



EMPLOYMENT TRIBUNALS

Claimant

Respondents

L

v

Q

Heard at: London Central

On: 23 – 26, 30 April 2018;
1, 3 May 2018

In chambers: 4. 8, 9 May 2018

Before: Employment Judge Lewis
Ms S Boyce
Ms J Griffiths

Representation

For the Claimant: Ms A Palmer, Counsel

For the Respondents: Ms A Mayhew, Counsel

JUDGMENT

The unanimous decision of the employment tribunal is that:

Claims upheld

1. Placing the claimant at risk of redundancy was discrimination arising from disability contrary to s15 EqA 2010.
2. The respondents failed to make the following reasonable adjustments:
 - Giving the claimant a reduced workload in the period up to November 2016.
 - Not giving the claimant too many tasks to deal with at once (with the exception of last minute tasks)
 - Moving the claimants desk (up to 22 May 2017)
 - Giving the claimant a weekly plan of tasks
 - Providing the claimant with a buddy from May – November 2016.
 - Breaking the claimant's work into chunks
 - Setting clear specific targets for the claimant

3. The above claims were all presented in time.

Claims not upheld

4. Delaying the claimant's start date was not direct discrimination, or discrimination arising from disability.
5. Pre-employment health screening was not indirect discrimination.
6. The claims that placing the claimant at risk of redundancy were direct discrimination, harassment or victimisation are not upheld
7. The following harassment claims are not upheld:
 - discussing disciplinary sanctions with the claimant
 - AA saying in May 2016 that the claimant was very well paid and shouldn't have to be supervised
 - The offer of two options on 23 March 2017
 - On 11 April 2017, AA saying 'goodbye and good luck' and that the claimant's 'last day was 15th May 2017'
8. The following claims for the following reasonable adjustments are not upheld:
 - Not giving the claimant last minute tasks
 - Completing a stress risk assessment (claim withdrawn)

Remedy

9. The hearing for remedy, which will also be held in private, will take place as agreed on **28 November 2018**. It is listed for a full day, starting at 10 am. The parties must complete their submissions and any evidence by 12.30 pm to give time for the tribunal to reach and deliver its decision.
10. As well as any compensatory award, the tribunal will consider making recommendations. Both parties are invited to consider what useful recommendations could be made.

Rule 50

11. Any report of these proceedings will not identify the claimant, the respondents or any of the witnesses.
12. The case will be referred to henceforth as L v Q and the witnesses will be referred to in our judgment by initials.
13. The judgment will not go on the register.

REASONS

Claims and issues

1. The claimant brings claims for disability discrimination. Following the withdrawal of certain claims, the parties agreed a revised list of issues. These are attached at the end of these Reasons.

Procedure

2. The tribunal heard evidence from the claimant, and for the respondents from AA, BB, CC, DD, EE and FF. It was no longer necessary to hear from GG. There was an agreed trial bundle of 1712 pages.
3. As a result of the claimant withdrawing certain claims prior to the hearing, the respondents decided it was unnecessary to call GG. They also deleted certain parts of the other witness statements as now irrelevant.

Rule 50

4. The claimant applied under rule 50 for the hearing to be held in private, for names to be anonymised, and for the Judgment not to be placed on the register. The respondents did not consent to the hearing being held in private, although they did not put forward any personal disadvantage.
5. We considered it in the interests of justice and to protect the claimant's convention rights to make the following orders under r50:
 - 5.1 The hearing would be conducted in private
 - 5.2 Any report of these proceedings will not identify the claimant, the respondents or any of the witnesses
 - 5.3 The case will be referred to henceforth as L v Q and the witnesses will be referred to in our judgment by initials
 - 5.4 The judgment will not go on the register.
6. We have carefully considered the very high premium placed on the principle of open justice. However, this is one of those rare cases where we consider the balance to fall in favour of the orders we have made, We have taken account of the medical evidence including from a clinical psychologist which explains that the claimant is experiencing adjustment disorder on top of his other disabilities as a result of anxiety about the tribunal claim. He has expressed thoughts of not wanting to wake up, though no intent to harm himself at present.
7. We were told the claimant was also anxious about other people being in the room. He is self-conscious and embarrassed about the manifestations of his disabilities in the hearing. There is evidence that even in routine situations, 25% of the claimant's concentration is always taken up with managing the impulses and urges of the Tourette's. We are concerned that his added worries about a public hearing will interfere with his concentration and stress levels and affect his ability to give evidence adequately. Indeed, we are told

by his Counsel that he is wondering whether or not he would feel able to go ahead if such orders were not made.

Other reasonable adjustments

8. In the week prior to the start of the hearing, the claimant's solicitors wrote to the tribunal seeking a number of adjustments for the hearing. These had not been raised at the previous preliminary hearings and some of the adjustments were initially resisted by the respondents.
9. After some discussion, the following reasonable adjustments were made by consent. The hearing ran approximately from 10 – 4 each day. The hearing started at 11 am on the two days when the claimant gave evidence. Fixed breaks were given every 45 minutes during the claimant's evidence. The claimant (or indeed anyone else) was entitled to have an additional break any time they asked. In the event, the claimant did not ask for additional breaks. The claimant was provided with an unoccupied room where he could take his breaks. He was happy not to use this room at the start of each day. He was told that if he needed to do so, arrangements could be made. In the tribunal room, the claimant was permitted to choose where he sat, including during his cross-examination.
10. The claimant initially requested that only one witness from the respondents sit in the room while he give evidence. Ms Mayhew said she would normally have wished for four witnesses to be present throughout to give her instructions. In the end, a solution was agreed, by which only two witnesses would remain in the room throughout; it would be the same two witnesses (AA and CC), and they would sit in the room where the claimant chose.
11. The claimant confirmed that the general conditions in the room regarding heat and noise were acceptable. He was invited to say if they became unacceptable. In terms of cross-examination, the claimant asked to have the questions in advance, or at least an indication of the order of topics. The parties agreed together that it was sufficient to provide the order of questioning. This order was adhered to and each topic was signalled. The tribunal explained the procedure generally and what would be happening in advance at intervals. As far as was possible, the respondents indicated in advance their order of witnesses.
12. Adjustments were also made for AA, desks being moved to enable him to hear questions put by the claimant's representative.

Fact findings

13. The claimant started his employment with the respondents on 4 December 2015 as job title A. At the dates of the hearing, he was still employed there. The claimant's line manager throughout has been AA. AA was job title B.

Disability

14. It is accepted by the respondents that at all material times, the claimant had the disabilities of Autistic Spectrum Disorder (Asperger's) and Tourette's syndrome. These disabilities cause the claimant stress, which in turn exacerbates their effects.
15. The claimant has had symptoms of Tourette's and Asperger's all his life, but at the time he applied for the job with the respondents, he had only been diagnosed with Tourette's. He was diagnosed with Tourette's in his 20s. The symptoms of his Tourette's were described by his Counsellor/Psychotherapist in a letter dated 27 August 2015 as follows. When feeling anxious and stressed, the claimant bites the inside of his cheeks and his lips repetitively; he has an uncontrollable urge to move his head and neck 'tick like'; he consistently moves his hands and crosses his fingers; he taps his feet with high frequency; and he clenches his jaw and grinds his teeth. When not anxious, he is able to manage these manifestations, so his condition is not obvious. The claimant finds his tics very embarrassing and he is self-conscious.
16. During therapy, the claimant had explained how his Tourette's can impact his professional life, ie 25% of his concentration is always taken up with managing the impulses and urges of the Tourette's; he requires routine, structure and order in his work; there is benefit in giving him notice rather than being parachuted in at the last minute; he can be panicked when pressured to give an immediate response and can feel a great sense of threat when challenged; and he needs clear communication and instruction. The claimant had this letter at the time of his recruitment, though he did not show it to OH or his managers.
17. In January 2018, the claimant was formally diagnosed with Asperger's, although his own consultant had told him in April 2016 that he believed he was on the autistic spectrum and had Asperger's. Prior to that, the claimant had attributed all his difficulties to Tourette's. The claimant struggles with social communication and does not know how to initiate conversations with people when there is no specific reason for doing so. He now realises that he takes things very literally. He often misinterprets the intentions of others and he can fail to recognise a joke. He shies away easily and sometimes says the wrong thing. He is regularly filled with very strong emotions which affect his abilities at interaction.
18. Explaining the mutually reinforcing effect of his disability and stress, the claimant said that if, for example, he is asked to cover for someone else at work, it feels like chaos. This causes stress, which in turn causes his Tourette's to flare up.
19. The claimant does not feel comfortable with everyone knowing about his disabilities. He prefers to tell people on a 'need to know' basis.

The recruitment process

20. An external recruitment consultancy was engaged to find suitable candidates for the role. The consultancy had not worked with the respondents before. AA and the claimant's predecessor, HH interviewed the claimant on 7 October 2015. AA interviewed the claimant again with EE, job title C, on 21 October 2015.
21. There was some discussion about the claimant wanting to avoid rush hour travel. We think it unlikely the claimant was overtly asked whether he had any disability in these interviews.
22. AA needed to get internal approval to make the claimant a job offer because he wanted to pay him £70,000, at the top of his band, which was unusual for a new starter. He was keen for the claimant to start as soon as possible because it had been difficult to recruit and the role was being covered only on an interim basis. He felt the claimant's CV was very strong and he had the right level of expertise.
23. On 22 October 2015, AA spoke to the recruitment consultancy to confirm the respondents wanted to make an offer and, subject to the paperwork, 9 November 2015 was a possible start date. The agency pressed AA to make the offer formal because the claimant had an offer of a three month interim role elsewhere, which he did not want to lose. On 26 October 2015, AA emailed the consultancy to say 'I confirm that we are in the process of progressing an offer ... with the following details ... start date: ASAP'.
24. On 27 October 2015, the consultancy pressed for a notional start date for their system. AA agreed 2 November 2015. He was not expecting the date to be passed on to the claimant. The consultancy's email said, 'Re start date it can differ from the 2nd I just had to put a date in for our compliance (I know it might not be feasible dependent on paperwork)'. We find that AA was absolutely clear to the consultancy that 2 November 2015 was only a provisional or aspirational date. However, on speaking with the consultancy, the claimant gained the impression that 2 November 2015 was a firm start date. We suspect the consultancy said something ambiguous like 'we are looking at 2 November' which the claimant took to be more certain than it was.
25. The paperwork was dealt with by the respondents' Resourcing Business Partner, II. On 29 October 2015, the claimant was sent the formal offer. It said that 'On receipt of the Employment Acceptance Form, any pre-employment checks and successful completion of the pre-employment health screening questionnaire, we will be able to confirm your start date'. The offer stated that it was subject to right to work and identity checks, medical assessment, professional references and declaration of unspent convictions.
26. On 28 October 2015, the claimant emailed the respondents' recruitment department to ask when he would start work and whether the references and medical checks were done after he started. They emailed back to say 'A Monday start will be too tight now, as you need to fill in paperwork and return it'.

27. The claimant completed a BUPA health questionnaire in the evening of 29 October 2015. On 2 November 2015, II emailed the recruitment consultancy to say he was waiting for the claimant to return his signed acceptance form and they were also awaiting the medical form to come back.
28. On 3 November 2015, JJ in HR informed II that they had received the report from the claimant's online health questionnaire and he would need to attend a face to face medical. JJ said he would book the claimant an appointment with the new health providers.
29. The claimant became increasingly anxious about the delay. On 5 November 2015, he emailed II saying 'I would really appreciate written assurances that the medical/disability aspects of the situation will not prevent the employment proceeding'. AA was also becoming frustrated by the delays.
30. On 5 November 2015, KK – another HR person involved with the respondents' pre-recruitment checks – said the challenge was getting a medical appointment as soon as possible due to the change in provider that very week.
31. On 6 November 2015, HR referred the claimant to the new provider, OH Assist. The claimant completed a general health questionnaire for OH Assist that day. He answered 'yes' to a number of questions including, 'Do you need any special aids or adaptations to the workplace to assist you to work? Do you have a medical problem, a disability or recent injury that affects your ability to work? Have you ever had any health problems which have been caused or made worse by work? Do you have or have you ever had anxiety/stress or depression? Do you have or have you ever had other mental health problems? Are your symptoms well-controlled?' The claimant also answered yes to a number of questions about musculoskeletal difficulties. The form states that OH 'will forward an opinion to your prospective employer regarding your fitness to work. Your information will remain confidential to OH and it will not be disclosed to anyone else without your prior consent.'
32. On 13 November 2015, the claimant saw the OH Assist adviser. He told her he had Tourette's Syndrome from childhood and said he coped well. He mentioned stress in previous employment and that he was feeling low now because he was not working. He said he had a phobia about crowded trains. He said he was seeing a Counsellor and had wider stress issues. He had various musculoskeletal injuries as a result of a cycling accident. The adviser spent 55 minutes with the claimant, longer than the scheduled 30 minutes, and decided to refer him for further assessment to the OH Doctor. The recruitment team chased up the medical provider to arrange the appointment as soon as possible. The claimant eventually saw the OH Assist consultant occupational physician on 26 November 2015
33. The Doctor's notes record that he told the claimant that he had been asked to provide an impartial report to his employer about his health and work and that the claimant consented to proceed. The notes show that the claimant told the Doctor that he had Tourette's Syndrome since childhood. He said he was very

stressed because of what had happened on the recruitment process in the last month, 'agitated, punching walls, twitching, biting lip'. He said he had counselling 4 years ago and recently. In 2011 he had had CBT due to stress. He also had difficulty travelling on crowded trains. The report concluded 'proposed responses discussed with patient and consent gained to release to employer'. There is no indication on the notes that the claimant asked for any information to be withheld from the employer.

