



EMPLOYMENT TRIBUNALS

Claimant: Mrs J Marsden

Respondent: Department for Work and Pensions

HELD AT: Manchester

ON: 23 - 27 September
2019

BEFORE: Employment Judge Slater
Ms L Atkinson
Mr A J Gill

REPRESENTATION:

Claimant: In person
Respondent: Mr S Redpath, Counsel

JUDGMENT

The unanimous judgment of the Tribunal is:-

- 1 The complaint of discrimination arising from disability is well founded.
- 2 The complaint of failure to make reasonable adjustments is well founded.
- 3 There will be a Remedy Hearing on 10 March 2020 at the Manchester employment tribunal, beginning at 10 a.m. with a time estimate of one day.

REASONS

Claims and Issues

1. The claimant brought complaints of discrimination arising from disability under Section 15 of the Equality Act 2010 and failure to make reasonable adjustments. The complaints and issues had been clarified at a case management preliminary

hearing on 5 December 2015 and the respondent produced a list of liability issues with which the claimant agreed. This was amended in discussion with the Tribunal. The amended list of issues was as follows:-

Disability (Section 6 Equality Act 2010)

1. The respondent concedes that the claimant was at material times disabled within the meaning in the Equality Act 2010 by reason of anxiety and depression.
2. Is it a feature of the claimant's anxiety and depression that she becomes pre-occupied with perceived injustice?

Discrimination arising from disability (Section 15 Equality Act 2010)

3. Did the respondent treat the claimant unfavourably by treating an issue raised by the claimant i.e. that a document titled "draft briefing: historical background" prepared in 2011 should be corrected in light of a definitive "chronological summary – final version dated 14 January 2014" agreed with the respondent in 2014 ("the document issue"), as concluded and refusing to engage in further substantive discussion about it, including at a face to face meeting?
4. Was the respondent's treatment of the document issue something arising in consequence of the claimant's alleged disability?
5. At material times, did the respondent know, or could it reasonably be expected to know, that the claimant had a disability as alleged?
6. If so, was the respondent's treatment of the claimant a proportionate means of achieving a legitimate aim, namely of ensuring that complaints raised by employees are dealt with fairly and with an appropriate degree of finality?

Failure to make reasonable adjustments

7. Does the respondent have a practice of, once a matter has been concluded and the relevant procedure exhausted, of ceasing to engage on the matter, including holding a face to face meeting?
8. If so, did such a practice put the claimant at a substantial disadvantage in relation to the document issue i.e. because she is unable to accept the outcome and move on, in comparison with persons not sharing the claimant's alleged disability?
9. At material times, did the respondent know, or could it reasonably be expected to know, that the claimant had a disability and was likely to be placed at the alleged disadvantage?

10. If a duty to make reasonable adjustments arose, in the circumstances, was holding a face to face meeting a reasonable step for the respondent to have to take to avoid the alleged disadvantage?

Time Limits

11. Does the Tribunal have jurisdiction to consider the complaints in relation to any treatment occurring before 21 December 2017?

Updates to the claims and issues

2. The claimant confirmed at the stage of submissions that she was asking the Tribunal to decide whether there was discrimination arising from disability and/or failure to make reasonable adjustments in the period described in the details in her claim form i.e. the period 30 October 2017 until presentation of the claim on 21 March 2018.

3. Having heard the evidence and considered again the notes from the Preliminary Hearing, the Tribunal considered that issue 3 did not correctly reflect the claimant's case and should, in fact, read as follows:

Did the respondent treat the claimant unfavourably by treating an issue raised by the claimant i.e. that a document titled "draft briefing: historical background" prepared in 2011 should be corrected ("the document issue"), as concluded and refusing to engage in further substantive discussion about it, including at a face to face meeting?

4. The Tribunal also identified that there had been omitted from the list of issues an issue of whether the claimant was subjected to a detriment by the unfavourable treatment relied on for the s.15 claim, as required by Section 39 Equality Act.

5. For reasons which we explain in our conclusions, we did not consider that it was helpful, in reaching our conclusions, applying the appropriate statutory tests, to decide issue 2 as a stand-alone issue.

Evidence and cast list

6. We heard evidence from the claimant and, for the respondent, from:

Sheila Dove, Civil Service Human Resources Consultant;
Carrie Cowsill, HEO responsible for a team of work coaches delivering support for Jobseekers Allowance, Employment and Support Allowance and Income Support claimants and line manager to Alison Nelson, the claimant's line manager, from around December 2017;
Stephen Louis, now manager of a number of jobcentres in Wirral and, at relevant times, line manager to Carrie Cowsill.

7. We heard evidence and read documents which referred to very many employees of the respondent who were involved in some way in relevant events over a lengthy period. We set out below a list of the names of the principal people mentioned in our reasons as being involved in relevant events and, so far as we

have been able to identify this, their roles at relevant times. We have used, in our reasons, initials for some employees who it is not necessary to identify, other than by role.

Cast List

Charlie Bonsall, Operations Manager, North West HR Services. Involvement ended September 2017 with the closure of the respondent's Stockport office.

Carrie Cowsill, line manager of Alison Nelson, the claimant's line manager.

Sheila Dove, HR, based in Newcastle upon Tyne, took over case file from Charlie Bonsall and Steve Thomson September 2017.

Mike Harvey, Head of Investigations.

Wendy Humphries, Sheila Dove's Grade 7 line manager, HR.

Stephen Louis, line manager to Carrie Cowsill.

Rupert McNeill, Cabinet Office.

Terry Moran, Director of Field Operations.

Alison Nelson, claimant's line manager from around 2016.

Jonathan Russell, Director for HR Services.

Siobhan Sheridan, investigated reasons for a special payment not being actioned. Author of historical background document.

Sue Stevens, a senior HR manager, consulted by Sheila Dove.

Colin Stewart, Works Services Director for North West England.

Steve Thomson, HR, Stockport office. Left c.Sept 2017 with the closure of the respondent's Stockport office.

Summary of case

8. The complaints relate to events in the period 30 October 2017 to 21 March 2018 inclusive, but have a lengthy back story. The claimant was an administrative officer with the respondent. She is agreed to have been disabled by reason of anxiety and depression at all relevant times. Her complaints of discrimination arising from disability and failure to make reasonable adjustments relate to the respondent's refusal, in the period 30 October 2017 to 21 March 2018 (but dating back long before this), to engage with her persistent attempts to get them to engage with and meet with her to discuss issues relating to a draft briefing historical background document prepared in 2011. The claimant obtained a copy of this document by means of an SAR in 2013. This document contained inaccuracies. The claimant discovered that it had formed part of documentation on the basis of which the respondent took legal advice relating to complaints raised by her. The respondent refused to engage on the basis that it considered that all matters had previously been investigated.

Facts

9. The claimant has worked her whole career with the respondent, beginning employment on 4 August 1980. She worked as an administrative officer at all relevant times.

10. The period with which we are directly concerned follows a lengthy and complicated history. Relevant background facts began in 2002. We have heard evidence and read many documents relating to events from 2002 until the presentation of the claim. We record in our reasons only those matters which we

consider necessary to understand the complaints brought by the claimant and those facts on which we rely in reaching our conclusions.

11. In July 2002, the claimant raised grievances relating to a promotion report and her line manager's behaviour towards her, amongst other matters. There was an equal opportunities investigation and investigators upheld the claimant's grievances in part, upholding grievances relating to the refusal by the line manager to delegate and blocking applications for promotion. In July 2003, the claimant was incorrectly not told that part of her grievance had been upheld. The claimant then made further complaints which would not have been brought had she been correctly informed of the outcome of her grievance. Events which followed included the claimant being advised by an HR Business Partner to obtain independent legal advice if she wished to pursue a compensation claim. The HR Business Partner identified a weakness in the handling of the grievances and recommended compensation subject to the claimant being legally represented. A re-investigation of the equal opportunities complaint was offered and initially refused but later agreed.

