EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4107789/2020

Preliminary Hearing Held on Cloud Video Platform on 6 July 2021

Employment Judge M Robison

Ms C Rolandi	**Claimant** **Represented by** **Mr J Tinston** **Solicitor**
Crieff Hydro Ltd	**Respondent** **Represented by** **Mr K McGuire** **Counsel** **Instructed by** **Ms C Mitchell** **Solicitor**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

1. The respondent's application for strike out for want of jurisdiction is refused.

2. The respondent's application for strike out on the grounds that the claim has no reasonable prospects of success is refused.

3. The respondent's application for a deposit order is refused.

REASONS

1. This preliminary hearing was set down at a case management preliminary hearing which took place on 20 April 2021, to consider the following preliminary matters:

    1. Whether the claim should be struck out for want of jurisdiction;
    2. Whether the claim should be struck out on the grounds of no reasonable prospects of success;
    3. Whether a deposit order should be made on the grounds that there is little reasonable prospect of success.

2. At the outset of the hearing, I confirmed that I had received an electronic file of productions, which are referred to in this judgment by page number.

3. I did not hear evidence from any witnesses, although it was agreed that in the event that I decided that a deposit order should in principle be made, that the claimant would require to submit information about her means.

Respondent's submissions

4. I first heard from Mr McGuire who made oral submissions on the respondent's applications.

Jurisdiction

5. Mr McGuire argued that this Tribunal does not have jurisdiction to hear this claim because it does not fall within the scope of Part 5 of the Equality Act 2010 which relates to work. This is by reference to section 39, with section 39(2)(b) particularly in contention, relating to the receipt of any other benefit, facility or service.

6. As Mr McGuire pointed out, the claim is set out in the ET1 form at page 10, which confirms that this is a claim arising from accommodation occupied by the claimant in terms of an accommodation agreement lodged at page 70. The factual background is as set out in the respondent's paper apart to the ET3. That background is not challenged in regard to the occupation by the claimant of a room where she was given notice to move out so that urgent repairs could be done.

7. Mr McGuire relied on two points in particular. The first is that this claim has nothing to do with the claimant's work for the respondent: it was not in a working context and it does not relate to a task which was performed at work.

8. The second important point is that the occupancy of the room is not governed by the contract of employment. This is signed by both parties but there is no reference to accommodation. The terms on which the claimant is allowed to occupy the room are set out in the accommodation agreement and not the contract of employment.

9. By reference to section 39(2), he argued that for this Tribunal to have jurisdiction, the accommodation would require to come within section 39(2)(b) ie that had to be classified as any other benefit facility or service.

10. The respondent argues that accommodation is a separate matter to employment; it is logically and objectively distinct from the terms and conditions of employment as set out in the contract of employment; which is a separate matter to the provision of accommodation. It cannot be said therefore that the provision of accommodation is sufficiently linked to employment for it to be reasonably referred to some sort of benefit or service related to employment. There is therefore no jurisdiction.

11. Mr McGuire submitted that the claimant has chosen to enter into a separate agreement for accommodation which she pays for. This cannot be seen in objective terms as a benefit, facility or service. This is unlike free or subsidised travel which can be categorised as facilities or services where these is no separate agreement governing their terms separate to the contract of employment. The separate accommodation agreement takes the claim outside what is said to be benefits, facilities or services.

12. While the claimant refers in his argument to the Housing Act 1988, by reference to section 141 which sets out its extent, Mr McGuire argued that the relevant provisions do not apply in Scotland. He suggested that Scots Law does not recognise the concepts of "service occupancy" and "service tenancy" relied on.

13. The claimant occupied the accommodation in the same way that she would in an agreement with any other party, which happens in this case to be her employer. This does not change the nature of the agreement for the occupation of a room. If the agreement was with another party, then there would be no claim against the other person in the Employment Tribunal.

14. Further, the claimant does not complain about her terms and conditions of employment or her treatment as an employee. The complaint relates not to a time when she was working but rather when she was attending college.

15. The respondent submits that these circumstances fall under Part 4 of the Equality Act, so this claim should be pursued in the civil courts. Although the Sheriff at Perth Sheriff Court has rejected the claim, given there was no argument and the nature of the claim was not properly explained, and no appeal, it is not for this Tribunal to place any weight on that.

