



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

**Ms Julie Jones**

**v**

**Secretary of State for Justice**

**Heard at:** Watford Tribunal

**On:** 19,20,21,22 August 2024  
(in Chambers on 6 September and  
18 October 2024)

**Before:** Employment Judge Cowen  
Mr D Bean  
Mr D Sutton

## **Appearances**

**For the Claimant:** Ms Franklin (counsel)  
**For the Respondent:** Ms Jennings (counsel)

## **RESERVED JUDGMENT**

1. The Tribunal has no jurisdiction to hear a claim of Indirect Disability Discrimination and this claim is dismissed.
2. All the claims of indirect sex discrimination succeed.
3. The following claims of victimisation succeed;
  - 3.1. Failure and/or refusal to consult with the Claimant about shift patterns, and
  - 3.2. Imposing a shift pattern on 3 February 2023
4. All other claims are dismissed
5. A remedy hearing for 2 days, will be listed and notified to you separately.

## REASONS

1. The Tribunal would like to apologise to both parties for the delay in providing this reserved judgment to the parties. This delay has been caused by the time taken to deliberate on the case and the workload of the Tribunal.
2. The Tribunal were provided with an agreed bundle (and the Claimant's own bundle) and witness statements on behalf of the Claimant, and by Matthew Bullard, Nicholas Walmsley, Chris Stearn and Stephen Taylor on behalf of the Respondent.
3. Counsel on behalf of both parties provided both an opening note and closing written submissions. A chronology was provided by the Claimant's counsel. The case was heard over 4 days, with 2 deliberation days required to reach a decision on all the claims of indirect sex and disability discrimination.
4. A list of issues was agreed by the parties at the Case Managed Hearing on 18 October 2023, albeit that one of the legitimate aims set out by the Respondent (3.6.1) was withdrawn at the start of the final hearing. The Respondent also conceded that protected acts were carried out in relation to the s.27 EQA claim and that the Claimant's father was a disabled person for the purposes of s.6 EQA.
5. The Tribunal heard evidence from the Claimant and all of the Respondent's witnesses over a period of 4 days, before hearing closing submissions from both counsel.

### Facts

6. Having considered all the evidence, we find the following facts on a balance of probabilities.
7. The parties will note that not all the matters that they told us about are recorded in our findings of fact. That is because we have limited them to points that are relevant to the legal issues
8. The Claimant started working as a prison officer in August 1995. She became a dog handler around 20 years ago and was posted to work at HMP Pentonville. The Claimant had command of 2 dogs which were used for the searching of people; prisoners, staff and visitors for substances and items which are not allowed within the prison (e.g. drugs, mobile phones etc). The dogs were cared for by the Claimant at her home when they were not working. The Respondent provided the Claimant with a van to transport them, kennels to house them in her garden and all their food and vet bills were paid for by the Respondent. However, the Claimant had the control and

responsibility of the dogs at all times.

9. As part of the requirements of the job, the dogs have to undergo a certain number of training days each year and are subject to licensing.
10. Whilst the Claimant was posted to HMP Pentonville her line management responsibility lay with PSP South, who control the dog handlers in the area. When working in HMP Pentonville, the Claimant took her direction from the Head of Security.
11. The rota for a full time dog handler was to work 1 in 2 weekends, on both Saturday and Sunday.
12. The Respondent's witnesses suggested that there was a requirement to have a 28 day notice period for a change in shift, however, this was not supported by any contractual, or other documentary evidence.
13. The Claimant's father was an elderly man who suffered from Chronic Obstructive Pulmonary Disease, arthritis and had a stroke in 2011. He also contracted Covid in 2020 and this had a deleterious effect on his ability to look after himself. The Claimant and her brother therefore had to step in to assist him with both personal and domestic tasks.
14. The Claimant first considered adjusting her working pattern in May 2021. She discussed with Carol Gibbons, a Custodial Manager and the Claimant's line manager, whether she would be able to work compressed hours. This was not feasible due to the restrictions on working time with dogs.
15. On 9 June 2021 the Claimant applied for 'partial retirement', by which she wished to reduce her working hours to 22 hours per week. The Claimant wanted this arrangement to commence in November 2021. The Claimant was the first person in PSP South to make such an application.
16. On 29 June 2021 the Claimant contacted Carol Ann Gibbons, to whom she had made the application, indicating that she was willing to move her days around to assist them. The Claimant was asked to provide a proposed shift pattern and advised that an answer would be provided by 27 July 2021.
17. The Claimant did not receive a reply, but was asked to resend her proposal to the Governor, which she did on 12 August 2021.
18. On 25 September 2021 the Claimant again asked for an outcome but did not receive one. After her return from leave, the Claimant pressed again for an outcome to her request.
19. On 5 October 2021 the Claimant was told that it would not be possible to reduce her hours, as the cost to the business of training and keeping the dogs would be too high relative to the hours worked. The Workforce Planning Committee also said it would not be possible to share the use of the dogs with anyone else.

