EMPLOYMENT TRIBUNALS

Claimant: Ms F Chughtai

Respondent: Secretary of State for Justice

Heard at: London Central (Via Cloud Video Platform)
On: 30 November 2021 and 1 and 2 December 2021

Before: Employment Judge Joffe
Ms S Aslett
Mr T Ashby

Appearances
For the claimant: Ms A Palmer, counsel
For the respondent: Ms J Gray, counsel

JUDGMENT

1. The claimant's claims under section 15 Equality Act 2010 are dismissed on withdrawal by the claimant.

2. The claimant's claims that the respondent failed to make reasonable adjustments contrary to sections 20 and 21 Equality Act 2010 are not upheld and are dismissed.

REASONS

Claims and Issues

1. There was an agreed list of issues. The respondent had accepted that the claimant's hypothyroidism was a disability within the meaning of the Equality Act 2010. The section 15 claim was withdrawn during the proceedings and it

was accepted by the claimant that a risk assessment is not, having regard to the authorities, itself a reasonable adjustment. We adjusted the list of issues accordingly.

Time bar and ACAS Early Conciliation

1. Did any of the alleged acts / complaints occur more than 3 months before the Claimant presented her claim (taking into account any extensions permitted by the ACAS Early Conciliation period, if any) and are they therefore out of time?

2. If they are, in relation to the discrimination claims, is it just and equitable to extend time under s123 (2)(b) of the Act?

NB: We were not addressed on and did not decide these issues.

Disability discrimination

Disability

3. Was C a disabled person at all material times within the meaning of section 6 of the Equality Act 2010?

Knowledge – section 15 and 20 / 21 of the Equality Act 2010

4. Did the Respondent know or could they have been reasonably expected to know that C was a disabled person within the meaning of the Equality Act 2010?

5. Did the Respondent know or could they have been reasonably expected to have known that the Claimant was likely to be placed at the alleged substantial disadvantage as a result of the alleged PCP(s)?

~~Discrimination arising from disability – section 15 of the Equality Act 2010~~

~~6. Did the Respondent treat the Claimant unfavourably? The Claimant relies upon the following alleged act of unfavourable treatment was the Respondent's refusal to provide the Claimant with the requested appropriate work desk on 28th May 2020.~~

~~7. If yes, was the unfavourable treatment because of something arising in consequence of the Claimant's disability? The Claimant avers the something arising in consequence of disability was the adverse impact on the Claimant's health and exacerbation of her disability, leading to the Claimant's inability to work between 8th – 22nd June 2020.~~

~~8. If yes, can the Respondent show that the treatment was a proportionate means of achieving a legitimate aim or aims?~~

Failure to make reasonable adjustments- sections 20 and 21 of the Equality Act 2010

9. Did the Respondent apply a provision criterion or practice? The Claimant relies upon the following alleged PCPs, namely the requirement to work with unassessed work station equipment, namely a small desk with limited space and uncomfortable seating.

10. If so, did the PCP place the Claimant at a substantial disadvantage as compared to non-disabled persons? The Claimant relies upon the following alleged substantial disadvantage(s):

a. the adverse impact on the Claimant's health and exacerbation of her disability, leading to the Claimant's inability to work between 8th – 22nd June 2020.

11. If yes, did the Respondent take such steps as were reasonable to take to avoid the alleged disadvantage to the Claimant and/or would or could the same have avoided the alleged disadvantage? The Claimant relies upon the following alleged adjustments / steps:

~~a) Provide the Claimant with a risk assessment of her work station at home;~~

b) Provide the Claimant with an appropriate desk

Remedy:

Injury to feelings

12. Only if the discrimination claim(s) succeed:

13. Has the Claimant suffered any injury to feelings and, if so, what award ought the Claimant receive for the same (if any)?;

Findings of fact

The hearing

2. We were provided with an agreed bundle of some 318 pages and a supplementary bundle which contained a selection of the claimant's medical records running to 117 pages.

3. We heard evidence from the claimant on her own behalf and from Ms C Sandle, senior FM delivery manager at relevant times, Ms E Goulden, property services strategy and support functions lead, and Mr K Maddison, director of facilities management, for the respondent.

4. The hearing was a remote hearing by video. Everyone could see and hear everyone else and there were no significant technical issues.

Relevant events

5. On 15 May 2000 the claimant first started working as a civil servant.

6. In April 2013 the claimant was diagnosed with hypothyroidism. She has subsequently been on medication for her condition; it appears that her condition is not always well controlled by medication. We saw GP records and a letter from GP, which gave no very detailed account of the effects of the condition. The Tribunal was aware that it is a condition with variable impact and medication can be highly effective at treating the symptoms or less so.

7. The claimant told the Tribunal that significant symptoms for her in the context of this claim were muscle aches and weakness and pain and fatigue.

8. On 10 June 2019, the claimant started working for the respondent as an executive officer - diary manager. Mr Watson was her line manager.

9. We saw no pre-employment documents showing whether she was asked to declare and, if so, did declare her disability.

10. On 3 October 2019, the claimant disclosed her condition to her line manager Mr Watson in an email

Further to our conversation on Monday 30th September 2019, this is to confirm that I was diagnosed with a long term medical condition (under active thyroid) in 2013 for which I am taking medication.

11. The two had a discussion and exchanged WhatsApp messages about her transfer to the line management of Ms J Thomas on 28 October 2019. We note from the messages we saw that the relationship appeared to be a friendly and an informal one.

Claimant: have you told Jess about my medical issue? as I need to send her an email...

Watson: I simply told her what you told me and that there is not a visible day to day impact on your ability to do your job, but to be mindful that in the event of excessive work or other pressure you could be impacted, initially by fatigue

Further message: *Sound okay?*

Claimant: wonderful

Claimant: I'll send her a note

…

Watson: I didn't want to underplay or overplay it

Watson: I am happy to amend that description if you want me to?

Claimant: no that is fine.

Claimant: I will pick up with Jess going forward

12. The claimant did not add anything about her condition and its effects at this point.

13. The claimant's GP records do not suggest tha muscle pain was an issue for the claimant at this stage so it seemed to the tribunal it was not surprising that she was not asking for something else to be said to her manager. She had raised the issue which was relevant to her at the time which was tiredness. The claimant accepted in evidence that she did not tell Mr Watson about muscle pain and weakness being a symptom or potential symptom of her condition.

14. From 20 January 2020, the claimant was acting up to temporary role of Higher Executive Officer – Business manager. Her line manager had been Mr Watson, then Ms Thomas from 29 October until 19 January 2020.

