



# EMPLOYMENT TRIBUNALS

**Claimant:** Miss J Waite

**Respondent:** Commissioners for Her Majesty's Revenue and Customs

**Heard at:** Carlisle **On:** 23, 24, 26 and 29  
April, 2019

**Before:** Employment Judge Nicol **Members:** Mr T D Wilson  
Ms V Worthington

## Representation

Claimant: appeared in person  
Respondent: Mr A Crammond, Counsel

# JUDGMENT

After hearing the parties, it is the unanimous judgment of the Tribunal that

- 1 the claimant's complaint that she suffered discrimination arising from disability as described in Section 15 of the Equality Act, 2010, is not well founded and is dismissed
- 2 the claimant's complaint that she suffered discrimination as described in Sections 20 and 21 of the Equality Act, 2010, on the ground of the protected characteristic of disability is not well founded and is dismissed
- 3 the claimant's complaint that she suffered harassment as described in Section 26 of the Equality Act, 2010, on the ground of the protected characteristic of disability is not well founded and is dismissed
- 4 the claimant's complaint that she suffered victimisation as described in Section 27 of the Equality Act, 2010, on the ground of the protected characteristic of disability is not well founded and is dismissed
- 5 all other complaints by the claimant whether expressly set out in or may be implied from any document submitted to the Tribunal by or on behalf of the claimant, including but not exclusively the claimant's claim form and list of issues, are dismissed on withdrawal by the claimant
- 6 the correct name of the respondent is Commissioners for Her Majesty's

Revenue and Customs

## REASONS

1 At the end of the hearing, the Tribunal gave its Judgment and Reasons for the Judgment. The claimant requested that the Tribunal should set out its Reasons in writing, which the Tribunal agreed to provide. Accordingly, these Reasons set out the Tribunal's findings in support of its Judgment. Whilst the wording and order may differ from the announced version, this is with the benefit of more preparation time and is not the result of further deliberations by the Tribunal.

2 These are complaints by Joanne Waite, the claimant, against the Commissioners for Her Majesty's Revenue and Customs, the respondent, (named in the complaint as Her Majesty's Revenue and Customs) arising from her employment with the respondent. The claimant's employment with the respondent commenced on 14 November, 2016, and the effective date of termination was 19 September, 2017, when the claimant had been in continuous employment for less than one complete year.

3 The Claimant alleges that she is a disabled person for the purposes of the Equality Act, 2010 ('EA') and that she suffers from dyslexia. For the purposes of these proceedings, the respondent has accepted that the claimant satisfies the test of disability under Section 6 in Schedule 1 to the Equality Act, 2010, at all relevant times, in respect of her dyslexia.

4 The claimant alleges that she suffered discrimination arising from disability, that the respondent failed to make reasonable adjustments for her disability, that she suffered harassment on the ground of her disability and that she suffered victimisation on the ground of her disability. The respondent denies these complaints.

5 At a preliminary hearing on 1 August, 2018, a different Employment Judge identified the issues that were apparent at that time. The claimant provided further particulars of her complaints and the respondent served an amended response which identified each of the issues that the claimant appeared to be pursuing and the incidents on which she is relying. With the agreement of the parties, the Tribunal used this document during its deliberations to identify the issues that it needed to consider.

6 All of the respondent's witnesses had been employed by it at the relevant times but the site where they worked has been closed and they have been made redundant. Witness orders had been issued before the hearing requiring three witnesses to attend on behalf of the respondent. During the hearing, the Tribunal issued a further witness order for a fourth witness to attend on behalf of the respondent. Each of these witnesses did attend and indicated that their expenses in attending had been agreed with and would be paid by the respondent. The Tribunal did not consider that these circumstances affected the nature and quality of their evidence.

7 The Tribunal heard evidence from the claimant and from Christine Riddell, formerly team leader, Angela Woodend, formerly operations manager, Ian Gaythwaite, formerly resources manager, and Mathew Young, formerly deputy senior delivery

manager, on behalf of the respondent. The claimant, Mrs Riddell and Mr Young gave their evidence in chief by submitting written statements that were read by the Tribunal at the start of the hearing and, subject to any necessary corrections, confirmed on oath or affirmation at the start of each witness's oral evidence and, as permitted by the Tribunal, answering supplemental questions. Ms Woodend and Mr Gaythwaite did not produce statements but gave their evidence in chief in response to oral questions. All witnesses were cross-examined.

8 The Tribunal had before it an agreed bundle of documents, marked 'Exhibit R1', to which additional documents were added by the claimant during the hearing with the agreement of the respondent and the leave of the Tribunal. Both parties made oral closing submissions by reference to skeleton arguments.

9 From the evidence that we heard and the documents that we have seen, the Tribunal finds the following facts.

10 The claimant was employed by the respondent on a fixed term contract which was due to run from 14 November, 2016, to 28 September, 2018.

11 She stated that she has a degree in law, an HNC in business studies and administration and other qualifications. She has undertaken voluntary work with Cumbria Law Centre and Citizens' Advice. She had previous call centre experience.

12 The claimant had a previous history of mental conditions but did not rely on them in connection with these proceedings. So far as could be ascertained, the claimant was not knowingly suffering from these conditions at the time that her employment with the respondent commenced, although she did declare them. It was also not clear whether the claimant disclosed her dyslexia before commencing her employment but, if not, soon after she started employment she provided the respondent with a report from an educational psychologist concerning her dyslexia which had been prepared whilst she was a student for educational purposes.

13 Whilst the claimant's condition was known, its full effect and the impact on her work were not appreciated by the claimant or the respondent. To some extent, the claimant's evidence was coloured by knowledge that she has subsequently acquired. This is not to suggest that the claimant was deliberately untruthful but rather that she had difficulty distinguishing between what she knew at the time and what she subsequently found out.

