



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms R Duggal  
**Respondent:** HBOS Plc  
**Heard at:** London Central  
**On:** 12, 13, 14 & 17 February 2020  
**Chambers:** 18 February 2020  
**Before:** Employment Judge Khan  
Mrs J Griffiths  
Mr I McLaughlin

## Representation

**Claimant:** In person  
**Respondent:** Mr M Khoshdel, Counsel

# JUDGMENT

The unanimous judgment of the tribunal is that:

- (1) The failure to make adjustments complaint succeeds in part in relation to the claimant's light sensitivity.
- (2) The other complaints fail.
- (3) The respondent is ordered to pay the claimant damages for disability discrimination in the sum of £10,827.82 which consists of £10,000 for injury to feelings and £827.82 in interest.

# REASONS

1. By an ET1 presented on 25 May 2019 the claimant brought a claim for disability discrimination. The respondent resists this claim.

## The Issues

2. The issues we were required to determine were set out in the tribunal's Order dated 23 October 2019:

### **2.1 Disability**

2.1.1 It is accepted that the claimant was at the relevant times disabled by reference to light sensitivity (photophobia) and frozen shoulder (Bilateral Adhesive Capsulitis).

2.1.2 The respondent also accepts that it had knowledge of the claimant's disability at all relevant times.

### **2.2 Failure to make adjustments (sections 20 & 21 EQA)**

#### A. In relation to any PCPs

2.2.1 Did the respondent apply any or all of the following provisions?

- a) Having a design policy or practice of only providing standard oval-shaped desks – this is agreed
- b) Requiring the claimant to sit at an angle and/or at an oval-shaped desk in order to carry out her duties – the respondent agrees that the claimant was required to sit at an oval-shaped desk but it does not accept that she was required to sit at an angle at her desk
- c) Requiring the claimant to work in a room with bright and fluorescent overhead lighting – this is agreed

2.2.2 If so, when were these applied?

2.2.3 Did this put the claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled in that:

- a) She was caused pain and discomfort which made it difficult to concentrate, to sit with clients for sustained periods, to work at the same pace or to work at all?
- b) They caused her to suffer dizziness, dry eyes, pain behind her eyes, headaches and migraines which meant she could not concentrate on her work or not work at all – this is agreed

2.2.4 Did the respondent take such steps as were reasonable to avoid the disadvantage?

- a) Changing the overhead lighting to that which was suitable for the claimant, or allowing her to work in an alternative room with more suitable lighting
- b) Dimming the lighting in the claimant's room
- c) Painting the walls in the claimant's room a darker shade
- d) Providing a blind or a poster to cover the window to the banking hall
- e) Providing a square-sided desk

2.2.5 The claimant complains that the respondent failed to take the steps at (a) – (e) on 19 February 2019; the steps at (a) – (d) on 13 May 2019 and the step at (e) on 4 June 2019.

2.2.6 Did the respondent know or could it have reasonably been expected to know that the claimant was likely to be placed at the disadvantage(s) set out above? The respondent accepts that it had knowledge of the substantial disadvantages which related to the claimant's light sensitivity but not her frozen shoulder.

**B. In relation to any physical feature**

2.2.7 Did the respondent have the following physical features:

- a) Bright and fluorescent overhead lighting – this is agreed
- b) The desk set-up, sitting at an angle at an oval desk – this is agreed save for the need or requirement to sit at an angle

2.2.8 Did any of these physical features put the claimant at a substantial disadvantage in comparison with persons who are not disabled in that:

- a) The lighting caused her to suffer dizziness, dry eyes, pain behind her eyes, headaches and migraines which meant she could not concentrate on her work or not work at all – this is agreed
- b) The desk set up caused her pain and discomfort which made it difficult to concentrate, to sit with clients for sustained periods, to work at the same pace or to work at all?

2.2.9 Did the respondent take such steps as were reasonable to avoid the disadvantage?

- a) Changing the overhead lighting to that which was suitable for the claimant or allowing her to work in an alternative room with more suitable lighting
- b) Dimming the lighting in the claimant's room

- c) Painting the walls in the claimant's room a darker shade
- d) Providing a blind or a poster to cover the window to the banking hall
- e) Providing a square-sided desk

2.2.10 Did the respondent know or could it have reasonably been expected to know that the claimant was likely to be placed at the disadvantage(s) set out above? The respondent accepts that it had knowledge of the substantial disadvantages which related to the claimant's light sensitivity but not her frozen shoulder.

C. In relation to the provision of an auxiliary aid

2.2.11 The claimant relies on the following auxiliary aids:

- a) A fully functioning footrest
- b) A swivel base for her computer
- c) A Plantronics headset

2.2.12 Did the respondent provide any such auxiliary aids within a reasonable time?

- a) The claimant says that she was not provided with a fully functioning footrest until December 2019. The respondent says no later than 9 November 2018.
- b) It is agreed that the claimant was not provided with a swivel base. The claimant accepts that the respondent provided an arm swivel. The respondent says this was provided by no later than 9 November 2018.
- c) The claimant says that a headset was not provided until April 2019. The respondent says no later than 9 November 2018.

2.2.13 Without such auxiliary aids, was the claimant put at a disadvantage in comparison with persons who are not disabled in that:

- a) It made it more difficult for her to concentrate
- b) It made it more difficult for her to sit with clients for sustained periods
- c) It made it more difficult for her to work at the same pace, or to work at all

2.2.14 Did the respondent know or could it have reasonably been expected to know that the claimant was likely to be placed at the disadvantage set out above?

### **The Evidence**

3. The claimant gave evidence herself.
4. For the respondent we heard evidence from: Tracey Ridout, Senior Area Support Manager, and formerly, Senior Manager managing branch managers in the London City area; and Gemma Trimmer, Bank Manager of the Cannon Street Halifax branch.
5. There was a bundle which exceeded 800 pages. We read the pages in this bundle to which we were referred.
6. We also viewed video footage.
7. A limited number of additional documents were admitted into evidence which related to the desk set-up and an Occupational Health referral.
8. We also considered closing submissions from both parties.

### **The Facts**

9. Having considered all of the evidence, we make the following findings on the balance of probabilities. These findings are limited to points which are relevant to the legal issues.
10. The respondent is a high street bank with around 800 branches in the UK. It offers a range of financial products, including mortgages, credit cards and savings accounts. It is part of the Lloyds Banking Group Plc.
11. The claimant has been employed since 10 March 2008 as a Banking Consultant. Her role involves helping customers with enquires, including setting up new current and savings accounts and home insurance, dealing with account queries and applications for credit cards, loans and overdrafts. She works primarily from a desk in her own office.
12. The claimant was diagnosed with light sensitivity in December 2009. She says that she began to suffer with significant shoulder pain in September 2017. She was diagnosed with Bilateral Adhesive Capsulitis i.e. frozen shoulder in her right shoulder in March 2018.

