Case No: 2300274/2018

EMPLOYMENT TRIBUNALS

Claimant: Mrs L Julian

Respondent: Harvey & Thompson Limited

Heard at: **London South Employment Tribunal** **On:** **13-16 May 2019**

Before: **Employment Judge Ferguson**

Members: **Ms E Whitlam**
Ms Y Batchelor

Representation
Claimant: Mr R Board (Claimant's husband)
Respondent: Mr T Sadiq (counsel)

JUDGMENT having been sent to the parties on **18 May 2019** and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

INTRODUCTION

1. By a claim form presented on 19 January 2018 following a period of early conciliation from 12 December 2017 to 12 January 2018, the Claimant brought complaints of direct disability discrimination, discrimination arising from disability, harassment related to disability and failure to make reasonable adjustments.

2. At the time of presenting her claim form the Claimant was represented by solicitors. The issues were agreed at a preliminary hearing on 10 April 2018. By the time of the hearing before us the Claimant's solicitors were no longer acting for her and she was represented by her husband, Mr Board. The list of issues was agreed by both parties to be accurate and we were satisfied that it properly reflected the complaints brought, with one minor exception (explained below).

3. We attempted to simplify the agreed list, partly for the Claimant and Mr Board's benefit, as follows:

   3.1. It is not in dispute that the Claimant is a disabled person by reason of post-traumatic stress disorder ("PTSD") and anxiety.

   3.2. The Claimant alleges that the following were acts of direct disability discrimination and/or harassment and/or unfavourable treatment because of something arising from disability (namely her sickness absence):

      3.2.1. Failure to refer the Claimant to Occupational Health ("OH") as soon as the Respondent was aware of her disability

      3.2.2. Not allowing the Claimant to move from the host role in 2015

      3.2.3. Failing to hold sickness review meetings with the Claimant whilst she was taking a considerable amount of time off work in 2016 and to date

      3.2.4. Not referring the Claimant to OH following the Respondent receiving a report from the Claimant's GP in April 2017

      3.2.5. Failing to provide the Claimant with minutes of her case review meeting held on 24 June 2017

      3.2.6. Failing to keep in touch with the Claimant from 24 June 2017 to 15 Jan 2018 regarding her health

      3.2.7. On 20 Sept 2017, the Claimant received a letter from the Respondent confirming what she would receive from the company if she resigned, without the Claimant saying she wanted to leave the company.

   3.3. In the claim form the Claimant also complained of the failure to provide her with notes of a meeting on 22 Feb 2017 but this was not reflected in the list of issues and the Respondent had not come prepared to defend such a complaint. We will address this in our conclusions.

   3.4. As to the reasonable adjustments complaint, the Claimant alleges that she was required to work in the "host role" and that the Respondent had an "open door policy", both of which put her at a substantial disadvantage because of her disability. She argues the Respondent should have made adjustments exempting her from both.

<u>Application to amend</u>

4. At the start of the hearing the Claimant applied to amend her claim as regards the Respondent's date of knowledge. It is asserted in the claim form that the Respondent knew of the Claimant's disability from January 2017. Mr Board wished to argue that the Respondent knew, or should have known, of the Claimant's disability much earlier. He referred to a document from February 2013, a report from Health Assured, the Respondent's employee health

service, which referred to the Claimant and others having trauma reactions after a robbery. We considered the application, applying the principles in Selkent Bus Co v Moore 1996 ICR 836, and, noting that the overriding consideration was the balance of prejudice, we refused it.

5. The application was made very late, but we took account of the fact that the Claimant was now not professionally represented and may not have appreciated the significance of what was in the claim form or the need to make an application to amend.