14 The claimant worked for the respondent at a call centre answering calls from callers with tax queries. The work required the use of two terminals with screens. The call handler would input information received from the call on one screen and use guidance notes on the other screen. For example, at the start of the call, the call handler would be prompted to ask questions intended to ensure the identity of the caller who would provide information that was input on the other screen. Normally, a call handler would be given time targets in respect of call handling but the claimant was not subjected to those targets. Training was given to new employees to enable them to become familiar with the systems. During calls, callers might be put on hold whilst the call handler was checking something and the call handler was expected to explain the

reason that the call was put on hold. Call handlers were expected to be courteous and, for example, thank callers for information provided.

15 Security and accuracy are matters that the respondent takes extremely seriously. It is considered essential that call handlers establish who they are speaking to and that any information disclosed to the caller is accurate and only given to the person entitled to receive it. A failure in this regard can lead to various complications including breach of data protection, errors in advice, under and/or over payments of tax and damage to the respondent's reputation.

16 The respondent operates a system where new employees work a period of probation. It has various policies which apply to employees on probation. If performance is not satisfactory, the probation period may be extended and continued failure can result in dismissal. Two matters which the respondent takes seriously are lateness and compliance with absence reporting procedures. Non-compliance with requirements can result in wasted management time and put additional pressure on other call handlers.

17 The claimant had worked previously in a call centre but that was in relation to sales.

18 The claimant's post was at Workington. The office has now closed and all employees still in post when it closed were made redundant. Had the claimant completed her fixed term contract, it is quite likely that it would not have been renewed but, if it was, it would only have been for a limited period until the office closed.

19 The claimant's line manager was Mrs Riddell. She had previously been a call handler and her job included encouraging and coaching her team, listening to how calls were handled and helping team members to respond to calls. The claimant was part of an intake of about eighty employees. When the claimant first joined Mrs Riddell's team, she publicly asked to change to a different team.

20 It was not clear what the problem with their relationship was. Below, reference will be made to a series of meetings that took place between Mrs Riddell and the claimant. At virtually all of them, Mrs Riddell was accompanied by a note taker. The claimant was asked to sign the notes of the meetings as being accurate, which she did on most occasions. She has since disputed most of the notes, saying that she was under pressure to sign them. At one point, her trade union representative told her not to sign these notes but she still did sign them. The Tribunal did not accept that the claimant did feel under pressure to sign the notes. She demonstrated on several occasions that she was prepared to complain about Mrs Riddell. On the other hand, Mrs Riddell was clearly concerned about the way the claimant reacted to her, as can be seen by the extensive notes that she had taken. The Tribunal therefore considers that most of the notes are reasonably accurate but the claimant's recollections may have been affected by hindsight.

21 Mrs Riddell's manager was Ms Woodend. There was evidence that the claimant would go to her in preference to Mrs Riddell.

22 The first few weeks of the claimant's employment, with her colleagues, were spent in intensive training before moving to handling actual calls.

23 Early in her employment, the claimant provided a copy of the report from the educational psychologist concerning her dyslexia to Dawn Lightfoot in HR who informed Mrs Riddell that she had the copy and that Mrs Riddell could see it if she needed to. Mrs Riddell did not read it as she did not think that she would understand it but she did note that the claimant was dyslexic. The respondent did have a document entitled 'IT accessibility: help for staff with dyslexia and related conditions' to which Mrs Riddell referred.

24 Initially, it was thought that the claimant did not require any reasonable adjustments to assist her with her work. However, Mrs Riddell had noted that a double headset might be helpful in reducing potentially distracting noise and she ordered one for the claimant. She also arranged for the icons on the claimant's screens to be made bigger.

25 The claimant was hesitant to start taking live calls and asked for additional support, which was provided, for a week.

26 The claimant complained that in January, 2017, Mrs Riddell wrote on a whiteboard that 'Joanne no longer needs support'. This was intended by Mrs Riddell as the celebration of success in that the claimant was making satisfactory progress. The claimant took it as emphasising that she had needed support when others had not. There was not any evidence of the claimant getting any reaction from her colleagues but she complained about it to Ms Woodend. Ms Woodend raised the matter with Mrs Riddell who decided not to do it again.

27 The claimant was exhibiting signs of stress from January, 2017. On 18 January, 2017, she telephoned to say that she was stressed about work and did not want to come in. Mrs Riddell persuaded her to come in and they discussed the problems that the claimant was encountering. The claimant was concerned about getting to grips with training material and understanding how to deal with enquiries. They also discussed the claimant's dyslexia and the problems that she encountered when processing information. Mrs Riddell suggested that the claimant take part in buddying and that, within her working hours, she be given more investment time for self-development and training.

28 A support plan was developed by Mrs Riddell. This included the provision of a mentor. Regular meetings were to take place to discuss the progress made, problems encountered by the claimant and to get feedback from the mentor. In due course, the mentor noted that the claimant was having difficulty in identifying the reason the call was being made, was anxious about keeping the caller on the telephone and had long silences.

29 The claimant alleged that an incident occurred in January, 2018, when Mrs Riddell made fun of a colleague's speech impediment. Mrs Riddell denies this happened. The claimant says that she reported the matter to Ms Woodend, who does not recall the conversation. The claimant suggests that this was a protected act for the purposes of the Equality Act, 2010.

30 The circumstances of the alleged incident are not clear. For example, the nature of the speech impediment is not known and it is also not clear whether it arose from a disability. Further, there was not any evidence to tie the claimant's subsequent treatment to this alleged incident or any report made about it. The relationship between Mrs Riddell and the claimant was already being established and there is nothing to suggest, at least on Mrs Riddell's part, that anything changed after this time.

31 On 1 February, 2018, the claimant rang the absence telephone line to say that she was not coming in to work. Mrs Riddell contacted her and offered to give her work that did involve handling telephone calls. Although the claimant initially agreed to come in, she did not attend work that day. When she returned to work, the sickness absence reporting requirements were discussed.

32 Working with a different mentor, the claimant indicated that she found the mentor's presence distracting. The mentor reported that the claimant was having difficulties in understanding what her calls were about and in navigating the system.

