



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss J Bravender

**Respondent:** Rochdale Borough Council

**Heard at:** Manchester

**On:** 3 – 4 May 2022  
6 May 2022;  
12 – 15 December 2022  
26 January 2023  
(In Chambers)

**Before:** Employment Judge Ainscough  
Mr Mark Smith  
Mr David Lancaster

## REPRESENTATION:

**Claimant:** In person  
**Respondent:** Ms Quigley, Counsel

# JUDGMENT

The unanimous judgment of the Tribunal is that the claim of a failure to make reasonable adjustments brought in accordance with Section 39 of the Equality Act 2010 is unsuccessful and dismissed.

# REASONS

## Introduction

1. The claimant works as an Occupational Therapist at the respondent local authority. The claimant worked in the Heywood Team which was initially based at Number 1 Riverside but her place of work later moved to Brook House. The claimant was part of a team of Occupational Therapists who were responsible for providing support and advice to those discharged from

hospital. At the time the claimant commenced employment, the Occupational Therapists were not rostered to work at the weekend.

2. The claimant complained that from the start of her employment, the respondent failed to make reasonable adjustments in order that she could attend at the office to conduct her employment. In addition, the claimant complained that she was required to work weekends.

### **Evidence**

3. The Tribunal heard evidence from the claimant. The Tribunal also heard evidence from the claimant's line manager Judy Robson an Advanced Practitioner, the claimant's Team Manager Mary Martins an Advanced Practitioner – Social Worker and Daniel Shepherd-Williams, a qualified Social Worker and Health and Social Care Neighbourhood Lead. The parties agreed a bundle of 672 pages.

### **Issues**

4. The issues were agreed at a Preliminary Hearing before my colleague Employment Judge Allen on 24 March 2021 as follows:

1. **Reasonable Adjustments (Equality Act 2010 sections 20 & 21)**

- 1.1 A "PCP" is a provision, criterion or practice. Did the respondent have the following PCPs:

- 1.1.1 The requirement for all occupational therapists to be on the discharge hub rota;

- 1.1.2 The requirement to work in the office (at weekends);

- 1.1.3 The requirement to do moving and handling of service users and equipment (at weekends);

- 1.1.4 When working in the office, the need to be seated, work at a desk, and/or work at a computer; and/or

- 1.1.5 The requirement/need to transport equipment required to use in a service users home.

- 1.2 For 1.1-1.3 the claimant alleges that the PCP applied from 28 August 2020 in relation to work on the discharge hub rota.

- 1.3 Did the application of the PCP place the claimant at a substantial disadvantage by reason of her disability?

- 1.4 If so, did the respondent fail to comply with its duty to make reasonable adjustments? The reasonable adjustments relied upon are:

- 1.4.1 Provision of a specialist chair;

- 1.4.2 Provision of a wrist rest;
  - 1.4.3 Provision of an adjustable foot rest;
  - 1.4.4 Provision of a specialist foot rest;
  - 1.4.5 Provision of a specialist keyboard;
  - 1.4.6 Provision of a back rest;
  - 1.4.7 Provision of a rolling backpack;
  - 1.4.8 Provision of a book rest;
  - 1.4.9 Being taken off the discharge hub rota;
  - 1.4.10 Being allowed to work from home for weekend work; and/or
  - 1.4.11 Not being required to do moving and handling at weekends, that is to collect and/or deliver to service users, review equipment, and/or teach others to use the equipment.
- 1.5 The claimant alleges that: 1.4.1-1.4.8 applied from 14 January 2020; and 1.4.9-1.4.11 applied from 28 August 2020.
- 1.6 If the respondent was in breach of the duty, was the claim entered at the Tribunal within the time required (and, if not, would it be just and equitable to extend time)?

## 2. **Remedy**

- 2.1 If the claimant succeeds in her claim, the Tribunal will need to determine what remedy, if any, the claimant should be awarded.