#### **Best Practice Guide to Managing Colleagues with Disabilities**

13. The respondent's Best Practice Guide to Managing Colleagues with Disabilities ("the best practice guidance") was designed to develop disability awareness for line managers and to act as a guidance resource for them. This guidance, in so far as material, provided that:
  - 13.1 Workplace adjustments were centrally funded.
  - 13.2 Before commencing the workplace adjustment process a line manager would be required to conduct basic health and safety checks including a Display Screen Equipment ("DSE") assessment and consider a referral to Occupational Health.
  - 13.3 A workplace assessment referral could then be made to order

equipment or arrange for a telephone or on-site assessment. This assessment would be conducted by Microlink, an external provider of ergonomic assessments.

- 13.4 Following such an assessment a report would be produced and sent to the employee to verify its accuracy. If agreed, the back page of this report acted as a “Workplace Agreement” or “Passport” i.e. a record of the agreed adjustments which would be signed by the line manager and employee.
- 13.5 Workplace adjustments would take between 5 and 30 days depending on the nature of the adjustment required.
- 13.6 This passport would enable the employee to get adjustments re-established if they moved to another role or to a different line manager.
- 13.7 If an employee disagreed with the assessor’s recommendations then a meeting would be arranged between the employee and assessor. If this failed to resolve any dispute the case would be escalated to a formal arbitration process.

Mayfair branch (November 2011 – April 2018)

14. The claimant moved to the Mayfair Halifax branch in around November 2011.
15. The claimant began to experience difficulties with workplace lighting following a refurbishment in 2013. Bright spotlights were added to the ceilings and installed in the wall to highlight posters mounted on shelf panels. The grey square-topped desk was replaced with a smaller white oval-shaped desktop and the monitor was repositioned to the side of the desk. Bright lights from the banking hall entered her office through a glass door. This exacerbated the claimant’s symptoms which related to light sensitivity which she reported to her managers. The claimant also reported that the position of her monitor and the drawers under her desk which restricted her leg movement were causing left-sided pain.
16. Following a workplace assessment in January 2014 the claimant was provided with an ergonomic chair and footrest. We were not taken to this assessment and we accept the claimant’s evidence that she was not provided with a copy of it which was in breach of the best practice guidance.
17. In May / June 2014 the claimant’s desktop was changed to oak and blinds were installed to block the light from the banking hall. The lights in her office were adjusted so that they faced upwards and one light was removed. Further adjustments were made to her office in February / March 2016 when the lights were replaced with lower voltage bulbs and a white wall was painted dark blue. These adjustments removed the disadvantages the claimant would have otherwise suffered because of her light sensitivity whilst working in her office.
18. The claimant discussed her desk set-up with Azaria Fennell, branch manager. She completed a DSE assessment on 2 March 2016 in which she wrote:

“Due to oval shape desk, its impossible to position my monitor directly in front of me. It is on my left hand side and there is also draws [sic] under my desk which stops me from moving comfortably. Due to this I have pain in my neck, shoulder and my left side...”

Ms Fennell counter-signed this assessment and agreed that the claimant’s movements were restricted. She completed a workplace assessment referral.

Workplace assessment on 14 April 2016

19. The claimant had a workplace assessment on 14 April 2016 by Catherine Fitzgerald, a chartered physiotherapist and ergonomic assessor. Her report referred to the primary condition of back pain in the left lower ribs area. There was no reference to shoulder pain. Ms Fitzgerald made the following recommendations:
  - 19.1 Chair adjustments: it was noted that the claimant was not aware of how all of the adjustments on her chair worked. These were demonstrated to her. She was advised to sit with her back against the chair.
  - 19.2 Swivel monitor stand i.e. swivel base: to assist the claimant in manipulating her screen during meetings with customers.
  - 19.3 General ergonomic advice: it was noted that the claimant had been observed sitting forward with her legs crossed, resting her forearms on the desk with her head tilted towards the screen. She twisted left to retrieve documents from the printer. She bent forwards to retrieve customer documents stored in the drawers under the desk. Recommendations were made on posture and her workstation setup including: the position of her monitor screen, keyboard and mouse; using a different cupboard to store documents; using her footrest; posture breaks.
  - 19.4 Assessment of the office and desk by the facility team: it was noted that the claimant did not feel that these ergonomic adjustments would improve her problems. The claimant felt that the oval desk was unsuitable and she wanted a square desk as this would give her more room to work.
20. Although the claimant disputed this, we find that Ms Fitzgerald observed the claimant leaning forward with her legs crossed and twisting to retrieve documents. We do not find that Ms Fitzgerald would not have invented these details. We also note that at a subsequent meeting the claimant agreed that she crossed her legs when seated.
21. The claimant was not provided with a copy of this report until October 2016 in breach of the best practice guidance. However, she agreed that Ms Fennell discussed this report and its recommendations with her on 14 & 20 April 2016. She disagreed with Ms Fitzgerald’s recommendations. She felt that the ergonomic recommendations would not make any difference. She refused to sign this assessment. A follow up meeting with Ms Fitzgerald was not arranged. We find that she was resistant to Ms Fitzgerald’s advice and was focused on a square-shaped desk and she did not try out all of these steps.

22. The claimant wanted a different desk but this had not been recommended. She says that her chair could not align with the desk so that she could not position her arm rest to sit flush against the desktop. She could not position the monitor in the middle of her desk. The drawers underneath her desk restricted her leg movement. She could not use her footrest because it would encroach on the customer's leg space. We were taken to a photograph of her office setup. Her desk was a small circular one. There was limited leg room.
23. Following a visit by the facilities team, a Microlink coordinator wrote to Ms Fennell in May 2016 to confirm that the respondent's Internal Design Standards could not be adjusted:

"As Rajni is based in branch, Lloyds rules and regulations unfortunately are not to supply rectangular desks for colleagues. Us at Microlink have tried to push for design standards to allow this, however, the response was negative. However, we are very aware that this cannot be ignored as this poses risk to Rajni's health. We would like to look into more alternatives for Rajni."

The coordinator queried whether Ms Fitzgerald had recommended an alternative desk in a different room. She had not.