12. In March 2004, an occupational health report was obtained. This reported that the claimant's issues needed to be resolved in order for her to make a full health recovery, that consideration should be given to the Disability Discrimination Act and that the claimant was suffering from Clinical Depression which was work-related and had been ongoing for two years.

13. On 12 August 2004, the claimant began long term sick leave. This turned into maternity leave between 1 July 2005 and 2 July 2006 and then a career break beginning 31 July 2006, with the claimant returning to work on 1 October 2008.

14. There were a number of grievances and other issues raised by the claimant after her initial grievances in 2002.

15. On 20 October 2006, the respondent's solicitors wrote to the claimant's then solicitors. The solicitors' letter referred to issues between their clients as being long standing and, as a result, not entirely straightforward. The respondent's solicitors attached a chronological summary of events which they had prepared. We do not know, and do not need to deal with, what resulted from the solicitors' correspondence. However, the significance of this is the chronological summary prepared by the respondent's solicitors and enclosed with this letter. The chronology contained some inaccuracies and was later corrected and a chronological summary agreed between the claimant and Mike Harvey, then HR Head of Investigations, in January 2014.

16. Further issues arose which it is not necessary for us deal with in detail.

17. In April 2010, JS, a newly appointed HR Business Partner for Greater Manchester received an email from the claimant about her treatment, primarily by HR, over the preceding ten years. It appears that JS did some considerable research into the matter and came to the view that a couple of issues had not been correctly or timely handled and she told the claimant she would look to seek some form of apology or recompense. JS was given advice to submit a SPEC1 form and refer the case to a Special Payment Decision Maker for consideration of a special payment. She duly submitted the application and, on 27 January 2011, the Special

Payments Decision Maker issued an interim decision asking JS to have the solicitors' branch confirm that it was acceptable to make a special payment decision and, if the case was re-referred to them, saying they would need more evidence. JB took over from JS. She took the view that the request for a special payment had been made erroneously and did not refer the matter to solicitors or go back to the Special Payments Decision Maker.

18. On 29 March 2011, JB informed the claimant that she had received notification from the Special Payments Branch that a payment in the circumstances was not appropriate. She wrote that she had reviewed the claimant's case and all had been done that could be done. She wrote that she was satisfied that the chronological summary was fair and accurate. This was the chronological summary which was subsequently corrected. She wrote that the respondent was not prepared to undertake any further reviews or reopen any cases or claims deemed to be closed.

19. In April 2011, the claimant was given a copy of the chronological summary of events which had been drafted by the respondent's solicitors in 2006. The claimant contacted the respondent's Data Protection Officer with concerns that the summary contained inaccurate information. The claimant was advised to make a Subject Access Request (SAR) which she did.

20. The claimant wrote to Terry Moran, then director of field operations, on 20 May 2011 regarding a claim for misadministration which she considered unresolved. Siobhan Sheridan investigated the reasons for a special payment not being actioned. She wrote a "draft briefing historical background" document. This contained inaccuracies, including that none of the claimant's 2002 grievances were upheld. The claimant did not see this document until she acquired it by way of a SAR in 2013. Although, as we record below, the respondent's Data Protection Officer informed the Information Commissioners Office that inaccuracies in this document would be looked into, this process has still not been completed.

21. The claimant made a complaint to the Information Commissioners Office (ICO) in 2012. By a letter dated 23 April 2012, the respondent's Data Protection Office wrote to the ICO with a letter which included the information that an investigation into holding inaccurate information was ongoing.

22. The claimant, after obtaining the draft briefing historical background document in response to an SAR in 2013, wrote to AB of HR on 19 June 2013 saying that this was inaccurate and had been used to not allow a special payment to be processed. She asked how this would be corrected.

23. Mike Harvey, Head of HR Investigation Services, was appointed to deal with the claimant's maladministration claim and to oversee any other outstanding action. AB informed the claimant that, given the link to a previous special payment request, it might be appropriate for the correction of the draft briefing historical background document to be considered by Mike Harvey alongside her latest maladministration claim.

24. On 25 October 2013, there was an occupational health report. This stated that the claimant had an ongoing underlying health problem, depression, which

appeared to be a reaction to perceived stressors at work. The report noted that it was likely that, if the stressors at work were resolved, her symptoms would ease. An Occupational Health Advisor expressed the opinion that the claimant's condition was likely to be considered a disability because it had lasted longer than twelve months and was likely to recur.

25. On 8 November 2013, the respondent's Data Protection Manager (the DP Manager) wrote to the Information Commissioners Office. The letter included progress on seeking to correct the chronological summary. The DP Manager wrote that, on legal advice, any events that post-dated the original summary would not be accepted in any new version of the summary. She wrote that the respondent was aware that the claimant believed the historical background document to be inaccurate. She wrote that the claimant had not specifically identified parts she believed to be inaccurate (the claimant says she has not been asked) but wrote that this would be looked into as part of the maladministration complaint once a satisfactory version of the chronological summary had been mutually agreed.

26. The Information Commissioner's Office wrote on 22 November 2013 that, although the process of resolving the claimant's concerns about the chronological summary appeared to be slow, the respondent did appear to be taking the matter seriously so they did not propose to advise the respondent further in relation to the issue. They noted that the respondent had not ruled out looking into possible inaccuracies in the historical background document as part of a maladministration complaint once a satisfactory version of the chronological summary had been agreed. They wrote that, in the absence of evidence to the contrary, it appeared the respondent had complied with the Data Protection Act in relation to the claimant's complaint about accuracy.

27. In January 2014, a chronology of events up to the claimant's return to work on 1 October 2008 was agreed between the claimant and Mr Harvey. This included a statement that the respondent had been found by the Information Commissioner's Office to have committed a number of breaches of the Data Protection Act surrounding SARs including not releasing information and not keeping accurate records.

28. Mike Harvey took legal advice in relation to the matters he was investigating. The evidence of Sheila Dove, who informed us that she had read the legal submission, confirmed that both the agreed chronology and historical background document formed a part of the documents sent with the request for legal advice. The claimant did not become aware that the historical background document, which she asserts contains inaccuracies, had formed part of a legal submission until a letter from LA of the Data Protection Team on 1 October 2014.

29. On 3 March 2014, Mike Harvey wrote to the claimant with an outcome to her complaints. He concluded that there should be no financial redress. His letter of 3 March included a statement that the equal opportunities complaint had been upheld. This letter included confirmation that any documents that had been retained in light of the ongoing investigation into the claimant's complaint would be properly reviewed and appropriately handled in line with the respondent's data retention policy.

30. Mike Harvey then received HR advice which caused him to alter his letter of 3 March and he re-issued the letter to the claimant on 7 March 2014, changing the part about the equal opportunities complaint being upheld.

31. On 1 October 2014, in answer to a request from the claimant, LA of the Data Protection Team informed the claimant that the historical background document was part of the legal submission so exempt under the Data Protection Act from the requirement to provide it to the claimant.

32. On 21 October 2014 Jonathon Russell, Director for HR Services, wrote in response to the claimant's correspondence to the Data Protection Team, the HR official correspondence team, the Secretary of State, and HR Specialist Services Official Correspondence Team. He wrote that no separate "historical document" existed and that he assumed that the references to this and the chronological summary were to one and the same document. He wrote that the department considered the matter to be closed and any future correspondence received from her on these matters would only be acknowledged. It was later accepted by the respondent that the chronological summary and the historical document were, in fact, separate documents. Jonathan Russell had been mistaken in writing that they were one and the same document.