34. On 26 November 2015, OH Assist sent their pre-employment health screening report to the respondents. It simply stated 'Flexible start/finish working times may be required; Work station risk assessment; Control work stress'. The report ended 'If you have any queries regarding the content of this report I would be happy to discuss'. The claimant's email to AA of 20 January 2016 (referred to below) supports his tribunal evidence that he had expected OH to be passing more information onto the respondents than this brief note.
35. AA did not raise any queries with OH Assist. On Friday 27 November 2015, the respondents emailed the claimant to ask if he could start that Monday and apologised for the delay surrounding the medical. The claimant emailed on 1 December 2015 to ask what adjustments would be made following the pre-employment medical checks. He asked the respondents to 'also clarify what information has been learned in the process in regards to the medical report from OH Assist & how this will affect my role & the impact on the team'. He also asked what steps would be taken to remedy the delay which had occurred.
36. AA spoke with the claimant on 2 December 2015 and followed up with an email. He agreed 10 am – 6 pm as the claimant's normal hours, and he said the claimant should indicate if he wished to change these. He said he would arrange a work station assessment as the claimant had told him he had a musculoskeletal condition following a bike accident. He said he would put in place a pattern of 1-to-1 meetings to assist with managing workflows and deadlines to assist in managing workplace stress. He would also assist in managing stakeholder expectations and requirements. He said they should jointly review these arrangements on a monthly/regular basis to ensure they were working well and the claimant was given the necessary support. He said matters could be discussed further as the role developed. A start date of 4 December 2015 was agreed.
37. Regarding the respondents' general practices, all operational staff must have a face-to-face medical assessment. Office-based staff complete a health questionnaire and are sent for a face-to-face assessment only if they tick certain answers indicating that one is necessary. The purpose of the assessment is to see whether the job applicant is fit for work and any adjustments which need to be made (whether for a disability or other health issue). On investigating for the claimant's later grievance about the delay in his start date, BB was told by HR that the average time from offer to hire including medical questionnaire was 10 days for non-operational staff and 22

days for those requiring face-to-face medical assessment. However, each case depends on many variables and some can take weeks.

38. The claimant's grievance on this matter was dated 29 March 2016 and is accepted by the respondents to be a protected act. BB rejected the grievance. However, on his appeal, DD offered one week's pay in acknowledgement of the delay which he attributed to the change in OH provider.

The department and the claimant's role

39. The respondents' Treasury department was part of the wider Group Finance function. Treasury was split into Front and Back Office, which were located together in London. The Front Office was primarily concerned with day-to-day raising and managing debt. The Back Office managed compliance aspects of Treasury work. EE was job title C and responsible for the Front Office. He had X people with him in his team.
40. The claimant was based in the Back Office. The only other person in his team was his direct report, MM.
41. AA was the claimant's line manager. He was based out of London, whereas the claimant was based in central London. At the relevant time, AA was responsible for a team of Y employees and the claimant was one of his Z direct reports.
42. The claimant had an unusual mix of roles. The three key areas were responsibility for Treasury Back Office functions, some of which he would do himself, some of which would be done by MM; monthly and year-end accounting; and hedge accounting twice/year, usually April/May and October/November. The latter involved giving advice to job title D in the Front Office team on whether the respondents' financial risks were suitably hedged.
43. The claimant's job description was written by his predecessor in May 2015. The job purpose was stated as 'to report, account and analyse [the respondent's] funding, including, accounting for financing vehicles. Provision of a comprehensive service for [the respondents'] treasury department, including accounting for the debt and derivative portfolios, complying with external and internal financial regulation and to provide technical accounting input to the funding strategy'. Nine key accountabilities were listed, including (8) to manage and develop job title E; (7) responsible for compliance with financial regulatory requirements; (4) prepare and analyse the group's debt position, including foreign exchange and hedge accounting and hedge effectiveness testing.'
44. When he started, the claimant was given a list of 86 tasks, which had been written by his predecessor. This may not have been exactly 86 tasks, but it has been referred to as such. It lists tasks which must either be done by the claimant or by MM, for which the claimant would be responsible. During the first couple of days, AA discussed with the claimant what his initial priorities should be, ie spending time with MM, familiarising himself with the Back Office

and getting to know the Treasury accounting activities. AA would then gradually hand over other aspects of the role.

45. A contractor from D had covered certain work prior to the claimant starting. She only had time to give a brief fragmented handover.
46. The claimant felt he did not have sufficient handover into his role. His predecessor had already left and MM did not have sufficient knowledge of the claimant's role.
47. The plan on period end work (4 weekly) was that the claimant would spend time with NN, job title G, and then start doing the work alone once he understood the processes. This did not work out very well. NN was based out of London. The claimant had difficulty agreeing dates with her and even when times were booked, she would not appear or would arrive 2 hours late. The claimant was not asked to do period end on his own until May 2016, but as a result of lack of handover or training by NN, the claimant felt unable to do the full job which made him very anxious.
48. Regarding the hedge accounting, the claimant, MM and NN suggested to AA that the claimant and the D consultant meet the claimant's predecessor in his new job to talk through the hedge accounting. AA agreed to this and a meeting went ahead.
49. On the claimant's first day, AA was unable to be present and EE introduced the claimant to a few people on the team. The claimant was never subsequently introduced to the others on the Front Office team who were not in on that first day. As a result of that, they never spoke to the claimant and the claimant never spoke to them.

The first few months

50. On 27 January 2016 the claimant emailed OO, (Head of HR Corporate Functions), to raise concerns over the delay in recruitment. He had been unaware before he joined that his Line Manager was not based in London. He felt there was insufficient structure and role clarity. He finished 'All the above has meant that one of the disabilities mentioned in my OH form is starting to flare up. I have requested an OH appointment but the process hasn't yielded an appointment yet and I am unsure what to do'. He asked OO not to forward the email and to treat it as confidential.
51. Ongoing discussions ensued. The claimant was reluctant to take up the matter as a formal grievance because he was afraid that it might affect his job and even risk losing it.
52. On OO's advice, he emailed BB on 29 March 2016, copying in OO, and set out his concerns about the delay in recruitment, the claimant also said 'I was made to feel unwelcome due to my disabilities, which I am conscious about going into much detail via email ... The delay as I was told by [Rs] resourcing was to check if I was fit to work and if [R] would accept me or not with these

- disabilities. People at work all appeared to be aware that something was wrong with me.’ The claimant went on to say that it had taken a considerable time to get the follow-up OH appointment which he had requested. In addition, he had had very little handover on key areas of his role. His predecessor’s notes were inadequate. As his line manager did not sit in London, there was no one to ask. It was hard to work out what to do without any training. He said there had been little structure or planning on his workload, role and responsibilities and this was stressful. He also did not have working PC equipment in the office and was spending 6-8 hours/week with the help desk.
53. The claimant also told AA on some occasions that he was stressed from ‘his disabilities’ and struggling to concentrate. AA never asked him for any detail about what his conditions were.
54. The claimant says that in conversations with AA in the period January to April 2016, AA would talk about ‘strike 1’, ‘strike 2’ and disciplinary meetings. He says he gained the impression that he was at risk of disciplinary sanctions. AA denies he discussed disciplinary sanctions at all. He says ‘strike 1’ and ‘strike 2’ are not terms in the respondents’ disciplinary policy.
55. We find there was some conversation of this kind. We think it unlikely the claimant would be completely wrong about remembering language such as ‘strike 1’ and ‘strike 2’. It is irrelevant that that is not the language of the respondents’ disciplinary policy. It is quite conceivable that a manager would use such language when talking colloquially. However, we think it unlikely that AA was making a disciplinary threat at such an early stage in the employment. The claimant was stressed and anxious about having difficulties with the work and may well have made enquiries about where he stood. We can envisage AA said words to the effect, ‘We would not take disciplinary action for the first six months, and then that involves strike 1, strike 2, disciplinary meetings etc, all long before you are out.’ The claimant may have interpreted that as a disciplinary threat, but we don’t believe that it was said in that mode. AA’s style was more, as we have found later in May, to tell the claimant that he should be able to do more because of his high salary.

The first OH report: 13 April 2016 (provided to Rs 5 May 2016)

56. During a 1-to-1 on about 20 January 2016, the claimant told AA that he required more support in relation to managing stress and he asked AA to refer him to OH. He did not say anything to AA explicitly about his Tourette’s. The claimant felt that OH had not made the detailed recommendations that were necessary to enable him to work. AA did not explore in detail what the claimant meant by stress. He said words to the effect, ‘Don’t worry, early days, we’ll sort it out’.
57. In a confirmatory email of 20 January 2016, the claimant told AA that he had explained these issues in great length at his OH visits in November and ‘they have all the details. My understanding was that recommendations would come out of that. I have since been told that due to data protection nothing is passed to you (but a little note).’

58. On 20 January 2016, AA referred the claimant to the OH Assist Bespoke Services Team stating '[C] requires more specific advice to be given with regard to support for his condition as discussed at previous referral ID.' Rather oddly, OH Assist replied that a workstation assessment was not a product which they could deliver. One week later, (on 28 January 2016) AA replied to say a workspace assessment was not what was being requested. The requested assistance was specifically around stress management. OH Assist then replied saying they did not do stress management.
59. Eventually AA managed to book the assessment by saying he needed clarification of the original OH report. We have had no convincing explanation as to why there was a continued delay after 28 January 2016 or why AA did not seek HR support in expediting the matter.
60. The OH report was dated 13 April 2016, and sent to AA on 11 May 2016. It was based on an assessment which took place on 29 March 2016.
61. The report, written by Dr P, stated that the claimant said he was experiencing stress relating to his work situation and receiving therapy to help him manage his stress. He felt he had had insufficient handover to his current role and insufficient training in the specifics of the role. The claimant said he worked best in a structured way and would like to have clear and measurable objectives from management. He wanted to discuss and agree with his manager how to prioritise his work. Dr P recommended that management discussed C's workload with him to ensure it was reasonable and that he should have regular contact with his manager to discuss his progress.
62. The OH Physician said he believed the claimant would be considered disabled. The condition was 'the psychological health issues which make it difficult for him to travel in peak travel time'.
63. Dr P noted that following the consultation, the claimant had subsequently requested the following to be added to the report, which Dr P recommended management to discuss with him:
 - 63.1 No work is given to him at the last minute and advance notice is helpful where possible.
 - 63.2 He cannot work for long stretches of time and needs constant breaks.
 - 63.3 He needs extra time to deliver work, at least in the beginning, when stress and physical symptoms emerge.
 - 63.4 He does not find it helpful to be pulled away at short notice from the work he is doing, particularly not being able to prepare or when he is unclear what the purpose is.
 - 63.5 He is keen to work together with his line manager to set specific, clear targets that are measurable that will allow his development into the role.
64. On 13 April 2016, the claimant emailed OH Assist to ask for them to clarify that 'the psychological issues do affect travel, but that is not the only thing that is affected'. The OH Doctor did not correctly make the amendment, so the claimant wrote again to the same effect on 3 May 2016. This correction was never made by the OH Doctor.

65. It was put to AA in cross-examination that he knew he had to address the claimant's workplace stress, but he never asked the claimant what caused it. Instead there was a three month delay waiting for the OH report. AA admitted that 'If we had known everything we know today, we may have taken different actions. But we didn't know that. We found out more as time went on and as we got more OH reports.'

