and however informal) indicating how similar cases are generally treated or how a similar case would be treated if it occurred again. It seems to me that "practice" here connotes some form of continuum in the sense that it is the way in which things generally are or will be done. That does not mean it is necessary for the PCP or "practice" to have been applied to anyone else in fact. Something may be a practice or done "in practice" if it carries with it an indication that it will or would be done again in future if a hypothetical similar case arises. Like Kerr J, I consider that although a one-off decision or act can be a practice, it is not necessarily one.

39. In that sense, the one-off decision treated as a PCP in Starmer is readily understandable as a decision that would have been applied in future to similarly situated employees. However, in the case of a one-off decision in an individual case where there is nothing to indicate that the decision would apply in future, it seems to me the position is different. It is in that sense that Langstaff J referred to "practice" as having something of the element of repetition about it. In the Nottingham case in contrast to Starmer, the PCP relied on was the application of the employer's disciplinary process as applied and (no doubt wrongly) understood by a particular individual; and in particular his failure to address issues that might have exonerated the employee or give credence to mitigating factors. There was nothing to suggest the employer made a practice of holding disciplinary hearings in that unfair way. This was a one-off application of the disciplinary process to an individual's case and by inference, there was nothing to indicate that a hypothetical comparator would (in future) be treated in the same wrong and unfair way."

Group Disadvantage

53. Once it is clear that there is a PCP, the Tribunal must consider whether there is "group disadvantage". As set out under section 23 EqA (see 41 above), when considering the pool for comparison, there must be no material differences in the circumstances of the two groups (other than that one group has the protected characteristic and the other does not). In general, the pool should consist of the group which the provision, criterion or practice affects (or would affect), while excluding workers who are not affected by it (EHRC Code, paragraph 4.18).

54. As Lady Hale explained in the Supreme Court case of *Essop v Home Office (UK Border Agency); Naeem v Secretary of State for Justice [2017] UKSC 27*:

"*41. … all the workers affected by the PCP in question should be considered. Then the comparison can be made between the impact of the PCP on the group with the relevant protected characteristic and its impact upon the group without it. This makes sense. It also matches the language of s.19(2)(b) which requires that "it" – ie the PCP in question – puts or would put persons with whom B shares the characteristic at a particular disadvantage compared with persons*

with whom B does not share it. There is no warrant for including only some of the persons affected by the PCP for comparison purposes. In general, therefore, identifying the PCP will also identify the pool for comparison."

55. The Tribunal must then compare the effect on those people sharing the protected characteristic and those without the protected characteristic. In *Dobson v North Cumbria Integrated Care NHS Foundation UKEAT/0220/19/LA*, the EAT observed the following:

"*56. ... particular disadvantage can be established in one of several ways, including the following: a. There may be statistical or other tangible evidence of disadvantage. However, the absence of such evidence should not usually result in the claim of indirect discrimination (and of group disadvantage in particular) being rejected in limine; b. Group disadvantage may be inferred from the fact that there is a particular disadvantage in the individual case. Whether or not that is so will depend on the facts, including the nature of the PCP and the disadvantage faced. Clearly, it may be more difficult to extrapolate from the particular to the general in this way when the disadvantage to the individual is because of a unique or highly unusual set of circumstances that may not be the same as those with whom the protected characteristic is shared; c. The disadvantage may be inherent in the PCP in question; and/or d. The disadvantage may be established having regard to matters, such as the childcare disparity, of which judicial notice should be taken. Once again, whether or not that is so will depend on the nature of the PCP and how it relates to the matter in respect of which judicial notice is to be taken*."

56. In relation to circumstances when judicial notice may be taken, the EAT stated in *Dobson* that the following evidential principles (derived from Phipson on Evidence) were relevant*:*

"42. *….a. There are two broad categories of matters of which judicial notice may be taken: (i) facts that "are so notorious or so well established to the knowledge of the court that they may be accepted without further enquiry"; and (ii) other matters that "may be noticed after inquiry, such as after referring to works of reference or other reliable and acceptable sources".*

b. The Court must take judicial notice of matters directed by statute and of matters that have been "so noticed by the well-established practice or precedents of the courts":

c. However, beyond that, the Court has a discretion and may or may not take judicial notice of a relevant matter and may require it to be proved in evidence;

d. The party seeking judicial notice of a fact has the burden of convincing a judge that the matter is one capable of being accepted without further inquiry."

57. In relation to considering whether there is disadvantage, the EAT stated in *Dobson* that "*It does not need to be impossible for an employee to comply with a requirement before there is a disadvantage. The fact that compliance is possible but with real difficulty, or with additional arrangements having to be made, or by shifting the childcare burden on to another, can still mean that there is a disadvantage.*" [53].

