



EMPLOYMENT TRIBUNALS

Claimant: Ms T James and Others

Respondent: Reading Borough Council and Others

Heard at: Reading **On: 30 and 31 October 2017**

Before: Employment Judge Gumbiti-Zimuto
Members: Mr J F Cameron and Ms H T Edwards

Appearances

For the Claimants: Ms D Romney (Queens Counsel)

For the Respondent: Mr R Leiper (Queens Counsel)

JUDGMENT

The roles of Waking Night Care Assistant (Mrs B Clifford), Care Assistant (Mrs M Davies) and Community Care Worker (Mrs G Shackelford) are of equal value.

RESERVED REASONS

1. The Tribunal heard evidence from Mrs Gloria Shackelford, she commenced employment with Berkshire County Council as Home Care Assistant on 5 September 1996. The Tribunal heard evidence from Mrs Marina Davies, she commenced employment with Reading Borough Council as a Care Assistant on 16 February 2004. The Tribunal also heard evidence from Mrs Susan Kelly the Community Reablement Team Manager and Mrs Christina Mabbutt, Manager of the Willows Specialist Dementia and Intermediate Care Service. The Tribunal were also referred to the agreed facts in the case of Barbara Clifford and the draft agreed facts in the cases of Gloria Shackelford and Marina Davies.
2. The Tribunal have relied on the Independent Expert Report prepared by Mr Joe Magee and Ms Lis Lowe.

3. The Independent Experts concluded in their report that Barbara Clifford's work was of equal value to the work of three comparators. The Employment Tribunal in a Reserved Judgment sent to the parties on 23 January 2017 found that Barbara Clifford did work of equal value to Brian Peever.
4. Mrs Shackelford contends that the role of Home Care Assistant, now known as Community Care Assistant (CCA), is at least of equal value to the role of Mrs Barbara Clifford who worked as a Waking Night Care Assistant (NCA).
5. The claimant and the respondent have produced a draft statement of agreed facts. The document is mainly a statement of agreed facts but there are some disputed matters. In so far as the statement is agreed it provides a detailed and accurate summary of the CCA role. There is also a draft statement of agreed facts in respect of the role of Waking Night Care Assistant (NCA) performed by Mrs Barbara Clifford.
6. Mrs Susan Kelly states that the CCA would generally deal with services users who were less frail and better able to care for themselves than those in a residential care home. The service users being cared for by a CCA would be living in their own home. They would often live alone and typically be expected to cope with many day-to-day tasks without assistance, in contrast to service users in a residential care home who would typically be more heavily dependent on support for basic living tasks. Mrs Kelly made the generalisation, she accepted there are exceptions, that someone in a residential care home is more likely to be frail and less able to care for themselves than someone living in their own home and receiving support for the home care team.
7. Mrs Kelly in answer to questions said that she had not worked in residential care but insisted that she had insight into residential home care from her experience of working in the care and domiciliary industry generally and the fact that "care is care". Mrs Kelly accepted that CCA work involved a lot of physical effort.
8. The Independent Experts in section 3 of their report explain their method of assessment. This involves considering the roles against a range of factors and scoring each role considered in respect of each of those factors. Where the claimants score at least the same as a comparator role, the roles are of equal value.
9. The dispute between the claimant and respondent arises in respect of the scoring that should be given to three of the factors used to assess the roles and thus determine whether the roles are of equal value. These are Factor 4, Responsibility for People and the Planning/Organisation of Work; Factor 10, Cognitive Demands; and Factor 11, Physical Demands
10. The CCA role involves visiting service users in their own homes or sheltered accommodation to provide care. The purpose of the role is to encourage independent living amongst a range of clients, some of whom are totally

dependent on care services to others who are able bodied but have learning disabilities.

11. The criteria adopted by the Independent Experts (Magee and Lowe) in this case is set in the Independent Experts' Report. Factor 4 referred to by the Independent Experts is "Responsibility for People & Planning/Organisation of Work". In respect of this factor the NCA role was assessed at level C and given a score of 20. The respondent's case is that in the case of the CCA the role should be assessed at level D and therefore given a score of 10.

