



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms Pauline Pilawa

**Respondent:** Spericle Ltd T/A Properties on the Market

**Heard at:** Nottingham via CVP

**Heard on:** 5-13 February 2024  
In Chambers on 14 February 2024

**Before:** Employment Judge V Butler

**Members:** Ms D Newton  
Mr C Bhogaita

**Appearances:**

**Claimant:** Mrs M Inkin, Solicitor

**Respondent:** Mr S Vaddaram, Director

## RESERVED JUDGMENT

The unanimous Judgment of the Tribunal is:

1. The Claimant's claim of unfair dismissal succeeds.
2. The Claimant was a disabled person at the material time for the purposes of section 6 Equality Act 2010 ("EQA").
3. The Claimant's claim that the Respondent discriminated against her because of something arising in consequence of her disability succeeds.
4. The Claimant's claim that the Respondent failed to make reasonable adjustments succeeds.
5. The Respondent is ordered to pay the Claimant the following amounts:

Basic Award:	£499.44
Loss of Statutory Rights:	£500.00

Compensatory Award:	£6,353.30
Injury to feelings:	£15,000
Loss of earnings <sup>1</sup> :	£1,042.96
ACAS uplift <sup>2</sup> :	£5,338.32
Interest <sup>3</sup> :	£2,973.32
Total:	<b>£31,707.34</b>

## REASONS

### Background

1. The Claimant presented her claim to the Employment Tribunal on 2 March 2022 following a period of early conciliation between 15 November 2021 and 26 December 2021.
2. She was employed by the Respondent from 12 July 2019 until her dismissal with effect from 19 November 2021. She claims unfair dismissal, disability discrimination under section 15 Equality Act 2019 (“EQA”) and failure to make reasonable adjustments under sections 20 and 21 EQA.
3. The Claimant suffers from endometriosis (amongst other conditions) and says that she was a disabled person for the purpose of s.6 EQA at the material time.
4. The parties agreed at the outset of the hearing that the correct identity of the Respondent was Spericle Ltd T/A Properties on the Market.

### The issues

5. The parties agreed the following issues for determination.
6. **Unfair Dismissal**
  - 6.1. *Was the Claimant dismissed unfairly by the Respondent contrary to section 94 Employment Rights Act 1996 (“ERA”)?*
  - 6.2. *Has the Respondent shown the reason for dismissal, and that it is a reason falling within section 98 (2) ERA, or some other substantial reason of a kind to justify the dismissal?*
  - 6.3. *Did the Respondent carry out any procedure in connection with the Claimant’s*

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<sup>1</sup> Explanation below

<sup>2</sup> Breakdown below

<sup>3</sup> Calculations below

*dismissal?*

- 6.4. *Was there any procedure implemented as required by the ACAS Code of Practice on disciplinary and grievance procedures?*
- 6.5. *Was the Claimant offered an opportunity to appeal from the decision to dismiss her?*
- 6.6. *If the Tribunal finds that the Claimant's dismissal was procedurally unfair, should any compensation the Claimant received be reduced under Polkey v A E Dayton Services Ltd [1987] ICR142?*

**7. Disability**

- 7.1. *Was the Claimant a disabled person for the purpose of section 6 EQA at the material time?*
- 7.2. *What was the material time?*

**8. Disability Discrimination under section 15 EQA**

- 8.1. *Did the Respondent treat the Claimant unfavourably? The Claimant relies on the act of dismissal on 5 November 2021 and the Respondent refusing to reconsider its decision on 8 November 2021.*
- 8.2. *Was the Claimant dismissed because of something arising in consequence of her disability? The Claimant submits that she was dismissed because:*
  - (a) *On 23.09.2021 she requested an adjustment to her duties because of her disability, which the Respondent refused, and/or,*
  - (b) *On 27.09.2021 she submitted a doctor's sick note because of her disability and the Respondent's refusal of the requested adjustment, valid between 22.09.2021 and 21.10.2021 and/or,*
  - (c) *On 21.10.2021 she submitted her doctor's confirmation that she required an adjustment of working from home while awaiting surgery because of her disability, valid until 20.11.2021.*
- 8.3. *Did the Respondent know, or could it reasonably have been expected to know, that the Claimant was disabled at all material times under section 15(2) EQA.*
- 8.4. *Did the Respondent take all reasonable steps to find out whether the Claimant was disabled under para 5.15 of the Employment Statutory Code of Practice? The Claimant submits that the Respondent knew or could have reasonably expected to know about the Claimant's disability from the very beginning until the end of her employment.*
- 8.5. *Was the dismissal a proportionate means of achieving a legitimate aim?*

**9. Failure to Make Reasonable Adjustments – Sections 20 and 21 EQA**

- 9.1. *What is the material time? The Claimant submits that the material time was between*

23.09.2021 and 19.11.2021.

- 9.2. *The Claimant submits that the Respondent applied the following practices, criterion, and/or provisions ("PCP"):*
- (a) The requirement for an employee to undertake full contractual duties in the office instead of working from home.*
  - (b) The practice of not offering amended positions/duties on a temporary or permanent basis to disabled employees.*
- 9.3. *Did the Claimant suffer a disadvantage because of the PCP's? The Claimant submits that she suffered the following disadvantages:*
- a) She was unable to undertake her duties as before her condition deteriorated.*
  - b) She was unable to work from home.*
  - c) Instead, she had no choice but to commence a period of sick leave, which meant she suffered financially.*
  - d) Upon being able to return to work she was not provided with any work until she completed the return-to-work assessment form, which meant she suffered financially.*
  - e) She was not paid any wages until she completed the return-to-work assessment form.*
  - f) Eventually she was dismissed.*

### **The Hearing**

- 10. The hearing was listed for eight days, and we were allocated the first day to read in. The evidence and submissions were concluded on 13 February 2024, and we reserved our decision. We used 14 February 2024 to deliberate.
- 11. The Claimant had Polish interpreters available during the hearing but only needed their assistance on occasion. By way of adjustment, she was permitted to give evidence from her bed.
- 12. In advance of the hearing, the parties agreed a bundle of documents and produced written witness statements.
- 13. The Respondent made two applications during the course of the hearing which we detail below.

### **The Respondent's application to admit witness statements**

- 14. On 6 February 2024, Mr Vaddram made an application to admit witness statements for Drs Morishetty and Yalamanchili, the contents of which related to whether the Claimant was a disabled person at the material time.

15. The application was refused, and we gave oral reasons to the parties on the day. In summary, we refused it for the following reasons: i.) Mr Vaddaram did not propose to call them as witnesses so they could not be cross-examined, ii.) Mr Vadderam failed to comply with the direction of the Employment Judge at a preliminary hearing on 11 January 2023 regarding expert evidence; and iii) the application was made too late in the proceedings.
16. However, we explained to Mr Vaddaram that he could use the matters raised in their statements as the basis of his cross examination on the issue of disability.

*The Respondent's application to admit further documents*

17. On 13 February 2024, Mr Vaddaram made an application mid-cross examination to admit further evidence. We refused the application and gave oral reasons to the parties on the day.
18. In summary, the first part of the application was to admit evidence of the dates his family tested positive for Covid and copies of his, and his family's passports, to confirm they had travelled to India on 27 October 2021 and returned on 19 November 2021. We refused the application because the Claimant took no issue with the oral evidence provided by Mr Vaddaram in this regard.
19. The second part of the application was to admit the Respondent's accounts for the period April 2021 – March 2022 to demonstrate that the Respondent was making a loss. We refused the application because firstly, we considered that they were not relevant and secondly, they post-dated the events complained of.
20. The third part of the application was to admit additional documents relating to the Respondent being interviewed under caution by the Council in respect of a property which the Respondent argued that the Claimant was responsible for. We refused the application because i.) there was already sufficient information in the bundle: ii.) the Respondent had had over two years to produce the documents; and iii.) the Claimant had already given evidence and the Respondent had cross examined her on this point (she admitted that she had dealings with the property but says it was her line manager who was responsible for all final checks so it was not her responsibility in any event).

