EMPLOYMENT TRIBUNALS

Claimant: Mrs F Hassanzadeh

Respondents: City of Bradford MDC

Heard at: Manchester **On:** 19 November 2019 (In Chambers)

Before: Employment Judge Holmes
Ms F Crane
Mr T A Henry

REPRESENTATION:

Claimant: Written Representations
Respondents: Written Representations

SUPPLEMENTARY JUDGMENT MADE ON RECONSIDERATION

It is the supplementary judgment of the Tribunal that:

1. The judgment sent to the parties on 15 March 2019 is reconsidered, as set out below.

2. Having reconsidered its judgment in relation to the s.15 claims, those claims are dismissed.

REASONS

1. By a judgment sent to the parties on 15 March 2019, the Tribunal dismissed the claimant's claims of unfair dismissal, disability discrimination and protected disclosure detriments.

2. By letter of 28 March 2019 from Mr Shojaee, the claimant's husband and representative, the claimant sought reconsideration of the Tribunal's judgment. The application was referred to the Employment Judge pursuant to rule 72(1) of the 2013 rules of procedure. He refused the application under that rule, on the grounds that

there was no reasonable prospect of the original judgment being varied or revoked, for reasons which were set out in the Tribunal's letter of 3 April 2019.

3. The Employment Judge, however, accepted that the claimant had identified that the judgment did not address and determine the claimant's s.15 claims. The views of the respondent were sought, and by a document dated 1 May 2019 entitled "Respondent's Response to the Request for comments on the Claimant's application for Reconsideration" , the respondent conceded that there were s.15 claims before the Tribunal, and that these claims had not been determined in the Tribunal's judgment.

4. Accordingly, the respondent set out its response to the s.15 claims identified by the Employment Judge as having been before the Tribunal.

5. The claimant was permitted to respond further to the respondent's submissions on the s.15 claims , which Mr Shoajee did by further submissions dated 1 July 2019.

6. The parties agreed that the reconsideration could be dealt with without a hearing, and (after an attempt to do so on 19 September 2019, when one of the panel could not attend) on 19 November 2019 the Tribunal convened in Chambers to reconsider its judgment, and determine the s.15 claims. The Tribunal apologises to the parties for this further delay.

7. The Tribunal's findings and judgment on these claims are as follows.

The s.15 claims.

8. Taking the s.15 claims as enumerated in the Scott Schedule , they are:

12 – December 2011- Colin Willsher making false allegations against the claimant in a letter or letters (i.e those dated 14 December 2012 , at pages 1601 and 1602 of the bundle).

13 – January 2012 – Colin Willsher refused to discuss the occupational health report and to carry out an appropriate stress risk assessment.

14 – April 2012 – Colin Willsher refused to discuss an appropriate stress risk assessment, conduct which is alleged to constitute disability related discrimination , harassment or failure to make reasonable adjustments.

16 – June to September 2012 – Colin Willsher committed "deceptions and falsifications" of a meeting in July , and deviated from the school stress policy in carrying out an appropriate stress risk assessment.

17 – October 2012 – Colin Willsher and Les Hall committed "misrepresentations, false allegations and trickery" to avoid following the school stress policy in the completion of an appropriate stress risk assessment.

18 – January to March 2013 – Les Hall committed "misrepresentations, false allegations and deceptions" during the ACAS pre – claim conciliation process to

agree to following the school stress policy for the completion of an appropriate stress risk assessment, or a "premature retirement".

9. There are, it is now clear, no direct discrimination claims before the Tribunal. None of the claims nos. 12 to 18 above include claims of direct discrimination, although previous claims did. As they now have been dismissed , none of the live claims before the Tribunal in the previous hearing included direct discrimination claims, and to the extent that paragraphs 77 to 81 of the judgment deal with direct discrimination claims, they can be ignored , as no such claims remained before the Tribunal.