16. Mr McGuire argued that if the Tribunal were to find in favour of the respondent, then this could “open the flood gates”; the fact that this type of claim may be rare strengthens the respondent’s case that it is not the case that the Employment Tribunal’s jurisdiction will be ousted in a large number of cases whereas these are claims which should be pursued in the Sheriff Court.

17. He submitted that this claim should therefore be struck out because the circumstances do not fall within the scope of section 39; there are otherwise no reasonable prospects of success because the claimant does not have sufficient service to bring a claim under the ERA.

Prospects of success

18. Mr McGuire argued that Section 8.2 of the ET1 contains insufficient specification relating to the claim under the Equality Act. He submitted that there is no reference to the PCP and there is no reference to whether reasonable adjustments were requested; or what was requested. The claim wholly lacks sufficient specification. Thereafter an agenda and note

of argument have been prepared on behalf of the claimant but these do not form part of the relevant pleadings in this case.

19. He pointed out that these points were raised on behalf of the respondent at the PH presided over by EJ McFatridge. It was there noted that if there were to be further and better particulars added or an application to amend, then these should be submitted. The respondent's position is that what is set out here in the note of argument is an amendment but no application to amend has been made.

20. While Mr McGuire accepted that if this additional information is categorised as further particulars (or an amendment), his argument has less force, his position is that this should not be included as part of the pleadings. Relying on *Chandhok v Tirkey* 2015 IRLR 195, he submits that the pleadings are only those set out in the ET1 and that what is stated in the agenda cannot be rolled up with what is stated in the ET1, even where the ET1 was initially prepared by an unrepresented claimant. Further, the information contained in the agenda and note of argument is not just a relabelling of claims already pled but would require a formal amendment. That he submitted cannot be considered because there is no notice of any application to amend. While the ET3 contains some detail in response, that is largely setting out the factual background; otherwise the response to the legal claims is only dealt with in paras 28 and 29 which cannot be relied on to assume that the claimant's claim is properly made out.

Prospects of success – further specification

21. Even if the agenda and note of argument in relation to the discrimination claims are accepted as further particulars of claim, Mr McGuire argued that the section 20/21 claim in regard to the failure to make reasonable adjustments is bound to fail.

22. With regard to the PCP, he argues that what is contained in the agenda and note of argument is a "new claim", because there is a difference between what is articulated in the agenda and what is stated in the ET1 (although he accepts that there is a factual dispute about that).

23. Further, the claim is bound to fail because it is now accepted that a reasonable adjustment has to be work related, and related to the claimant's employment. The reasonable adjustment contended for is for more notice to vacate her room; but this has nothing to do with the claimant's terms and conditions of work. Relying on *Salford NHS v Smith* UKEAT/0507/10, and *Environment Agency v Rowan* 2003 IRLR, he argued that the steps that will need to be taken must have the practical consequences of preventing or mitigating the difficulties faced by a disabled person at work.

24. Mr McGuire also argued that the claim under section 15 does not have any reasonable prospects of success on the basis of what is currently set out in the ET1. Relying on that, the claimant cannot show unfavourable treatment which arose as a consequence of the claimant's disability.

25. In any event, there is insufficient specification of any harassment claim. Further, there is no further specification at all of the claim referenced "other payments", even if the agenda and note of argument are accepted as sufficient specification of the other claims.

Claimant's submissions

26. Mr Tinston had lodged a written note summarising his arguments which he supplemented in oral submissions.

Jurisdiction

27. He argued that the circumstances must be covered by some provision of the Equality Act because it cannot be that the claimant is left without recourse if she has suffered discrimination.

28. He agrees that the relevant provision of section 39(2)(b) but argues that the scope of "benefit facility or service" is wide enough to encompass the circumstances here. Further, section 32(2)(a) of Part 4, which relates to discrimination in the context of premises, excludes discrimination prohibited by part 5.

29. While he was not aware that the Housing Act 1988 did not apply throughout UK, he argued that his submissions on "service occupancy"

and “service tenancy” are applicable by reference to the case of *Elvidge v Coventry CC* 1993, and other case law on this point relevant in Scotland, namely the decision of the House of Lords in the case of *Glasgow Corp v Johnstone* 1965 1 All ER 730.