33. On 30 January 2015, a further occupational health report was obtained. This recorded that the claimant had developed some psychological symptoms which appeared to have arisen in response to her perceptions of issues within her employment. The occupational health adviser expressed the view that the stress was unlikely to be classed as a disability under the Equality Act as the condition was reactive to the claimant's work circumstances and it would be expected to resolve with resolution of her perceived stressors. The advisor expressed the view that the claimant, who was off work at the time, following resolution of the outstanding issues, should be able to return to work.

34. In response to a further email from the claimant, Jonathon Russell replied on 23 September 2015, writing that she had not raised anything new and matters were closed. He asked that she cease raising these matters with any representative of the department and said there would be no response to further correspondence. He wrote that, if there were new issues unrelated to the matters already investigated, the claimant should raise these through her line manager.

35. From September 2015, the claimant was corresponding with Colin Stewart, Works Services Director for North West England. On 23 December 2015, Colin Stewart replied, in the form of a letter drafted by HR, that the claimant had not raised anything new. He wrote that the department considered matters closed and asked the claimant to cease raising the matters and wrote that no one would provide a response. He wrote that, if there were new issues, the claimant's line manager would discuss these with her.

36. The claimant raised with various people over some period that she believed that legal advice had been sought using incorrect information. Some time prior to 4 August 2016, the claimant wrote to the Cabinet Office and her letter was passed to Rupert McNeil. On 24 August 2016, GT, DWP HR Specialist Services Official Correspondence, asked Mike Harvey and others for briefing notes for Rupert McNeil.

Mike Harvey sent a briefing in response, stating that the claimant had raised nothing new and that the matters had been extensively looked into by Siobhan Sheridan, AB and himself.

37. There is a suggestion, in information provided to the claimant on an SAR request, that, in September 2016, the claimant had been marked by the respondent as “vexatious” although, when the claimant learnt of this and raised it, she was informed that this was not correct.

38. On 16 November 2016, the claimant sent an email to her line manager, Alison Nelson, saying that she wanted to raise a grievance because of bullying and threatening emails and letters from HR and management containing inaccurate information. Alison Nelson replied on the same day that the claimant had been advised by the Regional Director, Colin Stewart, that this historical matter was closed and consequently, she was unable to discuss it with the claimant.

39. On 5 December 2016, the claimant submitted a grievance form about Mike Harvey having sought advice on the basis of incorrect information and subsequent failures to address this.

40. On 12 December 2016, the claimant wrote to GT, alleging that the Mike Harvey briefing document was inaccurate.

41. On 14 December 2016, Steve Thomson of HR, wrote to the claimant about her grievance saying that this related to the same grievances, internal processes had been exhausted and no further action could be taken as previously advised.

42. On 9 January 2017, the respondent’s Data Protection Officer gave the claimant advice that issues regarding discrepancies and changes she required should be raised with her HR Business Partner. The claimant requested a named Liaison Officer who would correct/amend her records.

43. The claimant wrote to Charlie Bonsall, Operations Manager, North West HR Services over a period of months without receiving any reply.

44. On 30 January 2017, Alison Nelson, at the claimant’s request, wrote to Charlie Bonsall to ask for a named officer. Charlie Bonsall instructed Alison Nelson to reply to the claimant and that her correspondence should be sent to the Civil Service Casework Team.

45. On 15 March 2017, Jonathon Russell wrote to the claimant stating that the chronological summary agreed with the claimant had been used to seek advice. He wrote that he was unaware of the existence of any other “historical background” document. As previously noted, the respondent later accepted that the chronological summary and historical background document were separate documents.

46. On 11 May 2017, Steve Thomson confirmed to the claimant that the historical background document and chronological summary documents were on file. He noted that there were alleged discrepancies. He asked the claimant to amend the historical background document with her alleged discrepancies. He wrote that, following this, they would review it to establish it if there were significant

discrepancies. Although this email suggested that the respondent was going to undertake a process of reviewing and seeking to correct the historical background document, we have received no explanation as to why the respondent did not follow through on this commitment.

47. The claimant, having received no response to enquiries as to who would investigate the document she corrected, wrote to Rupert McNeil in the Cabinet Office on 18 June 2017. She referred to her grievance of 5 December 2016. She wrote that HR had said a document used to obtain legal advice did not exist but they had now confirmed it existed but had not advised her of the next steps. She asserted that there was no evidence of any investigations since the correction of the chronological summary on the 14 January 2014. She asked for a letter setting out why her complaint had been ignored, what was the original information/evidence held by the legal team on which HR based their decision to ignore the complaint and what the next step should be, bearing in mind she had been libelled because of the inaccurate information held on her records.

48. On 22 June 2017, Charlie Bonsall of HR wrote to the claimant stating that the chronological summary was the definitive document agreed by the respondent and the claimant. He wrote "this matter has been looked at extensively and will not be investigated any further. The historical summary feeds into the chronological summary which is the definitive document".

49. On 5 July 2017, the claimant wrote to Charlie Bonsall. She wrote that she had been advised that he had refused a request for an investigation to be held to correct the historical background document. She asked for his grounds for refusal. She asserted that the historical background document was a document on which legal advice was sought by the respondent. She said the document needed to be corrected and the legal team to have sight of the corrected information on which to base their decision. She wrote that the document was not superseded by the corrected chronological summary.

50. On 10 July 2017, the claimant wrote again to Charlie Bonsall. She attached a stress risk assessment and asked him to advise who would hear it. He replied that the stress risk assessment highlighted historical issues that had already been investigated.

51. On 24 August 2017, Steve Thomson wrote to the claimant in the same terms as Charlie Bonsall's email of 22 June. He wrote that the claimant would not receive any further responses on this issue.

52. The claimant wrote again to Charlie Bonsall on 23 September 2017. She wrote that the historical background document was still incorrect; the Mike Harvey briefing of August 2016 was misleading about the facts (giving an explanation about the equal opportunities complaint having been upheld); and about Jonathon Russell denying that the historical background document had existed. This email was returned as undeliverable. The claimant then tried sending this to Steve Thomson but was told that he had left the respondent. We understand from the evidence of Sheila Dove that the respondent's Stockport office closed in September 2017. Charlie Bonsall and Steve Thomson who were based at that office ceased to deal with the claimant's case at this time and Sheila Dove was allocated the case.

53. On 24 September 2017, the claimant forwarded her email to Charlie Bonsall and his of 5 July 2017 to Rupert McNeil. She asked for this to be treated as a grievance, a maladministration claim or whatever it needed to be to allow management and HR to correct her records. This email was forwarded by the Cabinet Office to the respondent's HR, then being passed to Sheila Dove.

54. Sheila Dove was passed the paperwork which had been held by Charlie Bonsall and Steve Thompson. She looked at the papers she had received which included the Mike Harvey letters of March 2014, the agreed chronology and the historical background document. At some point during her correspondence with the claimant, she spoke to Mike Harvey and to someone in Jonathon Russell's office. It appears by this time that Jonathon Russell had either already left the organisation or was shortly to leave. Sheila Dove thought she may have made some handwritten notes of relevant conversations but, if any such notes were retained, we were not shown them. Sheila Dove also took advice from her higher-level managers, Sue Stevens and Wendy Humphries. Sheila Dove relied on assurances from Mike Harvey that everything had been fully investigated. She was told by an aide to Jonathan Russell that Jonathon Russell had not been aware of the historical background document.

55. On 29 September 2017, Sheila Dove wrote to the claimant in the same terms in which Charlie Bonsall had written to the claimant in July 2017. This included the assertion that the historical background document fed into the chronology summary.

56. The claimant replied on 3 October 2017. She disagreed that the historical background fed into the chronological summary. She asked for confirmation that the investigation into the historical background document and maladministration would now take place. She also wrote that the respondent still had not addressed why Mike Harvey and Jonathon Russell could provide incorrect information to Rupert McNeil, herself and the nominated officer for the Civil Service Commission and the Investigator for the Civil Service Commission. She asked for advice on how this would be taken forward. She wrote that Sheila Dove's email had created stress for her, because inaccurate information was placed on her record.

