



EMPLOYMENT TRIBUNALS

Claimant:

Dr Sarah Greenwood

v

Respondent:

Maximus UK Services Limited

Heard at: Nottingham

On: 2, 3, 4 & 5 April 2024

Before: Employment Judge Fredericks-Bowyer
Tribunal Member Newton
Tribunal Member Goldson

Appearances

For the claimant: In Person

For the respondent: Ms J Duane (Counsel)

RESERVED JUDGMENT

1. The claimant's claims for failure to make reasonable adjustments are not well founded and are dismissed.
2. The claims orientated around alleged PCP1, PCP2 and PCP3 are brought out of time and are beyond the jurisdiction of the Tribunal because -
 - 2.1. There is no conduct extending over a period of time which brings those claims within in time; and
 - 2.2. It is not just and equitable to extend time in respect them.

REASONS

Introduction

1. The claimant claims that the respondent has failed to make reasonable adjustments. She is deaf, and uses cochlear implants to be able to understand the sounds around her. The events that led to the claim take place against the back-drop of the Covid-

19 pandemic, where the requirement to rapidly adjust working practices was challenging for everyone as well as for those with disability.

2. We heard this claim over four days and did not need the fifth listed day. Judgment was reserved because of the claimant's barrier to communication caused by her disability. The claimant was able to take part in the hearing through the use of reasonable adjustments, with regular repetition of what was said to her for her to be sure she had interpreted our words properly. It would not have been fair to have given oral judgment and expected the claimant to be able to follow it without regular clarification. This is the unanimous judgment of the Tribunal, in all respects, and is to be read as the single judgment of us all.
3. The claimant represented herself at the hearing and gave evidence in support of her claims. The respondent was represented by Ms Duane of Counsel. The respondent witnesses were: (1) Pam Tutty (Performance Manager); (2) Susan Fisher (Assessment Centre Manager); and (3) Lorna Sabella (Performance Manager).

Preliminary applications and reasonable adjustments

4. The claimant made an application to admit documents into the hearing bundle. The respondent objected on the basis that the documents were not relevant to the issues in the claim. The documents related to the difficulties that the claimant said she has been having at the respondent between bringing her claim and now. The claimant had not presented an application to amend her claim to include allegations from the time since her claim was issued. Once the claimant understood what the scope of her claim was, she understood why the documents were not admitted.
5. The respondent applied for paragraphs of the claimant's witness statement to be struck out on the basis that they, too, relate to issues said to have arisen or been ongoing since the claim was issued. The application was refused; the Panel is able to give weight to the contents of the witness statement based on its relevance to the issues. We confirmed that Ms Duane did not need to cross examine the claimant on obviously irrelevant content.
6. The claimant required reasonable adjustments as a result of her disability. Her use of electrical devices with microphones which connect to her implant were not, in our view, 'adjustments' to the hearing because their use had no impact on the way things would ordinarily run. The claimant was aware that she could ask for a break when she felt she needed it, as we recognised that she uses more energy in concentration on listening than others in the room. The claimant explained that she may not answer questions as may be expected because she possibly would not interpret what she was being asked properly.
7. The only adjustment of significance in terms of how the hearing ran was when the claimant cross examined the remote witness. The claimant had signalled her difficulty with interacting over a video meeting because it formed part of her claim. She has fairly recently been equipped with a device which live transcribes speech. She was allowed to use this device during the remote cross examination. The claimant explained that the recording/transcription is stored on the cloud but that she would do all she could to delete it once the evidence had finished. We allowed her

to proceed on this basis and the claimant showed us that the recording had been deleted.

Issues to be decided

8. The issues were agreed between the parties prior to the start of the hearing, and confirmed at the start of the hearing once the claimant's position had been clarified. The PCPs were defined by the claimant when asked to distil the case she was pursuing into the issues in the hearing itself. The claim, therefore, was:-

8.1. Failure to make reasonable adjustments –

8.1.1. *Has there been a failure on the part of the respondent to make reasonable adjustments under section 21(1) Equality Act 2010;*

8.1.2. *Did the respondent have the provision, criteria or practice (“PCP”) as identified below?*

8.1.3. *If so, did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability?*

8.1.4. *Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?*

8.1.5. *What steps (‘adjustments’) could have been taken to avoid the disadvantage?*

8.1.6. *Was it reasonable for the respondent to have taken those steps and when?*

8.1.7. *Did the respondent fail to take those steps?*

8.2. Alleged PCPs

8.2.1. *In early 2019, the requirement for employees to take calls in an open plan working environment (“PCP1”);*

8.2.2. *In March 2020 until June 2020, the requirement to communicate via telephone conference teams calls whilst working from home (“PCP2”);*

8.2.3. *From 24 April 2021 to January 2022, the requirement to wear face masks and to work behind shielding screens (“PCP3”);*

8.2.4. *The practice of having an audible only fire alarm (“PCP4”); and*

8.2.5. *The requirement to carry out long detailed telephone assessments (“PCP5”).*

8.3. Time limits –

8.3.1. *Given the date the claim form was presented and the dates of early conciliation, any complaint about any act or omission which took place more*

than three months before that date, 19 March 2022, (allowing for any extension under the early conciliation provisions) is potentially out of time, so that the tribunal may not have jurisdiction.

