THE EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		*Respondent*
Mr P Blackburn	**AND**	**HMRC**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Held at: **North Shields** **On: 6, 7, 10, 12, 13, 14 & 17 July 2017**

Before: **Employment Judge Morris** **Members:** **Ms E Menton**
Mr T A Denholm

Appearances

For the Claimant: **Mr S Healey of Counsel**
For the Respondent: **Ms J Callan of Counsel**

JUDGMENT

The unanimous judgment of the Tribunal is as follows:-

1 The claimant's complaint that, contrary to section 21 of the Equality Act 2010, the respondent failed to comply with its duty to make reasonable adjustments under section 20 of that Act and thus subjected the claimant to a detriment contrary to section 39(2)(d) of that Act is not well-founded and is dismissed.

2 The claimant's complaint that the respondent harassed him as defined and explained in section 26 of that Act and therefore was in breach of section 40(1)(a) of that Act is not well-founded and is dismissed.

3 The claimant's complaint that the respondent victimised him as defined and explained in section 27 of that Act is not well-founded and is dismissed.

4 The respondent took all reasonable steps to prevent its employees from doing or omitting to do the alleged acts and omissions or anything of that description and,

therefore, had any of the above claims been well-founded, the defence provided to employers in section 109(4) of that Act would have applied to this case.

5 The vast majority of the alleged acts of discrimination occurred prior to 18 September 2016 and were therefore outwith the primary time limit period for the presentation of a complaint to the Employment Tribunal provided for in section 123(1)(a) of that Act. Furthermore, they do not constitute continuing acts with any acts or omissions in that period and it is not just and equitable to extend that period.

REASONS

Representation and evidence

1 The claimant was represented by Mr S Healey of Counsel who called the claimant and his wife, Pauline Blackburn, to give evidence.

2 The respondent was represented by Ms J Callan of Counsel who called the following employees of the respondent to give evidence on its behalf: Ms G Robson; Mr J O'Brien; Ms E Jameson; Ms K Owens; Ms C Pizzey; Ms T J Measor; Ms A Cochrane.

3 The Tribunal had before it a significant number of documents in an agreed bundle, which was added to during the course of the hearing.

The claimant's claims

4 The claimant had presented three claims to the Employment Tribunal as follows:

4.1 By reference to section 21 of the Equality Act 2010 ("the Act"), he being a disabled person for the purposes of the Act, the respondent had failed to comply with the duty imposed upon it by section 20 of the Act to make reasonable adjustments and thus subjected the claimant to a detriment contrary to section 39(2)(d) of the Act.

4.2 By reference to section 26 of the Act, he being a disabled person for the purposes of the Act, the respondent had harassed him in that the respondent's managers had engaged in unwanted conduct relating to his disability, which conduct had the purpose or effect of violating his dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for him and thus was in breach of section 40(1)(a) of the Act.

4.3 By reference to section 27 of the Act, the respondent's managers had subjected him to a detriment because he had done a protected act.

The issues

5 The parties had produced a lengthy agreed List of Issues, which, for ease of reference, are appended to this Judgement. All the issues contained in that List were pursued at the hearing with the exception of those at paragraphs 3(i) and

(ii) and 12(i) and (iii), which were withdrawn by the claimant's representative at the commencement of his closing submissions. Further, it was agreed with the representatives at the commencement of the hearing that it was more appropriate that paragraph 3(v) in the List should be split to refer, first, to "being placed on a performance improvement plan (PIP)" and, secondly, to "being given a needs improvement marking".

6 It will be seen from the agreed List that the issues fall into the three categories relating to the claimant's claims as set out above. Additionally, the question of the statutory defence contained in section 109(4) of the Act is raised as is whether the acts or omissions of which the claimant complains that occurred before 18 September 2016 (being the commencement of the primary time limit for the bringing of complaints of this type) can be pursued in these proceedings on the basis that either they amounted to conduct extending over a period so as to be treated as having been done at the end of that period or, if not, whether the complaint in respect of matters otherwise being out of time was presented within such other period as the Tribunal considers is just and equitable in accordance with section 123(1)(b) of the Act.

Consideration and findings of fact

7. Having taken into consideration all the relevant evidence before the Tribunal (documentary and oral), the submissions made on behalf of the parties at the hearing and the relevant statutory and case law (notwithstanding the fact that, in the pursuit of conciseness, every aspect might not be specifically mentioned below), the Tribunal records the following facts either as agreed between the parties or found by the Tribunal on the balance of probabilities.

7.1 The respondent is a well known employer of a significant number of staff with considerable resources including as to Human Resources.

7.2 The claimant commenced employment with the respondent in July 1999. In 2002 he suffered a back injury. It is not disputed that as a result of that injury he became and continues to be a "disabled person" as that term is defined in the Act.

7.3 In August 2012, as a result of an occupational health report, adjustments were put in place by the respondent in respect of the claimant's workstation and so as to enable him to have hourly breaks when he chose. The recommendation was for two breaks of five minutes duration each hour but the practice appears to have become for the claimant to take one break of 10 minutes duration each hour. Quite clearly, this recommendation for breaks must have been discussed with the claimant; he certainly did not suggest that that had not occurred. It was clear to the Tribunal that, in practice, the claimant could take breaks as when he considered he needed them.

7.4 In March 2013 the claimant moved to an office in Sunderland where Ms Robson became his Manager. On 3 March 2013 an occupational health report was produced which, amongst other things, refers to the fact that

the claimant "is undertaking adjusted duties due to difficulty in concentration". Thus, that adjustment to the claimant's duties was already in place at the date of the report rather than the report recommending that it be brought into place. In 2014 what the respondent and its employees refer to as a Reasonable Adjustment Passport was created by Ms Robson in respect of the claimant.

7.5 At the end of 2014/early 2015, as a reasonable adjustment to address the claimant's issues of concentration and pain he was moved from Self-Assessment Recovery to the Debt Management and Banking (DMB) Department of the respondent.

7.6 In May 2015 as part of the respondent's annual Performance Management Review (PMR) process the claimant was rated as "needs improvement", that being the lowest of three ratings. He appealed against that rating, but his appeal was rejected.

7.7 In about September 2015 the respondent decided, for operational reasons, to move a number of staff into its Child Benefit Office (Benefits and Credits) Department (CBO). The claimant was one of those employees. On 14 September 2015 the claimant, with a number of colleagues, attended a meeting where they were given an outline of the type of work to which they were to be transferred and informed that training would be provided. The transfer of the claimant and his colleagues took place on 28 September 2015. The claimant was on holiday on that date and returned to work in his new department on 12 October 2015.