58. As set out in *Dziedziak v Future Electronics Ltd [2012] UKEAT/0270/11* the Claimant bears the burden of proof in relation to the PCP, group and individual

disadvantage. The case related to indirect sex discrimination complaint, and Mr Justice Langstaff stated that before the burden of proof could shift to the Respondent, it must be proven: "*that there was a provision, criterion or practice, secondly, that it disadvantaged women generally, and thirdly, that what was a disadvantage to the general created a particular disadvantage to the individual who was claiming. Only then would the employer be required to justify the provision, criterion or practice"* [42].

Justification

59. The Equality and Human Rights Commission Code sets out that, in order to be a "legitimate aim", the aim should be "*legal, should not be discriminatory in itself, and must represent a real, objective consideration*." (paragraph 4.28).

60. *Seldon v Clarkson Wright and Jakes (A Partnership) 2012 ICR 716, SC* noted that aims had to be relevant to the particular employment in question, see paragraph 61

"*Once an aim has been identified, it has still to be asked whether it is legitimate in the particular circumstances of the employment concerned. For example, improving the recruitment of young people, in order to achieve a balanced and diverse workforce, is in principle a legitimate aim. But if there is in fact no problem in recruiting the young and the problem is in retaining the older and more experienced workers then it may not be a legitimate aim for the business concerned. Avoiding the need for performance management may be a legitimate aim, but if in fact the business already has sophisticated performance management measures in place, it may not be legitimate to avoid them for only one section of the workforce*."

61. The aim must be (i) appropriate to the employer's objectives; and (ii) reasonably necessary to achieve the relevant objectives (*Chief Constable of West Yorkshire Police and anor v Homer 2012 ICR 704, SC*). "Reasonably necessary" is a stricter test than the "range of reasonable responses" test, the Tribunal must make its own judgement within the context of the relevant considerations involved.

62. In considering justification, what is required is "*an objective balance between the discriminatory effect of the condition and the reasonable needs of the party who applies the condition" (Allonby v Accrington & Rossendale College [2001] EWCA Civ 529*).

63. An employer, in showing objective justification, does not have to demonstrate that there was no route other than the discriminatory practice by which the legitimate aim could have been achieved. However, the availability of a less discriminatory but equally effective measure will undermine the argument that a particular measure was proportionate (*Hardy and Hansons plc v Lax 2005 ICR 1565, CA*).

64. Considering whether an action is objectively justified involves "*weighing the employer's justification against the discriminatory impact. To do that, [the Tribunal] must engage in what is called critical scrutiny, considering whether*

the means correspond to a real need of the undertaking, are appropriate with a view to achieving the aim in question, and are necessary to that end….. while the test is an objective one and not a band of reasonable responses test, the authorities also establish that the test as to whether the measure is "necessary" does not mean that the employer must show that it was the only course open to it in order to achieve its aim. It effectively means "reasonably necessary", as judged by the tribunal." Stott v Ralli Ltd 2022 IRLR 126, EAT.

65. In NSL Ltd v Zaluski 2024 EAT 86, HHJ Auerbach summarises the authorities as follows.

"76. *However, the following particular points emerging repeatedly from the authorities (I cite only some examples) also need to be kept in mind. Firstly, the PCP must be "appropriate" to the aim or aims found to have been legitimately relied upon, which means that it must be rationally connected to that aim or aims, in the sense of being logically capable of furthering them (see, for example, Homer at [20] and [22]).*

77. Secondly, the respondent does not have to show that the application of the PCP or PCPs was necessary to the achievement of the aim, in the sense of there being no alternative way to do so. Rather, the question is whether it is reasonably necessary: Hardys & Hansons plc v Lax at [28]. However, the balancing exercise may therefore include consideration of whether there were reasonable alternatives to the imposition of a discriminatory PCP: Homer at [24]. Further, in the proportionality or balancing exercise, the impact of the PCP on the affected group must be weighed against the importance of the employer's need. The more serious the disparate impact, the more cogent the justification must be: Hardys & Hansons plc v Lax at [19]; Homer at [20] and [24]."

Burden of proof in relation to EqA complaints

66. The provisions relating to the burden of proof are to be found in section 136 of the EqA as follows.

"*136 Burden of proof*

(1) This section applies to any proceedings relating to a contravention of this Act.
(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
(3) But subsection (2) does not apply if A shows that A did not contravene the provision."

67. *Efobi v Royal Mail Group Ltd 2021 ICR 1263, SC*: the claimant is required to prove, on the balance of probabilities, facts from which, in the absence of any other explanation, the Tribunal could infer an unlawful act of discrimination.