30. He argues that this is a “service occupancy” type case and not a service tenancy type case, where the former relates to accommodation supplied in connection with employment, whereas the latter is regulated by the housing laws.

31. In this case, the conditions which categorise this as a “service occupancy” type case apply. In particular, by reference to the accommodation agreement, this terminates when the employment ends (clause 29, page 50). Further it is clear that the right to accommodation is contingent on being in employment and the two are intrinsically interlinked. This is clear from clause 24 of the contract of employment which references accommodation (page 66).

32. The respondent relies on the fact that there are separate agreements, but the accommodation agreement is expressly referred to in the contract of employment, and the adherence to the obligations relating to accommodation is linked to disciplinary in the work context. It is therefore not correct to say that that these are entirely separate agreements.

33. In any event, he argued, there could be separate agreements about travel expenses or a company car, but that would not exclude them from being a benefit facility or service. Relying on *Elvidge*, he argues that the provision of such benefits is to facilitate the best performance of full duties. Here, the claimant is automatically entitled to be offered accommodation by virtue of working full time. If the situation changes and she goes part time, as she did here, she is likely to have to leave the accommodation. This shows that the accommodation agreement is intrinsically interlinked with the contract of employment.

34. With regard to the floodgates argument, he argued that there has to be some recourse for a person who is discriminated against. To protect her position and given imminent time bar, the claimant lodged a claim in the Sheriff Court using the simple procedure but this was rejected on the

grounds this is an employment matter. This accords with his understanding, and it would potentially be an abuse of process to engage further resources of the Sheriff Court since this is clearly a matter for the Employment Tribunal. It would not be appropriate to lodge another claim in the Sheriff Court which would in any event be out of time and unlikely to be permitted under the just and equitable test. He submitted that the facts in this case fall squarely under Part 5.

Prospects of success

35. With regard to the prospects of success, he argues that the claimant's claims are sufficiently articulated in the original claim form which the claimant completed without the benefit of legal advice. He submits that unrepresented claimants are not expected to set out which legal claims they rely on; and that the basis of the claim is clear from the first lines of the claim. While there is a reference to *Selkent* in his note of argument, he submitted that all that the additional information does is to add labels to facts which are already plead and no new claims are being introduced.

36. Further it is clear that disability discrimination is claimed. While the claimant has not ticked the box to say that she is disabled, she has ticked the box to confirm that she is claiming disability. It is however not uncommon for a claimant to interpret that question on the claim form as a question whether reasonable adjustments are required for the hearing itself. Further, the respondent was aware that the claimant suffered from PTSD because she had declared this in the health questionnaire when she commenced employment (page 68). The respondent was clearly aware that she was disabled and the adverse impact that had on her.

37. Mr Tinston argues that these further particulars tie into the ET1 and that they are not providing additional factual information but merely specifying the claims that are plead. Further, the agenda was prepared and submitted two and a half months ago; so that intimation was made on 19 April which was at the earliest opportunity once the claimant had the benefit of legal advice. Any lack of clarity was clarified in the skeleton argument (which address the matters which were raised in the agenda).

38. If these are not considered further particulars on the claim, then Mr Tinston said that the claimant will make an application to amend. However, his primary position is that the main basis of her claim is set out in the ET1 which includes meritorious and valid claims.

39. He argued that there should be no deposit order principally on the basis that if the Tribunal has jurisdiction, then these claims have more than little prospects of success.

40. With regard to prospects of success of the reasonable adjustments claim, this is covered by section 39(5) read with section 39(2)(b) which relates to benefits. This is the failure to make a reasonable adjustment in relation to a benefit. If the Tribunal accepts that it has jurisdiction, then that makes the reasonable adjustment sought work related.

41. Here the PCP is set out in the accommodation agreement, that is the requirement to give 24 hours' notice to vacate in order for works to be done. This PCP subjected the claimant to a disadvantage and unnecessary anxiety and she set outs the steps to avoid. Relying on *Elvidge*, he argues that a benefit does not require to be imperative to carry out duties; but rather to be beneficial and to facilitate the better performance of duties.

Tribunal deliberations and decision

Respondent's application for strike out for want of jurisdiction

42. Mr McGuire argued that the provision of accommodation in this context could not be argued to fall within the scope of the provision at section 39(2)(b) of Part 5 but rather within Part 4 (premises) and therefore that it was the Sheriff Court not the Employment Tribunal which has jurisdiction. I did not accept that argument for the following reasons.