## **Application to Amend**

5. At the outset of the hearing the claimant made an application to amend her claim to include alleged acts of discrimination which took place after the submission of the claim form on 18 October 2020.
6. The Tribunal heard submissions from the claimant and the respondent on the application to amend. The Tribunal determined that the amendments submitted by the claimant amounted to a change to the provision, criteria or practices put forward in the list of issues at the Preliminary Hearing. The claimant contended that after 18<sup>th</sup> October 2020 she was required to work in an office and do moving and handling of service users on a daily basis. The claimant also contended that there was a requirement to sit at a desk when she worked either at home or at the office.

7. The Tribunal concluded that this was a different claim to that submitted on 18<sup>th</sup> October 2020 and the amendment was substantial. The Tribunal was of the view that the facts of this expanded claim were known to the claimant at the time of the case management Preliminary Hearing but not raised by the claimant. The Tribunal also concluded that despite the claimant being a litigant in person, she had a good understanding of the parameters of a discrimination claim. The claimant provided little explanation as to why she did not include the expanded claim at the time of the case management Preliminary Hearing.
8. It was the view of the Tribunal that the respondent was not in a position to respond to the expanded claim on the first day of the final hearing because it would need to take evidence from its witnesses and potentially new witnesses about acts that occurred after the 18<sup>th</sup> October 2020. To allow the respondent to do so would require an adjournment of the final hearing for many months and the delay would not be in accordance with the overriding objective. The Tribunal ultimately concluded that the respondent would suffer greater hardship should the amendment be allowed than the claimant would if the amendment were not allowed.

## Relevant Findings of Fact

### Application and Interview

9. On 28<sup>th</sup> August 2019 the claimant applied for the role of Occupational Therapist with the respondent. During the application process the claimant was asked the question whether she considered herself disabled and she selected the answer that “she preferred not to specify”.
10. The job description that appears at page 87 of the bundle was that applied to the claimant’s employment. The claimant was a qualified Occupational Therapist and this was not her first role post qualification. The job description required an Occupational Therapist “to recommend the provision of disability equipment for daily living and instruct eligible service users and carers in their use”. The Tribunal concludes that the claimant would have been aware of this requirement because she signed the job description.
11. The claimant attended for an interview on 7<sup>th</sup> October 2019 with Judy Robson. It was agreed between the parties that there was no discussion of the claimant’s disability at interview stage.
12. On 11<sup>th</sup> October 2019 the claimant was contacted by the respondent’s Occupational Health Department and disclosed her health conditions. The Practitioner completed the form to say that the claimant was fit to work and adjustments would only be required for medical appointments. There was no suggestion of any other adjustments or the need for a workplace assessment. The Tribunal has concluded on the balance of probabilities it is more likely than not that this was the discussion that took place between the claimant and the Occupational Health Practitioner. The claimant gave evidence that she minimised her condition because she wanted to obtain the job on merit. It is likely that the claimant had the same mindset when speaking with the Occupational Health Practitioner in order to achieve an offer of employment.

13. On 29<sup>th</sup> October 2019 the respondent made the claimant a job offer. On 31<sup>st</sup> October 2019 the claimant signed the job description in acceptance of that offer.