15. The claimant did not have any direct conversation with Ms Thomas about her condition.

16. Form 20 January 2020 to 27 October 2020 in her new role, the claimant was line managed by Ms Goulden.

17. The claimant said that she was doing the work of a diary manager and a business manager during this period and was overloaded with work. The respondent accepted that she was doing both roles and that the workload was heavy. There was some limited dispute about whether it lightened or not during pandemic; it appeared that it changed but did not lessen.

Workplace

18. The claimant worked up until March 2020 at an office in Petty France and did not have any complaints about her workstation there.

19. It appeared that she had had some kind of assessment of her workstation when she started to work at the Petty France office.

20. Mr Maddison said there were three levels of assessment done by the respondent for staff:
    - Mandatory DSE assessment done by everyone for office working and occasional home working – looking at issues such as screen, keyboard, need for foot rest, lighting;
    - A home working checklist;
    - Where there is contracted home working which is permanent – an assessor attends the employee's home to assess the workplace.

21. The claimant undertook a health and safety training package at the beginning of her employment by the respondent which it appeared including the DSE assessment described by Mr Maddison. She did not remember much about it and the respondent had not produced records. We concluded that the

claimant had had some relevant training and a DSE assessment but it was not possible for us to determine how extensive the training was. We considered that the records of the training should have been produced for the bundle but they were not.

22. On 7 February 2020, the claimant had a Skype conversation with Ms Goulden. They had not previously discussed the claimant's health condition.

Claimant: Hi Liz - whilst I understand the importance of BACP - I am currently drowning in work and I have been working some very long hours this week 9 / 10 hour days .... this is not sustainable long term. Nevertheless I did agree with Jess to carry out both the DM and BM roles for two weeks pending her being able to secure an agency DM – 1Iam not sure how far she has got with this …

Goulden: Totally understand - let's leave the BACP until w/c 24th (I'm on a course half term). I will chase Jess. Is there anything I can help out with -just shout. You shouldn't be doing 9/10 hour days at all.

Claimant: ok I shall send an invite...

Claimant: I wondered if Jess gave you a handover and made you aware of my long term medical condition

23. We heard differing accounts of the subsequent conversation between the claimant and Ms Goulden. Ms Goulden said that the claimant asked her to speak to Ms Thomas and Ms Thomas then said that she did not know much about the claimant's condition. Ms Goulden then went back to the claimant. The claimant said that her disability was related to tiredness and that managing workload was key. Ms Goulden asked the claimant to let her know if her workload got too high and the claimant did not ask for or suggest any other support. She said that she got the impression that the claimant was not comfortable talking about her condition as she had initially referred her to Ms Thomas and had only mentioned the tiredness issue.

24. The claimant said it was Ms Goulden who wanted to talk to Ms Thomas about the condition, which she thought was strange. She did not maintain she had mentioned symptoms other than tiredness to Ms Goulden.

25. We did not consider the difference in the accounts to be material, although we concluded that Ms Goulden's account was more likely to be accurate since it seemed to us to tally with the Skype messages.

26. In cross examination Ms Goulden said that she did not ask what the condition was but came away with understanding it related to tiredness. She did not ask if there were other effects or anything else she could do. She said that her impression was that the claimant was guarded and did not feel comfortable sharing with her as her line manager. With hindsight she thought she could have asked more questions.

27. We had some evidence about the claimant's working from home arrangements prior to the March 2020 lockdown.

28. Ms Goulden said that the claimant was working from home up to two days per week. We could see from the claimant's diary that she worked from home as much as two days per week, particularly in December 2019 to February 2020. For the earlier period it probably averaged closer to once per week.

29. The claimant did not request any specialist equipment for working from home at any time prior to lockdown or suggest that there were issues with her work station at home.

30. She used a work laptop on a small square kitchen table with a wooden kitchen chair. We understood that the home workstation should have been discussed as part of the claimant's work station assessment at the outset of her employment but there was no clear evidence that it had been.

31. By 12 March 2020, the pandemic was becoming an issue for people. The claimant did not want to travel to the office and she had a meeting with Ms Goulden to discuss the claimant working from home.

32. The claimant and Ms Goulden together filled in a work from home checklist. We saw the pro forma version of this document but not the document filled in by the claimant and Ms Goulden. Ms Goulden did not retain a copy which seemed to us to be poor practice. She thought the claimant took the checklist home. The claimant said that she left it in her work locker and shredded it along with other documents when she changed employer.

33. Ms Goulden said that the claimant raised no issues about her working from home arrangements in the course of filling in the checklist. The claimant said that she could not remember if that was correct.

34. We considered that the claimant would have remembered if she had raised an issue about her home work station when completing the checklist given what a big issue the workstation was subsequently.

35. The sections of the checklist to complete included

I consider my chosen remote working location to provide sufficient leg room to support a comfortable working posture.

I have completed the locally accepted training (e.g. Cardinus) and self-assessment and I understand how to work safely at my remote working locationhttp://intranet.justice.gsi.gov.uk/guidance-support/health-safety/downloads/dse-workstation-support/advice-sheet/cardinus-workstation-safety-plus.doc

I can work safely at my remote working location.

36. We concluded that these were not issues that the claimant had identified at this point.

37. On 13 March 2020, the claimant messaged Ms Goulden asking if she could be provided with a wheelie bag to carry her laptop back and forth 'given my medical condition'.

38. Ms Goulden said in evidence that the request did not suggest to her the claimant had symptoms other than tiredness – the kit was heavy and carrying it back and forth would be tiring.

39. She wrote to the claimant to say:

Farrah, I need you to do a DSE assessment to get the authority for the bag. Darren will send you a link - is that ok?

40. The claimant said that was OK, but it appears that the claimant did not pursue the wheelie bag because she was working from home entirely shortly afterwards.

41. On 16 March 2020, the claimant started working from home using her work laptop on a small wooden table, sitting on a hard wooden kitchen chair.

42. She said in evidence that about this time she started to have pain working at her work station; she had not previously had that issue.

43. It was suggested by the respondent that she was not limited to working at that table but there was no evidence that the claimant had any other suitable place to work at home. Working from sofas or beds would clearly not be ergonomically appropriate or sensible.

44. On 23 March 2020, lockdown began and the claimant was working from home full time.

45. In the week commencing 30 March 2020, the claimant said that she told Ms Goulden by phone and Skype that she was suffering from pain, especially in her shoulders, neck and back due to working from home. Ms Goulden told her to take a five minute break every 30 minutes which the claimant said did not help.

46. There were further discussions as time went on about taking more breaks but the claimant said she had too much work to do to take prolonged breaks and that Ms Goulden did not do enough to alleviate her work load.