The May 2016 incident

66. On 4 May 2016, the claimant sent AA an email regarding the period end the previous Thursday. He said NN had always done the reconciliations and on this occasion he was completely unaided at short notice. He added 'I have raised this before with you about training and handover. I have disabilities, I cannot simply pick things up without support. I have made this aware to Occupational Health before I joined and to you on multiple occasions. This is very stressful not to have the support. I need time, structure and resource to get this done properly.' At this stage, AA had not yet received the OH report.
67. Following this, AA met with the claimant to discuss what had happened the previous day and why the claimant had notified him so late in the day that he could not finish the period end work. This was the first time the claimant had been asked to do the period end work on his own. It developed into a heated discussion. AA was very angry. The claimant said AA should have been there to supervise him in the morning. AA said he did not consider that he should need to supervise job title A who was being paid £70,000 / year. AA said that MM, the lowest paid and most junior member of the staff, was having to supervise the claimant, and that the claimant's salary was 30% more than that of NN: the claimant was wanting NN to assist him, but it should be the other way round.
68. Half way through the conversation, the claimant said he had felt unable to approach AA or NN 'due to his neurological disabilities'. He said he had felt like stabbing EE (a colleague in the Front Office team) with a pen and that if he did that, it would not be his fault, but his condition. He also said he might jump in front of a train on the way home. AA did not feel that was a genuine threat and he managed to calm the claimant down. At that point he talked about putting a plan in place to avoid this issue arising again.
69. As a result of this discussion, AA thought he should notify his own line manager, BB (Job title F), and FF (the Lead HR Business Partner). AA and FF met the claimant the next day by way of a welfare meeting. FF had not previously met the claimant.
70. In the meeting on 4 May 2016, AA said that in the absence of any information from OH, he had no information other than what the claimant told him to manage his stress load. The claimant said that he had in the past been signed off as a suicide risk and though he was not at that point currently, he wanted to avoid it occurring again. He agreed it was inappropriate to refer to harming others in the office. He denied feeling violent towards others. He said that

when he is criticised because of his condition, he feels exactly as a normal person would feel when confronted with someone with a knife. He also said that handover notes, processes and training were insufficient for the amount of structure he requires in a role due to his condition. It was agreed that he would share his OH report with AA. AA said he would carry out an HSE Stress Management Risk Assessment. FF agreed to meet with the claimant and keep the lines open to assist in managing his welfare.

71. AA emailed BB on 5 May 2016 to report 'I am more worried about the extent of the mental illness'.
72. This incident led to the claimant showing AA the OH report on 5 May 2016 and OH sending AA a copy on 11 May 2016.
73. Either at his first meeting with FF or shortly afterwards, the claimant told him he had Asperger's. We think this most likely to have happened at the first meeting, given that the claimant had referred to his neurological difficulties there. Moreover, in an email dated 29 June 2016, the claimant notes 'You and I also spoke about the disabilities when we first met'. FF told the claimant about his step-son who had a range of disabilities, possibly including Asperger's.
74. On 5 May 2016, FF emailed AA with various suggestions, including 'he probably needs a 'Buddy' to help him build relationships, he doesn't seem to know very many people around him and is uneasy about making these approaches directly'. On 6 May 2016, FF told BB that there were concerns about the claimant's integration into the team
75. On 18 May 2016, FF invited the claimant for a catch up meeting. The claimant was anxious he might be at risk of having his employment terminated or terms and conditions changed. He said 'AA has often spoken to me about disciplinary meetings, first, 2nd, 3rd strike, etc, so I am conscious about this, given that I have raised much more awareness of my disability now ... there has been mention of a number of times about my salary levels, what is expected of me, I get paid more than others etc this makes to quite anxious about the intention.' FF reassured him that it was nothing of that kind.

The action plan

76. In June 2016, CC, an HR Business Partner, took over the claimant's file from a colleague who was going onto maternity leave. CC continued the work of developing an action plan in the light of the OH report and issues raised by the claimant. CC met the claimant to discuss her first draft on 30 June 2016 and met jointly with the claimant and AA to talk in more detail on 8 July 2016.
77. On 29 June 2016, the claimant emailed AA to talk about the difficulties working with NN. He said she had created a process which was difficult to follow with multiple workarounds. He added 'You have read the OH report and there is a policy for disability, I need time to get things done especially when they start off in bad shape'.

78. During June 2016, the claimant produced a list of all the tasks which he was expected to do, on which he highlighted those tasks which he was not yet doing because he did not understand how to do them. He sent this to CC. AA did not work from this document. AA was working from the list of 86 tasks.
79. Meanwhile on 28 June 2016, FF sent BB the claimant's formal grievance in respect of the recruitment process. He asked that any questions he had for the claimant were put in writing and he had committed to a response by BB in 14 days. He said this was not the normal grievance process but adjustments had been made 'based on a known disability'.
80. On 30 June 2016, the claimant emailed FF, 'Do we need another OH referral? I don't want to be in a position later in the year when I'm told by [Rs] we were unaware of the psychiatric issues and adjustments. I have told OH of all the conditions and they are aware and said to refer back if further help needed. I want and tried to get as much information as possible to [Rs] for that purpose.
81. In July 2016, the claimant and MM worked together on a 'traffic light' cover list. This described MM's work to be covered while he was away, indicating level of importance of each task.
82. On 14 July 2016, the claimant emailed CC to say he felt very victimised and bullied by his team and he felt overwhelmingly stressed out. In a telephone conversation the next day, the claimant referred to 'Tourette's, autism and Asperger's' and said he did not want to be labelled; he was just 'throwing these out there'. In this or a subsequent conversation CC encouraged him to share his conditions with his team so that they would understand his working preferences. However he did not want to do so.
83. On 22 July 2016 the claimant complained his current workload was excessive. He pointed out the amount of time he was spending on IT matters and with HR. The claimant set out a list of tasks confronting him. To help him, AA chose three priorities. It was difficult for AA to remove work from the claimant because he was at least two people down in the team and had been unsuccessfully trying to recruit. D people could only be invited in to do specialist tasks.
84. The claimant also referred to his feelings of isolation from the team. For example, in the notes of his meeting with CC and AA on 8 July 2016, the claimant said he was excluded from meetings, socials and team events. On 13 July 2016, the claimant emailed CC to say that the last three Front Office and Back Office meetings were all being held on the day he was working at home and he felt he was being excluded
85. CC sent the claimant and AA the finalised action plan on 29 July 2016. She said there just remained to for AA and the claimant to agree when the claimant would do period end on his own; task list completion on the claimant's tasks (as opposed to MM's); PDP and JD review.

86. It was agreed there would be fortnightly 1 to 1 meetings between AA and the claimant. Up to that point, they had been less frequent. These further 1 to 1 meetings did take place, but we cannot say with what regularity. They may eventually have merged with the weekly team meetings, which we refer to below.
87. BB met the claimant on 30 August 2016 at CC's request because AA was away. This was to help the claimant manage his workload. BB confirmed the main points of the meeting in an email dated 31 August 2016 on which the claimant commented. The claimant said 'If you would like me to explain you more about my documented disability, I will explain it, but OH Assist have considerable details already.'
88. On 5 September 2016, the claimant emailed CC to ask what had happened to the buddy idea raised a few months ago. He said recently a person on the team had been openly mocking people with Asperger's, Tourette's etc.
89. On 6 September 2016, the claimant emailed CC to complain that there was a new joiner on the team to whom he had not been introduced. Exactly the same thing had happened with another employee on the team, with whom he had never communicated since. He went on to say there was too much noise in the team, which he found distracting. He asked his desk to be moved as nothing was being done to include him in the team and he was sitting in the middle with virtually no interaction. He mentioned that another team event had been organised on Friday and he had only been asked 5 seconds before leaving time if he wanted to attend. The claimant attached a copy of the respondents' own policy, 'Everyone Managing Disability in the Workplace: Asperger's'. He said 'I believe the description in the enclosed [Rs] Policy is helpful, the employer has known about the issues for nearly 8 months. Every time I speak to BB he is totally oblivious to how a disability would impact me at work as somehow seems to think I should be 100% operational regardless of disability, pc problems.'
90. The claimant agreed CC could send the policy guide to BB and AA, which she did on 9 September 2016. BB did not read it. AA did read it. He felt it best to work on the assumption that the claimant did have Asperger's. He felt the adjustments the respondents were already making through the action plan were in line with what was required under the policy.
91. The claimant had been having difficulties with his IT for some time. He was having far more problems than normal with IT and more than anyone else in the department. The help centre attempted to resolve the situation by changing the hardware and upgrading the memory without success. They swapped cables with those used by MM to see whether that made a difference, but it did not. In the end they concluded that difficulties might be arising as a result of the complexity and bespoke nature of the IT used by the claimant, together with him using a laptop at home as well as at work. The IT department did all they could but they felt many of the issues were self-inflicted.

92. On 15 September 2016, FF sent CC an OH report dated 24 August 2016. This was the first time that report had been seen by CC or management. The report was based on an assessment on 27 July 2016. The report stated that since the last review on 13 April 2016, the claimant felt he had a huge workload and insufficient support and guidance from management about his role. The report advised, inter alia, that the claimant was not given too many tasks at once and that work tasks were spread out evenly on a daily basis; a weekly plan of tasks to even his workload; regular meetings; and support to resolve his IT issues as he found the multiple points of entry to IT support difficult. It also suggested management might consider conducting a Stress Risk Assessment in Work. The report stated its author's view that the claimant 'would be considered disabled due to psychological health issues'.
93. CC sent the report to AA on 21 September 2016 and suggested he meet the claimant to talk it through.
94. CC and AA also discussed the report. They felt they were already carrying out the reasonable adjustments, but they would now need to put the claimant on reduced duties. Meanwhile CC would continue working with the claimant to resolve the IT issues.
95. There were not in fact multiple points of entry to IT support. There was only the IT help desk. CC therefore interpreted this as meaning that the claimant would like to deal with a single person there. This report was the first time she had understood from the claimant that the issue was not only the IT difficulties, but the way that help was accessed. Ultimately it proved not viable to provide single-person support.
96. The action plan was updated in September 2016. Between July and November 2016, NN did the last 20% of the period end work, which she had never shown the claimant how to do. The claimant continued to do the first 80%. NN was supposed to provide the claimant with notes so that he could do the 20% and it was envisaged that he would transform those notes into his own notes which he would understand. However, she merely provided additional clarification on the first 80%. In November 2016, when the claimant's workload was reduced following OH advice (see below), NN took over the period end work entirely.
97. From September 2016 onwards, AA held weekly team meetings. These took place on Mondays when AA came to London and met with the claimant and MM. At first, AA simply asked the claimant what he intended to do in the following week and made suggestions as to who should do which task, and what should be prioritised. The claimant felt that this was little more than him telling AA what work he had, without any kind of structure for checking afterwards that he had done it. The claimant wanted more feedback on the tasks as he completed them and direction on what he should do next. AA started doing this as it became clear that was what the claimant wanted.

98. The claimant would have liked a written weekly list of tasks. AA did not see it as necessary to create one. He felt the key tasks had already been broken down in the list of 86 tasks.
99. The claimant sent CC an email on 2 November 2016 saying he had concerns about AA's management style and 'nothing to do with me' approach. He said the weekly meetings were quite vague and AA did not know what to delegate to him. He said that AA 'goes round telling [D] staff "BB is asking how much longer we need people to keep giving [C] support"'. The contents of the email were discussed at a pre-arranged meeting on 14 November 2016 which was also to discuss progress on the action plan.
100. In November 2016, the claimant and AA agreed that another OH report was needed to consider reduced duties and CC made the referral. In their Report dated 19 December 2016, while the claimant was off sick because of anxiety and back problems, OH said there were still recurring themes from his perception of stress at work. The Report said that the difficulties at work were non-medical but the stressors were 'likely to be aggravating his underlying condition'. It recommended, inter alia, IT assessing his PC as a priority and regular 1 to 1s with management and HR. In relation to management's question whether the advice to reduce the claimant's workload should continue beyond the original 31 December 2016, the Report said yes, and it could be revisited at the next OH Assessment.
101. The OH report repeated the claimant's view that AA had a 'nothing to do with me' attitude and nothing moved forward, leading to elevated stress. He was saying that the job he had applied for was different to the job he was doing 'and the big boss says you are 'job title A', which is very disturbing as it is not my fault they made a team of 3 people become a team of 1 (ie myself) and paid a higher salary expecting 1 person to do all that work'.
102. There was a follow-up OH assessment on 12 January 2017 and OH Report the next day. The Report noted that the claimant was thorough, liked the challenge of finding a solution to a problem, and preferred structure to his working day. The Report said the stress risk assessment should address the question as to whether workload should continue to be reduced.
103. The OH report recommended that a buddy be found for the claimant, which might reduce the need for him to raise so many issues with management. It said that the claimant could be isolated at work and would benefit from someone with whom he could share his work concerns and iron out issues.
104. The Report concluded that if the claimant could adapt to the respondents' way of working, he would eventually adjust to his work environment.
105. By this stage, BB was already the nominated buddy.