7.8 Immediately prior to the transfer, the claimant's Manager was Ms L Alderslade. She had reduced the claimant's performance targets as a reasonable adjustment (page 55). Ms Robson sent an e-mail to Mr J Oliver (copied to Ms Jameson and Mr O'Brien), which makes them aware of this adjustment.

7.9 Although there had been this transfer of the claimant between departments, on his return to work after his holiday he returned to his same workstation in the same office and therefore to the same adjustments to his workstation, and his entitlement to take breaks was continued. The adjustment in respect of these breaks was known to Ms Robson and she communicated this to Ms Jameson and Mr O'Brien.

7.10 Initially, it had been intended that, following the transfer, Ms Robson would manage the whole team within which the claimant worked with Ms Jameson providing assistance to her; particularly overseeing the training of the transferred staff, which training was to last from October to December 2015. At that point the trainees would move to established teams. Given the number of staff for whom Ms Robson was responsible, however, it was decided between her and Ms Jameson that the group of 18 transferring staff for whom she was responsible would be split between them. Ms Robson would retain the staff for whom she had previously

been the responsible Manager prior to the transfer whereas Ms Jameson would take over the staff for whom Ms Alderslade had previously been the Manager, which included the claimant. This division of responsibility between these two Managers was in place when the claimant returned to work following holiday on 12 October 2015.

7.11 The claimant's mid-year PMR review for the period April to September 2015 was undertaken by Ms Alderslade who had been his Manager at that time. In the notes made by the claimant regarding this mid-year performance review is included the following: that he is slow in recording notes; the agreed reduced productivity targets; that there had been no overall improvement; that he accepted that his performance would be rated as "needs improvement" at this stage (page 73).

7.12 After Ms Alderslade had undertaken the claimant's mid-year review with him on 15 October 2015 she went to see Ms Jameson and made her aware of the "needs improvement" rating, and mentioned that she wanted the claimant to do a touch-typing course and had looked at getting him a better keyboard. Ms Jameson raised this with the claimant but he said that he was happy with the keyboard that he had.

7.13 During the training period from October to December 2015, all the trainees followed a structure that had been established by the providers of the training (pages 83A and B) in respect of which they were each provided with a period of training followed by a period of consolidation. In this regard, the Tribunal records that the claimant accepted that, as described in Mr O'Brien's evidence, he was familiar with the computer applications CBOL, CBOS and ADD that he had used previously in DMB. He had said as much in the Skills Assessment that he completed prior to his transfer in which he said that he would only require a refresh on these applications.

7.14 Also during the training period, all the trainees were exempt from achieving targets; the focus was on their training. That said, the targets that the team was expected to achieve once they had been fully trained were displayed on a whiteboard so that they were aware of them. It was submitted on behalf of the claimant that those were nevertheless targets for the claimant to achieve during this training period. The Tribunal does not accept that and prefers the evidence of the respondent's witnesses that they were aspirational and intended as a measurement of the trainees' progress both for the Managers and for the trainees themselves. The Tribunal accepts that it was appropriate for the trainees (and indeed their Managers) to be aware of how they were progressing.

7.15 Additionally the Tribunal accepts that during the training period there were no requirements imposed on any of the trainees in respect of time that they took to complete tasks; again, during this period, the focus was on training.

7.16 It is not in dispute that the claimant found the training difficult: for example, he generally found the new skills difficult to absorb and

specifically he could not sit in group work due to the angle at which he had to sit so as to see the computer screen. The respondent tried to address this in a variety of ways including the provision of some one to one training (which the claimant accepts was provided) and Ms Jameson requested of her Managers that more training resource should be provided to the trainees, which was provided. Additionally, staff experienced in these areas of work were brought in to sit alongside the trainees, including the claimant, so as to provide them with help and assistance. An employee whom we only know as Debbie was one such person who, during this time, sat next to the claimant and was a source of additional support to him albeit not being formally designated a mentor in the strict sense of that word. The Tribunal is satisfied that these measures were an appropriate and reasonable response to the needs of the claimant within the resources available to the respondent.

7.17 One of the reasonable steps suggested by the claimant is the provision of help cards/aide memoirs. In this respect the Tribunal accepts the evidence of Mr O'Brien and others that the claimant was provided with such training aids: specifically, by Mr O'Brien sat with him giving one-to-one training and then produced a folder of hard-copy documents, which he circulated to the claimant and other trainees by e-mail of 28 September 2015. Indeed the Tribunal notes the claimant's own evidence that the number of documents he was issued with for the purposes of training was "overkill".

7.18 When the trainees who had been transferred to CBO moved out of the training group and into established teams, commencing January 2016, the claimant was transferred into Team 1, which comprised 12 Administration Officers and was managed by Ms Jameson and Ms Owens. Both Managers worked part-time and although Ms Jameson was recorded on the respondent's HR system as being the claimant's direct Line Manager, they shared that responsibility and he had access to either or both of them.

7.19 In preparation for the move to the established teams Ms Robson had sent out to the training employees, on 24 November 2015, a generic PMR (page 154), which contained development plans. The e-mail explains why a generic PMR had been issued rather than bespoke PMRs to each individual employee. The Tribunal accepts that explanation in the circumstances of this group of employees having transferred to new work and being the subject of, at this time, training.

7.20 Jumping ahead slightly, when, in May 2016, the claimant was informed that his year-end validation had resulted in him being given a "must improve" rating he expressed surprise as he had not received a PMR or his development needs. The Tribunal is satisfied that that is not correct as the PMR (page 154) was issued to him by Ms Robson under cover of the e-mail referred to above dated 24 November 2015 and does contain a section relating to Development Needs.

7.21 The claimant also states that a Performance Development Plan (PDP) should have been put in place in respect of him. The Tribunal accepts the evidence of the respondent's witnesses, however, that it is initially for an employee to take the initiative in developing a PDP to meet his or her needs and future aspirations albeit then to be agreed by management. An exception to this is that if a "must improve" rating is given to an employee a PDP should be put in place. This is returned to below. The claimant did not take any such initiative. In any event such matters were being addressed by the PIP referred to below.

7.22 On 21 December 2015, in preparation for the claimant's move to Team 1 in January 2016, Ms Owens issued a PIP to him, which was agreed on 8 January 2016 (page 112). The Tribunal finds that the whole process connected with the PIP was detailed and supportive. We note that Ms Owens met the claimant frequently to discuss his needs and progress. The claimant himself records that he is happy with the regular meetings; the PIP itself; the training (which he says was meeting his needs in respect of his fears of the work); the support of his mentor, Ms Judith Bell, who had been appointed to support him on a one-to-one basis from 18 January 2016; and that he accepts that he was slow undertaking the tasks allocated to him. All in all, the claimant accepted both at the time and at the Tribunal hearing that the PIP process was positive and supportive. Indeed, in evidence he remarked that it remedied what he perceived to have been the previous inadequacy in training.