8.3.2. *Were the discrimination complaints made within the time limit in section 123 Equality Act 2010? The Tribunal will decide –*

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

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

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

8.3.2.4. *If not, were the claims made within a further period that the Tribunal thinks is just and equitable?*

8.3.3. *The Tribunal will decide –*

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

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

8.4. Compensation

8.4.1. *If the Tribunal concludes that the respondent did fail to make reasonable adjustments what financial losses has the discrimination caused the claimant?*

8.4.2. *What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?*

Findings of fact

9. The relevant facts are as follows, as we have found them on the balance of probabilities. To find facts on the balance of probabilities, we are making an assessment about whether something is more likely than not to have happened. In other words, if considering whether one of two things happened, we are looking for the one that appears to us to have a greater than 50% chance of being the truth of the matter.

10. Where we have had to resolve any conflict of evidence, we indicate how we have done so at the material point. When finding these facts, we have considered the documents we were referred to in the bundle, the written evidence in the witness statements, and the oral evidence heard in cross examination. In this case, there were few conflicts in the factual narratives which bore relevance on the issues. The dispute between the parties was centred primarily on legal argument.

The claimant's disability

11. The claimant became deaf in her early 20s and has used cochlear ear implants since 2005. She has no functional hearing and no hearing at all in her right ear. Her hearing loss has obvious substantial adverse impact on her day to day life and the respondent has always agreed in these proceedings that the claimant is disabled by her hearing loss. The claimant struggles to communicate in crowded and noisy environments. She explained, and we accept, that she relies on the context of conversations to interpret the sensations picked up by her implant into conversation. This is because sounds may often sound the same to her, even if they are different. We have no difficulty accepting these challenges; we perceived them during this hearing where the claimant was comfortable speaking about and understanding subjects which were familiar to her, but where she struggled to understand new words or terminology which was not familiar to her.
12. The claimant relies on more than sound to interpret what is happening around her and what is said to her. This can present challenges with non-face to face interaction. The claimant described how she had to learn to use a mobile phone again, and how each new device requires learning how best to hold the device a certain way so the sound is by the microphone on her phone. This is less of a challenge now, because an app allows her device to connect to a smart phone, but it was a challenge in the period of time to which her claim relates. Even then, the claimant relies on understanding the context of conversation and navigating conversations through presenting a series of options for the other person to respond to. In this way, she can interpret the response against how she would expect one of few defined options to sound. She says, and we accept, that she struggles far more with non-face to face conversation where the other person might say anything to her.
13. Like many with hearing challenges, society's response to the Covid-19 pandemic posed problems for the claimant. Masks and screens served to introduce communication barriers for the claimant because, she says and we accept, the muffled sound as a result means that her implant is unable to clearly pick up what is being said to her. The claimant also said that social distancing presented a problem, but in cross examination she confirmed that the *distance* from others introduced by the Covid-19 response was not particularly an issue. The barriers and masks were.
14. The claimant described other conditions in her evidence, which do not found her disability complaints but one of which is relevant to us because it informed, in some ways, how the claimant and respondent operated during the response to Covid-19. The claimant has an immune deficiency which requires her to take certain medication every 48 hours. That medication triggers cold/flu symptoms when taken such as fever, headaches, muscle pain, joint pain and a generally unwell feeling. The condition made the claimant clinically vulnerable and she was advised to isolate throughout the period of public interventions due to Covid-19. The side effects from her medication also mimicked some key symptoms of the virus, meaning that she was regularly faced with not being permitted access somewhere because of those symptoms. In her evidence, the claimant described how this also applied to her place of work.

The claimant's role before the Covid-19 pandemic (PCP1)