43. In Part 5 of the Equality Act 2010, section 39(2) states that an employer must not discriminate against an employee (b) in the way it affords that employee access, or by not affording access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service.

44. The relevant provision thus references “benefits, facilities and services”. Although not defined by the Act, this is widely interpreted as is made clear by the EHRC’s Code of Practice at paragraph 14.14, which sets out a non-exhaustive list of examples. They can be contractual or discretionary.

45. I made the point to Mr McGuire during argument that the EqA creates claims in breach of a statutory duty, or as he preferred to describe it, a statutory delict. His position was that was relevant to where the claim is brought (ie the Sheriff Court or the Employment Tribunal) as opposed to the type of claim. His argument focussed on contractual terms of the two separate agreements. In particular in support of his argument he pointed out that the contract of employment made no reference to accommodation and that the accommodation agreement made no reference to employment.

46. I agreed with Mr Tinston that terms of employment could be contained in a separate document but that would not mean that they were not benefits facilities or services. Given that discretionary benefits will be included, they need not be referenced in any contractual agreement or have their basis in contract at all.

47. Indeed I am of the view that this focus on the agreements in play here is misplaced. Claims under the Equality Act are not based on contract (apart from the equal pay provisions). The focus is not on any breach of the contract or contractual terms or obligations, but rather on a breach of the statutory provisions. I considered it to be irrelevant if the occupancy of the room is not governed by the contract of employment; and it is not significant that the terms under which the claimant is permitted to occupy the room are set out in a separate agreement.

48. In any event, the accommodation agreement and the contract of employment do make reference to the link between employment and accommodation. I noted that the accommodation agreement at page 80 referenced deductions from pay. It states that, “If you’re leaving employment and accommodation…let us know….when you’ll be leaving accommodation (you can have up to 48 hours after your last shift). In exceptional circumstances, we can sometimes agree an extension if

we've a room available…if you leave us on bad terms or you're dismissed, we'll either give you immediate notice or a maximum of 48 hours to leave accommodation…"

49. The respondent's position is that staff accommodation is offered to employees who work a minimum of 25 hours per week, full-time. Indeed, when the claimant expressed a wish to reduce her hours to attend a college course, she was notified that she would be required to find alternative accommodation.

50. The right to stay in the accommodation is thus clearly dependent on being employed by the respondent. It is clear that it is only employees who are entitled to the benefit of that accommodation. It is therefore a benefit linked to that employment. This is not a standard landlord/tenant arrangement, where the landlord could be any person or organisation. I accept that benefits or facilities could be provided by third parties as service providers (or providers or premises) but I do not consider the arrangement here falls into that category.

51. The link with employment is further reinforced in the contract of employment, at page 66, where reference is made at clause 24 to accommodation, "If you've been offered accommodation….you'll be required to sign an accommodation agreement and to adhere to all of the relevant obligations relating to your behaviour whilst occupying the accommodation. Failure to do so may result in disciplinary action being taken and the offer of accommodation being withdrawn".

52. It is clear from the terms of the agreements that the accommodation is let to the claimant and other employees on condition that they are employed full time, that they have a clean disciplinary record and that occupation ceases when the employment ended. Accordingly, whether the concepts of "service occupancy" and "service tenancy" are relevant in Scots law is neither here nor there.

53. I conclude therefore that the provision of accommodation while the claimant is employed by the respondent is a "benefit, facility or service" in terms of section 39(2)(b) of the Equality Act 2010. I accepted Mr Tinston's submission that the reasonable adjustments duty applies to the provision

of a benefit to an employee by virtue of section 39(5). I accept therefore that this Tribunal does have jurisdiction to hear the claim.

Respondent's application for strike out on grounds of no reasonable prospects of success

54. Mr McGuire argues that the claim has no reasonable prospects of success and should therefore be struck out for that reason. This is on the basis of the current written case set out in the ET1 only.

55. He argues that there is no formal application to amend before the Tribunal, so that the further information contained in the agenda and note of argument do not and cannot form part of the "pleadings".