7.23 Shortly after Ms Bell had been appointed as the claimant's mentor, she advised the claimant's Managers that he required what she referred to as "full blown" training on all aspects of his new work: ie he had to start his training from scratch, which he did, even in respect of those aspects that he had previously described himself as being comfortable with and only requiring a refresh. During this mentoring period, Ms Bell checked 100% of the claimant's work but noted that repetition did not seem to make anything stick. She worked as the claimant's mentor until 8 June and although she then stood down from that formal position when the claimant advised Ms Owens that he was "happy to go on his own" on 16 June, she continued as his 'buddy'. Additionally, if during the period when Ms Bell was the claimant's mentor she was for any reason not available to the claimant, he had the support of Norma, an established member of the team, who sat next to him and provided assistance to him. The Tribunal also notes that when Ms Bell was on holiday Ms Owens informed the claimant that he need only work on that aspect of the work referred to as KANA during her absence as he was comfortable with that work having done it previously. At this time the remainder of the claimant's team went on to DMS.

7.24 Ms Owens was concerned as to why, despite the significant input of support, the claimant was not progressing as he should. As such, on 8 April 2016 (with the claimant's agreement) she submitted a referral to occupational health (page 110) which she chased up on 15 April. The assessment was undertaken on 21 April (page 122) and the report had

been received by the respondent by 29 April as, on that date, it was discussed between the OH Consultant, Karen Smart, and Ms Owens as is apparent from the e-mail at page 129. In that confirmatory e-mail Ms Smart advises that the effect of the claimant's medication "is likely to impair the ability to think, focus, concentrate and react. It may therefore impact on performance and impair the ability to retain and remember information." Ms Owens forwarded this e-mail to the claimant on 25 May upon her return from holiday. On 27 May, in the light of the occupational health report, Ms Owens made a referral to the respondent's Reasonable Adjustment Support Team (RAST) seeking advice and guidance. Her referral notes, amongst other things, that the claimant was working at that time less than 50% of the required target. The advice from RAST was received on 27 May and was discussed by Ms Owens with the claimant.

7.25 During this period from January to early June 2016 the claimant was not required to meet any targets although, as previously, he was aware of the targets that were expected of his colleagues and that, in time, he would be expected to achieve.

7.26 We need to backtrack slightly in our chronology in that, at this time, Ms Jameson was the Manager responsible for the claimant's PMR. She met him on 3 February 2016 and discussed with him that he was only completing a few cases a day whereas others were completing up to 40 cases. Their next meeting was in March 2016 and, once more given the lack of any progress, Ms Jameson informed the claimant that although subject to the validation process, which the respondent puts in place with regard to PMR assessments, she felt that he should be given a "must improve" box marking. The claimant did not react to this and, specifically, did not point to the effects on his performance of his medication or inadequacies of training.

7.27 The validation took place in late March or early April 2016. The outcome of the validation was that the claimant was awarded a "must improve" rating. He was the lowest performer in his group although another four employees were also given a "must improve" rating. Ms Jameson's "justification" for the claimant's rating includes, "Not achieving any of the average KPIs for this group of Trainees" (page 107). The Tribunal notes that the lack of achievement is assessed against the average of the performance of the other trainees and not by reference to targets specifically allocated to the claimant of which, it is repeated, there were none.

7.28 At the beginning of May managers were given authority to communicate the PMR markings to their staff. The Tribunal accepts that there was a time 'window' within which this information had to be given to staff. This was a requirement of HR and appears to have had implications for payroll. The claimant was due to go on holiday on 4 May so, that day, Ms Jameson informed him that unfortunately he had been given a "must improve" rating. As indicated above, the claimant responded that he did not have a PMR (which we have found he did) and asked about his

occupational health report, which we accept Ms Jameson had not seen as it had been requested by and sent to Ms Owens. The Tribunal accepts that the occupational health report was not received by the respondent prior to Ms Jameson deciding that the claimant should receive a "must improve" rating and from we can discern of the chronology, it had not been received prior to the validation meeting.

7.29 It is Ms Jameson's evidence that even had she known of the occupational health assessment when considering the claimant's PMR box marking, it would not have changed her view. This is because her assessment was based on the claimant not making any progress despite full time one-to-one training. That is also the opinion of Ms Pizzey who was undertaking the role of Temporary Higher Officer (HO) in the changes team (Team 1) at this time. The Tribunal accepts those opinions of those two Managers. The next category of rating in the PMR scheme is "achieved". Even the claimant does not suggest that he met that threshold.

7.30 The claimant appealed against his "must improve" marking on 23 May 2016 (page 132). Amongst other things he refers to his back injury and consequent inability to participate in group training. He then states, "I am claiming disability discrimination and will follow this through the Resolving Issues process". He also refers to the recent occupational health report and the impact of his medication and to a lack of management understanding of reasonable adjustments. Although the claimant raises these and other various issues in his appeal document, the focus of his evidence before the Tribunal was on the respondent's alleged failure to comply with its procedures regarding the PMR process rather than the substance of the correctness of the "must improve" rating itself. This is reflected in the reasoning of the Appeal Manager, who considered the claimant's appeal against this rating, for not upholding his appeal where she states "An appeal cannot be solely on the basis that the performance management process has not been followed properly. Whilst this may be one of the reasons for the appeal against the performance rating, failure of the process does not, in itself, invalidate the performance rating. After careful consideration of all evidence provided alongside the validation meeting minutes my final decision is the end of year marking will remain as Must Improve" (page 144).

7.31 To recap, the claimant had been provided with full time one-to-one mentoring from January 2016. On 8 June 2016, he advised Ms Owens that he was "happy to go on his own". This was agreed to albeit that Ms Bell, while stepping down from being his mentor, would continue as his 'buddy' and would check all his work. At this meeting Ms Owens informed the claimant about the RAST response and encouraged him to contact Access to Work and asked him whether he had considered changing his medication. The claimant responded that he had previously considered changing his medication but that which he was now taking (Tramadol) was the most effective in terms of pain relief. Ms Owens met the claimant the following week (15 June) when he advised her that he had not contacted Access to Work. As the claimant had now stated that he was happy to

work on his own Ms Owens advised him that for the following week she would be looking to introduce what she referred to as being "stepped targets", which she would have to discuss with her Higher Officer (HO) and agree this over a period of time (page 168). The claimant responded that he was happy with this and agreed that it was required. Following discussion with her HO (Ms Pizzey) Ms Owens wrote to the claimant on 16 June (page 169) advising him of his targets, which were to achieve 35% of the actual KPIs of the other employees in the group. That was fractionally above what the claimant was actually achieving at the time and gave him something to aim towards in terms of progression. Ms Owens set the targets at this level as being achievable. As she said in evidence, "I did not want to set Peter up to fail".