6 January 2020 – 16 March 2020

14. On 6<sup>th</sup> January 2020 the claimant started work at the Number 1 Riverside location. Judy Robson was appointed as the claimant's line manager and Tahamina Rahman was appointed as the claimant's Team Manager. The claimant was based at Number 1 Riverside until 2<sup>nd</sup> March 2020.
15. On the claimant's first day she informed her Team Manager of her disabilities. The claimant was told by Tahamina Rahman that there was no disabled car park space available for the claimant. The claimant was advised to talk to Judy Robson about the specific adjustments the claimant required in her role.
16. On 14<sup>th</sup> January 2020 the claimant spoke with Judy Robson about the adjustments she required and told her that the Occupational Health Practitioner had recommended a health based risk assessment. The claimant accepted during evidence that this was the first time that the respondent was on notice of the need for specific adjustments.
17. The claimant was provided with a particular chair. The claimant admitted it was reasonably comfortable but was not suitable for long term use. The claimant was also provided with a footrest which she said was adequate but would need adjustment in the future. As a result, Judy Robson contacted the HR department about the correct procedure for setting up adjustments and was advised on 15<sup>th</sup> January 2020 to ask the claimant to complete the necessary forms and to purchase a laptop bag to help the claimant carry her laptop.
18. On 23<sup>rd</sup> January 2020 the claimant completed a workstation self-assessment. The outcome of the assessment revealed that the chair the claimant was using did not need replacing but rather that it needed adjusting.
19. On 16<sup>th</sup> January 2020 the claimant confirmed that she had completed her application to Access to Work for assessment. The claimant acknowledged that it would take up to three weeks for Access to Work to get in touch. On 23<sup>rd</sup> January 2020 it was agreed that Tahamina Rahman would provide a rolling laptop bag she had in her possession to the claimant.
20. On 4<sup>th</sup> February 2020 Access to Work asked for permission to attend at the workplace to assess the claimant. On 5<sup>th</sup> February 2020 Judy Robson agreed to that request.
21. On 6<sup>th</sup> February 2020 the claimant and Judy Robson had a supervision meeting. It was agreed that Tahamina Rahman would provide the rolling laptop bag and the claimant commented that her chair was unsuitable in the long term. The claimant did not complain that Tahamina Rahman had already provided the rolling laptop bag and that it was unsuitable. On 14<sup>th</sup> February 2020 the claimant was absent on leave.

22. On 18<sup>th</sup> February 2020 the claimant was assessed by Access to Work. Access to Work recommended the claimant be provided with a rolling backpack. The claimant was in the office on 19<sup>th</sup> and 20<sup>th</sup> February 2020 and worked from home on 21<sup>st</sup> February 2020. The claimant worked at the office from 24<sup>th</sup> to 27<sup>th</sup> February 2020 and took the 28<sup>th</sup> February 2020 as a day off in lieu. The claimant was also in the office on the 2<sup>nd</sup> March 2020. From 3<sup>rd</sup> March 2020 the claimant was absent on annual leave and special leave.
23. The Tribunal has concluded that there was no discussion between the claimant and Judy Robson about the unsuitability of the rolling backpack at the supervision in February 2020 or thereafter. The first time the claimant raised this issue was in cross examination. The claimant did not deal with the unsuitability of the back pack either in her witness statement or her claim form.
24. From 16<sup>th</sup> March 2020 the claimant was allowed to work from home as a result of the impending pandemic. From 6<sup>th</sup> April 2020 the claimant was advised to shield until 1<sup>st</sup> August 2020 as her son was clinically extremely vulnerable.

#### Access to Work recommendations

25. On 23<sup>rd</sup> March 2020 Access to Work wrote to the claimant setting out details of the assessment and the equipment the claimant required at work. The claimant was asked to sign a declaration form to confirm she agreed with the suggestions and return it by no later than 22<sup>nd</sup> April 2020. Neither the letter nor the form reveal that a copy was sent to Judy Robson. The form does reveal that the claimant was advised to discuss the matter with her manager but despite the claimant's assertions that the form would have been sent to Judy Robson, the Tribunal does not conclude that this happened.
26. The Tribunal has determined that an Access to Work application is driven by an employee and it is the employee who has to authorise the sending of the details to the employer. The claimant did not authorise that the form should be sent to Judy Robson at this time because the recommended chair was incorrect.
27. On 26<sup>th</sup> March 2020 the claimant contacted Access to Work and advised that the recommended chair was incorrect. In response, Access to Work confirmed that it would rectify the recommendation as soon as possible.
28. By 11<sup>th</sup> June 2020, the claimant and Judy Robson had discussed the content of the report in a supervision meeting. Judy Robson noted that the quote for the correct chair was outstanding.
29. It took Access to Work until 3<sup>rd</sup> September 2020 to provide the quote for the correct chair and the claimant was given until 2<sup>nd</sup> October 2020 to sign the declaration to say that she accepted the recommendation. Judy Robson received notice of the new quote on 25<sup>th</sup> September 2020. On 8<sup>th</sup> October 2020 the Department for Work and Pensions emailed Judy Robson to say that it had received the declaration from the claimant accepting the recommendations and Judy Robson could go ahead and purchase the items.

