Case Number: 1600761/2016

EMPLOYMENT TRIBUNALS

Claimant: Miss F Healer

Respondent Abertawe Bro Morgannwg University Health Board

Heard at: Cardiff **On:** 16, 17, 18 and 19 May 2017

Before: Employment Judge S Davies
Members: Mrs M Walters
Mrs L Bishop

Representation:
Claimant: In person (with father as companion)
Respondent: Mr Gareth Graham (Counsel)

RESERVED JUDGMENT

It is the unanimous decision of the Employment Tribunal that all claims are dismissed.

REASONS

Claims

1. The Respondent conceded that the Claimant has a disability by reason of her dyslexia.

2. The Claimant brought complaints of discrimination arising from disability (Section 15 Equality Act 2010), failure to make reasonable adjustments (Section 20 and 21 Equality Act) and victimisation (Section 27 Equality Act).

Issues

3. The issues in the case were clarified at the Telephone Preliminary Hearing held with Regional Employment Judge Clarke on 9 March 2017 (page 44(a)).

   Discrimination arising from disability

4. The Claimant alleges 3 detriments (which are denied):

   1) excessive clinical supervision (which the Claimant confirmed at the outset of the hearing related to Alexa Sparks' treatment of her in mid-March 2016);

   2) threat of capability process by Donna Duncan in April 2016; and

   3) Constructive discriminatory dismissal as a result of her treatment

5. As for 'something arising in consequence of disability' the Claimant relies upon her performance at work generally, and more particularly on making an incorrect prescription dosage due to a transcription error she made in March 2016. She asserts that the error arose from her disability, the effect of alleged excessive supervision and the withdrawal of reasonable adjustments;

6. With regard to justification the Respondent relied on the following legitimate aims (which were not challenged by the Claimant):
   1) patients receive a reasonable level of service and care;
   2) clinical staff hold the required level of clinical knowledge expected of a band 6 Paediatric Dietician; and
   3) clinical errors should be properly investigated and patient safety maintained.

7. If the facts alleged by the Claimant are found, the Tribunal must consider whether the Respondent acted proportionately in pursuance of the legitimate aims;

8. Whether the complaints are brought within time (3-month time limit) and if not whether there is a continuing act and/or it would be just and equitable to extend time.

   Failure to make reasonable adjustments

9. The Claimant asserts that the Respondent has failed to implement the following reasonable adjustments to ameliorate the effects of her disadvantage.

10. Provision criterion or practice ("PCP") that she was 'required to work at the same speed as non-disabled colleagues':

    1) 25% extra time to complete administration work;

    2) trial of change to clinic times – 10 to 15 minutes between appointments for reading up to prepare for the next patient and make notes from the previous patient;

    3) withdrawal of time to carry out admin between 14 and 21 March 2016 by Alexa Sparks;

    4) withdrawal of the availability of admin staff to dictate her letters for a period in March 2016.

11. PCP of 'requiring that the Claimant work in the Respondent's office/workplace':

    1) a failure to adjust to accommodate flexible working hours option – to work from home completing admin

12. PCP of 'requirement to start work at either 8.30 or 9.00am':

    1) a failure to adjust to accommodate an introduction to KRONOS to monitor time in and out of the workplace; and

    2) allowing flexibility to start and finish at different times while still working core hours

13. PCP of 'not always giving staff information about meetings and training in advance':

    1) to provide information about meetings and training sessions prior to the event.

14. Whether there was a failure to make an adjustment by providing dyslexia awareness sessions for colleagues.

15. Whether the reasonable adjustment claims are brought in time and if not whether there is a continuing act and/or it would be just and equitable to extend time.

<u>Victimisation</u>

16. Whether the Respondent subjected the Claimant to victimisation by referring her to the Health & Care Professions Council (HCPC) on or around 23 August 2016;

17. The Claimant's 'protected act' is commencing early conciliation (EC) via ACAS on 10 August 2016;

18. Whether Donna Duncan was aware of ACAS EC commencing prior to making the referral to HCPC;

Hearing

19. The parties produced one large lever arch bundle which was not initially in an agreed format. After a discussion at the outset of the hearing the parties cooperated to agree the content of the bundle. The parties were also permitted to adduce additional documentation during the course of the hearing. The parties were told at the outset that the Tribunal would not read documents unless they were specifically taken to them. References to page numbers are to those in the bundle.

20. We heard evidence from the Claimant. On behalf of the Respondent we heard from Debbie Lavelle, Clinical Lead for Nutrition and Dietetics, Alexa Sparks previously employed as Team Lead Dietician, Neath Port Talbot Hospital, Victoria Wilkins, Paediatric Dietician, Neath Port Talbot Hospital, Claire Wood, Advanced Paediatric Dietician, Princess of Wales Hospital, Bridgend, Carol Milton, Head of Nutrition and Dietetics, Donna Duncan, Professional Head of Nutrition and Dietetics – Mental Health and Learning Disabilities Delivery Unit and Elizabeth Stevens, Specialist Dietician, Princess of Wales Hospital, Bridgend and Local British Dietetic Association Union Representative.

21. The Claimant informed the Tribunal of her dyslexia in advance of the hearing and a discussion was held to see how assistance could be provided for her effective participation in the hearing as a litigant in person and a witness. The Tribunal was grateful to the Claimant and Mr Graham for cooperating to establish how the Claimant could be assisted during cross examination. It was agreed that breaks would be facilitated as requested, questions would be kept as short as possible and that Mr Graham would signpost areas of questioning prior to changing topic. The Claimant was reminded that should she not understand a question that she should say so and it would be possible to reframe it and that she should let the Tribunal know if she required questions to be repeated.

22. An outline timetable for cross examination and submissions was set in that all evidence and submissions would be complete by the end of day 3, permitting the Tribunal to use day 4 (18 May 2017) as a chambers day, at

which this Judgment was reached. The parties cooperated to ensure that the timetable was maintained, whilst breaks were facilitated as appropriate.

23. Mr Graham produced written submissions set out in simple bullet point format on day 3 (this style being preferred by the Claimant). The Tribunal adjourned the hearing to read the written submissions, allowing the Claimant time to do the same and reconvened to hear Mr Graham's short additional oral submission. The Claimant was then given the opportunity to respond with oral submissions, having been informed that she was not obliged to provide written submissions.

Background

24. The Claimant is a qualified dietician. She was recruited to work as a paediatric dietician for the Respondent following an interview in July; there was an elapse of some time prior to her start date of 2 November 2015

Notification of disability

25. Ms Lavelle was the Recruiting Manager who interviewed the Claimant; she confirmed that the Claimant disclosed her dyslexia at the conclusion of her interview. The Claimant had become aware of her dyslexia after studying for a masters in public health at Cardiff University, where she was assessed and a report dated 3 December 2012 produced, making recommendations for adjustments for the purposes of her study (page 243).