10. This supplementary judgment should be read in conjunction with the judgment sent to the parties on 15 March 2019. No findings of fact are altered, and to the extent that any further additional facts are found, which are not expressly or implicitly referred to in the original judgment, they will be apparent from this supplementary judgment.

The submissions on the s.15 claims.

11. The respondent made further submissions in writing by a Response document dated 1 May 2019 and the claimant further responded by a Submission document dated 1 July 2019.

12. The respondent's position is that s.15 is not engaged in any of these claims. The unfavourable treatment complained of differs in each claim, and must be considered first, as if there is no such treatment, there is no claim. As pointed out in the submissions, it is unfavourable treatment , not less favourable treatment that is proscribed , so there is no requirement for a comparator. If such treatment is established, the Tribunal must then consider whether the treatment was because of something which arose in consequence of the claimant's disability.

13. The respondent's submissions are that the first limb of s.15 is not engaged in any of the six claims to be determined. There is either no unfavourable treatment, as properly analysed, or, if there is any such treatment was not for any reason which falls within s.15.

14. For the claimant, Mr Shojaee makes wide ranging submissions. Firstly, he insists that the Tribunal corrects , and does not rely upon, any errors or perversities in the original judgment in determining these s. 15 claims. He seeks determination of his other grounds for reconsideration before the Tribunal determines these claims. As is clear from the Tribunals rejection of his application for reconsideration on these other grounds, the Tribunal will not acceded to that request, and the determination of these claims will be made on the basis of the facts and other findings made in the original judgment.

15. Further, Mr Shojaee is critical of Ms Mellor, and accuses her to seeking some advantage by being permitted to make submissions on these claims, when she had not done so in her previous submissions, in breach he contends of her duties as counsel. As has also been made clear, the Tribunal does not accept that. Ms Mellor, as did the Tribunal, made the erro of failing to appreciate or remember that the

claimant had also made s.15 claims, and had mistaken them for direct discrimination claims. That is all. She, or the respondent, gains no advantage, and both parties are now in the same position of being able to address those claims in this reconsideration.

16. Turning to the actual merits, Mr Shojaee agrees with the authorities cited by Ms Mellor of ***Sheikholesmi v University of Edinburgh UKEAT/001417*** and ***City of York Council v Grosset [2018] EWCA Civ 1105*** . He picks up the reference in ***Grosset*** to the relevance of the Employment Statutory Code of Practice , and the Explanatory Note to s.15 of the Equality Act 2010. He submits that in each instance the Tribunal must have regard to the Code of Practice, and , in particular paras. 5.20. 5.21 and 5.22 . He makes reference to the attachments to the claim form, and the "refusal" as he puts it, of the respondent to acknowledge the claimant's disability. In para. 23 he says that the refusal of the respondents to acknowledge the claimant's disability was the only reason for the impasse in the completion of the risk assessment. He refutes any suggestion that his own conduct had any bearing on that.

17. In essence, in respect of each claim, he submits that Colin Willsher must have known that the claimant was a disabled person from 16 November 2011. He then was under a duty to make reasonable adjustments, and as, in breach of the Code, he did not, s.15 of the Act is engaged. That argument is, essentially, repeated in relation to each of the six claims. He goes on to contend that the respondents were going to great lengths to "conceal" the claimant's disability. His submissions also, as did the claimant's claims originally, go on to allege that her trade union was party to these acts of concealment and deception.

18. In relation to claim no. 18 specifically, Mr Shojaee , in para. 38 , submits that once the respondent was aware by January 2013 that the claimant was a person with a disability, it should have made an attempt to take some steps towards making a reasonable adjustment, but Colin Willsher, Les hall and occupational health only offered a "deaf ear and a blind eye".

The Law.

20. Section 15 of the Equality Act 2010 provides:

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.