12. Factor 4 provides a general definition in the following terms:

"This covers the job holder's responsibility for planning and organising their own work and or that of others. It includes the supervisory element in relation to managing, directing and co-ordinating the work of others and in terms of responsibility for the quality and standard of work done by the job holder or by others."

13. In respect of level C, the Independent Experts set out the following criteria:

"The job holder is responsible for the day to day management or organisation of the own work within the context of objectives set by and directed by others. While they may be assisted by other staff from time to time they will have no direct management or supervisory role in terms of others. While the job holder is deemed to be responsible for the quality and standard of their own work in the first instance they will be subject to occasional or periodic monitoring by others."

14. In respect of level D, the Independent Experts set out the following criteria:

"The job holder has a limited responsibility for organising their own work on a day to day basis within the framework of routines and objectives determined by others. They have no involvement in organising the work of others. The job holder will work to standards set by others; quality while expected in the first instance will be monitored by others."

15. The CCA has the responsibility to carry out her allocated tasks throughout the day. There is weekly rota. The CCA has a specific rota to work to including clients who are required to be seen at specific times the CCA can make small temporary changes to the rota but the Home Care Organiser must be informed of all changes, including temporary ones. The rota indicates the names of the clients requiring visits, the times for the visits and the task to be completed. The CCA visits the same clients regularly and generally knows what needs to be done on each shift. The CCA follows a routine to ensure that the everything is completed and to keep to the structure for the clients. When working in a team the CCA is required to give directions to her colleague. The CCA is responsible for completing the necessary paperwork for the clients, this includes observation sheets kept in the clients' homes. The CCA typically visits ten clients during any given day, this can vary from as few as one to as many as fourteen, exceptionally CCA can visit as many as

twenty in a day. In addition to the work dictated by the rota the CCA, once or twice a week, may take calls requesting that she fit in an additional client into her rota. These calls could be emergency calls or calls requesting help from a colleague. Making the additional call to the client could last as little as five minutes, e.g. to see how a client is doing. The CCA carries out shopping for morning clients, may also pay bills and collect pensions. The shopping etc. takes approximately one hour.

16. The CCA role does in the community what is similar but not identical to what the NCA does in the home. The range of tasks is different but in our view the scope of responsibility is similar. We can see no qualitative difference to allow us to say that one role is of an obviously higher level or is to be scored differently resulting in a conclusion that the role of CCA and NCA are not of equal value.

17. Considering the Independent Experts' criteria, we are satisfied that the CCA role cannot properly be classified at level D under factor 4. In our view, it is wrong to state that the responsibility for organising work of the CCA is limited. The CCA is responsible for the day to day organisation of her own work. The CCA role in our view appropriately sits in level C.

18. In respect of factor 10: Cognitive Demands the Independent Experts give the following general definition:

“This factor considers the requirement for awareness/vigilance, concentration (a combination of short bursts and more sustained) necessary for complete tasks or procedures, and the use of memory to recall events, information, procedures or instructions. It takes into account the nature and frequency of distractions/interruptions and the regularity of conflicting priorities. It also considers the demands placed upon the job holder to meet deadlines or performance standards (including degree of accuracy) and that particular pressures may bring increasing emotional strain.”

19. In respect of level B, the Independent Experts set out the following criteria:

“A requirement for more heightened awareness and/or sustained concentration than in C and D below, whilst carrying out a sequence of tasks or procedures where there is a need for accuracy or care. Memory is used in terms of recalling events, sequences and instructions in relation to established procedures and methods of working. The pattern of interruptions/distractions is commonplace and may lead to conflicting demands that have to be resolved in a timely way to avoid disruption to work progress or routines and/or distress to individuals.”

20. In respect of level C, the Independent Experts set out the following criteria:

“A requirement to maintain general awareness whilst concentrating upon a sequence of tasks or procedures where there is a need for accuracy or care. Memory is used to recall instructions, methods and the sequence of actions required to complete such tasks. The pattern of interruptions/distractions is

regular and may lead to conflicting demands for the job holder's attention. The job holder has to meet some deadlines and performance targets."