24. These desks were designed to support collaborative communication between staff and customers. As Ms Azaria, who liaised with Microlink about the desk issue, noted, Internal Design Standards:

"Have advised the oval desks were chosen by the retail team to support collaborative communication between customers and colleagues, the rectangular desk encourages people to sit opposite each other in a more confrontational manner. The oval desk has been repeatedly reviewed and both ergonomically and size appropriate for the task being carried out..."

25. The claimant was provided with a swivel base.
26. A rectangular desk was delivered in around March 2017. The claimant objected to it before it was set up in her office. She was then persuaded by Ms Fennell to try using it. The claimant felt that this desk was unsuitable as it was too wide and not deep enough, and the monitor was too close to her eyes.
27. Gemma Trimmer, now the claimant's line manager, sought an update on the desk provision on 31 May 2017.
28. By June 2017 the pain in the claimant's shoulder intensified.
29. In September 2017 the claimant was seen by a neurologist about her light sensitivity who noted that she was avoiding "luminance and bright light". The claimant disclosed this letter to her managers on 23 May 2018.
30. At a return to work meeting in October 2017 it was noted that the claimant had a pain in her side "is caused by the position she sits in".



First grievance

31. The claimant submitted a formal grievance in which she complained about several issues including her desk. She attended a grievance investigation meeting with Winsome Johnson, Branch Manager, on 30 October 2017. She noted that she sat with her legs crossed. She did not use the footrest as it was in her way. She did not use the swivel screen as it did not work. She said that she did not want to move to one of the bigger rooms available in her branch as she wanted to remain in her office and she said that removing the drawers from underneath her desk would not resolve the issue. In her evidence to the tribunal, however, the claimant said that removing the desk drawer from underneath her desk could have solved the problem for her legs. She accepted that she refused to consider this as she wanted a straight-edged desk. During this meeting the claimant failed to explain in what way the oval-shape desk impacted on her frozen shoulder.
32. The claimant's grievance was partially upheld in relation to her desk on the basis that "it is not acceptable to have an issue ongoing without a clear decision of what will be offered". Ms Johnson therefore acknowledged that a final decision on whether a straight-edged desk could be provided remained outstanding. She recommended that another workplace assessment was completed. This was not in itself a recommendation for a new desk.
33. At a review meeting with Ms Trimmer on 20 December 2017 the claimant complained about the shape of her desk and the difficulty she had reaching her footrest. It was noted that this was not a cause of her shoulder pain although it had caused pain in her side and overall discomfort. The claimant declined an offer of an Occupational Health referral. She felt that this would not be of any benefit.
34. The claimant saw her GP about her shoulder pain in November 2017. She also discussed her pain with Ms Trimmer. She started to have physiotherapy from early 2018.
35. Ms Trimmer made a Microlink referral in late December 2017. An assessment was delayed because of the closure of the Mayfair branch in April 2018 and uncertainty about where the claimant was being relocated. The claimant was told on 11 May 2018 that she would be transferring to the Hammersmith Halifax branch on 1 July 2018. In the meantime, the claimant's equipment was discarded. This included the swivel base and footrest.
36. When the Mayfair branch closed the claimant was temporarily redeployed initially to the Oxford Circus Halifax branch for 2 – 3 weeks. She was then temporarily redeployed to the Victoria Halifax branch between May – 29 June 2018. No adjustments were made in the interim.
37. Ahead of her move to the Hammersmith branch the claimant requested a workplace adjustment on 25 May 2018. By the end of June 2018 with no assessment having been arranged and concerned that the adjustments that had been implemented in the Mayfair branch would not be in place in

Hammersmith, the claimant requested disability leave. This was agreed and took effect on 2 July 2018. We were not taken to any document in the bundle which related to this provision but it was accepted that the claimant was eligible for disability leave because the adjustments which she required to work safely had not been implemented. The claimant remained on disability leave until 18 February 2019.

Workplace assessment on 30 July 2018

38. The claimant visited the Hammersmith branch on 5 July 2018 and a DSE assessment was conducted. She was then assessed by Microlink on 30 July 2018 (190). This was the first assessment which referred to frozen shoulder as the claimant's primary condition. The claimant agreed that this assessment was conducted properly. The report included the following recommendations in relation to her frozen shoulder condition:
- 38.1 A replacement chair with armrests to support her upper back and shoulders.
  - 38.2 A footrest to support the claimant's legs when seated.
  - 38.3 A monitor arm to adjust the screen to replace the monitor stand previously provided. This would also free up desk space.
  - 38.4 A Plantronics headset to enable the claimant to adopt a better posture when making calls. It was noted that the claimant did not make many calls but using a standard handset could be a contributory factor in frozen neck and shoulder problems.
  - 38.5 A replacement desk setup to be evaluated by the facilities team. It was noted that the desk area was very small and a cupboard underneath the desk restricted the claimant's leg movement. It was also noted that the claimant felt that a more rectangular desk would help with seating and desk space issues. "It is recommended that a further assessment be carried out by LBG facilities to see if the current furniture can be replaced with a setup that would allow more space for Rajni". There was no explanation of whether and if so, how, the desk shape itself impacted on the claimant's frozen shoulder condition.
  - 38.6 Posture breaks.
39. This report noted that there were two fluorescent lights in the claimant's office and recommended the following steps in relation to the claimant's light sensitivity:
- 39.1 Reduction in overhead lighting brightness by using lower wattage bulbs or removing some of the lights.
  - 39.2 Blinds for facing window.

Second grievance

40. The claimant submitted a second grievance on 31 July 2018. This included a complaint about Nicola Baker, Local Director – London South West, who was responsible for overseeing the claimant's move to the Hammersmith branch. The claimant's complaints included that she was still waiting to resume her role and her workplace adjustments had not been implemented three months after the Mayfair branch had closed.

41. The claimant had an informal meeting with Tom Martin, Regional Director, on 15 August 2018, to discuss her grievance. She felt hurt because of the uncertainty about her transfer, the ongoing issues with the adjustments that she had struggled to secure and the fact that she was now on disability leave and sitting at home when she wanted to work. It was agreed that she would not move to Hammersmith because of her complaints about Ms Baker. The claimant's grievance was resolved informally on the basis of the following action which Mr Martin agreed to take:
- 41.1 A replacement chair, mouse and footrest would be delivered to the claimant's new branch once this had been identified.
  - 41.2 A desk would be arranged. This was not amplified and the claimant understood that Mr Martin had agreed that her desk should be replaced.
  - 41.3 Light adjustments in the claimant's new office would be looked at.