26. The Claimant received occupational health clearance in a letter dated 9 October 2015 (C4) which gave her clearance to undertake general clinical and health care work with adjustments; "*will require assessment and appropriate software for PC*". The letter from occupational health was addressed to the Claimant and copied to Donna Duncan as Recruiting Manager. We accept Ms Duncan's evidence that she was named as Recruiting Manager on the Respondent's online recruitment system, however the Recruitment Manager for the process was in fact Ms Lavelle.

27. The Claimant's references, taken up pre-employment, include one from Aneurin Bevan UHB (page 64(b)) which notes in respect of the Claimant's dyslexia and dyspraxia "*knowing this explains some of the difficulties she evidently had with record keeping and correspondence, with the logical organisation of her work and problem solving. Her employer will need to be aware of this and to make appropriate adjustments, taking advantage of resources available to support her*."

Enquiry about adjustments/change of base

28. Prior to the Claimant starting work Ms Lavelle had a telephone call with her to enquire whether any adjustments needed to be put in place prior to the Claimant starting work. Ms Lavelle also told the Claimant that her base would be at Neath Port Talbot Hospital rather than Bridgend. The Respondent's witnesses conceded that this was a change in arrangements. The Claimant was made aware at interview that she would be required to do a clinic at Neath but had been told previously that she would be based at Bridgend.

29. The Claimant was unhappy with this change in arrangements but agreed to it. The journey to Neath added a minimum of 30 minutes to her commute and impacted her child care arrangements. The Claimant's working pattern (Monday, Thursday and Friday (half day)) involved splitting her time across two bases at Bridgend and Neath Port Talbot.

30. When Ms Lavelle asked the Claimant about the implementation of adjustments the Claimant agreed that adjustments could be put in place once she had started the role (5.2.2 ET1 rider). There is a dispute on the evidence between Ms Lavelle and the Claimant about the exact content of the conversation. Ms Lavelle asserts that the Claimant told her she had equipment at home and would see how she got on first before requesting adjustments. On either account, it appears that the Claimant agreed that adjustments would be considered once she had started work.

31. The change of base for the Claimant appears to have arisen out of a need to cover complex inpatient paediatric cases, which the Claimant was not qualified to deal with. Hence Victoria Wilkins, who had the appropriate qualification, was assigned to work certain clinics at the Princess of Wales Hospital to cover this service requirement. This arrangement accommodated the service needs of the Respondent and also satisficed Ms Wilkins' desire to obtain experience of hospital based work (Ms Wilkins is a Band 6 and Band 7 (part time for each band) community based paediatric dietician).

32. Due to the changes to the Claimant's working pattern and base prior to commencing employment, Alexa Sparks was assigned as her Line Manager. Ms Sparks is not a paediatric dietician and does not have experience of managing employees with dyslexia. It appears that there may have been a gap in communication between Ms Lavelle and Ms Sparks as to the need to review reasonable adjustments. Ms Sparks had not seen the reference from Aneurin Bevan UHB or the occupational health recommendation when commencing her role as the Claimant's line manager.

33. When no workplace assessment was forthcoming after commencing work the Claimant made enquiries herself and approached Ruth Gates, Dyslexia Workplace Assessor, to obtain an assessment. Due to the Claimant's working pattern, holiday, sickness leave and being split across two sites there were some initial difficulties in identifying a suitable time to meet Ms Gates but a date was set for 11 December 2015. This date was cancelled due to difficulties obtaining the Claimant's report from occupational health and was rearranged for 7 January 2016. Ms Sparks was unsure of the correct process to follow to obtain an assessment and contacted Ms Gates by email on 21 December 2015 (page 94(a)) to enquire how Ms Gates had become involved: "*I'm just not familiar with the process and want to ensure I am doing everything I can to support Fran*".

34. Ms Sparks tasked Ms Wilkins to induct the Claimant into the paediatrics team at Neath Port Talbot. Ms Wilkins worked alone at that location and was tasked with induction despite the fact that she was an unsuccessful candidate for the role the Claimant was appointed to.

Concerns

35. Ms Wilkins indicated that she found "straight away" the Claimant asked her "very basic questions" that she did not expect from a Band 6 Paediatric Dietician. As a result of concerns raised by Ms Wilkins, Ms Wood and Ms Pengelly (Paediatric Dietician based at Princess of Wales) as well as phone calls from families of patients, the Claimant's colleagues became concerned about gaps in her clinical knowledge of paediatrics. Ms Wood notes, at paragraph 4 of her witness statement, that she was struck by one of the Claimant's patients being joined by their Health Visitor at clinic because the Health Visitor had concerns about the advice given to the child's mother by the Claimant. Ms Wood says this was highly unusual and that she had never experienced a Health Visitor attending a consultation for this reason previously.

36. Ms Sparks set out detail of the team members' concerns in an email to Carol Milton of 8 December 2015 (page 91). The email indicates that the Claimant's letters were being typed by the Administration Assistant, Helen. Ms Sparks indicated she would seek advice from HR with regard to supporting dyslexia but suggested structured clinical support from the paediatric team was required. As for cross site working Ms Sparks says "*we feel she would be better supported and managed if she were on one site only – cross site working is challenging for anyone and requires excellent time managing skills as you know and I think this is just an extra hurdle for Fran*."

37. On 11 December 2015 Ms Wood emailed Ms Milton (page 91(a)) suggesting that all pre-employment references for the Claimant were

reviewed. Ms Milton confirmed that she had seen the reference at page 64(b) and believed that this would have been in or around December 2015.

38. The Claimant had some sickness absence in December, so Ms Wood and Ms Wilkins were unable to meet with the Claimant on 18 December 2015 as they had hoped. The meeting in fact took place on 21 December 2015 and it was agreed that clinical supervision would be provided for the Claimant's Monday and Thursday clinics, to be reviewed at the end of January.

39. In an email of 21 December 2015 Ms Wood states "*I think it is essential that Fran has her meeting rescheduled with Ruth Gates and that we are able to address any recommendations that are made from this*" (page 95). After this meeting Ms Wood described reviewing the Claimant's case work cards in order to identify any concerns with patients. The meeting minutes of 21 December 2015 (page 101-103) include action points, areas where the Claimant would like to gain experience, resource development and training needs. Actions included sourcing the provision of a dictaphone for the Claimant's use and changing the start time at Princess of Wales clinic from 9.00am to 9.30am at the Claimant's request.

Workplace assessment

40. The Claimant attended an appointment with Ruth Gates for a workplace assessment on 7 January 2016; the report appears at pages 111 - 113. The Claimant indicated by email of 21 January 2016 that she was happy with Ms Gates report and had no changes to make (page 116(a)).

Meeting of 21 January

41. On 7 January 2016, the Claimant emailed Ms Sparks requesting a meeting with her and Ms Milton to discuss her concerns and difficulties with managing work and childcare demands as a lone parent. A meeting was convened for 21 January 2016, a note of which is at pages 115 - 116.

42. The Claimant anticipated that this would involve a discussion of a request for flexible working. The notes indicate that there was an initial discussion about her workplace assessment, adjustments and the Claimant's concerns, following which Ms Milton raised her own concerns with regard to the Claimant's level of paediatric clinical knowledge.