20. On 7 October 2021 the Claimant asked to see the minutes of the Workforce Planning Committee meeting at which her request was discussed, but these were not provided. On 19 October 2021 Carol Ann Gibbons told the Claimant that these would not be provided due to the personal nature of the content.
21. The Claimant contacted Stephen Taylor, Deputy Head of Function, DST to ask for an explanation of this decision. He replied to her on 22 October 2021, saying that the application was turned down due to cost, the fact that the dogs cannot be redeployed, the impact on their effectiveness and the fact that the training and licensing requirements would remain the same. Stephen Taylor also said that it could not be allowed as it would have to be given to all dog handlers and that would not be possible.
22. In response to this the Claimant raised a grievance on 31 December 2021. The grievance referred to discrimination on grounds of sex, disability and age, naming Penny Bartlett, Carol Ann Gibbon, Gary Wright and Stephen Taylor amongst others.
23. On 24 January 2022, the Claimant attended a grievance hearing with Penny Bartlett, the Capability Lead. The Claimant told Ms Bartlett that her reasons for wanting to reduce to part time hours were due to her own health and due to her need to support her father who had a number of illnesses and had suffered a stroke.
24. The outcome of the grievance on 11 February 2022, was that the Claimant should be allowed to reduce her hours, but that she could not continue to be a dog handler on reduced hours. The discrimination complaints were dismissed. The complaints in relation to poor communication and support were upheld.
25. The Claimant immediately appealed this decision on 22 February and received an outcome on 21 June 22. The appeal was considered by Sarah Coccia, Executive Director South, who upheld the appeal and allowed the Claimant to reduce her hours (partial retirement), but did not address the issue of whether the previous treatment had amounted to discrimination.
26. This outcome was treated with some disappointment and irritation by other managers in the Workforce Planning Committee. They were the committee with whom the Claimant had to agree her work pattern and therefore, although they were told to agree to reduced hours for the Claimant, they were not willing to make this easy for her. In particular Stephen Taylor and Matthew Bullard. Chris Stearn, who was not a member of the Committee but who attended on behalf of management, in relation to the Claimant's shift pattern was also disappointed and angered by the fact that the Claimant was being allowed to work part time hours and remain a dog handler.
27. On 30 August 2022 the Claimant sent a proposed work pattern to Carol Ann Gibbons. This pattern included working 1 in 4 weekends. The Claimant did

this as she assumed that by working part time she would be treated as other (non dog handler) part time prison officers were. She asked to start this pattern on 1 November 2022.

28. The Claimant shared caring responsibility with her brother, who worked as a fire officer and therefore needed to have their shifts not coincide. The Claimant's brother worked more weekends, as he was also a reserve fire officer.
29. Chris Stearn told the Claimant on 7 September 2022 that she would have to continue to work two weekends in four.
30. The Claimant received no response from Carol Ann Gibbons, so on 23 October 2022 she sent the same pattern to Chris Stearn. He responded to say he would contact HMP Pentonville to try to put this in place in time (ie by 1 November 2022). The Tribunal were satisfied that some handover took place between Carol Ann Gibbon and Chris Stearn at which Chris Stearn became aware that the Claimant had previously asked to work 1 weekend in 4 due to her caring commitments to her father and the need to co-ordinate with her brother.
31. On 28 October 2022 Chris Stearn told the Claimant that he was waiting for HMP Pentonville to comment on her proposed shift and that ultimately it is up to PSP South to make the decision on her shift. This was later changed to it needing to be approved by the Workforce Planning Committee.
32. On 31 October 2022, the Claimant asked Chris Stearn who at HMP Pentonville needed to approve her shifts. She also referred to the fact that Sarah Cocchia said that any shortfall in hours would be covered by 'PP' (overtime payment) to others.
33. From 1 November 2022 the Claimant reduced her hours and became partially retired. Chris Stearn became her line manager.
34. On 2 November 2022 Chris Stearn spoke with the Claimant. He said that he would allow her to work her requested shifts in November, but that her shift pattern must be approved by the Workforce Planning Committee. He also told her that the process she must undertake is to make an application for a work life balance application to be considered by the workforce planning committee and that until her pattern is approved, she must continue to work 1 in 2 weekends. The Claimant objected to this.
35. Chris Stearn told the Claimant that if the dog handlers could not meet the needs of HMP Pentonville then they may review their requirement for handler numbers. He did not say that the Claimant might have to reapply for her own job, although the Claimant may have considered this to be a consequence of what he said.