15. The respondent holds a contract to provide health assessments for people who are out of work due to long-term illness caused by disability or other health condition. It has done so since 1 March 2015. The claimant is employed as a Functional Assessor, with continuous service stretching back to 27 May 2011 due to a TUPE transfer to the respondent. The claimant is a medical doctor by training, and she explained in her evidence that she has previously completed surgical college exams before a shift in her career emphasis. The claimant assesses people who require a health assessment, and may need to attend sites across the East Midlands to do that.
16. The claimant says that, from 2018, she was required to take a larger volume of phone calls than previously. When working at the Nottingham Business Service Centre, the claimant says that this meant she was having to take calls in a large and noisy open plan office. For this reason, she says in her written evidence that she requested provision of a mobile phone so that she could do the calls from a quieter space where there was not the background noise which made it difficult for her implant to distinguish between the person on the telephone and that background noise. A mobile was provided, after what the claimant considers to be unacceptable delay. She says that that delay was of around eleven months because her manager, Lee Kettlewell, had done nothing to progress the provision of a phone until he delegated it some time later.
17. It is important to note that the phone calls which were being made at this time are different in nature to the telephone assessments which form the basis of the claimant's complaint further forward in time. These phone calls were short calls to arrange meetings and discuss issues with cases. Whilst they were, no doubt, important and precise, they were not long calls requiring the claimant to deploy all of her skills in making an assessment.
18. The claimant says that the respondent had a provision, criterion or practice which required her to take the phone calls in the busy open plan office. In her evidence, the claimant described that this building had an open plan floor where her and colleagues would work. She accepted that there was a smaller 'medical' room which had some desks in it where people could withdraw to in order to make phone calls. She accepted it was quiet in that room, but considered that this was still an open plan space which could have background noise. She accepted that the open plan office was not designed for phone calls to be made, and that there was no 'call centre' type set up in the way which might be interpreted from her description. The claimant conceded that the floor was not always busy because other assessors would be on different sites. The claimant accepted that the floor was designed for file work and not assessments because the respondent had no remote assessment ability at that time.
19. We do accept that the claimant was expected to work in an open plan office at the Nottingham Business Service Centre in 2019. We accept that this open plan office had a degree of background noise which affected the claimant because of the way her cochlear ear implant worked. We accept that at least part of that work involved making or receiving telephone calls to set up appointments and discuss cases. We find that a smaller and quieter room was available to the claimant, and we find that that room was indeed a quiet space for working where the claimant could remove herself from the hubbub of the larger space to do her work and make the short calls

required of her there. We find this on the basis of the claimant's own words about the space, and the fact that she agreed that this was a suitable space for her to work in when she returned to in person working and was provided with a 'fixed' desk in that space.

20. To this end, we do not find as a fact that there was a general working practice at the respondent requiring telephone work tasks to be done in a 'busy open plan working environment'.

The respondent's response to the Covid-19 pandemic (PCP2)

21. Like all agencies interacting with the public, the response to Covid-19 represented a significant challenge to the respondent's way of working. Prior to the pandemic, the claimant and those with her role would very often do those assessments face to face. As outlined above, this is the best mode of communication for the claimant in terms of reducing the impact of her disability. That method of assessment was removed from the respondent in the immediate response to the pandemic because everyone were instructed to 'stay at home' in March 2020.
22. The claimant was not required to do any work during the initial period of response to the pandemic. She was at home, fully paid. The claimant found this to be frustrating. Until around June 2020, the respondent was not carrying out any telephone assessments and none of the practitioners in the claimant's role were doing their day to day job role. Instead, continuous professional development was provided remotely and staff were asked to complete that work. The respondent witnesses said that this was not necessarily required work, and was not enough work to fill the day, but that the respondent understood that its employees were dealing with a lot at home during this time.
23. The claimant had difficulty in accessing this work because it required the use of teleconferencing facilities. She also had difficulty in accessing some other activities with colleagues, such as socials and quizzes run remotely via teleconference. During this initial period, the claimant did not have a company laptop because these were not routinely issued to staff by the respondent prior to being required to work remotely. The respondent's employees had been expected to do assessments face to face and do paperwork on site. The claimant explained in her evidence that some work had been done at home previously, after a home visit, but she accepted that this was not a requirement for which the respondent would have been expected to provide a laptop.
24. The claimant complained about not being able to reliably access information in June 2020. She was told that information would be emailed to her instead. We find that the respondent also put into process transcriptions of telephone calls. The claimant accepts that she did start to receive information in a way which was differentiated for her accessibility, but she says that it was unreliable. We accept that evidence. It seems more likely than not that a bespoke and new system at a time of great upheaval will have issues upon implementation and would not run smoothly immediately. The claimant's evidence is also not challenged by the respondent witnesses directly, as none of them worked with the claimant at this time. The claimant says, and we accept, that she needed to ask for training in a different format regularly and that this was upsetting.

25. At around this time, in June 2020, the respondent introduced telephone assessments for its customers to assess their disability needs. The respondent employees were classed as 'key workers', and they were asked to return to the office where able to do those assessments. The claimant was classed as vulnerable, and so was not required to attend the office. The claimant explained that she could not try to do her role without a work laptop, and so she was advised to do what she could to keep up her continuing professional development until a work laptop could be sourced for her. Sourcing a laptop was not straightforward, as the requirement for laptops was greater than demand and respondent equipment needed to be provided by the Department for Work and Pensions.

The claimant's return to in-person working (PCP3)

26. The claimant was referred to occupational health in late 2020 because the parties recognised that adjustments needed to be considered. The report was at pages 192 to 194. In terms of adjustments for deafness, the report recommended an assessment from RNID. It also suggested Access To Work funding could be applied for to cover the costs of any adjustments. The claimant explained that there was no defined path for these processes and expressed frustration about that.