7.32 Ms Owens was then to be on holiday from 20 June to 5 July 2016 and told the claimant that she would review this arrangement on her return to work on 5 July. Before she was able to do so, however, the claimant became absent from work due to ill health on 5 July 2016 from which he has not returned. Thus, although the stepped targets were nominally introduced in the week commencing 20 June 2016, as a result of his absence, they were never actually applied to the claimant in the sense of him being measured against them.

7.33 For the first time in the period commencing October 2015, therefore, targets were thus in place in respect of the claimant; and had been put in place by his Managers in the full knowledge of his disability and the reports of both occupational health and RAST. The level of the targets was agreed between Ms Owens and Ms Pizzey (her HO). As Ms Owens put it, "Once it was established that Peter's medication was affecting his memory I knew that he wouldn't be able to meet the same customer demands as one of his colleagues who was not on that medication. We took this into account in allocating him work". The Tribunal is satisfied that setting the target at the level of 35% was a reasonable adjustment to meet the circumstances of the appellant.

7.34 We conclude this section of these reasons by considering the separate issue of the claimant keying into and out of the workplace. The respondent's 'clocking' procedure was applied to all employees. As the claimant worked for only six hours a day he was required to clock out at the end of that six hours so as to comply with the provisions of the Working Time Regulations in relation to rest breaks. That said, he did have the alternative option open to him to take a break of 20 minutes during his six-hour working period but he did not wish to do that.

7.35 So as to assist the claimant clocking out on time Ms Owens told him that he could close down his workstation sufficiently before the expiry of the six-hour period so that he could clock out on time. He was told, quite simply and fairly, to give himself enough time to do so. In passing in this connection the Tribunal notes that there was a keying out point on the floor where the claimant worked but he chose to proceed to the ground

floor and use the keying out point at the main office exit, with all that meant in terms of time taken and inconvenience.

7.36 We now turn to the claim of harassment. The claimant relies on nine instances of conduct that he maintains were unwanted. In making the above findings of fact, the Tribunal has already addressed the majority, being all those nine instances apart from two, which are the alleged failure to respond to e-mails and withholding documents from a subject access request (SAR).

7.37 In respect of the allegation of failing to respond to e-mails the claimant's representative narrowed this complaint to two e-mails of 25 May (page 134) and 6 June 2016 (page 153). As to the first, it is right that Ms Jameson (to whom the e-mail was addressed) did not reply but Ms Pizzey (to whom the claimant sent a copy of the email) did reply and did so that day by sending to the claimant the validation minutes and requesting him to complete and return the appeal form. As to the e-mail of 6 June, Ms Jameson replied on 7 June (page 153) and Ms Pizzey replied on that same day (page 151). Although in respect of each of those e-mails of 25 May and 6 June a fuller response could have been given, the Tribunal is satisfied that the respondent's Managers followed the correct process of requiring the appeal form to be completed and submitted and not entering into discussions, outside the appeal process, in respect of the other issues that the claimant had raised.

7.38 Finally in respect of the claim of harassment there is an allegation of the respondent's Managers, "withholding documents deliberately from his Subject Access Request". When the claimant's SAR request was received, the respondent's Manager at the time was Ms Robson and she was therefore given the task of responding to it. As she said in evidence, she was not experienced in such matters and was personally not aware of the existence of certain documents that could have been sent in response to the SAR request. The respondent had hoped to be able to address Ms Robson's lack of experience by having Ms Pizzey check her response by working through the documents herself before they were despatched to the claimant. Unfortunately, Ms Pizzey was absent from work due to ill health when the deadline for delivering the documents was reached. She telephoned to check with Ms Robson that everything was in order and, when she confirmed that it was, Ms Pizzey authorised the despatch of the documents. In the event, it appears that not all of the documents were included but the claimant has failed to be specific as to what were the missing documents. Be that as it may, the original response having been sent to the claimant on 7 October, when the claimant's trade union representative then sent an e-mail to Ms Measor on 19 October drawing attention to the fact that certain documents were said to be missing, she took charge of this aspect and created a second, complete bundle of documents, which was sent to the claimant on 24 October. It is also to be noted that the claimant confirmed that he was already in possession of some of the documents he says were missing from the first bundle; for example e-mail correspondence.

7.39 Next there is the claim of victimisation. In this respect the first question in the List of Issues is whether the claimant alleged that any person had breached the Equality Act and if so when. The claimant did make such an allegation in his appeal that he lodged on 23 May 2016. At page 132 he refers to "disability discrimination" and "disability and age discrimination" and at page 133 to "reasonable adjustment": in each respect the claimant states that he will be following the Resolving Issues Guidance.

7.40 Two detriments in the agreed list having been withdrawn, the only remaining detriments to which the claimant is said to have been subjected in connection with his claim of victimisation relate to a change in the practice regarding the treatment of the claimant's flexi-time records and allegedly withholding documents deliberately from the original response to the SAR request. On the basis of the evidence before the Tribunal, we are satisfied that the practice regarding the treatment of the claimant's flexi-time records did not actually change in or about early June 2016 or at any other time. On the contrary, the claimant had always been told that he needed to clock out after the six-hour working period and could leave his workstation when he chose to do so, this giving him ample time to clock out. That practice continued throughout. The policy requirement for him to clock out after six hours was merely reinforced by Ms Jameson after the respondent's policy in this respect had been reinforced to her by her Manager. As to the detriment of allegedly withholding documents deliberately, we have already found above that there was no deliberate withholding of documents.

Submissions

8 The parties' representatives made submissions by reference to comprehensive skeleton arguments, which painstakingly addressed in detail each of the matters contained in the agreed List of Issues in the context of relevant statutory and case law. It is not necessary for the Tribunal to set out those submissions in detail here because they are a matter of record and the salient points will be obvious from our findings and conclusions below. Suffice it to say that the Tribunal fully considered all the submissions made (both in the written documents and orally by the representatives) and the parties can be assured that they were fully taken into account in coming to our decisions.

9 Addressing one specific point, the Tribunal has no hesitation in accepting the point of principle made by the claimant's representative that it is important that people with significant disabilities should be retained in the workforce and that that is especially so in cases such as this claimant who, he said, had been a hard worker and had been employed since 1989, there being no issues regarding his attendance at work, and where the occupational health report in 2014 had recognised that for him to be at work was vital. We accept that point of principle but our task is to find the facts on the basis of the evidence that is presented to us and apply the facts and the relevant law in the light of the submissions made to us so as to determine the issues in this case.