Change to working pattern

30. On 30<sup>th</sup> March 2020 the respondent moved from providing services Monday – Friday to a working pattern over seven days. The reason for the change was to create a discharge hub at a different location to help hospitals discharge those who could be assisted with a move back to home from hospital and free up beds during the pandemic. Occupational Therapists were required to work in the discharge hub over the weekend. As of March 2020, Occupational Therapists were asked to do this on a voluntary basis.
31. On 6<sup>th</sup> May 2020 there was a supervision meeting between the claimant and Judy Robson.
32. In June 2020 the Heywood Team moved from Number 1 Riverside to Brook House. Judy Robson accepted in evidence that she would have seen the content of the Access to Work report prior to the move from Riverside to Brook House.
33. On 17<sup>th</sup> June 2020 the claimant and Judy Robson undertook an individual wellbeing risk assessment to establish whether the claimant was able to work from home. The assessment revealed that the claimant could work from home but needed a screen, keyboard and mouse. The claimant confirmed that she had a suitable chair at home.
34. On 22<sup>nd</sup> June 2020 the respondent began consultation with all Occupational Therapists about weekend working. Daniel Shepherd-Williams gave evidence that the Occupational Therapists contracts already provided for working over seven days. The consultation was focussed on how shifts would be implemented. The consultation document was sent to the Heywood team. The Tribunal notes that when the claimant was asked in the application form she completed prior to interview if she had a problem with working over seven days; the claimant confirmed that her old job required working over seven days and she was fully flexible.
35. On 7<sup>th</sup> July 2020 the respondent signed off on the claimant's probationary period. On 29<sup>th</sup> July 2020 the respondent sent out the proposed new shift patterns for working over seven days. On 30<sup>th</sup> July 2020 the claimant emailed Judy Robson expressing concern about the consultation period and whether the claimant would be able to accommodate weekend working. Judy Robson forwarded that email to Daniel Shepherd-Williams and responded to the claimant sympathising with her stress and advised her to join the union.
36. In August 2020 Mary Martins became the claimant's Team Manager. On 10<sup>th</sup> August 2020 the claimant set out the following concerns about the consultation: childcare issues, manoeuvring and handling alone and access to specialist equipment at the hub office. On 13<sup>th</sup> August 2020 that email was forward to Daniel Shepherd-Williams. On 14<sup>th</sup> August 2020 Daniel Shepherd-Williams responded by making the point that he was concerned that the claimant could not do the job at all regardless of the days on which she worked. The claimant was informed that all would be moving to working over seven days and a discussion would need to be had around general adjustments regardless of the requirement to work over seven days.

37. In response, Judy Robson made the claimant's case to Daniel Shepherd-Williams and suggested that a reasonable adjustment might be working in pairs or home working on a weekend. Daniel Shepherd-Williams responded on the same date stating that working over seven days would apply and that the respondent would look at individual circumstances once they had made the change.
38. On 5<sup>th</sup> August 2020 the respondent circulated a frequently asked question and answer document. Question 2 dealt with the possibility of transporting equipment at the weekend. The answer given was that staff would not be asked to transport equipment if they were unable to do so.
39. By 17<sup>th</sup> August 2020 the rota for weekend working was circulated and the claimant's name was placed on that rota. The claimant immediately responded querying why she had been asked to work over a weekend more frequently than initially outlined.
40. On 28<sup>th</sup> August 2020 the consultation period ended and as a result, a shift pattern over seven days was imposed.