47. Ms Goulden agreed that the claimant raised with her that she had discomfort in her neck and back arising from her work station set up. Ms Goulden thought it was early to mid-April that the issue was first raised. The claimant did not relate the pain she was suffering from to her underlying condition at this point. Ms Goulden said she still understood that tiredness was the only relevant symptom in respect of the underlying condition.

48. We considered that the issue had probably been raised with Ms Goulden by early April. There was not a major dispute between the parties and no doubt the conversations were of more significance and therefore more memorable to the claimant than Ms Goulden.

49. It was put to Ms Goulden that when the claimant raised an issue about pain, she should have checked with her whether there was a connection with her disability. Ms Goulden said the claimant herself had drawn no such connection until May 2020, referring to evidence which the claimant gave to the Tribunal. Ms Goulden did not suggest an occupational health referral at the time.

50. On 6 April 2020, the claimant also started working for Mr Maddison in her diary officer role. They had regular catch ups and spoke frequently. He had no handover from Mr Watson.

51. On 11 May 2020, the claimant sent an email to Ms Goulden:

On 05th May 2020 we had a town Hall event where (Diversity & Inclusion Manager) at the LAA spoke about disability/work place adjustments, as you are aware I have a protected characteristic and I am writing to request the following work equipment in order to meet my needs;

Big Screen

Work Chair

Keyboard

I have also mentioned previously that my neck and back have been causing me physical issues and by way of alleviating these issues would you be able to arrange/authorise the above for my use ASAP please?

During my time at 102PF I would always use the large screen and as you know I wear glasses and staring at a small screen all day is negatively impacting on my eyes.

52. It was put to Ms Goulden that she should have taken professional advice at this point. She said: ‘It was not clear to me, the language was guarded.’ She did not think it was clear that the pain was being connected with the protected characteristic: ‘She could have phrased it more clearly and brought it to my attention.’

53. Ms Goulden spoke to Kevin Fraser, working from home lead, and he told her about an upcoming meeting on the issue of equipment for home working. She told the claimant about this meeting.

54. On 12 May 2020, there was an executive committee meeting to review arrangements and determine policy for provision of kit and equipment to staff.

55. On 19 May 2020, having not heard anything further, the claimant chased Ms Goulden about the equipment Ms Goulden then spoke again to Mr Fraser and equipment was approved so Ms Goulden ordered it:

Hi, please could you urgently send me a form for ordering a chair and peripherals to a staff member's home address.

56. Ms Goulden accepted that she could have acted more quickly in terms of ordering the equipment. She said that she was busy with work and also had home schooling to do.

57. On 20 May 2020, Ms Sandle approved the chair and other equipment requested by the claimant.

58. On 21 May 2020 the claimant contacted 'Warp-it' about obtaining a desk. Warp-it appeared to be some kind of central exchange for used furniture within the respondent; no one explained it further to us. She wrote:

Thank you for your email, I need a desk to work from home so I am watching some desks on Warp-It at the moment and I wondered if any of them are at 102PF how I could go about getting this to me?

59. A Mr Shoesmith wrote to the claimant:

You can contact whomever has listed the desks and see if they can arrange delivery to you. You may need to use your team's cost code to charge the delivery I guess (you would need permissions from your budget holder for this).

But you could easily make the case that repurposing a desk is more efficient and cost saving than buying a new one to assist you to work from home.

Warp-it doesn't help facilitate the delivery the items usually, they just manage the platform. If you sign up a user (if you're not already) you can then simply message whoever is listing them and get in contact about how they might be able to deliver this to you.

I heard about someone getting a chair posted to their house from 102PF previously so it must be possible.

60. It ultimately appeared that the claimant could not acquire a desk for home use in this way because she needed permission from an appropriate budget holder.

61. On 26 May 2020, the claimant sent an email to Ms Goulden asking for a desk

I tried sourcing a desk but this has proved fruitless, therefore, are you able to order one for me?

62. We note that at this stage the claimant was not expressly suggesting that she needed the desk as an adjustment or that her existing desk was causing difficulties related to her disability.

63. On 27 May 2020, Ms Goulden spoke to Mr Fraser about a desk for the claimant. Mr Fraser told her that desks were not routinely being provided.

64. 28 May 202, the claimant sent Ms Goulden a WhatsApp picture of her work station with the following message:

Morning Lis, this has been my working set up for 11 weeks now, I'm in a lot of pain physically my neck and shoulder right side and my left side lower back. I am teary everyday because of pain and I just wanted some equipment to help me do my job

65. There followed a series of messages between the two. Ms Goulden asked whether she could give the claimant a call and the claimant said she was unable to speak at that point. She told the Tribunal she was in pain and was about to take minutes for a three hour meeting. She said that she had struggled for nearly three months and she could not carry on working in the pain she was in. She did not know why Ms Goulden had not wanted to help her earlier.

66. They did have a discussion later that day. The claimant said that Ms Goulden said that generally the answer had been no to desks and very few desks had been authorised. She was aware that some staff had been provided with adjustable desks. If people were working uncomfortably, they needed to prioritise getting them to an office, not necessarily Petty France. The claimant said that she asked who would be responsible if she caught Covid and Ms Goulden said that was her reservation. The claimant said that she asked if the department were not going to help with a desk and Ms Goulden said desks were not going to be approved.

67. Ms Goulden agreed that she had said that desks were not being authorised. The claimant said that she had seen a virtual directorate meeting with a team who all had desks and that she felt unvalued as others had been provided with desks. She was not aware if the claimant was right about that and was concerned that she might have missed an announcement about desks and let the claimant down. In fact it turned out the others had not been provided with desks.

68. She said that they did discuss the claimant coming to the office and that the claimant had not wished to do that given the risks.

69. She said that she told the claimant to take as many breaks as she required, even if that meant asking to take whole or half days. She said that the claimant did not take blocks of time off.

70. There were no material disputes between the claimant and Ms Goulden about this discussion. The claimant was understandably upset at the proposal that

she come into an office. Ms Goulden we considered was not unreasonable to raise it and she did not push it.

71. Ms Goulden said she scheduled a regular daily catch up with the claimant from 2 June 2020 onwards, although the calls did not always happen. She said that she was checking in with the claimant to see if she needed more time off or breaks. The claimant did not request extended breaks or time off. The claimant told the Tribunal she as unable to take more breaks as none of her workload was removed.

72. Ms Goulden said she did remove some work and Mr Maddison said a project was delayed. Our impression was that on both sides it could have been better discussed and aired. The claimant could have set out more clearly that she was not in a position to take more breaks and needed some work removed. Ms Goulden could have initiated a more fully fledged discussion about what work would remain with the claimant and what could be done by someone else. We heard limited evidence on these matters and were not in a position to and did not need to reach any conclusions on what exactly occurred.