**The evidence**

*The Claimant*

21. We heard evidence from the Claimant and found her to be entirely credible and honest. She made concessions where appropriate and was able to answer all questions put to her clearly and concisely. Her answers in cross-examination accorded with the contemporaneous documents in the bundle.
22. We also heard evidence from Ms S M Milho Valente, Ms K Nowak, Ms T Hulbert, Ms B Dearcos Marin, former colleagues. We found them to be credible witnesses and corroborated the Claimant's evidence to a degree. However, much of their evidence did not assist us in determining our findings of fact.

*The Respondent*

23. For the Respondent, we heard evidence from Mr Vaddaram, Director. We found Mr Vaddaram to be evasive. More generally, he would deflect questions by giving long explanations thus avoided answering them. We found he gave evidence to suit the Respondent's case which was implausible at times (see paragraph below). Furthermore, in the face of clear evidence he refused to make concessions in respect of matters which were plainly obvious. By way of example, he was adamant that the Claimant had been refused permission to work from home with effect from 17 March 2021 despite evidence in the bundle that she had done so.
24. After hearing the evidence, we were satisfied that Mr Vaddaram fabricated disciplinary documents relating to the Claimant for the purposes of the hearing. There was simply no indication in the contemporaneous documents or witness evidence (including that of the Respondent's own witnesses) that the Claimant was subject to disciplinary action. Furthermore, Mr Vaddaram was unable to provide any credible explanations to substantiate the allegations against the Claimant and we preferred her evidence wholly over his, namely that she was never alerted to, or subject to, disciplinary action.
25. Accordingly, we found Mr Vaddaram to be a wholly unreliable witness.
26. We also heard evidence for the Respondent from Ms A Syktor, Executive Manager, Ms S Foster, Sales and Marketing Supervisor, Mr S Yarlagadd, Negotiator, M Donkena, Administrator and P Robertson, Construction Manager. We found their evidence to be broadly credible but, save in the case of Ms Syktor, added very little to the issues to be determined.
27. We found it striking that the Respondent failed to call Mr Somu Thippareddy who was the Claimant's Line Manager and Mr Vaddaram's brother-in-law. He was a key witness for the Respondent in relation to the Claimant's alleged performance issues and his initial refusal to allow the Claimant to work from home. His absence was conspicuous and no compelling reason provided by Mr Vaddaram for it.
28. Given the above, where there was a conflict in the evidence, we preferred the Claimant's version of events over that of the Respondent's.

### **Disability**

29. The Claimant relies on the condition of endometriosis and provided a disability impact along with voluminous medical records in support of her contention that she was a disabled person.
30. The Respondent disputed that the Claimant was a disabled person and argued that the Claimant's demeanour when she was in the office displayed "*vitality, cheerfulness, and a smiling disposition*". It submitted that the Claimant did not encounter difficulties walking or performing day-to-day activities because the Respondent nor any of its employees had "*witnessed her using a walking stick*". Furthermore, endometriosis is not officially classified as a disability in the UK but nevertheless is manageable by prescribed treatments.
31. We accepted the Claimant's evidence in its entirety about the condition and effects on her which accorded with the medical records in the bundle.

### **The facts - disability**

32. The Claimant was diagnosed with endometriosis after undergoing surgery on 18 September 2018 to remove an ovarian cyst.
33. However, she had suffered from symptoms of the condition since 2015 when she began experiencing low abdominal pain which continued (pages 45 and 46 of the Medical Bundle "MB").
34. On 10 February 2018, the Claimant attended the A&E Department at Lincoln County Hospital because of abdominal pain (pages 203-206 MB). It was only in April 2018 that endometriosis was first considered (page 798 MB).
35. Over the coming months, the Claimant remained in pain and reported to her GP on 24 May 2018 that severe pain was interfering with her work (page 5 MB).
36. On 24 October 2018, the Claimant underwent surgery to remove a cyst and the consultant confirmed in his letter that:

*"on the left ovary there was a 5cm endometrioma that was stripped and a small amount of endometriosis found. I would characterise this as a stage 2 disease on the American Fertility Society grading..."* (page 171 MB).
37. On 2 June 2020, the Claimant attended her GP reporting distressing pelvic pain (page 129 MB). In consequence she was referred to a Gynaecologist.
38. She continued to attend her GP with endometriosis symptoms (pages 15, 16 and 18 MB).
39. On 20 August 2021, the Claimant attended the Endometriosis Centre Clinic at which the consultant noted that *"she is suffering from a wide range of cyclical symptoms"* such as pain, heavy periods and rib and chest pain (pages 80 and 263 MB).
40. On 25 October 2021, the Claimant's Gynaecologist reported that a recent ultrasound scan *"Demonstrated that the left ovary is stuck to the left pelvic side wall, adjacent bowel and the right ovary again is stuck"*. The Claimant was listed for surgery at Hull Endometriosis Centre and her Gynaecologist said he would try and operate as soon as the waiting list would allow (page 262 MB).
41. The symptoms of endometriosis experienced by the Claimant were (and remain): severe pain in her pelvis, low abdomen, lower back, shoulders, knees, ovaries, between her ribs and legs: painful bowel movements: bladder and bowel urgency: pain when her bladder is full; and, feeling tired, weak, dizzy and nauseous. During her menstrual cycle she also suffers pain under the shoulder blades, breathlessness, rectal bleeding and coughing up blood.
42. She has been prescribed sixteen different types of medications over recent years including Tramadol (which was prescribed for the first time on 12 February 2021) and morphine (which was prescribed for the first time on 14 October 2021).
43. On bad days, which accounted for 80 percent of the time, the Claimant struggled with basic activities such as preparing food, eating and drinking, washing and bathing, using the toilet, dressing and undressing, reading, talking, listening and understanding, socialising, managing money and making journeys and walking. She was, and remains, unable to

function without taking strong painkillers.

44. At the time of the Claimant's dismissal, she was bed-bound most of the time and in constant pain but could work comfortably from her bed.

**The law – disability**

45. Section 6 of the EQA provides:

(1) A person (P) has a disability if—

(a) P has a physical or mental impairment, and

(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

46. Section 212 provides that substantial means 'more than minor or trivial'.

47. When considering whether a person is disabled within the meaning of the EQA, we must consider the Guidance on Matters to be Taken into Account in Determining Questions Relating to the Definition of Disability (2011) ("the Guidance") issued by the Secretary of State where appears to us to be relevant.

48. Schedule 1, paragraph 2 of the Equality Act 2010 provides:

(1) The effect of an impairment is long term if –

(a) it has lasted for at least 12 months,

(b) it is likely to last for at least 12 months, or

(c) it is likely to last for the rest of the life of the person affected.

(2) If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day to day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.

49. Schedule 1, paragraph 5 provides:

(1) An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day to day activities if –

(a) measures are being taken to treat or correct it, and

(b) but for that, it would be likely to have that effect.

(2) "Measures" include, in particular, medical treatment and the use of a prosthesis or other aid".



50. We must consider:

- (i) Does the Claimant have a physical or mental impairment?
- (ii) Does that impairment have an adverse effect on their ability to carry out normal day-to-day activities?
- (iii) Is that effect substantial?
- (iv) Is that effect long-term?