27. On 11 May 2021, an RNID assessment was carried out remotely. That report set out recommendations for services and equipment for the claimant. This included a caption service and –

*“1 x Phonak Roger Pen
1 x Phonak Roger Table Mic II twin pack with remote control
1 x Phonak Roger 20 integrated receiver
1 x Sennheiser Bluetooth Dongle” (page 227).*

28. This equipment was ordered directly by the respondent, bypassing Access To Work, by 2 July 2021. The equipment was received in September 2021 and, the claimant says, this alleviated most of the difficulties experienced. The claimant used this equipment in the hearing. The claimant complains about the delay in receiving the equipment after it was recommended, but she accepts that there was a global manufacturing crisis caused by a shortage of microchips. This, we find, caused a delay sourcing the equipment. The respondent did all it could once it had authorised the order to get the equipment. We accept the claimant found the delay stressful given her prior experience waiting for a mobile phone, but we do not think it factually accurate to lay fault with the respondent for the delay and so we do not.

29. The respondent had put into place social distancing guidelines for staff and customers during this period. Staff were separated by Perspex dividers, were to wear masks when not at the desks, and were instructed to stay at least 2m apart from each other. We find that this was in line with Government instruction at the time. Customers were also to wear masks, remain socially distanced so far as possible, and be separated by a screen during conversation.

30. The claimant attempted to conduct assessments in this way on 24 June 2021. The respondent recognised that masks may cause a barrier for someone with deafness, and so clear masks had been purchased for the claimant's customers to use. The

hope was that the claimant could still have visual information to help interpret what was being said to her. The claimant was clear in her evidence that she does not and did not think that she lip read in order to understand others. However, she agreed to use the transparent masks to see if they assisted. Her witness statement is a little contradictory on whether clear masks were given, but in cross examination the claimant did talk about clear masks on this occasion. We accept the claimant's evidence that she was unable to complete the assessments properly in these conditions. The physical barriers put in place to guard against Covid-19 infection exacerbated the claimant's communication challenges.

31. The claimant also encountered barriers with colleagues in staff areas. Colleagues did not always remove masks when at their desks, and so the claimant could not hear them even when permitted to remove masks. The claimant also said, and we accept, that colleagues may well be eating when speaking to her, and the distortion caused also meant that she could not understand what they had been saying. The claimant considers that these issues could have been solved if the respondent sent all colleagues on the deaf awareness training recommended by RNID. That training cost £500 per head. The respondent opted instead, at least initially in October 2021, to provide deaf awareness guidance sheets to colleagues (to be re-circulated ahead of meetings), which provided guidance for how to communicate with the claimant. The respondent did send 16 colleagues on this training on 15 September 2022, after the period to which the claimant's claim with this PCP relates.
32. The requirements in relation to social distancing were in place until shortly before the claimant issued her claim.

Adjustments for the claimant – fire alarm (PCP4)

33. On 28 August 2021, the claimant raised a grievance about the difficulties she was experiencing. That grievance was raised in an e-mail shown to us from page 512 to page 516. There was a grievance meeting on 27 September 2021 and the notes of that meeting were shown to us from page 556 to 577. That process was chaired by Ms Fisher. When talking about her wish for colleagues to do deaf awareness training, the claimant mentioned that she could not hear fire alarms. She said that she is occasionally in a building on her own. This was the first time that the claimant had mentioned this issue during her employment.
34. We find that the situation is a little more complicated than captured in the grievance notes. The claimant described the problem in more detail during her evidence. The claimant is able to identify a fire alarm sound when she is using her microphone device directly. She described that she remembers what an alarm sounds like, and that it has a distinctive oscillating noise. That is something she can pick up still. The difficulty comes when the claimant is not connected to her devices. She described that she sometimes takes it out 'to give [her] hearing a rest' when she is concentrating on work alone. In that situation, she is almost entirely deaf and cannot hear an alarm. She also uses her device to connect through a laptop to assist with accessing video calls and meetings. That process screens out ambient room noise, and we accept the claimant's evidence to the effect that this screens out the alarm, too.

35. It was put to the claimant that, when working on site, she is rarely alone and so she would notice other people all leaving in response to the fire alarm. She agreed but said that she is still sometimes alone. She then described instances of lone working and we accept that that does happen from time to time. It was put to the claimant that many of the alarm units at the respondent sites have a flashing light flashing which she would notice and would prompt her to leave. The claimant agreed, and said that such alarms are “very good”.
36. We find that there are still going to be rare occasions where the following circumstances mean that the claimant would be unable to respond to a fire alarm:-
- 36.1. There is no light attached to the alarm;
 - 36.2. The claimant has removed her device or is using the laptop;
 - 36.3. The claimant is alone in a room; and
 - 36.4. The alarm is sounded.
37. The respondent recognised the risk of this and sought to respond accordingly through alerting the fire wardens about the risk posed to the claimant by such events. A personalised evacuation plan was put into place. One suggestion was the use of a flag system as a visual prompt to the fire warden that the claimant was on site. The claimant was very upset by this notion, and described it in the hearing as if it were proposed that she carry a flag with her to alert everyone to her disability (which she did not want). When the process was explained to her in the hearing, she accepted that it was not what had been proposed.
38. The discussion about a solution to the fire alarm issue was on-going (with interim measures put into place about awareness and training) when the claimant went on sick leave on 25 October 2021. The claimant was removed from the risk posed on this date and was unable to properly consider or test solutions until her return. Ms Fisher put into place actions following the grievance in the meantime and the claimant returned to work on 12 September 2022.
39. Although the solution was found after her claim was issued, we note that the claimant no longer complains about this issue because she has a mobile alarm system which has a light and vibrates, which is connected to the alarm system on site. Her complaint relates to the period of time where she says the respondent failed to make an unreasonable adjustment.