21. The CCA only has to deal with one client at a time. The NCA may potentially have to deal with needs of more than one client at a time. The NCA unlike the CCA is not working alone.
22. Included in the tasks that the CCA must perform are the matters listed in the witness statement of Mrs Gloria Shackelford. These matters, she states, require concentration and care in making a written record of anything that is observed and when making verbal handovers to colleagues. The CCA has to maintain vigilance in spotting signs of bruising, assault or illness. The CCA is required to act with care in handling client money while shopping and collecting pensions.
23. The CCA must concentrate when performing any task involving administration of medication. Paper work must be completed accurately. The CCA has to remember what daily and weekly matters the client requires from pension collection to putting the bins out for collection. Care plans record most matters that are required to be done.
24. Pressure is put on the CCA by visiting many clients or running late because appointments overrun. The CCA often attends to very unwell or elderly clients who require nursing from bed. All clients have a specific time they are expecting the CCA to arrive. However, due to the nature of the job tasks may take longer than anticipated without completing the duties required. Clients can be verbally abusive to the CCA. The CCA has to constantly make decisions regarding the well-being of the client particularly about whether to contact a doctor or manager. The CCA must decide when to undertake tasks in relation to each client. In many cases the CCA will be the only point of contact with the client on that day, a failure to identify whether a client has become unwell or requires medical attention could result in their condition becoming worse.
25. Heightened awareness is required in the administration of medicines correctly, deciding whether to call the doctor or a manager and in completing paperwork correctly. Memory is used in recalling events sequences and instructions even relatively mundane acts such as putting out bins and following the care plan.
26. In our view, a CCA role is at a greater level than set out in the criteria for level C which calls for a general awareness. The care of the elderly and unwell people in our view calls for more than a general awareness. The CCA may face interruptions in carrying out her role and such interruptions are likely to be unpredictable. In the care home setting at night interruptions may be more frequent but the evidence does not suggest that the frequency or nature of the interruptions leads to the NCA role being a higher-level role than the CCA role.

27. In respect of factor 11: Physical Demands the Independent Experts give the following general definition:

“This factor considers the nature, frequency and duration of the physical demands placed upon the job holder. Physical demands include explosive effort (such as lifting) and stamina (sustained physical activity such as walking, standing, maintaining a fixed position and stretching) required to perform the work competently, within health and safety parameters.”

28. In respect of level B, the Independent Experts set out the following criteria:

“There is a requirement for the job holder to spend a significant part of their working time on activities requiring stamina and or explosive effort to lift, pull or push, manoeuvre weights, within H&S parameters. This may entail the job holder being obliged to stand/walk for long periods. Such effort required may also be increased sometimes by having to work in awkward or confined spaces, or by holding a set position.”

29. In respect of level C, the Independent Experts set out the following criteria:

“The job holder is regularly required to work on activities requiring stamina and/or explosive effort to lift, pull or push, manoeuvre weights, within H&S parameters. This may entail the job holder being obliged to maintain a fixed posture or to stand for regular periods in order to carry out specific tasks associated with the job.”

30. The Independent Experts set out in respect of the NCA that she spends around 90% of each shift on her feet and walking around. During this time, she can be assisting residents in and out of bed using a hoist 5-6 times per shift as well as using a rotunda and a slide sheet to assist in moving clients. The NCA is also required to carry out domestic duties described as physically demanding involving spending time on hands and knees to scrub floors and clean spillages of vomit and faeces. This role is assessed at level B for physical demands.

31. The agreed statement of facts describes under the heading of physical effort how the CCA needs to work on her feet for most of the working day. Apart from travel time she will be on her feet throughout her shift. Cleaning and cooking duties are described as tiring, “especially as the job holder often repeats those tasks several times during the same shift for different clients”. The CCA sometimes has to move clients within confined spaces which can cause difficulties and require the CCA to work in awkward positions. The CCA may be doing this for 30-45 minutes at a time. Tasks that the CCA has to complete also include bending over, for example while bathing a client or if the client is in bed.

32. When undertaking manual handling duties with a colleague, the CCA must coordinate all movements with her colleague, this requires experience and skill.