73. On 28 May 2020, the claimant also raised the issue with Ms Sandle, who was next in her line management chain. The claimant told the Tribunal that she said she urgently needed a desk as her posture meant she was in continuous pain and teary. She said that she told Ms Sandle she had a disability and Ms Sandle did not ask about it. Ms Sandle talked about the claimant working from an office closer to her home. The claimant asked who would be responsible if she caught Covid and she said Ms Sandle did not reply.

74. Ms Sandle's account of the discussion was that the claimant said she wanted to speak to her as she was not satisfied with the information she had received from Ms Goulden about it not being possible to provide the claimant with a desk. The claimant said she was uncomfortable and experiencing pain whilst working from home which she felt was due to her work set up. She wanted a larger and more suitable desk. Ms Sandle said that the claimant mentioned disability more as an aside and said she had no reasonable adjustments at work for it. She did not say what the disability was or link the discomfort she was having to the disability or ask for a desk to be provided because of her disability. She said that the claimant moved on with the conversation and she got the impression that the claimant did not want elaborate on her disability.

75. There was no significant difference in the two accounts in our view – the difference was one of impression rather than as to the content of the discussion.

76. Ms Sandle said that she would look into the policy as it was not clear whether the policy on providing equipment for home working applied during the pandemic. She also wanted to explore the claimant's concern that other people had been provided with desks.

77. The claimant told the Tribunal that she probably made the connection between her pain and her disability in May 2020.

78. On 29 May 2020, the claimant said that she was in considerable pain and had to stand to work. Some of the equipment ordered for her had been delivered.

79. By 2 June 2020, the claimant said she had received and started using the other equipment ordered.

80. Between 28 May and 4 June 2020, Ms Weaver, Ms Sandle and Mr Maddison were in communication about the desk policy, which at the time was not to provide desks for home working. Ms Sandle and Ms Goulden agreed that they would make an occupational health referral for the claimant.

81. On 4 June 2020, Ms Sandle told the claimant that no desk would be provided.

82. She said that she had a discussion with the claimant described in her email to Ms Goulden:

I had a catch up with Farrah after the team call and updated her regarding her request for a desk. I explained that the MoJ approach was for people to work from home where they are able to but if they are not able to then they can wo rk from an office, either 102PF or one nearer to home. I also explained that M oJ are not providing desks for people working from home and we have not pro vided them to people in the directorate (Jo confirmed this to me). I suggested that there may be other ways we can make it more comfortable for Farrah to c ontinue working from home and suggested regular breaks, reduced hours etc. She said this may help but she was concerned about being able to do this wh ile still managing her workload. I assured her that we would support her with t his to ensure she can work comfortably and manage her workload when she i s not on a break. I suggested she may want to consider diarising her breaks s o they are prioritised and not shelved in favour of meetings or urgent requests as can easily be the case for all of us.

I suggested that she have a chat with you to agree how we can support her in taking regular breaks, working fewer hours if need be and managing her workl oad so please could you have a chat with her on this at your earliest opportuni ty? If you let me know how it goes I'd be happy to have a chat with Keith to e nsure he is aware and this will help in managing her workload. I'll be having a nother catch up with her after the team call next Thursday to see how she's g etting on.

83. She said that the claimant did not raise concerns that what she had agreed to trial would not work for her. There was a disagreement between Ms Sandle and the claimant about whether Ms Sandle said in this conversation that not providing the desk was not discriminatory. We concluded that it was not necessary for us to resolve that issue.

84. On 5 June 2020., the claimant sent an email to Mr Maddison, Ms Goulden, Ms Sandle and Ms Weaver:

The last 12 weeks under lockdown have been a trial and I wanted to say thanks for your assistance with the chair and IT, I received these last week and this has helped to better facilitate my working from home. I have spoken with both Lis and Carly on 28 May and 4 June respectively regarding my need for a desk and they have made me aware that in line with MOJ Policy this cannot be provided to me but thank you all for your time in clarifying this position.

We know that the current advice is to stay at home for however long, but I've been told that if I'm still not comfortable at home with my working conditions then I will need to attend an office, not necessarily 102 Petty France, but as we know Covid-19 disproportionately affects people from my background and is a major risk factor. That's especially so if one has underlying health conditions as I do. In the current climate I wouldn't therefore want to travel to any office in line with an employer's statutory duty of care for their employees.

85. There followed a further discussion between Ms Weaver and Mr Maddison about provision of desks. Ms Weaver explained that disabled employees who has special desks may have had those desks couriered to them at home. They needed to better understand the claimant's reference to underlying health conditions and Ms Goulden was going to speak with the claimant about that on 8 June 2020.

86. On Monday 8 June 2020, the claimant was signed off sick. She said that she was in continuous pain in the morning and it was impossible for her to work Her sick certificate later that day referred to 'muscle pain'.

87. Mr Maddison emailed Ms Weaver and Ms Sandle:

I know we have provided desks to some individuals (to be fair not many) is there something we could do for Farrah?

88. Ms Sandle wrote to Mr Maddison and Ms Weaver:

Would be good to know if this is an option.

Farrah is finding herself in physical pain from her work set up and she is on special leave today as she has woken up in pain even after a weekend. Regular breaks and shorter hours may not be sufficient by the sound of it. From the information she has given to myself and Lis I'm not sure if this is linked to her disability or limited to being caused by her workstation set up and I'm wary of getting a larger desk for her and then finding it doesn't fix the problem for her.

Lis is going to have a chat with her tomorrow about an occupational health assessment as this may give us a clearer picture on what is needed for Farrah to ensure we put the right measures in place. A larger desk may be part of this so it would be good to know if we can indeed provide this for her.

89. Mr Maddison emailed to say that occupational health involvement would be the first step.

90. Ms Sandle wrote to the claimant:

Thanks for your email and I'm pleased to hear the chair and IT are helping you work remotely.

I appreciate your concerns about returning to work in an office and as a department we will do all we can to ensure you have access to a safe and suitable work environment, whether in an office or at home. You are correct that if staff cannot work remotely, they can work in an office near to them however this is not something the department is forcing people to do. For some, it is the best option, but this is being assessed on a case by case basis. I appreciate this may not currently be the right option for you and there are lots of options open to us to make working remotely more comfortable for you, some of which Lis and I have already discussed with you.

I have spoken with Lis this morning and she will be speaking with you tomorrow to explore these options further and discuss an occupational health assessment with you which should help us ensure the right measures can be put in place for you while you are working remotely.