21. The test of unfavourable treatment is an objective one – it is that which the putative discriminator does or says or omits to say or do which places the disabled person at a disadvantage (see ***T – System Ltd v Lewis UKEAT/0042/15***) . As Bean L J observed in the judgment of the Court of Appeal in ***Williams v Trustees of Swansea Univeristy Pension and Assurance Scheme [2017] IRLR 882***, the case of ***Shamoon v Chief Constable of the Royal Ulster Constabulary*** **[2003] IRLR 285** is not authority for saying that a disabled person has been subjected to unfavourable treatment within the meaning of s.15 simply because he thinks he should have been treated better.

22. As is clear from the judgment of Simler P in ***Pnaiser v NHS England [2o16] IRLR 170*** a Tribunal must address these issues in determining s.15 claims:

'(a) 'A tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises.

(b) The tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a s.15 case. The "something" that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.

(c) Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A's motive in acting as he or she did is simply irrelevant: see ***Nagarajan v London Regional Transport [1999] IRLR 572.*** *A discriminatory motive is emphatically not (and never has been) a core consideration before any prima facie case of discrimination arises, contrary to Miss Jeram's [counsel before the EAT] submission (for example at paragraph 17 of her skeleton).*

(d) The tribunal must determine whether the reason/cause (or, if more than one), a reason or cause, is 'something arising in consequence of B's disability'. That expression 'arising in consequence of' could describe a range of causal links. Having regard to the legislative history of s.15 of the Act (described comprehensively by Elisabeth Laing J in ***Hall****), the statutory purpose which appears from the wording of s.15, namely to provide protection in cases where the consequence or effects of a disability lead to unfavourable treatment, and the availability of a justification defence, the causal link between the something that causes unfavourable treatment and the disability may include more than one link. In other words, more than one relevant consequence of the disability may require consideration, and it will be a question of fact assessed robustly in each case whether something can properly be said to arise in consequence of disability.*

*(e) For example, in **Land Registry v Houghton UKEAT/0149/14, [2015] All ER (D) 284 (Feb)** a bonus payment was refused by A because B had a warning. The warning was given for absence by a different manager. The absence arose from disability. The tribunal and HHJ Clark in the EAT had no difficulty in concluding that the statutory test was met. However, the more links in the chain there are between the disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact.*

(f) This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.

*(g) Miss Jeram argued that "a subjective approach infects the whole of section 15" by virtue of the requirement of knowledge in s.15(2) so that there must be, as she put it, "discriminatory motivation" and the alleged discriminator must know that the "something" that causes the treatment arises in consequence of disability. She relied on paragraphs 26–34 of **Weerasinghe** as supporting this approach, but in my judgment those paragraphs read properly do not support her submission, and indeed paragraph 34 highlights the difference between the two stages – the "because of" stage involving A's explanation for the treatment (and conscious or unconscious reasons for it) and the "something arising in consequence" stage involving consideration of whether (as a matter of fact rather than belief) the "something" was a consequence of the disability.*

(h) Moreover, the statutory language of s.15(2) makes clear (as Miss Jeram accepts) that the knowledge required is of the disability only, and does not extend to a requirement of knowledge that the "something" leading to the unfavourable treatment is a consequence of the disability. Had this been required the statute would have said so. Moreover, the effect of s.15 would be substantially restricted on Miss Jeram's construction, and there would be little or no difference between a direct disability discrimination claim under s.13 and a discrimination arising from disability claim under s.15.

*(i) As Langstaff P held in **Weerasinghe**, it does not matter precisely in which order these questions are addressed. Depending on the facts, a tribunal might ask why A treated the claimant in the unfavourable way alleged in order to answer the question whether it was because of "something arising in consequence of the claimant's disability". Alternatively, it might ask whether the disability has a particular consequence for a claimant that leads to "something" that caused the unfavourable treatment."*

Discussion and Findings.

