EMPLOYMENT TRIBUNALS

Claimant: Mrs H McKay

Respondent: HM Revenue and Customs

HELD AT: Manchester **ON:** 8, 9, 10 and 11 August 2017

BEFORE: Employment Judge Ross
Mrs C Bowman
Ms E Cadbury

REPRESENTATION:

Claimant: Mr M Brown, Trade Union Representative
Respondent: Mr S Redpath, Counsel

JUDGMENT

1. The claimant's claim that the respondent failed to make reasonable adjustments pursuant to Section 20 - 22 of the Equality Act 2010 is not well founded and fails.

2. The claimant's claim that she was unfavourably treated because of something arising in consequence of her disability when she was awarded a "must improve mark" for her performance for the year 2015/2016 is not well founded and fails.

REASONS

1. The claimant is employed as an Administrative Assistant by the respondent. Her employment began on 27th August 2002. It is not disputed that the claimant is a disabled person within the meaning of the Equality Act 2010 by reason of light sensitivity. The claimant brought a claim before this Tribunal for failure to make reasonable adjustments during the period June to 4th December 2015 and a further failure to make reasonable adjustments in October 2016.

2. The claimant also brought a claim that she was treated unfavourably pursuant to Section 15 Equality Act 2010 when she was awarded a "must improve" mark for the end of year performance assessment for 2015/16.

3. We heard from the claimant and from her trade union representative Mr Young. For the respondent we heard from Ms C Morris and Ms M Jones.

4. At the outset of the hearing the issues were agreed between the parties. There was a discussion in relation to the helpful case management hearing conducted by Employment Judge Horne, see page 41 to 42 of the bundle. The issues noted in that case management were further refined at the outset of this hearing. These refinements are clarified in the relevant section of this judgment.

Facts

5. We found the following facts. At the relevant time the claimant was employed by the respondent at their premises, namely Unicentre in Preston. She worked 25 hours a week. It was not disputed that in 2011 she brought to the respondent's attention that she suffered from light sensitivity and the respondent prepared a Reasonable Adjustments Passport (see page 76). The passport included a number of adjustments, the most important of which were that the light was to be removed from above the claimant's desk and that she should sit in a desk by the window with desk blinds with her right eye facing the window. The claimant agreed that these adjustments were carried out. There were no apparent issues and nothing of concern was raised by the claimant for a number of years.

6. It was not disputed that in or around April 2015 the claimant received a "must improve" marking in her annual performance review from her manager Ms Ahmed. We were informed by Ms Morris and it was noted in an email document, page 161 that Ms Ahmed said the claimant had ripped up the “must improve” assessment in front of her. The claimant disputed this.

7. On 8th June 2015 the claimant was asked to move to the other side of the room for a training exercise (see page 81A). The claimant found that this hurt her eyes. She became upset and left the office.

8. On 9th June she indicated that "what started all this off was because I got a ‘Must Improve’ from my end of year marking 2014/15". The claimant was asked by Ms Ahmed to complete a display screen equipment (DSE) user self assessment which she did on 20th July 2015, see page 82 and 83. She confirmed she had adjustments in place i.e. blinds closed to avoid sunlight and overhead lights turned off but asked "if there is anything else to help me with my eye strain which I struggle with". She also suggested, see page 87 "is it possible to have diffusers on the light above or maybe something similar to put over my PC screen". The DSE document is signed off by the claimant's manager Ms Ahmed on 3rd August 2015 at page 87.

9. We rely on the evidence of Ms Morris that when she took over as the claimant's line manager in August 2015 she discussed the claimant's Reasonable Adjustment Passport and noted that Ms Ahmed had requested a DSE assessment.

Ms Morris was on leave from 13th August until 1st September and from 1st September to 16th September the claimant was absent due to a viral infection.

10. On 17th September 2015 in discussion with the claimant Ms Morris discovered that an assessor had not yet come to do her DSE workplace assessment. We find that Ms Morris requested the assessment to take place as a matter of urgency (page 107) and she also instructed a different assessor namely Emma Ribchester. We rely on Ms Morris's evidence that she is unsure precisely when she received the first DSE outcome of assessment. We rely on her evidence that it must have been in or around October of 2015 because we accept her evidence that it was on receipt of that document that she took steps to action the adjustments suggested by the assessor.

11. We find that Ms Morris had been promoted to Team Leader in August 2015 and became the claimant's line manager at that time part way through the performance year. We find this change of manager for the claimant was due to an office reshuffle. We find that during this reshuffle the claimant remained at the same desk she had been in previously in a corner next to the window which was on her right hand side with the blind pulled closed and the light above her desk off. We rely on Ms Morris's evidence that the light to the left of the claimant had been altered with the removal of one of the l lighting tubes. The claimant agreed that this was the position.