**Conclusions - disability**

51. The burden of proof is on the Claimant to establish that she was a disabled person.
52. We are satisfied that she had the physical impairment of endometriosis as evidenced by her medical records at the material time. The scan in October 2021 showed that the endometriosis had caused her left ovary to become stuck to her left pelvic side wall, adjacent bowel and her right ovary was also stuck.
53. We accept that there is no cure for endometriosis and that it can spread to other organs in her body. Whilst the Claimant may get some relief from surgery this is no more than temporary.
54. We are satisfied that the endometriosis had an adverse effect on the Claimant's ability to carry out normal day-to-day activities and such effect was substantial. We accept her evidence that the associated pain necessitated assistance from her mum to carry out basic tasks of eating and drinking, washing and bathing, using the toilet, dressing and undressing, reading, talking, listening and understanding, socialising, managing money, making journeys and walking. The pain could be controlled by medication, albeit not eliminated, as recorded in her medical reports. When the pain was particularly bad, she would work from her bed at home thus avoiding movement. At the time of dismissal, she was bed-bound.
55. We are also satisfied that the effects were long term. The medical records demonstrate that the Claimant was suffering from the effects of endometriosis as early as 2015 and she still suffers to date.
56. Accordingly, we are satisfied that the Claimant was a disabled person at the material time which we consider to be from 23 September 2021 – 19 November 2021.

**The facts – unfair dismissal and disability discrimination**

57. We made our findings of facts based on the material before us, taking in to account the contemporaneous documents where they existed, the conduct of those concerned at the time and the oral evidence. We resolved any conflicts of evidence on the balance of probabilities.

**The Claimant's duties and working from home arrangements**

58. The Claimant commenced employment with the Respondent on 12 July 2019. She was interviewed by Mr Vaddaram, the Respondent's director. At interview, the Claimant confirmed that she could only work between 9am until 3pm as she needed to supervise her younger brother after his return from school. She also explained clearly to Mr Vaddaram that

she suffered with endometriosis and would need to take days off or work from home when she was in pain, which was typically during her period. Mr Vaddaram happily agreed to this and considered it as *'finding the solution to the Claimant's problem'*. The solution worked to both parties' satisfaction. The Claimant got on well with Mr Vaddaram and *'trusted him 100%'*. She had no issues with him until August/September 2021.

59. The Claimant's Line Manager was Somu Thippareddy, referred to as Mr Somu. The Claimant did not get on with Mr Somu who she felt unnecessarily criticised her. However, she *"took it on the chin"* and was able to undertake her duties satisfactorily.
60. The Claimant was initially employed as an Administrator. Her duties involved greeting customers and directing them to the right team, preparing and signing tenancy agreements, dealing with matters of property maintenance, incoming emails and phone calls, taking rent payments and preparing moving in files.
61. In late 2019, the Claimant became a Negotiator after her colleague, Ms Strokes-Bennett, left the Respondent. Her primary function in this role was to rent as many properties as possible and her duties included answering and making phone calls and dealing with emails about property enquiries.
62. The Claimant sat at the front desk in the office and was a natural first point of contact for incoming clients. However, reception duties were not a core element of her role as a Negotiator. Indeed, on 7 December 2020, Mr Somu e-mailed her saying: *"I don't know why you and Kinga are wasting time on customer service jobs. Its not your responsibility"* (page 218). When the Claimant was not in the office, it was a task undertaken by others.
63. No issues were raised with the Claimant's requests to take time off or work from home when she was experiencing heightened pain until August/September 2021. The Claimant made nineteen such requests over the course of her employment which were all accommodated (pages 229 – 250). The Claimant was easily able to undertake her duties at home and no complaints were made about the quality of her work at home.
64. The Respondent had a WhatsApp group within which employees advised of absences or lateness. Within the Claimant's messages, she would explain that endometriosis was the reason for her absence or working from home. On 26 September 2019, the Claimant messaged that she had been in A&E (page 267).
65. The Claimant undertook property viewings for around a year but only those within a ten-minute walking distance from the office as she did not drive. However, the Claimant did not undertake any viewings in the final six months of her employment because they were primarily done by Mr Somu and a colleague.
66. On 27 March 2021, the Claimant had her appraisal (page 46) which made no mention of disciplinary proceedings which we deal with under a separate heading below.

August 2021

67. Broadly, the Claimant had no issues with her employment until August 2021. On 4 August 2021, the Claimant emailed Mr Somu following comments he made to her as follows:

*"I hope you are well. I am contacting you to kindly ask you not to comment on my sick days off and they are not holidays off as you said yesterday. As I have already informed, I do not have impact on it, most of the days I am in pain but I am still at work. I have already discussed this issue with Sath on my interview 2 years ago and informed him I can only work till 3.00pm and around 3 days a month I won't be able to come to work. He employed me based on what I have told him, so I do not want to hear anything again from you regarding my sick days. Those comments are demotivating me even more. Living in pain almost every day is not easy, because I am smiling and joking at work it does not mean I am fine. I do again, call Sath directly to discuss the matter, I do not want to do this as I know you will be in trouble. Please accept this email as a friendly request"* (page 378).

68. Mr Somu replied simply by saying:

*"I didn't make fun of you. Your performance is very bad from past few weeks, so I remind you not take any days off. If you thank (sic) that I made fun of you I can't do anything"* (page 378).

69. Accordingly, Mr Somu had seemingly refused to allow the Claimant to take any more time off sick or work from home.

70. On 10 August 2020, the Claimant emailed Mr Somu to explain that she was suffering with endometriosis alongside other conditions. She said:

*"I hope you will understand that almost every day is a struggle for me, but because I really like this job, I am giving 100% of myself. I just want to be honest with you and I hope you will understand now, why I need to take a day off sometimes and work from home for a few days"* (pages 199-200).

71. On 13 August 2020, the Claimant emailed Mr Somu and Ms Syktor explaining that she needed the day off because:

*"the pain has increased and it has got worse through the night. No pain killers are working. I will be back in office tomorrow 100%, I need only one more day off. I will book myself to see GP and get stronger painkillers...."* (page 201).

72. Her requests were granted without question.

September 2021

73. On 23 September 2021, the Claimant had cause to email Mr Vaddaram because Mr Somu had refused to allow her to work from home. She said:

*"I am contacting you, because unfortunately I am having some management issues with Somu. Everything was fine until today. He doesn't let me work from home while I am not feeling well, and I am in pain all the time. I was honest with you from the first day, I did explain on my interview what health issues I have, it's not my fault, that endometriosis is developing and getting worse every day. I am always in pain and still try to do my best to be in the office, but sometimes it's not possible, even to work from home. It's not like I am having days off and enjoying life, if I am off that means I*

*cannot manage the pain. I would love to be healthy and be in the office every day, but unfortunately, no one found a cure for the endometriosis yet. My condition affects me, my private life, my family and company, because of having days off it makes me to struggle financially too. I am feeling there are days I am losing myself and it is breaking me down mentally. I am doing all I can to minimise the pain, hence I was recently off for consultations and I am waiting for a date for operation that is going to supposedly make me feel better and reduce the pain which will allow me to be more reliable. I hope you do understand my situation and as Company boss, you will support me. In return I promise to keep pushing myself and work hard. I have never disappointed you and never will” (pages 203 – 204).*

74. Mr Vaddaram did not reply to this email but instructed Ms Syktor, Executive Manager and friend of the Claimant, to do so on his behalf on 24 September 2021. She said:

*“As a responsible employer we cannot allow people to work if they are not well whether its from home or in the office. In order to work you need to feel well mentally and physically and to be fit to fulfil all your duties and responsibilities that come with your role. If you are not well you should not be working. You said yourself that you are not well and in pain which brings the question how can you work from home and fulfil all your duties? On the other hand if you feel well enough to work from home I don’t see any reason why you cannot come to the office” (page 203).*