43. Initially Ms Milton discussed the recommendations in Ms Gates workplace assessment. A number of the adjustments were agreed to, or Ms Milton indicated that they were already in place. Ms Milton did not agree to all recommended adjustments; she explained that she felt the Claimant had

been given sufficient administration time - 3 admin sessions for 2 clinics; that the Respondent could not accommodate home working due to confidentiality of patient records nor could it accommodate further flexibility around working hours, save that a time off in lieu (TOIL) system was operational.

44. In the note of the meeting Ms Milton is recorded as referring to concerns about the Claimant's clinical knowledge: "*regards to her level of paediatric clinical knowledge, that unfortunately in practice does fall short of our expectations of a Band 6 dietician, from interview and application this was not apparent*." Ms Milton indicated that the then current intensive level of supervision was higher than she would expect would be required for a Band 6 dietician with a non-complex case load.

45. The Claimant became upset during the meeting; she says she was surprised by the concerns raised. She alleged that Ms Milton said she was "*not as good as interview*" (page 178) which comment is denied by Ms Milton (albeit the notes of the meeting indicate that there was reference to the interview).

46. Subsequently the Claimant enquired by way of email of 29 January 2016 (page 124) whether her clinical supervision formed part of disciplinary action with regard to capability. Ms Wood met with the Claimant and informed her face to face that no formal process was being pursued, this was also confirmed in writing by Ms Milton in an email of 4 February 2016 (page 125). Ms Milton also confirmed that at no point had she discussed disciplinary action.

47. The Claimant's period of intense clinical supervision concluded in mid February 2016. Ms Milton's evidence, at paragraph 9 of her witness statement, is that it could not have continued at that high level indefinitely because of the impact on the workloads of the three dieticians involved in supporting the Claimant. Feedback was provided and recorded, at pages 130(a) to 130(c), which refers to a review of the plan in six weeks. The reference to the Claimant working with autonomy (page 130(b)) was with regard to the Claimant identifying patients whose condition fell outside her area of experience.

Administrator absence NPT

48. Shortly following the end of intense supervision, Neath Port Talbot site operations were affected by the long-term absence of Helen, their Administration Assistant, who transcribed letters for the team. In view of Helen's absence, Ms Sparks sent an email to the team of 3 March 2016: "*letters – all to do own letters, but it may be that DA's have capacity to help if desperate – suggest asking if needed. Please don't add any typing*

to the trays as they will not be checked or actioned. If you have anything outstanding in the trays, please action yourself'. Following Ms Sparks email the Claimant was afforded some assistance with typing as is evidenced at pages 136(a) and (b), where Emma Scanlon typed letters on her behalf on 10 and 11 March 2016.

Meetings with Ms Sparks on 14 and 18 March 2016

49. Ms Sparks noticed that there was a bundle of outstanding letters in the Claimant's tray and met with the Claimant to discuss these on 14 March 2016. Ms Sparks' note following the meeting is in an email of 29 March 2016 (page 144), sent after a period of Ms Sparks' leave.

50. There is a dispute about which letters were still outstanding in the Claimant's tray. The Claimant asserted that they all related to the period of her intense clinical supervision, when Ms Wood had taken on responsibility for the issuance of correspondence on the Claimant's behalf. Ms Sparks disputed this noting that there were other letters still outstanding in the tray which dated back until January or February. Ms Wood's evidence was that there were 7 letters she had dealt with in the period of clinical supervision outstanding and she acknowledged in an email of 16 March 2016 (page 136(d)) that she had made an error in forwarding draft versions in error which mistake had been picked up by an Administration Assistant prior to them being posted. In her email of 16 March 2016, Ms Wood offered to help with the issuance of these letters, however Ms Sparks elected to deal with the matter herself informing Ms Wood that she would not be required to travel from Bridgend to Neath Port Talbot to assist with the task.

51. It is noted at page 144, that Ms Sparks indicates that ensuring correspondence is checked and sent in a timely manner is the Claimant's professional responsibility. We do not read her email as indicating that the Claimant must type and post letters herself but that it is her responsibility to ensure the task is complete. We note that Helen was ill for an extended period of time but the email indicates that the dietetic support worker had taken some letters to Bridgend for typing and so there was some support for the Claimant.

52. Ms Sparks and the Claimant had a further meeting on 18 March 2016 resulting from the Administrator asking Ms Sparks to check the letters she had been tasked with sending out. The Claimant describes Ms Sparks as standing over her shoulder while she went through the letters, requiring an explanation of their content. The Claimant also asserts that Ms Sparks spoke words to the effect that she thought that she would have concerns with regard to the Claimant's letter writing but she could see now that they were OK.

53. Ms Sparks disputes this version of events; she accepts that they sat side by side going through the letters but that she had called the meeting to understand how the backlog of correspondence had occurred and the issue with the wrong versions of the letters being sent to Admin to send out. Ms Sparks communicated that the responsibility for ensuring final versions of the letters were sent out remained with the Claimant, whilst acknowledging the error made by Ms Wood. Ms Sparks noted that the correspondence had been checked for clinical accuracy by another dietician, there was also a discussion about phone messages and urgent actions from clinic and the need to deal and document them appropriately.

54. Their discussion also covered support for the Claimant's dyslexia. The Claimant said she needed time to train and use the Dragon voice recognition software and it was agreed that the Claimant would have dedicated time on 31 March 2016 at Princess of Wales to do this. The Claimant said she preferred dictating letters; it was agreed that this method would continue at Princess of Wales but that at Neath Port Talbot the Claimant would use the Dragon Software to create letters from that point onwards. The Claimant asked that someone check her letters for correct punctuation and grammar, and it was agreed that administrative support would be put in place for this. It was noted that the Claimant had an occupational health appointment scheduled on 5 April 2016 and Ms Sparks would await the outcome of any suggestions they might have. Ms Sparks also noted that she was due to have a meeting with the Claimant and Ms Gates to discuss the workplace assessment; she had not received a response and would chase Ms Gates up.

Datex investigation

55. On 22 March 2016, a GP surgery rang the Respondent to discuss a prescription issued by the Claimant as the dosage appeared to be incorrect. Ms Wilkins dealt with the call and reissued the prescription with the correct dosage, which the Claimant had recorded on the case work card. The Claimant accepts that she made this error and that it had to be investigated.

56. An incident referral form was completed by Ms Wilkins and submitted on 31 March 2016 (page 147(a)); it was reported as a 'near miss' with 'no harm' and that the likelihood of a recurrence was 'minor although there was some possibility'. At page 147(g), the report indicates that the incident was not reportable to the Welsh Government. A hyperlink is included to view the definition of a 'serious incident' for this purpose.

57. Ms Duncan was given the task of investigating the prescription error. Ms Duncan had not had previous contact with the Claimant having been on a

period of extended sick leave from the Claimant's start date until the end of February 2016.