36. On 7 November 2022 Chris Stearn emailed the Claimant to confirm what he had said and told her that until a pattern was agreed by the Workforce Planning Committee, she must continue to work 1 in 2 weekends.
37. Chris Stearn had emailed Nick Walmsley, Head of Security and Intelligence at HMP Pentonville on 4 November 2022 to ask whether he had any requirement for shift pattern in respect of dog cover. The email told Nick Walmsley that "I'm in the process of formulating a shift pattern for Miss Jones to work, however, she has submitted to me an 8 weeks shift pattern, that comprises of her working 1 in 4 weekends and alternative days during the week". Chris Stearn therefore highlighted to Nick Walmsley what he saw as a problem, in the same email.
38. Nick Walmsley replied the same day to say that the "business need at Pentonville would be that DH Julie Jones works one weekend in two to ensure adequate dog cover". The two men had clearly discussed this matter beyond the content of the email, in order to Mr Walmsley to give such a detailed and speedy reply.
39. On 9 November 2022 when the Claimant received notice that she would have to continue to work 1 in 2 weekends, the Claimant went off work sick. On 10 November she wrote to Nick Walmsley to explain that it had taken a year and an appeal process to obtain approval to partially retire and that she had asked to work 1 in 4 weekends, but that Chris Stearn had told her that this would need to be approved by PSP South and that she might need to reapply for her job. Mr Walmsley's reply told the Claimant that she would need to take this up with Chris Stearn. He did nothing to allay her fears.
40. The Claimant was rostered to work every other weekend. There being five dog handlers at HMP Pentonville, some weekends there were three dog handlers working and other weekends there were two. The Claimant was allocated to the weekends when two handlers in total were working. The Respondent did not allocate her to the weekend when three dog handlers were rostered to work, thus enabling the Claimant to not work the weekend and remain suitably covered with dog handlers.
41. On 19 November 2022 the Claimant emailed Sara Cocchia to explain that Chris Stearn was imposing a shift pattern on her and that she had been given more unsocial ('red') hours than she thought was correct. Ms Cocchia did not reply to the email.
42. Due to the Claimant's continued absence due to stress, an informal attendance review meeting was held on 15 December 2022, at which the Claimant was asked what could be done to support her return to work. She said she could return to work if her work pattern was approved. Chris Stearn told the Claimant he could not agree to that, and it had to be agreed by the Workforce Planning Committee. He did not say that he would support her application.

43. The Claimant emailed Chris Stearn her application once again on 16 December 2022. This was passed to Stephen Taylor, who asked to meet the Claimant in person.
44. The Claimant heard nothing from the Workforce Planning Committee after their meeting on 16 December 2022. On 25 December she wrote to Mr Taylor asking why she needed to apply for work life balance and why the Workforce Planning Committee had to approve her shift pattern.
45. On 27 December 2022 Chris Stearn wrote to HMP Pentonville People Services to ask for advice. He indicated that having been granted partial retirement the Claimant was now applying for a work life balance application to work set days and shifts. He said that he felt this was a separate issue which was not contained in the first application – this was misleading to the Respondent’s HR advisers, as the two issues were inextricably linked.
46. Similarly on 30 December Mr Taylor wrote to Mr Walmsley and to Ian Blakeman to ask for their operational opinion and views on the Claimant working 1 in 4 weekends. He highlighted to them that this pattern would mean that during periods of leave, there may be no dog handler available at weekends. Unsurprisingly, based on that view, Mr Blakemore’s reply on 2 January 2023, was that this was not acceptable and that he could not agree a work life balance application which allowed this. Likewise Mr Walmsley’s reply on 6 January said that the proposed pattern leaves gaps and therefore does not meet the business need. Mr Taylor had written a leading email to the two managers, without trying to find a solution to fit the needs of all parties.
47. On 21 January 2023 the Claimant chased Mr Stearn for a response from the Workforce Planning Committee. Mr Stearn told her on 23 January that he had not heard from them.
48. On 27 January 2023 an Occupational Health report was written about the Claimant which said that the change in the Claimant’s shifts, together with her caring responsibilities were the reasons for her anxiety and depression.
49. On 3 February 2023 Christ Stearn told the Claimant that her work life balance application had been partially successful, in that it was agreed by the Workforce Planning Committee that part time employees should not have a higher percentage of red hours than full time employees. The decision went on to say that the shift pattern proposed by the line manager (i.e, Chris Stearn) ensured that the Claimant was treated fairly. This shift pattern had not been shown to the Claimant. Chris Stearn sent this shift pattern to the Claimant saying that it met all the needs of both parties. This was not correct. The shift pattern still included 1 in 2 weekends, but for shorter hours. The Claimant replied to say that she would not be accepting this shift pattern as it did not represent recognised shifts within the dog section.

50. On 6 February 2023, a further Occupational Health report said that the Claimant's mental health symptoms were stress related due to work factors.
51. On 28 December 2022 the Claimant applied for sick leave excusal on the basis that her sickness absence was due to the lengthy delays and barriers she had faced in being allowed to work part time. Unfortunately, the Claimant used the wrong form for this application. The form had been supplied to her by Chris Stearn. He had told the Claimant her application would be considered by Matthew Bullard on 13 February 2023.
52. On 23 January 2023 at a dog handlers meeting, it was indicated that HMP Pentonville would be allocated a further dog handler, taking the total to six.
53. On 7 March 2023 the Claimant called Mr Bullard to ask for the outcome, he told her that he had not seen her application, but this was not true. It was not until 7 June 2023 that Mr Price acknowledged that Mr Bullard had been misleading to the Claimant.
54. The Claimant received no outcome and raised a grievance on 17 March 2023 about both Matthew Bullard's delay and Chris Stearn having caused the delay. On the same day Mr Bullard told Mr Stearn and Mr Taylor that he couldn't find the application. At this time Mr Bullard was working closely with Ms Cocchia and would have known about Ms Cocchia's decision to allow the Claimant's partial retirement application.
55. The Claimant received no outcome to her sick leave excusal application until 27 July 2023, when Matthew Bullard dismissed it, saying there was no evidence that her absence was work related. Ultimately, the sick leave excusal was granted by the Respondent after an appeal meeting on 7 September 2023.
56. On 16 March 2023, the Claimant sent a further suggested work pattern to Chris Stearn, Matt Bullard and Stephen Taylor. She asked for this to be submitted to the Workforce Planning Committee.
57. By 17 March 2023, Stephen Taylor had lost patience with the Claimant and wrote to Matt Bullard and Chris Stearn to say "*I think this is totally out of order from JJ..... I believe know (Sic), we should stand firm, inform her of the forthcoming FARM date and loot to do the right thing by the business and give her two options, (A) work the shift patter that's been agreed at WFP, or (B) we look to assist her with a more suitable place of work to fit her needs, as this is costing the tax payer thousands of points in lost wages (been off sick since November 2022!) and the amount of wasted manager hours and equally as important HMP Pentonville are down a dog handler every single week.*" Matt Bullard replied to this email with "*So I think we need to play a straight bat (as always) and not be influenced by any emotion you have on this request (or – even if youre not influenced by emotion – not to communicate in any way that risks being seen to be influenced by any emotions, remembering that these*