33. The CCA works on her feet for most of the working day. This compares with the NCA who spends 90% of the shift on her feet and walking around. During this working time, the CCA performs cooking as cleaning duties. General cleaning duties such a vacuuming dusting mopping, making beds, and housework. This compares with the NCA whose duties include being on hands and knees to clean spillages.
34. The CCA will use a hoist where a client is immobile may use an electrical or mechanical hoist. Assisting in washing a client may involve using mobility aids. The CCA is to assist clients with mobility problems which may involve using a hoist or rotunda or other mechanical assistance. This compares with the NCA who uses a rotunda and hoist several times a day to move clients where needed in and out of bed or to support the client to a chair. The number of times that the CCA uses theses instrument depends on the clients and their individual mobility.
35. The description of the job role from the agreed facts leads us to conclude that the CCA's role is no less demanding than the NCA's role when assessed in respect of physical demands. The NCA role is assessed by the independent Experts as level B in in respect of physical demands.
36. Considering the Independent Experts criteria, the CCA role spends all the working time on her feet she may be required to carry out lifting and moving of clients using a hoist or rotunda. She will need to spend time carrying out cleaning and spending about 2 hours a day on this task. There is in our view a significant amount of her working time spent on activities requiring stamina and or explosive effort to lift, pull or push, manoeuvre weights, within H&S parameters. The CCA is required to stand for long periods. In our view, the CCA role is properly assessed at level B when considering the factor of physical demands.
37. Mrs Marina Davies commenced working for the respondent as Care Assistant on 16 February 2004.
38. Mrs Davies contends that her role of Care Assistant (CA) is at least of equal value to the role of Mrs Barbara Clifford who worked as a NCA.
39. In her evidence Mrs Christina Mabbutt stated that the CA works during the days when there are more members of staff on duty and there is a manager on duty as well as other senior staff. There are more people around to help with difficult and unusual situations. The NCA is expected to respond to bells rung by residents who may be in difficulties or distress during the night as well as carrying out routine checks every two hours The NCA is expected to immediately assess whether the situation is a possible emergency or whether it is something of less immediate concern. Typically, in daytime residents are more likely to be in communal arears of the home where there is more visibility between the care assistants of how people are getting on and whether any problems are developing.

40. The claimant and the respondent have produced a draft statement of agreed facts. The document is mainly a statement of agreed facts but there are some disputed matters. In so far as the statement is agreed it provides a detailed and accurate summary of the CA role.
41. The principle areas of dispute between the claimant and respondent arise in respect of the scoring that should be given to three of the factors used to assess the roles and thus determine whether the roles are of equal value. These are Factor 4, Responsibility for People and the Planning/Organisation of Work; Factor 9, Freedom to Act; and Factor 10, Cognitive Demands
42. Mrs Davies worked in a Residential Dementia and Rehabilitation Care Home as did Mrs Clifford the NCA. The CA unlike the NCA worked during the day. The CA was allocated a floor where there were either thirteen or fourteen service users. The CA worked with another carer on the floor and had responsibility for the service users during the shift. On each shift, there were supposed to be five staff, four CA's and a duty officer who was the senior member of staff.
43. In contrast on Mrs Clifford's night shift there were two NCA's and (pre-2005) Sleep in Officer or (post 2005) a Lead NCA who was the senior member of staff to whom Mrs Clifford, the NCA, reported and who was responsible for the overall health and safety of the unit.
44. The CA role had a set working pattern with specific tasks to be carried out at specific times. The CA is required to respond to the needs of the service users as necessary. The CA duties are set out in the statement of job facts.
45. In respect of factor 4 as stated above the Independent Experts assessed the NCA role as level C. The respondent contends that the CA role should be assessed at a lower level than the NCA role.
46. The respondent contends that the CA works with a greater number of colleagues on duty at the same time than the night care assistant with more senior staff on site to direct the work. The response from the claimant is that the CA deals with far more service users than the NCA because they are all awake at the same time and needing attention and therefore the CA is more likely to have two service users needing attention at the same time than the NCA is. There are more senior staff on duty directing the work with the NCA as there are with the CA. There are many demands on the CA during the day and she has to make choices about what to do which tasks to prioritise.
47. The draft statement of agreed facts states that the CA has responsibility for planning and reprioritising tasks within her standard working pattern in so far as that is rostered down for certain care shifts although her responsibility for how and when they are carried out is largely decided within the team. It is agreed that there is a set routine such as breakfast, lunch, teas, showers, getting people up for the day that it is a daily routine or pattern. All care needs are within the case plan which the CA must work towards. The CA has some

discretion as to how she responds to some issues such as behavioural problems.