I hope this email provides clarification in response to your email below. Thank you for your continued support throughout these challenging times and exceptional working arrangements. Please do be assured that we are committed to working with you to ensure that when working you can do so safely and comfortably.

91. On 9 June 2020, the claimant sent a message to Mr Maddison; she was seeking to explain why she was unable to assist with his diary and to say that she did not want to leave him in the lurch.

92. Both the claimant had Mr Maddison said that they had lost the message, in Mr Maddison's case because of his phone being reset to factory settings.

93. According to the claimant, the content included a reference to her hypothyroidism causing muscle aches and weakness '*Obviously this has become worse over lockdown and whilst I recently had some equipment I have been in pain throughout and I hope the next few days will help.'*

94. Mr Maddison said that content was not included and that he would have remembered it if it had been.

95. The claimant produced a section of exported WhatsApp messages which she had had with a friend in which she set out some proposed drafts of a message to Mr Maddison including the text quoted above. The selection of messages was incomplete.

96. In amendments to the later grievance appeal hearing minutes, the claimant added in text which reflected the draft which she had sent to her friend:

and I texted, said "I am resting up but unable to switch off, I wanted to let you know the last few months have not been easy for me and I wouldn't like you to think that I am leaving you 'in the lurch'. I would like to let you know that I have hypothyroidism (under active thyroid) as a condition there are many symptoms that I normally manage well. However, one of those is muscle aches and weakness which leads to muscle fatigue.

Obviously this has become worse over the lockdown and whilst I recently had some equipment I have been in pain throughout and I hope the next few days rest will help".

97. That text was not raised in the original grievance and by that stage her work phone had lost the message sent to Mr Maddison so she appears to have relied on the draft sent to her friend.

98. The claimant did not wish to discuss an occupational health referral with Ms Goulden on 8 or 9 June so Ms Goulden said she would pick up the issue with her when her GP certificate expired.

99. She made the referral on 16 June 2020.

100. Meanwhile, on about 13 June 2020, the claimant purchased a desk at IKEA, which was a desk which as larger than her existing table, with adjustable height legs.

101. On 22 June 2020, the claimant returned to work.

102. On 24 June 2020, the claimant had an occupational health assessment. Ms Goulden sent the claimant the referral document which asked for a workstation assessment and said that the 'assessment will be conducted by video call due to social distancing.'

103. It also said:

Farrah has been WFH full time as a result of COVID-19 - she previously WFH occasionally.

She is experiencing lower back pain and was signed off work due to pain on 8 June. She has a standard height adjustable office chair, a large screen (eye pain using the laptop), keyboard and mouse (reflecting Farrah's set up when in the office) and is working on a small kitchen table. Please can you provide advice on what adjustments can be put in place to make Farah comfortable.

104. The claimant did not give details in her evidence about what discussion she had with the OH adviser either about her workstation set up or more generally.

105. At the end of June 2020, Ms Sandle became aware that requests for office equipment could be put to line managers, given the extension of home working. There had been a change to the respondent's policy.

106. On 29 June 2020 Mr Maddison sent an email to Ms Goulden about ordering a desk for the claimant. Ms Goulden confirmed that the claimant could have a desk however she subsequently found out that the claimant had already purchased a desk.

107. On 2 July 2020, the claimant provided the occupational health report to Ms Goulden in an email. It said, amongst other things:

As detailed in your referral Ms Chughtai has recently been absent from work for 2 weeks due to neck, shoulder and back pain. She does have other underlying medical conditions however these are not currently affecting her abilities.

She attributes these symptoms to her having to work from home on a full time basis without adequate or suitable equipment to carry out her job comfortably.

She states that she told her line manager over a considerable period of time that she was in pain and requested work equipment in May 2020 which was received week ending 29.05.2020 and she started using the equipment from 02.06.2020, however, given the time that had elapsed the damage had already been done.

108. The OH adviser advised a phased return and postural breaks:

Ms Chughtai states she is not currently sure if the equipment she has been provided with is actually suitable therefore I would recommend further risk assessments be undertaken to ensure her safe working practice and to prevent any further deterioration in her back condition.

109. The claimant did not say in her witness statement that the occupational health report was inadequate but told us in oral evidence that she went into great detail about her condition and none of the detail had been included by OHA. In answer to Tribunal questions said that she had called the OH people and had said that lot was missing and was told that they would let the OHA know.

110. The extra detail she told us was that she was anxious and depressed; it was not, it appeared, particular things which contradicted the adviser's findings. She did not say that she had said things which would have linked her underlying condition with the issues she was having with pain.

111. In her email to Ms Goulden containing the report, she did not raise any issues with the contents of the report. She complained about her treatment:

I have a protected characteristic which falls under the Equality Act 2010 and one of the symptoms is muscle aches and weakness; as such the employer would be duty-bound to consider and therefore make reasonable adjustments in respect of myself, but these obligations seem to have been ignored.

112. The claimant accepted in evidence that she had not previously said muscle aches and weakness were a side effect of her underlying condition.

113. She also said in the email that she had purchased a desk and asked how she could reclaim the cost.

114. On 3 July 2020, Ms Goulden wrote to the claimant:

Thank you for your email and for requesting a refund of £130 on the desk you recently purchased.

Please note that HR advice on DSE and other equipment to support homeworking is constantly changing in response to COVID-19. Carly and I both separately sought advice on purchasing a desk for you and at the time we were told this was not possible.

The new order form which included the ability to order a desk from a new supplier came out this week. Given that you have only recently purchased a desk, I agree with you that the cost should be refunded and I have obtained approval for you to reclaim the cost of the desk on expenses. Please could you raise an expense and attach a copy of the receipt. Please note that once you are refunded, the desk will be the property of MoJ.

115. On 24 August 2020, the claimant submitted a grievance about the matters which form the subject matter of her Tribunal complaint.

116. On 11 September 2020, there was a grievance investigation meeting. The minutes contained this passage:

FC advised one of her conditions is muscle aches and weakness, she believes the wooden chair was making this worse.

IS asked what the issue with the wooden desk FC was working from previously, was it the height or the size. FC offered a picture and said that both were an issue and the chair and that the table was not suitable for working from. FC said she felt she was sat at an incorrect position for work which gave her back pain.

117. The claimant received a grievance outcome in October 2020; her grievance was not upheld.

118. On 1 December 2020, the claimant attended a grievance appeal hearing and on 24 December 2020, she was notified that her appeal was not upheld.

119. The claimant's GP letter is dated 7 September 2021. It says:

Thank you for your letter dated 31st August. I have today consulted with Ms Chughtai and confirm the nature of her shoulder girdle and back pain. This started in March 2020 and is mechanical in nature. Her pain is related to sitting at her work station at home in suboptimal position. She has been hypothyroid for many years. Her symptoms of hypothyroidism include, but are not limited to, muscle aches, weakness and pain and fatigue. These symptoms have been compounded by long hours at her desk.