The outcome and agreed actions were not recorded on the claimant's personnel file as required by the respondent's Grievance Policy.

Fenchurch Street branch (September 2018 – February 2019)

42. It was agreed that the claimant would move to the Fenchurch Street Halifax branch. Mr Martin emailed the claimant's new managers on 31 August 2018 to confirm the arrangements for managing her transfer. The claimant would be line managed by Ms Trimmer who was based in another branch and she would also be responsible for managing her move. Although it was initially envisaged that the claimant's new branch manager, Kieran Dignan, would be responsible for making the arrangements to implement the agreed workplace adjustments, Tracey Ridout, Senior Area Support Manager, oversaw this process.
43. Ms Ridout had identified Fenchurch Street as the most appropriate location for the claimant because it was more dimly lit and had several unused interview rooms. Prior to this she had had an initial discussion with Mr Martin when he told her that the claimant struggled with bright lights and wanted a square desk. She did not discuss this with the claimant. At around this time she also discussed the claimant with Ms Trimmer, who was familiar with the adjustments which had been made for the claimant in the Mayfair branch i.e. spotlights, a darker wall and blinds.
44. The claimant's managers were provided with a copy of the July 2018 Microlink assessment report, although they were not provided with the record of the action agreed by Mr Martin at the meeting on 15 August 2018. In her evidence, Ms Trimmer said that the agreed action was essentially the same as the recommendations of the Microlink report. However, the claimant understood that Mr Martin had agreed to arrange for a new desk whereas the July 2018 report had only recommended an evaluation by the facilities team.
45. It was agreed that a return to work date would be agreed once the claimant's adjustments were in place.

46. The claimant visited the Fenchurch Street branch on 4 October 2018. Her office had the same small oval-shaped desk, there was a cupboard underneath the desk which restricted her legs. Her office was illuminated with two fluorescent lights. The claimant met with Ms Trimmer and Mr Dignan when she referred to her light sensitivity and the adjustments which had been made in Mayfair. We accept her unchallenged evidence that she referred to Mr Martin's actions to look at the lighting and a new desk. Neither manager had seen the informal grievance outcome. We also accept the claimant's unchallenged evidence that Mr Dignan asked her which colour she wanted the facing wall to be painted.
47. The equipment recommended by Microlink in July 2018 including a footrest, swivel base and headset was sent to the Hammersmith branch and did not arrive in the Fenchurch Street branch until 9 November 2018. The ergonomic chair was sent directly to Fenchurch Street but did not arrive until 4 December 2018 and was delayed because the respondent did not inform Microlink of the claimant's new location until around 24 September 2018. The respondent's witnesses were unable to explain these delays. In her evidence to the tribunal, Ms Ridout agreed that these delays were unacceptable.
48. Prompted by an email from Microlink on 27 November 2018 concerning the delivery of the claimant's chair and requesting details of the claimant's return to work date and up to date DSE assessment, Ms Trimmer telephoned the claimant to arrange a visit to the Fenchurch Street branch on 4 December 2018 to complete a DSE assessment. Ms Trimmer told the claimant that all of her equipment and chair would be in place by that date. The claimant asked about her desk and was told that this had not been changed. She emailed Ms Trimmer on 30 November 2018 to complain that a new desk had not been provided "despite two successful grievances and assurances given to me that it will be provided".
49. A new assessment was required because the claimant's managers wanted to have all of her equipment in place in her new office. This had not been necessary when the Hammersmith assessment was completed. This led to unnecessary delay because of the delay in obtaining the claimant's office equipment. In the meantime, no assessment of the lighting in the claimant's office was made. Ms Ridout agreed that the claimant could have returned to work in September 2018 if all adjustments had been implemented in time. She agreed that the claimant could not work until this action had been taken. The claimant therefore remained on disability leave in the meantime.
50. The claimant returned to the branch on 4 December 2018 when there was no one available to conduct the assessment of her new chair. She completed a DSE assessment.

Microlink assessment on 19 December 2018

51. The claimant had another workplace assessment on 19 December 2018. The report itself was focussed on the claimant's frozen shoulder condition. It was noted that

“Rajni reports that her right arm and shoulder experience pain which previously increased through the day whilst working...When the pain is present Rajni says that this causes her fatigue and affects her concentration.”

The report recommended:

- 51.1 Chair armrests.
- 51.2 Posture breaks.
- 51.3 A replacement desk setup to be evaluated by the facilities team. This repeated word-for-word the same recommendation in the July 2018 report with the additional suggestion that the desktop should be rectangular in shape with the dimensions of 1600 x 1000. This was not a recommendation for new desk.

This report made no reference to a swivel base, headset or footrest.

- 52. Although this report referred to two fluorescent lights in the claimant's office, as the July 2018 report had, it made no recommendations in relation to lighting. This omission is inexplicable. We find that the claimant did refer to lighting during this assessment. We accept her unchallenged evidence that she referred to the lighting adjustments which had been made in Mayfair i.e. a reduction in the brightness of the lights, a blind to block out the banking hall lights and the facing wall to be painted a darker colour and she requested that these were implemented for her new office and she also suggested that a poster was used to block the light from the banking hall in the meantime. The assessor told her that facilities would action this. The claimant confirmed the same details in an email to Mr Dignan on 6 February 2019. Mr Dignan also acknowledged that the lighting issue had been discussed on 19 December 2018 when he had suggested that the claimant could work in her office with the lights off. We do not find that the claimant agreed that this meant that lighting was not an issue.
- 53. Following a visit by the desk supplier earlier that month Mr Dignan wrote to the claimant on 21 January 2019 when he noted: “we have had someone out who look at the desktop and the supplier Halifax uses for the tables do not supply square/rectangle desks”. He told her that he and Ms Trimmer would explore whether anything more could be done. He then emailed her again on 1 February 2019 to confirm “the desk is not going to be replaced so need to discuss next steps and your return to work”. Mr Dignan provided more detail of the supplier's assessment on 6 February 2019 when he wrote:

“the supplier confirmed the desk is fit for purpose as the current desk is the standard one supplied to all Halifax branches, and in fact they do not supply any square or rectangular desks.”

This was essentially the same advice from Internal Design Standards which had been conveyed to the claimant in 2016. The supplier had not in fact conducted an assessment into the claimant's desk setup as recommended by Microlink. The claimant's oval-shaped desk was deemed to be suitable because it was standard issue and there was no alternative desk available, and without any evaluation of the claimant's requirements.