Finding a buddy

106. As stated above, after the meeting on 5 May 2016, it had been agreed it would be helpful if the claimant could have a buddy. When the respondents asked the claimant who he wanted to be his buddy, he suggested EE. After that, the claimant was generally kept in the dark regarding the efforts made by AA to get EE to be a buddy.
107. One of the items in the July 2016 action plan was that the claimant felt isolated from the team and felt there was no one to ask questions or interact with. AA had not yet approached EE or anyone else to be the claimant's buddy and one of the planned action was 'AA to speak to EE' to ask whether he would be a buddy for the claimant. At some point after this, AA asked EE to have a coffee with the claimant and help him integrate into the team. He did not use the word 'buddy'.
108. On 5 September 2016, the claimant emailed CC to say 'What has happened to the buddy idea raised a few months ago?' He added, 'Recently a member of the team has on one occasion been openly mocking people with Asperger's Tourette's etc. I think he was talking about someone quite specific, whom he knew, and people were giggling and smirking'. He followed up by identifying the relevant person as EE. On 9 September 2016, CC replied to say she believed AA had spoken to EE about being a buddy and they could pick it up at their planned action plan review on Monday 12 September 2016.
109. On 14 September 2016, the claimant emailed CC again. He said AA had avoided the question about a buddy at the meeting and he had the impression things were not moving along on that front. He added that perhaps EE did not want to be a buddy. Two days later, the claimant spoke to CC on the telephone. He asked why it was taking so long to find him a buddy. In the September update of the action plan, it was noted that AA had spoken to EE; he would chase it up and ask EE to have a coffee with the claimant.
110. On 2 November 2016, the claimant again emailed CC regarding AA's management style and 'nothing to do with me' approach. He said that he had not had a buddy since the discussion kicked off in May; he would rather be told it wasn't happening than wait.
111. Eventually EE told AA that he did not feel comfortable with the idea of casual catch-ups with the claimant as there had been some work-related disagreements.
112. AA had not at any stage asked the claimant whether anyone else would be suitable if EE was unwilling to be his buddy. Certainly by the time EE said no, it was difficult to consider others in the team because their working relationship with the claimant was not good at that stage. In an action-plan meeting on 4 November 2016, he therefore asked BB. Both the claimant and BB were happy with that suggestion. It was proposed that they have a 30 minute coffee every few weeks.
113. BB met with the claimant in his buddy role for a half hour coffee approximately every three weeks. There were about three meetings in the period November

to March 2017. BB was unavailable in April 2017 because of something urgent from the CEO and the claimant was off sick in May 2017, after which a grievance process had properly started (see below) and BB thought it inappropriate to continue to be a buddy.

114. AA felt he could not force an employee to be a buddy to the claimant. As well as BB stepping in, CC in HR also provided considerable support and acted as a sounding board.
115. At the first buddy meeting in November 2016, BB had a discussion with the claimant about how he felt in his role and also talked about his family and background. The claimant said he did not like the respondents' public sector culture. BB said if he was unhappy, they would understand if he was looking for another job and would be flexible about giving him time off for interviews.

The desk move

116. On 27 January 2017, MM sent AA an email listing some long-standing complaints about the claimant and threatening to raise a grievance because AA had not resolved them. AA persuaded him not to rush to a grievance and resolved certain concerns. Shortly after, MM told him that the claimant was working better and he did not want to take any grievance at that point.
117. On 31 January 2017, the claimant sent AA an email listing various concerns about team members. He concluded 'I sit in the middle, am totally excluded from the team who are resentful of me People shout over my desk and I find it very disturbing. I have asked to be moved or something done about it.' This was the first time AA was aware the claimant had asked to move desk, though the claimant had asked CC on 6 September 2017.
118. AA responded by an email saying he was unaware the claimant wanted to move desk. Where would he like to go? He said 'I think it would be useful for the other members of the team to understand your viewpoint and you theirs. The front office expect a level of service, they are unaware of any of your disabilities at your request.
119. This upset the claimant. He emailed back referring to the policy on Aspergers which he had previously provided. He then quoted selected extracts from the policy. The claimant went on 'Thank you for confirming that you have not disclosed my disability to the wider audience. This is private and legally I have done my part to share with OH, HR, a select few [Rs] employees and the TU rep. Any further sharing of my disability (verbally or in writing or by accident) by you or anyone else without my written approval would be viewed as malicious and seen as an attempt to humiliate me into resignation'.
120. The claimant was absent from work through sickness from 24 May – 26 June 2017. On his return, the desk move had been made. This occurred because the team occupying the suitable area moved in May 2017. Prior to that, there had been no available desk for the claimant next to a window as he had requested. It would have entailed asking two people from another team to

move, as the claimant still needed to sit next to MM. AA said he felt he could not ask the other team leader to free up some desks without revealing the claimant's disability, and the claimant had indicated in his email that any further sharing of his disability would be seen as malicious. AA did not discuss with the claimant the dilemma or what might be acceptable to say to the other team's leader.

Last minute tasks

121. In the 13 April 2016 OH Report, the claimant's request not to be given work at the last minute was noted. Most of the last minute work arose when the Front Office team needed Back Office approval for completion of a deal or to make a payment. This was usually done by MM, but when he was away, the claimant would have to cover. MM had 28 holidays/year. Sometimes he worked half days at home, and he took 10-15 days sick leave per year. Some last minute tasks would also be given to the claimant by other members of the team.
122. AA found this the hardest reasonable adjustment to accommodate. He stopped giving the claimant last minute tasks himself and asked others also to stop, but that was not always possible. The biggest difficulty was when MM was unexpectedly off sick. Some of this was addressed later when other team members were trained up to cover MM's absences in August / September 2016.
123. When it was put to AA in cross-examination that there were still some last minute tasks which MM would have to cover, he observed that the claimant is very clever; he has qualifications and knowledge. He ought to be able to cover at least some of the last minute enquiries.

Reorganisation

124. In September 2014, the respondents were reclassified as a public body. Prior to the reclassification, they had raised a substantial part of their funds from external markets. Following reclassification, new funding has come solely from central government and the respondents are not allowed to borrow externally.
125. In late Autumn 2016, AA – in discussion with BB - had started to review the structure of the Group Tax and Accounting Team. AA says this was prompted by the reclassification. He says there was a reducing need for much of the work done by the Treasury Back Office as the respondents were no longer looking at new fundraising via capital markets and there was much less hedge accounting to be done.
126. The claimant disagrees that there was any reduction in hedge accounting advice. He says that there was maintenance work to be done on hedge accounting up to April 2019 when it would stop and that there were numerous SWAPs. Moreover, the claimant says that treasury accounting is not involved in raising debt. That is the job of the Front Office. He says if anything, the

Back Office work increased because there were two funding systems running in parallel at that point.

127. By early January 2017, AA had designed a new structure for the finance team. This would involve a new role of Senior Financing and Analyst which would focus on new sources of private sector funding and asset financing. AA decided that the functions of Job Title A would be split between himself, Job Title E, and Job Title G.
128. Some of the work to be reallocated was work which the claimant had not yet started to do, eg sole responsibility for period ends and twice yearly hedge accounting activity. Those tasks had been covered by other team members or by D.
129. By mid-March 2017, AA had largely finalised the papers on the restructuring in liaison with CC. The claimant was the only person whose role would be made redundant under the proposal.
130. On 23 March 2017, the claimant was invited to attend an informal meeting with BB, FF and his trade union representative. FF told the tribunal that this was an 'at risk' meeting. BB and FF had jointly agreed what they were going to say. BB discussed the proposed restructure and that the claimant was at risk of redundancy because his role would be displaced and there were not any other roles for him. The claimant was offered the option of voluntary severance with something along the lines of garden leave and PILON or going through redundancy with no guarantee he would get anything. It's not clear which of BB and FF verbalised this offer, but they had jointly agreed it should be made. On balance, it appears to have been FF who first mentioned it. BB and FF strongly recommended the claimant take the opportunity to leave as he appeared to be so unhappy at the respondents. They said this was an opportunity to avoid the hassle of the redundancy process, but they would need a quick answer.
131. Subsequent to the meeting, the claimant was sent the draft Memorandum of Consultation and his comments were invited by the end of 28 March 2017. He was told that if none were received, they would move on to Consultation and follow the relevant process. The claimant duly submitted his comments.
132. On 31 March 2017, CC forwarded AA the final document so that consultation could begin. Formal consultation started on 11 April 2017 and AA met the claimant on that date. AA said this was an initial briefing to let the claimant know that the respondents were starting a consultation with his trade union, TSSA; that the consultation period would last at least one month; and that there would be individual consultation with the claimant after that if it was decided to proceed with the proposals. AA mentioned the possibility of voluntary severance.
133. The claimant was going on holiday the next day. The claimant says that at the end of the meeting, AA said 'goodbye and good luck' and that his 'last day was 15th May 2017'. AA denies this. He says that he may have said

'Goodbye', because the claimant was going on holiday, but not 'Good luck' and certainly not that his last day would be 15 May.

134. There is an email of 20 April 2017 where CC records to a colleague that the claimant is 'at risk'. On 21 April 2017, AA emailed the claimant to say they aimed to conclude the consultation process by 10 May 2017 and that he would put some time in their diaries on 12 May 2017 to discuss the outcome in a 1 to 1. On 9 May 2017, the claimant emailed CC to say that he was told on 11 April that his last day would be around the first or second week of May and he would have a meeting on 12 May to conclude. He asked whether that was to be his last day in the office.
135. CC replied on 10 May 2017 to say 12 May had been the day planned to give the outcome. However, due to the grievance which the claimant had now raised, the respondents would not conclude consultation until the grievance had been concluded.
136. In his email of 7 July 2017 noting what happened in the 23 March and 11 April meetings, the claimant recollects AA stating his last day was 12 May 2017 and that he wished him good luck for the future and hoped he would find a better job where he would be happy.
137. It makes no sense to us that AA was informing the claimant that his job was definitely ending on 12 or 15 May 2017. The respondents were taking trouble at least to be seen to be going through a consultation process. We think it likely that there was a discussion about voluntary severance where AA drew attention to its advantages for the claimant and said that if he wanted to go, the date could be 12 or 15 May 2017. Or he may have said that if the redundancy process went through to its conclusion, it was likely to conclude on 12 or 15 May. We do not find that AA said 'goodbye' and 'good luck' or that the claimant's last day would definitely be 15 May.

Grievance: May 2017

138. On 8 May 2017, the claimant raised a grievance. By letter dated 11 September 2017, the claimant's grievance was upheld in respect of the reorganisation of the department and the failure to make reasonable adjustments.
139. As part of the grievance investigation, the claimant, BB and AA were interviewed and CC was also contacted for information. An employer trawl provided 4600 relevant emails from the claimant's account.
140. The grievance investigation report is carefully reasoned and takes account of the key issues and management arguments.
141. The first allegation which was upheld was that the claimant's proposed removal in the reorganisation was direct disability discrimination.
142. The investigation report noted that the offer of a payment and gardening leave in March 2017 was outside the company policy on managing reorganisations

and it was unclear why it was being offered. The reorganisation did appear to have been well considered by AA, but by his own admission, it was not his area of expertise. It summarised, 'it is difficult not to conclude that the timing of the changes, the impact on only one individual, and the offer of an exit payment prior to consultation suggest it wasn't purely done to achieve the object.' ie a reorganisation to provide a more suitable platform for the changing needs of the business. In conclusion, the organisation appeared to be 'at least in part set up to allow [C] to leave'. It conveniently dealt with a difficult member of staff rather than one that was specifically disabled. On that basis, the grievance was upheld.

143. In relation to reasonable adjustments, the report stated that transparency over the actual diagnosis and therefore requirements was obviously making it difficult for the manager to proactively institute adjustments; he always seemed to be on the back foot. However, 'the number of reports, references to psychological health issues and advice from HR meant that line managers should have been able to link the symptoms to a disability and therefore have acted differently'.
144. The report stated that HR were used as an intermediary too often and the manager therefore did not discharge full management requirements. A combination of a very hands off management style and a need by the employee for structure and much more hands on management created a situation that spiralled out of control quite quickly. Although 'the adjustments went some way to discharging responsibility, it was not a proactive and structured approach to dealing with the needs of the individual, but rather a list put together with the benefit of hindsight, it probably fell short of the requirement'. On this basis, the grievance was upheld. The management chain above the claimant had failed to comply with the requirements of the company guide, even after the nature of the disability became clear. The offer of a PILON before consultation on a reorganisation that affected only one member of staff was unreasonable management behaviour.

The respondents' disability guides

145. The respondents' guide to reasonable adjustments 'Everyone Managing Disability in the Workplace' points out that there are many reasons why a disabled employee might not tell their line manager that they are disabled. Therefore 'managers need to be proactive. It warns that some staff may only tell managers about their health issues once trust is built.
146. The respondents' guide on Aspergers contains much useful information. The section with Guidance on Communication and Social Skills talks about misinterpretation, not being able to interpret sarcasm or wit, having feelings of inadequacy and isolation from peers because of being unable to understand what is happening, not understanding the rules of social behaviour, being very outspoken and tactless, and having difficulty making friends.
147. The policy says managers' strategies for support can include providing a quiet workspace to help reduce noise and over-stimulation.