#### Working from home

41. The claimant's shielding period ended on the 1<sup>st</sup> August 2020. On 18<sup>th</sup>, 19<sup>th</sup> and 27<sup>th</sup> August 2020 the claimant chased Access to Work for a response about the chair.
42. On 19<sup>th</sup> August 2020 Judy Robson went to see the claimant on a home welfare visit and on or around this date Mary Martins agreed that the claimant could continue working from home rather than coming into the office as a result of the delay in setting up the adjustments in the office.
43. On 10<sup>th</sup> September 2020 the claimant resumed home visits but was allowed to work from home rather than come into the office. It was the evidence of Mary Martins that the claimant was allowed to continue working from home in the absence of the equipment being in place to allow her to return to the office.
44. On 14<sup>th</sup> September 2020 the claimant submitted a flexible working request which included a request to be removed from the weekend rota or to work weekend shifts from home. This application was forwarded to Daniel Shepherd-Williams.
45. On 15<sup>th</sup> September 2020 Judy Robson re-arranged the rota cover for Sunday 8 November 2020 so that the claimant would not have to work that shift.
46. On 21<sup>st</sup> September 2020 the claimant signed the variation to her contract accepting weekend shifts on the proviso that the adjustments she had requested of removal from the discharge hub rota and being allowed to work from home at weekends was accepted. The next day Daniel Shepherd-Williams responded and said the only way the claimant could continue to work under such conditions was to terminate her current contract of employment and receive a new contract of employment with the requested adjustments.



47. The claimant responded on 23<sup>rd</sup> September 2020 saying that she did not agree. Daniel Shepherd-Williams suggested that until the matter could be resolved, the claimant should swap shifts with colleagues so she did not work any weekend shifts.
48. On 24<sup>th</sup> September 2020 Daniel Shepherd-Williams asked the claimant to set out the adjustments she required. The claimant responded and subsequently Daniel Shepherd-Williams asked Mary Martins and Judy Robson to ensure the claimant's desk and chair were set up at the office.
49. On 6<sup>th</sup> October 2020 the claimant chased the flexible working request and by 20<sup>th</sup> October 2020 she met with Daniel Shepherd-Williams to discuss the same.

### Relevant Legal Principles

50. Discrimination against an employee is prohibited by section 39(2) Equality Act 2010:

**“An employer (A) must not discriminate against an employee of A's (B) –**

- (a) **as to B's terms of employment;**
- (b) **in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;**
- (c) **by dismissing B;**
- (d) **by subjecting B to any other detriment.”**

### Reasonable adjustments

51. Section 20 of the Equality Act 2010 sets out the following duty:

#### **20 Duty to make adjustments**

- (1) **Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.**
- (2) **The duty comprises the following three requirements.**
- (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.**
- (4) **....**

#### **21 Failure to comply with duty**

- (1) **A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.**

- (2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.
- (3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.

#### Code of Practice on Employment 2011

52. The Code of Practice on Employment issued by the Equality and Human Rights Commission in 2011 provides a detailed explanation of the legislation. The Tribunal must take into account any part of the Code that is relevant to the issues in this case.

53. In particular the Tribunal has considered paragraphs 6.23 – 6.29 to decide whether the adjustments suggested are reasonable;

#### Burden of Proof

54. The burden of proof provision appears in section 136 and provides as follows:

- “(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 sub-section (2) does not apply if A shows that A did not contravene the provision”.

55. In **Hewage v Grampian Health Board [2012] ICR 1054** the Supreme Court approved guidance given by the Court of Appeal in **Igen Limited v Wong [2005] ICR 931**, as refined in **Madarassy v Nomura International PLC [2007] ICR 867** where Mummery LJ held that “could conclude”, in the context of the burden of proof provisions, meant that a reasonable Tribunal could properly conclude from all the evidence before it, including the evidence adduced by the complainant in support of the allegations, such as evidence of a difference in status, a difference in treatment and the reason for the differential treatment.

56. Importantly, at paragraph 56, Mummery LJ held that the bare facts of a difference in status and a difference in treatment are not without more sufficient to amount to a prima facie case of unlawful discrimination. However, whether the burden of proof has shifted is in general terms to be assessed once all the evidence from both parties has been considered and evaluated. In some cases, however, the Tribunal may be able to make a positive finding about the reason why a particular action is taken which enables the Tribunal to dispense with formally considering the two stages.

#### Time Limits

57. Finally, the time limit for Equality Act claims appears in section 123 as follows:

- “(1) Proceedings on a complaint within section 120 may not be brought after the end of –

- (a) the period of three 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 ...
- (2) ...
- (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”.