54. With no alternative desk available, Mr Dignan emphasised that by using the chair armrests which had now arrived and could be positioned so that they were flush with the desk and by adopting better posture in her chair, the claimant could work safely at the desk provided. The claimant was asked to come into the branch to try out the desk setup.
55. The claimant replied to Mr Dignan on the same date, 6 February 2019, to say “I do need the lights and the desk situation resolved for me to be able to return to work as the existing provisions are not suitable to my needs and will cause me serious ill health issues”. Although we find that the health issues relating to the claimant’s light sensitivity were self-evident we do not find that the health issues arising from her frozen shoulder were patent and the claimant did not explain what these were. She agreed to meet with Mr Dignan and Ms Trimmer to discuss her office setup.
56. Ms Ridout and Ms Trimmer say that all adjustments were in place by 18 February 2019. Ms Ridout says that they had obtained the July 2018 Microlink report, and the recommended items of a mouse, headset, footrest, monitor arm swivel and a chair with armrests.
57. When the claimant visited the office on 18 February 2019 she met with Ms Trimmer and Kellie Foster, another branch manager with more experience whom it appears to us was there to support Ms Trimmer rather than the claimant. The claimant referred to the adjustments which she required i.e. a reduction in the brightness of lighting, blinds and painting the wall a dark colour. She was told that the lights and desk would not be changed. Ms Foster initially refused to change the fluorescent lighting before it was agreed that a standard lamp would be provided. The claimant was told that it was unlikely that her desk could be changed. During this meeting the claimant agreed that she could work without a footrest.
58. This meeting was conducted under fluorescent lighting. The claimant suffered a migraine and she was signed off work by her GP from 19 – 28 February 2019.
59. Ms Trimmer and Ms Foster removed one of the fluorescent lights in the claimant’s office after this meeting.
60. In an email the next day, 19 February 2019, Ms Trimmer told the claimant that all adjustments had been completed. A lamp would be provided and she suggested that the claimant saw an optician to obtain glasses to protect her eyes from UV lighting.

Fenchurch Street branch (March – August 2019)

61. The claimant began a phased return to work on 1 March 2019. Aside from the lamp no other adjustments were made to the lighting in the claimant’s office. The claimant was exposed to bright / fluorescent lights in the branch, particularly the stairway, toilet and back-office where the water cooler was. She wore a headscarf and dark glasses to protect her eyes when she needed to access these areas. It was agreed that she would use the toilet at Fenchurch Street station to minimise her exposure to the lighting inside the branch.

62. In the meantime, the claimant had made a complaint to the local health and safety enforcement body about her desk provision. Toby Thorp, an Environmental Health Officer, emailed Mr Martin and Ms Ridout on 26 February 2019 to enquire about the action taken by the respondent to address this issue. Notably, Mr Thorp commented

“It is not clear to me that a straight edged desk would necessarily provide the support that Rajni needs and would always recommend an opinion from a competent medical professional to assist. I am informed that Halifax have arranged for an Occupational Health appointment for Rajni Duggal and would endorse that approach with a specific focus on ensuring that her diagnosed condition(s) are considered in the light of the workstation she is expected to use so that more definitive advice can be provided to both Halifax and Rajni regarding what control measures would be reasonable. These would be sensible steps and it is perhaps disappointing that such steps are not taken sooner.”

63. The claimant agreed to have an Occupational Health assessment. Ms Trimmer completed an initial referral form on 4 March 2019 when she noted that the respondent was unable to provide a square desk. A telephone appointment was arranged on 12 March 2019 but could not proceed because the claimant had not been provided with a copy of Ms Trimmer’s referral. Ms Trimmer then amended this referral on 28 March 2019 to add further details relating to an eye appointment the claimant had attended in the interim and she referred to the claimant’s request for a “squarer desk rather than the curve edged interview room desk”. The Occupational Health appointment was rearranged on 10 April 2019 but was postponed at the claimant’s request. An appointment did not take place with neither party pressing for one. In her evidence to the tribunal, Ms Trimmer accepted that she had not taken the claimant through the respondent’s standard Occupational Health referral script. Nor did she appear to understand the purpose of an Occupational Health referral and it is notable that she told the claimant at a subsequent meeting in May 2018 that a referral would not assist with any workplace adjustments. This was plainly wrong. As Mr Thorp had underlined, such a referral could have provided much-needed advice on whether the claimant’s desk was suitable for her and any adjustments or modifications necessary to support her.

64. Mr Thorp’s enquiry prompted the claimant’s managers to continue to explore the desk issue. Ms Ridout emailed Ross Hovey, Accessibility Manager, on 4 March 2019, when she noted that the claimant had been asking for a square desk for several years. In this context, she referred, quite inappropriately, in our view, to the fact that the claimant had raised grievances and had been moved across branches to fit with where and with whom she was prepared to work. This was also misleading. In relation to the desk issue, Ms Ridout encapsulated the respondent’s options in a nutshell:

“I would love for someone senior who has experience with these matters to review the situation and either confirm that no desk will be provided and back up Microlink so we can put an end to this once and for all...Or, alternatively look at the desk and maybe agree she needs one to support her disability – in this case a slightly frozen shoulder and then help us source one quickly / amend what is there...”

65. Mr Hovey replied on 8 March 2019 to confirm his view that a bespoke desk could be considered if necessary although he noted “it will take a long time to obtain sign off and build”. He did not explain the reason for this delay. In the meantime, he told Ms Ridout to continue to liaise with Microlink. On the same date Ms Ridout identified a straight-edged desk in the Cheapside branch and she contacted Microlink about using this desktop for the claimant’s office in Fenchurch Street.
66. The respondent accepts that the claimant’s mandatory training had lapsed because of the protracted duration of her disability leave and she was required to complete the reaccreditation process before she was able to resume her role with customers. The claimant completed the reaccreditation process in May 2019.
67. The claimant’s headset was discovered to be missing in late March 2019. A replacement headset was not reordered by Ms Trimmer until 16 April 2019. She was unable to provide an explanation for this delay. However, we find that the claimant did not report that her headset was missing at the earliest opportunity and this was because she was not using it.