12. We rely on Ms Morris's evidence that when the claimant had been transferred into Team 1 although she continued sitting in the same place she did not initially perform Team 1 work. She remained for a short period of time dealing with Team 2 tasks, namely the assessing of P87 expenses claims. We accept the evidence of Ms Morris that she did not take over full responsibility of the claimant in terms of the type of work she was doing until October 2015.

13. We find that whilst the claimant was absent from work sick in September 2015 Ms Morris held telephone meetings with her on 4th, 7th, 8th, 9th, 10th and 15th September 2015 (see pages 104/5).

14. We find that when the claimant returned to work on 17th September 2015 (see page 106/7), Ms Morris chased up the assessor. We find that on 21st September 2015 there was an attendance meeting (see page 110). We find that on 7th October 2015 the claimant was reprimanded by Ms Morris for chatting. The Tribunal is satisfied that there is nothing to suggest that the reprimand was in any way related to the claimant's disability.

15. Meanwhile we find Ms Morris received the DSE assessment in October 2015 and took action. The report recommended screen filters for the claimant's computer. We find that Ms Morris ordered them immediately and these were in place by 23rd October 2015 (see page 123). The filters were to reduce the glare of the screen.

16. We find there was a recommendation for the blinds to be fixed. We accept the evidence of Ms Morris and the claimant that although the blinds were closed they did not completely close because they did not meet in the middle. We find this problem with the blinds had been fixed by 14th October 2015. See p150A to B.

17. We find there was a recommendation for window sills to be painted black and for diffusers to be ordered. We accept the evidence of Ms Morris that this was more complex. A building case had to be prepared for the Building Manager who worked on behalf of a landlord and it was unclear who would be responsible for paying for those adjustments. We find Ms Morris was chasing this up on 25th October (see page 128).

18. Meanwhile on 23rd October 2015 we find there was an incident between the claimant and another member of staff. We find that the other member of staff had opened the window behind the blinds because she had a migraine. We find the claimant took exception to her behaviour. We rely on the evidence of Ms Morris that rather than coming to her, as the line manager, to resolve the matter, there was conflict between the two individuals. We find that Ms Morris spoke to the claimant and the other individual and advised each of them that their behaviour was not acceptable and if they had issues then they should come to speak to her about it in private away from the team in order to resolve matters.

19. On the same day Ms Morris contacted OH Assist and arranged an appointment for the claimant to see occupational health, (see page 124). The same date she also contacted the Reasonable Adjustment Support Team (RAST). We find they provided support and practical assistance to managers who needed to implement adjustments. We find she asked RAST for advice about anything further she could do, see pages 122 to 123.

20. On 28th October 2015 there was a regular performance meeting under the respondent's usual procedures between the claimant and Ms Morris as her manager, (see page 131 to 133). There was a discussion about the possibility of disability adjustment leave for the claimant. We find that that is leave which paid leave provided by the respondent which does not count as sickness absence

21. We find on 29th October 2015 a report was received from occupational health at page 136 to 138. We find in this report for the first time there was a suggestion of a "partition around the claimant's desk", see page 137.

22. We also find that the OH report inaccurately recorded the fact that "adjustments had not been implemented." See page 136. This was based on the information supplied to the occupational health department by the claimant. We find Ms Morris contacted the Occupational Health Nurse, see page 135 to explain that OH understanding was inaccurate. We find that on 29th October 2015 the recommendation in relation to painting the sills was ready to take place although the invoice was awaited.

23. We find the position with regard to the diffused lighting was more complicated as advice had been given that the lighting needed to be standard (see page 134).

24. On 30th October 2015 we find there was further discussion updating the claimant on the reasonable adjustments. Although the claimant's light above her head was switched off she was worried in case the light was switched back on. The claimant was advised that if this did happen then she would be able to go home and take disability adjustment leave (page 142).

25. .

26. On 3rd November 2015 Ms Morris referred again to the RAST team for further help (see page 144 to 7). By this time the low wattage bulbs (light diffuser) had been declined by the Building Manager as the light to all floors had to be standard throughout the building (see page 145). Ms Morris asked if there was anything further she could do. She also asked whether health and safety of other employees "trumped" reasonable adjustments.