Law

Direct discrimination

148. Both representatives provided written submissions setting out the law. We read these. It is not necessary to reproduce the entirety of the submissions here.
149. Under s13(1) of the Equality Act 2010 direct discrimination takes place where, because of disability, a person treats the claimant less favourably than that person treats or would treat others. Under s23(1), when a comparison is made, there must be no material difference between the circumstances relating to each case. Under s23(2), where the protected characteristic is disability, the circumstances relating to a case include a person's abilities.

Indirect discrimination

150. Under s19 of the Equality Act 2010, indirect discrimination occurs if the respondents applied to the claimant a provision, criterion or practice which (a) the respondents applied or would have applied to those who do not share the claimant's protected characteristic, (b) put, or would have put those who share the claimant's protected characteristic at a particular disadvantage when compared with those who do not, (c) put, or would have put the claimant at that disadvantage, and (d) the respondents cannot show it to be a proportionate means of achieving a legitimate aim.

Discrimination arising from disability

151. Section 15 of the Equality Act 2010 prohibits discrimination arising from disability. This occurs if the respondents treated the claimant unfavourably because of something arising in consequence of the claimant's disability. The respondents have a defence if they can show such treatment was a proportionate means of achieving a legitimate aim.
152. The respondents will not be liable under section 15 if they show that they did not know, and could not reasonably have been expected to know, that the claimant had the disability.

Harassment

153. Under s26, EqA 2010, a person harasses the claimant if he or she engages in unwanted conduct related to a relevant protected characteristic, and the conduct has the purpose or effect of (i) violating the claimant's dignity, or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. In deciding whether conduct has such an effect, each of the following must be taken into account: (a) the claimant's perception; (b) the other circumstances of the case; and (c) whether it is reasonable for the conduct to have that effect.

154. By virtue of s212, conduct which amounts to harassment cannot also be direct discrimination under s13.
155. In Richmond Pharmacology Ltd v Dhaliwal [2009] IRLR 336, EAT, Mr Justice Underhill (as he then was) gave this guidance:
- ‘an employer should not be held liable merely because his conduct has had the effect of producing a proscribed consequence. It should be reasonable that that consequence has occurred. The claimant must have felt, or perceived, her dignity to have been violated or an adverse environment to have been created, but the tribunal is required to consider whether, if the claimant has experienced those feelings or perceptions, it was reasonable for her to do so.....Not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers and tribunals are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other discriminatory grounds) it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.’
156. The duty to make reasonable adjustments is set out in sections 20 – 21 of the Equality Act 2010 and in Schedule 8. Where a provision, criterion or practice of the employer puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, the employer is required to take such steps as it is reasonable to have to take to avoid the disadvantage.
157. ‘Substantial’ means more than minor or trivial (EqA s212(1)).
158. The House of Lords in Archibald v Fife Council [2004] IRLR 652 said this about the duty to make reasonable adjustments:
- ‘The duty to make adjustments may require the employer to treat a disabled person more favourably to remove the disadvantage which is attributable to the disability. This necessarily entails a measure of positive discrimination.’
159. At para 6.28, the EHRC Employment Code says the following factors may be relevant to whether an adjustment would have been reasonable: whether taking any particular steps would be effective in preventing the substantial disadvantage; the practicability of the step; the financial and other costs of making the adjustment and the extent of any disruption caused; the extent of the employer’s financial and other resources; the availability to the employer of financial or other assistance to make adjustments eg advice through Access to Work; and the type and size of the employer.
160. Under Schedule 8, paragraph 20(1), the employer is not subject to a duty to make reasonable adjustments if the employer 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 in the first, second or third requirement.

161. The EHRC Employment Code says at para 6.19 that employers must do all they can reasonably be expected to do to find out if someone has a disability and is likely to need adjustments.
162. It need not be certain that making the adjustment would remove the claimant's disadvantage. It is not even necessary for there to be a 'good' or 'real' prospect of that happening. It is sufficient simply if there is a prospect of the adjustment removing the disadvantage. However, the likelihood of it succeeding may affect compensation. (Leeds Teaching Hospital NHS Trust v Foster UKEAT/0552/10; Redcar and Cleveland Primary Care Trust v Lonsdale UKEAT/0090/12.)

Occupational Health

163. A responsible employer must make its own decision about whether or not an employee is disabled. Where OH suggests that the individual is disabled, unless there is a good reason not to, an employer will normally respect that opinion. On the other hand, if OH says the person is not disabled, the employer must still not forget that it is for the employer to make the factual judgment. The employer cannot just rubber stamp OH's opinion that the individual is not disabled. When seeking outside advice, employers must not just ask whether the person is disabled under the legislation, but must pose specific practical questions directed to the circumstances of the putative disability. (Gallop v Newport City Council [2013] EWCA Civ 1653.) An employer can still attach great weight to the opinion of an OH consultant if it is informed, but they must not uncritically accept it. (Donelien v Liberata (UK) Ltd [2018] EWCA Civ 129.)
164. Some older cases look at the different but related question as to whether OH's knowledge of the claimant's health and disability can be imputed to the employer. In LB Hammersmith & Fulham v Farnsworth [2000] IRLR 691, a case under the former Disability Discrimination Act 1995, the Council offered a provisional offer of employment following a report by an external OH physician. The EAT said the physician was an agent of the employer who was part of the decision-making process on who should be offered a job. The employer was therefore fixed with the actual knowledge of the OH physician and not entirely passed on.
165. Hartmann v South Essex Mental Health and Community Care NHS Trust and others [2005] IRLR 293, CA was the first of a set of claims for psychiatric injury arising from stress at work. Mrs Hartmann had disclosed a recent nervous breakdown in a pre-screening health questionnaire for the Trust's OH department. The CA said this did not put the employer on notice that she was vulnerable because the questionnaire was specifically said to be personal and confidential and for use by the OH service only. It was therefore not right to attribute to the employer knowledge of confidential medical information disclosed by the employee to the OH department.

Burden of proof

166. Under s136, if there are facts from which a tribunal could decide, in the absence of any other explanation, that the respondents have contravened the provision concerned, the tribunal must hold that the contravention occurred, unless the respondents can show that they did not contravene the provision.

Conclusions

167. We now apply the law to the facts to determine the issues. If we do not repeat every single fact, it is in the interests of keeping these reasons to a manageable length.

Knowledge of disability

From what date did the respondents know or should they have known the claimant had the disability of Tourette's

168. During the recruitment process, the claimant told both the OH Assist adviser and the OH Doctor in his face-to-face assessments that he had long-standing Tourette's. OH Assist chose not to pass this information on to the respondents, but there is no indication that this was because the claimant asked them not to do so. The claimant's email to AA dated 20 January 2016 suggests he expected OH to have passed on everything relevant. In April 2016, the claimant was pressing OH Assist to clarify that his psychological issues were not only related to travel. Although this is a later date, it reinforces a general picture of someone who expected OH to pass on key information about his condition to management. Again, in his later email to FF on 30 June 2016, the claimant says, 'I have told OH of all the conditions and they are aware and said to refer back if further help needed. I want and tried to get as much information as possible to [Rs] for that purpose.' Again this conveys the picture of someone who expected the information he gave to OH to filter through.
169. We have considered Farnsworth and Hartman. They were cases which neither Counsel were familiar with. The tribunal had brought them to Counsel's attention. As a result, we did not receive a great deal by way of submissions about them. In our view, in the circumstances of this case, where the role of OH Assist was to assess a candidate's suitability for work and to make recommendations to enable him to work, and in a situation where that candidate expected all necessary information to be passed on, the respondents are fixed with the knowledge of OH Assist. It was not like the Hartmann case, where the medical questionnaire was explicitly said to be confidential to OH. We therefore find that the respondents knew about the claimant's Tourette's from the outset.
170. If we are wrong on that, the question is whether and when they should have known. We take that to be the time when they should have been put on

enquiry to ask OH Assist or the claimant exactly what his underlying condition was. The brief OH Assist report lists as one of its three workplace recommendations 'Control work stress'. It adds, 'If you have any queries regarding the content of this report, I would be happy to discuss'. This should have been a red flag to AA. It ought to have alerted him to the possibility that there was a mental health problem and he should certainly have asked more questions. Had he done so, it is probable that he would have been told about the Tourette's. We add that the claimant was also sending emails to the recruitment team asking what had been passed on about his medical report and how it would impact on the team, and referring to the 'medical/disability aspects of the situation'.

171. We therefore believe that the respondents and AA knew, or should have known, from the very beginning that the claimant had Tourette's. We note that on 20 January 2016, the claimant asked AA to refer him to OH in order to manage stress. As AA recognised, that was an unusual request to come from an employee. It was only 6 weeks into the job and OH had in their initial report stated 'manage workplace stress'. This is another point at which AA should, as a matter of urgency, have asked questions about the claimant's underlying condition. He could have explored further with the claimant or asked OH. Instead AA seems to have regarded it as a matter of the claimant needing more advice, rather than him as the claimant's manager finding out more about the claimant's concerns. AA wanted to offer reassurances, but he did not at this stage want to delve deeper.
172. The respondents' guide to reasonable adjustments 'Everyone Managing Disability in the Workplace' points out that there are many reasons why a disabled employee might not tell their line manager that they are disabled. Therefore 'managers need to be proactive'. It warns that some staff may only tell managers about their health issues once trust is built.
173. The difficulty with AA's reaction is that he was telling the claimant 'Don't worry', 'We'll sort things out' without asking any questions, either of the claimant or of OH. The OH report was not written till April. There were some initial difficulties because OH Assist did not understand its purpose and it did not appear to fit within their procedures. However, we had no convincing explanation as to why the delay was allowed to go on so long, or why AA did not approach HR for assistance in getting a faster appointment.
174. When the report did come through in May 2016, it did not mention Tourette's but it did mention 'psychological health issues which make it difficult for him to travel in peak travel time'. The claimant unsuccessfully tried to get OH Assist to clarify it was not only travel which was affected. They failed to make the amendment for unexplained reasons. Even so, the report does refer to work-related stress, therapy, and some kind of 'psychological problem'.
175. Just before receiving this report, the incident occurred in early May 2016 when the claimant talked about stabbing a colleague, jumping under a train, having been signed off in the past as a suicide risk, wanting to avoid that happening again and having 'neurological difficulties'. The respondents accept that from

5 May 2016, they had knowledge that the claimant had a mental health condition that amounted to a disability, albeit they were not aware of the nature of the disability. If they were not yet aware, we find this is another point at which they could and should have asked considerably more questions.

From what date did the respondents know or should they have known the claimant had the disability of Asperger's

176. In January 2018, the claimant was formally diagnosed with Asperger's, although his own consultant had told him in April 2016 that he believed he was on the autistic spectrum and had Asperger's. On 14 July 2016, the claimant mentioned the words 'Tourette's Autism and Asperger's' to CC and on 6 September 2016, he sent her the respondents' guide on Asperger's.
177. The respondents accept they were aware or should have been aware that the claimant had Asperger's on 6 September 2016.
178. Two members of HR knew long before that date. FF knew on 5 May 2016, albeit he was told confidentially. CC was effectively told on 14 July 2016. The claimant did not want to be 'labelled' or it to be bandied about loosely, but he had told someone in authority who was helping him negotiate work difficulties. Further CC did not ask whether she could tell AA at that point or go back to OH.

Delaying the claimant's start date: DAFD

179. We do not uphold this claim.
180. The reason for the delayed start date was that the respondents were awaiting a report from OH. The delay was unfavourable treatment because the claimant lost out in wages and had the anxiety as to whether he would lose an interim job opportunity if the present one fell through. The treatment was for a reason arising in consequence of the claimant's disability, ie the need to have an OH assessment at all plus the need for a more in-depth assessment.
181. The question is therefore whether the respondents can show their treatment was a proportionate means of achieving a legitimate aim. We find there was a legitimate aim, ie obtaining medical advice as to whether candidates and in this case the claimant were fit to do the job and what adjustments if any might be required from the outset.
182. The final question is whether the treatment was proportionate. On 29 October 2015, the claimant was sent the formal offer which notified him that his start date would be confirmed on successful completion of pre-employment checks. The claimant completed the BUPA questionnaire that evening. There was then a delay due to the respondents' change of health provider. On 6 November 2015, the claimant was referred to the new provider and he completed a further questionnaire that day. He had a face-to-face with the OH adviser on 13 November 2015. She decided a more specialist assessment was required and on 26 November 2015, that took place. A report was sent in

the same day. On Friday 27 November 2015, the respondents asked whether the claimant could start that Monday, ie Monday 30 November 2015. In the event, the claimant started on 4 December 2015. The delay was the result of the claimant making further enquiries about adjustments.