*emails are all disclosable under DPA should JJ submit a SAR)*".

58. Matt Bullard went on to say “ *In those circs, if she comes at us with an alternative shift pattern (as she has done below) which she believes is another way of achieving those three things, we should consider whether it is, and whether it is better than the shift pattern we have come up with. If her solution is worse than ours then we say no and explain why, but equally if she has landed on a solution that is better than the one we came up with then we say thank you very much and implement it. And we do that objectively, without emotion, an regardless of whether we think she’s behaving in a way that is all about her*”.
59. Matt Bullard’s position remained that he could not ask other dog handlers to cover the Claimant’s shift, or ask them to alter their shifts to assist the Claimant to have the time off she required. This was despite Sarah Cocchia’s decision that any gaps could be filled by PP (ie overtime) being offered to others.
60. On 21 March 2023 Chris Stearn asked that a compensation package calculation being put together for the Claimant who had a FARM (formal absence management) meeting approaching. He also emailed Matt Bullard and Stephen Taylor indicating two possible shift patterns, both of which required the Claimant to work 1 in 2 weekends.
61. On 3 April 2023, Chris Stearn asked the Claimant to submit another work life balance application to be taken to the Workforce Planning Committee in April.
62. Once again on 17 April 2023, the Claimant’s application was declined for not meeting the business need. They relied on the fact that Mr Blakemore and Mr Walmsley had said that weekends were a high risk point and that dog handling cover was required. The consideration of the Workforce Planning Committee had not taken into account any alternative means of ensuring this cover. This decision required the maintenance of the 1 in 2 weekend work which the Claimant opposed.
63. The Claimant’s absence was scheduled to be considered at a FARM. However on 18 April 2023 Gary Barnes the HR Case Manager indicated that the Claimant was returning to work so no FARM should be carried out. He also indicated that as there was an unresolved grievance that should be dealt with before the FARM, in case the grievance impacted on it.
64. Between April 2023 and December 2023, the Claimant was made to work the shift pattern imposed by Chris Stearn.
65. The issue of the shift pattern was ultimately resolved in September 2023 when a meeting was held with the Claimant’s representative, at which it was agreed that a shift pattern would be drafted and agreed. An agreed shift

pattern was commenced in mid- December 2023. This resulted in the Claimant working only Saturdays and one in eight Sundays.

## The Law

### Indirect Discrimination

66. S.19(1) EQA – “ (1)A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.”

67. The section refers to the protected characteristics of ‘B’ – that is, that the Claimant shares the relevant protected characteristic. There is no requirement in s.19 that the Respondent must have knowledge of the relevant protected characteristic.

68. Directive 200/43 at Article 1 – “*The Purpose of this Directive is to lay down a framework for combating discrimination on the grounds of racial or ethnic origin, with a view to putting into effect in the member states the principle of equal treatment*”.

69. The purpose of the Directive was referred to in *Chez Razpredelenie Bulgaria AD v Komisia za zashtita ot diskriminatsia C-83/14*, [2015] IRLR 746, as “ *the principle is intended to benefit also person who, although not themselves a member of the race or ethnic group concerned, nevertheless suffer less favourable treatment or particular disadvantage on one of those grounds*”.

70. Two separate classes of associative indirect discrimination have arisen. Those which are ‘friends and family’ cases where the person at the disadvantage is someone who associates with a person who has the protected characteristic. The other class is referred to as the ‘same disadvantage’ where there is no personal link and the person does not have the protected characteristic but suffers the same disadvantage. *Chez* was a ‘same disadvantage’ case.

71. The case of *Rollett v British Airways*, case 332541 in the Tribunal found that a ‘same disadvantage’ case could proceed under s.19 EQA.

72. The present case fits more firmly in the ‘family and friends’ category, where the situation goes beyond that considered in *Chez*.

73. Directive 2000/78/EC Article 2.2 defines indirect discrimination as occurring ‘*when an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage*’. It does not say anything to include those people who associate with those with a protected

characteristic.

74. The case of *Follows v Nationwide Building Society*, 2201937/2018. A Tribunal decided that s.19 would provide protection for a 'friends and family' case. The Tribunal there said it was following *Chez*, but it had ignored the fact that *Chez* itself was a case on 'same disadvantage'.
75. In *Rollett v British Airways*, the Tribunal found that the *Chez* point did not apply to 'friends and family' cases and therefore such cases would not be covered by s.19 EQA. In the EAT, it was concluded that the decision of the Tribunal on 'same disadvantage' cases, ie. Those were the Claimant did not share the protected characteristic could progress under s.19. The EAT was not asked to consider those cases which are 'friends and family' type associative discrimination.