48. In assessing the NCA role at level C the Independent Experts referred to the agreed facts in that role in the following way: "The job holder follows the routines of the Centre; handover, checks, paperwork, laundry, cleaning. She has '*a set working pattern*' and whilst she '*endeavours(s) to complete all of her laundry and domestic tasks*', they have to be fitted round responding to the needs of the service users who are the priority. She is informed if a service user requires more frequent checking than the standard two hourly pattern. There is '*a daily cleaning list which outlined the precise cleaning tasks for the day*' and the job holder ticks each task when completed. Additionally, there is '*a list of weekly cleaning tasks differing each night*'.
49. The view of the Tribunal is that while the work of a Night Care Worker and a Day Care Worker are different. The scope of the roles is not materially different. If a client/service-user/resident awakes at night the scope of task and caring activity to be done are not significantly different at night or day. During the day, there is a wider range of activity in the life of the home compared to night when in the main the clients/service-users/residents are asleep. This offers the opportunity to attend to different range of tasks to those done during the day. However, the scope and nature of those tasks are not materially different from that done during the day time. There is in considering factor 4 little to distinguish the NCA and the CA in our view.
50. Factor 4 considers the job holder's responsibility for planning and organising their own work. For the post to be assessed at level C, the Independent Experts set out criteria, that the job holder is responsible for the day to day management or organisation of their own work within the context of objectives set by and directed by others; the job holder is responsible for the quality and standard of their own work but will be subject to occasional or periodic monitoring by others. In our view, this is an appropriate description to be given to the CA role. The CA has responsibility for planning and reprioritising tasks within standard working pattern; responsibility for how and when tasks are carried out is largely decided within the team. In our view, an assessment of the CA role at level C is appropriate.
51. In respect of factor 9 the Independent Experts set out the following general definition criteria: "This factor considers the freedom given to an individual to take action and the scope they have to use their initiative and to make decisions, whilst considering the amount of supervision and guidance provided. It seeks to assess the level and complexity of decision a job holder is permitted to take and their consequences where they can be reasonably foreseen whilst taking to account the parameters (such as regulations, policies, procedures, protocols, instructions, performance standards) that the job holder is required to act within."

52. The Independent Expert assessed the role of the NCA, Mrs Clifford at level C within this factor. Level C guidance provides that: "The job holder normally works within clearly prescribed limits where tasks are performed in accordance with instructions given. Decisions are generally about steps in well established procedures rather than about the procedure to be used. The job holder's freedom to act is limited within the context of routine. At times, the job holder will be required to act outside of usual routines, in situations that have arisen before and where the required response is well known. In such circumstances, they are required to report their action to others at the earliest opportunity. The impact of decision making is limited to the outcome of the immediate task(s) performed by the job holder."
53. The CA carries out a variety of tasks which are determined by the centre's routines and individual service users care plans and reacting to the service users' needs as they arise. This involves planning and reprioritising care tasks within standard patterns and exercise of discretion within set parameters. The CA has to make decisions in the role including many informal decisions during and regarding everyday tasks involved in the role. The CA may have to make a judgment call on the service user's health for example where the he/she is reluctant to communicate whether he/she felt ill or not. In such a case, the CA would make an informal assessment of the right way to proceed before reporting to the Duty Officer, whose role it is to decide whether to call a doctor etc.
54. The CA has the discretion to make decisions adapting (within the service users care plan) the personal care of the service user and when to fit in any cleaning or paperwork as necessary. The CA will decide priority of care tasks where there are multiple requests. Any problems with a service user will be contained as best as possible and reported to the supervisor at the earliest convenience.
55. Level D, of factor 9 provides: "The job holder works under the guidance of others using well established procedures in accordance with instructions given. There is limited scope for freedom of action with supervision readily available, and the job holder is expected to refer routinely any problems." The scope of level D is in our view below the expectation of the role of the CA. While there is limited scope for freedoms of action in the CA role, and there is supervision readily available, the description of the role in the agreed facts shows that the claimant is expected to take action in a variety of instances and is not expected to the "refer routinely any problems". The CA is expected to deal with any problems with a service user as best as possible and report to the supervisor at the earliest convenience. This is in keeping with the criteria in level C, that requires, the job holder will act outside of usual routine and report their action to others at the earliest opportunity, rather than in level D.
56. Factor 10: Cognitive Demands considers the requirement for awareness/vigilance, concentration (a combination of short bursts and more