57. On 11 October 2017, Sheila Dove replied to the claimant. She wrote as follows:-

“As you are aware this has been extensively looked into over a number of years by various senior managers, no new information has been presented and as such, no further investigations will be undertaken”.

58. The claimant sent a further lengthy email to Sheila Dove in reply.

59. On 14 October 2017, the claimant wrote to Charlie Bonsall, attaching the correspondence with Sheila Dove.

60. On 17 October 2017, the claimant raised issues on a stress reduction plan with her line manager, Alison Nelson. She wrote about continuing inaccuracies on the historical background document and unsuccessful attempts to get this corrected. On the same day, the claimant wrote to Sheila Dove. She wrote that, as far as she

was aware, the stress reduction plan was to discuss the stress she was currently feeling, which was in relation to the Data Protection Act breaches currently under discussion. She wrote that she did not feel comfortable discussing the stress reduction plan with her line manager and then being told that it could not be discussed. She asked what her line manager could discuss and help with.

61. Sheila Dove replied that stress reduction plans should be undertaken with her line manager and should follow the guidance on the intranet. She wrote that she could not comment as to why the claimant's manager would not discuss past issues with her.

62. On 30 October 2017, the claimant wrote to Alison Nelson following the stress risk assessment meeting that day. She wrote that she had confirmed that she had previously been diagnosed with PTSD and that the previous chronological summary had confirmed that there were breaches of the Disability Discrimination Act. She asked for a Reasonable Adjustment Passport and, whether it was possible for a reasonable adjustment to be that the historical background document and the briefing document from Mike Harvey to Rupert McNeill were corrected.

63. Alison Nelson suggested an occupational health referral to the claimant and one was made.

64. On 31 October 2017, Sheila Dove wrote to the claimant in response to an email in which the claimant advised her that she had been diagnosed with PTSD and had asked for a Reasonable Adjustment Passport and her records to be corrected as part of a reasonable adjustment. Sheila Dove wrote "as per previous emails no further investigations will be undertaken. It is not a reasonable adjustment to have records adjusted". She attached a link to the guidance for a Workplace Adjustments Passport.

65. When giving oral evidence, Sheila Dove was asked why she formed the view that correction of records was not a reasonable adjustment. Her evidence was that it was not a reasonable adjustment because they were not holding the document. When asked why her email did not give this explanation, she suggested this was because she had been trying to be succinct. We find that a view that correction of records was not a reasonable adjustment because the respondent was not holding the document was not the reason at the time for saying it was not a reasonable adjustment but an explanation formed after the event. Had she considered there was no need to alter the document because it was not held anywhere by the respondent, we would have expected her to have written this at the time.

66. On 1 November 2017, Sheila Dove wrote to the claimant in the same terms as previously: that the chronological summary was the definitive document that had been agreed by both the department and the claimant. She wrote "this matter has been looked at extensively and will not be investigated any further" [Ms Dove's emphasis]. This historical summary feeds into the chronological summary, which is the definitive document".

67. On 1 November 2017, the claimant wrote to Sheila Dove saying she would take up the reasonable adjustments with her manager.

68. On 3 November 2017, the claimant emailed Alison Nelson a copy of the historical background document with suggested changes. On 3 November 2017, Alison Nelson emailed Sheila Dove, writing that the claimant had asked her to contact Sheila Dove on her behalf regarding the ongoing historical issues, which she felt were causing her tremendous work-related stress and anxiety. She wrote that the claimant also felt that this should be covered under reasonable adjustments within the Disability Discrimination Act. Sheila Dove replied to Alison Nelson on 3 November 2017 as follows:-

“Joyce has been advised on several occasions that the chronological summary is the definitive document that has been agreed by both the department and herself. This matter has been looked at extensively and will not be investigated further. The historical summary feeds into the chronological summary which has been agreed as the definitive document.

It is not regarded as a reasonable adjustment under the Equality Act to have records adjusted”.

69. On the same day, Sheila Dove wrote to the claimant as follows:-

“Mike Harvey’s letter of 3/3/2014, clearly answers the questions you posed and was written following receipt of legal advice from our solicitor. Solicitors’ letters/advice are subject to legal privilege and as such I am not able to send you a copy of this.

“As previously explained this matter has been extensively looked at and will not be investigated further. The historical summary feeds into the chronological summary which has been agreed as the definitive document”.

70. On 6 November 2017, Alison Nelson wrote to Sheila Dove that she had carried out several stress reduction plans with the claimant but all the issues causing stress and anxiety were historical and related to the correction of records. She asked for Sheila Dove’s advice.

71. On 6 November 2017, the claimant responded to Sheila Dove’s email. This included writing that the historical summary did not feed into the chronological summary because the DWP confirmed with the Information Commissioner’s Office that the historical background document would be corrected after the chronological summary was corrected, as a separate document. She also asked what happened about the complaint that was ignored by Human Resources considering Jonathon Russell’s letter which was clearly incorrect as the maladministration complaint was upheld and the historical background document did exist. The claimant asked how to rectify her records.

72. The claimant wrote to Alison Nelson, copied to Sheila Dove, on the same day, concerning her request to correct records. She wrote that the statement “this matter has been looked at extensively and will not be investigated further” did not seem to apply to the correction of her records or the reasonable adjustment. She wrote “if my records are incorrect then it is the responsibility of management and human resources to correct them. As I am under considerable stress and anxiety because of the incorrectness of my records and harassment from human resources because I

have asked for my records to be corrected, then the stress reduction plan and a reasonable adjustment would seem to flow from that. Can you confirm if this will be sent to the CSWAT office or if I will have to take my case to a Tribunal?”.

73. The claimant wrote to Sheila Dove on 14 November 2017, confirming what she was requesting by way of reasonable adjustment. This included the correction of the historical background document and that Jonathon’s Russell’s letter of 2014 should be corrected and the complaint against Jonathon Russell submitted in December 2016 should be heard now that Human Resources had confirmed that the historical background document existed.

74. On 16 November 2017, Sheila Dove replied to the claimant as follows:-

“We are really concerned that we seem to be going over the same ground again and again. You have been told repeatedly that this matter has been extensively looked at and will not be investigated further. This includes responding to your emails and any further correspondence. The documents you refer to are correct and are the definitive documents. If you disagree you can always keep a copy of them with your amendments for your future reference.

We have to inform you that we will not be responding to any further correspondence/communication with you in this regard. We will not even acknowledge receipt of your email. We feel that we have given this matter more than sufficient time and we cannot incur any further time on this”.

75. Sheila Dove and her Grade 7 Line Manager Wendy Humphries took legal advice before sending this letter.

76. Sheila Dove wrote to Alison Nelson on 16 November 2017 about the line to take with the claimant, suggesting that Alison Nelson re-iterate the position to her as Sheila Dove had written to the claimant that day. She wrote that, whilst she appreciated that this may be causing the claimant stress, the claimant had to accept that her records would not be updated.

77. On 22 November 2017, the claimant wrote to Sheila Dove asking her to advise what happened when a grievance was not heard as in December 2016. She asserted that KH and Mike Harvey had altered the chronological summary after January 2014.

78. The claimant continued to raise issues with Alison Nelson. Alison Nelson asked Sheila Dove to send Alison Nelson a “butt out and don’t get involved response” if Alison Nelson raised issues with Sheila Dove.

79. On 5 December 2017, the claimant sent an email to Alison Nelson after a meeting, questioning whether the historical background document had been investigated and, if so, asking for details about this. She wrote that she felt that the Data Protection Act, her situation and her health condition were being ignored and not taken seriously. She confirmed the agreement to make an occupational health referral. She wrote that the Data Protection Team had advised that it was within

HR's remit to correct incorrect documents so the historical background document needed correcting. Alison Nelson forwarded this letter to Sheila Dove.