183. The average time from offer to hire for non-operational staff who do not need a medical is 10 days. For those needing a face-to-face medical, it is 22 days. For context, from 29 October to 30 November 2015 is 32 calendar days and 21 working days. To 4 December 2015 is an additional 4 days. From 6 November 2015, the questionnaire for the new provider, until 4 November 2015 is 28 calendar days and 20 working days.
184. We do not feel the time taken to get medical clearance was disproportionate. It was unfortunate that the claimant's job application coincided exactly with the timing of the change of provider, but this caused a delay of only 1 week. When one looks at the steps in the process, none of the delays between steps are undue. The longest delay is for the appointment with the Doctor, but a two week wait is not excessive. We do not think it unreasonable that the first person who does the check is not a specialist doctor. This is not a situation involving an in-employment referral where there is clearly a major issue. In many cases, the initial adviser would be equipped to do the assessment. We understand that the claimant was anxious because he had another offer, albeit of only a temporary post. However, this was not any different from usual pre-employment checks which can take longer or shorter than the average.

Delaying the claimant's start date: direct discrimination

185. We do not uphold this claim.
186. The respondents asked all job applicants to complete a health questionnaire. If non-operational staff tick an item on the questionnaire which indicates there is a potential health issue, whether or not it is a disability, they are sent for a face-to-face assessment. If the issue is complex, they might be sent for a further assessment with a doctor. Health issues do not automatically equate with disabilities. The respondents do not distinguish between health issues which are a disability and those which are not. The claimant was therefore not treated less favourably than he would have been treated if he was not disabled and had ticked items on the questionnaire which required further investigation.

Placing the claimant at risk of redundancy on 11 April 2017: DAFD (s15)

187. We uphold this claim.
188. On 23 March 2017, the claimant was invited to attend an informal meeting at which BB discussed the proposed redundancy and that the claimant's job was very likely to go. FF confirmed to the tribunal that this was an 'at risk' meeting. Formal consultation started on 11 April 2017. The claimant was de facto at risk on that date. Further, there is an email of 20 April 2017 where CC records to a colleague that the claimant was 'at risk'.

189. Quite apart from the technical point which the respondents' representative takes regarding when the claimant was 'at risk', he quite clearly was at risk of redundancy in a real sense from the moment a restructure was designed and proposed which would delete his post.
190. We find that the reason the claimant was placed at risk of redundancy was because of the high level of management support he was requiring and his failure to do all parts of the job. This was something arising in consequence of his disability. He was needing meetings, action plans, monitoring, guidance on priorities, cover by other people and so on, and he was writing numerous emails. All these were because of his needs for structure and support arising from his Tourette's and from his Asperger's and also the stress caused by each of these.
191. We are struck by the timing of the proposed reorganisation, the fact that the claimant was the only individual put at risk, and the fact that he was invited to a pre-consultation where he was strongly encouraged to accept severance terms.
192. Regarding the timing, AA said it was the result of the falling off of Back Office work because of reclassification. However, the respondents were reclassified in September 2014. The alleged effect on the claimant's post would have been foreseeable. Yet the claimant was recruited, with some urgency, in December 2015. He was given a job description and task list based on the job his predecessor had been doing. Although AA says he was too inexperienced at that stage to foresee job changes, we find that surprising that he should see the need for dramatic change only 12 months later.
193. By October / November 2016, the claimant had become increasingly time-consuming. The respondents had been forced to reduce his workload. In a 2 November 2016 email, the claimant referred to the fact that AA 'goes round telling [D] staff "BB is asking how much longer we need people to keep giving [C] support"'
194. Then the claimant was invited to a somewhat unusual pre-consultation, prior to the start of the usual formal consultation process which the respondents embark on with the trade union. He was offered a payment and garden leave. This was outside the company policy on managing reorganisations. He was strongly encouraged to accept severance.
195. For these reasons, we therefore find that the reason for putting the claimant at risk of redundancy was something arising from his disability. The respondents do not seek to justify this treatment because they deny that was the reason. We do not in any event find that this treatment was justified as a proportionate means of achieving a legitimate aim. If the respondents were unable to accommodate the claimant's needs, that should have been addressed head on, not by creating an artificial redundancy situation.

196. For these reasons, we find that placing the claimant at risk of redundancy by designing a restructure which eliminated his job was discrimination arising from his disability. We note that the respondents reached a similar conclusion in their internal grievance and we derive comfort from that.

Placing the claimant at risk of redundancy: direct discrimination

197. We do not find direct discrimination. Had the claimant been a non-disabled person who was taking up the same amount of management time and not doing all his parts of his job after a year, doubtless the respondents would have behaved in the same way.

Harassment: AA discussing disciplinary sanctions with the claimant

198. It is alleged that AA discussed disciplinary sanctions with the claimant between January and April 2016 and that this was harassment. We do not uphold this claim.
199. For reasons explained in our fact-findings, we have found that the mention of disciplinary sanctions was in answer to the claimant expressing his anxiety about having difficulty with work tasks, and in the context of telling him disciplinary sanctions would not be considered at such an early stage.
200. We add that AA did not refer to strikes and disciplinary action for reasons related to the claimant's disabilities. He did so because the claimant expressed anxiety about his work difficulties and in order to reassure him.

Harassment: AA saying in May 2016 that the claimant was very well paid and shouldn't have to be supervised

201. In May 2016, AA told the claimant that he did not consider that he should need to supervise Job Title A who was being paid £70,000 / year. AA said that MM, the lowest paid and most junior member of the staff, was having to supervise the claimant, and that the claimant's salary was 30% more than that of NN: the claimant was wanting NN to assist him, but it should be the other way round.
202. These remarks were unwanted conduct, but not related to disability. The reason for the remarks was that the claimant was requiring a level of assistance from AA and from more junior staff, which AA did not think was justified given the claimant's high salary. This discussion had been prompted by the claimant not completing period end the previous day. AA was angry that the claimant had not told him until the end of the day that he could not do it. It was not until later in the conversation that the claimant revealed he had 'neurological disabilities'. Until that point, AA did not personally know the claimant had disabilities.

Harassment: BB presenting two options on 23 March 2017

203. On 23 March 2017, BB and FF presented the claimant with two options, ie: (1) voluntary severance with something along the lines of garden leave and PILON and (2) going through redundancy with no guarantee he would get anything. The claimant was strongly encouraged to accept voluntary severance. BB and FF had jointly agreed to offer these options, although during the meeting, it was FF who raised it first.
204. This offer was unwanted conduct. The claimant did not want to leave. The offer and the way it was put were for a reason related to disability, ie the desire that the claimant should leave because of the time taken to manage his adjustments.
205. We do not consider the respondents had the purpose of creating a hostile, humiliating or offensive environment for the claimant. But it had that effect.
206. As to whether it is reasonable to have had that effect, we take account of the claimant's perception and the other circumstances of the case. We can see that from the claimant's viewpoint, given his disabilities, he may have found it difficult to understand any good intentions behind the offer. He perceived the redundancy situation to be unjustified in the first place and indeed the tribunal has also found that placing the claimant at risk was discriminatory. On the other hand, the claimant was aware that he had expressed his unhappiness in the job several times. He was being made an offer which might have been attractive to him. He had good relations with FF. His union representative was also present. He was given some time to think. On balance, we do not think it was reasonable to have had that effect. This claim is therefore not upheld.

Harassment: 11 April 2017 meeting

207. It is alleged that AA, on 11 April 2017, ended a meeting in which he gave the claimant 'consultation papers' by saying 'goodbye and good luck' and that his 'last day was 15th May 2017'. For reasons explained in our fact-findings above, we do not find that AA said these things on 11 April 2017.

Harassment: placing at risk of redundancy on 11 April 2017

208. This claim was put in the alternative in the claimant's Counsel's final submissions. We have already found that placing the claimant at risk of redundancy was discrimination arising from his disability contrary to s15 of the Equality Act 2010.

Indirect discrimination pre-employment health screening

209. This claim is not upheld.
210. The claimant says that the provision, criterion or practice was requiring non-operational job applicants to complete a pre-health screening process. We find that the respondents did apply such a provision, criterion or practice.

211. The respondents applied that provision, criterion or practice both to the claimant and to other job candidates without the claimant's disabilities.
212. The provision, criterion or practice put and would put those with the claimant's disabilities at a particular disadvantage compared with others in that as a general rule, it is likely to take longer before they can start in post.
213. The provision, criterion or practice put the claimant at a particular disadvantage in that it delayed his start date which he found stressful and cost him some lost earnings.
214. The respondents have shown that the provision, criterion or practice was a proportionate means of achieving a legitimate aim. The aim was to ensure job candidates were fit for the post and to ascertain what reasonable adjustments might be needed before they start. The means were proportionate. The claimant was asked to follow a routine process of completing a questionnaire and then, arising from his answers, attending a face-to-face assessment. It is inevitable that some individuals will have more complex needs requiring further specialist assessment. There were arrangements for that to take place and the delay was within reasonable bounds. The reality is that such things do take time.

Reasonable adjustments: provisions, criteria and practices

1. Requiring employees to carry out the duties of their role

215. This provision, criterion or practice was applied. Self-evidently the claimant, and indeed other employees, were required to carry out the duties of their role.
216. This requirement put the claimant at a substantial disadvantage compared with someone who did not have his disabilities. As a result of his Tourette's as well as his Asperger's, the claimant needed structure and order in his role, clear communication and instruction and he panicked when given last minute tasks. All this made it difficult for him fully to carry out the duties of his role, especially until he had been fully trained up and he had learned all aspects. Some duties he would always find extremely difficult, ie having to cover MM at the last minute and being given last minute tasks.

Did the respondents know the claimant would be placed at a substantial disadvantage? Alternatively could they reasonably be expected to know?

217. By the time of the OH report received on 11 May 2016, AA knew the claimant had these needs. The respondents could reasonably be expected to have known sooner. Certainly once the claimant had asked for a referral to OH on 20 January 2016 regarding management of his stress, the respondents were sufficiently put on notice to have sat down and talked to him about his needs. They should also have expedited the OH referral and not allowed it to drift for three months. Indeed, the very first OH report said 'Control work stress'. AA responded by announcing what steps he was going to take to help the

claimant manage his stress, but he did not sit down and have a proper conversation about it. Nor did he ask more questions of OH, despite their invitation to him to do so. We therefore find that the respondents should have known from the outset that the claimant would be placed at a substantial disadvantage in doing his duties as a result of his disability of Tourette's.

2. A lack of structure to the duties

218. We find that the duties were structured. The respondents did not apply a provision, criterion or practice of lack of structure. There was a job description, albeit talking mainly at a high level about accountabilities and responsibilities. There was a task list of 86 tasks provided by the claimant's predecessor. The list indicated which tasks were in the first instance the claimant's duty and which were MM's duty and who was responsible for cover. These were available from the beginning. The type of task was largely recurring.

3. A lack of a working PC

219. We accept the claimant had above-average difficulties using his PC over a prolonged period. However, the cause of this is unclear. We are not satisfied it was due to a lack of working PC. The help desk concluded in the end that many of the difficulties were self-inflicted.

4. A lack of training:

Did the respondents apply this requirement?

220. By lack of training, the claimant means showing him how to do tasks and processes with which he was unfamiliar. The respondents had an expectation that the claimant would hit the ground running. They would have wanted anyone taking up that post to be able to do so after a brief induction into the culture. The claimant was never adequately shown how to do the full period end work by NN. His handover by the D person who had been covering was brief and fragmented. The respondents therefore did apply a provision, criterion or practice of 'lack of training' in the sense meant by the claimant.

Did this requirement put the claimant at a disadvantage because he is disabled compared with someone not disabled?

221. This put him at a substantial disadvantage because of his disability. Because of his disability, the claimant needed to understand things from the bottom up rather than the top down. As already stated, he needed clear communication and instruction. The failure to properly teach him the period end work was an area which caused particular stress for the claimant and led to the incident in early May 2016. NN never did teach the claimant the last 20% of the period end work.

Did the respondents know the claimant would be placed at a substantial disadvantage? Alternatively could they reasonably be expected to know?

222. The OH report seen by AA on 11 May 2016 says the claimant felt he had insufficient handover and insufficient training in the specifics of his role. As stated above, the respondents could reasonably have found this out sooner and indeed from the outset had they made reasonable enquiries.

5. A lack of leadership

Did the respondents apply this requirement?

223. By lack of leadership, the claimant says he means the tendency of AA to let things slide in terms of chasing reasonable adjustments and failing to help the claimant integrate into the team. We find this too vague to be a provision, criterion or practice. It appears to be saying that failing to make reasonable adjustments is a provision, criterion or practice leading to the need to make reasonable adjustments.