sustained) necessary for complete tasks or procedures, and the use of memory to recall events, information, procedures or instructions. Considering the nature and frequency of distractions/interruptions and the regularity of conflicting priorities. It also considers the demands placed upon the job holder to meet deadlines or performance standards (including degree of accuracy) and that particular pressures may bring increasing emotional strain.

57. In respect of level B, the Independent Experts set out the following criteria:

“A requirement for more heightened awareness and/or sustained concentration than in C and D below, whilst carrying out a sequence of tasks or procedures where there is a need for accuracy or care. Memory is used in terms of recalling events, sequences and instructions in relation to established procedures and methods of working. The pattern of interruptions/distractions is commonplace and may lead to conflicting demands that have to be resolved in a timely way to avoid disruption to work progress or routines and/or distress to individuals.”

58. In respect of level C, the Independent Experts set out the following criteria:

“A requirement to maintain general awareness whilst concentrating upon a sequence of tasks or procedures where there is a need for accuracy or care. Memory is used to recall instructions, methods and the sequence of actions required to complete such tasks. The pattern of interruptions/distractions is regular and may lead to conflicting demands for the job holder’s attention. The job holder has to meet some deadlines and performance targets.”

59. The respondent contends that greater numbers of staff on duty during the day would not put the CA in the position that the night care assistant may be in when dealing with competing urgent situations. Mrs Davies contests this and refers to the draft agreed statement of facts which provides that the CA on every shift is required to concentrate on more than one task at a time, particularly morning time when serving breakfast to service users, she might be called to see the morning wakeup or assist in the toileting of another service user. The draft agreed statement of facts provides that it can be difficult to balance the various demands for attention when all the services users from the unit are together, so the CA will have to focus to ensure that she remains aware of their safety and at the same time is able to best deal with the individual needs.

60. In our view having regard to the criteria relating to factor 10 we are satisfied that this can properly be assessed at level C. The CA must always observe what is going on around her and might need to plan a job ahead each time, she must prioritise what she is going to do. There is need for constant concentration in this range of daily tasks due to the level of focus on service users and their personal wellbeing. The CA on every shift is required to concentrate on more than one task at a time and to balance the various demands for attention. The CA is required to concentrate when dealing with service users particularly when helping with mobility. Over the course of a

day the CA will try to remember any incidents that occurred, to record these as and when they happen but sometimes it is not possible to report an incident straight away and the job holder must keep track of the information until she can report or document it. The CA deals with verbal aggression of service users. The CA has a number of deadlines which she has to work towards in this job. There are specific times for meals and she may encounter difficulties if she is behind in general tasks due to interruptions. The CA has to make a number of decisions in the role including many informal decisions during and regarding the everyday tasks involved in the role.

61. In our view, the CA role is not to be assessed at a lower level than the NCA role in respect of factor 10.

The respondent's submissions:

62. The respondent contends that the CCA provides care for single client in an uninterrupted environment following a care plan that sets out the work to be done and that the discretion of the CCA is limited to the in which order the work is done. There is limited decision making and significant limits as to decision making when carrying out specific tasks. 80% of clients are long term clients. It is said that this is to be compared with Mrs Clifford in whose role there is a constant flow of people each with their own care plan. It is said that there are fewer emergencies for the CCA than the NCA. While the CA may be on her feet for 90% of the time when she is in a service users home she is not working on her feet 90% of the time. The CA can be travelling up to 30 minutes for each client and when travelling she is not providing care. It is also said that the CA is not caring when out shopping or going to the post office for a service user. The pattern of work is very different from NCA who is onsite the whole time. While both the CCA and the NCA use a hoist and a rotunda, it is said that frequency of use by the NCA is greater than in the case of the CCA. While the CCA has specific task that she completes and leaves the NCA has to fit in tasks around responding to care. The respondent states that in respect of Factor 4 the CCA should be assessed at level D and not C as in the case of the NCA. In respect of factor 10 the CCA role is more limited and should be assessed at level C as it is not a level B. In respect of factor 11 the NCA spends 90% of her working time on her feet the CCA does not. The CCA spends much her time travelling the appropriate level is level B.
63. In respect of the CA role and the NCA the respondent states that the differences distinguish the two roles. The respondent relies on the increased staffing during the day in contrast to the night. Further it is said that there are fewer people in Mrs Davies home in contrast to Mrs Clifford's home there are therefore more people to look after fewer residents. The service users are in the day room for much of the time on the CA shift. We are asked to treat the evidence of Mrs Davies with caution on the basis it was said she that she tended to exaggerate. In respect of factor 4 it is said that the Mrs Davies does not have the same level of responsibility as Mrs Clifford and should be assessed at level D. Given the number of individuals working on day and the