56. Mr Tinston in essence argues that the information contained in the ET1 is sufficient to set out the basis of the claim; that the information in the agenda and note of argument are further particulars of the claim; that no new claims are being argued; that these are just to put legal labels on the claims made.

57. Mr Tinston's primary position then is that these are further particulars of claims already made and that an application to amend is not strictly necessary. He did however submit that if that is deemed appropriate then the claimant will make an application to amend.

58. In my deliberations on this point I take account of the fact that the claimant drafted the ET1 herself (and I understand that English is not her first language). I also take account of the fact that it is very common indeed in this Tribunal that unrepresented claimants simply set out a factual narrative of the circumstances relied on without any reference to the relevant legal provisions at this early stage. While the claimant is now represented this case is still at a relatively early stage of proceedings, which is highly significant.

59. Mr McGuire relied on the oft cited *Chandhok v Tirkey* 2015 IRLR 195 to support his argument that the focus should only be on the pleadings in the ET1. There the EAT states that the ET1 should set out the "essential case"; that parties must set out "the essence of their respective cases". In that appeal, the Employment Tribunal had determined a point raised in a

witness statement rather than in the ET1. That case had proceeded beyond the very early stages of the claim, and an amendment had already been allowed, unlike in this claim.

60. In this case the narrative of the ET1 does set out the essence of the claimant's case, and the additional documents put legal labels on, and give more detail of, the factual circumstances described to support those legal claims.

61. I decided that there is sufficient factual information in the ET1 to form the basis of relevant claims, notwithstanding the absence of reference to the relevant legal provisions. I noted in particular that in the ET1 the claimant ticked the box for disability; she referenced being threatened with eviction; that she got less than 24 hours' notice of the need to move out; that she got no help and was given no flexibility; that the respondent knew about her mental health condition; that she was "harassed" and the context of that; that her mental health deteriorated; that she had to leave her accommodation; that she brought her concerns to the attention of the general manager; that there were problems with the scheduled meetings and the respondent refused to arrange another.

62. In regard to the claim for "other payments": the claimant claims that her accommodation fee continued to be deducted after she had left the staff accommodation.

63. The ET1 narrative is then amplified and reworded and the legal labels which support the facts alleged are set out in more conventional legal language by the claimant's representative in the agenda and note of argument. There it is made clear that these relate to claims under section 15, 21 and 26. The PCP is articulated as "giving employees 24 hours or less to vacate their accommodation when repairs are required"; and that the demand to vacate the accommodation which she has described as a "threat of eviction" is described as the unfavourable treatment for the section 15 claim; and further details of the harassment claim are included.

64. As Mr Tinston argued, unrepresented claimants are not expected to set out the legal basis of their claims in the first instance. The agenda is intended to assist the claimant in that process, and in turn intended to

ensure the respondent knows the precise claims which will be pursued; and in clearly setting out the claims to be met. Indeed the case management stage is designed precisely to facilitate the clarification of claims. This is clear from the template for the agenda which states, "Your answers and those of the respondent will form the basis of the discussion at the PH. They do not form part of the claim or response at this stage. Following discussions some of your answers may be accepted as further details of your claim."

65. I take the view that the information contained in the agenda and note of argument represents further details and specification of claims already pled.

66. In any event, even if an amendment is required, I would have no hesitation in granting it. Although Mr McGuire suggested that I could not allow such an amendment at this hearing, I did not agree, not least because Mr Tinston submitted that if the Tribunal were not to agree that the information contained in the agenda and note of argument ought to be categorised as further details of claims already pled, then he would make an application to amend, and indeed he referenced the *Selkent* principles.

67. Further, in the case of *MOD v Dixon* UKEAT/0050/17, which I mentioned during the course of argument, the EAT (HHJ Eady QC) held that the information contained in the claimant's agenda was a valid application to amend which ought to have been considered at an earlier stage of proceedings.

68. The question whether or not to grant an application to amend is a matter of judicial discretion. When determining that question, account requires to be taken of the guidance set out by the EAT in *Selkent Bus Co Ltd v Moore* 1996 IRLR 661. In that case, the EAT stated that "whenever the discretion to grant an amendment is invoked, the tribunal should take into account all the circumstances and should balance the injustice and hardship of allowing the amendment against the injustice and hardship of refusing it" (the so-called "balance of hardship" approach).