27. On 5th November 2015 further advice was received from RAST which confirmed the adjustments in place were "excellent support". With regard to the overhead light the RAST advisor had discussed this with his colleagues and recommended she contact Mark Kerry who was part of Estates and Support Services (see page 152). We find Ms Morris contacted Mr Kerry explaining that occasionally someone would turn the light back on for health and safety reasons which was contrary to the claimant's reasonable adjustments passport. Mr Kerry referred the manager Ms Morris to the "Hub" (see page 154). The manager Ms Morris made further enquiries (page 156) and was advised to contact Trillium as they dealt with maintenance issues for the building (see page 157). We find that on 10th November 2015 Ms Morris reached an arrangement with Trillium that if the lights were turned on or left on for any reason above the claimant's work desk an urgent work order would be placed for them to be turned off (see page 158). We find the claimant was also made aware that in this eventuality she would be able to go home from the workplace and claim Disability Adjustment Leave (DAL).

28. We find that at this stage five out of the seven recommendations had been implemented. The only two which had not been implemented were the window sill which was underway and the light diffuser/low wattage of the bulb which was out of the control of Ms Morris. (See page 160) We find at this stage the claimant was asked if she had been back to her opticians in relation to her eye condition and she said she had not.

29. We find that a further DSE workplace assessment was carried out and updated recommendations sent to Ms Morris on 23rd November 2015 (see page 163 to 175). There was a recommendation for a desk lamp, (see page 174). The report also recommended a sound board be placed between the claimant’s desk and the desk opposite to block the light from the window. The report confirmed the blinds were in a good state of repair

30. We find that on 23rd November 2015 Ms Morris ordered the desk lamp for the claimant (see page 174 to 5), and that this was ordered the same day she received the work place assessment.

31. Meanwhile, in October 2015 all members of staff had been issued with a second computer monitor and this led to a further DSE assessment. We find that is the reason why the final assessment is dated November. We find this is consistent with Ms Morris's evidence that she had received a first DSE assessment in October for the claimant.

32. On 25th November 2015 Ms Morris chased up the sound boards with the trade union representative (see page 176). We find that on 27th November the claimant's Reasonable Adjustment Passport was updated(p177) confirming the following adjustments had been agreed to support the claimant in her work:-

(1) lights directly overhead the claimant to be switched off. If the lights are turned on at any point the Trillium helpline must be contacted and a work order raised to have the light switched off again;

(2) with the lights turned out the JH (the job holder) has been provided with a desk lamp to support her at certain times of the day when her work area is particularly dark;

(3) screen filters fitted to the monitors in order to reduce glare;

(4) windowsills to be painted either a matt colour or black in order to reduce lights being reflected from the windowsills;

(5) an occupational health report and assessment have been carried out and as the job holder has been suffering from the condition for over twelve months JH is likely to be covered by the Equality Act. Disability adjustment leave will be considered if necessary when an absence occurs in relation to the condition and JH would otherwise be fit for work;

(6) 2 sound boards to be fitted around the JH's desk, one in front of the JH in between her desk and the one opposite and the other on the right hand side of her desk. This will maximise the amount of light being blocked out for the job holder.

33. The claimant agreed in cross examination that by the 4th December 2015 all the above adjustments were in place. It was agreed that once the sound boards were in place there was no requirement for the window sill to be painted. The claimant agreed that it had not been possible for the diffuser to be fitted as the lighting according to the managers of the building had to be standard given that it was an open plan office where other staff worked.

34. We find the claimant had no further complaints in the months that followed. We find that there was a keeping in touch meeting on 8th January 2016 which was a regular performance meeting (see page 191). The claimant's quality check was 85.7% for that month which was improving but was far below the 97% required. There was a further KIT meeting on 10th February 2016 (page 229 to 233) where the monthly quality figure increased to 88.8%. There was a further KIT meeting on 9th March 2016 (page 232 to 4) where the claimant had a good month for quality reaching 100%.

35. Figures were produced for the claimant's end of year assessment. They showed that during the course of the whole year her quality figure was only 74.68% which was well below the team average and the target of 97%. We find there was a meeting between Ms Morris and the claimant on 14th April 2016 where she was informed that following a meeting with all managers on 7th April her end of year

marking was "must improve for the year 15/16". The claimant was informed that although her performance had improved the quality was "not where it should be". Ms Morris also explained that at mid year there had been concern about behaviour and lack of engagement from the claimant.

36. We find that at the meeting of the managers to discuss and moderate staff performance assessments for the year end Ms Morris relied on her note at p240 and the information provided to her by Ms Ahmed at p161. Ms Ahmed noted that the claimant did not volunteer or contribute, that she had a lack of engagement and showed no interest in getting involved in anything and had been spoken to about talking and distracting the team. Adjustments had been made but there were no improvements, that email is dated 12th November 2015.

37. We rely on Ms Morris's evidence that although the claimant's work had improved with the adjustments she had arranged to be in place there had been issues about the claimant's behaviour, in particular in relation to her chatting in October 2016 and the way she had behaved in relation to another member of the office. We find that although the topic which give rise to the disagreement between the two members of staff was in relation to the claimant's disability namely the blinds it was the claimant's behaviour which caused concern to the manager not the issue of disability.