lack or regular interruptions there are material factors bringing the CA role to level C not, in contrast to the NCA role, a level B. In respect of factor 9 it is said that Ms Mabbutt's evidence stated that more opportunity to report to people in the day shift if there were problems. The respondent also relied on the difference between the pattern of working in the morning when there are more people around and the lack of challenges in contrast to the night time as a feature distinguishing the NCA role with the CA role.

64. The respondent states that having regard to the scoring scheme that has been adopted by the Independent Experts and accepted by the Tribunal, if there is a distinction in respect of the specific areas of challenge then there is difference in score and there is not going to be equality in the roles.

The claimant's submissions:

65. The claimant state that the respondent makes distinctions in respect of the NCA role based on a hypothesis that is not correct namely that the role is busier, has less support, is more physical and has more freedom to act. The claimants say that the NCA is there on shift at night with two others one of whom is the lead. The principle job of the NCA is the care of the service users the fact that the NCA carries out laundry or administration tasks that are not time crucial in the way that the care of service users is. The claimants say that the respondent "paints a bogus picture" – the principle job is to look after the needs of service users. Mrs Shackelford's principle duties are personal care of service users, this is more important than Hoovering etc. The job is to look after service users and the respondent is taking spurious distinctions.
66. The claimant criticises the evidence of Mrs Kelly stating that the roles have changed since 2010 and she has been in post for three and half years (i.e. since 2013). Further they say that she did not take the time to find out about the CCA role to be able to assist relating to the issues in dispute. We were asked to be cautious of the evidence of Mrs Mabbutt which concentrated on the CA role more than the NCA.
67. To the respondent's point that there are fewer people working at night came the report that there are fewer people up at night. Most people are asleep therefore fewer people working needed. All service users need attention and to be watched but most are in bed when the NCA starts shift and finishes shift, a period of time when there is no need to attend to anyone. The claimant asked us to consider the excerpts from the description of Mrs Clifford's role as set out in the agreed facts on p297 at paragraph 15 and the description of Mrs Davies role as set out in the agreed facts on p317 at paragraph 15 and on p323 at paragraph 40. While the CA has to resolve a conflict between person A and person B needing attention the NCA is addressing conflict between having to carry out tasks. The claimants point out that various passages where it is suggested that there was no distinction between the day and night care assistants.

68. The claimant contrasts the way that the NCA has support from other staff at night and compares this with the need for Mrs Shackelford the CCA to make decisions about care on her own. The claimants say that when considering Factor 4 the CCA role cannot be fitted into level D because she works alone without a supervisor.
69. Considering cognitive demand, it is said that we should not just look at frequency of interruptions but we need to consider the level of personal care deployed by the CCA in contrast to the NCA. Concentration is required when carrying out various acts of personal care. We are asked not to over emphasise one small part of the level B criteria. In respect of CCA role it is said that driving from service user to service user also requires concentration. The fact that the CCA is working alone means she is required to concentrate when carrying out tasks, the decision as to what to do is required. When carrying out care, 90% of the time the work in the role is physically demanding. The fact that the CCA drives does not mean that claimant is not spending a significant period doing physically demanding role.
70. The claimant says that there is no difference between the CA and NCA roles in respect of freedom to act.