58. Following a short sickness absence; Ms Duncan held a return to work meeting with the Claimant on 4 April 2016 and informed her of the Datex report and investigation. Ms Duncan's handwritten notes of the meeting (pages 150(a) - (b)) indicate that she asked the Claimant to provide a witness statement with regard to the incident that same day and provided her with the patient record card to enable her to do so. The Claimant asked what the "worst case scenario" could be and Ms Duncan's notes indicate that if the case was found following the investigation, that could trigger formal policy. Ms Duncan informed the Claimant that she was being removed from patient contact until the investigation was complete and until they had advice from occupational health with regard to the impact of her dyslexia.

59. Ms Duncan explained in evidence that she followed up the meeting with an email as the Claimant had become upset; she appreciated that it was a stressful situation and the Claimant may not have fully taken in all that was said to her. Her email of the same date (pages 150(c) - (d)); reiterates the request to the Claimant to provide a witness statement that same day. The Claimant sought advice from her trade union representative and informed Ms Duncan that she needed more time to write her statement. Ms Duncan agreed to this, having suggested that the Claimant make contact with the local trade union representative, Ms Stevens, to accompany her to a meeting on Thursday 7 April 2016.

60. The Claimant attended a OH assessment on 5 April 2016.

61. The Claimant produced a statement dated 7 April 2016 (page 155 to 161). This document also forms part of the rider to the ET1 claim form. Ms Duncan's report of the datex investigation was issued on 20 April 2016 (page 170 to 173); she concluded that the incorrect prescription was due to transcription error and that the incident alone would not warrant formal action against the Claimant for misconduct or capability. Ms Duncan recommended that the Claimant's mitigation set out in her statement of 7 April 2016 required further investigation and that the workplace recommendations with regard to dyslexia should be reviewed and implemented to support the Claimant.

Meeting with local trade union representative

62. Following the meeting of 7 April 2016, the Claimant had a separate meeting with Ms Stevens. There is a conflict in evidence as to the exact location and content of this discussion but the outcome was that Ms Stevens was tasked with exploring whether the Claimant could agree an

exit from the Respondent with 3 months' pay. Ms Stevens enquiries were not fruitful; the Respondent indicated that the Claimant could leave work immediately and would not be required to work her notice.

63. Ms Stevens' witness statement contained some typographical errors; the meaning of paragraph 5 was not clear in light of amendments that she made at the hearing. The passage in question relates to whether the Claimant was receptive to her efforts to support her.

Sickness absence

64. The Claimant took a period of annual leave from 11 to 17 April 2016; having been informed by Ms Stevens that the datex investigation was closed and no formal action would be taken against her during a call on Friday 15 April 2016. The Claimant sought support from her GP and commenced a period of long term sickness absence with stress starting on 18 April 2016. The Claimant never returned to work.

65. The Claimant alleges that she indicated she wished to raise a grievance and that Ms Stevens replied that if she did so the Respondent would refer her to HCPC; this allegation is denied by Ms Stevens.

66. Ms Duncan's datex investigation report was issued prior to occupational health's letter from Dr Lever dated 15 April 2016 being received into the department on 29 April 2016 (page 175). Dr Lever's letter concludes "*from my discussions with Miss Healer it does appear that this is certainly a managerial issue both with inputting recommendations from the dyslexia assessment and also reviewing clerical administrative problems which would have had an impact on someone who has dyslexia. I would urge management to input all the recommendations as soon as possible and also complete the investigative processes. I have urged Miss Healer to contact the counselling department and I hope that with a speedy response via management and with this input her stressors shall improve and she will be able to fulfil her role*." Ms Duncan described in evidence trying to contact occupational health in order to discuss the content of the report with Dr Lever but says she did not receive a response. We note that Dr Lever reached conclusions in her letter without input as to the factual situation from management.

67. The Claimant attended a meeting with Ms Duncan on 19 May 2016 (page 181); during which the Claimant raised concerns with regard to her treatment at work providing the Respondent with a document entitled "Sickness meeting Facts – contributing to or leading to sickness episode" (page 177 to 180) (this document also forms part of the ET1 rider).

68. During the Claimant's sickness absence, Ms Duncan met with Ms Wood and Ms Gates to discuss the Claimant's requirements following the workplace assessment. A note of this meeting on 22 June 2016 is at page 186(a). It was agreed during that meeting that Ms Gates would provide a session on supporting people with dyslexia and dyspraxia to the wider team in September. Ms Gates reviewed a proposed return to work plan drawn up by Ms Duncan for the Claimant (page 195 to 196) and agreed it was suitable. The return to work plan included a recommendation that the Claimant continue to use a dictaphone and have clerical support to type letters.

69. Ms Milton responded to the Claimant's concerns raised on 19 May 2016, in a letter of 23 June 2016 (page 187 to 192). In this letter Ms Milton indicated that all reasonable adjustments that could be accommodated would be actioned; including the 10 to 15 minutes' break between appointments and the dyslexia awareness session. Ms Milton explained why working from home and KRONOS could not be actioned (page 188).

70. During her sickness absence, the Claimant had discussions with full time Trade Union representative, Steve Austin. She communicated by email of 13 July 2016 to Mr Austin that she no longer wished to continue with the return to work process and instructed him to act on her behalf to discuss termination of employment (page 199).

71. The Claimant attended a meeting with Ms Duncan and HR together with Mr Austin on 14 July 2016. Ms Duncan's letter following this meeting (pages 201 to 202) notes that an adjournment was facilitated to allow Mr Austin to review the return to work plan that had been prepared, as he had not seen it. Ms Duncan suggested that one option could be termination of employment due to capability on grounds of ill health; the Claimant confirmed after an adjournment that she wished to have more time to consider the situation. Pending her decision Ms Duncan referred the Claimant to occupational health.

72. The Claimant subsequently resigned by email of 12 August 2016 (page 212). The Claimant's resignation was accepted with a final date of employment of 9 September 2016.

ACAS Early Conciliation

73. The Claimant initiated early conciliation via ACAS on 1 August 2016 but initially named individuals as respondents. Following discussion with the ACAS Conciliator, early conciliation was commenced again on 10 August 2016 against the Respondent. Ms Milton's and Ms Duncan's evidence is that they were not made aware of the ACAS early conciliation process until 30 August 2016, after Ms Milton was informed of it by a

representative of HR, following which Ms Milton went on to inform Ms Duncan.

74. The Claimant asserted that she had suspicions that Mr Austin informed Ms Duncan of the ACAS early conciliation at some point after it was initiated but prior to Ms Duncan's referral of the Claimant to HCPC. This is strenuously denied by Ms Duncan. We note that Mr Austin is based in Birmingham at the BDA's offices.

HCPC

75. Ms Duncan made enquiries of a colleague, Mr Hughes, in or around April 2016 when the Claimant was absent due to stress, as to whether there was a need to refer a concern about her to HCPC. Mr Hughes sits on the HCPC committee and advised that it was not necessary to make a referral as the Claimant remained in employment and her practice could be managed within the frameworks of the Respondent and the dietetic team. Ms Duncan took this initial advice around the time of the datex incident, as Ms Duncan had concerns that the Claimant's health may be impacting her practice.