68. *Igen v Wong [2005] EWCA Civ 142* remains the leading authority in relation to the application of the burden of proof set out in section 136 EqA in relation to

discrimination cases. It is not sufficient for the claimant simply to prove facts from which the tribunal could conclude that the Respondent "*could have*" committed an unlawful act of discrimination. It is clear that the claimant must prove facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the respondent *did* commit an unlawful act of discrimination it can.

69. It is not sufficient to shift the burden of proof (in relation to a direct discrimination complaint) for a claimant to show only a difference in status and a difference in treatment. These are bare facts which only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the Respondent had committed an unlawful act of discrimination. (*Madarassy v Nomura International Plc [2007] EWCA Civ 33*).

70. *Madarassy* further sets out that "could conclude" "*must mean that 'a reasonable tribunal could properly conclude' from all the evidence before it. This would include evidence adduced by the complainant in support of the allegations of sex discrimination, such as evidence of a difference in status, a difference in treatment and the reason for the differential treatment. It would also include evidence adduced by the respondent contesting the complaint. Subject only to the statutory 'absence of an adequate explanation' at this stage (which I shall discuss later) the tribunal would need to consider all the evidence relevant to the discrimination complaint*".

71. In *Artem Limited v Edwins [2024] EAT 136* this was also emphasised by HHJ Tayler, who stated that in relation to considering whether there was sufficient evidence to shift the burden of proof "*an Employment Tribunal should not ignore evidence that suggests discrimination. However, I should also add that it is important that Employment Tribunals do not ignore evidence that suggests there has not been discrimination. What must be ignored at the first stage is any exculpatory explanation for the treatment*."

72. Per *Igen*, in which the Court of Appeal approving the revised *"Barton Guidance"* if the burden of proof has moved to the respondent:

"*10) It is then for the respondent to prove that it did not commit, or as the case may be, is not to be treated as having committed, that act.*

11) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of [the protected characteristic] ...

12)That requires a tribunal to assess not merely whether the Respondent has proven an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that [the protected characteristic] was not a ground for the treatment in question." [76]

Time Limits

73. Section 123 EqA provides that:

123 Time limits

(1) Subject to section 140B proceedings on a complaint within section 120 may not be brought after the end of—
(a) the period of 3 months starting with the date of the act to which the complaint relates, or
(b) such other period as the employment tribunal thinks just and equitable.
…

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it."

74. Section 140B EqA permits an extension of time where ACAS early conciliation is undertaken:

"In this section—

(a) Day A is the day on which the complainant or applicant concerned complies with the requirement in subsection (1) of section 18A of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and

(b) Day B is the day on which the complainant or applicant concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under subsection (11) of that section) the certificate issued under subsection (4) of that section.

(3) In working out when the time limit set by section 123(1)(a) or 129(3) or (4) expires the period beginning with the day after Day A and ending with Day B is not to be counted.

(4) If the time limit set by section 123(1)(a) or 129(3) or (4) would (if not extended by this subsection) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.

(5) The power conferred on the employment tribunal by subsection (1)(b) of section 123 to extend the time limit set by subsection (1)(a) of that section is exercisable in relation to that time limit as extended by this section.

75. If the claim is brought outside of the three month time limit, the Tribunal must make a determination in relation to section 123(1)(b) EqA: whether the claim has been brought within "*such other period as the employment tribunal thinks just and equitable*".

Should the Tribunal use its discretion to extend time?

76. The Court of Appeal in *Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 640* summarised the position at paragraphs 18 and 19:

"[18] … It is plain from the language used ("such other period as the employment tribunal thinks just and equitable") that Parliament has chosen to give the employment tribunal the widest possible discretion. Unlike section 33 of the Limitation Act 1980, section 123(1) of the equality act does not specify any list of factors to which the tribunal is instructed to have regard, and it would be wrong in the circumstances to put a gloss on the words of the provision or to interpret it as if it contained such a list … [19] that said, factors which are almost always relevant to consider when exercising any discretion whether to extend time are: (a) the length of, and reasons for, the delay and (b) whether the delay has prejudiced the respondent (for example, by preventing or inhibiting it from investigating the claim while matters were fresh)."

77. Legatt LJ went on to say [25] "*As discussed above, the discretion given by section 123(1) of the Equality Act 2010 to the employment tribunal to decide what it "thinks just and equitable" is clearly intended to be broad and unfettered. There is no justification for reading into the statutory language any requirement that the tribunal must be satisfied that there was a good reason for the delay, let alone that time cannot be extended in the absence of an explanation of the delay from the claimant. The most that can be said is that whether there is any explanation or apparent reason for the delay and the nature of any such reason are relevant matters to which the tribunal ought to have regard.*".