The law

10 The principal statutory provisions that are relevant to the issues in this case are all to be found in the Equality Act 2010 and are as follows:

> Section 20
> *(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.*
> *(2) The duty comprises the following three requirements.*
> *(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.*
>
> Section 21
> *(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.*
> *(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.*
>
> Section 26
> (*1) A person (A) harasses another (B) if—*
> *(a) A engages in unwanted conduct related to a relevant protected characteristic, and*
> *(b) the conduct has the purpose or effect of—*
> *(i) violating B's dignity, or*
> *(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.*
>
> Section 27
> *(1) A person (A) victimises another person (B) if A subjects B to a detriment because—*
> *(a) B does a protected act, or*
> *(b) A believes that B has done, or may do, a protected act.*
> *(2) Each of the following is a protected act—*
> *(d) making an allegation (whether or not express) that A or another person has contravened this Act.*

Section 39

(2) An employer (A) must not discriminate against an employee of A's (B)—

(d) by subjecting B to any other detriment.

Section 40

(1) An employer (A) must not, in relation to employment by A, harass a person (B)—

(a) who is an employee of A's

11 In this case, with regard to Section 20 above, the claimant relied upon a provision, criterion or practice (PCP) of the respondent putting him at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled and, as such, the duty potentially comprised a requirement for the respondent to take such steps as it is reasonable to have to take to avoid the disadvantage. Thus the issue is whether a PCP did put the claimant at such a substantial disadvantage and, if so, whether the respondent had taken such reasonable steps to avoid the disadvantage. The actual PCPs relied upon are dealt with below.

12 In relation to the element of "effect" referred to in Section 26(1)(b) above, the Tribunal, in deciding whether the conduct alleged had the effect referred to must take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

13 As indicated above, the Tribunal also took into account the case law that is relevant to the issues in this case including the authorities relied upon by each of the parties' representatives: for example, Smith v Churchill Stairlifts plc [2006] IRLR 41; Environment Agency v Rowan [2008] IRLR 20; Land Registry v Grant [2011] ICR 1390; HM Prison Service v Ibimidun [2008] IRLR 940.

Application of the facts and the law to determine the issues

Reasonable adjustments

14 In accordance with the decision in Rowan it is appropriate to address first the Tribunal's consideration of the PCPs relied upon by the claimant and also the identification of the comparator. In this we are assisted by the agreement between the parties who have identified five PCPs that are listed in paragraph 1 of the attached agreed List of Issues. Given that agreement, we adopt those PCPs although noting that the first needs to be construed somewhat loosely given normal flexibility that will be available to all staff during working hours.

15 The agreed comparator is said in the List of Issues to be "people who do not have the disability". While that is not inappropriate, given the evidence in this case, how it has developed during the hearing and the fact that the second of the PCPs relates to the group of staff within which the claimant worked from October 2015 to March 2016, we are satisfied that a more appropriate comparator is a

person who, like the claimant, transferred from DMB to CBO in October 2015 and engaged in training before transferring to an established team in January 2016; and who was not disabled, that disability being a back impairment although taking account also of the consequential effects of medication on the claimant's concentration and memory.

16 That said, we do accept that the agreed PCPs did have the potential for putting such disabled people at a substantial disadvantage when compared with such comparators. The important question is, of course, whether the PCPs were all applied to the claimant by the respondent, without adjustment or relaxation, which we address below.

17 On the basis of the above findings, the Tribunal is satisfied that the allegation that the claimant was disadvantaged by an alleged failure to adjust targets, whether to reflect the effect of his medication or otherwise, is not well-founded. During the training period in the latter part of 2015, there were no targets set for the claimant and his colleagues to achieve. Likewise, in 2016 no targets were set for the claimant until, with his agreement, the setting of stepped targets was discussed with him on 15 June 2016 and were then set, adjusted to reflect his circumstances. The Tribunal is satisfied that then setting a target for the claimant at the level of 35% was a reasonable adjustment to meet the circumstances of the claimant and reflected both his actual performance at the time and his Managers' knowledge of his disability and the reports of both occupational health and RAST. In fact, those targets were never actually applied for the claimant to achieve as he then became absent due to ill health on 5 July 2016.

18 Thus, addressing the alleged disadvantages and suggested adjustments in the agreed List of Issues the Tribunal is satisfied, first, that initially and for the greater part of the period in question no targets were put in place that the claimant had to achieve, which might have been adjusted or required adjustment and, secondly, when targets were then set (with the claimant's agreement) on 16 June 2016, they had been reasonably adjusted so that they did reflect the claimant's circumstances including the effect of his medication and his need for time to carry out his tasks. It follows that the claimant cannot have been disadvantaged by the setting of targets.

19 The Tribunal does not accept the allegation that the claimant was told that he was not working hard enough. In fact, it is clear that on a number of occasions the claimant was the one commenting that he knew he was slow. It again follows that the claimant cannot have been disadvantaged by being told that he was not working hard enough.

20 The claimant complains that on transfer he did not receive an induction. The Tribunal accepts that as a fact, as indeed did the respondent. The Tribunal is satisfied, however, that being an existing employee of the respondent for so long, an induction was neither necessary nor appropriate; further, that no other transferring employees received such an induction.

21 The claimant also complains about the handover between his previous and new Managers before and after the transfer in October 2015. The Tribunal has

accepted the evidence of Ms Jameson, however, that Ms Alderslade came to see her after she had held the mid-year review with the claimant on 15 October 2015. She made Ms Jameson aware of the "needs improvement" rating, and mentioned the other matters referred to above. The Tribunal has also accepted that Ms Robson had made Ms Jameson aware of the other issues relating to the claimant's disability and the adjustments that were in place in respect of his disability that are also referred to above.

22 Thus the Tribunal is not satisfied that the claimant's complaint regarding there being no handover between his Managers is well made out and specifically, regarding issue 4(iii) in the List of Issues, is satisfied that the new Managers in the shape of Ms Jameson and Ms Robson were aware of the claimant's disability and the reasonable adjustments that were in place in respect of that. Importantly, it is agreed between the parties that those adjustments continued after the transfer without interruption.

23 As found above, the claimant did benefit from the "provision of appropriate training on a 1:1 basis": first, during the initial training period at the end of 2015 when such training was provided to him by Mr O'Brien and others, albeit then within the resources available to the respondent; secondly, when Ms Bell was appointed as the claimant's mentor, which function she continued to perform until June 2016 when she became his 'buddy'.