80. On 12 December 2017, Sheila Dove wrote to Alison Nelson with some pointers for Alison Nelson to include in her response to the claimant. Sheila Dove confirmed that the historical background document existed but wrote that issues/incidents concerns etc contained in the historical document fed into the chronological summary which the claimant agreed. She wrote that no documents needed to be amended, they were not held on her personnel file. She wrote that her information came from the agreed chronological summary and Mike Harvey's letter of 7 March 2014. She wrote that they had re-visited the same issues over the last three years and the claimant needed to accept that no further investigations would be undertaken. Alison Nelson sent this response on to the claimant on 13 December.

81. The claimant replied to Alison Nelson the same day, copying her email to Sheila Dove, challenging points made.

82. The claimant was told by Alison Nelson that Alison Nelson had been told not to respond to the claimant's emails about her grievance and reasonable adjustments.

83. On 13 December 2017, the claimant emailed Alison Nelson's manager, Carrie Cowsill, asking for advice on what needed to be done to have her grievances/reasonable adjustments heard. On the same day, the claimant sent a grievance to Alison Nelson and Carrie Cowsill about non-agreement of a reasonable adjustment following a stress risk assessment on 30 October.

84. On 14 December 2017, there was a further occupational health report. This noted that the claimant reported symptoms of stress/depression and an ongoing issue regarding inaccurate information held on personal records in HR which she had tried to have amended. The report noted that the claimant had undergone counselling earlier that year but said that they advised she was unlikely to be able to move forward and get better until the workplace issue was resolved. They noted that the claimant had indicated that she would like to meet with someone from HR to go through her file to understand what had happened so she could achieve closure. Under the heading "Current Outlook" the Occupational Health Advisor wrote:-

"Mrs Marsden's symptoms are directly linked to the unresolved issues regarding her personal records. Until this issue is resolved and Mrs Marsden is able to achieve closure it is likely that her symptoms will continue and she will find it difficult to move forward".

85. The advisor offered the opinion that the claimant's condition was likely to be considered a disability because it had lasted longer than twelve months and was having a significant impact on her ability to undertake normal daily activities. They advised that Mrs Marsden be given the opportunity to meet with someone from HR to discuss her case so she could achieve closure and move forward.

86. Carrie Cowsill sought advice from HR, initially speaking to LG. LG took legal advice.

87. The claimant chased for information on what was to happen after the occupational health report.

88. On 18 January 2017, the claimant had a meeting with Alison Nelson. The claimant was asking for records to be corrected and for a face to face meeting with HR. Alison Nelson reported to Carrie Cowsill.

89. On 23 January 2017, Alison Nelson sent an email to the claimant in a form provided by Carrie Cowsill who had taken advice from HR. The claimant was referred back to the letter from Sheila Dove of 16 November and told that that was final correspondence. Alison Nelson wrote:-

“The letter from Sheila Dove was the final correspondence and DWP have utilised all internal procedures therefore your request for having your files corrected as a reasonable adjustment on your recent OHS cannot be accommodated as HR consider this matter to be closed. Please stop sending any further correspondence to me relating to this matter as all internal procedures have been utilised”.

90. Sheila Dove took the decision, in conjunction with senior HR managers, Wendy Humphries and Sue Stevens, that a face to face meeting with HR was an unreasonable request. Sheila Dove took the decision because the respondent was not going to change anything and HR do not usually have face to face meetings with members of staff.

91. On 5 February 2018, the claimant presented a grievance about the refusal to implement reasonable adjustments in the occupational health report. Carrie Cowsill forwarded the grievance to HR for advice.

92. On 6 February 2018, the claimant contacted ACAS under the Early Conciliation Procedure.

93. On 12 February 2018, Alison Nelson wrote to the claimant, after receiving advice from HR, as follows:-

“Following recent advice from HR for reasons previously discussed and in Sheila Dove’s letter of 16 November 2017, your grievance has not been upheld. Any future grievances relating to this matter will receive the same response, as this matter is closed”.

94. On 14 February 2018, the claimant wrote to Carrie Cowsill asking for her grievance to be heard by the Management Investigation Team if applicable.

95. On 23 February 2018, the claimant appealed against the decision of 12 February not to uphold the grievance. On the same date the ACAS Early Conciliation Certificate was issued.

96. On 26 February 2018, the claimant met with Alison Nelson. She was told that there was no grievance and that it had not been upheld in its entirety. She was told that correspondence from Sheila Dove was the final correspondence.

97. On 26 February 2018, Carrie Cowsill wrote to the claimant stating that she wanted to clarify the claimant's understanding as to why her grievances and appeal could not be investigated. She wrote:-

“As you have previously been informed, this case has been thoroughly investigated by numerous people and will therefore no longer be investigated. It would not be applicable for the grievance to be heard through management investigation as per previous HR advice as this matter has been extensively looked at and you are referred back to your letter from Sheila Dove on 16/11/17 which was the final correspondence relating to this matter.

“We feel we have given this matter more than sufficient time and therefore we will not be responding to any further correspondence or communication with you regarding this matter”.

98. On 27 February 2018, the claimant wrote to Carrie Cowsill asking what investigations had taken place. She wrote that her mental health was suffering because of this. She asked for her grievance regarding the non-implementation of the OHS recommendations to be heard.

99. On 12 March 2018, the claimant sent a grievance to Stephen Louis against Alison Nelson and Carrie Cowsill for failure to implement reasonable adjustments recommended by occupational health.

100. On 21 March 2018, the claimant met with Carrie Cowsill, at Carrie Cowsill's request, to discuss the claimant's recent correspondence. At the meeting, Carrie Cowsill informed the claimant that there would be no more investigations and correspondence. The claimant said that the historical background document had not been corrected. Carrie Cowsill said everything had been investigated. The claimant asked about the occupational health recommendation for a face to face meeting with HR. Carrie Cowsill said the matter was closed. The claimant said Jonathon Russell said the historical background document did not exist. Carrie Cowsill said she could not engage in this as she knew nothing about this. Carrie Cowsill said further communications could lead to disciplinary action.

101. Carrie Cowsill was acting on advice from HR in what she was telling the claimant. Carrie Cowsill did not have any information about earlier matters. HR had told her that she did not need to know about this and that “the matter” had been fully investigated and was closed.

102. On the same day, after the meeting with Carrie Cowsill, the claimant presented her claim to the Tribunal. The details of claim deal with events from 30 October 2017 and the request for reasonable adjustments in the stress risk assessment with Alison Nelson, until presentation of the claim, including the meeting with Carrie Cowsill on 21 March 2018.

103. On 22 March 2018, Carrie Cowsill wrote to the claimant following their meeting, summarising points, including the respondent's view that there was nothing new to investigate, that a face to face meeting with HR was an unreasonable request and that the claimant had been asked to modify her behaviour in relation to this

matter as she was not demonstrating the standards of behaviour the department expected. She confirmed that she had asked the claimant not to send any further correspondence relating to this matter unless there was something new to investigate as this may result in disciplinary action.

104. On 29 March 2018, Stephen Louis wrote to the claimant, writing that the grievances she had submitted did not contain any information that had not already been investigated. He wrote that the claimant was not demonstrating the standards of behaviour the respondent expected by continuing persistent contact by emails when the claimant had been informed on multiple occasions that the matter was closed. Mr Louis got his information from Sheila Dove that the matters the claimant was raising had been dealt with previously.

105. Mr Louis did not take disciplinary action against the claimant because he felt she had mental health problems so should go a bit lighter than he would have done with others.

106. Stephen Louis told us that an employee cannot continually grieve about the same thing. We understand from this that the respondent has a practice that it will not consider a grievance if it considers that this is a repetition of a grievance which has already been fully investigated.