38. We find that there was guidance for managers see page 592-8. We rely on the distribution curve at page 593 and the evidence of Ms Morris that at that time it was expected that normally 10% of any team would be in the "must improve" category. Other categories for end of year performance are "adequate" and "exceeded". We find that Ms Morris was responsible for seven staff members and that one other person in her team, had a "must improve" mark and that person was not disabled.

39. Following the must improve mark the claimant presented a grievance, objecting to her "must improve" rating. See page 250 to 252. A meeting was held on 29th April 2016 (see page 253 to 254).

40. The claimant was granted Disability Adjustment Leave on 3rd May 2016. On 26th May 2016 there was a proposal for further disability related adjustments namely a mentor. It was not disputed that the mentor was in place by 11th July 2016.

41. The claimant's objection to her "must improve rating" was dealt with as an appeal. The outcome is at page 282 to 4. The finding was that it was partially upheld. Although the "must improve" mark was retained, in the manager's comment section some words were inserted as follows "the first part of the year you struggled because reasonable adjustments were not in place" see page 283.

42. Meanwhile on 26th May 2016 the claimant was granted a reduction in productivity targets (this was not for quality but productivity). The reduction was to three cases in a five hour working day, leaving two hours to handle cases or make telephone calls, see page 279. This was updated in reasonable adjustment passport, see page 180. (Paragraphs 7 and 8.)

43. There was another referral to the RAS team by Ms Morris on 16th June 2016 (page 287) where she checked whether a reduction in target was appropriate. The reply at p290 states that such a reduction may be appropriate "where she is disadvantaged by her condition". The Tribunal notes at this stage that there was no medical evidence from a treating physician or optician or occupational health physician to explain how or why the claimant's condition of light sensitivity was affecting her work quality.

44. On 7th July 2017 Ms Morris sought clarification. See page 308. She enquired whether it was appropriate to compromise on quality. The reply from the RAS team was that "when considering adjusting targets you shouldn't consider allowing reductions for quality measures". They stressed that work undertaken needed to be correct and it “wasn't reasonable on an ongoing basis for a job holder's output to be checked by you or another team member". Page 313.

45. Although the claimant’s quality figures had improved towards the end of the performance year, the improvement had not been maintained. The claimant's quality figures deteriorated as she entered the next performance year. In April 2016 they were 92.85%, in May 2016 87.5% and in June 2016 61.53%, see page 315. This was despite all the adjustments in place for the claimant by this stage

46. The Tribunal finds this suggests there was no clear link between the provision of additional reasonable adjustments after July 2015 and the claimant’s quality of work. We find that it suggests that issues with the quality of the claimant’s work may be unrelated to her disability. It is not disputed the claimant received a must improve at the end of the previous performance year 2014/15 which at the time she did not suggest was disability related.

47. In June 2016 the claimant requested to increase her hours.

48. On 11 July 2016 she commenced a sickness absence for work related stress returning on 3 October 2016.

49. On 20 July 2016, follow an informal meeting between the claimant’s union representative and Mr Chris Howarth, a senior manager, Mr Howarth asked the Appeal Officer to reconsider the outcome. The Appeal Officer revised her opinion and changed the claimant’s “Must Improve” assessment for 2015/16 to “Achieved” on the basis that a reasonable adjustments plan was not in place until later in the year and “without reasonable adjustments in place this could have a negative impact on productivity.” P343.

50. The Tribunal notes the Appeal Officer stated that the failure to make reasonable adjustments “could” affect productivity, not that it did so. The Tribunal notes the appeal officer refers only to the claimant’s productivity but not to the quality of the claimant’s work. The Tribunal finds the reason why Ms Morris awarded the claimant a “must improve” assessment was because of the quality (not productivity) of her work and also because of her behaviour.

51. On 1 August 2016, there was a reorganisation and Ms Jones became the claimant's line manager. She held a keeping in touch meeting with the claimant and introduced a further adjustment for the claimant: more frequent screen breaks.

52. The claimant requested a change in team during her sickness absence as she said she found the work stressful. We find the respondent explored the option but the first team to which the claimant requested a transfer was unable to accommodate her. When the claimant via her union suggested a move to a different team in the Guild Tower in September 2016, the respondent was able to accommodate that transfer and it took place when the claimant returned from her sickness absence.

53. We find the claimant returned to work on 3 October 2016. We find she had a phased return to work. We find after her return she was absent in October for a week on annual leave. We find that by 20 October 2016 there is no dispute that the reasonable adjustments for the claimant's light sensitivity as set out in her reasonable adjustments passport were all in place.