6. The Claimant had not produced a witness statement for the hearing (as to which see below), and there was no evidence from her or anyone else saying anything that differed from the position asserted in the claim form. The 2013 document that she heavily relied upon refers to trauma reactions and the employees being "somewhat anxious". It set out options for follow-up if needed. The Claimant's impact statement says that she mentioned to Mr Curran that the host role, introduced in 2015, "added to her anxiety". The Claimant has no other basis for claiming knowledge prior to January 2017, and those references to anxiety are a very long way from saying the Respondent had knowledge of the Claimant's then undiagnosed PTSD, or that they should have known about it. If the Claimant were allowed to pursue this argument the Respondent would need to call more evidence about the knowledge of its managers before January 2017, which could well require an adjournment. It would open up an issue on which the Claimant is extremely unlikely to succeed, so the prejudice to her in refusing the amendment is minimal.

7. We therefore proceeded on the basis that the earliest the Respondent had knowledge of the Claimant's disability was January 2017. The Respondent says it was somewhat later, in July 2017.

Evidence and adjustments

8. There was a letter from the Claimant's GP in the bundle dated 15 May 2018 which confirmed a diagnosis of anxiety and depression, as well as PTSD. It said she felt low in mood and was very anxious and tearful, and she found it extremely hard to leave the house. The letter did not address the issue of the Claimant's ability to give evidence, but Mr Board told us that it might be problematic and we had some concerns based on our own observations of the Claimant. She appeared to be extremely anxious when she entered the Tribunal hearing room and was supported at all times by her daughter. It also became apparent in our initial discussions with the parties that neither she nor Mr Board had realised the Claimant would need to give evidence. There was a misunderstanding about what a "witness statement" was, and eventually we established that no written statement of the Claimant's evidence had been prepared. Mr Board confirmed that they were happy for the claim form and the Claimant's disability impact statement to be treated as her evidence. We spent the rest of the first day reading, and it was agreed that the Claimant would give evidence the following morning. We asked Mr Board to consider in the meantime what adjustments might be helpful, and indicated that we would allow regular breaks, and for the Claimant's daughter to sit with her.

9. On the second day the Claimant did not come into the Tribunal hearing room. Mr Board said she had been up all night and had taken extra medication. It had been a struggle to get her to the Tribunal. We canvassed the possibility of a postponement, if the Claimant's condition was likely to improve, or to enable Mr Board to obtain further medical evidence dealing with the Claimant's ability to participate in the hearing, but Mr Board was clear that he and the Claimant wanted to proceed. He said he did not need to call the Claimant. Mr Sadiq for the Respondent was content to proceed on that basis, but said he would have wanted to cross-examine the Claimant. We explained to Mr Board the consequence of her not giving evidence, in that we would be likely to give her written evidence less weight. It was ultimately agreed that we would hear the Respondent's witnesses first and then adjourn until the following day, and the Claimant could decide at that point whether to give evidence.

10. On day three Mr Board reported that the Claimant was feeling much better and wanted to give evidence. We discussed adjustments again. Mr Sadiq confirmed that he had reduced his cross-examination, which he originally anticipated taking one day, to an estimated 30 minutes. Mr Board asked to be given a list of the questions to show the Claimant in advance. We refused this request, but Mr Sadiq confirmed the topics on which he was intending to question the Claimant and Mr Board was satisfied with that. Mr Sadiq also confirmed that he would, in his manner of questioning, be sensitive to the Claimant's condition. Mr Board asked for Respondent's male witnesses not to be present during the Claimant's evidence and the Respondent agreed to this. We explained that the Claimant could ask for a break at any stage, and her daughter sat next to her at the witness table. Having agreed those adjustments, the Claimant gave evidence and was cross-examined with admirable sensitivity by Mr Sadiq. She was able to answer all of the questions asked without any apparent difficulty.

11. On behalf of the Respondent we heard from Andy Curran and Peter Curtis, both Area Managers, and from Emma Welford, Head of HR.

12. There were two separate bundles, one that had been agreed between the Respondent and the Claimant's former solicitors and a further bundle prepared by Mr Board. Mr Board's bundle contained a number of statements from people who did not attend the hearing. Nor were they signed. We explained to Mr Board that we would read them, but would not be able to give them as much weight as we would have if the witnesses had attended.