76. Once the Claimant had resigned Ms Duncan sought advice from Mr Hughes again; emailing him on 12 August 2016 and then meeting with him on 17 August 2016 (pages 213(a) to (b)). Mr Hughes advised Ms Duncan to make a referral to the HCPC, as the Claimant was no longer working for the Respondent within a governance framework.

77. Having contacted HCPC, Ms Duncan was sent an employers' referral form and submitted her referral on 23 August 2016 (page 227). Ms Duncan attempted to contact the Claimant to inform her that the referral would be made and explained that she did so as she felt it was the professional approach to take to forewarn the Claimant; we accept Ms Duncan's reasons and evidence in this regard. Having been unable to speak directly with the Claimant, Ms Duncan contacted Mr Austin who informed the Claimant of the referral.

78. The HCPC informed the Claimant that no further action would be taken by email of 23 February 2017 (page 241) stating "*the reason for this is that there is no credible evidence which suggests that your fitness to practice is currently impaired*". Ms Duncan was informed of this outcome on the same date (page 242(a)).

The Law

Equality Act 2010
Section 15 Discrimination arising from disability

(1) A person (A) discriminates against a disabled person (B) if—

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

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

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

Section 20 Duty to make adjustments

(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…..

(5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put 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 provide the auxiliary aid.

Section 21 Failure to comply with duty

(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 27 Victimisation

(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—

(a) bringing proceedings under this Act;

(b) giving evidence or information in connection with proceedings under this Act;

(c) doing any other thing for the purposes of or in connection with this Act;

(d) making an allegation (whether or not express) that A or another person has contravened this Act.

Conclusions

79. Before setting out our conclusions, we wish to note that we recognise the considerable personal difficulties that the Claimant faced during the short period of her employment. The Claimant was a lone parent of young pre-school twins, returning to employment in a new role. The Claimant had taken on a rental property near to the Bridgend base and had hopes of obtaining a mortgage to purchase her own property. Before starting, the role changed from the one she had anticipated, in that she was to be based at Neath Port Talbot, which involved more travel and impacted her child care arrangements.

80. These personal difficulties no doubt had a significant impact on the Claimant's ability to cope with her new role particularly in circumstances where that was split over two sites, which Ms Sparks herself indicated was a challenge for anyone.

81. As for the interview process for the Claimant's role, we infer that it did not elicit from the candidates competency based examples of their experience in the areas required for the role. Had such questions been asked of the candidates it seems likely that the gaps in the Claimant's paediatric knowledge would have been identified at recruitment stage.

82. With regard to the Claimant's dyslexia, the occupational health recommendation (C4) and the reference received from a previous

employer (page 64(b)) do not appear to have been sent to the Claimant's line manager initially; so, there was a lack of appreciation at the outset of employment as to the level of support that might be required.

83. These factors combined meant a difficult start to employment for the Claimant, for whom we have considerable sympathy.

Clinical and administrative aspects of Claimant's role

84. We accept the submission of the respondent that a distinction can be drawn between those matters that fall within the claimant's clinical knowledge as a paediatric dietician and those matters which relate to the way in which she carried out her role from an administrative perspective. The respondent acknowledged that administrative tasks were impacted by the Claimant's dyslexia but disputed that the condition impacted on her clinical knowledge.

85. The workplace assessment (page 111) outlines areas of difficulty identified by the Claimant as follows: emailing, handover reports, spelling, sentence construction, short-term memory, time management, sufficient time to plan clinics, sufficient time between patients to read notes, remembering the events of the day and working in an open plan office environment. Ms Gates reports the Claimant saying her line manager was 'supportive but may not understand fully the time management issues' that she faced. These matters raised by the claimant all fall within the administrative side of the role rather than impacting clinical knowledge.

86. In the notes of 21 December 2015 (page 101 – 103) the action points detail specific steps to be taken to support the claimant with regards to the administrative side of her role and time management. The notes then go on to deal with her clinical knowledge, outlining areas where the claimant wishes to gain experience (such a faltering growth, concentrated feed) and identifies resources for her future development including online learning tools and finally identifies training needs specific to paediatrics.

Discrimination arising from disability

87. First we set out our findings with regard to the three alleged detriments.

Excessive clinical supervision

88. The Claimant asserts that Ms Sparks' interactions with her on 14 and 18 March 2016 amounted to excessive clinical supervision. We accept Ms Sparks' evidence that her meetings with the Claimant on these dates were related to clerical matters and the outstanding bundle of letters in the Claimant's tray. Ms Sparks was not a paediatric dietician; her clinical expertise lay elsewhere and so the content of letters would not fall within her expertise.

89. Ms Sparks' recall of matters was not particularly clear but we have considered her contemporaneous email (page 144 to 145) which sets out the content of their discussion. It appears to us that Ms Sparks' actions were proportionate in ensuring that the backlog of letters was dealt with. Ms Sparks took a management decision to assist the Claimant herself, as she wished to understand how the backlog had accrued. We do not consider that doing so, and ensuring the issuance of long outstanding letters, can have been disproportionate action in all the circumstances. The Respondent was without administrative support in Neath Port Talbot and so working under unusual circumstances although some administrative support was made available to the Claimant during the period of Helen's long term sickness absence.

90. Although the focus of the Claimant's complaints is on the interactions with Ms Sparks in March 2016, it is appropriate for us to comment on the clinical supervision of the Claimant more generally. Having identified gaps in the Claimant's clinical knowledge it appears entirely appropriate to us that clinical supervision should be put in place not only to support the Claimant but also to ensure patients received an appropriate standard of care. The Claimant was frank during evidence in that she found the experience of working alongside her colleagues was of benefit to her development and knowledge of paediatrics. We do not consider that this treatment can be considered unfavourable.

91. We were referred to the Respondent's capability policy (R1) and note that this policy was not implemented. The Respondent elected to take a 'light touch' approach when dealing with these issues and did not invoke any formal written process. This appears to have been a reasonable approach to take in the circumstances, including the relatively short period for which the Claimant had worked for the Respondent and the Claimant's dyslexia whilst the Respondent sought advice as to how best to accommodate that.

92. The Claimant appeared to suggest during the course of the hearing that she should have been managed within a formal policy, however we think it is appropriate that the Respondent dealt with the issues in the way that they did prior to invoking any formal policy. This would be in line with paragraph 7 page 7 of R1, which indicates that "*where an employee is regularly failing to meet performance standards… they should be subject*

to an initial discussion with their manager. This must not be the first time that an employee is made aware of their failure to perform as this should be part of an ongoing dialogue between managers and employees."

93. In summary, we reject the assertion that the Claimant was subjected to excessive clinical (or other) supervision.

94. Although the Respondent is not required to justify its actions in light of our finding, we consider that Ms Sparks' supervision would have been justifiable in pursuance of legitimate aims that patients receive a reasonable level of service and care.

Datex investigation – threat of capability/disciplinary

95. We have considered the evidence of the Claimant and Ms Duncan together with Ms Duncan's handwritten notes of the meeting. It can be difficult for individuals in stressful situations to properly absorb verbal information; the stress of the situation may impact the way in which what is said is processed and understood.