54. The Tribunal turned to the claimant's claim of the failure to make reasonable adjustments pursuant to Section 20 to 22 of the Equality Act 2010.

Issues

(1) What is the PCP?

(2) Does it put the claimant at a substantial disadvantage in relation to a relevant matter in comparison with a person who is not disabled?

(3) Did the respondent take such steps as is reasonable to take to avoid this disadvantageous effect?

55. The claimant relied on several PCPs. They are listed at p41-2. The Tribunal turned to the first PCP "the physical feature of Unicentre where the claimant worked. Its windows let in sunlight". (It was agreed "Diadem House" as listed on p41 is a clerical error and the correct building is Unicentre) We find that that is a provision criteria or practice of the respondent and this was agreed by the respondent.

56. The next question is did it put the claimant at a substantial disadvantage compared to non disabled persons. The claimant suffered from light sensitivity. We find (and it is not disputed by the respondent) that based on the claimant's evidence that this PCP put the claimant at a substantial disadvantage.

The Tribunal turned to the third question. Did the respondent take such steps as is reasonable to take to avoid the disadvantageous effect? The claimant stated the respondent should have installed suitable blinds to avoid the disadvantageous effect.

57. The Tribunal find that from 2011 there were suitable blinds in place. We find that in or around June or July 2015 the claimant raised a concern about the blinds not meeting completely in the middle so some light filtered through. We rely on our findings of fact to find that once she was in place as the claimant's manager in around August 2015 Ms Morris commissioned the appropriate reports and the blinds were fixed by 14th October 2016. See page 150A to B.

58. We find the only other occasion when there was a problem with the blinds was one day on 23rd October 2015 when there was a falling out between the claimant and a colleague. We find the evidence about that day suggests that a colleague opened the window because of a migraine. Accordingly light came through the blinds but we find it was not a problem with the blinds themselves.

59. Accordingly we are satisfied that the respondent made a reasonable adjustment namely it ensured there were blinds, they were kept shut and when the claimant reported they did not meet properly in the middle arrangements were made for them to be fixed. We rely on our findings of fact above to find the repair occurred within a reasonable timescale. Therefore this claim fails.

60. We turn to the second PCP, the requirement for the claimant to work at a computer screen. There is no dispute that the claimant was required in the course of her employment to work at a computer screen. We turn to the second issue did it put her at a substantial disadvantage. There is no dispute that it did. The claimant suffered with light sensitivity and the brightness of the display on the screen caused a problem to her.

61. We turn to the third issue. Did the respondent make such adjustments as was reasonable to have to make. The claimant contended for suitable lamps, providing suitable sound boards and providing suitable display screen equipment.

62. We find that the respondent did make the reasonable adjustments to avoid the disadvantageous effect. We find with regard to the screens Ms Morris sorted this out promptly. She ordered two screen filters recommended by the DSE report and we find they were in place within one day of receiving the report. We turn to the suitable sound boards. We find they were to stop light coming in from the window. We find that these were in place by 4th December 2015. We rely on Ms Morris's evidence that these were not recommended until the updated DSE report was received in November 2015 and were then installed promptly.

63. We turn to suitable lamps.

64. We find that as a result of the recommendation in the original reasonable adjustment passport in 2011 the light had been removed from above the claimant's desk and that her desk was sitauated by the window. The claimant agreed that this had occurred. We find that there had been a suggestion of a diffuser and for the reasons explained in our fact finding it was not possible for a diffuser to be fitted. The office was open plan and the lighting affected other staff and the company responsible for the building was not prepared to change the lighting to low wattage or a diffuser.

65. However, we find that as well as the light being switched off above the claimant's desk there was arrangement with the company Trillium that if the light was switched on again they would come out and fix it i.e. switch it off promptly. We find a further adjustment was that the claimant could go home on disability adjustment leave if the light was switched on. (It was agreed that the overhead light could not be adjusted by the claimant or other users of the building).

66. We also find that once a desk lamp was recommended it was obtained and very promptly (see page 174 and 5). Accordingly we are satisfied the respondent made such adjustments as was reasonable to make to avoid the disadvantageous effect of the claimant working at a computer screen.

67. Insofar as the claimant relies on a failure to provide this equipment when she transferred to new premises in the Guild Tower we are satisfied that all the equipment she required was in place by 20th October 2016 within seventeen days of her returning to work in that position and accordingly we find such adjustments as were reasonable to make, namely those described above, were made.

68. We turn to the next PCP, the requirement to work on a complex task involving looking at multiple applications. (This was amended from "multiple screens" at the outset of the hearing). The claimant said at the outset of the hearing that the adjustment she was contending for was that the claimant should be transferred to a less complex task anywhere within the Preston estate within reasonable travelling distance including to the Guild Tower.