THE FACTS

13. The Respondent is known as H&T Pawnbrokers. It has pawnbroking shops across the UK. The Claimant began working for the Respondent in 1998, but has continuous service dating back to 1984 when she began working for what was then her father's jewellery business. At all material times the Claimant was the Deputy Manager of the Welling branch in Kent.

14. In or around 2000/1 the Claimant was the victim of a crime involving men arriving at her home (which was then above the shop) claiming to have held her daughter hostage and demanding a ransom. The kidnap was later discovered to be a hoax. the Claimant describes the effect of this incident on her health in her impact statement:

> "16. After this incident I was always on guard and watching who was walking behind me. Whenever there was a knock on the door or when the home phone rang, I felt terrified and I would instantly think back to the incident. In addition, if my daughter was ever late from school, automatically I would think that she had been kidnapped.
>
> 17. I started to experience chest pains as a result of the hoax kidnapping, where on two occasions the ambulance was called to my house as I thought I was having a heart attack. I had in fact started to suffer from panic attacks. I still suffer from panic attacks.
>
> 18. After the incident it would take me 15 minutes to walk down my road to get to the shops. At the end of the road I would be out of breath and the chest pains continued.
>
> 19. The Respondent was made aware of this incident however I was never provided with the support that I felt I had needed at the time. It was as if I was expected to go into work and carry out my duties as normal and as if nothing had happened."

15. The Claimant did not take any time off work after this incident.

16. It is asserted in the claim form that the Claimant was diagnosed with "work-related anxiety, stress and depression" in 2010. There is no medical evidence of such a diagnosis, but there is evidence of the Claimant attending her GP in relation to anxiety in 2002 and suffering from depression from at least 2009. A GP report produced on 13 April 2017 states that the Claimant "has been suffering from depression for a long time" and notes relevant GP attendances in October 2009 and August 2013, and regularly since then. The Claimant has been prescribed medication for her mental health since 2009.

17. On 1 February 2013 a robbery took place at the Welling branch. Three members of staff including the Claimant were in the branch at the time. In the course of the incident one of the assailants jumped over the counter. They took around £19,000 worth of jewellery. The Claimant and other staff retreated to safe areas during the robbery.

18. Andy Curran was the Area Manager responsible for the Welling branch at the time. He says he remembers talking to the staff afterwards and that counselling was offered. On 8 February 2013 a consultant from Health Assured, the Respondent's employee health service, attended the shop and spoke to the staff about the incident. The report of this meeting notes that the staff saw two men enter the shop, one wearing a balaclava, and they saw what they thought was a gun. The report continues as follows:

> "**Summary of reactions**
> In the CISD session the three staff who were present exhibited classic trauma reactions though all acknowledged that these had receded in the week since the raid. They were experiencing hyper-vigilance, "what-if's", disturbed sleep and anxiety… Lisa [the Claimant] is now in touch with her feelings of anger towards the raiders and determined to get back to normal.

We talked through their reactions and I normalised their feelings. It was a very frightening experience and has left them all feeling unsafe and vulnerable. All four had been involved in a previous incident six months ago and were familiar with the recovery process… All four were feeling extremely vulnerable and concerned about security going forward. Their biggest concern was the 'open door' policy and the lack of some kind of barrier in the retail area of the shop… We talked through their reactions, that they had in fact functioned and kept themselves safe. We talked over how best to care for themselves now to aid their recovery. In fact, Nigel, Lisa and Natasha all recognise that they have made steps in their recovery in the week since the raid occurred… Their major concern was that security measures in the shop would be strengthened as they feel they are a 'soft option' locally in comparison to other retail outlets etc.