Discussion and Conclusions

Direct disability discrimination by association (Equality Act 2010 section 13)

3.2.1 On 13 August 2024, the Claimant was misled and pressurised into a change of work base to Tavistock. In that she was told by Ms Combe, that if she did not accept the change, she could be made redundant without pay

78. Factually, I have made a finding that the Claimant was told that: "*If you do decline this proposal, you will need to put forward a case, outlining your circumstances and reasons for declining. This will be considered by the Redundancy panel where a decision will be made as to whether this offer of continued employment is reasonable or not… I must advise that if you decline this proposal this may result in redeployment, redundancy notice of dismissal possibly without redundancy pay if the panel view it to be a reasonable offer*".

79. I consider that this is neither misleading nor pressurising the Claimant but rather stating what the consultation document set out the possible outcome was for the Claimant if she declined. This meant that she could make her decision in

the full knowledge of the possible consequences of refusing the change to her work base.

80. In cross examination, it was put to the Claimant that anyone in her position would have got the same warning. She answered that "*if they had not accepted the offer, yes, but nobody else was given the warning*".

81. When asked on what basis she alleged that the "reason why" was that her son was disabled, the Claimant could not point to any evidence but stated that was the only reason she could think whey they were doing it. I have not identified anything in the evidence, from which a Tribunal could conclude that there was discriminatory motivation. On that basis I consider that the burden of proof has not transferred to the Respondent.

82. I consider that the appropriate comparator is someone in the following material circumstances: someone in the same role as the Claimant who had been identified in the restructuring exercise as being required to move their base location and stating that they did so "under protest". The Claimant's own evidence was that a comparator would be treated in the same way: she accepted that anyone in the same position as she was would have been given the same warning if accepted the offer under protest. The statement made by Ms Combe was identified in the consultation document (page B19) as being the possible consequence of a refusal to accept a change in location. I find that a hypothetical comparator who was not associated with a disabled person but was otherwise in the same material circumstances as the Claimant would have received the same warning.

83. In terms of the "reason why", Ms Combe was not present to give evidence, and as such I was not able to hear evidence from her. I understand she had left employment with the Respondent. However, I consider that the Claimant has not been able to identify any prima facie evidence from which I could conclude that there was discrimination. Taking the evidence in its totality, I infer that the comments were made because it was an accurate explanation of the possible consequences for the Claimant of refusing to accept the change in base location.

84. This allegation of direct discrimination by association is not well founded and is dismissed.

3.2.2 On about 10 September 2024 misled and pressurised the Claimant into a change of work base to Tavistock. In that she was told by Ms Combe, that if she did not accept the change, she could be made redundant without pay.

85. I have not factually upheld this allegation. As such, this allegation is not well founded and is dismissed.

3.2.3 On 1 September 2024, the Respondent changed the Claimant's work base. The Claimant worked under protest.

86. It is agreed between the parties that this is factually correct.

87. In relation to the Claimant's named comparators, the Claimant accepted in cross examination that the reason Ms HY was identified to stay at Rushbrook is that she lived geographically closer to it than the Claimant. The Claimant accepted that if Ms HY had lived closer to Abbey Rise than the Claimant, she would have been relocated there instead of the Claimant. I therefore consider that Ms HY is not a statutory comparator because she was in materially different circumstances in that she lived closer to Rushbrook. In circumstances where the selection criterion was geographical proximity to each work base, I cannot see that Ms HY's position adds anything as an evidential comparator either to support the Claimant's position.

88. I consider the Claimant's position that Ms HY was treated more favourably than her because she had only entered one preference on the preference form (whereas the Claimant had completed all three) and had different contractual hours (9am to 3pm) are irrelevant to the factual allegation being made by the Claimant.

89. Ms SS, the Claimant's other named comparator, lives around the same distance from Abbey Rise, but closer to Rushbrook than the Claimant. The Respondent's position in making the decision to move the Claimant's work base rather than Ms SS's is that she would suffer a serious mental health consequence if required to move. In contrast, the Respondent received Occupational Health advice that the Claimant did not have a medical condition which prevented her from moving.

90. The Claimant's position is that Ms SS could drive and could go on holiday, however I consider that this does not undermine the Respondent's position regarding Ms SS's mental health, which may relate to other matters associated with the move. The Claimant did not dispute the underlying position that Ms SS had mental health issues and that that was the reason she was kept at Rushbrook.

91. I consider that this is a materially different circumstance to the Claimant and consider that Ms SS is therefore not an appropriate statutory comparator.