Review meeting on 11 April 2019

68. At a review meeting on 11 April 2019 between the claimant, Ms Trimmer and Ms Foster, it was agreed that a referral would be made to Microlink to consider changing the fluorescent lighting in the branch. The claimant also asked for a swivel base as the arm swivel aggravated her frozen shoulder. It was agreed that this would also be referred to Microlink. The claimant also asked about a desk and she was told that this was being looked into. The claimant’s footrest was inspected and found to be visibly broken. The claimant said that she was able to work without one and it was agreed that she would ask for a replacement if she wanted one. We find that the claimant was not using a footrest as she did not request a replacement at this meeting.
69. In her evidence, Ms Trimmer said that she followed up on the swivel arm issue with Microlink in April / May 2019 when she was advised that this was the standard adjustment as it provided more mobility. However, she also accepted that a monitor base was no longer available via the supplier. We find that like the desk issue, the claimant’s managers conflated functionality with procurement i.e. the facility offered was deemed suitable because this was what was supplied. However, in her evidence, the claimant was unable to explain why a swivel base was more suitable than a swivel arm in avoiding shoulder pain.

Assessment on 2 May 2019

70. An assessor from Microlink visited the branch without warning. The claimant was surprised and became upset when she referred to a new desk and the assessor told her that one would not be provided. The assessor was unable to conduct an assessment of the claimant’s desk setup because the claimant became agitated. He discussed the claimant’s posture with her and she refused to accept his advice. He suggested a second monitor which would avoid the need to swivel her monitor. The



claimant felt that this ad hoc assessment was being used to supersede what she had understood to be Mr Martin's decision to source a new desk. Afterwards the assessor wrote to Mr Dignan with advice on the claimant's workstation setup which included using armrests, a second monitor and a footrest.

71. On the same date a member of the facilities team visited the branch to read the brightness of the lights in the branch. The claimant's office was also checked and produced a reading of 80lux which was deemed unsafe for customers. It was unclear to us whether the lamp was still working on this date. The standard lamp was removed from the claimant's office around a week later. The claimant was unable to use any lights in her office from this date until July 2019. This meant that she was unable to see customers in her office when she completed her reaccreditation later that month. She was therefore required to sit in the dark for over two months, save for the light coming into her office from the banking hall.

Review meeting on 13 May 2019

72. At a review meeting on 13 May 2019 with Ms Trimmer and Ms Foster the claimant referred to the lighting issue. The claimant says that the respondent refused to adjust the lights at this meeting. We do not find that there was an outright refusal to make this adjustment. The note of this meeting recorded that this issue would be referred to a member of the facilities team for consideration of adjustments to her room to enable her to see customers. The claimant was asked to provide medical evidence of her light sensitivity. This was reasonable as the respondent was trying to understand the claimant's disability and the adjustments which would be necessary to support her. The claimant disclosed a letter from her neurologist later that month which did not clearly identify the optimal lighting conditions required and noted only that she was trying to "avoid the luminance and bright lights".
73. The claimant reported that her frozen shoulder symptoms were being well-managed through physiotherapy. Her symptoms were also being controlled because she was still working reduced hours and was not seeing customers. The claimant remained concerned that using the arm swivel to manipulate the monitor would aggravate her shoulder.
74. The desk issue was discussed. The claimant was told that Microlink had not recommended a square desk and were confident that there was no medical reason for one because of the other equipment provided. She was also told that a final decision was with Mr Hovey although it was very unlikely that a new desk would be provided.
75. The footrest was checked and found to be in working order although flimsy. The claimant had not requested a new one since the last review meeting and she did not request one at this meeting.

Review meeting on 4 June 2019

76. At a review meeting on 4 June 2019 with Ms Trimmer and Ms Foster the claimant was told that the lights in her room and potentially three lights

outside of her office would be changed by 14 June 2019. The claimant confirmed that LED or LCD lights were suitable as long as they were not too bright. The claimant did not want the banking hall light to be blocked out by a poster because this remained her only source of artificial light.

77. The claimant complains that the respondent refused to adjust her desk at this meeting. We do not find that there was an outright refusal to make this adjustment. The claimant was asked to provide a doctor's letter which confirmed why a square desk was necessary as the respondent did not have any medical evidence for this. The respondent agreed to consider any evidence provided.
78. The claimant returned to her full contracted hours on 21 June 2019. The lights in her room and three other lights outside her office in the banking hall, by the cash office and above the stairs had been changed on 14 June 2019. The fluorescent lights had been removed and replaced with large square light panels. These lights were unsuitable for the claimant as they were too bright. In an email sent to Ms Ridout and other colleagues that day, Ms Trimmer noted that the claimant was distressed, stressed and really unhappy with the lighting situation. The claimant continued to use her office with the lights off.
79. The claimant disclosed a GP letter dated 25 June 2019 which referred to her shoulder pain and hip pain and advised:

"I understand that Ms Duggal is experiencing ongoing symptoms at work which may be exacerbated by her current work station set up. Ms Duggal feels that a square or rectangular desk with a sufficient depth, which also allows her to keep the monitor at a suitable distance will be more helpful to her. I would agree with her suggestion and would support her request."

This letter did not explain why the claimant's frozen shoulder condition meant that she was unable to work at an oval-shaped desk without pain or how a square desk would avoid this pain. However, the respondent agreed to revisit the desk issue on the basis of this letter. At a meeting with the claimant on 2 July 2019 Ms Trimmer agreed to make another referral to Microlink to reconsider her desk.

80. In mid / late July 2019 the lights in the claimant's office were changed to LED spotlights and a dimmer switch fitted. The banking hall lights were also blocked out. The claimant agreed that the lighting in her room was suitable from this date. It had taken the respondent almost 11 months to implement these adjustments from the date when the Fenchurch branch had been identified in late August 2018.

Oxford Circus branch (from September 2019)

81. The claimant was transferred to the Oxford Circus branch on 2 September 2019. The lighting in her office was suitably adjusted without delay. A new chair and screen were also ordered ahead of this move.
82. The claimant was offered a straight-sided desk which she declined. We were taken to photographs of this desk from which we could see that it

had two opposing straight edges, a tapering depth and rounded corners. In her evidence to the tribunal, the claimant said that this desk was unsuitable as it was not square enough and it was in a room in which she did not want to work. She instead opted for an interview room with a standard oval-shaped desk.

83. At a review meeting on 9 December 2019 the claimant's managers agreed to reorder a new headset and footrest. These items had not been transferred from the Fenchurch Street branch. The claimant says that these items arrived later that month. The claimant's desk was discussed and the note of this meeting recorded that no further action would be taken because a square-shaped desk was not available.