Recommendations
Given that a week had passed since the incident occurred the staff involved demonstrated a normal set of reactions and recovery steps. Their hyper-vigilance has diminished, the flashbacks experienced (particularly by Nigel) have receded and, whilst they are still somewhat anxious, they recognise that they are returning to normal functioning…
I advised all four that if they are experiencing intrusive thoughts, flashbacks and undue levels of hyper-vigilance after another week or two they should seek help via the counselling that is available to them and / or visit their GP. All four of them are fully aware of the counselling service available to them and have information about how to access it.
I understand from them that there are plans to improve security in the shop and this will go a long way to helping them feel more secure in their working environment and facilitate a speedier return to normal."

19. The Claimant described her reaction to the incident as follows:

"21. This traumatic incident had a further impact on my condition and more specifically the anxiety related to my condition. As a result, I had started to suffer from acid reflux and headaches and dreaded going into work.

22. After the robberies, the Respondent had insisted on maintaining an open-door policy, which meant anyone could walk in from the public. This was constantly terrifying as it made it easier for robbers to walk in and for further robberies to take place.

23. I found it constantly difficult to work with the open-door policy as it added to my anxiety. I was always terrified with customers coming into the Respondent's premises. I felt vulnerable and unprotected and that every customer was a threat to me.

24. I had told the Area Manager, Andy Curran that I did not feel comfortable with the open-door policy because of the incidents mentioned above. However, I was made to continue working with the open-door policy. I had felt unsupported by the Respondent which made me lose my confidence in them and with senior management.

25. Furthermore, the Respondent had introduced a host role whereby I was made to approach and assist new customers on the shop floor. I had again mentioned to Mr Curran that this role added to my anxiety, however, I was still made to continue my role as a host.

26. I submit that the Respondent should have offered me an alternative role to assist me to cope with my condition.

27. The Respondent had put security screens up to protect employees from the public, however, when carrying out the host role I was placed outside of the security screen and thus placed in a vulnerable situation and I had felt unsafe.

28. I had found it immensely difficult to get out of bed on the days that I attended work as a result of the host role and when complying with the open-door policy. On the way to work I would hope that I had a car crash to avoid having to go in.

29. My condition was at its worst in 2016 as my condition had considerably deteriorated. As a result, my attendance at work was affected."

20. According to the Respondent's absence records, the Claimant took one day off work on 6 February 2013, three days off in March 2013 and there were five other intermittent absences of one day in 2013.

21. The host role described by the Claimant was introduced in 2015. There is a dispute about whether she was required to do it. Mr Curran accepted in his evidence that the Claimant told him she was not comfortable with hosting, but he says he told her she did not have to do it because it could be any member of staff. She was never forced to do it. Mr Board suggested in cross-examination that this was unrealistic as the Claimant was the deputy manager and had to lead by example. The Claimant did not take the matter any further and did not submit any complaint in writing.

22. The open door policy had been in place since before the robbery. This meant customers could enter the shop without having to buzz for entry. Mr Curran's evidence was that he has no recollection of the Claimant saying she was uncomfortable with this, but we accept that she did. It is mentioned in the Health Assured report. Her evidence about this was not challenged. She accepts, however, that she did not make any complaint in writing.

23. As to the time off work in 2016, it was asserted in the claim form that the Claimant had taken 2-3 days off every week. The Respondent produced the Claimant's absence record showing there were 20 days in total taken off sick in the year. These were mostly short intermittent absences for unknown reasons. There was one absence of 11 days, which was said to be for a respiratory infection. The Claimant did not challenge that evidence in the hearing and accepted that the level of absence claimed included annual leave. The evidence of Ms Welford, Head of HR, was that that level of absence was not unusual and would not have given rise to any particular concern. We accept that.