92. I have not identified anything in the evidence, from which a reasonable Tribunal could conclude that there was discriminatory motivation. The Claimant could not point to me to anything which she said showed that the "reason why" was that her son was disabled. On that basis I consider that the burden of proof has not transferred to the Respondent.

93. I consider that the appropriate comparator is someone in the following material circumstances: someone in the same role as the Claimant, who lived in the same physical location as the Claimant, and had put forward caring

responsibilities for a non-disabled person which caused them problems with a longer commute.

94. I find that the appropriate comparator would have been treated in the same way as the Claimant. The "reason why" the Claimant was moved was that she lived geographically closer to Abbey Rise than other employees. In relation to Ms SS who lived approximately an equal distance to Abbey Rise, there was a balancing exercise in relation to each persons' personal circumstances and the Respondent considered Ms SS's to be more pressing. Whilst the Claimant may disagree with this, I have seen no evidence from which I could conclude that the "reason why" was the Claimant's association with her disabled son.

95. This allegation of direct discrimination by association is not well founded and is dismissed.

3.2.4 Rejected her flexible working request made on about 6 October 2024

96. The parties agree that this is factually correct.

97. The Claimant agreed when it was put to her in cross examination that (1) the flexible working request was granted because there were no vacancies at Rushbrook; and (2) her flexible working request was not rejected because of her son. In common with a number of other occasions during cross examination, when Mr Small tried to confirm these points with her, the Claimant reverted to saying "that it what it says here" (referring to the rejection form at page B24).

98. I explained to the Claimant that if something was being put to her, it was not answering the question to simply respond that that was stated in the Respondent's document: she was being asked if *she* agreed or disputed the point. I do not believe that the Claimant was being deliberately evasive, she was clearly finding the cross examination stressful. Nevertheless, the effect was the same in that she was not answering the questions being put to her. This happened a number of times throughout the evidence. Mr Small would often put the point a number of times in order (I assume) to give the Claimant a fair opportunity to give her own response. Eventually I explained that if she disputed the point being put to her, she needed to say so. Otherwise, she must be deemed to agree with whichever document she was referring to in her answer. In light of this explanation, I gave the Claimant the opportunity to say whether she disputed what was being put to her, and she did not do so.

99. I have not identified anything in the evidence, from which a reasonable Tribunal could conclude that there was discriminatory motivation. The Claimant's own evidence was that it was not: the request was not rejected because of her son. On that basis I consider that the burden of proof has not transferred to the Respondent.

100. I consider that, based on the decision letter, the "reason why" for rejecting the Claimant's flexible working request, was that there were no vacancies at Rushbrook.

101. I consider that the appropriate statutory comparator is someone in the following material circumstances:

101.1. someone in the same role as the Claimant;
101.2. who had been identified for a change in work base who had been moved from Rushbrook to Abbey Rise;
101.3. who had put forward caring responsibilities for a non-disabled person which caused them problems with a longer commute; and
101.4. who had made a flexible working request requesting a return to Rushbrook as their work base.

102. I consider that the hypothetical comparator would have been treated in the same way: their flexible working request would have been rejected. This is based on my finding regarding the reason why: there were simply no vacancies at Rushbrook at that time.

103. This allegation of direct discrimination by association is not well founded and is dismissed.

Indirect associative disability and/or sex discrimination (Equality Act 2010 s. 19)

104. It is agreed that the Respondent had the following PCPs:
104.1. a provision in the contract that the Respondent could direct the Claimant where to work ("PCP 1"); and
104.2. a restructure/reorganisation in June required some staff to move their work base, using their home address as the primary selection criterion ("PCP 2").

Did the Respondent apply the PCP to the Claimant?

105. The Claimant's position in evidence in relation to her grievance (B29), which raised the lack of a mobility clause in her contract, was that the mobility clause was not applied to her and that the change in work base was that "*they did it through consultation not a mobility clause*". When Mr Small confirmed with the Claimant that it was her case that it was done through consultation, the Claimant responded again saying the move was done through consultation.

106. The Respondent's Grounds of Resistance states at paragraph 10 that it was entitled to vary the Claimant's contract by requiring her to work at another location and it exercised this right in a fair and reasonable way. Mr Small sought to resile from this position on the basis that it did not reflect the factual circumstances of the case.

107. In circumstances where there was much discussion about the requirement for the Claimant's agreement before the move be implemented, I consider that the relevant change to work base was made by agreement rather than by the Respondent exercising the clause unilaterally. The stated alternative to the alteration by consent was a potential redundancy or SOSR dismissal and not the unilateral imposition of the change of location using the mobility clause. Whilst I note that the Claimant's agreement was always "under protest", she

acknowledged in evidence that the Respondent believed her to have agreed to the change.