75. The Claimant found this email very frustrating and upsetting because both Mr Vaddaram and Ms Syktor were aware why the Claimant was working from home, and it had not been raised as a problem previously. She felt that her condition was being mocked and ridiculed.
76. The Claimant replied to Ms Syktor’s email that same day explaining she felt lied to and promises not kept. She recounted that Mr Vaddaram had said at interview it was no problem for her to work at home if she was not well, expressed her disappointment and said she no longer felt a valuable employee. She also withdrew her support from court cases and furlough applications. The Claimant acknowledged the Respondent’s clear position that if she was not well enough to come to the office she could not work from home. Accordingly, she had no choice but to contact her GP on 27 September 2021 who gave her a sick note signing her as not fit to work so she could claim SSP (page 388A). The sick note confirmed that the Claimant was suffering *“Severe pelvic and chest pain previously diagnosed as endometriosis awaiting treatment”*.
77. The Claimant e-mailed the sick note to the Respondent later that day and confirmed that she would be back to work as soon as she was fully capable of performing her duties (page 388).
78. In late September 2021, Ms Syktor told the Claimant during an informal conversation that Mr Vaddaram had decided to dismiss her. Accordingly, on 4 October 2021 after taking advice, the Claimant emailed Mr Vaddaram, copying in Ms Syktor, raising a formal grievance as follows:

*“Following to our recent discussion, I would like to make some corrections regarding your email. You have employed me with a medical condition/disability and you knew this from the first day we met, as already discussed about it during my interview with*

*you. I have symptoms every single day which are getting much worse. Some days its affecting me a lot, some days it is affecting me less. I have to live with it. That's why I have requested to make some adjustments (working from home). I do not agree with what you said that, if I am well enough to work from home, I am well enough to work from office. Every movement is making me suffer, while working in the office I have to move, stand up, sit down again, work around to get the keys for new tenant or take the payment and put it in the safe. While working from home, I would have advantage of working from bed and have stable position with no need of moving. As you have informed, you do not agree for these adjustments to be made, that's why I didn't have any other choice than go on sick leave. I wish to raise a formal grievance about your failure to make reasonable adjustments to accommodate by condition. Also, as per informal conversation with Anna last week, she has been instructed by you to inform me, that you have made your decision to dismiss me. Unfortunately, I have not received any formal communication regarding this matter. Please kindly for an update” (page 390).*

79. The same day, the Respondent removed the Claimant's access to all its systems, including e-mails, and the team WhatsApp group (page 251). The Respondent did not have a policy in existence, either formal or informal, providing that access would be removed in cases of sick leave or long holidays as it now claims.

80. On 5 October 2021, the Claimant emailed Mr Vaddaram and Ms Syktor again from her personal e-mail address having become aware that she had been removed from the e-mail system. The content was largely a repeat of her email the previous day, and concluded:

*“As you have informed me, you **DO NOT** agree for this adjustment to be made, that's why I didn't have any other choice than to go on sick leave. I wish to raise formal Grievance about your failure to make responsible adjustments to accommodate my condition. Also as per informal conversation with Anna Syktor last week, she has been instructed by you to inform me, that you have made your decision to dismiss me. Unfortunately I have not received any formal communication regarding this matter but based on your actions (blocking access to business email and other accounts, I assume I am being dismissed.” (page 392).*

81. The Claimant received no response from the Respondent. Given that she now understood the Respondent's duty to make reasonable adjustments and was able to work from home, she contacted her GP again on 21 October 2021 to obtain another sick note confirming “You may be fit for work taking account of the following advice.... fit for work on reduced work and working from home – review with manager in 1/12” (page 39A).

82. The Claimant sent a copy of the sick note to Mr Vaddaram, Ms Syktor and Mr Somu by e-mail on 22 October 2021 as follows:

*“Unfortunately, I haven't heard from you, since my last email with any update, whenever I have been dismissed or not. I assume I am still employed, please see attached extension of my sick note” (page 393).*

83. She assumed that the Respondent would contact her to resume access to the systems

and allow her to work from home. The Respondent replied on 24 October 2021 stating:

*“Please find attached letter in response to your email dated 5 October 2021 along with Return to Work Assessment Form which you should fill in and return to us” (page 393).*

84. No deadline was stipulated by which the Claimant had to return the form. The attached letter was from Mr Vaddaram in response to the Claimant’s email dated 5 October 2021 which stated:

*“There is no contract stipulating that you have been employed with disability, for that reason I disagree with your statement. We are not medically trained to advise you on medical conditions.*

*You have never requested any adjustments at workplace during your employment with our Company. Working from home is not considered as an adjustment to fulfil your duties under your employment as your contract of employment clearly stipulates that your place of work is at 65 High Street, Lincoln, LN5 8AD. Whether you agree or disagree, “working from home” is not a part of your contract of employment.*

*It is very clear from your email that you are going on sick leave only because we did not agree for you to work from home. This is not accepted under the Statutory Sick Pay regulations. SSP is designed for employees who genuinely become ill and that causes for them to be incapable to perform their duties under their contract of employment. We are seeking professional advice on this to determine your eligibility on getting the sick pay and if we don’t get the clarity before the pay day, we will seek refund from you.*

*We disagree with your statement that we have failed to accommodate your condition as we have never received a request to make any adjustments at your workplace which is 65 High Street, Lincoln, LN5 8AD. Request of working from home is considered as an amendment to your employment contract and we have given clarity that we will not accept your requested amendment.*

*As an employer, we only make necessary adjustments if any employee requires such adjustments to perform their duties at workplace only it is not our remit to follow the employee outside their workplace to change any necessary adjustments. We will not respond to the last paragraph of your email as we do not need to respond to hearsay.*

*A Return to Work Assessment*

*We have received Statement of Fitness to Work from you on 22 October 2021 which clearly demonstrates that you are able to work from 21 October 2021 on reduce work so we are sending you Return to Work Assessment Form for you to give full response” (pages 394-395).*

85. The Claimant found the letter very upsetting and felt threatened and humiliated by it. In her view, it demonstrated that the Respondent had no idea what her rights were, or that it had chosen to deliberately ignore them. Either way, it made clear to her that she was not wanted, and her dismissal was only a matter of time.

The return-to-work assessment form

86. It took the Claimant some time to complete the form because i.) she wanted to obtain legal advice, ii) she did not have a printer so had to wait for a friend to print it, iii) she found completing it draining and, iv) she had to have it scanned to return to the Respondent.
87. The Respondent did not contact the Claimant to chase it or enquire if she needed any assistance completing it. She remained prevented from working because the Respondent would not allow her to do so until she could return to the office.
88. Within the form, the Claimant described the symptoms of endometriosis as follows:

*“The only comfortable position I am finding is laying in bed, otherwise the pain is unbearable. Although I am able to perform all my normal work duties as Sales Negotiator from home on my personal laptop...”*

89. In response to being asked if she could perform her normal duties at any time during her absence, she said:

*“Yes I am if reasonable adjustments were made I was able to work from home”.*

90. The Claimant also explained that she had been prescribed oral morphine to manage the pain, was still waiting for her surgery and:

*“Endometriosis is stopping me to perform most of daily activities which mainly is moving around. Due to being in pain 100% of the time, my general health is not as good as it was before I started so experience symptoms of endometriosis” (pages 399 - 401).*

The Claimant’s dismissal

91. On 5 November 2021, at 3:42.12pm, the Claimant emailed Mr Vaddaram and Ms Syktor attaching the return-to-work assessment form (page 398).
92. Within 45 seconds, at 3:42.57pm, the Claimant received an email from Ms Syktor, copying in Mr Vaddaram, dismissing her. The email said:

*“As we did not receive a response to our previous email and you have till date not to return the Return to Work Form, we have come to the decision to terminate your employment. Please find attached termination notice” (page 396).*

93. The attached letter simply said:

*“This notice is to formally inform you that your employment with Spericle Limited will end. As per your contract of employment you are entitled to 2 weeks’ notice of termination and therefore your employment will end on 19 November 2021. All Company documents, materials, equipment or any other Company property you have access to must be returned to the office before 19 November 2021. The final payslip, P45 and all the outstanding money will be sent to your bank account” (page 404).*

94. The Claimant replied immediately explaining that she had returned the return-to-work form a few minutes previously (page 406).
95. Three days later, on 8 November 2021, Ms Syktor replied saying: *“Our decision remains the same as per the termination notice”*.