### Victimisation

76. Section 27 of the EQA provides;  
*" (1) A person (A) victimises another person (B) if A subjects B to a detriment because – a) B does a protected act, or b) A believes that B has done, or may do, a protected act. (2) Each of the following is a protected act: a) Bringing proceedings under this Act; b) Giving evidence or information in connection with proceedings under this Act; c) Doing any other thing for the purposes of or in connection with this Act; and d) Making an allegation (whether or not express) that A or another person has contravened this Act. "*
77. The detriment will not be due to a protected act if the person who put the individual to the detriment did not know about the protected act (*Essex County Council v Jarrett* EAT 0045/15, and *Deer v Walford and anor* EAT 0283/10 where awareness of "some sort of legal case" was insufficient to establish knowledge).
78. For victimisation to occur, the detriment must be because of the protected act. It does not need to be solely because of the protected act to amount to victimisation, but it does need to have a significant influence (*Nagarajan v London Regional Transport* 1999 ICR 877, HL). This means an influence which is "more than trivial" (*Igen Ltd v Wong*, above.).
79. The motivation does not need to be conscious (*Nagarajan*, above). It is possible for a dismissal or detriment to be in response to a protected act but nevertheless not amount to victimisation if the reason for the treatment is not the complaint itself but a separable feature of it such as the way in which the complaint was made (*Martin v Devonshires Solicitors* [2011] ICR 352).
80. The focus should be on the motivation of the person who submitted the individual to the detriment. If a third party provided "tainted information" to influence the decision maker, that would need to be raised as a separate allegation, otherwise an innocent party could find themselves liable for an act

for which they were personally innocent (Reynolds v CLFIS (UK) Ltd and ors 2015 ICR 1010, CA).

## **Decision**

### **Time limits**

81. The parties were agreed that as the Early Conciliation occurred between 7 February 2023 and 17 February 2023 and the ET1 was issued on 17 March 2023, the Tribunal should consider that anything which occurred before 8 November 2022 was notionally out of time.
82. It was accepted by the Respondent that the only allegation which would be out of time (and not part of a continuing act) was Chris Stearn threatening that the Claimant would have to reapply for her job or dismissal on 2 November 2022 (issue 4.2.2).
83. The Tribunal concluded that this is all part of the conversation about what hours the Claimant would work as a partially retired dog handler and why her proposed shift pattern could not be agreed. The Tribunal found it was therefore part of a continuing act by Chris Stearn and others to prevent the Claimant from reducing her hours.
84. In any event, the Tribunal concluded that it was just and equitable to allow this allegation to be considered as it was part of the same series of events.

### **Disability**

85. The Tribunal noted that the parties agreed that the Claimant's father was disabled as set out in s.6 EQA 2010 on the basis of his stroke, COPD and arthritis. On that basis the Tribunal accepted that he met the criteria in s.6.EQA. This in turn meant that the Claimant could be considered to have an association with him on a 'friends and family' basis.

### **Indirect Disability Discrimination by Association**

86. The Tribunal considered the issue of jurisdiction, as it is obliged to do in every case.
87. The Tribunal were satisfied that this case was a 'friends and family' case and therefore was distinguishable from the facts as set out in Chez and in Rollett.
88. The facts of this case fit squarely into the 'friends and family' subdivision of indirect discrimination by association, which was referred to in Chez as a separate category.
89. As this case does not follow the facts of those cases, the Tribunal considered whether, on the basis of Chez, friends and family cases can be covered by s.19 Equality Act.

90. The decision in Follows, although more closely aligned with the present case, as it refers to ‘family and friends’ cases, is not likely to be authority for the inclusion of such cases under s.19. This is because the decision in Follows relied on Chez and appeared not to distinguish between the two sub divisions of associative discrimination. This Tribunal concluded that they did not consider that Follows (which the ET is not bound to follow as they were decisions of first instance) should define their position.
91. Further, as Rollett did not decide on the basis of ‘family and friends’ and nor did the EAT address that, the Tribunal did not consider that they were bound by the decision made there, due to the distinction in facts.
92. The Tribunal also noted that s.19A Equality Act which was introduced in January 2024 also did not encompass the friends and family subdivision and therefore did not assist us in the present circumstances.
93. The Tribunal therefore concluded that there is no authority which sets out an extension to s.19 to encompass claims of associative discrimination where the basis is of a friends and family nature.
94. The Tribunal therefore considered s.19 on its common place reading and concluded that it has no jurisdiction to consider the indirect discrimination claims on the protected character of disability, as the Claimant in this case was not a person whom held a protected characteristic themselves.