33 At a meeting on 9 February, 2017, Mrs Riddell and the claimant discussed calls that Mrs Riddell had listened in to. Mrs Riddell was concerned that the claimant was not following the security process. Also, that calls were taking too long to resolve. She gave the claimant advice about the use of open and closed questions. Mrs Riddell was not concerned about the quantity of calls handled but rather the quality of the service that the claimant was providing. After this the claimant's performance in respect of security improved.

34 On 11 February, 2017, the claimant and Mrs Riddell had a further meeting, on this occasion also attended by Stacey Tinnion, a trainer.

35 The claimant's relationship with Mrs Riddell was discussed. The claimant quoted an example of when Mrs Riddell had answered a question and then moved on to talk to someone else. Mrs Riddell explained that she had to do this because of her own duties.

36 The claimant alleges that at about the time of this meeting, Mrs Riddell said words to the effect 'we don't want to have to tell you to go'. The Tribunal was satisfied that Mrs Riddell had genuine concerns about the claimant's performance and knew that if there was not sufficient improvement, the claimant's employment could be terminated. The Tribunal was also satisfied that Mrs Riddell was trying to support the claimant so that this did not happen.

37 When Mrs Riddell and the claimant met on 14 February, 2017, they discussed the support plan and the claimant was asked to identify any support that she considered that she needed but she did not identify anything. She did ask for help in dealing with calls relating to underpayments but she did not provide any examples as she had previously been requested to do, although the claimant did challenge whether she had been asked to produce examples. About this time Mrs Riddell produced an aide-memoir for the claimant to assist with navigating the computer system.

38 A formal review meeting was arranged for 23 February, 2017, but this did not take place until 28 February, 2017.

39 On Saturday 25 February, 2017, the claimant failed to turn up for work on time. Mrs Riddell informed Rachel Burns, the duty manager, and was advised on what she should do, which could include a home visit. Mrs Riddell tried to contact the claimant and then her next of kin by telephone, without success. Mrs Riddell left a voicemail message for the claimant saying that a home visit might take place if contact could not be otherwise established.

40 Mrs Riddell went to the claimant's address with another manager. They took a letter with them in case there was not any response. The claimant answered the door to them and agreed to come into work with them.

41 Mrs Riddell said that she was concerned in case anything had happened to the claimant and that she needed help. Had contact not been made with the claimant, Mrs Riddell would have called the Police to enter the claimant's premises to see if she was in need of help.

42 After being at work, the claimant told a trade union representative that she had had enough and was going home. She was seen leaving by Ms Burns who went to speak to her. The claimant alleged that she was being bullied and suffered harassment because of her meetings with Mrs Riddell. The claimant then went back to work.

43 At the meeting on 28 February, 2017, various matters were discussed including a referral to occupational health because the claimant considered that her dyslexia could be a contributory factor in her poor performance.

44 The occupational health report confirmed that dyslexia was likely to be a disability. The suggestions to assist the claimant were

- 44.1 Voice recognition, which the claimant did not want
- 44.2 Adjustment of targets, however, the claimant had not been subjected to them
- 44.3 The provision of a mentor/buddy, which was already being provided
- 44.4 Extra time for tasks/reading, again the claimant did not have targets and she was being given extra investment time
- 44.5 The provision of information in formats she may find accessible, the claimant had already had her visual display adjusted and Mrs Riddell tried to ensure that the claimant understood letters that were sent to her.

The claimant was assessed as being able to undertake her usual hours and duties. However, she did have problems with reading and writing and processing information.

45 The claimant was issued with a formal written warning on 9 March, 2017, by Mrs Riddell after she had taken into account the occupational health report. Mrs Riddell was concerned that the claimant was not always completing security checks, she was disclosing information before completing security checks, she was making incorrect changes to records, she was issuing the wrong tax codes and she was not following the call guides. Mrs Riddell wanted a further four week review period for the support

plan and that assistance should be sought from Access to Work, which it was thought could provide assistance if dyslexia was part of the cause of the claimant's problems.

46 The claimant alleged that at about this time Mrs Riddell suggested that she should seek advice from her doctor. Mrs Riddell did not dispute this but not recall the details. Mrs Riddell thought that there might be further problems affecting the claimant that could be assisted by medical intervention. The claimant herself makes reference to stress and anxiety and had had previous problems. The Tribunal was satisfied that it was reasonable for Mrs Riddell to be concerned about the claimant and to comment on this to her.

47 A further support plan was developed. Mrs Riddell provided support by listening to calls and giving advice. She also provided her with training materials and a link to Access to Work.

48 On Saturday 11 March, 2017, the claimant was late in arriving at work. The claimant worked a shift pattern that meant that she worked late on certain Fridays and then early on the next day, Saturday. She said that she had problems with transport which resulted in her being home late on the Friday and then needed to be up early for the next day. The alternative was to get a taxi on the Saturday morning. As she was tired, she was liable to oversleep. In respect of this occasion and subsequent ones, the claimant was not clear and consistent about the reasons for her lateness. It was not even clear whether you used an alarm clock or similar device or whether she made any advance preparations, such as ordering a taxi. The only reason for not reporting in was that she was asleep.

49 On 14 March, 2017, Mrs Riddell met the claimant to discuss the fact that the claimant had been late on the previous two Saturdays when she had been scheduled to work. The claimant put forward her reasons for being late. Mrs Riddell stressed the need for the claimant to report absences.

50 The claimant's progress was considered at a meeting on 17 March, 2017. At about that time, the claimant alleges that Mrs Riddell said that talking to her made her 'feel like I am talking to a brick wall'. Mrs Riddell concedes that she may have said something like this. She was getting frustrated because the claimant sometimes worked correctly but at other times did not. The claimant did not seem to appreciate the efforts that were being made to support her but could not say what else was required. At the end of the meeting the claimant accepted that she was getting the necessary support.