108. Since PCP 1 (the mobility clause) was not applied to her, the Claimant's complaints in relation to 4.1.1 and 5.1.1 of the List of Issues are not well founded and are dismissed, subject to the jurisdiction point below at 148.

109. In relation to PCP 2 (the geographic proximity criterion), the parties agree that this PCP was applied to both the Claimant and to those who did not share her protected characteristics, namely association with someone disabled and being female.

Group disadvantage – those associated with a disabled person

110. I must consider whether PCP 2 (the geographic proximity criterion) put persons with whom the Claimant shared the characteristic at a particular disadvantage when compared with persons with whom she did not share the characteristic.

111. When considering the pool for comparison, there must be no material differences in the circumstances of the two groups (other than that one group has the protected characteristic and the other does not). As per ***Essop*** *"all the workers affected by the PCP in question should be considered. Then the comparison can be made between the impact of the PCP on the group with the relevant protected characteristic and its impact upon the group without it." [41]*

112. It was established that 12 individuals were affected by the restructuring exercise undertaken by the Respondent. There were two individuals who had caring responsibilities for a disabled person. The Claimant and one other person, Mr PH.

113. Using the criterion of proximity to work base, the Claimant and Mr PH were relocated to Abbey Rise, and another female was relocated to the Nichols Centre (Exeter). Whilst it is clear that all three of these particular people were unhappy about having to move, disadvantage has a similar meaning to detriment: it has a subjective and objective element. I consider that a reasonable worker is normally likely to prefer working closer to their home and cannot therefore see that disadvantage can simply be assumed.

114. I am required to determine whether there is a *particular* disadvantage to those caring for a disabled person as a group. The Claimant has not provided any statistical evidence showing the application of the PCP would cause a particular disadvantage for those with caring responsibilities for a disabled person.

115. As to whether the application of the PCP caused Mr PH disadvantage, the Claimant's position is that it did. Mr PH was moved to Abbey Rise. Reviewing Mr PH's preference form, the only matter referred to in relation to this was that he did not *save* petrol costs because whilst it was a shorter distance, there was more driving uphill. This appears to be a neutral effect, and I consider that Mr PH did not suffer a disadvantage in this regard. The disadvantages he outlined

in relation to his caring responsibilities were related to having a longer commute which was not relevant to the move to Abbey Rise but to the Nichols Centre (and he was not moved there). He agreed to the change in work base by email, without expressing that this was under protest or that he considered that he had been put to a disadvantage.

116. For those reasons I am not satisfied that Mr PH was objectively put to a disadvantage by this information alone. Mr PH had a shorter commute by 7 miles.

117. I consider that only the Claimant suffered from the *particular disadvantage* she relies on, when considering the group of 12 people to whom the PCP was applied.

118. There is no more general statistical or other tangible evidence before me of group disadvantage.

119. Another way in which group disadvantage can be established is by inferring from the particular disadvantage in the individual case. In this case, from a consideration on the principles, it is not clear to me that allocating employees the place of work closest to where they live is likely to disadvantage those with caring responsibilities. Working closer to where you live is usually considered to be advantageous.

120. The Claimant was given a new work base which was in fact closer to her home, geographically, than her existing place of work. I consider the factors which lead the Claimant to conclude that she has suffered a particular disadvantage are unique to her own individual circumstances:

120.1. despite shorter mileage, the journey takes ten minutes longer;
120.2. in the Claimant's view this particular journey is more susceptible to traffic or adverse weather conditions than the journey to her original place of work;
120.3. the disabled person she cares for has extremely inflexible routines which mean that ten minutes would make a significant impact.

121. I consider that these are such unique facts relating to the Claimant's own circumstances that group disadvantage cannot be inferred from them:
121.1. many journeys which are closer by mileage will actually be quicker;
121.2. the Claimant's view that there are more unpredictable driving conditions in relation to her commute to Abbey Rise relates to her particular home address which is on the other side of Plymouth from Abbey Rise or otherwise requires her to drive across Dartmoor. These unique facts cannot be used to infer that driving a shorter distance to work is always likely to create a disadvantage for a group of people to whom the PCP is applied;
121.3. even if it could be shown that as a group the PCP would create a longer commute to work (which I do not accept), not all disabled persons have inflexible routines. Even some people caring for a disabled person with a particularly inflexible routine may be able to make adjustments to that routine to account for a ten minute delay in getting home relating to a permanent workplace change. For example, changing the routine so that

dinner is always eaten at 5.15pm each day rather than 5pm – this still enables the disabled person to have a fixed routine after an initial adjustment period to the new timing.