### **The Relevant Legal Principles**

#### ***Reasonable adjustments***

84. In **Environment Agency v Rowan [2008] IRLR 20** the EAT said that in considering a claim for a failure to make adjustments the tribunal must identify:
- (1) the PCP applied by / on behalf of the employer, or
  - (2) the physical feature of the premises occupied by the employer
  - (3) the identity of non-disabled comparators where appropriate, and
  - (4) the nature and extent of the substantial disadvantage suffered by the claimant
85. The onus is on the claimant to show that the duty arises i.e. that a PCP has been applied which operates to their substantial disadvantage when compared to persons not disabled. The burden then shifts to the employer to show that the disadvantage would not have been eliminated or alleviated by the adjustment identified, or that it would not have been reasonably practicable to have made this adjustment.
86. The test for whether the employer has complied with its duty to make adjustments is an objective one, see **Tarbuck v Sainsbury's Supermarkets [2006] IRLR 664**. Ultimately, the tribunal must consider what is reasonable, see **Smith v Churchills Stairlifts Plc [2006] ICR 524**. The focus is the reasonableness of the adjustment not the process by which the employer reached its decision about the proposed adjustment.
87. The tribunal must have regard to the guidance contained in the EHRC Code of Practice on Employment 2011, and in particular the following six factors when considering the reasonableness of an adjustment:
- (1) Whether taking any particular steps would be effective in preventing the substantial disadvantage
  - (2) The practicability of the step
  - (3) The financial and other costs of making the adjustment and the extent of any disruption caused
  - (4) The extent of the employer's financial or other resources

- (5) The availability to the employer of financial or other assistance to help make an adjustment (such as through Access to Work)
  - (6) The type and size of the employer
88. An employer has a defence to a claim for breach of the statutory duty if it does not know and could not reasonably be expected to know that the disabled person is disabled *and* is likely to be placed at a substantial disadvantage by the PCP, physical feature or, as the case may be, lack of auxiliary aid. A tribunal can find that the employer had constructive (as opposed to actual) knowledge both of the disability and of the likelihood that the disabled employee would be placed at a disadvantage. In this case, the question is what objectively the employer could reasonably have known following reasonable enquiry.

## **Conclusions**

### **Failure to make adjustments / physical feature: Light sensitivity**

89. The respondent accepts that the claimant was required to work in a room with bright and fluorescent overhead lighting over the relevant period.
90. It also accepts that this put the claimant at a substantial disadvantage in comparison with persons who are not disabled in that that this PCP / physical feature caused her to suffer dizziness, dry eyes, pain behind her eyes, headaches and migraines which meant she could not concentrate on her work or not work at all. It also accepts that it knew that the claimant was likely to be placed at this disadvantage.
91. The claimant complains that it would have been reasonable for the respondent to have taken the following steps:
- a) Changing the overhead lighting to that which was suitable for the claimant / allowing her to work in an alternative room with more suitable lighting.
  - b) Dimming the lighting in her room.
  - c) Painting the walls in her room a darker shade.
  - d) Providing a blind or a poster to cover the window to the banking hall.
92. We find that it would have been reasonable for the respondent to have taken these steps for the following reasons.
- 92.1 These steps were practicable. The respondent was able to implement steps (a), (c) and (d) in the Mayfair branch and steps (a), (b) and (d) in the Fenchurch Street branch. It also made adjustments in the Oxford Circus branch.
  - 92.2 Once these steps were taken the substantial disadvantage was avoided.
  - 92.3 The respondent is a large and well-resourced organisation for whom the cost incurred in taking these steps was unlikely to be significant.

93. The claimant complains that the respondent failed to take these steps on 19 February 2019 and on 13 May 2019. We find that the respondent failed to take these steps on these dates. These steps were not taken until mid / late July 2019.
- 93.1 These steps had already been implemented in the Mayfair branch. Ms Trimmer who had been the claimant's branch manager between March 2017 – April 2018 knew that these steps had been taken and why they were necessary. She discussed these steps and the claimant's disability with Ms Ridout. Both managers were provided with the July 2018 Microlink report which referred to the steps required to manage the claimant's light sensitivity.
- 93.2 There was an unreasonable and inexplicable delay in sourcing the claimant's office equipment and chair. Although the Fenchurch Street branch was identified as the claimant's new branch in late August 2018 the office equipment and chair did not arrive until 8 November 2018 and 4 December 2018, respectively. This delay impacted on the timing of the DSE and Microlink assessments which the claimant's managers were insistent could not proceed unless the claimant's office equipment was set up. We do not find that this was necessary because the absence of this equipment had not prevented the thorough Microlink assessment in July 2018. In the meantime, the respondent took no steps in relation to the lighting in the claimant's office.
- 93.3 Whilst the December 2018 Microlink report did not refer to the claimant's light sensitivity or make any recommendations to manage this disability, we have found that the claimant referred to this disability, the steps taken to support her in the Mayfair branch and requested that the same steps were taken in Fenchurch Street during this assessment. The respondent was therefore on notice that these issues remained live.
- 93.4 There was another unreasonable and unexplained delay in arranging for the claimant to attend Fenchurch Street to meet with her managers and trial her new desk setup on 18 February 2019.
- 93.5 When the claimant repeated her request for the lighting adjustments to be made on 18 February 2019 there was a further unreasonable delay in taking the appropriate steps. Aside from the provision of a standard lamp, which was removed in early May 2019, no other action was taken to adjust the lighting until the claimant's managers agreed on 13 May 2019 to refer this issue to the facilities team.
- 93.6 The lighting adjustments which were made on 14 June 2019 were inappropriate and unreasonable. They were not what the claimant had requested nor were they consistent with the recommendations of the July 2018 Microlink report. Both the claimant and report had identified that bright lighting was an issue for her. The respondent had therefore replaced one trigger for the claimant's symptoms i.e. fluorescent lighting with another i.e. bright lighting.
- 93.7 It took the respondent almost 11 months to make the appropriate adjustments to the lighting in the claimant's office. This was an

excessive and wholly unreasonable delay and at odds with the best practice guidance which provided that implementation of workplace adjustments would take between 5 – 30 days.

94. We therefore find that the respondent failed to comply with its duty to make reasonable adjustments in relation to the lighting issues and this part of the claim succeeds.

**Failure to make adjustments / physical feature: Frozen shoulder**

95. The respondent accepts that at all relevant times it had a design policy or practice of only providing standard oval-shaped desks and it required the claimant to sit at an oval-shaped desk in order to carry out her duties.

96. We find that the oval-shaped desk, together with the requirement to interact with customers by moving the monitor to share on-screen information, also meant that the claimant was required to sit at an angle from the desk.

97. However, we do not find that these PCPs / this physical feature put the claimant at a substantial disadvantage in comparison with persons who are not disabled in that she was caused pain and discomfort which made it difficult to concentrate, to sit with clients for sustained periods, to work at the same pace or to work at all.