107. In June 2018, the claimant went off work sick. There were further occupational health reports in September 2018, February 2019, March 2019, June 2019 and August 2019. The advice in the September 2018 report was that the claimant was likely to remain unfit for work whilst the perceived work-related issues persisted. Subsequent reports also referred to work related issues as part of the barrier to a return to work. The claimant returned to work in July 2019 after having been informed that dismissal was a possibility because of her absence.

108. Further medical evidence, of which the respondent would not have been aware during the time period with which this claim is concerned, includes a letter dated 23 February 2007 from an Adult Psychotherapist. This included the view that the claimant needed resolution about work before she could think about doing other therapeutic work for herself and that the claimant could not embark upon therapy whilst things remained unclear at work. A letter from a different therapist on 16 February 2010 wrote that, notwithstanding progress the claimant made in therapy, the claimant realised that, while her work situation remained unresolved, she was not going to achieve fully the goals that she had set for herself.

Respondent's Submissions

109. Mr Redpath produced written closing submissions in outline and supplemented these with oral submissions. The respondent conceded that the claimant was disabled within the meaning in the Equality Act by reason of anxiety and depression but did not concede that an effect or psychological symptom of the claimant's anxiety and depression was that "she becomes pre-occupied with the perceived injustice, which becomes a matter of obsession for her [so that] she is unable to get over that injustice".

110. In relation to the discrimination arising from disability claim, the respondent submitted that the claimant was not treated unfavourably because of something arising in consequence of a disability. If the tribunal found that the claimant was treated unfavourably because of something arising in consequence of disability, the respondent argued that the approach taken by the respondent was a proportionate means to achieve a legitimate aim of treating complaints raised by employees fairly and with an appropriate degree of finality.

111. In relation to the reasonable adjustments claim, the respondent submitted that the respondent did not apply a provision or practice that, once a specific matter was concluded and relevant procedure was exhausted, the respondent would cease to engage in a matter including holding a face to face meeting.

112. In relation to time limits, Mr Redpath said he would find it difficult to maintain an argument that the actions of Sheila Dove were not a continuing act, since her advice was consistent.

Claimant's submissions

113. The claimant made oral submissions. In relation to the complaint of failure to make reasonable adjustments, the claimant noted that Sheila Dove and Jonathon Russell had confirmed that they were applying the practice, writing that they would not be replying to any more emails. The claimant noted that the responses she received were unreasonable because they were not borne out by following the grievance procedure or the reasonable adjustments process on the Attendance Management page. She submitted that the respondent did not act proportionately or with due diligence.

114. The claimant submitted that because of her anxiety and depression, she became anxious to clear her name and depressed because she could not do so. She referred the tribunal to the 14 December 2017 occupational health report in support of her argument that the respondent was aware that there was an underlying health issue, which advised that the claimant was unable to get better until workplace issues were resolved.

115. The claimant made further submissions on the facts which we do not seek to summarise.

The Law

Discrimination arising from disability Section 15 Equality Act 2010

116. Section 15 Equality Act 2010 provides:-

(1) A person (A) discriminates against a disabled person (B) if:-

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

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

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability”.

117. The proper approach to determining Section 15 claims was summarised by Mrs Justice Simler, then President of the EAT, in the case of **Pnaiser -v- NHS England and Another** [2016] IRLR 170. The points contained in this summary include the following:

- a. In determining what caused the impugned treatment or what was the reason for it, the focus is on the reason in the mind of A. An examination of the conscious or unconscious thought process of A is likely to be required.
- b. The “something” that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.
- c. Motives are irrelevant.
- d. The Tribunal must determine whether the reason for the cause, or, if more than one, a reason or cause, is “something arising in consequence of B’s disability”.
- e. The expression “arising in a consequence of” could describe a range of causal links. The causal link between the something that causes unfavourable treatment and the disability may include more than one link.
- f. The stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.
- g. Knowledge required is of disability only and does not extend to the requirement of knowledge that the “something” leading to the unfavourable treatment is a consequence of the disability.

118. In **City of York Council -v- Grosset** [2018] ICR 1492, the Court of Appeal held that dismissal for misconduct caused by disability could amount to Section 15 discrimination even if the employer did not know that the disability caused the misconduct. In that case, the Tribunal had concluded, on the basis of medical evidence which had not been available to the school at the time of the dismissal, that there was a link between the claimant’s behaviour and his disability. The Court of Appeal upheld the Tribunal’s decision that there was section 15 discrimination. Sales LJ noted that the question of whether the “something” for Section 15 purposes arises in consequence of the employee’s disability is an objective matter. In his view, it was not possible to read into Section 15 a further requirement that the employer must have been aware of the link when choosing to subject the employee to the unfavourable treatment in question.

119. The claimant bears an initial burden of proof to prove facts from which the Tribunal could conclude that there was Section 15 discrimination. This means that the claimant has to show that:-

- He/she was disabled at relevant times;
- He/she has been subjected to unfavourable treatment;
- A link between the disability and the “something” that is said to be the ground for the unfavourable treatment;
- Evidence from which the Tribunal could infer that the “something” was an effective reason or cause of the unfavourable treatment.

120. If the claimant proves facts from which the Tribunal could conclude that there was Section 15 discrimination, the burden shifts in accordance with Section 136 of the Equality Act 2010 to the respondent to prove a non-discriminatory explanation or to justify the treatment under Section 15(1)(b).

121. The respondent will successfully defend the claim if it can prove that the unfavourable treatment was a proportionate means of achieving a legitimate aim. Legitimate aims are not limited to what was in the mind of the employer at the time it carried out the unfavourable treatment. Deciding whether unfavourable treatment was proportionate will involve an objective balancing exercise between the reasonable needs of the respondent and the discriminatory effect on the claimant: a test established in the context of indirect discrimination in **Hampson -v- Department of Education and Science** [1989] ICR 179 Court of Appeal.

122. Section 39(2) of the Equality Act 2010 provides, amongst other things, that an employer must not discriminate against an employee by subjecting that employee to a detriment.

123. In **Ministry of Defence v Jeremiah** [1980] ICR 13, Lord Justice Brandon, in the Court of Appeal, thought “any other detriment” meant “putting under a disadvantage”.

Failure to make reasonable adjustments

124. The duty to make reasonable adjustments is found in Sections 20 and 21 of the Equality Act. One way in which the duty to make reasonable adjustments may arise is where there is a provision, criterion or practice (“PCP”) that puts the claimant at a substantial disadvantage in comparison with persons who are not disabled. The respondent will have a defence if it can show that it did not know and could not reasonably have been expected to know both that (a) the claimant was a disabled person and (b) was likely to be at that disadvantage. If the duty to make reasonable adjustments arises, and the respondent does not have a knowledge defence, the Tribunal must consider whether the respondent failed in its duty to take such steps as it would have been reasonable to have taken to avoid the disadvantage. In general, “provision, criterion or practice”, is to be construed widely. However, case law has indicated that there are some limits to what can constitute a PCP. In particular, there has to be an element of repetition, actual or potential. A genuine one-off decision which was not the application of policy is unlikely to be a practice: **Nottingham City Transport Limited -v- Harvey** [2013] LL ER (D) 267 (Feb), EAT.

125. “Substantial” means “more than minor or trivial”: Section 212 Equality Act.

126. The disadvantage must be linked to the disability.

127. There does not have to be certainty that the step contended for will prevent the disadvantage for this to be a reasonable adjustment. In **South Staffordshire and Shropshire Healthcare NHS Foundation Trust v Billingsley** EAT 0341/2015, the EAT said that it would be sufficient for there to be a chance that it would avoid the disadvantage.