69. It is not disputed that the claimant was required to work on complex tasks involving multiple applications and accordingly we find that this was the PCP. (This was agreed by the respondent.)

70. We turn to the next issue. It was not accepted by the respondent that this PCP namely the requirement to work on complex tasks involving multiple applications put the claimant at a substantial disadvantage in relation to a relevant matter in comparison with non-disabled colleagues.

71. The Tribunal finds that all work tasks carried by an employee at the claimant's level in the respondent's organisation were complex. It is agreed that some were more complex than others but we rely on the evidence of Ms Jones that there were no simple tasks.

72. The Tribunal also relies on its findings of facts that there was no evidence before the tribunal to show that the requirement to work on complex tasks caused the claimant a disadvantage in relation to her disability of light sensitivity. There was no medical evidence from a treating physician, optician or occupational physician to suggest a connection.

73. We find the evidence suggests that the claimant found difficulties in relation to the complexity of tasks because she could be indecisive and later because she became stressed. We rely on the evidence of her trade union representative that sometimes the claimant found complex tasks difficult because she could be

indecisive on occasion. We rely on the claimant's own evidence that she found complex tasks difficult after she became stressed.

74. We rely on the fact that the statistical evidence shows that although her quality of work improved in early 2016, it deteriorated again, in April, May and June 2016. We find this decline in the quality of her work despite the extensive reasonable adjustments in place at that time is not consistent with a suggestion that the complexity of the task caused her difficulties because of her disability light sensitivity.

75. In terms of the multiple applications the Tribunal accepts that the respondent's evidence that the nature of the work for a person in the claimant's job role means it is necessary because of the way the respondent systems work to have a number of applications open on the computer at any one time. Although there was no medical evidence to suggest that multiple applications could cause the claimant a disability because of her light sensitivity the claimant said that she found it more difficult when there were multiple applications. Accordingly in relation to the multiple applications aspect of the PCP only the Tribunal is prepared to accept that looking at multiple applications aggravated the claimant's vision problems and thus amounted to substantial disadvantage.

76. The Tribunal therefore turns to the last issue, did the respondent take such steps as is reasonable to have to take to avoid the disadvantageous effect of looking at multiple applications.

77. The Tribunal finds the respondent did. We find both Ms Morris and Ms Jones to be conscientious and caring managers who sought help for the claimant. Ms Morris was very thorough. So was Ms Jones. The claimant had the benefit of a referral to Occupational Health, to DSE assessments and to guidance from RAST. The claimant had the benefit of numerous adjustments.

78. However the specific adjustment the claimant contends for in relation to this PCP namely a transfer to less complex work we was not a reasonable adjustment the respondent could make to avoid the substantial disadvantage of looking at multiple applications.

79. . We rely on the respondent's evidence that the nature of the work and the respondent's systems meant the roles available all required the job holder to look at multiple applications on a computer screen .Accordingly we are not satisfied this was a reasonable adjustment which the respondent could have made.

80. Finally, for the sake of completeness, if we are wrong and the claimant can show that the requirement to work on complex tasks put her at a substantial disadvantage in relation to a relevant matter, we turn to consider the adjustment contended for by the claimant which was a transfer to a less complex task.

81. We find this was not an adjustment it was reasonable for the respondent to make. Our reason for this finding is the same as our finding above. We rely on the evidence of Ms Jones that there were no tasks at the claimant's level that were less complex. The claimant accepted the role to which she was subsequently transferred to because of a stress related condition also includes complex tasks.

82. We turn to the final PCP "the requirement to work alongside colleagues who were resentful of adjustments made for disabled employees". The Tribunal finds that this is not a provision, criterion or practice applied by the respondent. The Tribunal finds that the only evidence it heard in relation to resentful colleagues was one incident between the claimant and one colleague where that colleague, when suffering from a migraine had opened the window behind the blinds and that had caused a breeze which had disrupted the blinds and allowed light into the open plan office area. The Tribunal is not satisfied there was any evidence to show that this employee was resentful of a disabled individual and in any event we find it was an isolated incident.

83. When questioned about this the claimant said this PCP referred to "managers who did not want to help. Everything they did was documented well but they were not sympathetic".

84. The Tribunal relies on its findings of fact. We found Ms Morris to be a clear, convincing witness with integrity who gave concessions where necessary. We find that despite the fact Ms Morris was only newly promoted at the time she took on line management responsibility for the claimant, she was both conscientious and thorough in seeking help for the claimant to the extent that by December 2015 six additional adjustments were in place. We find she continued to seek advice for further adjustments for the claimant and find that by the Summer of 2016 a Mentor had also been appointed and the claimant had been given further time to complete tasks.