24 The Tribunal is also satisfied that during the training period at the end of 2015, all the trainees followed a structure that had been established by the providers of the training in respect of which they were each provided with a period of training followed by a period of consolidation. Thus the Tribunal is satisfied (adverting to the List of Issues) that the claimant was provided with "a structured training plan"

25 The claimant also raises the provision of a mentor. As found above, during the initial training period, experienced staff were introduced to sit with the trainees, including the claimant, so as to provide them with help and assistance. Debbie was one such person who, during this time, sat next to the claimant and was a source of additional support to him albeit not being formally designated a mentor in the strict sense of that word. We repeat that after the initial training period, Ms Bell was appointed as the claimant's mentor to support him on a one-to-one basis from 18 January 2016 until 8 June, during which she recommend "full blown" training for the claimant, which was provided, and checked 100% of his work. Additionally, if Ms Bell was not available to the claimant, he had the support of Norma, an established, experienced employee. Further, even when Ms Bell stood down from that formal position of mentor she continued as the claimant's 'buddy'. For these reasons, the Tribunal is satisfied that the respondent did take such steps as it was reasonable for it to take with regard to the provision of, and support to the claimant initially through an experienced employee and then, more formally, by a mentor.

26 The claimant suggests that putting in place a PMR would have been a reasonable step. As found above, the Tribunal is satisfied that a PMR was in place for the claimant. Ms Robson had sent a generic PMR to each of the training employees on 24 November 2015, which contained a section relating to

Development Needs. The Tribunal has accepted Ms Robson's explanation as to why, in the circumstances of this group of employees having transferred to new work in relation to which they were undertaking training, it was sensible to issue a generic PMR. In this respect the claimant is strictly right when he says that he did not formally agree the PMR but neither did he object to the PMR that was issued to him and all his colleagues in the same situation. Furthermore, the claimant has not established how a bespoke PMR would have overcome the alleged disadvantage that he says he suffered.

27 In this connection it is also suggested that being given a needs improvement marking was a disadvantage. The Tribunal does not accept that. Although that could be a reaction amongst employees we accept that, on the contrary, the PMR should lead to a PDP through which an employee can improve so as to achieve what is expected of him or her. We acknowledge that in this case a PDP was not put in place but, first, the claimant has not suggested that that was a disadvantage and, secondly, as indicated above, the support that the PDP might have brought to him was more than being provided through the PIP and Ms Owens. More specifically, as also indicated above, the Tribunal has accepted the opinions of Ms Jameson and Ms Pizzey that that "must improve" rating was an appropriate PMR box marking to give to the claimant given that despite the respondent's significant input into his training for his new role (including one-to-one training from his mentor during 2016), he was not making any progress. We repeat that Ms Jameson's "justification" for this rating includes, "Not achieving any of the average KPIs for this group of Trainees". The next category of rating in the PMR scheme is "achieved" and even the claimant did not suggest that he met that threshold. Rather, the focus of his appeal against his marking and his evidence before the Tribunal was more on his allegation that the respondent had failed to apply the process properly rather than on the substantive issue of the actual marking. We also repeat that when the claimant was told that he was to be given a "must improve" rating he expressed surprise but that surprise related to the fact that he had not received a PMR or his development needs. He did not express surprise at the rating itself, which might be explained by the fact that at the mid-year review that had been carried out by Ms Alderslade in October 2015, he had been given a "needs improvement" rating (which was the old nomenclature for a "must improve" rating) and at the end of the previous year, 2014/15, he had also been given a "needs improvement" rating.

28 The claimant also suggests that it would have been a reasonable step for a PDP to have been put in place in respect of him. The Tribunal has accepted, however, that it is initially for an employee to take the initiative in developing a PDP to meet his or her needs and future aspirations albeit that there is an exception in that if a "must improve" rating is given to an employee a PDP should be put in place. The claimant did not take any such initiative. In any event such matters were being addressed by the PIP and the Tribunal does not accept that a separate PDP would have avoided the alleged disadvantage suffered by the claimant.

29 It is suggested that the claimant was put at a disadvantage by being placed on a PIP. To the contrary, the Tribunal has found that this process, connected with the PIP, was detailed and supportive and was to his advantage rather than to his

disadvantage as indeed is to be inferred from the claimant's recorded comments on the PIP form. Importantly, we repeat that the claimant accepted both at the time and at the hearing that the PIP process was positive and supportive and remedied what he perceived had been the previous inadequacy in his training.

30 As to the suggestion that allowing the claimant further time to complete tasks would have been a reasonable step, the Tribunal is satisfied that such an adjustment was made in the sense that the claimant was allowed all the time he needed to do his work both during the training period in 2015 and during the period when he was being mentored in 2016. The suggestion that the adjustment of the targets set for the claimant to reflect his need for more time to carry out tasks has been dealt with above: no targets were set for the claimant until, with his agreement, 16 June 2016 but they were never applied to him in practice.

31 Turning to the provision of help cards/aide memoirs, which it is suggested by the claimant might have been a reasonable step, the Tribunal has accepted above the evidence of Mr O'Brien and others that he was provided with such training aids, including Mr O'Brien producing a folder of hard-copy documents for the use of the claimant and others.

32 As to the respondent's 'clocking' procedure, the disadvantage is said to be the claimant being required "to clock out within 1 minute of finishing work". There is no evidence whatsoever to support the contention that that requirement was made of the claimant.

33 In this connection the reasonable adjustment suggested by the claimant is that he should have been permitted to adjust his flexi-time records to deduct time over the six hours spent at his workplace. The Tribunal finds that there are a number of answers to this suggestion. First, for a considerable period the claimant was in fact permitted to make such adjustments, albeit that this was a concession by his Managers who did not accept that the formal procedure required adjustment or should be adjusted and reminded the claimant on a number of occasions that he should be careful about his timekeeping. The principal reason for this adherence to the respondent's procedure in this regard was, most importantly, that the claimant was given the benefit of an adjustment to close down his work station sufficiently early to get to the keying out point in time to key out at the expiry of his six-hour working period. The Tribunal is satisfied that this adjustment comprises the second answer to this suggestion by the claimant. The Tribunal is further satisfied that this adjustment addressed this issue whereafter the clocking out process did not place the claimant at a substantial disadvantage. Thirdly, Ms Measor at the informal grievance meeting assured the claimant that she would investigate this issue with his manager and was sure that it could be easily resolved. In the event, the fact that the claimant raised a formal grievance rather than accept what had been offered to him by Ms Measor as a resolution of the informal grievance resulted in her investigation of this issue that she had proposed not being pursued. Fourthly, the claimant had the option of taking a break of 20 minutes during his six-hour working period, which would have introduced greater flexibility and enabled him to build up flexi-time to be taken as leave but he did not wish to do that.

34 In conclusion of the aspect of the claimant's claim relating to reasonable adjustments, the Tribunal is satisfied that each of the potential disadvantages and the steps mentioned in the agreed List of Issues was appropriately addressed by the respondent and that, for the most part, they were introduced on the respondent's initiative rather than being requested by the claimant albeit that all such adjustments were then made the subject of discussion between the claimant's Managers and him.