24. On 29 December 2016 the Claimant sent the following text messages to Andy Curran:

> “Just heard nige has to move I’m fuming Andy nige is so upset that shop will go down hill big time now. I think I will b off now with the stress of this
>
> You wanna ask them if I can have redundancy pay can’t stay there now all we hav been through”

25. The Claimant was referring to the fact that Nigel Harmer, the store manager, was moving to another store. Shortly after this Mr Curran also moved to a different area and was no longer responsible for the Welling branch. Tania Speed took over as area manager.

26. From 16 January 2017 the Claimant was signed off work, and she has not returned to work since. The first few sick notes said “anxiety” or “depression and anxiety”.

27. On 31 January the Claimant sent a text message to Tania Speed raising an issue to do with her pay and saying it was making her worse with her anxiety. The message continues: “Sorry I haven’t spoke to you yet but my doctor told me not to speak abt work or to nobody from work as this makes me worse. Thank you for your kindness & support. Please can you sort my wages out.”

28. On 7 February 2017 Ms Speed invited the Claimant to a welfare meeting, to take place at the Claimant’s home. This took place on 22 February. The Claimant’s evidence was that she asked in that meeting for medical help and financial help. There is no evidence from the Respondent as to what was discussed in the meeting, but Ms Welford wrote to the Claimant afterwards to confirm she had exhausted her company sick pay, so was only entitled to statutory sick pay. She also sent two consent forms, one for the Respondent to contact the Claimant’s GP and one for an OH referral. The Claimant signed and returned both forms.

29. The Respondent wrote to the Claimant’s GP on 28 February asking a number of questions about her health and fitness to work. The GP responded on 13 April 2017. The diagnosis given was “work-related anxiety and stress along with depression”. The GP noted the Claimant was currently taking sertraline and was waiting for therapy via Mind. He said the Claimant was unable to carry out normal day to day activities, and she was not getting out of the house much. The effects were substantial and according to the Claimant had started getting worse after Christmas 2016. He noted she had been suffering from depression for a long time and said he was unable to predict when she would be fit to resume full duties. He said that having spoken to the Claimant he did not think there were any particular changes or adjustments that would help her return to work.

30. From March 2017 onwards the sick notes said the Claimant’s condition was “work-related”. Around this time the Claimant arranged counselling sessions via Mind, which continued regularly until April or May 2018.

31. Ms Welford's evidence was that having received GP report she did not consider it necessary to refer the Claimant to OH in view of the advice from the GP, which she considered to be better than any advice they might get from a non-qualified OH practitioner. We accept that was the genuine reason for her decision. The Claimant argued that by returning the OH form she was effectively making a request for counselling or other medical help, funded by the Respondent. There's no evidence that the Respondent gave the impression to the Claimant that that was the purpose of the form. The form itself clearly states it is to enable an OH assessment.

32. Ms Welford also said that after she received the GP report, "Whether depression or PTSD it now seemed clear that Lisa was disabled and we had treated her potentially as such from January".

33. Peter Curtis became area manager for Kent in May 2017. His evidence was that he did not know the Claimant at that stage. He became aware of her by speaking to HR about employees who were on long term sick leave. He was updated on the Claimant's case, including the GP report.

34. On 2 June he wrote to the Claimant to introduce himself and to propose a case review meeting at the Claimant's home. This took place on 24 June. Mr Curtis spoke to Mr Board. During the discussion the Claimant came into the room and quickly left again saying, "I can't do this" or words to that effect.

35. On 26 June Mr Curtis emailed Ms Welford to report on the meeting. What it says about the content of the meeting is not in dispute.

> "I visited Lisa Julian (Welling Branch) on the 24th of June at 10am Last Saturday at her Home address. Lisa was unable to complete the meeting due to feeling very upset and anxious. She came into the room in her Night dress and stayed for less than 2 mins before having to leave.
>
> The points covered :- With her Partner Richard.
>
> 1. Lisa's current medical condition – As per her Medical Report. Lisa is not fit to return to work at this stage.
> 2. Her Absence to date was discussed – Lisa and her partner are clear that she has been off sick now for 6 months and that the SSP payments will cease.
> 3. Consideration for a reasonable adjustment to return to work – This was denied and Richard explained that she will never return to H&T.
> 4. Consideration of Alternative Employment – Again, Richard explained that this would not be possible short term or long term.
> 5. The way forward / Ongoing Review – Richard explained that both he and Lisa wanted a conclusion to her employment with H&T. He explained that this was an additional worry that they could well do without and that he wanted H&T to make Lisa redundant."