Adjustments for the claimant – long and detailed telephone calls (PCP5)

40. Telephone assessments were, as outlined above, a key part of the respondent’s work during the restrictions responding to the pandemic. They were introduced in June 2020 and formed a significant part of the workload for those in the claimant’s position. The claimant was not required to begin doing these assessments because she was vulnerable, at home, and for a time without the equipment to do her role. When she returned, until she received the devices which made her role easier to do, the claimant raised her difficulties with telephone assessments. She was then removed from doing that task and alternative work (file work) was given instead. Following this, the claimant was off work sick from October 2021 until her claim was issued, and was not required to do any work at all – and certainly not long and detailed telephone calls.

41. The claimant complains that her training and evidence of competence slipped as a result of the combination of (1) the way the respondent was working, and (2) her inability to engage with that way of working. In this way, she argues that the PCP caused substantial disadvantage because the adjustment made has reduced her competence to practice. We find that her competence validation was delayed during the Covid-19 response, but this is in line with what was allowed in an unprecedented situation. We also find that the claimant is struggling to show her competence now (although this post-dates her claim form), but that this is most likely caused by her long absence rather than any failure to meet competencies caused by the type of work being done.

Relevant law

Failure to make reasonable adjustments

42. Section 20 Equality Act 2010 provides:-

“(1)...

(2)...

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

....”

43. Section 21 Equality Act 2010 provides that a failure to comply with the three parts of s20 is a failure to comply with a duty to make reasonable adjustments, which is an act of discrimination. In other words, the employer must take reasonable steps to alleviate the substantial disadvantage where ‘substantial’ means “*more than minor or trivial*” (section 212(1) Equality Act 2010).

44. An employer is not liable in respect of a failure to make reasonable adjustments unless it knows or is reasonably expected to know that a PCP will place the employee at a substantial disadvantage. Schedule 8 Equality Act 2010 deals with in work reasonable adjustments. Paragraph 20(1)(b) includes employees by virtue of the definition of an ‘interested disabled person’ in Part 2 of Schedule 8. Paragraph 20(1)(b) reads (together with 20(1)):-

“A (employer) is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know...that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement”

45. Often, cases will turn on whether or not the employer has adopted or operates the ‘PCP’ which is being alleged. That is principally a finding of fact made by the Tribunal on the available evidence. Provisions and criteria are usually written down and

understood to be rules or measurements for certain things to be done or made available. The Tribunal will examine whether the circumstances amounting to the PCP have been applied to a claimant, and then consider whether it would be done so again or applied in analogous scenarios to others. If the answer to those considerations is 'yes' then there is likely to be a practice (*Ishola v Transport for London* [2020] IRLR 358). A 'practice' might be found where a Tribunal considers there is an expectation or requirement for something to be done or not done (*Carerras v United First Partners Research Ltd* EAT 0266/15).

46. A holistic approach should be adopted when considering the reasonableness of the adjustments, including the timing of those adjustments, and may include factors such as the effectiveness of the steps, the cost, the practicability, and the nature and size of the employer's undertaking (*Burke v The College of Law and another* [2012] EWCA Civ 87 CA). An employer cannot properly be criticised for failing to take a particular step or failing to take particular advice because the Tribunal is looking at the end of the process and at what has or has not been done to alleviate a substantial disadvantage and whether that decision is reasonable (*Tarbuck v Sainsbury's Supermarket Ltd* [2006] IRLR 664).

Time limits

47. Section 123(1) Equality Act 2010 provides that claims for discrimination (of which failure reasonable adjustments is one) should be brought within three months of the act being complained of. Time can be extended to take account of a period in ACAS early conciliation where, if ACAS notification occurred within three months, the days spent in early conciliation will 'stop the clock'. Events occurring more than three months before the claim is issued may be brought as claims in time if they form part of a course of related discriminatory conduct, the last one of which is in time when the claim is brought.
48. If, despite all of the above, a claim is still brought outside of the three month time limit, the Tribunal can extend time if it considers that it is just and equitable to do so. This is a broad discretion which requires the Tribunal to balance all of the circumstances of the case including the length and reason for the delay, the prospects of the claim brought out of time, and any other factor which appears relevant. The Tribunal should weigh those factors to determine the prejudice to each party in extending or not extending time, and then make a decision (*Abertawe Bro Morgannwg University Local Health Board v Morgan* [2018] EWCA Civ 640). Time will almost always not be extended where time limits are being considered at a final hearing and the Tribunal has determined that those late claims are not well founded and would be dismissed. In those cases, it would be pointless to extend time anyway.