I recommend the appropriate workstation changes in order to support the improvement of her symptoms.

120. There is no indication of what issues the GP was considering in relation to the workstation and what was said to be unsatisfactory about the workstation. He seems to be describing the situation as ongoing when it was by then historic.

Evidence about policy on desks

121. Mr Maddison told the Tribunal that there were a number of policy statements. From 24 March to the end of June 2020, no desks being provided for home working. That changed at the end of June when lockdown was extended and working from home became the norm. Individuals who already had desks provided at work as reasonable adjustments had these sent home earlier.

Evidence about the claimant's workstation

122. The claimant told the Tribunal that the problem with the table she had at home was that it was long (she clearly meant tall) and her seat was low so she sat at a funny angle so it was putting pressure on her neck and back. The new chair she was provided with was height adjustable so she could sit appropriately at the table. She thought that her feet touched the ground.

123. The claimant did not give evidence to Tribunal that the size of the desk otherwise created any difficulties for her in relation to her condition or why that might be the case.

124. The picture we saw of the workstation set up did not show hard copy documents or files on the desk that the claimant might have been having to manhandle to and from the table (due to lack of space) and she did not mention any such documents or files.

Evidence about the claimant's condition

125. In her impact statement, the claimant said:

The significant pain in my neck, shoulders and back, led me to being signed off from work on 8 June 2020 for 2 weeks, with muscle pain. I spent the 2 weeks flat on my back in bed, and even getting up to go to the toilet was a struggle. To help me with the pain in my back I had self-referred myself for physiotherapy and had received a treatment plan consisting of exercises which would help with my back.

126. Her evidence was that the back pain had been ongoing since then.

Law

Failure to comply with a duty to make reasonable adjustments

127. Under s 20 Equality Act 2010, read with schedule 8, an employer who applies a provision, criterion or practice ('PCP') to a disabled person which puts that disabled person at a substantial disadvantage in comparison with persons who are not disabled, is under a duty to take such steps as are reasonable to avoid that disadvantage. Section 21 provides that a failure to comply with a duty to make reasonable adjustments in respect of a disabled person is discrimination against that disabled person.

128. In considering a reasonable adjustments claim, a tribunal must consider:

- The PCP applied by or on behalf of the employer or the relevant physical feature of the premises occupied by the employer;
- The identity of non-disabled comparators (where appropriate) and
- The nature and extent of the substantial disadvantage suffered by the claimant.

Environment Agency v Rowan [2008] ICR 218, EAT.

129. The concept of a PCP does not apply to every act of unfair treatment of a particular employee. A one-off decision can be a practice, but it is not necessarily one; all three words connote a state of affairs indicating how similar cases are generally treated or how a similar case would be treated if it occurred again: Ishola v Transport for London [2020] EWCA Civ 112.

130. A claimant bears the burden of establishing a prima facie case that the duty to make reasonable adjustments has arisen and that there are facts from which it could reasonably be inferred, in the absence of an explanation, that the duty has been breached. There must be evidence of some apparently reasonable adjustment which could be made, at least in broad terms. In some cases the proposed adjustment may not be identified until after the alleged failure to implement it and this may exceptionally be as late as the tribunal hearing itself: Project Management Institute v Latif [2007] IRLR 579, EAT. There is no specific burden of proof on the claimant to do more than raise the reasonable adjustments that he or she suggests should have been made: Jennings v Barts and the London NHS Trust EAT 0056/12. The burden then passes to the respondent to show that the disadvantage would not have been eliminated or reduced by the proposed adjustment and/or that the adjustment was not a reasonable one.

131. By section 212(1) Equality Act 2010, 'substantial' means 'more than minor or trivial'.

132. When considering what adjustments are reasonable, the focus is on the practical result of the measures that can be taken. The test of what is reasonable is an objective one: Smith v Churchills Stairlifts plc [2006] ICR 524, CA. The Tribunal is not concerned with the processes by which the employer reached its decision to make or not make particular adjustments nor with the employer's reasoning: Royal Bank of Scotland v Ashton [2011] ICR 632, EAT.

133. Carrying out an assessment or consulting an employee as to what adjustments might be required is not of itself a reasonable adjustment: Rider v Leeds City Council EAT 0243/11, Tarbuck v Sainsbury's Supermarkets Ltd 2006 IRLR 664, EAT.

134. Although the Equality Act 2010 does not set out a list of factors to be taken into account when determining whether it is reasonable for an employer to take a particular step, the factors previously set out in the Disability Discrimination Act 1995 are matters to which the Tribunal should have regard:

- The extent to which taking the step would prevent the effect in relation to which the duty was imposed
- The extent to which it was practicable for the employer to take the step
- The financial and other costs that would be incurred by the employer in taking the step and the extent to which it would disrupt any of its activities
- The extent of the employer's financial and other resources
- The availability to the employer of financial or other assistance in respect of taking the step
- The nature of the employer's activities and the size of its undertaking
- Where the step would be taken in relation to a private household, the extent to which taking it would (i) disrupt that household or (ii) disturb any person residing there

This is not an exhaustive list.

135. There does not have to be a good or real prospect that an adjustment will remove the disadvantage for the adjustment potentially to be a reasonable one; it is sufficient that there is a prospect: Leeds Teaching Hospital NHS Trust v Foster EAT 0552/10.

136. Mr Justice Mitting said in South Staffordshire and Shropshire Healthcare NHS Foundation Trust v Billingsley EAT 0341/15 : '[T]he current state of the law, which seems to me to accord with the statutory language, is that it is not necessary for an employee to show that the reasonable adjustment which she proposes would be effective to avoid the disadvantage to which she was subjected. It is sufficient to raise the issue for there to be a chance that it would avoid that disadvantage or unfavourable treatment. If she does so it does not

necessarily follow that the adjustment which she proposes is to be treated as reasonable under [S.20] of the 2010 Act. It is in the end a question of judgement and evaluation for the tribunal, taking in to account a range of factors, including but not limited to the chance. A simple example may suffice to illustrate the point. If a measure proposed by an employee as a reasonable adjustment stands a very small chance of avoiding the unfavourable treatment arising out of her disability to which she would otherwise be subjected, but it was beyond the financial capacity of her employers to provide it, a tribunal would be entitled to conclude that it was not a reasonable adjustment. Indeed, on those facts it would be difficult to justify a conclusion that it was a reasonable adjustment. In the case of a large organisation by contrast, where a proposed adjustment would readily be implemented without imposing an unreasonable administrative or financial burden on the employer, then the obligation to take it may arise notwithstanding that the chance of avoiding unfavourable treatment was very far from a certainty.'