96. We prefer the version of events of Ms Duncan as being more reliable in the particular circumstances; in doing so we rely on the contemporaneous handwritten note and follow up email (pages 150(a) to (d)). We find that the Claimant asked Ms Duncan what the 'worst case scenario' would be and in response Ms Duncan confirmed that an adverse finding after investigation could trigger a formal policy. We reject the suggestion that Ms Duncan threatened the Claimant, with disciplinary and possible loss of her job, rather she responded factually to a query raised by the Claimant.

97. Ms Duncan concedes that she told the Claimant that the investigation was a serious matter from the perspective of the Respondent. The Claimant asserted that Ms Duncan exaggerated the seriousness of the issue. To support this assertion, she relied on the datex referral (page 147(g)); in particular, where Ms Wilkins reported the matter was not reportable to the Welsh Government. The Claimant suggested that this indicated that the matter was not serious. We conclude that this part of the referral form relates to a different and separate matter; 'seriousness' for the purposes of reporting to the Welsh Government is an entirely different consideration than whether the matter was considered serious by the Respondent.

98. Finally, we take into account the fact that Ms Duncan had no prior dealings with the Claimant, having been absent on long term sickness absence and so could approach her dealings with the Claimant on an impartial basis.

99. We find there was no unfavourable treatment as Ms Duncan did not threaten the Claimant in the manner alleged.

100. In any event, we accept the Respondent's submission that the action of investigating the transcription error conceded by the Claimant, must be a proportionate means of achieving the legitimate aim that clinical errors are appropriately investigated and patient safety maintained. The Claimant herself accepted that it was appropriate for the transcription error to be investigated. The investigation was carried out swiftly and the Claimant was informed by her trade union representative 11 days after the initial meeting with Ms Duncan that she had been cleared of any further formal action.

Constructive discriminatory dismissal

101. The Claimant relies on a breach of the implied term of trust and confidence; the cumulative effect of her allegations of excessive clinical supervision, disproportionate datex investigation (with threats of formal process), failure to make reasonable adjustments as well as the way she perceived she was treated by her colleagues during her employment.

102. We have already concluded that there was no excessive supervision and that the datex investigation was appropriate and non-discriminatory and therefore there can be no breach of contract in respect of these matters.

103. For the reasons given below we do not consider there was a failure to make reasonable adjustments; so, the Claimant is unable to rely on this as a breach of contract.

104. The Claimant has not suggested that the treatment she received from colleagues otherwise was discriminatory / harassing and therefore cannot seek to rely on it in circumstances where she complains of discriminatory dismissal. We note that the Claimant asserts she was subject to discrimination by comments of Ms Duncan, Ms Sparks, Ms Milton and Ms Stevens in a document dated 19 May 2016 (page 178).

105. Dealing firstly with Ms Stevens, we accept the submission of the Respondent that it cannot be held vicariously liable for the comments of a trade union representative acting on the Claimant's behalf, as amounting to or contributing to a fundamental breach of contract by the Respondent.

106. Ms Milton made some reference to the Claimant's interview, as it is referenced in the minutes of the meeting on 21 January 2016. The comment attributed to Ms Milton by the Claimant is "*not as good as interview*" which is denied. Even if such comment had been made the

Claimant has not established how that comment is linked to her dyslexia. We accept that Ms Milton had concerns about gaps in the Claimant's clinical knowledge which we do not consider were linked to dyslexia.

107. As for Ms Sparks' comment "*I thought I needed to be concerned about your letters and that I may need to raise concerns but it is OK after checking them all*", Ms Sparks did not recall using those words. Rather she recalled seeking clarity from the Claimant as to what had happened with the backlog of letters; she had concerns about errors and drafts that was not appropriate to be sent out to GPs, consultants and parents. Ms Sparks' evidence was that she did not consider the clinical content, as she was not qualified to do so, but rather clerical errors. In all the circumstances, which include the error admitted by Ms Wood and the number of outstanding letters going back several weeks, we find that Ms Sparks took appropriate action to support the Claimant in clearing the backlog. We have already found that there was no excessive clinical supervision in this regard.

108. Finally, as for the comments attributed to Ms Duncan "*this is a busy department and we are expected to cope with this*" and "*admin is a luxury*" these comments were not put to Ms Duncan during cross examination and we therefore conclude that it is not established that they were spoken.

109. The Claimant also relied on some additional comments attributed to Ms Duncan but not referred to in the document at page 178. Ms Duncan denies saying when the Claimant became upset during the 4 April 2016 meeting "*maybe it was all too much work and children*." Ms Duncan also denies saying she "*wondered why I would stay working here if I felt the environment and people were so terrible*" in the meeting on 7 April 2016. Even if these comments were made they do not demonstrate a link to disability.

110. There was some delay in implementing reasonable adjustments however in circumstances where the Respondent was taking advice from HR, occupational health and the dyslexia specialist as well as consulting with the Claimant to implement adjustments we do not consider that such delay as there was can be a fundamental breach that goes to the heart of the employment contract.

111. By the time of the Claimant's resignation on 12 August 2016 the Respondent had indicated its willingness to facilitate the appropriate adjustments and work with the Claimant to reintroduce her into the workplace. She had been cleared of any formal process following the datex investigation, all adjustments recommended which the Respondent considered reasonable had been implemented (with the dyslexia awareness training to follow in September), a return to work plan had

been drafted and approved by Ms Gates and the period of intense clinical supervision had ended.

112. In summary, we conclude that there was no behaviour on behalf of the Respondent which either individually or cumulatively amounted to a fundamental breach of contract.

Failure to make reasonable adjustments

25% extra time to complete administration work, either at the end of the day or a small amount of time throughout the day to suit the working pattern (and allegations of withdrawal of time/admin support).

113. The PCP is that the Claimant had to complete administrative tasks at the same speed as her colleagues. The Respondent accepts that her disability placed her at a substantial disadvantage.

114. We find that the Claimant was allocated additional time when compared with other paediatric dieticians from the commencement of her employment. The Claimant's work pattern included two clinics per week with three sessions set aside for administration. The pattern was structured so that there was an administration session after each clinic on the same day (Monday and Thursday) and Friday morning was for administration and other tasks including responding to phone calls. By way of comparison the Claimant's colleague Ms Wilkins worked full time hours; she had an average of seven clinical sessions in a week with three sessions for administration. This factual scenario was not disputed and it is clear that the Claimant was afforded at least 25% extra time when compared to her non-disabled colleague.

115. The Claimant asserted that extra time was withdrawn between 14 and 21 March 2016 when Ms Sparks met with her to clear the backlog of letters. The position the Claimant adopted was that because Ms Sparks' required her to deal with the backlog she was prevented from completing administration on the clinics scheduled during that week.