Discussion and conclusions

PCP1 – The requirement for employees to take calls in a busy, open plan working environment

49. We have found as a fact that the claimant was not required to take calls in a busy, open plan working environment. The claimant conceded that the floor complained of at the Nottingham Business Services Centre was not always busy. She conceded

that there was a smaller office space for her to use as she needed to, which was a quiet space away from the background noise of the main floor. She conceded that she could make the sort of short calls she was required to from that space.

50. As a result of the claimant's own evidence, we do not consider that the alleged PCP1 was in place at the respondent, and we are certain that no such provision was applied to her. If there was an application to the claimant of such a PCP, then she would not have been able to work on the phone in the smaller office space. Consequently, there is no substantial disadvantage caused to the claimant and no duty on the respondent to make reasonable adjustments to alleviate the substantial disadvantage.
51. In those circumstances, the failure to make reasonable adjustments claim orientated around PCP1 cannot succeed and must be dismissed if the Tribunal has jurisdiction to deal with the point out of time.

PCP2 – The requirement to communicate via teleconference teams calls whilst working from home

52. In closing submissions, Ms Duane queried the formulation of this PCP, noting that the claim is limited from March 2020 to June 2020 but that there was no real use of Microsoft Teams at this time. In our view, the substance of the complaint is clear. The claimant says that the respondent should have made a reasonable adjustment to the requirement to use teleconferencing to allow her to access materials and take part in staff team activities.
53. We are satisfied that the respondent's staff was required to engage with training and team activities through teleconferencing facilities from the on-set of the nationwide Covid-19 response through to June 2020 when the majority of staff returned to work. This was a practice at the respondent at the time, necessitated by the unprecedented 'lockdown' ordered by the Government. The claimant's disability presented a barrier to her accessing teleconference and remote activities in this time period. She was therefore less able to access social events and training. We are satisfied this was a substantial disadvantage for the claimant compared to colleagues without the disability, given the facts we have found about the effect the claimant's disability has upon her ability to communicate.
54. The respondent contends that it would not have known, and could not reasonably have known, about the substantial disadvantage caused to the claimant. This was argued on the basis that the parties were in a new situation and that the claimant had not given evidence that teleconferencing had ever been in place or posed a problem in the past. The claimant contends that the respondent should have realised that a person with a cochlear ear implant would not be able to engage in long telephone calls without difficulty and referred to her request for a simple mobile phone previously so she could use the telephone in a quiet space.
55. We are persuaded by the respondent's argument on this point. The claimant's previous complaint had been about ambient background noise. This is an issue which the respondent would reasonably think solved by home working, in our view. There was no duty to make an adjustment until the claimant raised the issue in April 2020. Even if we are wrong about that, and in any case after the claimant explained

her difficulty, then we remember that we are assessing whether the respondent failed to make a reasonable adjustment to alleviate the disadvantage, having in mind the guidance in *Burke* relating to practicability and the whole circumstances of the case. We consider that the respondent's entire working model was upended by the 'lockdown' measures. It could not do its contracted purpose. Its staff were not equipped to do any working from home, even if the work could be done. There was no widespread access to particular platforms for communication, other than through personal phones.

56. Overall, even if the respondent was under a duty to make adjustments, we do not consider that there was a reasonable adjustment that could be made which was not made. The respondent differentiated materials. This was a new system in an unprecedented time, where all was new, and so perfection is not expected when thinking about whether an adjustment has been reasonable and effective in the circumstances. The claimant was unhappy with what was done and when, and its effectiveness, but we are satisfied that reasonable adjustments were made and there was no failure to take some other reasonable step which should have been taken.
57. Overall, there is no failure to make reasonable adjustment in respect of this PCP. The claim would fall to be dismissed should we consider that the Tribunal has jurisdiction to deal with the complaint.

PCP3 – The requirement to wear face masks and to work behind shielding screens

58. The respondent followed Government guidance, and the applicable law, when responding to risk during the Covid-19 pandemic. The alleged PCP was in place and applied to the claimant because it was a requirement of law for that to be the case. Later, it was a requirement of good health and safety practice.
59. We accept that the imposition of those physical barriers between the mouth of those speaking to the claimant and her cochlear implant caused difficulty for the claimant's communication. The claimant and the respondent agree that the claimant could not hear well as a result of the screens and the masks. We consider that the application of this PCP did indeed cause the claimant a substantial disadvantage. That was a disadvantage that the respondent knew about, because we have heard evidence about the measures the respondent took to alleviate that disadvantage.
60. In response to the disadvantage, the respondent provided the claimant with clear plastic face masks so that the claimant could see what the person speaking to her was mouthing, in the hope that this would assist with understanding what they were saying. In our judgment, in the circumstances where those barriers were a requirement, the respondent could not have made any other reasonable adjustment to allow the claimant to continue with her work. In our view, the respondent did as much as it could, and we cannot find there to have been a failure to make reasonable adjustments with that conclusion.
61. The claimant also complains about the imposition of barriers in the office, as well as with those she was assessing. She contends that a reasonable adjustment for her would have been for staff to be sent on RNID deaf awareness training at a cost of £500 per head so that the issues with people communicating with her would not arise. The respondent did in fact send staff on that training some time later, a step

which we consider should be commended. Its initial position was that the cost of that training was not reasonable when the risk of attendees not taking it in or putting into practice the advice was factored into the decision making process. Instead, it says the regular provision of deaf awareness sheets were a reasonable adjustment at proportionate cost, so that the key points were constantly refreshed prior to interaction with the claimant.