36. Mr Board strongly objected to comments Mr Curtis then made in the email: Mr Curtis went on to say. "My opinion is that Lisa and her Partner (Richard) are holding out for as much as they can get from us as her current employer."

37. The next contact with the Claimant was on 3 July when the payroll department wrote to inform her that her statutory sick pay was due to run out on 28 July. A leaflet on claiming benefits was enclosed.

38. On 14 July 17 the Claimant submitted a sick note that said, for the first time, "post traumatic stress disorder?"

39. There appears to have been no further contact until the Claimant wrote to the Respondent on 11 September 2017 saying that she was being referred for therapy for PTSD. She noted she had not heard anything since the meeting with Mr Curtis. She noted he had said he was looking for "amicable closure so we could all move on". She said, "Unfortunately life is not good at present and I am trying to cope with this awful disorder being a jeweller is all I have known to be told I will know longer be able to continue with this profession know more as I am suffering with severe panic attacks caused by robberies which have taken there toll on my health".

40. Ms Welford replied on 20 September in the following terms:

> "Thank you for sending your latest sick note. I am sorry to hear that you continue to feel unwell.
>
> Whilst you were previously given counselling we can arrange further treatment for you if this would be helpful, please contact HR and this can be arranged. We also have an Employee Assistance Programme available through Lifeworks who offer 24/7 telephone assistance they can be contacted on…
>
> You state that you do not feel able to return to your role at H&T if you do in fact wish to resign I can confirm that you would have 12 week's notice owing to you (£5,621) as well as accrued but untaken holiday pay (£1,733). If this is your intention you can confirm in writing or by email and we can arrange payment."

41. On 21 September the Claimant replied by email:

> "I have not stated I could not come back to work my doctors & therapist have I'm suffering from PTSD caused by robberies during my time at H&t. I am being given trauma therapy by oxleas so your employee assistants won't be any good I never received counselling from H&t!
> I feel I have been let down by H&T for 19 years of service & loyalty this is making me very anxious & upset I will be seeking compensation with a specialist company for trauma caused by robberies my solicitors will be in touch"

42. The next contact was on 24 November when an HR assistant wrote to the Claimant chasing a doctor's certificate.

43. Around this time the Claimant instructed solicitors, who commenced early conciliation on 12 December. Andy Curran's evidence was that although he had moved to another area, it was decided that he should try to make contact with the Claimant, hoping that she would engage better with someone she knew

well. Mr Curran wrote to the Claimant 15 January 2018 proposing another case review meeting at her home. The Claimant replied saying she would not be able to attend as she was not up to it, and asked for any further correspondence to go via her solicitors.

44. There is a note in the Claimant's counselling records around this date saying that the Claimant was feeling distressed as a result of the letter from Mr Curran and that she "does not want to talk to them". She said she felt "pressured to have another meeting with them".

45. The Claimant obtained a further report from her GP via her then solicitors in May 2018. This states that the Claimant has anxiety, depression and PTSD "due to an incident that happened in the past". She was unable to work or go out of the house. He notes the history of medication and states, "However, the current circumstances have become worse since the incident at work around Christmas 2016". The Claimant was not currently able to carry out the duties in her job description. It was anticipated that she would continue to need therapy and treatment for some time.

THE LAW

46. A person has a disability for the purposes of the Equality Act 2010 ("EqA") if he or she has a physical or mental impairment, which has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities (s.6 EqA). Schedule 1 EqA expands upon that definition, specifying that the effect of an impairment is long-term if it has lasted for at least 12 months, is likely to last for at least 12 months, or is likely to last for the rest of the life of the person affected.