51 In March, 2017, Mrs Riddell had an exchange of emails with Garry Humphrey, the claimant's trade union representative. . He was not aware that a referral had been made to occupational health or that the claimant was to receive additional 1-2-1 support. He said that he was advising the claimant not to sign any more meeting notes.

52 On 24 March, 2017, there was a meeting between Mrs Riddell and the claimant to review the situation under the support plan. It was agreed that some positive progress had been made but that there were still issues that required attention. The claimant was concerned about the number of calls that she was able to handle but Mrs



Riddell was still more concerned with quality rather than quantity. The claimant agreed that she was getting the right level of support and that the current mentor was helping.

53 In an email dated 28 March, 2017, Mr Humphrey advised the claimant that the trade union would not support her in an appeal against the stage 1 written warning concerning the claimant's performance. He noted problems in communication between the claimant and Mrs Riddell and that the claimant had been confused about the effects of her disability. Mr Humphrey also highlighted the major part she played in her development. He advised her to 'press the reset button' with her interaction with the support offered and to work closely with Mrs Riddell.

54 On 30 March, 2017, Mrs Riddell received an email from the then current mentor stating that the claimant was still having problems with the security protocols and working out what a caller wanted. Mrs Riddell discussed this with the claimant the next day. It was recognised that the claimant had improved her accuracy in respect of tax codes but that she still needed to tell callers what she was doing, especially when putting a caller on hold. Mrs Riddell sent the claimant some more training materials but the mentor continued to note that security remained an issue.

55 The claimant was moved to a temporary seat in a different team but Mrs Riddell remained her team leader.

56 A further meeting took place on 7 April, 2017. Various matters were discussed including additional work on tax credits that Mrs Riddell's team was to undertake on instruction from Ms Woodend. Mrs Riddell had doubts about the claimant moving on to additional work as she was not satisfied that the claimant performed sufficiently well on her current work. However, she could not prevent the claimant undertaking the new training and in due course the claimant demonstrated more of an aptitude for tax credit work than her previous work to the extent that Mrs Riddell recommended that she restrict her work to this type of query.

57 The next formal review of the support plan was scheduled for 13 April, 2017. The claimant was notified in writing on 10 April, 2017. The claimant then tried to get a trade union representative to attend with her. This proved difficult because of the amount of notice given. The trade union complained that at least five days' notice should have been given but Mrs Riddell was satisfied that she only needed to give two days' notice. In the event, a trade union representative was present at the meeting.

58 At the meeting, there was a discussion of dyslexia and reasonable adjustments. The claimant did not consider that dictation/reading software would help but that there might be other things that would. The claimant had not yet contacted Access to Work.

59 Mrs Riddell decided to issue a final written warning for poor performance. She considered that the claimant 'doesn't seem to be taking on board the severity of the issue, or taking ownership for her own improvements'. She prompted the claimant to contact Access to Work to see if there was anything extra that could be done to assist the claimant.

60 The final written warning, dated 21 April, 2017, set out the continuing weaknesses and the required improvements. It also included details of a further review period and a warning that failure to improve could result in dismissal.

61 Mrs Riddell sent the claimant a new support plan on the same day and repeated the warning that failure to improve could result in dismissal because she wanted to ensure that the claimant was fully aware of the seriousness of her situation.

62 At their next meeting on 28 April, 2017, Mrs Riddell and the claimant discussed the risks to the claimant if she did not improve. To emphasise the point, Mrs Riddell asked the claimant how it would look on her CV if she had to say that she was dismissed by the respondent. This was another remark that the claimant complains about. The Tribunal was satisfied that it was a little heavy handed but was a genuine indication to the claimant that her continued employment was under threat if her performance did not improve.

63 The claimant continued to receive support during the review period.

64 Following a meeting on 5 May, 2017, the claimant signed the note of the meeting with the qualification that she was only signing to acknowledge receipt of the note and that she did not agree its accuracy. This demonstrates that the claimant was quite capable of indicating dissent about notes, if she felt that she did not agree them.

65 In the bundle was a copy of the Access to Work report. This was completed following discussions between the Access to Work advisor and the claimant. It is open to question whether the claimant accurately described her working situation. For example, reference is made to the time taken for handling each call and a recommendation was made for the claimant to be allowed additional time. In reality, the claimant was not subject to time constraints. Whilst she was encouraged to work more efficiently and faster, this was expected to come with training and experience and she was not subjected to targets as her colleagues were.

66 One point made in the report is that stress and pressure affect dyslexia. It does not say that dyslexia causes stress. In other words, the pressure to do a good job can affect someone with dyslexia and increase the problems faced. However, dyslexia does not, of itself, generate stress. Obviously, someone with dyslexia will know that they have problems to be overcome but much depends on the individual's attitude to this and the coping strategies that they adopt.

67 The report includes various recommendations including additional training and dedicated software. Access to Work provided a grant to contribute to the cost of the implementation of some of its recommendations.

68 Mrs Riddell and the claimant met to discuss the report. During the discussion, Mrs Riddell said that the claimant could take the report with her to another job. The Tribunal accepted that this was in the context of the report being valid for three years, a period that exceeded the length of the claimant's fixed term contract. The office was due to be closed and the employees working there were expecting to be made redundant. It was therefore unlikely that the claimant's contract would be extended, even if she was still employed under it when the contract ran out.

69 The claimant alleges that Mrs Riddell told her that she could always apply for the claimant to be dismissed. Mrs Riddell accepts that she may have said something to that effect but it was in the context of confirming to the claimant the seriousness of the need for to improve.

70 Mrs Riddell put in place various recommendations made by Access to Work but had problems organising the recommended training.

71 On 16 May, 2017, Louise Rigler heard the claimant's appeal against the final written warning. In a letter dated 22 May, 2017, Ms Rigler informed the claimant that her appeal had been upheld and that her employment prospects were not affected. However, she did not give reasons for her decision. What is clear is that Mrs Riddell's decision was open to review and that the appeal manager had not accepted that decision.