62. We agree with the respondent. It made a reasonable adjustment to alleviate the substantial disadvantage caused to the claimant by physical barriers such as screens and masks. It instructed colleagues about the difficulties and advised how they should be overcome. In any event, it did also send colleagues on to the training course that the claimant says was required. The only possible criticism arising is of delay with that last step but, where we consider that sending colleagues on that course was a step above the duty placed upon the respondent, we do not endorse such criticism.

63. The respondent made reasonable adjustments to alleviate the substantial disadvantage caused to the claimant by PCP3. It complied with its duty. The claim orientated around PCP3 should be dismissed if the Tribunal has jurisdiction to deal with it.

PCP4 – The practice of having an audible only fire alarm

64. The claim orientated around this PCP was in a precarious state as soon as the claimant acknowledged that most fire alarm boxes at the respondent have a flashing light as well as noise. There is no blanket practice that only audible only fire alarms are in place. We are therefore considering a practice which might be better phrased as 'not having only alarms which can be seen as well as heard'. As became a feature of this hearing, this is a problem which the claimant agrees she is no longer presented with. She now has a device which she carries which visibly alerts her to a fire alarm. The issue for the claimant was the delay in getting to this position.

65. The respondent does not assert that there are no audible only fire alarms in place at sites where the claimant works. This is a working practice which affects the claimant whenever she is in an area with an audible only fire alarm. We do not know how frequently that occurs because we were presented with no evidence from either party about it. We do know that the claimant is only affected when she is not wearing her cochlear implant directly. She was clear in her evidence that she is able to hear a fire alarm and understand its distinctive pattern and tone through her implant. The difficulty arises in two scenarios:-

65.1. When she removes her device to give herself some quiet from background noise; and

65.2. When she is using her device through her laptop, because it does then screen out noises from the room such as alarms.

66. In our view, the first scenario is the claimant putting herself into a position where she is subjected to disadvantage. The second scenario occurs when the claimant is doing her work and, if she is in an area without a flashing fire alarm, then she may well be in danger because she cannot be directly alerted to it. We accept that the

claimant is very perceptive to movements around her, and she acknowledges that one tool to mitigate the danger comes from following everybody else's lead when they respond to the alarm. In our view, any expectation that that is what she should do is not sufficient. No reasonable adjustment is made with that guidance alone.

67. However, that is not all that was done. Various ways to overcome this problem were discussed by the respondent when the issue was raised. The respondent promptly implemented a buddy system and a fire evacuation plan. There was a proposed flag system so that fire wardens were aware when the claimant was on site to actively seek her out if the alarm sounded. The claimant seemed very offended by the notion she should carry a flag around, but she had misunderstood the mechanism. All the respondent suggested was for the person in control of building safety to be given a visual cue when the claimant was on site.
68. The claimant was off sick from October 2021 to September 2022. There is no duty on the respondent to alleviate substantial disadvantage when the claimant was not working. By her return, the respondent had procured a device to alert the claimant to an alarm. The claimant was not happy with that device, and so an alternative (which the claimant now uses) was ordered.
69. We consider that the respondent has exhausted all possibilities when striving for a solution to this problem. The only other adjustment which could have been made would be to ensure that all fire alarm units had lights on them, but this is very likely to be beyond the respondent's ability because it is not in control of all assessment sites. The claimant is now satisfied with the solution in place and agrees that a reasonable adjustment has been made. Her complaint is with the delay. We do not consider that delay to be unreasonable where (1) that is partly due to the claimant's absence, and (2) the respondent implemented a number of other measures which we consider would have been reasonable adjustments if that was all the respondent did.
70. The respondent made reasonable adjustments to alleviate the substantial disadvantage caused to the claimant by PCP4. It complied with its duty. The claim orientated around PCP4 is dismissed.

PCP5 – The requirement to carry out long detailed telephone assessments

71. We have no difficulty in concluding that this is a PCP which the respondent had during the period to which the complaint relates (which the claimant says is from June 2020 to July 2022). It was a key plank in the respondent meeting its contractual obligations to DWP whilst adhering to Government guidance about social distancing and face to face interaction. If applied to the claimant, we consider that it would cause substantial disadvantage because the claimant was, we agree, unable to perform that role as a result of her disability. The respondent knew about that because the claimant told it so. We consider that adjustments were made to alleviate the substantial disadvantage because the respondent removed the requirement from the claimant's work. The PCP was no longer applied to her. In other words, in our view, a reasonable adjustment was made.
72. We have considered whether anything else could or should have been done which could have been different. The respondent did what it had to do when faced with

Covid-19 and the contractual obligations upon it. Failure to adapt to telephone assessments would have led to being in breach of contract, not being paid, and the respondent's staff likely losing their jobs. The respondent then responded when it recognised that that PCP would cause the claimant substantial disadvantage. It could not realistically respond in any way other than to provide alternative work, which it did. We do not conclude that there was any duty to do anything else.