47. Sections 13 and 39 EqA provide that an employer directly discriminates an employee if it subjects him or her to a detriment by treating the employee less favourably than others because of a protected characteristic.

48. Under s.15, an employer discriminates against a disabled person if it treats him or her unfavourably because of something arising in consequence of the disability, and the employer cannot show that the treatment is a proportionate means of achieving a legitimate aim.

49. The duty to make reasonable adjustments is set out in sections 20-21 EqA. Where an employer has a provision, criterion or practice ("PCP") that puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, it has a duty to take such steps as it is reasonable to have to take to avoid the disadvantage.

50. An employer cannot breach s.15 or s.21 if it does not know, and could not reasonably be expected to know, that the disabled person has a disability (and is likely to be placed at the disadvantage referred to - paragraph 20 of Schedule 8 EqA).

51. As to harassment, s.26 EqA provides that a person harasses another if he or she engages in unwanted conduct related to a relevant protected characteristic, and the conduct has the purpose or effect of violating the other person's dignity,

or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.

CONCLUSIONS

52. We address the date of knowledge issue first. As at January 2017 all the Respondent knew was that the Claimant was off sick with anxiety and/or depression. There was no indication that it was a long-term condition or that it was work-related. By April 2017, however, when Ms Welford received the GP report, it was clear that the condition was having substantial effects and was long-term. Ms Welford effectively conceded in her evidence that she knew at that stage the Claimant was a disabled person for the purposes of the Equality Act 2010. We consider that the Respondent had knowledge of the Claimant's disability from mid-April 2017 onwards, even though it was not described as PTSD at that stage.

53. We address each of the alleged acts of less favourable treatment/ harassment/ unfavourable treatment in turn.

54. Failure to refer to OH "as soon the Respondent was aware of the Claimant's disability". We have found that the Respondent first had knowledge of the disability after receipt of the GP report. We have also accepted Ms Welford's reason for not making an OH referral as genuine. We consider that was a reasonable approach, given the information already received from the GP. It did not constitute unfavourable treatment or a detriment. Nor does it meet the definition of harassment.

55. Not allowing the Claimant to move from the host role in 2015. We consider this is in reality a reasonable adjustment complaint. There is no evidence that the Claimant was a disabled person in 2015 and the Respondent certainly did not have knowledge at that stage, so this cannot have been a discriminatory act.

56. Failing to hold sickness review meetings with the Claimant whilst she was taking a considerable amount of time off work in 2016 and to date. As to 2016, the Respondent did not have knowledge of the Claimant's disability (if indeed she was disabled at that stage). In any event we have accepted Ms Welford's evidence that there was nothing particularly unusual about the amount of time the Claimant took as sick leave. As for the period from January 2017 to date, the Respondent held one welfare meeting, one sickness review meeting and invited the Claimant to a further review meeting in January 18. The Claimant was not well enough to engage in the June meeting and made it clear via Mr Board at that stage that she was never going to be well enough to return to work and alternative employment would not be possible in the short or long term. He said the Claimant wanted a conclusion to her employment with the Respondent. When the Respondent next attempted to meet the Claimant, in January 2018, she refused to attend. In those circumstances we consider there was no detriment or unfavourable treatment. Certainly there was no harassment. We observe that it was somewhat unfortunate that Nigel Harmer and Andy Curran, the two people in management with whom the Claimant had the closest relationship, moved to other areas shortly after she went off sick, but these things happen and the Respondent did later attempt to make contact via Mr Curran. Arguably the Respondent should have grasped the nettle after

the June 2017 meeting and decided what to do about the Claimant's employment status, but the specific complaint of failure to hold sickness review meetings is not made out.