### **Indirect Sex Discrimination**

95. The Tribunal considered the claim for indirect sex discrimination. The Tribunal accepted that women in the UK remain the majority of carers. Equally the Tribunal accept that care giving is a seven day a week requirement for those involved. The Claimant therefore was part of a group (ie.women) who could be placed at a disadvantage by a PCP which requires them to work specific shifts and weekend shifts.
96. In relation to the PCP in this case, the Tribunal considered that (issue 3.1.2) the requirement for part-time dog handlers to work one in every two weekend shifts was a subsection of (issue 3.1.1) the requirement for dog handlers to work one in every two weekend shifts, regardless of sex.
97. The Tribunal were satisfied that such a practice did occur in the Respondent, as this was shown by the repeated shifts imposed on the Claimant by the Respondent as being 1 in 2 weekends. All of the shifts imposed by Chris Stearn included 1 weekend in 2. There are emails between Chris Stearn and Stephen Taylor which talk of this being the requirement. Their emails to Mr Walmsley and Mr Blackmore indicate that this is the level of required attendance to maintain a dog handler presence at the weekend. The evidence also shows that there were 5 dog handlers at HMP Pentonville with a vacancy for a sixth. There were therefore sufficient dog handlers to

ensure that there were two present each weekend without the Claimant's presence. This occurred both before and after she moved to partial retirement. The Tribunal therefore accepted that these PCPs were applied by the Respondent.

98. The Tribunal also accepted that (issue 3.1.3) requiring dog handlers to work dedicated shifts of its choosing was a policy applied to all staff, as shift rosters were presented to all staff, who were expected to adhere to them. There was no evidence of the 'two way' conversations which Chris Stearn referred to in his evidence. His emails to the Claimant repeatedly indicate that she must work to the shift pattern which he was imposing. The Tribunal were in particular disappointed to see that Chris Stearn imposed shifts on the Claimant, but then insisted that any variation requested by the Claimant required an application for work life balance to be approved by the Workforce Planning Committee. The Tribunal were struck by the inequality shown in this system and did not accept that this was a 'two way conversation'.
99. The Tribunal were satisfied that these PCPs were applied to the Claimant. The various emails and calls between the Claimant and Chris Stearn indicated that he imposed shifts created by the Respondent on the Claimant. There was no evidence of consultation with the Claimant to obtain a compromise agreement between them.
100. The Tribunal considered whether women were placed at a disadvantage by these PCPs and concluded that as these PCPs affected women more than men and as caring responsibilities occur equally at weekends as weekdays, then any restriction on their flexibility of when they can work places them at a disadvantage. The Tribunal was also satisfied that these PCPs were applied to the Claimant and that she was placed at a disadvantage by them, because it meant that she could not co-ordinate with her brother to provide care for her father – her entire reason for requesting partial retirement.
101. The Tribunal accepted the Respondent's legitimate aim of ensuring the adequate prevention and detection of drugs being smuggled into HMP Pentonville. This is an entirely appropriate and legitimate purpose of imposing rotas for staff and ensuring cover is always available.
102. The Tribunal then considered whether it was proportionate to discriminate in this way against the Claimant in order to achieve the Respondent's aim. Particularly, the Tribunal considered whether any other steps could have been taken to achieve the aim, which would not have resulted in the discrimination of the Claimant.
103. The Respondent provided no evidence to support their contention that working 1 in 2 weekends was required to maintain security. The evidence that the Claimant was placed on the rota with one other dog handler, rather than on the opposite side of the rota to be placed with two other dog handlers, indicated to the Tribunal the lack of consideration for the Claimant's detriment in this situation. An easy amendment to the rota could have been made which

would not have affected the provision of dog handlers in the prison, but this was not considered or carried out by Chris Stearn, or Stephen Taylor.

104. The Tribunal noted that a compromise between the Claimant and the Respondent had ultimately been reached and that the Claimant was now working only one weekend in four, as she had suggested on a number of occasions. This proves that it was both feasible and practical to do this, without it causing detriment to the Claimant.
105. The Tribunal concluded that the Respondent had not been able to show their actions to be a proportionate means of achieving their aim and hence this claim succeeded.

### **Victimisation**

106. The Respondent accepted that the Claimant's protected acts were covered by the requirements of s.26 EQA. The Tribunal were satisfied that the Claimant complained of acts of discrimination on grounds of age, disability and sex when;
- 106.1. She complained about discrimination in her grievance dated 31 December 2021,
- 106.2. She complained about discrimination in her grievance meeting on 24 January 2022 to Penny Bartlett
- 106.3. She complained about discrimination in her grievance appeal meeting on 8 June to Sarah Coccia.
107. The Tribunal also accepted that Matthew Bullard was aware of these protected acts at the times they occurred, as he received a copy of the Claimant's grievance.
108. (issue 4.2.1)The Tribunal considered whether the Respondent had failed to agree to the Claimant's shift pattern proposed on 30 August 2022 onwards;
109. The Tribunal saw the email of 30 August 2022 in which the Claimant offered a proposed shift pattern and the subsequent emails which Chris Stearn sent to Mr Walmsley, Mr Taylor and to Mr Blackmore, in which he showed his disagreement and displeasure with her proposal and then asked them to voice their concerns, which they did in response. The Tribunal also noted that it was at this point that Mr Taylor indicated that the Claimant would have to apply to the Workforce Planning Committee for a work life balance approval. This had not been part of the decision by Sarah Coccia.
110. The Claimant had been required to make proposals to Carol Ann Gibbon and subsequently to Chris Stearn when he took over as her line manager in November 2022. Both of them told the Claimant that she must work 2 weekends in 4. The fact that the Claimant included Carol Ann Gibbon in her grievance dated 31 December 2021 shows that she was in conflict with Ms Gibbon prior to the grievance being issued, as Ms Gibbon had refused her

first request for partial retirement and suggested the Claimant use holiday instead. However, the Tribunal did not see any evidence from which it could infer that Ms Gibbon was aware that the Claimant's grievance had made reference to discrimination, nor that she had refused to allow her to work 1 weekend in 4 as a result of the grievance.