23. We apply these principles, firstly, in relation to claim no 12, which relates to the letter that Colin Willsher sent on 14 December 2011 (page 1602 of the bundle). We refer to our findings of fact at paras. 24.31 to 24.42 . The Tribunal does not consider that this is unfavourable treatment. In the letter Colin Willsher asks the claimant , following receipt of her occupational health report in which reference is made to her having been subjected to harassment and discrimination, to provide him with details of the incidents that have led her to this belief. He asked for her to do this by 13 January 2012, a month away, and after the school Christmas holiday. This is

claimed on behalf of the claimant to be Colin Willsher "making false allegations against her". This is because the claimant considered that she had previously provided these details to Colin Willsher, and this letter suggested that she had not. That may be how the claimant regarded it, but that was not a reasonable way to do so. It is of note that the claimant did not respond to that letter saying that she had already provided these details, or in any way recording her affront at receiving it. Rather, her response on 2 January 2012 merely queried the venue for the meeting on 11 January 2011. Indeed it was not until the document that the claimant prepared for Sandra Evans (with whom she had an occupational health appointment on 14 February 2012) , pages 775 to 776 of the bundle, after the meeting on 11 January 2012, that the claimant made the suggestion that Colin Willsher's letter requesting these details had implied a serious allegation against her. This claim fails at this stage.

24. The next claim to be considered is no. 13 , that in January 2012 (presumably on 11 January 2012, when a meeting was held) Colin Willsher "refused" to discuss the occupational health report and to carry out an appropriate stress risk assessment, conduct which is alleged to constitute disability related discrimination , harassment or failure to make reasonable adjustments.

25. We refer to our findings of fact at paras. 24.40 to 24.42 of the judgment. We do not find that Colin Willsher "refused" to discuss the occupational health report as alleged by the claimant. That was the very purpose of the meeting, and the fact that he was seeking further details of the matters that the claimant had mentioned to the occupational health practitioner demonstrates that the occupational health report was clearly being discussed. Factually this does not amount, we find to unfavourable treatment, and, in any event, even if it were its connection with the claimant's disability, or anything arising because of it, is tenuous. Her disability - related absence may have been the reason for the occupational health assessment taking place at all, but Colin Willsher's alleged refusal or failure to discuss has nothing to do, we are satisfied with the reason why the report was required in the first place. This claim fails.

26. We turn now to claim no. 14, which is that in April 2012 Colin Willsher "refused to discuss" an appropriate stress risk assessment, conduct which is alleged to constitute disability related discrimination.

27. We refer to our findings of fact at paras. 24.59 to 24.64 of the judgment. It is presumably the claimant's case that it was at the meeting on 12 April 2012 that Colin Willsher so "refused" to discuss an appropriate risk assessment.

28. Our findings are that he did not so refuse, because he was never asked to do so. Carrying out a risk assessment had not been mentioned at that stage, so Colin Willsher cannot have refused to carry one out. He may have <u>failed</u> to carry one out, which is a different thing. We consider that this is an instance of the claimant framing a failure to make reasonable adjustments claim as a s.15 claim.. We have rejected this claim as a reasonable adjustments claim for the reasons set out in paras. 88 to 95 of our judgment.

29. In any event, for this claim to succeed we would have to be satisfied that this was unfavourable treatment, applying the subjective and objective elements of the test as discussed above. There is no evidence that the claimant herself felt at that stage that the failure to have a risk assessment was unfavourable to her, still less that it could objectively be viewed as such. Rather, the evidence was (and we so found at paras. 24.611 to 24.66 of our judgment) that the meeting of 12 April 2012 was positive one, with the outcome that the claimant started a phased return to work on 16 April 2012. There was no unfavourable treatment, and again, even if we were wrong on that, we cannot see any adequate link between the treatment and anything arising in consequence of the claimant's disability (again, her disability related absence is merely the background, and the occasion for these issues arising) to bring it within s.15. This claim too fails.