69. In making that assessment, the EAT stated that the relevant circumstances include (although are not limited to):

1. *the nature of the amendment*: a distinction is drawn between (1) amendments which are simply intended to alter the basis of an existing claim, (2) those which add a new type of claim arising out of the facts already plead (re-labelling) and (3) amendments which add a wholly new type of claim which does not relate to the facts set out in the original claim at all.

2. *The applicability of time limits:* time limits are only relevant if a new type of claim is added, and even then only a factor to be taken into account.

3. *The timing and manner of the application*: otherwise any delay is a factor to be taken into account and consideration is given to why the application was not made earlier and why it is now being made. Questions of delay resulting for example in adjournments are relevant.

70. The Court of Appeal in *Abercrombie and others v Aga Rangemaster Ltd* 2014 ICR 209 confirmed that Tribunals considering applications to amend that arguably raise new causes of action should focus on the extent to which the new pleadings are likely to involve substantially different areas of enquiry than the old. More recently in *Vaughan v Modality Partnership* 2021 IRLR 97, HHJ James Tayler stated that when considering an amendment the focus should be on the real practical consequences of allowing or refusing the amendment. The *Selkent* factors are not the only factors that may be relevant, and the focus should be on the real prejudice to parties of allowing or not allowing the amendment.

71. By reference then to the guidance set out in *Selkent*, above, I accept in this case, as discussed above, that the claimant is not adding any new claims (I discuss Mr McGuire's point about the reasonable adjustments claim in detail below). If an amendment at all, it is a type 1 amendment, giving further details of an existing claim. The amendment is made at the very early stages in proceedings, as discussed above, and indeed at the case management stage designed precisely to clarify claims for the benefit of both parties. As Mr Tinston pointed out, it was made at the earliest possible stage in proceedings, as soon as the claimant obtained legal representation. The new pleadings amplify but do not involve

substantially different areas of enquiry. Most importantly, there is no prejudice to the respondent, the amendment causes no delay at all to proceedings. Indeed the respondent has set out the factual background in some detail already in their ET3, and it would not appear that the amplification of the claim will require much further investigation, if any. If it does, there is ample time to do that since no final hearing dates have been set.

72. When considering then on the basis of the further details/amended claim whether the claim generally has no reasonable prospects of success, I was conscious too of significant authority supporting the proposition that the threshold that must be reached to support strike out on the basis of no reasonable prospects of success is a high one. It would be unusual to strike out a discrimination case without first having heard evidence (See eg *Anyanwu v South Bank Student Union* 2001 ICR 391 HL).

73. In this case it is clear that there is a dispute on the facts. Considering then the claimant's case at its highest, I could not say that there was no reasonable prospects of success in regard to the claims overall such that it should be struck out.

The section 15 claim should be struck out because it has no reasonable prospects of success.

74. Mr McGuire argued specifically that the section 15 claim should be struck out because it has no reasonable prospects of success. This is on the basis that the relevant tests to establish discrimination arising from disability cannot be made out if reliance is placed only on the narrative of the ET1.

75. As I understand it, Mr McGuire was much less confident about the force of this argument were I to conclude that the further information in the agenda and note of argument were to be accepted as further particulars or an amendment.

76. As discussed above, I am in any event of the view that the facts narrated in support of this claim, which include the further details in the agenda and note of argument, are sufficient to support a prima facie claim of

unfavourable treatment arising in consequence of disability. Indeed it may be that the focus will be on the question of knowledge and objective justification.

Reasonable adjustments claim should be struck out because it has no reasonable prospects of success

77. Mr McGuire argued, even if the additional information in the agenda and note of argument were to be accepted as further particulars of the claim, that still the reasonable adjustments claim has no reasonable prospects of success.

78. Mr McGuire argues in particular that the claim has no reasonable prospects of success because it does not relate to the claimant's work.

79. In support of that argument he relies on the cases of *Salford NHS v Smith* and *Environment Agency v Rowan*. I was conscious that these were decisions which referenced the DDA and that the provisions on reasonable adjustments was not exactly replicated in the Equality Act.

80. I have already found that this Tribunal does have jurisdiction to hear this claim, that is that the provision of accommodation is a benefit or service related to the claimant's work. Mr Tinston submitted that was sufficient.