111. In relation to Chris Stearn, the Tribunal found that at the point he took over as line manager the Claimant had succeeded in her application for partial retirement. The Tribunal accepted Chris Stearn's evidence that he was not given any detailed handover from Carol Ann Gibbon, as all he needed to know was that a shift pattern needed to be agreed. The Tribunal also accepted that as Carol Ann Gibbon was not aware that discrimination was alleged in the grievance, she would not have told Chris Stearn of this and he too would not have been aware.
112. The Tribunal were satisfied by Chris Stearn's own evidence that he was fundamentally opposed to the idea of a dog handler being allowed to work part time and that this was his reason for failure to agree the Claimant's proposed shift pattern and not due to her protected acts. This was clear to the Tribunal from Chris Stearn's emails to the Claimant from September 2022 onwards, when he became involved in the conversation around agreeing a rota.
113. In relation to Stephen Taylor, the Tribunal find that he was aware that the Claimant had raised a grievance, but he was not interviewed as part of the process, so was not aware of the detail of the claim. Stephen Taylor was upset about this lack of investigation, but it did not mean that he acted towards the Claimant because she had made a protected act. He too was fundamentally opposed to part time working by dog handlers, and his resistance was based on this view.
114. The Tribunal therefore concluded that the reason why the shift pattern proposed on 30 August 2022 was not agreed was not linked to any of the protected acts by the Claimant.
115. (issue 4.2.2) Chris Stearn's threat that the Claimant may have to reapply for her job and potential dismissal on 2 November 2022.
116. As stated above, the Tribunal found that on 2 November 2022 Chris Stearn was not aware of the content of the grievance.
117. The Tribunal also found that Chris Stearn was not in a post as the Claimant's line manager at the time she made these protected acts. However, he became involved in the negotiation to agree a rota in September 2022, before he became her line manager. From the outset he insisted that the Claimant would have to work 1 weekend in 2, even when the Claimant informed him in October that this meant that she worked too many 'red hours'.



118. The conversation between the Claimant and Chris Stearn on 2 November 2022 indicated that the Claimant would be allowed to work her proposed shift pattern, but only for the month of November. There was no explanation by the Respondent as to why this could not be maintained. Chris Stearn also told the Claimant that any shift pattern would have to be approved by the Workforce Planning Committee and that she must make an application for work life balance. He also told the Claimant that after November, she must work the pattern he had devised until her application was decided. All of these points indicated that Chris Stearn was not assisting or willing to compromise with the Claimant.
119. The Tribunal found that Chris Stearn's statement at the meeting was that if the business need could not be met, then HMP Pentonville may review the number of dog handlers it required. This did not amount to a threat to the Claimant's job, although the Tribunal appreciate that the Claimant may have thought it sounded like one. The evidence supported the fact that there were a limited number of dog handlers and at that time there was a recruitment freeze. The Tribunal found that the comments did not amount to a direct threat to the Claimant's employment, nor that she would have to reapply for her own job.
120. The Tribunal therefore find that there was no detrimental treatment and the claim is dismissed.
121. (issue 4.2.3) Imposition of a shift pattern on 9 November 2022.
122. Chris Stearn's email on 7 November 2022 sets out that the Claimant can work her proposed shift in November, but that she must make an application for work life balance and that "*until a decision has been made by the WFP Committee on your proposed shift pattern, I must implement a shift pattern that is suitable for the business needs of PSP South Dogs and our service users. I have attached a copy of this shift pattern in this email. This shift pattern will start as of the 4<sup>th</sup> December and you will be starting on week1. This give you reasonable time to make plans or arrangements for your personal life*".
123. The Tribunal found that this was not a conversation, or negotiation. It was a management instruction which imposed a shift pattern on the Claimant.
124. The Claimant had told Chris Stearn on 4 November 2022 that the reason for her request was due to her care for her father.
125. However, the Tribunal were satisfied that at that time, Chris Stearn was not aware of the Claimant's protected acts and therefore his actions were not as a result of the protected acts.
126. This claim fails due to the lack of a causal link between the actions and the protected acts.