30. The next claim to be considered is no. 16 . This is put as being that between June and September 2012 Colin Willsher committed "deceptions and falsifications" of a meeting in July , and deviated from the school stress policy in carrying out an appropriate stress risk assessment, conduct which is alleged to constitute disability related discrimination, as well as other types of discrimination.

31. The facts that we have found in relation to this rather broad claim are at paras.24.76 to 24.138 (or thereabouts, it is unclear precisely what period the claimant is referring to). In terms of the first allegation, we do not find that Colin Willsher committed any deceptions or falsifications at all. The claimant and Mr Shojaee may have that perception, but we do not so find. The need for a stress risk assessment had been identified by initially the claimant (in that she and her husband made reference to the school's Stress Policy) , and at the meeting on 24 July 2012 it was agreed that such a stress risk assessment should be undertaken.

32. Colin Willsher accepted that he was unfamiliar with the School Stress Policy, and it was not until it was brought to his attention that he was aware of its specific provisions. That may not be very satisfactory, but it was not, in itself "unfavourable treatment". What is complained of in this claim, in part, and in the previous ones discussed above, is the failure to carry out a stress risk assessment, which the Tribunal has ruled did not at the time amount to unfavourable treatment.

33. Turning to this specific claim, at this period, the position had changed somewhat, in that by the time of the meeting of 24 July 2012 the need for a stress risk assessment had been recognised, and efforts were then made to carry one out. Precisely what "deviations" from the policy the claimant is referring to after this point is unclear, but the essential complaint appears to be the delay that then ensued in the stress risk assessment being completed.

34. That delay , the Tribunal would accept , would be capable of being considered unfavourable treatment, but, on the Tribunal's findings of fact Colin Willsher was not responsible for it, and did nothing the Tribunal finds to delay or impede the completion of the stress risk assessment , certainly during this period, once the need for it had been identified. Again, however, even if there was any such unfavourable treatment, the Tribunal would have to question the degree to which that treatment could be said to be "because of anything arising in consequence of" the claimant's disability. Again, the event occasioning the need for the stress risk assessment was the claimant's disability related absence, but the Tribunal does not see a sufficiently

proximate link between what gave rise to the need for the assessment and the allegedly unfavourable treatment in the day or obstruction in completing it. Again, this is another example of the claimant re-casting what is really a reasonable adjustments claim.

35. The next claim to be considered is no. 17, that in October 2012 Colin Willsher and Les Hall committed "misrepresentations, false allegations and trickery" to avoid following the school stress policy in the completion of an appropriate stress risk assessment, conduct which is alleged to constitute disability related discrimination , as well as other types of discrimination.

36. The Tribunal refers to paras. 24.148 to 24.170 of its judgment for its findings of fact in relation to this period. This claim is doubtless based largely upon the contentions made in Mr Shojaee's email of 2 October 2012 (pages 792 to 796 of the bundle) in which he makes similar allegations about the conduct of Colin Willsher and Les Hall. He sought, it will be noted (para. 24.151 of the judgment) to set out a number of conditions for the start of the risk assessment, including a requirement that the school expressly accepted that the claimant's stress was work – related, and to accept responsibility for delay in implementing the school stress policy.

37. It is again unclear what precisely the claimant is alleging, particularly in relation to Les Hall, who had no specific involvement at this time, but to the extent that the complaint is essentially of unfavourable treatment in the failure to progress the stress risk assessment at this time, the Tribunal agrees this could be considered unfavourable treatment, and will accept that it was, or some of it was, so considered by the claimant. That said, the claimant met with Colin Willsher and Susan Gee on 24 October 2012, and the following day in her email at page 2055 of the bundle, thanked him for the meeting and expressed satisfaction that they had agreed the first stress factor. That email is hardly evidence of her subjective view that this meeting had been unfavourable treatment, and having considered the evidence about it, the Tribunal does not consider that the meeting itself could reasonably be so regarded.