58. In considering whether conduct extended over a period we had regard to the decision of the Court of Appeal in **Hendricks v Metropolitan Police Commissioner [2003] IRLR 96**.

### **Submissions**

#### Respondent's submissions

59. The respondent submitted that the requirement for the claimant to work at a desk in an office ended in March 2020 and any claim of a failure to make reasonable adjustments is out of time. The respondent contended that had the claimant not had to work weekends she would not have complained about a lack of adjustments in the office.
60. The respondent submitted it did what it could during a pandemic and with the resources available. The respondent maintained that allowing the claimant to work from home was a reasonable adjustment and any substantial disadvantage was removed.
61. The respondent contended that the requirement to move equipment did not apply to the claimant because the respondent did not require those who could not move equipment to do so.
62. The respondent submitted that the requirement to work weekends did not put the claimant at a substantial disadvantage because the only shift on which she was rostered was covered by a colleague.
63. The respondent highlighted that the claimant never returned to work in the office between the requirement to shield with her son and prior to her maternity leave in January 2021.

#### Claimant's submissions

64. The claimant submitted that it was never made clear to her that she did not need to attend at the office nor that she did not need to work the weekend shifts. The claimant maintained that both requirements applied to her.

65. The claimant maintained that the transport of equipment included her laptop and that she was told by Occupational Health to obtain a work place assessment.
66. The claimant denied home working was a reasonable adjustment. The claimant contended that she was shielding and this was beyond the respondent's control.

## Discussion and Conclusions

### Did the Provision, Criterion or Practice apply?

- PCP 1 – the requirement for all occupational therapists to be on the discharge hub rota
  - PCP 2 – the requirement to work in the office (at weekends)
  - PCP 3 – the requirement to do moving and handling of service users and equipment (at weekends)
67. The Tribunal determines that the first three provisions, criteria or practices applied to the claimant's employment. Daniel Shepherd-Williams was clear in his evidence that working over seven days was applied across the board and it was only once it was applied that the respondent looked at individual circumstances to see whether adjustments needed to be made.
  68. The job the Occupational Therapists were asked to perform at the weekend was the same as the weekday job. Therefore, any adjustments that were made at the weekend would also need to be made in the week.
  69. The first three provisions, criteria or practices applied to the claimant from 17<sup>th</sup> August 2020 when Mary Martins sent the rota to all staff.
  70. The Tribunal was clear that the third provision, criterion or practice was different to the fifth. The third related to the moving and handling and demonstration of equipment in the service users home. The fifth related to the transporting of equipment from the respondent's premises to the service users home.
    - PCP 4 – when working in the office, the need to be seated, work at a desk and/or work at a computer
  71. The Tribunal determines that between the 6<sup>th</sup> January 2020 to 3<sup>rd</sup> March 2020 the respondent required the claimant to work in the office seated at a desk with her computer.
  72. This PCP did not apply between 6<sup>th</sup> April 2020 and 1<sup>st</sup> August 2020 because the claimant was shielding and therefore the respondent did not require her to attend in the office.
  73. This PCP did apply between 1<sup>st</sup> August 2020 and 18<sup>th</sup> October 2020 because the claimant was no longer shielding.

- PCP 5 – the requirement/need to transport equipment required to use in a service users home.
74. The Tribunal has determined that there was no requirement to transport equipment from the respondent's property to service users homes between January and March 2020 because the discharge hub did not exist prior to this date.
75. The Tribunal does not accept the claimant's contention that the need to transport her laptop or files between the office and service users homes was contained within this provision, criterion or practice. The claimant's complaint arose after the consultation revealed the need to transport equipment at weekends when the courier service was not available.
76. The Tribunal has also determined that from August 2020 this provision, criterion or practice did not apply to the claimant's employment. The question and answer document referred to by Daniel Shepherd-Williams in his witness evidence, made it clear that if an Occupational Therapist was incapable of transporting equipment they would not be required to do so. The claimant was included within that category.

Was the claimant at a substantial disadvantage?