*Events after the Claimant’s dismissal*

96. The Claimant obtained legal representation and on 1 December 2021, the Respondent wrote to her representative stating:

*“Your Client owes the Company money. It is a matter between your Client and the Company. Full details will be provided as and when necessary. We follow the correct Civil Procedure Rules whilst claiming against your Client in due course. I believe you are acting for your Client in relation to the employment only so this matter has no relevance to you at this stage”* (page 410).

97. The Claimant felt intimidated and threatened by the letter, and no details were provided to the Claimant or Ms Inkin about what the alleged monies were.

98. At around the same time, the Claimant and Ms Syktor had an exchange of messages in which Ms Syktor said:

*“We have sent letter to your lawyer... looks like there will be war”* (page 382).

99. On 2 December 2021, Ms Syktor contacted the Claimant by phone on Mr Vaddaram’s instruction. During the call Ms Syktor said:

*“And it doesn’t matter whether you win in your claim or not, he will just be all the time claiming from you to, just a different way... he will probably cheat. He just said he would, that you against him and him against you, and that he is going to check, that he is going to claim for all mistakes. Mistakes and things like that. He didn’t specify so I don’t know exactly what and you know how he is going to come up with things. But he said he would, if he finds out that you were working somewhere, he will send the message to your employers with, you know, bad feedback and with bad comment you know what you call it – references... well that’s why I am telling you that, well, I asked him what I was going to say, and he said what he had is planned, and I asked him when I meet Paula should I tell her what? What your intentions are and so on, and should I tell all the things you said before, and he said yeh... no details, you know, he never specified, just that he’s going to check everything from your work, from home, verify everything... and he will claim that it was you who made the mistakes and something and so on and so on and so on... well, tomorrow he is going to ask me if I talked to you and what you said. And I don’t know what to say... well, you know, he said that I should talk to you and tell you his plans. He probably thinks you know, I’ll tell you that and you’ll get scared you know...”* (pages 3-4 of the additional recording bundle).

100. On 20 January 2021, Mr Vaddaram wrote to the Claimant advising that the Respondent had received a Notice of Intent to issue a Financial Penalty regarding a property. He confirmed that the amount of the penalty was £17,278.04. He went on to say:



*“Your actions have caused/contributed towards breach of the HMO Regulations and resulted in the fine the Council is imposing... if it is proven that the breach of regulations was caused by your mistake and not followed business processes then we may claim the imposed penalty from you”* (pages 421 – 422).

101. The letter was clearly an attempt to threaten and intimidate the Claimant with a view to her withdrawing her Employment Tribunal proceedings. The Claimant did not respond. The Respondent sent further letters about the same on 29 January 2022 and a 15 March 2022. Again, the Claimant did not respond.

*Disciplinary action against the Claimant*

102. The Respondent asserts that the Claimant was subject to the following action following disciplinary hearings:

- i. On 20 July 2020 she was given a written warning for: *“your overall performance, not following company procedures, interfering with other departments without authorisation, levels of absence”* (page 195).
- ii. On 4 December 2020, a written warning for *“untruthful reporting”* (page 217)
- iii. On 28 January 2021 a final written warning for *“not achieving targets by the company, failure to follow company procedure while performing your job. Poor attendance”* (page 364)
- iv. On 17 March 2021, a further warning in which it was *“decided that you will be refused to work remotely for a period of 12 months”*.

103. The Respondent also relied on a spreadsheet at page 431 in the bundle which lists the alleged misconduct as: *“too many days off”, “move tenant to occupied property/costs incurred”, “(spoken to Somu – not following instructions/repeating mistakes/too many days off)”, “giving keys to the tenant without taking payment/time waste 16 St Martins Lane”, “Somu – lots of days off/not renting enough rooms/work from home – no results”, “spoken to Somu/not absorbing knowledge”, “spoken to Somu – not listening, wasting time with Kinga”, “spoken to Somu – not improving/others do work for her/not reaching targets/terminate”*.

104. Mr Vadarram’s final entry on 5 November 2021 reads: *“RTW still not received – terminate”*. He gave evidence that he took the decision to dismiss the Claimant on this date because the Claimant had not submitted the return-to-work form and due to *‘the ongoing disciplinary action’* (para 36 his statement). He delegated the task to Ms Syktor who sent the dismissal e-mail at 3:42.57pm. Conversely in oral evidence, Mr Vaddaram denied seeing the Claimant’s e-mail of the same date attaching the form because he was in a secure unit with his poorly parents. His evidence was, therefore, inconsistent, and contradictory.

105. We conclude on the balance of probabilities that the disciplinary allegations and documents were fabricated for the purposes of this hearing for the following reasons:

- (i) There is no record of or reference to any investigation or minutes in relation to the alleged disciplinary matters in the contemporaneous documents, including in the

Claimant's appraisal which took place ten days after the last 'warning'.

- (ii) No-one else in the Respondent was aware of them. Notably, Ms Syktor was oblivious to them despite being Mr Vaddaram's assistant and the Claimant's friend.
- (iii) In respect of the further warning imposing a ban from working from home, the Claimant continued to work from home thereafter thus undermining its legitimacy.
- (iv) Mr Vaddaram was unable to articulate with any cohesion or substance the misconduct relied on, which is also the case in the warning letters. Mr Vaddaram also asserted that the examples in the spreadsheet only amounted to 5% of her misconduct and the other 95% "were in [his] mind" but we find his evidence in this regard implausible.
- (v) The making of allegations against the Claimant accord with Mr Vaddaram's threat relayed to the Claimant by Ms Syktor that he "will probably cheat.....you know how he is going to come with things .....and he will claim it was you who made the mistakes.....". Ms Syktor was instructed by Mr Vaddaram to tell the Claimant his plans so she would 'get scared' and withdraw her claim.
- (vi) The dismissal e-mail with attached letter simply cites the Claimant's failure to return the return-to-work form as the reason for dismissal, not misconduct. If misconduct genuinely formed the reason, or part of the reason for dismissal, the dismissal e-mail/letter would have made this explicit.
- (vii) The Claimant gave evidence that she did not attend any hearings or receive the warnings and we prefer her evidence to that of Mr Vaddaram.

**The law - unfair dismissal and disability discrimination**

**Unfair dismissal**

106. Section s.98 ("ERA") provides.

*"(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show—*

*(a) the reason (or, if more than one, the principal reason) for the dismissal, and*

*(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.*

*(2) A reason falls within this subsection if it—*

*(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,*

.....

(4) *Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)—*

*(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and*

*(b) shall be determined in accordance with equity and the substantial merits of the case."*

107. Section 123(6) provides:

*"(1) Subject to the provisions of this section and sections 124, the amount of the compensatory award shall be such amount as the tribunal considers just and equitable in all the circumstances having regard to the loss sustained by the complainant in consequence of the dismissal in so far as that loss is attributable to action taken by the employer.*

.....

*(6) Where the tribunal finds that the dismissal was to any extent caused or contributed to by any action of the complainant, it shall reduce the amount of the compensatory award by such proportion as it considers just and equitable having regard to that finding".*

#### **Discrimination arising from disability**

108. Section 15 of the EQA states:

*"(1) A person (A) discriminates against a disabled person (B) if –*

*(a) A treats B unfavourably because of something arises in consequences of B's disability, and*

*(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.*

*(2) Sub-Section (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability."*

#### **Failure to make reasonable adjustments**

109. Section 20 of the EQA provides:

*“(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.”*

.....