72 On the 31 May, 2017, there was a staff meeting known as a 'talking points meeting'. Although, all members of the team would normally attend such a meeting, this was subject to availability and circumstances. On this occasion, the meeting conflicted with the claimant's lunch break and Mrs Riddell told her that she could take her break rather than attend the meeting. The claimant has construed this as excluding her from the meeting but this did not appear to have been the intention and she could still have attended, if she so wished.

73 The claimant had an absence work and produced fitness to work certificates dated 18 and 19 May, 2017, stating that she would be unfit to work until 15 June, 2017. The cause was given as anxiety/depression causing physical symptoms and work related stress. No reference is made to dyslexia. As mentioned above, the claimant had previously been advised by Mrs Riddell to seek medical advice.

74 On 12 June, 2017, after the claimant had returned from a holiday in South Korea, she moved back to the area of her own team.

75 On 23 June, 2017, the claimant was almost three hours late in attending for work. She had telephoned to say that she would be late but gave an estimated arrival time two hours earlier than her actual arrival time.

76 This was discussed by Mrs Riddell and the claimant at a meeting on 29 June, 2017. The claimant gave her reasons for lateness as needing to go into town to get money, stress, disruption of her sleeping patterns due to jet lag following the holiday in South Korea and lack of exercise.

77 Mrs Riddell issued the claimant with a written warning for misconduct on 4 July, 2017, following their meeting.

78 The same day, Mrs Riddell warned the claimant about being late back to her desk after breaks. The claimant had been trying to contact her trade union representative and Mrs Riddell reminded her that she should arrange time away from the telephones for this.

79 Mrs Riddell forwarded a blank stress reduction plan to the claimant and informed her that a trade union representative had been asked to assist the claimant in completing it.

80 The claimant produced a fitness for work certificate dated 5 July, 2017. This stated that the claimant was suffering from stress at work and recommended that the claimant work four shifts per week instead of five as a temporary measure for 28 days.

81 The claimant submitted a request to Ms Woodend to work a reduced number of days each week.

82 Ms Woodend organised a mediation meeting with Mrs Riddell and the claimant that took place on 7 July, 2017. The claimant had a list of complaints about Mrs Riddell. The meeting produced some suggested ways that their relationship could be managed in future.

83 The claimant was absent from work for five days and, on her return, Mrs Riddell conducted a return to work interview with the claimant. The claimant referred to changing her shift patterns and was told that this could be considered but was not part of this discussion.

84 The respondent was providing on site facilities for employees to undertake GCSE courses to assist them when the site closed. The claimant was intending to study English and Mathematics. Mrs Riddell queried whether this was wise given the problems that the claimant was facing in acquiring her job skills and also having regard to the state of her health as the studying would take up three hours before the start of a shift.

85 They also discussed Workplace Wellness. There is a report in the bundle from Workplace Wellness that confirms that the claimant consulted it on three occasions concerning bullying and harassment, legal advice, grievance, dismissal and sickness and absence.

86 Subsequently, the claimant asked Mrs Riddell about changing her number of shifts having previously exchanged emails with Ms Woodend on the subject. Mrs Riddell provided the claimant with a guidance booklet on Adjusted Work Patterns and gave her other assistance to pursue the matter. However, the claimant never indicated to Mrs Riddell what she wanted to do.

87 On 26 July, 2017, the claimant sent Mrs Riddell a Facebook message that she found insulting. However, despite all of the allegations that the claimant makes about Mrs Riddell's attitude towards her, there is not any evidence to suggest that Mrs Riddell retaliated in any way as a result of the posting or attempted to have any action taken against the claimant. The claimant apologised for this incident during the hearing.

88 On 29 July, 2017, the claimant was due to attend work at 0800. At 0930, Mrs Riddell succeeded in contacting the claimant on the telephone and was told the claimant was coming in to work that day. The claimant arrived on site at 1010 but did not get to her office until 1030.

89 Mrs Riddell considered that in view of the claimant's lateness history and failures to follow the absence procedures she should refer the matter to a decision maker under the respondent's policies relating to probation with a recommendation that the claimant's probation and her employment should be terminated. Mrs Riddell checked what she was doing with Ms Rigler, who had allowed the appeal against the final written warning, to ensure that she was following procedure and acting fairly.

90 On 31 July, 2017, Mrs Riddell informed the claimant of what she was doing. The claimant made reference to getting home late because of transport problems and asked about changing her shifts. She was told that this could be raised with the decision maker.

91 Mrs Riddell's recommendation was checked by Internal Governance and Mrs Riddell was satisfied that she had followed the correct procedures in relation to probation and discipline.

92 Mrs Riddell attempted to continue putting the reasonable adjustments in place but was told to await the outcome of the disciplinary process so that expenditure was not incurred unnecessarily in the event that the claimant was dismissed.

93 The decision maker was Mr Gaythwaite. He was not involved in the earlier matters relating to the claimant and was able to approach the situation with a fresh mind. There was not any evidence to suggest that he did not approach the task fairly and with an open mind.

94 The hearing took place on 8 August, 2017. The claimant attended with two trade union representatives and Callum Thomas acted as note taker. It was explained that the hearing was concerned with misconduct during probation in that the claimant was alleged to have been late on several occasions and had not followed the absence reporting requirements. The claimant and her representatives were able to raise all of the issues that they wished.

95 Mr Gaythwaite found that the claimant had been late and had not correctly followed procedures. As a result, apart from anything else, this had caused a waste of management time in establishing why she was not attending work. He considered that the complaints about timekeeping after breaks were minor matters but demonstrated a general attitude to timekeeping. He formed the view that all of the factors that were relevant to the claimant being late and not correctly following procedure were within the control of the claimant and did not relate to her dyslexia. Mr Gaythwaite decided that not taking action was not an option and that the only sanction open to him was to terminate the claimant's employment.