85. We find Ms Jones was also a very sympathetic manager who sought another occupational health referral and further adjustments for the claimant. Accordingly the Tribunal finds there was no such PCP and the claim fails at this stage.

Discrimination arising from disability-s15 Equality Act 2010

86. The issue for the Tribunal is: was the claimant treated unfavourably because of something arising in consequence of her disability?

87. The Tribunal must ask itself firstly was the claimant treated unfavourably and by whom. The Tribunal then has to determine what caused the treatment, focussing on the reason in the mind of the alleged discriminator, possibly requiring examination of the conscious or unconscious thought process of that person but keeping in mind that the motive of the alleged discriminator in acting as she did is not relevant.

88. We remind ourelves we must identify two separate causative steps. See Basildon and Thurrock Trust -v- Weerasinghe 2016 ICR 305. The first step is that the disability had the consequence of "something". The second is that the claimant was treated unfavourably because of that "something".

89. There is no dispute in this case that the unfavourable treatment relied upon by the claimant was that she was awarded a "must improve" end of year peformance assessment for the year 2015/16.

90. In this case the claimant said the "something" which arose in consequence of the claimant's disability was her performance.

91. We turn to the next question which is did the “something” ie the claimants performance arise in consequence of the claimant’s disability? The Tribunal is not satisfied it did.

92. The problem for the Tribunal was that this was a simple assertion by the claimant. There was no medical evidence from the claimant's treating Optician or a medical practioner or the Occupational Health physician to assist the Tribunal to suggest her performance was affected by her disability of light sensitivity.

93. We considered the contemporaneous documentary evidence.

94. The claimant said in her self assessment for the end of the relevant performance year "the first half of the year is difficult for me as I had severe problems with my eyes because the lighting was not suitable, I struggled with every aspect of my job because I could not see properly. During this period I changed tasks. She then said that "moving forward during August 2015 I moved onto a new team and things have improved immensely. With the support of my new manager, Carly, we were able to get to my RAP updated and put into practice my eyes have settled down and I am now able to perform my job in a more suitable environment for my needs. She goes on to say "I have steadily increased my accuracy and productivity rate". See page 236.

95. This evidence suggests that her performance was related to her disability and also that the adjustments have resolved the matter. However the later statistics show the claimant's quality figures deteriorated as she entered the next performance year. In April 2016 they were 92.85%, in May 2016 87.5% and in June 2016 61.53%, see page 315. This was despite all the adjustments in place for the claimant by this stage. This evidence is inconsistent with a finding that her deteriorating performance was caused by her light sensitivity.

96. The Tribunal has identified the individuals whom the claimant says treated her treated unfavourably. These are the two managers involved in the relevant end of year performance assessment. The final “must improve” was given by manager Ms C Morris but manager Ms S Ahmed was also involved because she had been the claimant’s line manager for the first part of the performance year and it was her assessment together with Ms Morris’ assessment which led to the claimant being given the "Must Improve" marking over the whole year.

97. The Tribunal turns to the evidence relied upon Ms Morris in reaching the end of year assessment. She relied on the overall year quality target which was 74.68% far below the team quality target of 97% Although the claimant's work did improve for quality under Ms Morris it was 80% in October of 2015, page 131, 87.5% by January 2016 see page 192 and 88.8% in February 2016 and 100% in March 2016. However, over the whole year it was only 74.68%, see page 242.

98. We find Ms Morris also took into account the comments made by Ms Ahmed about the claimant's poor behaviour, the reprimand she had for chatting as well as the fact she didn't meet her quality or production targets for the first half of the reporting year, see page 240.

99. The Tribunal is not satisfied that the unfavourable treatment-namely the "must improve" end of year performance arose because of something in consequence of the claimant's disability. The Tribunal notes that the respondent, despite upholding the "must improve" at appeal asked the appeal officer to substitute a new finding of achieved.

100. The Tribunal relies on its findings above that there is insufficient evidence to show a connection between the claimant's poor performance and her disability and accordingly the claim fails at this stage. The Tribunal notes that the claimant also received a must improve for the previous performance year which she did not suggest at the time was disability related. The Tribunal relies on the fact that the respondent, when it revised the appeal outcome, did not at any time suggest that the poor quality of the claimant's work was related to a failure to make reasonable adjustments. There was a reference only to productivity. We rely on our finding that the must improve mark was given because of the claimant's poor work quality (not her productivity) and her behaviour.