Knowledge

137. An employer is not subject to a duty to make reasonable adjustments if it did not know or could not reasonably be expected to know:
- That the employee has a disability; and
- That the employee is likely to be placed at a disadvantage by a PCP: Schedule 8, para 20(1)(b) Equality Act 2010.

138. An employer has a defence to a claim under s 15, if it did not know or could not reasonably have been expected to know of the employee's disability: s 15(2) Equality Act 2010.

139. An employer must do all it can reasonably be expected to do to find out whether an employee has a disability: EHRC Employment Code, para 5.15.

140. HHJ Eady QC said in A Ltd v Z [2020] ICR 199:

"23. In determining whether the employer had requisite knowledge for section 15(2) purposes, the following principles are uncontroversial between the parties in this appeal:

(1) There need only be actual or constructive knowledge as to the disability itself, not the causal link between the disability and its consequent effects which led to the unfavourable treatment: see York City Council v Grosset

[2018] ICR 1492, para 39.

(2) The respondent need not have constructive knowledge of the complainant's diagnosis to satisfy the requirements of section 15(2); it is, however, for the employer to show that it was unreasonable for it to be expected to know that a person (a) suffered an impediment to his physical or mental health, or (b) that that impairment had a substantial and (c) long-term effect: see Donelien v Liberata UK Ltd (unreported) 16 December 2014, para 5, per Langstaff J (President), and also see Pnaiser v NHS England [2016] IRLR 170, para 69, per Simler J.
(3) The question of reasonableness is one of fact and evaluation: see Donelien v Liberata UK Ltd [2018] IRLR 535, para 27; none the less, such assessments must be adequately and coherently reasoned and must take into account all relevant factors and not take into account those that are irrelevant.
(4) When assessing the question of constructive knowledge, an employee's representations as to the cause of absence or disability-related symptoms can be of importance: (i) because, in asking whether the employee has suffered substantial adverse effect, a reaction to life events may fall short of the definition of disability for Equality Act purposes (see Herry v Dudley Metropolitan Borough Council [2017] ICR 610 , per Judge David Richardson, citing J v DLA Piper UK llp [2010] ICR 1052), and (ii) because, without knowing the likely cause of a given impairment, “it becomes much more difficult to know whether it may well last for more than 12 months, if it has not [already] done so”, per Langstaff J in Donelien 16 December 2014, para 31.
(5) The approach adopted to answering the question thus posed by section 15(2) is to be informed by the code, which (relevantly) provides as follows:
“5.14 It is not enough for the employer to show that they did not know that the disabled person had the disability. They must also show that they could not reasonably have been expected to know about it. Employers should consider whether a worker has a disability even where one has not been formally disclosed, as, for example, not all workers who meet the

definition of disability may think of themselves as a 'disabled person'.

"5.15 An employer must do all they can reasonably be expected to do to find out if a worker has a disability. What is reasonable will depend on the circumstances. This is an objective assessment. When making inquiries about disability, employers should consider issues of dignity and privacy and ensure that personal information is dealt with confidentially."

(6) It is not incumbent upon an employer to make every inquiry where there is little or no basis for doing so: Ridout v TC Group [1998] IRLR 628 ; Secretary of State for Work and Pensions v Alam [2010] ICR 665.

(7) Reasonableness, for the purposes of section 15(2), must entail a balance between the strictures of making inquiries, the likelihood of such inquiries yielding results and the dignity and privacy of the employee, as recognised by the code.

141. We have to look at what the respondent should reasonably have been expected to do by way of enquiries and what the respondent should reasonably have been expected to know after these enquiries.

Submissions

142. Ms Gray had prepared a skeleton argument and we heard detailed and helpful oral submissions from both sides. We have considered those submissions carefully and taken them into account in reaching our conclusions.

Conclusions

Disability discrimination

Disability

Issue: Was the claimant a disabled person at all material times within the meaning of section 6 of the Equality Act 2010?

143. The respondent conceded that the claimant was disabled due to her hypothyroidism.

Knowledge – section 15 and 20 / 21 of the Equality Act 2010

Issue: Did the respondent know or could they have been reasonably expected to know that the claimant was a disabled person within the meaning of the Equality Act 2010?

144. We had regard in particular to the guidance in the case of A v Z and the EHRC Code.

145. We considered the various points when the claimant disclosed information about her condition. Should the respondent reasonably have made further enquiries? If it had made those enquiries, what response would it have received? Would the respondent have known that the claimant had a condition which substantially adversely affected her day to day activities and that those effects were long term?

146. We looked at key possible dates for knowledge.

Disclosures to Mr Watson: October 2019:

147. The claimant disclosed her long term condition of hypothyroidism and that it caused tiredness. We concluded that at this point the respondent did not have actual knowledge; it would not have been aware that the effect on the claimant's day to day activities was substantial in the sense of more than minor or trivial or that those effects were long term.

148. We agreed that Mr Watson should reasonably have asked the claimant more questions – about the effects of the condition and any medication the claimant was taking. Clearly this would have had to be done in a sensitive way with a view to understanding if there was a disability and whether anything more needed to be done to support the claimant. We also considered that he should reasonably have raised the matter with HR and considered that that would probably have led to a discussion with the claimant about whether more medical evidence from her GP or an OH assessment was appropriate.

149. We concluded however, given the tenor of her communications with Mr Watson, that the claimant was unlikely at this point to have volunteered more information or to have wanted an OH referral with a view to investigating whether she required support. We formed this view based on what the claimant was saying about her condition to Mr Watson and the fact that at this point that it did not seem to be causing her any difficulties in the workplace.

150. We therefore concluded that the respondent would not have had knowledge of the claimant's disability at this point even if had done everything it reasonably should have done.

February 2020 discussion with Ms Goulden

151. On this occasion, the information about the claimant's condition was shared in the context of a discussion about the workload and the claimant's concern about the impact of the workload on tiredness arising from her condition.

152. We considered that Ms Goulden should reasonably have made further enquiries, taken HR advice, discussed a possible OH referral and investigated with the claimant whether she required other forms of support, regardless of any impression she formed that the claimant might have been a bit reticent. If she asked the questions and the claimant made it clear she did not want to discuss it further, it would have been appropriate for her not to pursue the issue at that point.

153. Ms Goulden would not have had actual knowledge at this point. We had no actual evidence as to what the claimant would have done if offered an OH referral at this point so we had to speculate to some extent. We considered that the evidence that the claimant did not want further exploration of her condition was thin although she clearly did have concerns about confidentiality. She was careful to make sure each of her line managers was aware of her condition and what she perceived to be the relevant symptoms in the workplace. She did accept an OH referral in June although circumstances had changed by then.