38. Leaving aside that meeting, however, and assuming in the claimant's favour that there was any unfavourable treatment during this period, the question then is what was the reason for that treatment? In particular, was it the claimant's disability related absence , or the need for the risk assessment ? The answer is clearly in the negative. The reason for the lack of progress in the stress risk assessment at that stage is to be found in the events of October 2012 as found by the Tribunal in its judgment, i.e, the imposition by, or on behalf of , the claimant of conditions that were to be met before she would co-operate with the stress risk assessment, the withdrawal of union support from the claimant due to these "unreasonable demands", and the making of allegations against Susan Gee, which led to her withdrawing from the process. Again this is another instance of the claimant seeking to re-frame what is also a (dismissed) reasonable adjustments claim. This claim fails.

39. Finally, the remaining s.15 claim is no. 18 , that between January and March 2013 Les Hall committed "misrepresentations, false allegations and deceptions" during the ACAS pre – claim conciliation process to agree to following the school stress policy for the completion of an appropriate stress risk assessment, or a "premature retirement, conduct which is alleged to constitute disability related discrimination, again, as well as other forms of disability discrimination.

40. The first issue, of course, is whether this was unfavourable treatment. Before that, however, the Tribunal has to find what Les Hall did. The facts it has found are at paras. 24.209 to 24.303 (in so far as this appears to relate to the period in question). Quite what all the "misrepresentations, false allegations and deceptions " perpetrated by Les Hall are meant to be remains unclear, but we know that , for example, he is alleged to have falsely told the ACAS conciliator, Janet Hartley, that the risk assessment had been "completed", when it had not been, and was suggesting that the claimant had not signed it. The claimant has taken this as an implication that it was her who was delaying the process by not signing what was by then a completed document.

41. The Tribunal has examined the evidence about this. The claimant appears to be relying upon something Janet Hartley said to her, but the Tribunal did not hear from her or Janet Hartley. In his email to Janet Hartley of 11 January 2013 (page 2185 of the bundle) Les Hall said:

"The attached , is what I believe is the last completed Stress Risk Assessment…"

In her email to Les Hall of 13 January 2013 (page 2192 of the bundle) the claimant said :

"The purpose of your e-mail and the attachments are clear to me as Janet informed me that you are of the opinion that the Risk Assessment is complete but I have not signed it"

In her subsequent email to Janet Hartley of 14 January 2013 (page 2194 of the bundle) the claimant explained what was still to be completed in the assessment and said:

"Therefore his suggestion that it is complete is far from the truth and his suggestion that I have not signed it is only adding insult to injury."

That email was not copied to Les Hall. In cross – examination this issue was explored with Les Hall. He did not consider it likely that he told Janet Hartley that the claimant had completed the risk assessment, but had simply not signed it, because he knew that was not the case. He ever actually refuted this suggestion at the time, because he did not realise that he needed to, he, ACAs and the claimant then moved on to try to complete the rest of the assessment.

42. The Tribunal accepted that evidence. There may well have been some misunderstanding by Janet Hartley, especially given the use of the word "completed" in Les Hall's email to her, and she may well have thought that was what he meant and told the claimant that. The Tribunal, however, was quite satisfied that he did not intend to suggest to Janet Hartley that all that was required was the claimant's signature, when that obviously was not the case. On that basis, in this particular instance, there was no unfavourable treatment.

43. More generally, during this period of January to March 2013 , at which point the ACAS involvement effectively ceased, the Tribunal finds nothing in the conduct of Les Hall which can objectively be viewed as unfavourable treatment. As indicated above, treatment is not to be considered unfavourable simply because the recipient perceives it that way, it has to be capable of being objectively so viewed. Not getting