128. The claimant has an initial burden of proof, requiring the claimant to prove facts relating to the application of a PCP, the substantial disadvantage and the adjustment which might have avoided that disadvantage. If the claimant satisfies that initial burden of proof, the burden shifts to the respondent which may discharge the burden in a variety of ways e.g. by proving that there was no knowledge of the substantial disadvantage or by showing that the proposed adjustment was not in fact reasonable.

Time limits

129. The initial time limit for the complaints under the Equality Act 2010 is 3 months starting with the date of the act of discrimination. The effect of the early conciliation procedure is that, if the notification to ACAS is made within the initial time limit period, the time is extended by the period of conciliation. A tribunal may consider a complaint out of time if it considers it just and equitable to do so in all the relevant circumstances.

Conclusions

Disability

130. The respondent has conceded the claimant was disabled at relevant times by reason of anxiety and depression.

131. On reflection, the Tribunal considered that it was not helpful to consider the second issue identified on the list of issues prepared by the respondent as a stand-alone issue i.e. whether it was a feature of the claimant's anxiety and depression that she became pre-occupied with perceived injustice. Instead, we considered it preferable to focus on the implications of the disability in the context of the statutory tests in determining whether there was Section 15 discrimination or failure to make reasonable adjustments.

Discrimination arising from disability

132. Having heard the evidence, and considered again the issues as identified at the preliminary hearing, it appeared to us that issue 3 in the respondent's list of issues did not entirely correctly identify this issue. The claimant was not saying that the draft briefing historical background should be corrected in the light of a definitive chronological summary dated 14 January 2014. Indeed, she was consistent in saying that the historical background document went beyond the period of the chronological summary. She did persistently say that the historical background document should be corrected and, in some respects, this would mean that it would

be corrected the same way as the chronological summary was where they dealt with the same matters. The issue identified in the preliminary hearing on 5 December 2018 was to consider whether the claimant was treated unfavourably by the respondent and the respondent treating the document issue (which it is common ground relates to the historical background document) as concluded and refusing to engage in any further substantial discussion about it, including a face to face meeting.

133. We conclude that the claimant was treated unfavourably by the respondent treating the document issue as concluded and refusing to engage in a further substantive discussion about it, including at a face to face meeting. The respondent was consistent in its stance in the period 30 October 2017 to 21 March 2018 (see, in particular, paragraphs 64, 66, 69, 74, 80, 89, 93, 96, 97 and 100). Because of this treatment, the claimant was not able to get the correction she sought which, on the basis of medical evidence, was something which she required to be able to recover. For example, the occupational health report of 14 December 2017 (see paragraph 84) stated that until the issue regarding her personal records was resolved, it was likely that the claimant's symptoms would continue and she would find it difficult to move forward. The 2015 occupational health report (see paragraph 33) also noted that the claimant's stress was expected to resolve with the resolution of these issues. The Psychologist's reports in 2007 and 2010 (see paragraph 108) both recorded that the claimant needed to address things at work in order to get better.

134. We conclude also, that the claimant was subjected to a detriment by this treatment; she was put at a disadvantage by not being able to get the correction she sought and start to get better.

135. We consider next whether the respondent's treatment of the document issue was something arising in consequence of the claimant's alleged disability. The respondent, in the period 30 October 2017 to 21 March 2018, with which we are directly concerned for this claim, and from sometime prior to that, was met with a united front, through a variety of people, in the respondent refusing to engage with what the claimant was saying in detail. From the evidence of Carrie Cowsill and Stephen Louis, it was clear that they were not applying any independent thought to whether the claimant was raising anything new which should require the respondent to look at matters again. They were acting on advice given to them by Sheila Dove in HR. We conclude that Sheila Dove did not do any independent investigation of whether the claimant was raising anything new. She went to Mike Harvey and to Jonathan Russell's office, asking, in effect, whether they had done everything right. Perhaps, unsurprisingly, Mike Harvey and an aide to Jonathan Russell said they had. Sheila Dove was relying on Mike Harvey to tell her that there was nothing new in what the claimant had raised. Sheila Dove was acting on advice from higher level managers and legal advice before replying to the claimant to the effect that everything had been looked at before. A clear indication that she did not examine what the claimant was raising, independently, in detail, is that she missed the point about Jonathon Russell's letter, which was something which happened after the Mike Harvey investigation. We conclude that the respondent applied a collective closed mind to the matter and did not consider that the claimant was raising anything new after the Mike Harvey decision in March 2014. However, as noted above, the Jonathan Russell letter and his statement that there was no separate historical document to the chronological summary, which was inaccurate, was after Mike

Harvey's investigation. Even in relation to historical matters which had been dealt with by Mike Harvey, the claimant had discovered matters through SARs that legal advice had been sought, at least in part, on the basis of the historical document which was inaccurate. This was a document which the respondent's Data Protection Officer had assured the Information Commissioner Officer would be corrected but was not. This raised a concern for the claimant about the assurance she received that all decisions had been made on the basis of the agreed chronological summary. If legal advice was sought on the basis of incorrect information, this could potentially have had an impact on decisions which were then made.

136. The decision to not engage further with the claimant when she raised matters that appeared to relate to the original historical matters originated with the decision of Jonathan Russell in October 2015. We did not hear evidence from Mr Russell, Mike Harvey or Colin Stewart who were all telling the claimant, prior to the involvement of Sheila Dove and others, that matters raised by the claimant would not be looked into unless they contained something new.

137. In relation to the document issue, the claimant said the historical document was inaccurate. This had not been corrected, even though the respondent's Data Protection Officer had told the Information Commissioners Office that it would be. We know from the evidence of Sheila Dove that use was made of the historical document, forming part of the submission for legal advice sought by Mike Harvey before making his decisions in March 2014 (see paragraph 28). Jonathan Russell denied, incorrectly, that the historical document existed and was suggesting that it was one and the same as the agreed chronological summary. The respondent was saying to the claimant that the historical document fed into the chronological summary and then portrayed the chronological summary as the definitive document. However, as the claimant continually pointed out, this historical document dealt with matters also beyond 2008 when the chronological summary finished. Sheila Dove, even giving evidence to this Tribunal, did not appear to understand this point. The claimant was at one stage invited by Steve Thomson to make corrections to the historical document but the respondent failed then to do anything about this.

138. It appears to us that the respondent had had enough of the claimant writing in about matters which had a relationship to matters dealt with by Mike Harvey and this led to them refusing to engage further. The respondent viewed the document issue as relating to matters dealt with by Mike Harvey. They treated the document issue as concluded and refused to engage in further substantive discussion about it, including at a face to face meeting, because the claimant persisted in raising such matters.

139. We conclude that there was a link between the claimant continually raising matters which related to the Mike Harvey investigation and her anxiety and depression. The claimant persisted, to a remarkable extent, in raising the matters over a period of years because, unless she resolved matters, she was not going to get better. The medical evidence in the occupational health reports and the Psychotherapists' reports support this (see paragraphs 24, 33, 84, 107 and 108).

140. We conclude, therefore, that the claimant was treated unfavourably by the respondent in treating the document issue as concluded and refusing to engage in further substantive discussion about it, including at a face to face meeting because of something arising in consequence of the claimant's disability.

141. The respondents knew of the claimant's disability. The respondent has not argued that they did not know at relevant times that the claimant was disabled by reason of anxiety and depression. Rather, their argument was that they were not aware of certain features of the disability. Even if the respondent had sought to argue that they did not know of the disability, we would have concluded, on the evidence, that the respondent had actual or, at least constructive knowledge of disability at all relevant times. We have seen occupational health reports as far back as March 2004 which referred to depression (see paragraph 12). A 2015 report referring to psychological symptoms expressed the opinion that the claimant was unlikely to be regarded as disabled (see paragraph 33). The claimant's letter of 30 October 2017 should have put the respondent on enquiry as to disability by reason of a mental impairment, if they were not already aware of this (see paragraph 62). The occupational health report of 14 December 2017 referred to stress/depression and expressed the view that the claimant was likely to be regarded as disabled (see paragraph 84).