96 The claimant appealed against the decision to dismiss her and Mr Young dealt with the claimant's appeal. He had not had any previous dealings with the claimant and did not know the details of her case, although he was broadly aware of the matter.

97 Mr Young identified four grounds which the claimant was relying on in her appeal

97.1 That her request for a change of hours had not been acted upon

- 97.2 That reasonable adjustments to support dyslexia were not implemented
- 97.3 That the relationship between the claimant and her line manager were poor resulting in her being unable to complete the stress reduction plan and risk assessment
- 97.4 Issues around the date of her probation report.
- 98 Mr Young had various documents relating to the case giving the past history and some new material provided by the claimant.
- 99 The appeal hearing took place on 7 September, 2017.
- 100 The claimant tried to focus on issues that related to her dyslexia rather than on the disciplinary issue, lateness, that had led to her dismissal. She described the problems she had getting home after a late Friday shift and then getting in for a Saturday shift. Mr Young considered that she was not taking responsibility for herself and putting in place steps that would assist her, such as arranging a taxi or a lift from a colleague. She failed to persuade Mr Young that this was an issue relating to dyslexia.
- 101 The claimant put forward stress as a reason for her problems. Whilst she attributed much of this to Mrs Riddell, she had not taken any action about this. Other factors inducing stress included problems with her cat, financial worries and extra qualifications that she was pursuing.
- 102 With regard to the grounds of appeal, Mr Young found
- 102.1 The claimant had not actually proceeded with a formal request for a change of hours although it was her responsibility to identify what she was requesting and to put that forward.
- 102.2 Some adjustments had been made. Others might have assisted but it was taking time to sort out funding. None of this had any apparent impact on the lateness issue.
- 102.3 The claimant was aware of steps that she could have taken in respect of her relationship with Mrs Riddell but had not done anything.
- 102.4 Warnings had not been given until after a formal meeting at which the claimant was able to put her own views forward.
- 103 Mr Young decided that Mr Gaythwaite had followed the appropriate procedures and had reached a decision that he was entitled to make in the circumstances of the case. Further, that the decision was proportionate, fair and reasonable in the circumstances. He therefore dismissed the appeal.
- 104 The claimant obtained a medical report from her general practitioner dated 7 September, 2017, but it was not available in time for the appeal hearing. This confirmed that the claimant had sought medical advice before she started work about ways of ensuring that she could get up in time. It also confirmed that there was nothing to indicate that she had any learning disability, apart from dyslexia. The claimant

attended the surgery on 18 May, 2017, because she was very anxious about work and needed time away from work while a personnel issue was dealt with and she was given a 'sick note'. The claimant also attended the surgery on 5 July, 2017, and the discussion was concerned with the claimant's desire to change her shift pattern to work the same hours on less days and with more night shifts.

105 The claimant has also produced a report from Lakeland Capabilities dated 8 May, 2018. Again, this had not been available to the respondent during the disciplinary process. This is a lengthy document that seems to be the basis of the claimant's understanding of dyslexia and the possible effects on her.

106 The claimant commenced these proceedings on 18 December, 2017, and 19 December, 2017.

107 The contentions of the parties were set out in their closing submissions and the skeleton arguments, which need to be read for their full terms and effects. Briefly, the claimant contends that she suffered various forms of discrimination because of the actions and failures of her team leader and in particular that she suffered discrimination arising from disability, the respondent has failed to make reasonable adjustments to enable her to achieve the desired level of performance and she suffered harassment and victimisation. The respondent contends that the conduct of the team leader was reasonable in the circumstances and that it did not fail to make reasonable adjustments and that its managers did not harass or victimise the claimant because of her disability or otherwise.

108 Section 4 of the Equality Act, 2010, provides that disability is a protected characteristic. Section 15 of the Equality Act, 2010, deals with discrimination arising from disability, Sections 20 and 21 deal with the duty to make reasonable adjustments, Section 26 deals with harassment and Section 27 deals with victimisation. Section 123 sets out the applicable time limits for commencing proceedings, as to which Section 33 of the Limitation Act, 1980, needs to be considered.

109 Subsections (2) and (3) of Section 136 of the Equality Act, 2010, provide

(2) If there are facts from which [the Tribunal] could decide in the absence of any other explanation that a person (A) contravened the provision concerned, [the Tribunal] must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

110 In reaching its decision, the Tribunal had regard to the relevant statutory provisions, the Code of Practice for the elimination of discrimination in the field of employment against disabled persons or persons who have had a disability and the guidance on matters to be taken into account in determining questions relating to the definition of disability.

111 In relation to all of the claimant's complaints, the Tribunal had regard to the various authorities referred to in the closing submissions.

112 The first issue that the Tribunal considered was whether the claimant was entitled to pursue any or all of her complaints because it appeared that some of them were presented outside the prescribed time limit of three months.

113 The Tribunal unanimously found that some complaints were submitted outside the prescribed period. The claimant was in employment with the respondent and was having problems with her relationship with Mrs Riddell. In these circumstances, it was reasonable for the claimant to withhold presenting these complaints whilst efforts were being made to assist her so that she did not risk making the situation worse by alienating her management. Mrs Riddell had kept detailed records of her dealings with the claimant and the Tribunal was satisfied that the respondent had not been prejudiced in preparing its case by the delay in presenting the complaints.

114 The Tribunal considered the prejudice that the claimant would suffer if her complaints were not allowed to proceed. Leaving aside the merits of the complaints, the complaints are potentially significant for the claimant in terms of the way in which she alleges she was treated. If the complaints do not proceed, the claimant will lose the opportunity she would otherwise have. If the complaint proceeds, the respondent has the task of defending the complaint and the potential financial consequences of losing. However, much of the preparation for defending the complaint was necessary as the other complaints proceeded.