57. Not referring the Claimant to OH following the GP report. We have already dealt with this above.

58. Failing to provide the Claimant with minutes of her case review meeting on 24 June. It is not in dispute that no minutes were taken of the meeting. Mr Board argued Mr Curtis should have brought a minute-taker. We do not consider there was any obligation to do so, although it would have been good practice for him to send the Claimant a record of what was discussed after the meeting. We do not consider there was any detriment to the Claimant or unfavourable treatment in not doing so. We note there was no request at any stage by the Claimant or Mr Board for notes to be taken or to be sent to her afterwards. It was also not harassment.

59. Failing to keep in touch with the Claimant between 24 June 2017 and 15 January 2018 regarding her health. We have largely dealt with this above, but we also note that it is not factually correct that the Respondent failed to keep in touch with the Claimant during this period about her health. On 20 September Ms Welford offered to arrange treatment for the Claimant, and the Respondent enquired about her health on at least two other occasions.

60. Sending the letter of 20 September 2019, without the Claimant saying she wanted to leave the company. Again, this allegation is not factually correct. the Claimant had said, via Mr Board at the meeting on 24 June and in her letter of 11 September that she was not going to be able to return to work. We accept that in sending the letter Ms Welford genuinely believed that the Claimant was considering resigning. This did not constitute a detriment or unfavourable treatment, and nor was it an act of harassment.

61. Failure to provide notes of the 22 February 2017 meeting. We deal with this issue for completeness, albeit we accept that it had effectively been abandoned by the Claimant, via her solicitors, in agreeing the list of issues. We note that it appears from Ms Speed's invitation to the meeting that she intended a note-taker to attend. We have not seen any minutes of the meeting. Even if they exist, we do not consider there was any detriment or unfavourable treatment, let alone harassment, in them not having been provided to the Claimant. We make the same observation about good practice, but there was no obligation to take or send minutes of such a meeting.

62. As to reasonable adjustments, no duty could arise before the Respondent had knowledge of the Claimant's disability in April 2017. By that stage the medical evidence was clear that there were no adjustments that could be made to assist her return to work. The Claimant confirmed that in her own evidence to the Tribunal. Both of the reasonable adjustment complaints must therefore fail.

63. It was apparent during the hearing that the Claimant was seeking to make a number of complaints that are not contained in the claim form or the list of issues. She complains, for example, about failures in 2013 and afterwards that she says led to her developing PTSD. That appears to be a complaint of

negligence or breach of statutory duty causing personal injury over which we have no jurisdiction.

64. She also complained about the Respondent's failure to offer or pay for counselling or other treatment. This does not form part of the claim, but we observe that the Respondent did refer the Claimant to its employee assistance programme and specifically offered her counselling. She turned this offer down, saying she was already getting counselling. She complained in the Tribunal that this offer came far too late. We do not accept there is any fair criticism of the Respondent in this regard. They only knew of the seriousness of the Claimant's condition in April 2017, they were aware the Claimant had already been referred for therapy, and she would have been aware of the employee assistance programme. We also note that the specific allegation that the Claimant's condition was caused by robberies was made for the first time in the Claimant's letter of 11 September 2017.

65. Mr Board cross-examined Ms Welford about a £500 voucher that the Claimant should have received for long service. This was not part of the claim and we say nothing about it. Mr Board also cross-examined her about the Respondent's loans department chasing the Claimant for repayments. Ms Welford's evidence was that she knew nothing about this because the loans part of the business is entirely separate from the Respondent's function as an employer, and as soon as she became aware of it she put a stop to the chasing letters and text messages. Again, it is not part of the case and we say no more about it. Finally, Mr Board started to cross-examine Ms Welford about failure to pay the Claimant's holiday pay while off sick. We stopped the questioning because this is not part of the claim. Again, we say nothing about it.

66. In conclusion, we have not upheld any of the Claimant's complaints and her claim is therefore dismissed.

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Employment Judge **Ferguson**

Date: 14 June 2019