127. (issue 4.2.4) Failing to deal with Claimant's sick leave excusal application of 28 December 2022 up to 27 July 2023.
128. The decision over the Claimant's sick leave excusal was made by Matthew Bullard and the Work force Planning committee.
129. On 28 December 2022 the Claimant made her application to the committee. This was submitted on a form which had been provided to her by Chris Stearn. He had told the Claimant that her application would be considered on 13 February 2023 at a meeting.
130. The Claimant raised a grievance on 17 March 2023 due to the fact that she had not received any outcome. Her complaint was about the actions of both Chris Stearn and Matthew Bullard.
131. In fact that the Claimant did not receive an outcome to her application until 27 July 2023, when she was told that it was declined on the basis that there was no evidence that her absence was work related. This was untrue, as two OH reports had indicated that her stress was work related. The evidence of Matthew Bullard admitted that the delay in dealing with this application was because of his lack of organisation and his high workload.
132. The Claimant had to appeal this decision and it was changed by the outcome on 4 October 2023.
133. The evidence before the Tribunal was muddled and contradictory. Matthew Bullard suggested that in fact the form filled in by the Claimant on 3 February was correct, whilst the Claimant was told it was not and had to be resubmitted. Matthew Bullard also candidly told the Tribunal that this was the first time he had dealt with such an application and had no training in doing so. The Tribunal were troubled that Matthew Bullard told the Claimant on 7 March 2023, when she called to ask for an outcome, that he had not seen her application. This was untrue, he had seen it and dealt with it. He subsequently told Stephen Taylor and Chris Stearn on 17 March that he couldn't find it. There was therefore a delay and a misleading of the Claimant by Matthew Bullard.
134. The Tribunal noted that Matthew Bullard worked closely with Sarah Cocchia and therefore was likely to have been aware of the Claimant's partial retirement appeal. He admitted knowing about the outcome of the grievance which was the fact that the Claimant's discrimination allegations had been dismissed.
135. The Tribunal was therefore satisfied that Matthew Bullard was aware of the grievance raised by the Claimant and the fact it included allegations of discrimination. However, the Tribunal concluded that Matthew Bullard's failure to deal with the sick leave excusal application was due to his incompetence and his workload. Other witnesses described him as being difficult to pin down to a decision. It was clear to the Tribunal that he lost the application, that he

was not able to keep track of his work, but that was not linked to the Claimant's allegation of discrimination.

136. The Tribunal therefore dismissed this claim due to the lack of a causal link to the protected act.

137. (Issue 4.2.5) Delay in agreeing a shift pattern to end of November 2023; The Tribunal considered this to be essentially the same allegation as 4.2.1 and therefore considered them both together.

138. The Tribunal concluded that the reason for the delay was because the managers did not approve of the Claimant obtaining the right to partial retirement and therefore they were reluctant to agree a shift pattern that would allow her to work as she had requested. This does not amount to victimisation due to a protected act.

139. (issue 4.2.6) Failing/refusing to consult with the Claimant about shift patterns The Tribunal noted that the Workforce Planning Committed did not allow the Claimant to attend the meetings where they made decisions about her, despite the policy stating that she would be allowed to do so. The Respondent's witnesses provided no explanation as to why this policy was not followed.

140. The Tribunal also noted that Penny Bartlett who had made the initial decision on partial retirement was also present at the Workforce Planning Committee meetings. The Tribunal accepted that Penny Bartlett was aware of the grievance and wanted the Workforce Planning Committee to consider whether the Claimant should be allowed to continue as a dog handler on part time hours.

141. The Tribunal concluded that the evidence indicated that the Claimant had made her grievances about discrimination prior to the Workforce Planning Committee meetings, That Penny Bartlett who was aware of the grievance containing allegations of discrimination was present at those meetings, and that the Claimant's right to attend the meetings and be consulted was not followed. The Tribunal considered that it could be inferred that the Workforce Planning Committee took the step of not consulting with the Claimant due to her grievances. The Tribunal also noted that the Respondent had provided no evidence to explain in any other way, why there was a lack of such consultation by the committee.

142. The Tribunal therefore upheld this allegation.

143. (issue 4.2.7) Imposing a shift pattern on 3 February 2023 The Tribunal noted that it was Chris Stearn who wrote the shift pattern and the Workforce Planning Committee who approved it. The Tribunal further noted, as set out above that the Claimant was not asked to comment on it or agree it. Chris Stearn's email to the Claimant refers to it as 'meets the needs of all parties'. This was clearly incorrect and Chris Stearn was aware of that at the time.

144. The Tribunal considered that the shift was imposed on the Claimant and that this was done at a time when all the members of the Workforce Planning Committee would have been aware of the Claimant's grievance and its outcome. The shift pattern did not fit with the Claimant's requirement to work 1 in 4 weekends and therefore amounted to a detriment to her.
145. The Tribunal noted that Matthew Bullard, Stephen Taylor and Penny Bartlett were all of the view that they fundamentally disagreed with the Claimant being allowed to take partial retirement and remain as a dog handler and that their decision was an attempt to make the practical application of this as difficult as possible for the Claimant.
146. The Tribunal were therefore satisfied that this detriment arose at a time when those making the decision were aware of her complaints of discrimination and made a decision which they knew was not agreed by the Claimant. No other explanation for the imposition of this shift pattern was provided by the Respondent that would indicate a reason other than the knowledge of the complaints. The Tribunal were satisfied that a sufficient causal link was shown and that this amounts to victimisation.

**Remedy**

147. The parties will be sent a separate Notice of Hearing to list a remedy hearing for 2 days.

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Employment Judge Cowen

Date: .....20 December 2024.....

Sent to the parties on: 20/12/2024.....

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For the Tribunal Office

**Recording and Transcription**

Please note that if a Tribunal hearing has been recorded you may request a transcript of the recording, for which a charge may be payable. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings, and accompanying Guidance, which can be found here:

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