122. Since group disadvantage has not been proven for those associated with someone with a disability in relation to PCP 2 (the geographic proximity criterion), the Claimant's complaint in relation to 4.1.2 of the List of Issues is not well founded and is dismissed.

123. Notwithstanding this finding that group disadvantage has not been established, I go on to consider the other matters below for completeness.

Group disadvantage – women

124. It was established that 12 individuals were affected by the restructuring exercise undertaken by the Respondent. Of those, eight were women and three were men. Two women and one man were selected for relocation.

125. The Claimant says in her evidence that statistically women are more likely to be carers (paragraph 102 of her witness statements). Nothing further is put forward in the form of statistics or Office for National Statistics data or similar. Despite the lack of evidence provided by the Claimant, I consider that this is something that is so well known that judicial notice can be taken of the fact that women are more likely have caring responsibilities.

126. The fact that I have taken judicial notice of this point, does not necessarily mean that this particular PCP puts women as a group to a disadvantage. The Claimant does not point to any other woman in the group of 12 who has been put to particular disadvantage.

127. There is no statistical or other tangible evidence before me of group disadvantage.

128. Another way in which group disadvantage can be established is by inferring from the particular disadvantage in the individual case. For the reasons I have stated above, it is not clear to me that allocating employees the place of work closest to where they live is likely to disadvantage those with caring responsibilities.

129. I consider the factors which lead the Claimant to conclude that she has suffered a particular disadvantage are unique to her own individual circumstances and cannot be used to infer group disadvantage for the reasons set out above at paragraph 121. The point around the Claimant's son's routines is even less relevant when looking at women with caring responsibilities as a group rather than those caring for disabled persons as a group.

130. Since group disadvantage for women has not been proven in relation to PCP 2 (the geographic proximity criterion), the Claimant's complaint in relation

to 5.1.2 of the List of Issues is not well founded and is dismissed, subject to the jurisdiction point below at 148.

131. Notwithstanding this finding that group disadvantage has not been established, I go on to consider the other matters below.

Individual disadvantage

132. The Claimant's position is that the PCP put the Claimant at that disadvantage in that she needed to care for her disabled adult son, who had a strict personal routine and lifestyle. The change in work base meant that the Claimant had longer journey times which would affect the times she left and returned home which adversely affected her son's routines which enabled them both to continue working.

133. I consider that the Claimant has established individual disadvantage. The new location did not affect her son's morning routine, because he started work at 6am, which allowed plenty of time for the Claimant to accommodate a longer journey to work. The Claimant's son finishes work at 12.30, at which time the Claimant would not have been able to collect him from work even whilst working at Rushbrook, because this was in the middle of her working day. The issue, as identified by the Claimant is that her son had a particularly inflexible routine which meant he had to have dinner at 5pm. Based on the Claimant's evidence, even a ten minute delay to this would mean that her son would become distressed and go to bed without food and sometimes taking his medications. Her evidence was that this routine could not ever be changed, such as pushing back the usual dinner time to 5.15pm.

134. The test for disadvantage is similar to that regarding detriment. I consider that a reasonable worker in the same individual circumstances as the Claimant would consider the application of PCP2 (the geographic proximity criterion) to them to put them to a disadvantage.

Was the PCP a proportionate means of achieving a legitimate aim?

135. The Respondent says that its aims were:
    135.1. the need to ensure the provision of cost effective, qualitative, sufficient and appropriate continuity of care to its service users;
    135.2. the need to run and provide an efficient daycare service/provision;
    135.3. the need to re-organise its daycare provision in light of service needs/demands;
    135.4. the need to ensure efficient use of staff to provide appropriate and sufficient daycare service/provision; and
    135.5. the need to ensure the health and welfare of service users by ensuring appropriate and sufficient daycare services at each of its daycare locations.

136. The Claimant was asked in cross examination whether she accepted that the Respondent's pleaded aims were legitimate, and she said that she did not. When she was then asked about each one individually, she did accept each was a legitimate aim, but her position was that the change in work base was not required to meet them: Abbey Rise could have been continued to be

manned by those permanently based at other locations going there on an ad hoc basis.

137. I consider all of the specified aims are legitimate aims, none appear to be directly or indirectly discriminatory on their face. No reasons have been put forward why they should not be considered legitimate. They were legitimate in the particular circumstances: there was an excess of staff at Rushbrook, and not enough staff at the other two centres, as such there was a need to re-organise staff in order to ensure efficient use of staff. Having continuity of staff through staff being permanently re-located provided better care for service users because of the continuity of care (as accepted by the Claimant's witness, Mr Custerson).