154. We considered on balance that the claimant would have accepted a suggestion of an OH referral at that time and that would have resulted in a report to some extent similar to that eventually obtained in June 2020 which would have made clear that the underlying condition was such that it satisfied the definition of disability in the Equality Act 2010. The respondent we considered had constructive knowledge of the claimant's disability by February 2020.

Issue: Did the Respondent know or could they have been reasonably expected to have known that the Claimant was likely to be placed at the alleged substantial disadvantage as a result of the alleged PCP(s)?

155. Again we had to ask what enquiries the respondent should reasonably have made and when and what it could have been expected to know after those enquiries, bearing in mind the A v Z guidelines.

156. We considered various points when the respondent might have had actual or constructive knowledge.

February 2020 discussion with Ms Goulden

157. No connection was made at this point by the claimant between her condition and any muscular issues or problems with physical pain connected with her work station. This was therefore not something that the claimant would have raised with OH or which would have been reported back by OH. We considered that the respondent had no actual or constructive knowledge of the effects of the PCP at this point.

When the claimant started complaining about pain caused by her home workstation: late March / early April 2020

158. We did not consider that the respondent would have had actual or constructive knowledge at this point either since the claimant herself had not made any connection between her pain and her hypothyroidism.

After the 11 May 2020 email

159. Although we considered that the email itself was somewhat ambiguous as to the connection between the disability and the pain issues arising from the workstation; we considered that it should have put the respondent on enquiry and that the respondent should reasonably have taken OH advice at that stage.

160. However when we asked ourselves what would have been the outcome of an OH referral at this point, we had to bear in mind that the report from the OHA in June 2020 (which the claimant did not critique in her covering email to Ms Goulden) did not draw any connection between the disability and the pains caused by the workstation. It was not clear to us from the evidence we heard that the claimant said anything in that consultation which should have led the OHA to a professional opinion other than that which she expressed in the report.

161. We considered that the respondent is reasonably entitled to rely on an OH opinion where it is an opinion on a medical issue (as opposed to an opinion n whether an individual satisfies the legal test for disability).

162. We concluded that the respondent did not have actual or constructive knowledge that the PCP had the relevant effect in circumstances where the expert medical opinion was to the contrary.

163. That lack of constructive knowledge we concluded persisted right through the receipt of the OH report which the respondent did obtain, by which point there was no ongoing duty to make reasonable adjustments, as the workstation had been altered to the claimant's satisfaction by that point.

164. If we are wrong about constructive knowledge, we in any event went on to consider the other elements of the claim.

Failure to make reasonable adjustments- sections 20 and 21 of the Equality Act 2010

Issue: Did the Respondent apply a provision criterion or practice? The Claimant relies upon the following alleged PCPs, namely the requirement to work with unassessed work station equipment, namely a small desk with limited space and uncomfortable seating.

165. We concluded that once lockdown began, the claimant was obliged to work at home with whatever workstation she had, and that as a matter of fact her workstation was not professionally or independently assessed. We concluded that the PCP was applied.

Issue: If so, did the PCP place the Claimant at a substantial disadvantage as compared to non-disabled persons? The Claimant relies upon the following alleged substantial disadvantage(s):

a. the adverse impact on the Claimant's health and exacerbation of her disability, leading to the Claimant's inability to work between 8th – 22nd June 2020,

166. We considered carefully what evidence we had of the disadvantage. The respondent said the OH report said the disadvantage was not connected with disability. The GP report said it was connected and the claimant's evidence was that it was connected.

167. We considered that the GP report was not unambiguous. We did not know what information was provided to the GP and what criticisms of the workstation the GP was making. Confusingly the GP report is written as if the issue was ongoing.

168. Looking at the evidence in the round, we concluded that all of the medical evidence connected the pain issues with the home workstation. That fit with the claimant's own experience that the issues arose once she was working full time from home.

169. The claimant's GP drew the further connection between the pain and the claimant's underlying condition. It seemed to us that the GP was likely to have a fuller knowledge of the claimant and her medical history than the OH adviser. On balance, we therefore concluded that the PCP put her at a disadvantage compared with non disabled persons.

Issue If yes, did the Respondent take such steps as were reasonable to take to avoid the alleged disadvantage to the Claimant and/or would or could the same have avoided the alleged disadvantage? The Claimant relies upon the following alleged adjustments / steps:

~~a) Provide the Claimant with a risk assessment of her work station~~

~~at home;~~

b) Provide the Claimant with an appropriate desk

170. In looking at what steps it was reasonable for the respondent to take, we reminded ourselves that there only had to be a prospect or a chance, even a small chance, that an adjustment might be effective for it potentially to be reasonable, assessing all of the other factors. Given that we assumed that the provision of a desk was affordable for the respondent and was unlikely to cause any disruption, we were satisfied we only had to find a small chance that the adjustment might have been effective in order to conclude that it was a reasonable step for the respondent to have taken.

171. What the claimant said to Tribunal was that the problem was the relationship of the height of her chair to the height of the table, not other features of the table. Once she had an adjustable height chair, it appeared that the table presented no further problem.

172. We looked at what other evidence there was that the desk was problematic once the chair had been changed. The claimant mentioned the size of the table was a problem during her grievance but did not say why that led to any discomfort.

173. It was suggested on the claimant's behalf that the fact that the claimant went off sick after having been provided with the equipment other than a new desk was evidence that the small table contributed to her deterioration.

174. We looked carefully at what the evidence showed about whether the other equipment on its own without a new desk continued to cause deleterious effects in the short period between 2 June and 8 June 2020 when the claimant was signed off sick.

175. On her own account, the claimant has gone on having symptoms up to date; her symptoms carried on even after she changed desk. What appeared to have caused some improvement was a period of rest when she was signed off sick. We concluded that the following statement in the OH report best reflected the position and what the claimant herself had told the OH adviser:

She states that she told her line manager over a considerable period of time that she was in pain and requested work equipment in May 2020 which was received week ending 29.05.2020 and she started using the equipment from

02.06.2020, however, ***given the time that had elapsed the damage had already been done***

176. Ultimately, we concluded that there was no adequate evidence that there was even a very small chance that provision of a larger desk would have alleviated or ameliorated the disadvantage.

177. For all of the above reasons, we dismissed the claimant's claims.

_____

Employment Judge Joffe
29th Dec 2021

JUDGMENT SENT TO THE PARTIES ON

30th Dec 2021.

FOR THE TRIBUNAL OFFICE