### **Compensation**

110. Section 124 EQA provides:

*“(1) This section applies if an employment tribunal finds that there has been a contravention of a provision referred to in section 120(1).*

*(2) The tribunal may—*

*(a) make a declaration as to the rights of the complainant and the respondent in relation to the matters to which the proceedings relate;*

*(b) order the respondent to pay compensation to the complainant;*

*(c) make an appropriate recommendation.”*

### **Burden of proof**

111. Section 136(2) EQA provides:

*“(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.”*

112. We were referred to the following cases: *A Ltd v Z* [2019] IRLR 952, [2020] ICR 199; *Birtenshaw v Oldfield* [2019] IRLR 946; *British Home Stores LTD v. Burchell* [1978] IRLR 379; *Donelien v Liberata UK* [2018] IRLR 535; *Elliott v Dorset County Council* [2021] IRLR 880; *Gallop v Newport City Council* [2013] EWCA Civ 1583; *Polkey v. A E Dayton Services Limited (formerly Edmund Walker (Holdings) Limited)* [1987] IRLR 503; and *SCA Packaging v Boyle and EHRC* [2009] IRLR 746.

### **Submissions**

113. We had the benefit of written submissions from both parties which were supplemented by

oral submissions. Whilst they are not set out in full, we have considered all the points made and all the authorities relied on where appropriate, even when no specific reference is made to them.

## **Conclusions**

### **Unfair Dismissal**

114. There is no dispute that the Respondent dismissed the Claimant. The burden of proof is, therefore, on it to establish a potentially fair reason for dismissal under s.98 ERA.
115. The Respondent says in its defence to the claim that the Claimant was dismissed for the following reasons:

*“On 05 November 2021, the Respondent had decided to terminate the Claimant’s employment due to the Claimant:*

- a) Was not able to do her job properly (could not keep up with her job whenever there were any important changes to her task those are necessary due to the legislative changes. The Claimant was making constant mistakes which has caused enormous amounts of loss to the business)*
- b) Could not get along with the colleagues (the Claimant has raised several complaints against other employees those were baseless, and the Claimant was not able to prove the genuine reasons behind those complaints. This clearly indicates the Claimant could not get along with the colleagues in the business)*
- c) Persistent or long-term illness that makes it impossible for you to do the job (when the Respondent was in receipt of the second sick note which clearly indicated that employee is suffering long term illness, the Respondent has requested further information from the Claimant in order to support the Claimant in the workplace which is 65 High Street, Lincoln, LN5 8AD. Unfortunately, the Claimant has failed to give the response)*
- d) It was impossible to carry on employing the Claimant (according to the doctor's sick note, the Claimant can only work from home which clearly demonstrates that she cannot perform all the duties under the contract of employment. As an employer the Respondent concluded that it is impossible to carry on employing the claimant).*

*.....The Claimant was dismissed because of her failure to follow Company procedures, making constant mistakes which had caused enormous amount of loss to the business and despite numerous warnings and meeting failure to improve .....*

*The Claimant was aware of her misconducts during her employment as the Respondent has performed several disciplinary meetings as well as sent written warnings in the past where the Respondent has given the Claimant the opportunity to defend herself. The Claimant’s employment contract was terminated due to*

*several reasons and some of the reasons mentioned above.....We have waited more than 14 days to receive the form back which we believe is reasonable time to receive the response. Since there was no response received within that time scale we have made a decision to terminate the Claimant's Contract of Employment based on conduct the Claimant had throughout her employment contract" (pages 34 - 36).*

116. Accordingly, the Respondent argues that the Claimant's dismissal was by reason of her conduct and/or capability, and we address each in turn.

*Conduct as a potentially fair reason for dismissal*

117. We find as fact that the disciplinary allegations and documents were fabricated for the purposes of this hearing, and we accept the Claimant's evidence that she was never notified of the same.
118. Given that finding, we are satisfied that the Respondent has not identified the misconduct relied on nor could it have held a genuine belief in any misconduct. It follows, therefore, that it has not shown that conduct was the reason or principal reason, or indeed any part of the reason, for dismissal.

*Capability as a potentially fair reason for dismissal*

119. We are satisfied that when the Claimant interviewed with Mr Vaddaram, they discussed her endometriosis and he agreed to accommodate time off every month or working from home, which he does not dispute.
120. The Claimant gave evidence that she had no problems with her employment (save the fractious relationship with Mr Somu) until 23 September 2021 when she was told she could no longer work from home, despite being willing and able to. The Respondent took the view was that if she was well enough to work from home then she was well enough to come to the office. The Claimant felt she had no choice but to obtain a sick note so she would receive statutory sick pay and advised the Respondent of the same.
121. In late September 2021, Ms Syktor informed the Claimant during an informal conversation that Mr Vaddaram had already decided to dismiss her.
122. On 4 October 2021, the Claimant wrote to Mr Vaddaram detailing her symptoms again and confirming that she could work from home in bed. She raised her understanding that Mr Vaddaram had made the decision to dismiss her and confirmed that she wanted her email to be treated as a formal grievance. In response, and without the Claimant's knowledge, the Respondent removed her access to its systems, including email and the WhatsApp group.
123. The Respondent made no contact with the Claimant in response to her e-mails dated 4 and 5 October 2021. After taking advice, the Claimant understood that she had the right to request reasonable adjustments and submitted a second sick note saying that she was fit to work on reduced duties and working from home. Again, the Respondent did not reply.
124. The Respondent finally wrote to the Claimant on 24 October 2021, confirming that it would not permit her to work from home and threatened to seek a refund from her in respect of

SSP. The Respondent also asked her to complete a return-to-work assessment form. There was no deadline by which the Claimant was required to submit it nor at any point did the Respondent chase her for it.

125. When the Claimant submitted the return-to-work form, the Respondent dismissed her some 45 seconds later. The e-mail of termination simply cited her alleged failure to return to the form as the reason for her dismissal and the attached letter provided no explanation at all.
126. The Respondent asserts that the Claimant failed to '*provide further information to support her in the workplace*' in respect of her illness but this is not correct. She had already explained that she could work from home, submitted a sick note to that effect and completed the return-to-work assessment form confirming the same.
127. The Respondent failed to make any further enquiries of the Claimant about her illness, nor did it seek to obtain any medical evidence. Mr Vaddaram gave evidence that he did not see the Claimant's e-mail attaching the return-to-work form which contained relevant information about her condition before taking the decision to dismiss but, even if he did, he disregarded it.
128. The Respondent further asserts that it was impossible to carry on employing the Claimant because she could only work from home. We are satisfied that she had successfully worked from home in the past without complaint, yet the Respondent removed that adjustment and refused to re-instate it. It then took the decision to dismiss her without consultation or understanding the medical position.
129. Given that we are satisfied that the Claimant could undertake her duties, albeit from home, the Respondent has not established that capability was the reason or principal reason, or indeed part of the reason, for dismissal.

*The reason for dismissal*

130. We conclude that the Respondent took the decision to dismiss the Claimant because she had requested to work from home by way of an adjustment to accommodate her disability (and submitted a sick note confirming the same) which it did not want to accommodate. It refused to re-instate the previously agreed adjustment, despite it working to both parties' satisfaction, and dismissed her instead.
131. Accordingly, we are satisfied that the Respondent has not established a potentially fair reason for dismissing the Claimant and her claim succeeds.
132. Even if the Respondent had established a potentially fair reason for dismissal, it took no attempts to investigate/consult with the Claimant and failed to follow any procedure whatsoever. Accordingly, the decision to dismiss would have fallen outside the band of reasonable responses.