142. The respondent argued that they were not aware that a feature of the claimant's anxiety and depression was that she became preoccupied with perceived injustice. However, there is no requirement for the respondent to know that there is a link between the claimant's behaviour and her disability. In any event, we understand from the evidence of Stephen Louis that he did not take disciplinary action against the claimant because she had mental health problems (see paragraph 105). It seems, therefore, that he, at least, appeared to consider there may be a link between her behaviour and her mental health. We have explained above why we have concluded that there was a link between the claimant's behaviour and her disability which led to the respondent's unfavourable treatment.

143. The respondent relies on a legitimate aim of ensuring that complaints raised by employees are dealt with fairly and with an appropriate degree of finality. We accept that this is a legitimate aim. However, we conclude that the respondent's refusal to engage in further discussion, including at a face to face meeting, was not a proportionate means of achieving this legitimate aim. For reasons we have already expressed, the claimant was not raising the same thing over and over again. Simply saying no to her was not going to deal with her fairly. We conclude that the complaint of Section 15 discrimination is well founded.

144. In relation to the time limit issue, there were acts of treating the document issue as concluded and refusing to engage in further substantive discussion about it before and after 21 December 2017 (see, in particular, paragraphs 64, 66, 69, 74, 80, 89, 93, 96, 97 and 100). Acts on or after 21 December 2017 are agreed to be in time. Mr Redpath, on behalf of the respondent, stated that he would find it difficult to maintain an argument that the acts of Sheila Dove did not form part of a continuing act, since her advice was consistent. We conclude that earlier acts, during the time period with which we are concerned i.e. the period 30 October 2017 until presentation of the claim on 21 March 2018, form part of a continuing act of discrimination, being by, or on the advice of, Sheila Dove and of the same nature. The complaints of discrimination arising from disability are, therefore, all in time.

Failure to make reasonable adjustments

145. The PCP relied on by the claimant is a practice on the part of the respondent that, once a matter has been concluded and a relevant procedure exhausted, of ceasing to engage on the matter, including holding a face to face meeting.

146. We conclude that the respondent did have such a practice. This was not a "one off". The respondent applied it over a lengthy period to the claimant, from Jonathan Russell's letter in 2014 up to and beyond 21 March 2018, the date when the claimant presented this claim. We are, of course, only considering the period up to presentation of the claim. That there was such a practice is supported by Mr Louis's evidence that someone would not be allowed to grieve over the same matter (see paragraph 106). This suggests there is a general practice, not just limited to the claimant, of not allowing someone to raise matters which they consider had been raised previously.

147. We conclude that this practice put the claimant at a substantial disadvantage compared to people without her disability. Although persons without her disability will, no doubt, have a continuing sense of injustice if they feel their concerns have not been addressed correctly, letting these matters go and not pursuing them further would not have the same health implications as for the claimant. The claimant had been advised by health professionals that, unless she addressed the work issues, she would not get better. The medical evidence in the occupational health reports and the Psychotherapists' reports support this (see paragraphs 24, 33, 84, 107 and 108). A practice which prevented her addressing these issues and achieving some sort of closure, therefore, put her at a substantial disadvantage.

148. For reasons given previously, we concluded that the respondent knew of the disability at relevant times. We also conclude that the respondent knew, or could reasonably be expected to know, that the claimant was likely to be placed at the alleged disadvantage. The occupational health report of 2015 referred to the work issues as being barriers to her working (see paragraph 33). The claimant was raising health concerns in connection with the failure to address the document issue in the stress risk assessments. For example, on 10 July 2017, the claimant had written to Charlie Bonsall in HR referring to a stress risk assessment which was attached (see paragraph 50). In a letter dated 30 October 2017, the claimant sought the correction of a historical background document as a reasonable adjustment (see paragraph 62). Although she referred in that letter to a diagnosis of PTSD, the claimant was clearly making a link between her mental health and the need to address the document issue. The stress risk assessment completed on 17 October 2017 also made a link between the claimant's mental health and this issue (see paragraph 60). In a letter dated 5 December 2017 (see paragraph 79), the claimant wrote to her line manager, Alison Nelson, referring to Sheila Dove's letter of 16 November 2017 which continued the refusal to engage in the matter. The claimant wrote that she was very unhappy regarding the letter and felt that her health condition was being ignored and not taken seriously.

149. The occupational health report of 14 December 2017 (see paragraph 84) referred to the claimant's stress/depression and wrote that the claimant had undergone counselling earlier that year but was advised that she was unlikely to be able to move forward and get better until the workplace issue was resolved. A

recommendation in that report was that the claimant be given the opportunity to meet with someone from HR to discuss her case so she could achieve closure and move forward. The report wrote that the claimant's symptoms were directly linked to the unresolved issues regarding her personal records and, until the issue was resolved and the claimant was able to achieve closure, it was likely that her symptoms would continue and she would find it difficult to move forward.

150. We consider that the claimant continuing to raise the document issue in these documents, despite all the letters telling her that the respondent would not engage further with this, put the respondent, at the very least, on constructive knowledge of the disadvantage by 30 October 2017 at the very latest. The claimant was clearly making a link between her mental health and the need to address the document issue which should, at the least, have put the respondent on enquiry as to disadvantage. We conclude that the respondent ought reasonably to have known, if it did not actually know, that the claimant was put at a disadvantage by the PCP which was more than minor or trivial from no later than 30 October 2017. From receipt of the occupational health report of December 2017, we conclude that the respondent had actual knowledge of substantial disadvantage, even if they did not have actual knowledge before.

151. We conclude that the duty to make reasonable adjustments in the period from 30 October 2017 until presentation of the claim on 21 March 2018 arose for these reasons.

152. The reasonable adjustment which the claimant contends should have been made, as recorded in the notes of the case management preliminary hearing, was to hold a face to face meeting with the claimant and consider her claims further. We conclude that, in the circumstances, holding a face to face meeting between the claimant and HR was a reasonable step for the respondent to have to take to avoid the alleged disadvantage. The step does not need to be certain to alleviate disadvantage, it needs only to have a chance of doing so. We consider that a meeting between the claimant and HR conducted in good faith, where the claimant would have had a chance to explain the issue would have a chance of changing things. Sheila Dove's reasons for refusing the face to face meeting were that she did not consider this would change anything and the respondent did not have face to face meetings with HR. The fact that HR generally did not have face to face meeting cannot by itself mean the step would not be a reasonable step to take. It is the nature of reasonable adjustments for disability that respondents often have the duty to do things that they would not do in the normal run of things. We consider we must approach this on the basis that whoever from HR would have conducted the meeting would have done so in good faith, listening carefully to the claimant and what she had to say. If this had been done, we consider there is a chance that the respondent would have then gone on to correct the historical document and take whatever steps flowed from this. We consider there is, at the very least, a chance that being listened to in this way, and having any appropriate action taken, may have alleviated the claimant's anxiety and depression.

153. In relation to the time limit point, we conclude that the failure to make reasonable adjustments was a continuing act which continued up to the presentation of the claim. The claim is, therefore, in time. If we had not decided that it was a continuing act, we would have considered that it was just and equitable to consider it

out of time in all the circumstances. The claimant has gone to extraordinary lengths to attempt to resolve matters internally prior to bringing proceedings. We consider it just and equitable not to penalise her for giving the respondent every opportunity to resolve matters without recourse to litigation before taking the final step of presenting this claim.

154. We conclude that the complaint of failure to make reasonable adjustments is well founded.

Employment Judge Slater

Date: 17 October 2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON

17 October 2019

FOR THE TRIBUNAL OFFICE