what you want, which is what the Tribunal considers is the claimant's real complaint in this period, in terms of what she was seeking to achieve through the ACAS process, is not the same as being unfavourably treated. These claims fail on that basis, but in the alternative, even if the treatment could be found to have been unfavourable, the need then arises to consider the chain of causation which is alleged to link the treatment with the "something" arising as a consequence of the claimant's disability. As previously, but even more so in this claim, the connection between this alleged treatment and the claimant's disability becomes more tenuous. The involvement of ACAS at all did not arise because of the claimant's disability, or her sickness absence. It arose because her husband considered, initially, it may be beneficial in terms of seeking to agree the risk assessment, but he and the claimant clearly, as had been the case from an early stage, was also interested in exploring other means of resolution of her employment issues generally, by means of a settlement agreement. That was clearly one of the factors in deciding to involve ACAS at all. That is no criticism, but it again highlights the decreasing connection with the disability as such, or anything arising from it. Again, the disability related absence and related stress risk assessment are the context and background to the alleged treatment, but are far from being the, or a, cause of it.

44. Issue must be taken with Mr Shojaee's submission at para. 38(3) of his submissions. There was no "deaf ear" or "blind eye", the facts demonstrate. There was an attempt, a prolonged attempt to complete the risk assessment, and to get the claimant back into work. That reached an impasse. Other than to capitulate to the claimant's demands in the ACAS assisted negotiations of the risk assessment, and further options, the claimant has failed to present any case as to what the respondent should then have done, nor, appreciating that this burden does not rest upon the claimant as such, can the Tribunal see what else it could and should have done.

45. Another recurrent feature of the submissions is the assertion that the respondnet continually aspect

On the facts, in any event, these claims too must fail, there was no unfavourable treatment falling within s.15.

44. The Tribunal has tried to follow what Mr Shojaee has meant in his submissions, but has not found them helpful. He has repeatedly asserted this:

"To identify the "something", "the unfavourable treatment" and the "disability related" issues, I rely on paragraphs 5.20 and 5.22 of the Employment Code of Practice that I have expressed in paragraph 19(1) above and the Explanatory Note for Section 15 of EqA 2020 expressed in the paragraph 18 above."

The Tribunal has considered the judgment in ***Grosset***, from which Mr Shojaee has drawn these principles. The explanatory note sets the context for s.15 , and how it differs from direct discrimination. In terms of the Code of Practice, the relevant provisions are:

Relevance of reasonable adjustments

5.20 Employers can often prevent unfavourable treatment which would amount to discrimination arising from disability by taking prompt action to identify and implement reasonable adjustments (see Chapter 6).

5.21 If an employer has failed to make a reasonable adjustment which would have prevented or minimised the unfavourable treatment, it will be very difficult for them to show that the treatment was objectively justified. …'

It is thus apparent that the main relevance of reasonable adjustments will not be to identifying the "something" , but to whether the treatment can be justified. Mr Shojaee's submissions, unfortunately do not actually, in any of the six claims, identify the "something" relied upon. The Tribunal, however, has attempted to do so.

45. The Tribunal would also take this opportunity to address a recurrent theme in the claimant's submissions, that of the respondent's alleged "refusal" to accept that the claimant had a disability. The Tribunal can see no evidence of any such refusal. There may not have been a concession of disability until April 2017, but that is not the same as a "refusal" to accept that the claimant had a disability. An employer can make reasonable adjustments regardless of whether it appreciates that an employee has a disability. Whilst absence of knowledge of disability, or of the alleged disadvantage , is a defence, the converse, that an employer must have the requisite knowledge in order to make reasonable adjustments, is not the case. The respondent never disputed the claimant's condition, and , absent any defence of knowledge, recognition of the condition as a disability is not necessarily, of itself, a reasonable adjustment. Indeed, it is notable that until early 2013 the claimant was not seeking acknowledgment that she had a disability, but that her stress was work – related, a very different issue.

46. For these reasons, therefore, these claims too must fail. If, of course, these claims did satisfy the first limb of s.15 , they would succeed as, as the respondent has declined to rely upon any defence of justification.

Dated 22 November 2019

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON
6 December 2019

FOR THE TRIBUNAL OFFICE

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