*The ACAS Code of Practice*

133. The Respondent's failure to carry out any procedure was a breach of the ACAS Code of Practice, namely carrying out necessary investigations, informing the Claimant about the

problem, giving her the opportunity to put her case at a hearing with the right to be accompanied and allowing an appeal.

### **Discrimination arising**

#### Knowledge

134. We are satisfied that the Respondent knew of the Claimant's disability or could reasonably have been expected to know about it. The Claimant informed Mr Vaddaram about her endometriosis at the outset of her employment and he allowed her time off/working from home to accommodate it. Thereafter, the Claimant referred to her endometriosis within the Whatsapp group and was explicit about the effects on her more latterly in her e-mails dated 4 August 2021, 10 August 2021, 23 September 2021 and 4 October 2021.

#### Unfavourable treatment

135. The unfavourable treatment relied on by the Claimant is her dismissal and the Respondent's refusal to reconsider that decision on 8 November 2021. The EHRC Code provides that being treated '*unfavourably*' means that the disabled person must have been put to a disadvantage. We are satisfied that dismissal and failing to reconsider the decision to dismiss put the Claimant at a disadvantage and amounts to unfavourable treatment.

#### The 'somethings'

136. The Claimant submits that the '*somethings*' arising in consequence of her disability were that: i.) on 23 September she requested an adjustment to her duties because of her disability (which the Respondent refused); ii.) on 27 September 2021 she submitted a sick note because of her disability and the Respondent's refusal of the adjustment; and iii.) on 21 October 2021 she submitted a sick note confirming that she required an adjustment of working from home whilst awaiting surgery because of her disability.
137. We are satisfied that all three arose in consequence of her endometriosis which caused her significant pain. Absent that pain, she would not have required or requested an adjustment to her duties. The Respondent's refusal of the request to work from home meant she had no choice but to get a sick note so she could secure payment of SSP and then, on learning of her rights, she submitted a further sick note saying that she was to work if she could do so on reduced duties and from home.

#### Was the unfavourable treatment because of the 'somethings'?

138. As we have found above, the Respondent dismissed the Claimant because she requested an adjustment to work from home, supported by the second sick note, which it did not want to accommodate. As such, we are satisfied that she was dismissed because of something arising in consequence of her disability.
139. For completeness, whilst we accept that the submission of the sick notes arose in consequence of the Claimant's disability, it was the request for the adjustment itself and the Respondent's refusal of the same which was the cause of her dismissal.

#### Was dismissing the Claimant a proportionate means of achieving a legitimate aim?



140. Mr Vaddaram did not articulate a defined legitimate aim but argued that the Claimant's absence from the office was unfair on other members of staff because they had to pick up her duties. Indeed, the Respondent called Mr Yarlaghadd, Negotiator, to give evidence in which he said:

*“During the Claimant’s absence and while she was working from home I was also tasked with managing the physical property viewings, or in some cases having to cancel appointments when they clashed with my existing schedule. Regrettably, this led to the loss of a significant number of clients for our business. Given that the Claimant was frequently absent from the office, I found myself tasked with managing all reception duties in addition to my own responsibilities. This proved challenging to handle, resulting in prolonged waiting times for customers. Additionally, the reception desk was frequently unattended when I had to attend property viewings, further aggravating customer wait times and leading to tenants experience – related concerns. It had reached a point where I found it challenging to handle the workload. Unless the Company offered additional assistance, I was considering resigning from my position during October 2021”.*

141. However, we prefer the Claimant's evidence that reception duties were not a core element of her role. On the contrary, we saw evidence that Mr Somu reprimanded her for dealing with such duties. In any event, it was a task easily undertaken by others after she left at 3pm or was absent from the office. The Claimant had not undertaken viewings in the last six months of her employment, even when she was in the office, so this was not a task requiring cover anyway.
142. If her absence was becoming problematic as alleged by Mr Yarlaghadd, we were provided with no evidence that the Respondent took steps to attempt to relieve his concerns about workload and that such steps were not practicable or disproportionate.
143. We have also had regard to paragraph 5.21 of the Code which provides: *“if an employer has failed to make a reasonable adjustment which would have prevented or minimised the unfavourable treatment, it will be very difficult for them to show that the treatment was objectively justified’*. The Respondent refused to re-instate the adjustment of working from home. If it had re-instated it, she would not have been dismissed.
144. As such, to the extent that the Respondent argued that it had a legitimate aim of alleviating the impact of the Claimant's absence on other staff, dismissing the Claimant was not a proportionate means of achieving it.
145. Accordingly, the Claimant's claim under section 15 EQA succeeds.

### **Failure to Make Reasonable Adjustments**

#### The PCPs

146. The Claimant relies on the PCPs of the requirement for an employee to undertake full contractual duties in the office instead of working from home and the practice of not offering amended positions/duties on a temporary or a permanent basis to disabled employees.
147. We are satisfied that the Respondent had the PCP of requiring its employees to undertake

full contractual duties in the office instead of working from home. Mr Vaddaram gave evidence that the Claimant was banned from working from home, or working at all, unless she could undertake full contractual duties in the office. The Respondent's position is also reflected in Mr Vaddaram's letter dated 5 October 2021 in which he said:

*"Working from home is not considered as an adjustment to fulfil your duties under your employment as your contract of employment clearly stipulates that your place of work is at 65 High Street, Lincoln, LN5 8AD. Whether you agree or disagree, "working from home" is not a part of your contract of employment.....We disagree with your statement that we have failed to accommodate your condition as we have never received a request to make any adjustments at your workplace which is 65 High Street, Lincoln, LN5 8AD. Request of working from home is considered as an amendment to your employment contract and we have given clarity that we will not accept your requested amendment. As an employer, we only make necessary adjustments if any employee requires such adjustments to perform their duties at workplace only it is not our remit to follow the employee outside their workplace to change any necessary adjustments.*

148. We are also satisfied that the Respondent had a practice of not offering amended positions/duties on a temporary or permanent basis to disabled employees. Mr Vaddaram gave evidence that if anyone had a "minor illness" then they could come into the office to work but if they had a "serious illness" then they should not work at all. This accorded with Ms Syktor's e-mail dated 24 September 2021 which said:

*"As a responsible employer we cannot allow people to work if they are not well whether its from home or in the office. In order to work you need to feel well mentally and physically and to be fit to fulfil all your duties and responsibilities that come with your role. If you are not well you should not be working. You said yourself that you are not well and in pain which brings the question how can you work from home and fulfil all your duties? On the other hand if you feel well enough to work from home I don't see any reason why you cannot come to the office".*

149. Mr Vaddaram was asked in evidence whether the only choice available to an employee who was not able to come into the office, albeit could work from home, was to take sick leave to which he replied "Yes". He also commented: *"There is a limit on helping – permanent working from home is not possible"*.

Substantial disadvantage

150. We asked ourselves whether the two PCPs put the Claimant at a substantial disadvantage compared to persons who are not disabled.
151. 'Substantial' means more than minor or trivial. The Claimant says that she was put to six substantial disadvantages all of which arise from the Respondent's position that she could only undertake her duties from the office and its refusal to allow her to work from home, namely:

a) *She was unable to undertake her duties as before her condition deteriorated.*

- b) *She was unable to work from home.*
- c) *Instead, she had no choice but to commence a period of sick leave, which meant she suffered financially.*
- d) *Upon being able to return to work she was not provided with any work until she completed the return-to-work assessment form, which meant she suffered financially.*
- e) *She was not paid any wages until she completed the return-to-work assessment form.*
- f) *Eventually she was dismissed.*

152. We have found as fact that the Claimant was able to undertake her duties successfully from home. The Respondent insisted that she either came into the office or go off sick thereby preventing her from working. In consequence of this decision, she had no choice but to obtain a sick note which meant she was only in receipt of SSP rather than her normal wage. The Respondent refused to allow her to return to work until she had completed the return-to-work assessment during which time she was prevented from working and, therefore, not paid her normal wages. As soon as the Claimant submitted the return-to-work form, she was dismissed. We are satisfied that the matters complained of were more than minor or trivial and disadvantaged the Claimant.