6. A lack of skills within the team

224. No such provision, criterion or practice was applied. The claimant refers primarily to a lack of Treasury Specialist IT skills on the team, and to a lesser extent, to lack of work planning skills. The claimant has not satisfied us that there is a lack of such skills. There is no evidence that the difficulties the claimant had with IT were due to a lack of Treasury Specialist IT skills. Nor is there any evidence that any lack of work planning was due to lack of the skills to do so.

7. A lack of team integration

225. The respondents applied a provision, criterion or practice of lack of team integration.

226. AA and NN were based out of London. In London, the claimant was only introduced to those team members in the Front Office who were in on day 1. As a result, he never talked to them and they never talked to him after that. At a later point, EE did not want to go for coffee with the claimant. On 6 May 2016, FF told BB that there were concerns about the claimant's integration into the team. In the July 2016 action plan it is noted that the claimant felt isolated from the team and felt there was no one to ask questions or interact with. In the notes of his meeting with CC and AA on 8 July 2016, the claimant said he was excluded from meetings, socials and team events. On 13 July 2016, the claimant emailed CC to say that the last three Front Office and Back Office meetings were all being held on the day he was working at home and he felt he was being excluded. On 6 September 2016, the claimant emailed CC to complain that there was a new joiner on the team to whom he had not been introduced. He said exactly the same thing had happened with another employee on the team, with whom he had never communicated since

Did this requirement put the claimant at a disadvantage because he is disabled compared with someone not disabled?

227. This lack of integration put the claimant at a substantial disadvantage compared with those who did not have his disability. The very nature of his disability makes it difficult for him to form relationships. The claimant's consultant's letter notes that as a result of his Tourette's, the claimant is embarrassed and self-conscious and struggles with social communication and initiating conversations.

Did the respondents know the claimant would be placed at a substantial disadvantage? Alternatively could they reasonably be expected to know?

228. The respondents knew from 6 May 2016 that the claimant had difficulties with integration into the team. FF appreciated this was as a result of his disability and suggested the buddy idea. Then on 6 September 2016 the claimant gave the respondents the Asperger's policy which has Guidance on Communication and Social Skills.

229. Had AA asked further questions at the outset, he is likely to have discovered at that point that the claimant had Tourette's, was self-conscious and struggled with social communication and interaction.

8. *A practice of requiring employees to carry out multiple roles at once on short notice*

Did the respondents apply this requirement?

230. The claimant was not required to carry out multiple roles at once on short notice. He was required when needed to do last minute tasks and also to cover MM's absence. These might be required when he was engaged on some other task. To the extent that this is what is meant, such a provision, criterion or practice was applied.

Did this requirement put the claimant at a disadvantage because he is disabled compared with someone not disabled?

231. This provision, criterion or practice did put the claimant at a substantial disadvantage compared with someone without his disability. Due to his disabilities, the claimant liked to focus on one task at a time and became panicked by last minute requests which he experienced as chaos.

Did the respondents know the claimant would be placed at a substantial disadvantage? Alternatively could they reasonably be expected to know?

232. The OH Report provided on 11 May 2016 says that the claimant requested no work at the last minute, advance notice where possible, and not pulling him away at short notice from the work he was doing.

233. As already stated, had R explored the claimant's cause of stress at the outset, as he should have done, it is likely he would also have found out at that point that last minute tasks were a major difficulty.

9. A practice of requiring employees to manage the volume of work given to them

Did the respondents apply this requirement?

234. The respondents required employees including the claimant to manage the volume of work which was given to them.

Did this requirement put the claimant at a disadvantage because he is disabled compared with someone not disabled?

235. This provision, criterion or practice did put the claimant at a substantial disadvantage compared with someone without his disability. The OH Report disclosed on 11 May 2016 explains that the claimant needed a reasonable workload, guidance from his manager on how to prioritise, extra time to deliver work at least in the beginning and clear targets to be set together with his manager.

Did the respondents know the claimant would be placed at a substantial disadvantage? Alternatively could they reasonably be expected to know?

236. The respondents knew about these matters from the 11 May 2016 OH Report. Indeed in response to the pre-employment OH Report which refers to 'control work stress', AA had said he would put in place 1 to 1s to help manage workflows and deadlines to assist managing stress. AA therefore did in fact know the situation, but in any event, as we have already said, he ought reasonably to have known of the claimant's disabilities from the outset and also that the claimant would be put at this kind of substantial disadvantage as a result.

Reasonable adjustments: proposed adjustments

(a) *Giving the Claimant a reduced workload (until late 2016)*

237. We find that a reduced workload would have helped alleviate the disadvantage to the claimant arising from his difficulties in carrying out the full duties of his role from the beginning, managing a volume of work and the lack of sufficient training on new duties and processes. To a lesser extent it may have helped him cope with last minute demands when he was engaged on other work, but last minute demands would always be a difficulty for him.

238. The claimant had indicated workload was an issue from early on and the pre-employment OH report had said 'control work stress', which should have signalled that workload was a potential issue. The OH report received on 11 May 2016 said that management should discuss the claimant's workload with him to ensure it was reasonable. The OH report in August 2016 stated that the claimant felt he had a huge workload and it made various recommendations about not giving the claimant too many tasks at once. The claimant was himself raising issues about the stress of a heavy workload.

239. The claimant's workload was not officially reduced until November 2016. Up till that point, it was more a question of telling him which areas to prioritise.
240. For reasons we explain in more detail below in relation to weekly plan of tasks, work in chunks and targets, we find that the claimant's workload should have been built up gradually from the outset. He should have been given a portion of tasks to learn. Then another portion of new tasks to learn, while continuing with the already learned tasks. And so on until he built up his full workload. What caused the difficulty was giving him everything at once.
241. We therefore find a failure to make reasonable adjustments by the failure to give him a reduced workload at a much earlier stage. Certainly by the time he asked to self-refer to OH for stress in January 2016, and had matters been handled correctly, from the outset. The failure to make this reasonable adjustment continued until November 2016. As this adjustment overlaps with weekly plan of tasks, work in chunks and targets, we will address these items together in more detail below.
- (b) *Not giving the Claimant last minute tasks, or too many tasks to deal with at once*
242. The general issue of too many tasks at once, we will deal with under chunks of work and workload. Regarding last minute tasks, we do not find it a reasonable adjustment not to give the claimant these. AA said himself it was the hardest adjustment. The nature of the work meant that a level of last minute urgent enquiries was unavoidable. The Front Office employees needed someone to sanction their activities. If MM was away, it had to be the claimant until the point came where AA was able to recruit and cross-train. He did this as soon as he could. Even then, it was not a complete solution for unplanned absences, but that is understandable. We do not see what more AA could reasonably have done.
- (c) *Moving desk to avoid disruption to the Claimant (until 22 May 2017)*
243. Moving desk to the end of a row by a window rather than sitting in the middle of a team would have helped the claimant to carry out his duties and manage his volume of work. It may also have helped him feel calmer when faced with last minute interruptions.
244. The claimant first asked for his desk to be moved because he found the noise distracting in his memo dated 6 September 2016 to CC. He was not given a desk until his return from a period of sick leave which started on 24 May 2017. The respondents' own policy on Asperger's recognises noise and distraction are issues: it says managers' strategies for support can include providing a quiet workspace to help reduce noise and over-stimulation. The respondents were provided with this policy by the claimants on 6 September 2016. Had they read and understood it properly, they would have seen this was a matter which they should address.

245. This move could easily have been effected if two individuals including one with a window seat, sitting in another department had been asked to move. AA said he could not make this request of the other team leader because the claimant did not want his disability revealed. We accept that it would have been idea to be able to explain to the team leader and to the people being moved that the claimant had particular disabilities which meant he needed the desk. However, that was not essential. With the help of HR if necessary, the team leader could simply have been told that the desks were required. Or the claimant could have been asked how much information could have been passed on privately to the team leader. It would for example be possible to say the claimant needed a quiet desk without giving full reasons why. There was bound to be some way of handling the matter, but instead it was allowed to drift for over 8 months.

246. We therefore find the failure to enable the claimant to move desks at any point until his sick leave starting 22 May 2017 to be a failure to make reasonable adjustments.

(d) Giving the Claimant a weekly plan of tasks

247. The August 2016 OH report recommended a weekly plan of tasks to even his workload and work tasks spread out evenly on a daily basis. The claimant was not given a written weekly plan of tasks. AA did hold weekly meetings with the claimant and MM at the start of every week from September 2016. He discussed with the claimant what the next week's task should be and which should be prioritised. These did not start till September 2016 and were not systematically written down. AA refers to the list of 86 tasks which sets out a short list of recurring weekly tasks. This was not at the level of detail which the claimant meant as a plan. Further, the list was not looked at as a reference point in the weekly meetings.

248. For reasons explained below when we address the overlapping issues jointly, we find that this system of working should have been adopted from the outset. Failure to do so was a failure to make reasonable adjustments. Moreover, the ongoing failure to provide such a list following the OH report in August 2016 was also a failure to make reasonable adjustments.

(e) Completing a stress risk assessment

249. This claim is withdrawn.

(f) A buddy

250. A buddy would have helped the claimant with his team integration. It was first suggested in May 2016 by FF. AA appears to have taken very little action on the request. At some point he asked EE to go out for occasional coffees with the claimant. It was not until November 2016 that the claimant was given any feedback, and he was told that EE did not want to his buddy but BB could be a buddy instead.

251. Given that an HR professional, FF, had made the suggestion of a buddy, we feel the respondents could have made far greater and swifter efforts to find someone suitable. Instead it was allowed to drift for four months. In those four months, the respondents did not discuss with the claimant whether another team member might do. The respondents should have established sooner whether or not EE was prepared to assist and if not, and if BB was going to help, BB could have been asked sooner. We therefore find that the failure to find a buddy from May to November 2016 was a failure to make reasonable adjustments.
252. The claimant has also had no buddy since BB ceased being his buddy in about March 2017. By this time, the situation at work was less clear-cut, with the redundancy proposal, the latest grievance and then tribunal proceedings. We do not have enough evidence about the situation in work to suggest a new buddy was practical from that point on.

(g) Breaking the Claimant's work into chunks

253. Breaking the claimant's work into chunks would have helped him carry out the duties of his role and manage his volume of work. This means more than a detailed list of tasks as in the 86 task list. It means giving the claimant work in small portions, especially as he learns the job. As confirmed by the August 2016 where OH report advised that the claimant should not be given too many tasks to deal with at once and that tasks should be spread out evenly on a daily basis. This was never properly done.
254. For reasons we explain in detail below, we find the failure to do this was a failure to make reasonable adjustments.

(h) Setting clear specific targets for the Claimant

255. This overlaps with providing a weekly plan of tasks and breaking the work into chunks. The claimant needed to be given portions of work and know what he was required to achieve within a set time-frame. This was never done with sufficient clarity.
256. For reasons we explain in detail below, we find the failure to do this was a failure to make reasonable adjustments.

Further comments on adjustments (a), part of (b), (d) (g) (h)

257. What the claimant needed from the outset until he learned the role was a reduced workload, the work broken down into chunks with clear and specific targets and a weekly plan of tasks, and not being given too many tasks at once. He needed a gradual build-up of his workload task by task until he had learned everything. For this period, he wanted hands on management, targets and feedback. As AA explained to the tribunal, the claimant needed to understand things from the bottom up, not from the top down.

258. Because the process was managed wrongly from the outset and because of the claimant's susceptibility to stress arising from and reinforcing his disabilities, the situation deteriorated very quickly and the claimant's needs escalated. The respondents found themselves continually having to deal with concerns and put right problems which had already arisen. In the event, adjustments have become extremely onerous and time-consuming. We find this need not have happened.
259. We recognise this was a senior post on which AA had sought leave to pay at the highest end of the scale. From the claimant's CV, he appeared to be experienced and well qualified for the task. AA was not based in the same office. We would not expect the level of close supervision and day-to-day management that might be reasonable for a more junior lower paid post. Nevertheless, we believe if some time had been invested at the outset to get matters onto the correct footing, nowhere near as much time would have to have been spent on these adjustments as has in the event been spent. We agree with this comment in the grievance outcome: 'A combination of a very hands off management style and a need by the employee for structure and much more hands on management created a situation that spiralled out of control quite quickly.'
260. We also recognise that the claimant made matters more difficult by his understandable desire for privacy. He did not readily volunteer the name of his disability to AA, though he was open with OH, and he did tell AA about stress from the beginning. The mistake AA and BB made was never to try to have the conversation. AA knew there was a stress issue from the outset. It was notable enough to be mentioned in an OH pre-employment report. The claimant then asked to be referred to OH only 6 weeks into the job. AA's approach was to offer reassurances. But he did not sit down and have a systematic discussion about what the claimant felt would help. Nor did he try to find out what the underlying issues were. BB also took a hands off approach. He did not take up the claimant's offer in the 31 August 2016 email to tell him more about his disability. To the date of the tribunal hearing, he had still not read the respondents' Policy on Aspergers.
261. As already stated, we consider that the respondents knew or should have known that the claimant had the disability of Tourette's and the disadvantages to which this would put him right from the start of his employment. The second point at which they should have known was shortly after he asked for a self-referral to OH six weeks into his employment. It should have taken a few weeks, not three months, to get OH advice. So from the very beginning or at least within the first two months, it would have been a reasonable adjustment for the respondents to make the adjustments which we have described. With those, there was a reasonable chance that the claimant would have gradually have been able to take on the full job with decreasing levels of management supervision, although we suspect the need for some level of structure and accountability would always be required. As AA told the tribunal, 'If we had known everything we know today, we may have taken different actions. But we didn't know that. We found out more as time went on and as we got more OH reports.'