116. We accept the submission of the Respondent that there was no withdrawal of the adjustment; the administration sessions continued as usual in the relevant period, however the time was used to deal with outstanding administration work that dated back several weeks. In the circumstances, we consider this was an appropriate course of action by the Respondent; there was no withdrawal of the adjustment. It seemed that the Claimant felt that this time should have been ring-fenced so that she could use it to deal with clinics during the same week only, however we do not think that the Respondent's approach was inappropriate. The Claimant's administration work needed to be completed, whether current

or historical, and the Respondent faced particular difficulties because of the long-term absence of the Administration Assistant in Neath Port Talbot.

117. The Claimant's preferred method of working was to use a Dictaphone and then for administration staff to type; Ms Sparks agreed this in evidence.

118. We note that the workplace assessment report, which was approved by the Claimant without amendment, did not suggest that typing should be done for the Claimant. It appears that the assessment anticipates the use of the Dragon voice recognition software by the Claimant for transcription of letters herself. When the Claimant indicated that she required time to work with Dragon Software so that it could 'learn' to transcribe from her voice, this time was agreed and allocated by Ms Sparks.

119. We do not consider that there was a withdrawal of an adjustment due to Helen's sickness absence. The Claimant and all of the team were told that due to Helen's absence that there was a need for administration tasks to be completed personally however support was available if needed. The Claimant was provided with some support in transcription by Emma Scanlon who would also check her letters for punctuation and grammar (page 145). We do not consider there was a withdrawal of an adjustment rather the Respondent was reacting to shortages in the administration team and took reasonable steps to avoid disadvantage to the Claimant in all the circumstances.

120. The complaint is dismissed.

A trial of change to clinic times to include 10 - 15 minutes between appointments for reading up in preparation for a new patient and to make notes for the previous patient.

121. PCP is that the Claimant had to complete her tasks at the same speed as her colleagues. The Respondent accepts her disability placed her at substantial disadvantage.

122. We note that in the workplace assessment Ms Gates recommends this as a 'trial'. When this adjustment was discussed with Ms Milton on 21 January 2016, her view at that time was that the Claimant had been assigned sufficient time for administration in the three administration sessions per week (paragraph 21(ii)). Subsequently this position was reviewed and Ms Milton's evidence is that the adjustment was implemented on 9 May 2016 at Neath Port Talbot and 12 May 2016 at

Princess of Wales Hospital (while the Claimant was on long term sickness absence).

123. The Claimant's position appeared to be that she needed additional time to be allocated in a different way, rather than in blocks at the end of her clinics, to allow her to summarise following seeing a patient and then prepare for the next one. We can understand why the Claimant asserts that she required the time to be utilised in this way and it appears the Respondent also accepted this position eventually.

124. We do however take into account that the workplace assessment suggested this as a trial. The Claimant had little time to trial working arrangements under what might be considered "normal" conditions; the period of intense clinical supervision did not complete until 15 February 2016 and then shortly afterwards the Respondent was hit by difficulties due to long term absence of the Administration Assistant in Neath Port Talbot. The Claimant then was absent from work due to sickness from April 2016 onwards. There was very little time for the Respondent to assess with the Claimant how the allocation of administration time was working and its effectiveness in alleviating disadvantage.

125. We consider that the position adopted by Ms Milton in January 2016 can be considered as reasonable in all the circumstances; initially she was satisfied that sufficient additional time was being provided in blocks but the position was reviewed, presumably after receipt of occupational health reports in April 2016, and that the adjustment requested was subsequently implemented. The Claimant was informed of this but unfortunately did not return to work.

126. In all the circumstances, we do not consider that there was a failure to make this particular adjustment. This complaint is dismissed.

Flexible working option – chance to work from home completing admin tasks.

127. The PCP relied on is the Claimant was required to work in an office. We accept that the adjustment could only relate to administrative functions given that clinical functions would have to be performed at the Respondents site.

128. The Respondent does not accept the Claimant was placed at a substantial disadvantage and asserts that the Claimant always had a quiet room to work in on both sites. Although at times the quiet room may have been occupied by other users we accept that the facility was made available to the Claimant when possible.

129. We note that the workplace assessment refers to this as an option and take into account the fact that the Claimant was given some flexibility because of the operation of the TOIL system. She was able to review some training materials off site.

130. We concur with the Respondents submission that the step was not a reasonable one to take given that patient files are expected to stay on site for confidentiality reasons which the Claimant accepted (with only very limited exceptions where permission must be sought).

131. This complaint is dismissed.

Introduction to KRONOS to monitor time in/out of the workplace and allowing the Claimant flexibility to start/finish at different times, while still working core hours

132. The PCP the Claimant relies upon is the Respondents requirement that she start work at either 8.30am or 9.00am.

133. The Respondent does not accept that the Claimant was placed at a substantial disadvantage and asserts the request of varying start times relates to the Claimant's childcare needs and travel issues. The Claimant asserts that her time management difficulties impacted her ability to be ready at a specific time and that she could underestimate how long a task could take.

134. We note again that this is referred to as an option in the workplace assessment and that the Claimant utilised the TOIL system (page 164).

135. Ms Sparks raised issues with the Claimant's start and end times in an email (page 110) of 5 January 2016 "*we need to discuss your working times again. I notice you left early on Monday and another previous Monday – if you need to go early for some reason please let me know – you're agreed working times are 9 to 5 Monday 8.30 to 4.30 Thursday – and 9 to 12.45 on Fridays. If this isn't working for you please let me know so we can discuss it and come up with a solution, I don't want you to struggle*"

136. The Respondent changed the start of the clinic time to 9.30am at Princess of Wales following the Claimant's request, meaning that clinics on both sites started at 9.30am. Clinics were booked several weeks in advance; the Respondent therefore required employees to be available at set times to accommodate the patients booked in to the clinics.

137. The 9.30am start permitted the Claimant 30 minutes prior to clinic starting in order to prepare. The Claimant sought an intermediate start

time of 8.45 and wanted to be able to leave correspondingly 'early' if she arrived at this time. It appears to us that her request related to the Claimant's childcare obligations rather than her dyslexia. This appears to be supported in the Claimant's email of 7 January 2016 where she says to Ms Sparks "*I would appreciate a meeting with yourself and Carol to see if we could resolve some of my concerns and difficulties with managing work and childcare demands as a lone parent*".

138. We also note that in the Claimant's references provided to the Respondent that both Ms Norris and Mr Chadwick (pages 64(b) and 64(d)) refer to her being "*prompt and reliable*" and "*Fran can be relied on both in terms of time keeping and commitment*" – both references related to working periods prior to the birth of the Claimant's children. It appears to us that it was the impact of childcare issues that resulted in the request for a flexible start and end time. We consider that the Respondent took such steps as was reasonable in moving the start time of the clinic at Princess of Wales and this complaint is dismissed.

Obtaining information prior to meetings

139. The Claimant relied on a PCP that the Respondent did not always provide information prior to meetings or training. The Respondent does not accept that the PCP was applied and asserts that where information could be provided in advance it was.