153. We are satisfied that both PCPs, either singularly or combined, resulted in the substantial disadvantages to the Claimant compared to persons who are not disabled. Persons who were not disabled would have been able to attend the office to carry out their duties and would have no need to have amended positions/duties and would not have been, therefore, so disadvantaged.

#### Knowledge

154. As above, we are satisfied that the Respondent knew, or could reasonably have been expected to know, that the Claimant was a disabled person.

155. Furthermore, we are satisfied that it knew, or could reasonably have been expected to know, that the PCPs were likely to put to the Claimant to the substantial disadvantages. It was inevitable that the Claimant would be disadvantaged if she was prevented from working, despite wanting to, and would suffer financially. Further, the Claimant was explicit in her e-mail dated 5 October 2021 that she was put to the disadvantage of commencing a period of sick leave: “As you have informed me, you **DO NOT** agree for this adjustment to be made, that’s why I didn’t have any choice than to go on sick leave”.

156. The disadvantage continued by the Respondent’s refusal to permit her to work until she returned the return-to-work assessment, despite having a sick note confirming that she could work from home, depriving her of wages. Matters were taken out of the Claimant’s hands when the Respondent dismissed her which is indisputably a disadvantage in the circumstances.

#### The duty to make reasonable adjustments

157. Given that both PCPs placed the Claimant at substantial disadvantages, the duty to make reasonable adjustments arose. We are satisfied on the facts that the Respondent had no intention of making the adjustment of working from home for the Claimant. The Respondent had permitted the adjustment previously but unilaterally withdrew it and made it clear in correspondence to her that it would not be re-instated.
158. Mr Vaddarmam gave evidence that there was no cooperation on the Claimant's part because she had not returned the return-to-work form. He accused her of wanting '*to start a battle*' and said it was clear she wanted permanent working from home. He concluded that anyone could obtain a sick note, that the Claimant was e-mailing on a '*tit for tat*' basis and was not invested in the job. We reject that assertion. The Claimant was genuinely struggling with her disability and simply asked the Respondent to adhere to its previous agreement to allow her to work from home.
159. We consider that the adjustment was reasonable given that the Claimant had worked from home in the past without complaint. The Respondent provided no evidence to suggest that it was no longer a feasible arrangement, particularly given it had not taken steps to attempt to ameliorate the problems alleged by Mr Yarlaghadd nor had it undertaken any form of consultation with the Claimant.
160. Accordingly, the Claimant's claim that the Respondent failed to make reasonable adjustments succeeds.

### **Remedy**

#### **Unfair Dismissal**

161. We accept the Claimant's evidence that she has been unable to find new employment to date because she is restricted to working from home and bed bound. She also explained how after her dismissal she suffered mentally and underwent treatment for anxiety, low mood and stress which we address later.
162. Post-dismissal, the Claimant was issued with two sick notes certifying her as unfit for work for the period 22 November 2022 – 18 May 2022 and has restricted her losses to this period. We are satisfied that if the Respondent had not dismissed her, she would have been able to successfully work from home during this time. We are also satisfied that she would not have been able to obtain new employment whilst certified as unfit to work and it is, therefore, just and equitable to compensate her for the period claimed.
163. Her gross weekly earnings at the Respondent, less amounts received for SSP, were £249.72.
164. Accordingly, she is awarded the following amounts:

Basic Award:	£499.44
Loss of Statutory Rights:	£500.00
Compensatory Award:	£6,353.30

Compensation for discrimination

Injury to feelings

165. The Claimant gave evidence about the impact of the Respondent's treatment on her. When it wrote to her on 24 September 2019, we accept her evidence that she found its stance frustrating and upsetting and felt her condition was being mocked and ridiculed. This was more so when the Respondent took no steps whatsoever to understand her disability or find out more about it. Furthermore, she was disappointed that Mr Vaddaram himself had not responded to her email.
166. The Respondent wrote to the Claimant on 5 October 2022 stating that it would not consider adjustments and suggested it would attempt to recoup SSP payments. We accept her evidence that she found the correspondence upsetting, threatening and humiliating, particularly the implication that she was faking her illness.
167. We also accept the Claimant's evidence that she suffered mentally because of her dismissal and was subsequently treated for anxiety and depression. She provided medical evidence to confirm that she attended therapy sessions (pages 769 – 761) and was diagnosed with moderate depression (page 875), moderate anxiety disorder (page 875), stress and anxiety partially caused by conflict with her ex-employer and generalised anxiety disorder (pages 777 & 868).
168. The Claimant also had worries about finding another employer who would understand her condition (page 781) and she felt low, anxious and depressed (page 782). The Claimant also suffered from physical symptoms such as heart rate increases, feeling shaky and sweating (page 782).
169. The Claimant gave evidence that she felt cheated and used by the Respondent and was very sad that she was "*discarded like a piece of rubbish*". Her plan was to work from home until her surgery and then return to the office as soon as possible. We observed within the therapy reports that whilst the Claimant was worried about her illness and other matters, she was clearly affected by the Respondent's treatment of her.
170. The Claimant claims £15,000 in respect of injury to feelings falling within the middle band of the *Vento* Guidelines which was £9,100 to £27,400 at the material time.
171. Whilst the discrimination occurred over a short period of time, we accept the Claimant's account of the harm caused by the discrimination as evidenced in her medical records and are satisfied that such harm merits an award of **£15,000**.

Losses flowing from the discrimination

172. The Claimant also claims the amount of **£1,042.96** being the difference between SSP and normal wages for the period 23 September 2021 and 5 November 2021. We are satisfied that it is appropriate to award this amount given the loss is attributable Respondent's refusal to make a reasonable adjustment.

ACAS uplift

- 173. The Claimant also applies for an uplift for the Respondent's failure to comply with the ACAS Code of Practice on Disciplinary and Grievance Procedures.
- 174. We consider it just and equitable to order the full 25% uplift. The Respondent failed to undertake any dismissal procedure without explanation which was wholly unreasonable. Furthermore, it dismissed her for a discriminatory reason and fabricated documents to substantiate its decision to dismiss her and argue the dismissal was fair.
- 175. It also failed to follow a procedure when the Claimant submitted her grievance - it simply responded in writing and did not invite her to a meeting at which she had the right to be accompanied nor was she offered a right of appeal. Again, its actions were wholly unreasonable.
- 176. We do not consider such uplift to be disproportionate in the circumstances.
- 177. Accordingly, we order an uplift of **£1,588.32** on the compensatory element for unfair dismissal and financial loss flowing from the discrimination and **£3,750** in respect of injury to feelings.

Interest

- 178. For the purposes of the injury to feelings award, interest runs from 23 September 2021 when the Respondent refused to permit the Claimant to work from home. The calculation date is 14 February 2024.
- 179. The calculation is:  $874 \times 0.08 \times 1/365 \times £15,000 = \mathbf{£2,873.42}$
- 180. For the purposes of for the losses flowing from discrimination, the mid-point is 4 December 2022. The calculation date is 14 February 2024.
- 181. The calculation is:  $437 \times 0.08 \times 1/365 \times £1,042.96 = \mathbf{£99.90}$

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Employment Judge Victoria Butler

Date: 9 May 2024

JUDGMENT SENT TO THE PARTIES ON

....10 May 2024.....

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FOR THE TRIBUNAL OFFICE

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