138. I consider that in circumstances where there is a need to restructure staff across three centres, and no one is willing to move away from Rushbrook voluntarily, using geographic proximity as the primary criterion is appropriate and reasonably necessary to achieve the aims identified by the Respondent. A selection must be made somehow, and this seems to be an appropriate way to make that selection.

139. The Tribunal has to weigh the real needs of the undertaking against the discriminatory effects of the PCP on the affected group, including the Claimant. In this case, I do not have before me any evidence of discriminatory impact on those to whom the PCP was applied (see above regarding group disadvantage). In relation to the indirect associative claim I have determined above that Mr PH did not suffer a disadvantage. In relation to the indirect sex discrimination claim, there has been no evidence of disadvantage to other women.

140. In this case it is clear that the geographic proximity was the primary criterion, but personal circumstances were also taken into account. For this reason, two employees were not moved because of medical reasons, Ms SS and a person with lung cancer. I consider that the use of the primary criterion of geographic proximity whilst also taking other circumstances into account therefore balanced the needs of the Respondent and Ms SS and this other individual.

141. Taking the Claimant's personal circumstances into account, the Respondent offered the Claimant an adjustment to her working hours so that if she wanted to, she could have finished ten minutes earlier each day – so as to offset the additional 10 minutes travelling time. Whilst the Claimant disagrees because on occasion there may be traffic or adverse weather, I consider that this would have gone a considerable way (if not all the way) towards alleviating any disadvantage caused to her by the move. In fact, as it was clear from Mr Spratling's evidence, if the Claimant had engaged with this discussion rather than dismissing this out of hand, there was flexibility in relation to the amount of time being offered. Taking all of this into account, I consider that the needs of the Claimant and Respondent were also fairly balanced in the application of the PCP.

142. The Claimant has not identified a less discriminatory way that the same aim could have been achieved. I consider that her suggestion that continuing to use

temporary cover for Abbey Rise would not have achieved the aims of continuity of care and organising the service so as to be appropriate to the relevant demand.

143. I consider that the way in which this PCP 2 (the geographic proximity criterion) was applied by the Respondent was a proportionate means of achieving a legitimate aim.

144. For that reason, even if the Claimant had been able to establish group disadvantage, I consider that the Respondent would have been able to justify PCP 2 and the claim would have failed in any event.

Time Limits

145. The Claimant's indirect sex discrimination complaint was added to her claim by amendment on 9 October 2025. Since the Claimant's workplace change was made by email on 10 September 2024 (with effect from 1 September 2024), the primary three month time limit expired on 9 December 2024. Therefore, this complaint was ten months out of time. I must consider whether it just and equitable to extend time.

146. In considering whether it is just and equitable to extend time, I took into account the following factors in this case:
- 146.1. the claim was presented around ten months after the primary three month limitation period had ended;
- 146.2. the Claimant had been signed off sick for the entire period from 10 September 2024 until 9 October 2025. However, she was able to present her claim during this period;
- 146.3. the Claimant had trade union advice throughout the time from when the consultation was first started. She was informed by her trade union representative on 17 September 2024 that he did not think that there was a legal case to answer (page E146). The Claimant's trade union did not assist her with making the claim;
- 146.4. the Claimant took advice from ACAS on 17 September 2024;
- 146.5. the Claimant brought the claim as a litigant in person. She did not take legal advice at any time;
- 146.6. the Claimant discovered the possibility of relying on indirect sex discrimination by googling. Her evidence was that there was nothing was preventing her from doing this before the time that she did;
- 146.7. there is no good reason for not having brought the indirect sex discrimination complaint earlier;
- 146.8. the indirect sex discrimination complaint is not well founded (see above): in relation to PCP 1, the PCP was not applied to the Claimant. In relation to PCP 2 group disadvantage cannot be established and the Respondent succeeds on justification;
- 146.9. the Respondent would not suffer any real practical prejudice if time was extended since the complaint is brought on identical grounds to the complaint of indirect discrimination by association with a disabled person.

147. I have taken all of the factors set out above into consideration, and in particular the length of the delay and the lack of merit. Having weighed the

balance of prejudice, and considered the overriding objective, in my finding it is not just and equitable to extend time.

148. Therefore, the Tribunal does not have jurisdiction to hear the Claimant's indirect sex discrimination complaint, and it is dismissed for lack of jurisdiction.

Approved by
Employment Judge Volkmer
25 September 2026

JUDGMENT & REASONS SENT TO THE PARTIES ON
26 October 2026

Notes

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