115 Section 33 of the Limitation Act, 1980, needs to be considered. The complaint was submitted several months after the acts of alleged discrimination complained of were alleged to have taken place. In the context of these proceedings, these acts might have been found to be part of a series of acts that continued. The reason for the delay in submitting the complaint was the attempts by the claimant to resolve the situation without worsening her working environment. The Tribunal finds that in the context of this complaint the delay in submitting the complaint was not significant. The Tribunal was not satisfied that the delay had a significant effect on the collection of evidence and preparation for a hearing. The Tribunal accepted that the respondent had not been uncooperative in its conduct of the proceedings. During various parts of the period of the delay, the claimant was suffering from ill-health. It is accepted that advice was available for the claimant to take advantage.

116 Having regard to all of the circumstances of this case as discussed above the Tribunal unanimously came to the decision that it was just and equitable to extend the claimant's time for submitting these complaints to the Tribunal to the time when it was actually received.

117 It was clear to the Tribunal that the claimant was not happy working with Mrs Riddell from the start of her employment with the respondent. The reason for this was never explained but it was also clear that the claimant examined whatever was said to her by Mrs Riddell and usually interpreted it as being adverse to her, whether it was or not.

118 The Tribunal was satisfied that Mrs Riddell was supportive of the claimant and attempted to get her performance up to the required standard. At times, the claimant did demonstrate that she could do what was required of her but at other times she did not, even in respect of the same activities. The Tribunal was satisfied that the



claimant's level of continuing performance was such that Mrs Riddell would not have been fulfilling her function as team leader if she had not taken action in respect of it. There is not any evidence to suggest that Mrs Riddell was in any way reacting adversely to the claimant's disability. On the contrary, there is considerable evidence that Mrs Riddell was actively trying to find and develop ways to assist the claimant and to help her overcome her disability. The claimant failed to identify her problems in a way in which steps could be taken to alleviate them and did not pursue options that were open to her.

119 The Tribunal was also satisfied that the issue of lateness was of genuine concern to the respondent, particularly where an employee was still on probation. The Tribunal was not satisfied that the lateness was related to the claimant's dyslexia. There was not any evidence, either in medical reports or otherwise to support this. It had been an issue with a previous employer and the claimant had sought medical advice about it.

120 The Tribunal unanimously finds that the claimant was dismissed because of her lateness and that the decision to dismiss her was not caused or contributed to by her dyslexia and this was not in the mind of the decision maker, although he was aware of it, when making his decision. There was not any evidence to suggest that an employee not suffering from dyslexia would have been treated any differently.

121 Similarly, in respect of the appeal, the decision to dismiss her appeal was not caused or contributed to by her dyslexia and this was not in the mind of the decision maker, although he was aware of it, when making his decision. Again there was not any evidence to suggest that an employee not suffering from dyslexia would have been treated any differently.

122 With regard to the items identified by the respondent in its amended response in respect of harassment related to disability

- 122.1 'we don't want to have to tell you to go' – this was a reasonable thing for the respondent to say in the circumstances of this case. The claimant was at risk of underperforming so that her employment was at risk. The evidence showed that the respondent was making efforts to improve the claimant's performance so that her employment could continue.
- 122.2 'reference to doctor' – this was a sensible suggestion. The claimant had already suffered from other mental conditions and this was discussed during the hearing. The claimant acted on this advice and it is not reasonable to construe the comment as an act of harassment.
- 122.3 'I feel like I'm talking to a brick wall' – this was an ill-advised comment said in a moment of frustration. It was said in the context of the claimant sometimes doing as she was told without problems and at other times not doing so. This was a performance related comment and it was not reasonable to construe it otherwise.
- 122.4 'attempted prevention of training' – this was advice based on the problems that the claimant had experienced and was continuing to

experience in her role and was intended to discourage her from increasing the amount she was learning, which could well result in additional stress. The decision to extend the claimant's experience was not made by Mrs Riddell and she was not in a position to prevent it.

- 122.5 'prevention of adequate union representation' - the claimant was not prevented from having trade union representation, although the choice of representative may have been limited by time constraints. In the event, trade union representation was available at the relevant meeting. There was nothing to suggest that the timing of the meeting and the decision not to postpone was related in any way to the claimant's disability.
- 122.6 'poor performance warning letter' – the letter was based on the claimant's performance and Mrs Riddell was entitled to take the view of the performance that she took. There was not any evidence to suggest that the contents of the letter or the decision to send it was related in any way to the claimant's disability.
- 122.7 'how will this look on your CV, a dismissal from HMRC' – this may be considered an ill-advised comment in the light of the state of the relationship between the claimant and Mrs Riddell. However, it was intended to bring home to the claimant the seriousness of her position if her performance did not improve. The Tribunal did not consider that it was related to the claimant's disability and it was not reasonable that it should be construed as such.
- 122.8 'you can take this with you when you go to another job' – again this may be considered an ill-advised comment in the light of the state of the relationship between the claimant and Mrs Riddell. However, the claimant, in common with all other employees at the site, knew or ought to have known that the site was closing and that there would be redundancies. The report had a validity that would have extended beyond the latest date when the claimant could have been employed there so it was reasonable to assume that she would then need to find alternative employment where she might need support in respect of her dyslexia. The Tribunal did not consider that it was related to the claimant's disability and it was not reasonable that it should be construed as such.
- 122.9 'I can always and at any point put in for a dismissal if I don't think there is any improvement' – this was a statement of fact, a harsh statement but a true one. The claimant was reaching a point of no return unless showed significant improvement. She had failed to improve despite repeated warnings and needed to know that her position was becoming very precarious. The Tribunal did not consider that it was related to the claimant's disability and it was not reasonable that it should be construed as such.
- 122.10 'exclusion from talking points' – the Tribunal accepted that the claimant was advised not to attend the meeting because it would mean missing

her lunch break. This was an example of caring management that the claimant has chosen to misconstrue, largely because of the state of the relationship between the claimant and Mrs Riddell. The Tribunal did not consider that it was related to the claimant's disability and it was not reasonable that it should be construed as such.