Harassment

35 We now turn to the claim of harassment. As indicated above, claimant has relied on nine instances of conduct that he maintains were unwanted. The Tribunal has already addressed the majority being all those nine instances apart from two, which are the alleged failure to respond to e-mails and withholding documents from a SAR. As to that majority the Tribunal is satisfied that most of the alleged acts or omissions did not occur at all, for example:

35.1 Failing to discuss his regular breaks with him. The Tribunal has found that the breaks were discussed

35.2 Refusing to enter into dialogue regarding the claimant's disability etc. the Tribunal has found that there was such dialogue, particularly on the part of Ms Owens.

35.3 Stating that he was working too slowly. The Tribunal has found that this was not stated to the claimant.

35.4 Ignoring concerns regarding the "must improve" mark. The Tribunal has found that the claimant's concerns were not ignored and that his appeal in this respect was appropriately dealt with.

35.6 Providing an incomplete PMR. The PMR that was issued to the claimant by Ms Robson was as complete as it could be at that time of issue (given its generic nature) and could not include the section headed "End-of-year performance review" until, obviously, the employees' performance had been reviewed at the end of the year. Once that section had been completed, the amended PMR was then issued to the claimant under cover of an e-mail from Ms Jameson.

35.7 Referring to occupational health with allegedly no information as to why the referral was being made. The Tribunal is satisfied that the claimant was informed of the reason why the referrals were made first by Ms Owens and then by Ms Cochrane. In this respect it is right, as the claimant has asserted, that neither of these individuals showed the claimant a copy of the occupational health referral but that is not a requirement of the respondent's procedure.

36 As to the conduct said in the List of Issues to be "marking C as "must improve" in his End of Year Review". Whilst from a personal perspective the claimant might not have wanted to have that rating, as already explained, the Tribunal is

satisfied that it was reasonable and appropriate that that rating should be given to him.

37 In respect of the allegation of failing to respond to two e-mails of 25 May and 6 June 2016, the Tribunal has found above that both were replied to and that, although a fuller response could have been given, the respondent's Managers followed the correct process of requiring the appeal form to be completed and submitted by the claimant and not entering into discussions, outside the appeal process, in respect of the other issues that he had raised.

38 In short, the respondent's Managers did not fail to respond to the two e-mails although it is right that they did not enter into discussion of the issues outside the appeal process, which the Tribunal is satisfied would have been inappropriate.

39 Finally in respect of the claim of harassment there is the allegation of the respondent's Managers, "withholding documents deliberately from his Subject Access Request". The key word in this allegation is "deliberately". The Tribunal is satisfied that any documents that were not included in the initial response to the claimant's SAR request were not withheld deliberately but by reason of the circumstances of Ms Robson not being experienced in such matters and not being aware of the existence of certain documents. That was then compounded by Ms Pizzey, who it had been intended would check Ms Robson's response, being unfortunately absent from work due to ill health when the deadline for delivering the documents was reached. She did her best in the circumstances by telephoning Ms Robson to confirm that everything was in order and then authorising the despatch of the documents. In any event, a second, complete bundle of documents was then sent to the claimant on 24 October. In this regard we note that the claimant's representative's remark that if the withholding of the documents was "due to incompetence" he accepted that he faced an "uphill struggle".

40 Thus, in respect of each of these instances of conduct relied upon by the claimant (being the majority referred to above and the two issues of the e-mails allegedly not being replied to and the SAR response being incomplete), the Tribunal is satisfied that the conduct complained of, if it occurred at all, was not related to the claimant's disability, did not have the purpose of violating his dignity or creating an intimidating etc environment for him and cannot be said to have had the effect of either violating his dignity or creating an intimidating etc environment for him; in the latter respect taking account of the claimant's perception, the other circumstances of the case and whether it was reasonable for the alleged conduct to have that effect.

Victimisation

41 Next there is the claim of victimisation. In this respect the Tribunal has found that the claimant did allege that a person had breached the Equality Act in his appeal that he lodged on 23 May 2016 in which he refers to "disability discrimination" and "disability and age discrimination" and to "reasonable adjustment".

42 In the agreed list of detriments, only those relating to the alleged change in practice regarding the treatment of the claimant's flexi-time records in or about early June 2016 (which the claimant's representative referred to as the best example of victimisation) and allegedly withholding documents deliberately from the claimant's SAR request were pursued to the end of the hearing. The Tribunal has found that the treatment of the claimant's flexi-time records did not actually change whether in June 2016 or at any other time. As to the detriment of withholding documents deliberately from the SAR request, we have already found above that there was no deliberate withholding of documents.

43 Fundamentally, in any event, the Tribunal is not satisfied that any of the detriments the claimant alleges occurred because he did a protected act.

44 In summary thus far, the Tribunal is unanimous in finding that none of the complaints advanced by the claimant in these proceedings is well-founded: the respondent did not fail to comply with its duty to make reasonable adjustments under section 20 of the Act and thus did not subject the claimant to a detriment contrary to section 39(2)(d) of the Act; the respondent did not harass the claimant and, therefore, was not in breach of section 40(1)(a) of the Act; the respondent did not victimise the claimant contrary to section 27 of the Act.

The Statutory Defence and Time/Limitation Issues

45 In the agreed List of Issues, reference is made to the "Statutory Defence" and to "Time/Limitation Issues". In light of our decisions in relation to the claimant's complaints as summarised above, it is not necessary for us to consider either of those issues. We do so for completeness, however, given that they are issues in the agreed List.

46 As to the statutory defence, the Tribunal is satisfied that the respondent did take such steps as were reasonably practicable to prevent any discrimination in the circumstances of this case. We repeat that that is not to suggest that the Tribunal considers that there was discrimination in this case.

47 As to the issues of time/limitation. It is agreed that the 'normal period' in this regard commenced on 18 September 2016. Potentially, matters, whether acts or omissions, before that date cannot be relied upon by the claimant. There are, however, two exceptions to that approach. First, such matters can be relied upon if they can be linked to those after that date as being a continuous act over a period, which therefore comes to an end at the end of that period. Secondly, even if that does not apply the Tribunal has a discretion to allow the claimant to rely on those acts that are potentially out of time on the basis that it is just and equitable so to do.

48 The Tribunal is not satisfied that either exception applies in this case. The complaint relied upon by the claimant as occurring within the primary time limit is the deliberate withholding of documents from the initial SAR response that was sent on 7 October 2016. The Tribunal has already found that that did not occur. It follows that the alleged acts or omissions before 18 September 2016 cannot be linked to that alleged act so as to provide a continuing act. Neither are we

satisfied that the other matters raised by the claimant constitute a continuing state of affairs linking with any other matters occurring after that key date of 18 September 2016.