140. The Claimant complained in particular about the meeting of 21 January 2016 with Ms Milton; that she was not told the purpose of that meeting prior to attending it, having requested it on the basis that she wished to discuss flexible working due to childcare. Ms Milton responded to the Claimant's request for a meeting on 14 January 2016 (page 114(i)) stating "*Alexa advised me last week that you would like to meet with us both. This is timely as I had planned to arrange a meeting with you to <u>discuss your progress to date in your present role</u>.*" (our emphasis).

141. The Claimant's concern appears to be that she did not expect Ms Milton to raise concerns with regard to her performance and clinical knowledge. The Claimant felt she did not have time to adequately prepare for it. We consider that the Claimant was informed in general terms that the meeting would not solely focus on her flexible working request and that her progress would also be discussed. The background being the intense clinical supervision which had been implemented from early January 2016.

142. Difficulty seems to have arisen because the Claimant says she did not understand that clinical supervision was put in place to support her in addressing gaps in her clinical knowledge. Whilst we accept that the

Respondent's employees discussed with the Claimant gaps in her knowledge and areas for improvement on 21 December 2015 it appears that there was a lack of shared understanding of that communication. Because no formal process was initiated, the Claimant asserts that she did not interpret the intense clinical supervision as being to support gaps in her knowledge. This perception arose partly due to the Respondent's light touch approach.

143. We accept the submission of the Respondent that gaps in the Claimant's clinical knowledge were not related to her dyslexia; the way she went about her job was impacted by her condition but her knowledge was not. The Claimant herself acknowledged that there were some gaps in her knowledge and experience and she was open about areas where she wished to develop.

144. We do not consider that the Claimant was placed at a substantial disadvantage in respect of the meeting on 21 January 2016. The Respondent elected not to instigate a formal process and in those circumstances to suggest that the Claimant should be accompanied at a meeting for example could have risked breaching confidentiality for the Claimant. We consider that the information provided by Ms Milton was sufficient in circumstances where no formal process was instigated and a detailed note of the discussions of 21 December 2015 had previously been provided. The complaint is dismissed.

Dyslexia awareness sessions

145. The Respondent took steps to discuss provision of sessions which were delivered in September 2016 by Ms Gates, after the Claimant had resigned. The sessions were agreed on 22 June 2006 (page 186(a)) and the Claimant was informed the training would be implemented by Ms Milton in her letter of 23 June 2016 (page 187).

146. Facilitating awareness sessions clearly signifies best practice and will have assisted workplace relationships by giving the Claimant's colleagues an understanding of the issues that the Claimant faced. We are not convinced that in and of itself the provision of an awareness session to colleagues is an adjustment that would necessarily alleviate disadvantage for the Claimant. Adjustments usually involve practical steps which directly impact the Claimant's ability to do the role. That aside it would take some time to arrange a training session, with co-ordination of numerous diaries, and we consider that the adjustment was implemented. The complaint is dismissed.

Turquoise overlay

147. During the course of the hearing, albeit it was not pleaded in the ET1, the Claimant suggested that a turquoise overlay recommended by Ms Gates was not delivered to her. Ms Gates reported that the overlay was handed to the Claimant personally on 7 January 2016 during their meeting however the Claimant's evidence at the hearing was that Ms Gates posted it to her and it never arrived.

148. We note that the Claimant did not complain about this at the time and there was no indication that the Respondent would have declined to provide her with another overlay had she requested one whilst in employment. The Claimant acknowledged during the hearing that the overlay had been sent but simply not received. In all the circumstances, even if a complaint had been pleaded, we do not consider there was a failure to make adjustment.

Laptop

149. Finally, the Claimant complained that the laptop she was provided with to use with Dragon Software was slow and initially did not have a charger and bag. Ms Sparks located these items a few days later. The Respondent ordered a new laptop for the Claimant's use (quotation of 26 January 2016 at page 119). Ms Sparks could not recall whether the new laptop in fact arrived prior to the Claimant going on sick leave and Ms Sparks going on maternity leave.

150. We conclude that the Claimant was provided with a laptop, the initial issues with the provision of the charger were swiftly resolved. There is no suggestion that the new laptop would not have been provided if it had arrived prior to the Claimant's absence. There was no failure to make an adjustment in this regard.

Jurisdiction – time limits

151. The Respondent asserts that any claims arising prior to 11 May 2016 are brought out of time; ACAS early conciliation was commenced on 10 August 2016.

152. The Claimant asserts that any delay was in relation to her ill health and inability to deal with matters due to work related stress as well as personal circumstances in dealing with her young family and having to move house. The Claimant also asserts that all matters form part of a continuing act and that she had not received a substantive response to her complaints raised on 19 May 2016 in her return to work interview with Ms Duncan until Ms Milton replied in a letter of 23 June 2016.

153. We have no doubt that the Claimant's wellbeing was considerably impacted by events at work as well as her personal circumstances. Albeit absent through ill health, the Claimant accessed trade union advice speaking with both Ms Stevens and Mr Austin. While absent the Claimant was sufficiently able to produce a lengthy document (page 177 to 180) on 19 May 2016 which set out the factors contributing to sickness, her feelings as a result and needs in respect of sickness and a return to work. The Claimant described producing documents such as these as taking a great deal of effort and a long time in view of her dyslexia.

154. We note that Ms Milton's response was not received until after 23 June 2016; however, there was no formal grievance process underway. Even if there were, the fact that internal procedures are ongoing is not necessarily a factor that should affect consideration of jurisdiction.

155. The Claimant's evidence was that she was not given advice about the existence of time limits by her trade union representative but was informed of them when speaking to ACAS, initially 1 August 2016.

156. The Tribunal has discretion whether to extend jurisdiction on just and equitable grounds when considering complaints of discrimination. Although our conclusions on this are academic in light of our substantive findings, we consider that in circumstances where the Claimant was able to write and submit a lengthy document as at 19 May 2016, there appears no clear reason why the Claimant could not have initiated either ACAS early conciliation or a Tribunal claim. In reaching that conclusion we further note that the Claimant relied on those same documents when submitting her claim to Tribunal.

Victimisation

157. This claim is brought within time. The Claimant relies on a protected act of commencing early conciliation with ACAS on 10 August 2016. There is no dispute by the Respondent that this amounts to a protected act. The question is whether Ms Duncan referred the Claimant to HCPC on 23 August 2016 in an act of retaliation for commencing early conciliation.

158. We accept the evidence of Ms Milton and Ms Duncan that they had no knowledge that ACAS conciliation had commenced until 30 August 2016. We further accept Ms Duncan's reasons for making the referral to HCPC on the advice of Mr Hughes and HCPC themselves. We also think it relevant that Ms Duncan had already considered a referral in or around April 2016 when the datex investigation had commenced, prior to the Claimant making the protected act. The fact that Ms Duncan was already thinking of whether a referral was appropriate at this stage suggests to us

that her motivations were not related to any allegation of discrimination or potential tribunal proceedings. We accept Ms Duncan's reasons for making the referral as genuine and that she concluded it was her professional responsibility to do so. The victimisation complaint is dismissed.

Employment Judge S Davies
Dated: 23 June 2017

JUDGMENT SENT TO THE PARTIES ON

27 June 2017

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS

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