73. Really, the claimant complained in the hearing about the perceived result of the adjustment made. The claimant is doing fewer direct assessments, in her view, because of the adjustment. This makes it more difficult to establish competence and also more difficult to advance in her role because of the requirement to meet certain targets to go forward for extended roles such as auditing. However, this is not a complaint which can have any success attached to a pleaded failure to make reasonable adjustments claim. It might, we suppose, form part of a claim which was amended to bring the claim up to the present day, but there was no amendment made to do that despite discussion about it on the first day.

74. This claim therefore fails, and it is dismissed.

Time limits

75. PCP1, PCP2 and PCP3 all relate to events or time periods which end before 19 March 2022 (the time before which claims have not been brought within the primary time limit in the Equality Act 2010). They are therefore beyond the jurisdiction of the Tribunal unless we determine that they are brought within alternative permissible time limits because either (1) they form part of a series of discriminatory events which end within the primary time limit, or (2) it is just and equitable in all the circumstances to allow time to be extended so that the claims are considered to have been brought within time.

76. We have not found any discrimination in respect of PCP1, PCP2 and PCP3. There is no series of discriminatory events. In our judgment, there is no basis upon which it could be just and equitable to extend time so there is jurisdiction over a claim which we have already considered in detail and then found to be not well founded, after examination as if it had been brought in time. Consequently, it is not just and equitable to extend time because our finding that the claims are unsuccessful overwhelms any argument which might be made in favour of extending time.

77. Additionally, in relation to PCP1 and PCP2, we note that the respondent has been unable to call evidence from anybody working directly with the claimant in a management role at the time. This is partially because of key colleagues leaving the business. Had the claims been brought in time, or at least somewhat closer to the time limit than over two years after the events, then this evidence is likely to have been able to have been secured. In this judgment, we have accepted the claimant's evidence relating to those PCPs principally because no other narrative or emphasis has been able to be presented to us. In those circumstances, we do not consider that it would have been just and equitable to extend time for the claims because it would not be just and equitable to do so with the respondent so hampered in their defence.

78. We find that the claims relating to PCP4 and PCP5 were brought within their primary time limit and so were brought in time. They were unsuccessful on their merits. The claims orientated around PCP1, PCP2 and PCP3 are out of time. Time is not extended by any exception. The claims are beyond the jurisdiction of the Tribunal and are dismissed for that reason, notwithstanding that they also would have been dismissed on their merits had the Tribunal had jurisdiction.

Disposal and next steps

79. None of the claimant's claims are well founded and so all are dismissed as a result of our unanimous judgment. We have sympathy for the challenges that the claimant described as a result of her disability, as well as those faced personally over recent years, but those challenges have not led to any liability being fixed upon the respondent. One reason for that is that, to us, the claimant is overly fixed on solutions always being as she would wish them.

80. For example, the claimant spent a lot of time in argument talking about the simple mobile phone requested in 2019. She then admitted that the issue is that she had not learned where to hold a smart phone (speaker against microphone) in order to use it. It does not seem to have been in her mind to learn how to use a smart phone, when she says she spent months frustrated waiting for a 2000s style handset to be provided – a wait so long she says she lost confidence when using the phone.

81. Another example is in relation to the apparent revelation to learn that Microsoft Teams has a caption function which subtitles calls. The claimant was introduced to this by RNID in the assessment and described the instant positive impact of that discovery. We were surprised that the claimant, knowing her difficulties so well, had not sought to explore all of the functionality of tools already in place, or perhaps which were accessible, to support her. Instead, it seemed to us she was focused on getting a perfect solution whilst overlooking options already available which would alleviate any disadvantage – even if only on an interim basis.

82. In our view, the evidence shows that the respondent has supported the claimant well in difficult circumstances and at an incredibly difficult time. That support and the adjustments made went beyond what we would expect from a reasonable employer. It seems to us that the claimant seems to perceive events differently to those applying an outside and more objective view, and has expectations about reasonableness which are above those applied by the law and which can be delivered.

83. We hope that this judgment, together with the pleasing understanding that many of the issues raised in these proceedings have now been resolved in the on-going employment, allows the parties to move forward with better relations from this point onwards. It is clear to us that the claimant was extremely grateful to her current managers for the efforts they have made to assist her in the role. We wish those relationships every success in the future.

Employment Judge Fredericks-Bowyer

Dated: 16 May 2024

Sent to the parties on:

...21 May 2024.....

For the Tribunal Office:

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