49 The just and equitable exception is just that: an exception rather than the rule. The Tribunal does not exercise its discretion in this case for several reasons including, in no particular order:

49.1 The claimant has clearly been well equipped to deal with his matters of concern at the relevant time (for example he attended meetings and submitted his detailed appeal) and we are satisfied that he could have presented a complaint to the Employment Tribunal at the appropriate time.

49.2 The claimant had access to and took advice from his trade union throughout.

49.3 Any alleged lack of knowledge is not an excuse for ignorance of the law.

49.4 Similarly, the claimant's suggestion that he did not and could not present his complaint to the Tribunal as he was pursuing an internal grievance does not warrant the exercise of the just and equitable exception.

49.5 Finally and importantly, when the claimant submitted his grievance on 2 September 2016 he stated in his covering e-mail "I have completed this document because of the three month timescale, the last disability discrimination being early June" (page 211).

Conclusion

50 In all of the above circumstances, the unanimous judgment of the Tribunal is as follows:

50.1 The claimant's complaint that, contrary to section 21 of the Act, the respondent failed to comply with its duty to make reasonable adjustments under section 20 of the Act and thus subjected the claimant to a detriment contrary to section 39(2)(d) of the Act is not well-founded and is dismissed.

50.2 The claimant's complaint that the respondent harassed him as defined and explained in section 26 of the Act and therefore was in breach of section 40(1)(a) of the Act is not well-founded and is dismissed.

50.3 The claimant's complaint that the respondent victimised him as defined and explained in section 27 of the Act is not well-founded and is dismissed.

51 For completeness, as explained above the Tribunal is further satisfied that:

51.1 The respondent took all reasonable steps to prevent its employees from doing or omitting to do the alleged acts and omissions or anything of that

description and therefore, had any of the above claims been well-founded, the defence provided to employers in section 109(4) of the Act would have applied to this case.

52.2 The vast majority of the alleged acts of discrimination occurred prior to 18 September 2016 and were therefore outwith the primary time limit period for the presentation of a complaint to the Employment Tribunal. Furthermore, they do not constitute continuing acts with any acts or omissions in that period and it is not just and equitable to extend that period.

EMPLOYMENT JUDGE MORRIS

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON
2 August 2017
JUDGMENT SENT TO THE PARTIES ON

4 August 2017

AND ENTERED IN THE REGISTER

P Trewick

FOR THE TRIBUNAL

Appendix

LIST OF ISSUES

Sections 20 and 21: Reasonable adjustments

1. Did the Respondent (R) apply the following PCPs, namely:
   (i) the requirement that staff in the office work at a desk during working hours?
   (ii) the setting of performance targets in or about October 2015 to March 2016?
   (iii) the requirement to undertake work in a timely manner?
   (iv) the requirement to carry out all aspects of the role and to meet all targets?
   (v) the requirement to clock in and out in accordance with the flexitime system?
2. Did the application of the PCPs put people with a back impairment at a substantial disadvantage when compared with people who do not have the disability?
3. Was the Claimant (C) put at that disadvantage by:
   (i) The requirement for him to sit at a desk without breaks?
   (ii) the alleged failure to discuss breaks,?
   (iii) the alleged failure to adjust the averred target to reflect the effect of his medication?
   (iv) allegedly being told he was not working hard enough?
   (v) being given a needs improvement marking and placed on a performance improvement plan (PIP)?
   (vi) being required allegedly to clock out within 1 minute of finishing work?
4. Were the following reasonable steps which would have avoided the alleged disadvantage (and were any of them taken):
   (i) adjustment of the performance targets?
   (ii) provision of an induction?

(iii) handover between C's previous manager and his new manager so that his new manager was aware of his disability and the reasonable adjustments in place?

(iv) provision of appropriate training on a 1:1 basis?

(v) provision of a structured training plan?

(vi) provision of a mentor?

(vii) the putting in place of a performance management report (PMR)?

(viii) provision of a personal development plan (PDP)?

(ix) allowance of further time to complete tasks?

(x) provision of help cards/aide memoirs?

(xi) adjustment of the targets set for C to reflect his need for more time to carry out tasks?

(xii) being permitted to adjust his flexitime records to deduct time over 6 hours spent at his workplace?

5. Did C request any of the adjustments set out at 4 above?

Section 26: Harassment

6. Did R engage in unwanted conduct related to C's disability by:

(i) Allegedly failing to discuss his regular breaks with him?

(ii) Allegedly refusing to enter into a dialogue regarding the Claimant's disability, the affect it was having on his ability to carry out his role, occupational health reports and the adjustments he needed?

(iii) allegedly stating that C was working too slowly?

(iv) marking C as "must improve" in his End of Year review?

(v) allegedly ignoring C's concerns about his "must improve" mark?

(vi) allegedly failing to respond to emails dated 23 May 2016; 25 May 2016; 31 May 2016; 6 and 7 June 2016?

(vii) allegedly providing an incomplete PMR?

(viii) referring C to Occupational Health with allegedly no information as to why the referral was being made?

(ix) Allegedly withholding documents deliberately from his Subject Access Request (SAR)?

7. Did the alleged conduct have the purpose or effect of:

(i) violating C's dignity? Or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for him?

8. What was the perception of C?

9. What were the relevant circumstances of the alleged acts of harassment?

10. Was it reasonable for the alleged conduct to have the alleged effect?

Section 27: Victimisation

11. Did C allege that any person had breached the Equality Act, and if so, when?

12. Are the following detriments to which C was subjected:

(i) an alleged failure to discuss breaks and/or reasonable adjustments on or about 12 October 2015?

(ii) an alleged change in practice in the treatment of C's flexitime records in or about early June 2016?

(iii) an alleged failure to apologise at his grievance meeting on or about 12 September 2016?

(iv) Allegedly withholding documents deliberately from his Subject Access Request (SAR)?

13. Was C subject to the alleged detriments because he did a protected act?

Statutory Defence

14. Did R take such steps as were reasonably practicable to prevent discrimination, namely:

    (i) implementation, together with updates from time to time, of equality policies including a policy in respect of reasonable adjustments;

    (ii) provision of a team of specialists (RAST) who are available to support managers with advice and practical assistance in respect of reasonable adjustments; and

    (iii) requiring managers to attend training on equality and diversity, unconscious bias and disability awareness.

Time/Limitation Issues

15. The claim form was presented on 5 January 2017. C entered into early conciliation on 18 November 2016 and the early conciliation certificate was issued on 6 December 2016. Acts or omissions before 18 September 2016 are outside the 3 months time limit. In respect of those acts or omissions, the issues are:

(a) Was there conduct extending over a period so as to be treated as having been done at the end of that period? By reference to that course of conduct was the complaint in respect of those matters presented in time?

(b) Exceptionally, was any complaint otherwise out of time presented within such other period as the Tribunal considers it just and equitable to extend time?