81. I do however accept, if this was Mr McGuire's point, that the rationale behind the reasonable adjustments' duty (in the employment context) is to make adjustments which would be effective in keeping a disabled person in employment and continuing at work.

82. That is not to say however that they require to be related to the claimant's job per se, and I note for example that the reasonable adjustments' duty might apply where a person is no longer employed (section 108).

83. It seems to me that a claim is not precluded by the mere fact that it is not directly job related and that this question must be considered when addressing whether or not an adjustment is reasonable. This would include an analysis of whether any proposed adjustment it is effective in preventing the particular disadvantage. I could not say that the facts described could not support an argument that the reasonable adjustments'

duty was triggered, and so the question whether any adjustments contended for are reasonable in the particular circumstances requires to be determined. Given that there is a dispute on the facts, then I could not say at this stage that the claim has no reasonable prospects of success.

84. Further and in any event, Mr McGuire argued that this claim has no reasonable prospects of success because of the way that the PCP has been articulated. In particular, he argued that what is articulated in the agenda is different from what is articulated in the claim form, and it was for that reason that he argues that this should be categorised as a "new claim".

85. He states that what is complained about in the claim form is about getting less than the minimum 24 hours' notice to move her things into another staff accommodation building, whereas the policy states that an employee will get a minimum of 24 hours' notice. Thus in the claim form the claimant is not complaining about a PCP of 24 hours' notice, but that she got less than the minimum. He argues that there is no PCP here.

86. Mr Tinston's position was that the PCP is articulated in the agenda, by reference to the claim form, as "giving employees 24 hours or less to vacate their accommodation when repairs are required", and that this at a minimum places the claimant at a substantial disadvantage; that the practice of giving less placed her at a disadvantage; that was not at odds with the accommodation agreement; and that would not necessarily defeat the claim.

87. I have noted that the factual background on this matter is disputed. However, I was of the view in any event that, it being for the claimant to formulate it, and PCP being widely defined to include informal practices, the PCP was validly articulated and that it was the legal formulation of facts which had been alleged in the ET1. I could not say therefore, without hearing evidence, that this particular claim therefore has no reasonable prospects of success.

88. Further, I was cognisant of the fact that in this case, the Tribunal will in any event require to hear evidence about this background in support of other disability discrimination claims including the harassment claim and

therefore I did not consider that it was appropriate to strike out this claim at this stage.

The claim for payment of wages

89. Mr McGuire argues that, even if the further information contained in the agenda and note of argument is accepted as further particulars of the claim, and even if the discrimination claims are accepted as sufficiently particularised, the claim for "other payments" is not.

90. While there is no further reference in the agenda or note of argument to further particularise this claim, I do note that it is referenced in the ET1 itself as a deduction to pay for accommodation even after she had left. The claimant sets out a sum she believes is due. I accept that this is the essence of a claim, although the respondent will clearly require details of the specific sums which are sought in a schedule of loss.

91. While I accepted Mr McGuire's argument that I could strike out some but not all the claims, I decided taking the claimant's case at its highest, that I should not strike out this claim for "other payments" in isolation.

Deposit order

92. Nor was I prepared to say at this stage, without having heard any evidence, and taking the claimant's case at its highest, for all of the reasons set out above, that there was little reasonable prospects of success, and therefore I also refuse to make an order requiring a deposit.

Next steps

93. I have accordingly refused the respondent's application for strike out a failing which a deposit order.

94. The further information in the agenda and note of argument are accepted as further details of the claim, or alternatively an amendment to the claim.

95. The respondent will therefore have 21 days from the date of the issue of this judgment to lodge any response, if so advised.

96. It would appear that a further preliminary issue of disability status remains outstanding. I do note however that the claimant had furnished the respondent (in the PH agenda) with further information regarding her disability, and offered to obtain further medical records. Parties should therefore liaise regarding this question, and the claimant should provide the respondent with such further medical information as is appropriate to allow the respondent to consider whether that matter can be conceded.

97. A further telephone case management preliminary hearing should be listed for one hour to fix a final hearing (in the period September to November), if appropriate, and to deal with all other outstanding case management matters.

Employment Judge:	**M Robison**
Date of Judgment:	**30 July 2021**
Date sent to parties:	**02 August 2021**