262. By their mishandling of the situation from the outset and their continuing failure to provide the structure and training needed, the respondents got themselves into a situation where the claimant was unable to do large parts of his job and was taking up a great deal of time. He continued to need these adjustments. They sought to resolve that by putting him at risk of redundancy.

Victimisation: placing at risk of redundancy

263. We do not find that the claimant was placed at risk of redundancy because of his grievances. As we have stated, we believe he was placed at risk of redundancy because of the high level of management support he was requiring and his failure to do all parts of the job.

Time-limits

264. The ACAS notification was made on 16 June 2017 and the ACAS certificate was issued on 30 July 2017. The ET1 was presented on 25 August 2017. This means that any isolated acts taking place prior to 17 March 2017 are prima facie out of time.

265. Putting the claimant at risk of redundancy on 11 April 2017 and the prior meeting of 23 March 2017 are both in time. The reasonable adjustment of failing to move the claimant's desk up to 2 May 2017 is in time. The failure to make these reasonable adjustments continued up to 11 April 2017 and beyond:

- Not giving the claimant too many tasks to deal with at once (with the exception of last minute tasks)
- Giving the claimant a weekly plan of tasks
- Breaking the claimant's work into chunks
- Setting clear specific targets for the claimant

266. On the face of it, failures to make these reasonable adjustments took place more than three months prior to the ACAS notification:

- Giving the claimant a reduced workload in the period up to November 2016.
- Providing the claimant with a buddy from May to November 2016.

Nevertheless, we find them part of a continuing discriminatory state of affairs and as such, they are in time. They link together with the failures we have found which are prima facie in time and continued over the majority of the claimant's employment culminating in putting him at risk of redundancy. Had we not found these matters part of a continuing act of discrimination, we would have considered it just and equitable to allow them out of time. It is important to look at the treatment of the claimant as a whole. The respondents are not specifically disadvantaged by their lateness. Moreover, even if the claimant had access to legal advice and even if he was aware of time-limits, given his disabilities including his stress, it is more than understandable why he would hope to resolve matters internally rather than in the public forum of a tribunal which he found so daunting.

267. We have not considered it necessary to consider time-limits on those matters which we have not upheld. We first looked into them fully on their merits.

Vicarious liability

268. The respondents' representative was asked several times whether the respondents were pursuing the vicarious liability defence. Each time she indicated that she thought not, but needed to take instructions. In the end, the matter was forgotten. However, she did not make any arguments in pursuance of this and we take it that no such argument is made. Nor can we see on the basis of the evidence put before us why the respondents should succeed on such a defence.

Employment Judge Lewis
9 January 2020

This further anonymised version sent to the parties on:

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9 January 2020

.....
For the Tribunals Office

APPENDIX: REVISED AGREED LIST OF ISSUES

2. TIME LIMITS

- 2.1 Have allegations 1, 4, 11 and 14 (as set out in the Claimant's ET1) been brought in time (taking into account the 3 month time limit for bringing discrimination claims and the applicable extension for the ACAS early conciliation period)?
- 2.2 If not, do any of those allegations amount to conduct extending over a period amounting to a continuing act of discrimination, in respect of which the most recent of the allegations has been brought in time?
- 2.3 In relation to allegation 14 (which consists of allegations of failures to act) when is the Respondent to be treated as having decided upon the relevant failures to act (in line with the provisions of section 123(3)(b) and 123(4) Equality Act 2010)?
- 2.4 If any of the Claimant's claims are out of time, is it just and equitable to extend time?

3. DISABILITY

- 3.1 The Respondent concedes that the Claimant was, at the material times, a disabled person by reason of Autism Spectrum Disorder and the impairments caused by his ASD are set out in the report of Dr J dated 23 January 2018 (which was carried out to assess whether the Claimant had ASD.) The Respondent concedes that the Claimant was, at the material times, a disabled person by reason of Tourette's syndrome and that the addendum report of Dr J dated 19 March 2018 describes the symptoms that the claimant was experiencing at the time it was written.
- 3.2 The Respondent does not concede that the Claimant was disabled by stress. The Claimant no longer concedes that his stress was a disability in itself, however the Claimant contends that stress exacerbates his disabilities and having the disabilities is also a cause of stress for him.
- 3.3 If one or more of the two conditions were disabilities, did the Respondent know that the Claimant had these disabilities at the relevant time(s)?
- 3.4 Did the Respondent have such knowledge in respect of each condition?
- 3.5 If not, could the Respondent be reasonably expected to have known of the Claimant's disability at the relevant time(s)?

3.6 If so, from what date could the Respondent reasonably be expected to have such knowledge in respect of each condition?

4. DIRECT DISABILITY DISCRIMINATION

4.1 Did the Respondent act as alleged:

4.1.1 Delay the Claimant's start date by almost 5 weeks whilst awaiting an occupational health report (Allegation 1);

4.1.2 Place the Claimant at risk of redundancy on 11 April 2017 (Allegation 13)?

4.2 If so, did any of the above alleged conduct constitute the Respondent treating the Claimant less favourably than it would treat others (either a non-disabled person or a person with a different disability), whose abilities are not materially different to those of the Claimant)?

4.3 If so, was such treatment because of the Claimant's disabilities?

4.4 Who is the correct comparator (whose abilities are not materially different to those of the claimant)? Should a hypothetical comparator be used? The Claimant relies on a hypothetical comparator.

5. DISCRIMINATION ARISING FROM DISABILITY

5.1 Did the Respondent act as alleged:

5.1.1 Delay the Claimant's start date by almost 5 weeks whilst awaiting an occupational health report (Allegation 1);

5.1.2 Place the Claimant at risk of redundancy on 11 April 2017 (Allegation 13)?

5.2 If so, did any of the above conduct amount to the Respondent treating the Claimant unfavourably?

5.3 If so, did the Respondent treat the Claimant unfavourably because of something arising in consequence of his disability? The Claimant asserts that the "Something arising" was:

5.3.1 In relation to Allegation 1, an alleged requirement to undergo further Occupational Health Screening;

5.3.2 In relation to Allegation 13, "the way the Claimant does his job".

5.4 Can the Respondent show that that treatment was a proportionate means of achieving a legitimate aim within the meaning of section 15(1)(b) of the Equality Act 2010?

5.5 In any event, was the Respondent aware, or could it reasonably be expected to know, that the Claimant had his disability(ies)? If not, there is no discrimination.

6. DISABILITY HARASSMENT

6.1 Did the Respondent act as alleged:

6.1.1 Did the Claimant's line manager discuss disciplinary sanctions with the Claimant between January and April 2016 (Allegation 4)?

6.1.2 Did the Claimant's line manager say "why do I have to supervise you" to him and say that as the Claimant was paid very well, and earned 30% more than Job Title G, why does Job Title E, the lowest paid most junior person, have to manage the Claimant in May 2016 (Allegation 4)?

6.1.3 Did BB present the Claimant with two options: (1) voluntary severance with "something along the lines of garden leave and PILON" and (2) going through redundancy with no guarantee he would get anything on 23 March 2017 (Allegation 11)?

6.1.4 Did AA, on 11 April 2017, end a meeting in which he gave the Claimant "consultation papers" by saying "goodbye and good luck" and that his "last day was 15th May 2017" (Allegation 12)?

6.1.5 Place the Claimant at risk of redundancy on 11 April 2017 (Allegation 13)?

6.2 If so, did any of the above alleged treatment amount to the Respondent engaging in unwanted conduct?

6.3 If so, did any such unwanted conduct relate to the Claimant's disabilities?

6.4 If so, did such conduct have the purpose or effect of violating the Claimant's dignity and/or creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant? In determining this, the Tribunal must take into account the perception of the Claimant, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

7. INDIRECT DISCRIMINATION

7.1 Did the Respondent apply a provision, criterion or practice (PCP) to the Claimant of requiring employees to complete pre-employment health screening?

7.2 Did or would the Respondent apply that PCP to persons who do not have the Claimant's disabilities?

7.3 Does or would the PCP put those with the Claimant's disabilities at a particular disadvantage compared to employees who do not have those particular disabilities (such group including disabled and non-disabled employees)?

7.4 Did the PCP put the Claimant at a particular disadvantage?

7.5 Can the Respondent show that the PCP is a proportionate means of achieving a legitimate aim?

8. REASONABLE ADJUSTMENTS

8.1 Did or would the Respondent apply a provision, criterion or practice (**PCP**) to the Claimant, which it would also apply to employees who do not share the Claimant's disabilities? The PCPs relied upon are:

- (1) requiring employees to carry out the duties of their role;
- (2) a lack of structure to the duties;
- (3) a lack of a working PC;
- (4) a lack of training;
- (5) a lack of leadership;
- (6) a lack of skills within the team;
- (7) a lack of team integration;
- (8) a practice of requiring employees to carry out multiple roles at once on short notice;
- (9) a practice of requiring employees to manage the volume of work given to them.

8.2 If so, when did the Respondent apply such PCP(s)?

8.3 If the Respondent did apply any such PCP(s), did such PCP(s) put the Claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled? The substantial disadvantage relied upon in each case is the aggravation of the Claimant's condition as detailed at paragraph 47 of the ET1.

8.4 If so, did the Respondent know at the relevant times that the Claimant would be placed at a substantial disadvantage (Paragraph 20(1)(b) Schedule 8 Equality Act 2010)?

8.5 If not, could the Respondent reasonably be expected to know that the Claimant would be placed at a substantial disadvantage (Paragraph 20(1)(b) Schedule 8 Equality Act 2010)?

- 8.6 If the Respondent was aware of the disadvantage or could reasonably be expected to be aware of it, did it take such steps as it was reasonable to have to take to avoid the disadvantage?
- 8.7 Would the following steps have been ones that it was reasonable for the Respondent to have to take (and did the Respondent fail to take them):
- (a) Giving the Claimant a reduced workload (until late 2016);
 - (b) Not giving the Claimant last minute tasks, or too many tasks to deal with at once;
 - (c) Moving desk to avoid disruption to the Claimant (until 22 May 2017)
 - (d) Giving the Claimant a weekly plan of tasks;
 - (e) Completing a stress risk assessment;
 - (f) Providing the Claimant with a buddy;
 - (g) Breaking the Claimant's work into chunks; and
 - (h) Setting clear specific targets for the Claimant.
- 8.8 The Claimant relies on the following adjustments in respect of each of the PCPs:
- | | |
|------|------------------------|
| PCP1 | a, b, c, d, e, g and h |
| PCP2 | a, b, d, e and h |
| PCP3 | a, b |
| PCP4 | a, b, h |
| PCP5 | f, h |
| PCP6 | b |
| PCP7 | f |
| PCP8 | a, b, c, d, e and h |
| PCP9 | a, b, d, e, g and h |

9. VICTIMISATION

9.1 It is conceded that the Claimant did a protected act when he raised his grievance on 29 March 2016 and on 24 June 2016.

9.2 Was the Claimant subjected to a detriment by the Respondent? The Claimant relies upon the following alleged detriment:

9.2.1 The Claimant was placed at risk of redundancy on 11 April 2017 (Allegation 13)?

9.3 If the Respondent acted as described above, did it amount to a detriment?

9.4 If so, did the Respondent subject him to such detriment because of the alleged protected act?

10. REASONABLE STEPS

11. If the Claimant was discriminated against, had the Respondent taken all reasonable steps to prevent such acts of discrimination occurring or that type of discrimination occurring (and accordingly does it have a defence to his claims)?

12. REMEDY

12.1 If the Claimant was discriminated against, what, if any, compensation is he entitled to? In particular:

12.1.1 Is he entitled to any award for injury to feelings;

12.1.2 Is he entitled to aggravated damages;

12.1.3 Does the ACAS Code of Practice apply? If yes, did the Respondent unreasonably fail to comply with it? If so, should the Claimant's compensation be uplifted and to what extent?

12.1.4 Is the Claimant entitled to recover from the Respondent his alleged loss of earnings in relation to his delayed start date?