Conclusions

71. We have limited our considerations to the issues argued before us. They have been around whether the role carried out by Mrs Clifford (NCA) is of equal value -using the scoring scheme and methods set out by the Independent Experts and accepted by the Employment Tribunal- to the roles carried out by Mrs Davies (CA) and Mrs Shackelford (CCA).
72. We have concluded that the roles of community care assistant and day care assistant are of equal value to the night care worker.
73. We consider that the day care assistant and night care assistant do very similar roles. There are areas which are obviously different in that one works at night and the other works in the day. The environment in the care home at night and day is different but when one considers the tasks that they perform we consider the work by the night assist and day care assistant is of equal value.
74. The day care assistants work is done in an environment where the residents are up and about going about their life in the home. The night care assistant does her work in an environment where in the main people will be taking rest and sleeping. The number of people working at night is less and in terms of managers or people supervising there is only the lead worker. In contrast to the day where the whole staff group will be available covering all the various roles which will be required in the course of life in the home. However, we think that in terms of the roles of the care assistant and the night care assistant the fact that there are more people present, while it does make a difference, in terms of looking at whether the roles are of equal value, we

consider that there is equality. Both the care assistant and the night care assistant report to the lead worker. The difference between night and day is that during the day there are more people to whom one can cascade issues and problems up but in terms of what the expectations of the roles are we see that they are broadly equivalent and we are not able to find sufficient distinction between them for us to be able to say that is a factor which would result in a conclusion that the nature of the role is such that it is not of equal value.

75. We have considered the question of cognitive demands in relation to the night care assistant and day care assistant role. In relation to this we have concluded that whilst there are differences in the environment in which the work is done, there has been a lot of emphasis on the question of interruptions, that all that really signifies is the environment in which the core work of the night care worker or the day care worker is engaged in with the residents. At night, they will be more likely to be called into action with a buzzer; during the day, there are interruptions which arise, some with buzzers others by other calls to attention, the frequency of which was unclear from the evidence. The day time is an environment where there is much more engagement with people in the home. So, while we see a difference in relation to the suggestion of level of interruptions at night time in contrast to the day, overall in assessing the role we do not think that it is a qualitative difference which means that we ought to view the roles as not being of equal value in relation to that factor.
76. We have considered the issue of freedom to act and in our view when looking at the roles broadly we can see no basis for concluding that there is a real difference between the care assistant and the night care assistant.
77. Turning to the role of the community care assistant. This is a role which does in the community what is similar but not identical to what the night care assistant does in the home. Looking at the various headings that have been addressed in the evidence. On the question of responsibility for people and planning/organising work, whilst they are not the same, we can see no qualitative difference to allow us to say that one role is of more value or is to be scored differently resulting in a conclusion that they are not of equal value between the community care assistant and the night care assistant.
78. In relation to the question of physical demands we are satisfied that the roles are in many respects requiring the same sort of physical demands. The difference was highlighted in that there were tasks such as shopping etc. and driving which in the case of the community care assistant were not requiring of the same physical effort as the personal care work, but we do not see that there is a proper distinction to be made because the community care assistant spends time driving from client to client or may carry out additional tasks such as shopping to say the community care assistant role is of less value. In relation to the domestic tasks that the community care assistant carries out we recognise that they are not tasks which are carried out in the night care

assistant role but considering those in the context of the role we do not consider that they are such as to change the nature of the role for us to conclude that the work that is done by the community care assistant is not of equal value to that of the night care assistant.

79. The final area looked at is cognitive demands. We acknowledge the difference in that the community care assistant deals with one client at a time. We note the evidence that there is more constancy in the population looked after by the community care assistant to the community to be found in the home. However, looking at the cognitive demands of the roles we are not satisfied that it is possible to distinguish them sufficiently for us to be able to conclude that there is greater value in one role than the other.
80. One of the things that has influenced our conclusions is the refrain of Mrs Kelly about care being care. We think that what she meant by that is that when you look at the work that is done by all the people we have been considering they are broadly doing the same sort of job in a different place and in a different environment and sometimes to a different client group but they are essentially doing the same thing. Our view is that stepping back and looking at the roles these roles are so similar in the challenges the holders of the roles face and tasks that they perform for us to be able to feel comfortable that all these three roles are of equal value.

Employment Judge Gumbiti-Zimuto

Date: 3 January 2018

Sent to the parties on:

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For the Tribunals Office