101. Accordingly the claim fails at this stage.

102. However in case we are wrong about that and the fact that the claimant asserted her end of year performance rating for 2015/16 is something arising in consequence of her disability means that it is, together with the fact the respondent acknowledged at the appeal stage some issues were disability related, we turn to the next issue.

103. The last issue is: was the treatment a proportionate means of achieving a legitimate aim? We find that it was. We find that the respondent's legitimate aim was an efficient performance management system to achieve delivery of an effective service to the public where quality was delivered via properly motivated individuals.

104. We have taken into account that the respondent went to great efforts to introduce reasonable adjustments for the claimant. There were underlying adjustments in place from 2011.

105. When the claimant, following a "must improve" performance assessment for the previous year, April 2014- March 15, notified the respondent that she felt that her eye condition had deteriorated the respondent made great efforts to make suitable enquiries through the occupational nurse, the RAS team and in having DSE assessments carried out. We find the respondent acted reasonably and promptly on the advice to deliver further adjustments for the claimant.

106. The Tribunal also takes into account that an employer must be entitled to raise performance issues whether an employee is disabled or not and we find that

some of the performance issues that the respondent legitimately took into account were non disability related matters such as the way the claimant conducted herself in the office. In particular the managers were entitled to consider behaviour such as excessive chatting, how she joined in with the team and whether she volunteered for matters or not. We also take into account that although the conversation with another member of staff which developed in an unpleasant manner arose out of an issue connected to adjustments that was not the reason for the claimant being spoken to by Ms Morris, it was that she and the other job holder had dealt with the matter in an unsuitable way rather than if there was a conflict coming to the manager to resolve it out of the public area of the open plan office.

107. Accordingly the Tribunal is satisfied that there was a proportionate means of achieving a legitimate aim and this claim fails.

108. The final issue in relation to this claim was a jurisdictional issue that the claimant's claims for failure to make reasonable adjustments and for unfavourable treatment were out of time. The claimant's claims have failed so it is not strictly necessary for us to consider this issue. However we have considered it for the sake of completeness.

109. The respondent contended that the claimant's claims were out of time. The claimant contended that there was a course of conduct (see 123 of the Equality Act 2010) which continued up until further adjustments were in place in or around 20th October 2016.

110. The Tribunal has taken into account that the allegations of discrimination fall into three areas. Firstly there are complaints that there was a failure to make reasonable adjustments during the period June to the 4th December 2015. We find that the alleged failure to make reasonable adjustments at this time relates to Ms Carly Morris and Ms Somia Ahmed.

111. Secondly there was the alleged unfavourable treatment by the issuing of the end of year performance assessment of "must improve" in April 2016 by Ms Morris taking into account her observations and those of the other manager Ms Ahmed. We find that Ms Ahmed had no contact with the claimant after September 2015 and her last observations are in November 2015. We find that Ms Morris had no further contact with the claimant after August 2016.

112. We find there is then a break. We find the claimant was absent on sick leave for stress related reasons. We find the claimant returned to work on the 3rd October 2016. We find following her stress related absence she returned to a different role as agreed with the union with a new manager. We find that any alleged failure to make reasonable adjustments in the period when the claimant returned to work the 3rd to 20th October 2016 is not related to either Ms Morris or Ms Ahmed. They relate to the claimant's new manager.

113. We remind ourselves that when looking for a course of conduct it is relevant which managers are involved. We find if there was any cause of conduct it involved Ms Ahmed and Ms Morris and ceased with the end of Ms Morris's involvement in

August 2016. The claim was not presented until January 2017 accordingly the failure to make reasonable adjustments claim for the period June –December 2015 is out of time as is the unfavourable treatment claim for the end of year performance assessment 2016/16.

114. Finally we turn to the just and equitable provisions. For the sake of completeness we have considered this. We are not satisfied that it is just and equitable to extend time. The claimant was represented from her trade union throughout. No clear reasons were advanced as to why the claim was presented out of time We are satisfied that any cogent reason as to why it is just and equitable to extend time

115. At the outset of the hearing and at the case management hearing it was not made clear that the claimant wished to advance a claim for failure to make reasonable adjustments for the period 3-20 October 2016.

116. However the Tribunal has considered such a claim because the claimants representative appeared to rely upon this during the hearing. The Tribunal found all adjustments were completed in the claimant's new physical location by 20 October 2016. Accordingly the relevant date must at the latest be 19 October 2016. The claim was presented on 9 January 2017, within 3 months of the end of the period relied upon by the claimant. Accordingly that claim is within time but it fails for the substantive reasons given above in this judgment.

117. For all these reasons the claimant's claims fail.

Employment Judge Ross

Date 1 September 2017

JUDGMENT AND REASONS SENT TO THE PARTIES

5 September 2017

FOR THE TRIBUNAL OFFICE