- PCP 1 - 3
77. The Tribunal has concluded that PCP 1 and PCP 2 put the claimant at a substantial disadvantage. The placing of the claimant's name on the discharge hub rota meant that she was required to work from an office which was not set up with the required equipment. Daniel Shepherd-Williams was clear in his evidence that working over seven days would be applied to all and only then would there be an assessment of individual needs.
78. The Tribunal concludes that PCP 3 did not place the claimant at a substantial disadvantage. The claimant gave evidence that during the week, she was able to do this element of her job by demonstrating how the equipment should work. Judy Robson gave evidence that the requirement was to demonstrate and advise the carers on how to use the equipment. The Tribunal therefore concludes that the claimant would be able to do this element of the job at the weekend. The ability to perform this task is not dependent on the day of the week on which it is performed.
79. The discharge hub rota only required the claimant to do the same job she did in the week, at the weekend.
- PCP 4
80. The Tribunal has concluded that the claimant was placed at a substantial disadvantage by the requirement to work in an office from 6<sup>th</sup> January 2020 to the 3<sup>rd</sup> March 2020.
81. However, the Tribunal notes that the Access to Work assessment did not take place until 8<sup>th</sup> February 2020 and the first report did not get sent to the

claimant until 23<sup>rd</sup> March 2020. In addition, during that period, the claimant did not tell the respondent that she was at a substantial disadvantage. The claimant said that the chair was ok so long as it was replaced in the long term and whilst the footrest was not adjustable, she did not need it to manage at work.

82. Therefore, the respondent had no knowledge of the substantial disadvantage between 6<sup>th</sup> January 2020 and 3<sup>rd</sup> March 2020.
83. The Tribunal does not conclude that the claimant was at a substantial disadvantage between 6<sup>th</sup> April 2020 to 1<sup>st</sup> August 2020 because there was no requirement for her to attend at the office because she was shielding with her son.
84. The claimant was at a substantial disadvantage from 1<sup>st</sup> August 2020 to 18<sup>th</sup> October 2020 when she was required to return from shielding without the required equipment in place.

Was there a failure to comply with the duty to make reasonable adjustments?

- PCP 1-2

85. The respondent did not take the claimant's name off the discharge hub rota. Daniel Shepherd-Williams was clear in his evidence that initially the claimant was told to swap her weekend shift with other colleagues and when she couldn't do that she was told to work from home until the office equipment was in place.
86. The Tribunal notes that the provision of the specialist equipment was not signed off by the DWP until October 2020. Following that sign off, the chairs were in place from December 2020 and February 2021 to allow the claimant to work at Brook House and the discharge hub office respectively. Prior to the provision of the chair at the offices, the claimant was allowed to swap shifts or work from home.
87. The Tribunal therefore concludes that there was not a failure to comply with the duty to make reasonable adjustments because the respondent made alternative reasonable adjustments by allowing the claimant to swap shifts or work from home until the equipment was in place.

- PCP 4

88. From 1<sup>st</sup> August 2020 to 18<sup>th</sup> October 2020 the equipment was not in place. However, the claimant was not required to return to the office and instead was allowed to work from home. Therefore, the Tribunal concludes that whilst the specific adjustments recommended by Access to Work were not in place, the respondent made the reasonable adjustment of allowing the claimant to work from home until the equipment was in place.
89. Therefore, the Tribunal concludes that the respondent did not fail to make reasonable adjustments during this period.

90. The Tribunal also notes that the claimant has included the provision of a back rest, rolling backpack and book rest as the adjustments that were required to negate any substantial disadvantage of this PCP. That equipment would not have negated any substantial disadvantage from this PCP. The claimant did not identify any other PCP that put her at a substantial disadvantage which those adjustments would have negated. Therefore, the Tribunal has not reached any conclusion on the provision of that equipment.

### **Conclusion**

91. In light of the findings, the Tribunal concludes that the claimant's claim of a failure to make reasonable adjustments, is unsuccessful and is dismissed.

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Employment Judge Ainscough

25 April 2023

JUDGMENT AND REASONS SENT TO THE PARTIES ON

26 April 2023

FOR THE TRIBUNAL OFFICE

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