- 122.11 'employee of the month certificate' – there was a dispute in the evidence on this. The Tribunal considered that, on the balance of probability, the certificate was displayed but not where the claimant actually saw it. Even if it was not displayed, it is likely that this was because of the relationship between the claimant and Mrs Riddell and not because of the claimant's disability. The Tribunal did not consider that it was related to the claimant's disability and it was not reasonable that it should be construed as such.

The Tribunal unanimously finds that none of the above comments had the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

123 The Tribunal considered the evidence provided by the claimant but did not find that she established facts that supported her allegations in part or in their entirety. It follows from the above that there are not facts from which the Tribunal could decide in the absence of any other explanation that the respondent contravened the provision concerned so that the provisions of Section 136 of the Equality Act, 2010, do not apply.

124 With regard to discrimination arising from disability, the Tribunal finds that the relevant 'something' was the claimant's lateness and her failure to follow absence reporting procedures which led to her dismissal. There is no evidence to suggest that dyslexia resulted in the claimant's lateness. Even if it is accepted that the claimant's lateness was caused or contributed to by stress or a related condition, such as depression, this is not the disability relied on by the claimant. There was not any evidence to suggest that the stress was caused by dyslexia. The claimant was in a stressful situation where she was struggling to perform to the required standard and her employment was at risk. It is likely that anyone in that position would have suffered some effect. The claimant had received and was receiving support and assistance in various forms but they were not succeeding to the required extent. It was open to the claimant to take steps in her own interest to avoid lateness. Lateness was a problem that she had encountered before and on which she had sought advice.

125 The Tribunal considered the evidence provided by the claimant but did not find that she established facts that supported her allegations in part or in their entirety. It follows from the above that there are not facts from which the Tribunal could decide in the absence of any other explanation that the respondent contravened the provision concerned so that the provisions of Section 136 of the Equality Act, 2010, do not apply.

126 In respect of the provision of reasonable adjustments, even the claimant did not know what type of assistance she required. In so far as possible causes of the claimant's poor performance could be identified, the respondent made reasonable adjustments which the claimant accepted as appropriate. It is accepted that mentoring was not always successful but that depended on the relationship that the claimant had

with individual mentors. She complained that she found some mentors disrupted her but agreed that others were helpful. The respondent identified Access to Work as likely to provide assistance and referred the claimant to it. The Access to Work recommendations were either implemented or were in the process of being implemented when the claimant was dismissed for reasons not related to her performance.

127 The respondent admits that it had a provision, criterion or practice that required employees to be able to read and process information with reasonable efficiency and that this put the claimant at a substantial disadvantage in that the claimant worked at a slower pace than her colleagues. However, the Tribunal accepted that the respondent made the reasonable adjustment of not imposing the time targets on the claimant that it applied to other employees. Further, as mentioned above, the respondent took steps to try to assist the claimant.

128 With regard to the claimant's shift pattern, the respondent accepts that it applied the provision, criterion or practice of requiring employees to work a set shift pattern. The Tribunal did not accept that this placed the claimant at a substantial or any disadvantage as compared with anyone without her disability. If the claimant suffered stress as a result of her shift pattern, there is not any evidence to suggest that this was caused or contributed to by her dyslexia. In any event, it was open to the claimant to apply for a variation of her shift pattern, the methodology having been explained to her, but she failed to follow this through.

129 The Tribunal considered the evidence provided by the claimant but did not find that she established facts that supported her allegations in part or in their entirety. It follows from the above that there are not facts from which the Tribunal could decide in the absence of any other explanation that the respondent contravened the provision concerned so that the provisions of Section 136 of the Equality Act, 2010, do not apply.

130 Finally, addressing the alleged victimisation, the relationship between Mrs Riddell and the claimant started badly with the claimant seeking not to work with Mrs Riddell. In the absence of any evidence on the point, it must be assumed that there was something between them that the claimant thought would not produce a harmonious working relationship. This predates anything that might be construed as a protected act. The alleged incident concerning the colleague with a speech impediment was disputed in the evidence. But even if a complaint was made in respect of it, there was nothing to suggest that it had any influence in respect of a relationship that was already suffering.

131 From the claimant's closing submission, it appears that she may be suggesting additional/alternative protected acts. Taking a wider look at the evidence, in so far as the claimant complained to Ms Woodend or anyone else about Mrs Riddell's conduct towards her, it is not clear that this was raised as an issue related to her disability. However, even if it was, there is no evidence that Mrs Riddell's conduct towards the claimant changed following any complaint. Mrs Riddell was consistent in the way in which she treated the claimant. Even if it may at times have appeared harsh, there is nothing to suggest that it changed at any stage because of a complaint or for any other reason that was not work related.

132 If it is suggested that the act of dismissal was a further example of victimisation, there is nothing to link the decision makers with any protected act. No complaint was made about them in this regard. They were independent and were in positions where they could have overruled the recommendation made by Mrs Riddell. Indeed, one final written warning given earlier by Mrs Riddell was overruled by another decision maker.

133 The incidents referred to above in support of the allegation of harassment also need to be considered in respect of the allegation of victimisation. The Tribunal's comments set out above also apply in respect of this allegation and should be read with the paragraph above.

134 The Tribunal considered the evidence provided by the claimant but did not find that she established facts that supported her allegations in part or in their entirety. It follows from the above that there are not facts from which the Tribunal could decide in the absence of any other explanation that the respondent contravened the provision concerned so that the provisions of Section 136 of the Equality Act, 2010, do not apply.

135 The Tribunal unanimously finds that it follows from all of the above that the respondent did not subject the claimant to discrimination arising from disability and did not fail to make reasonable adjustments and that the claimant did not suffer harassment or victimisation as alleged or at all. Accordingly, none of her complaints are well founded and they are all dismissed.

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Employment Judge Nicol  
30 May, 2019  
Date.....

RESERVED REASONS SENT TO THE PARTIES  
ON

24 June 2019

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FOR THE TRIBUNALS OFFICE

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