97.1 The claimant was unable to explain how the oval-shape of the desk and / or the requirement to sit an angle from this desk exacerbated her frozen shoulder disability.

97.2 Nor was there any medical evidence which confirmed that the claimant's disability was exacerbated by these PCPs / this physical feature. The only medical evidence the claimant relied on was a letter from her GP dated 25 June 2019 which lacked detail and was imprecise, and inconclusive.

97.3 Nor was this link explained in any of the Microlink reports, DSE assessments, or review meeting notes we were taken to.

97.4 We also took account of the claimant's evidence which was that her performance was unaffected.

98. Even had we found that these PCPs / this physical feature put the claimant at this substantial disadvantage, we would not have found that the respondent had actual or constructive knowledge that she was likely to be placed at this disadvantage for the same reasons set out above, as well as for the following reasons:

98.1 The claimant had been complaining about the desk since 2013 which was several years before she had the frozen shoulder disability when she had referred to left-sided pain.

98.2 The claimant was reluctant to disclose medical evidence and the evidence she did provide was imprecise and inconclusive. She also declined to have an Occupational Health assessment until 2019 and she then declined to proceed with one in 2019. There was no evidence from which the respondent could reasonably understand that the desk setup was likely to exacerbate this disability.

99. We therefore find that this part of the claim fails.

**Auxiliary aids: Frozen shoulder**

100. The claimant complains about the provision of a fully functioning footrest, a swivel base and a Plantronics headset.

***Fully functioning footrest***

101. We find that the claimant was not provided with a fully functioning footrest until December 2019.

101.1 The respondent procured a footrest following the July 2018 Microlink assessment which was sent initially to the Hammersmith branch and arrived at the Fenchurch Street branch on 9 November 2018. The claimant was not able to use it until she began working in that branch on 1 March 2019.

101.2 This footrest was inspected on 11 April 2018 and found to be visibly broken. It was then inspected again on 13 May 2018 when it was found to be in working order but flimsy. We find that this footrest had been flimsy from the outset and was not therefore fully functional.

101.3 This footrest was not transferred from Fenchurch Street to Oxford Circus in early September 2019 and a new footrest was ordered and provided in December 2019.

102. However, we do not find that this put the claimant at a substantial disadvantage in comparison with persons who are not disabled in that she was caused pain and discomfort which made it difficult to concentrate and / or to sit with clients for sustained periods and / or to work at the same pace or to work at all.

102.1 We have found that the claimant did not use a footrest. Although the footrest provided in March 2019 was faulty, the claimant did not raise this issue until 11 April 2019. This was because she was not using it. She told Ms Winsome on 30 July 2017 that she did not use her footrest in the Mayfair branch and she also told Ms Trimmer and Ms Foster on 18 February 2019 that a footrest was unnecessary.

102.2 The claimant was unable to explain how this exacerbated her disability. Nor was there was any medical evidence for this.

***Swivel base***

103. It is accepted that a swivel base was not provided. The respondent procured a swivel arm on 9 November 2018 the claimant was not able to use this until she started working at the Fenchurch Street branch on 1 March 2019.

104. However, we do not find that this put the claimant at a substantial disadvantage. This is because there was no evidence which explained why a swivel arm was any less effective than a swivel base in moving the screen or how this impacted on the claimant's frozen shoulder disability

and led to the substantial disadvantage contended for. Nor was there was any medical evidence for this.

***Plantronics headset***

105. Although it was procured before this date, the claimant was not actually provided with a headset until 1 March 2019 when she started working at Fenchurch Street. This headset went missing later that month. A replacement headset was not reordered until around 16 April 2019 and provided within a few days. Like the footrest, the headset was not transferred from Fenchurch Street to Oxford Circus in early September 2018 and a new headset was ordered and provided in December 2019. The claimant therefore only had access to a headset in early March 2019, from late April – late August 2019 and from late December 2019.
106. However, we do not find that this put the claimant at a substantial disadvantage. We have found that the claimant did not use a headset. The claimant was unable to explain how this exacerbated her disability led to the substantial disadvantage contended for. Nor was there was any medical evidence for this.
107. This part of the claim fails.

**Remedy**

***Injury to feelings***

108. The claimant seeks only damages for injury to feelings.
109. Having considered the guidance in Vento v Chief Constable of West Yorkshire Police (no. 2) [2002] IRLR 102 and the Presidential Guidance: Vento Bands (2017) as updated by the Second Addendum (March 2017), we have concluded that the discrimination found falls within the middle Vento band and that it would be just and equitable to make an award to the claimant for injury to feelings of £10,000.
- 109.1 This is was not one-off act of discrimination nor was it trivial. We have found that the respondent failed to comply with its duty to make adjustments on 19 February 2019 and 13 May 2019.
- 109.2 The effect of this discrimination was significant.
- (1) The claimant had taken disability leave from 2 July 2018 because adjustments were required to make her workplace safe for her. Although a new branch was identified by late August 2018 the claimant remained on disability leave for another six months.
- (2) Whilst the initial delay related to the delay in sourcing the claimant's equipment and the decision to conduct a Microlink assessment only once this equipment was in place, the respondent failed in the meantime to take any steps to adjust the lighting in the claimant's office. This failure persisted despite



the claimant raising the lighting issue with the respondent on 18 December 2018. There was then a further inexplicable two-month delay before the claimant came into the office to trial her desk set-up. Because the respondent had not adjusted the lighting in the intervening period, the claimant was exposed to fluorescent lighting on 18 February 2019. This exacerbated her disability which resulted in the claimant being signed off work by her GP until 28 February 2019. Not only was this wholly avoidable, it had the effect of prolonging the claimant's exclusion from work.

- (3) The respondent then failed to adjust the office lighting until 14 June 2019, however, as we have found, this was inappropriate.
- (4) In the meantime, the claimant was required to remain in her office without any lights on. Because of this she was unable to conduct interviews with customers when she had completed the reaccreditation process.
- (5) It took the respondent over four months from the date the claimant returned to work and some eleven months from the date when the Fenchurch Street branch had been identified to make the appropriate lighting adjustments.
- (6) The failure to make these adjustments was compounded by the fact that these adjustments had already been made in the Mayfair office and the claimant's managers in the Fenchurch Street branch were fully cognisant of this. However, instead of facilitating these adjustments they were initially resistant to them and the claimant was told in February 2019 that all adjustments had been made. As the best practice guidance underlined "the relationship between the line manager and a disabled colleague has the most significant impact upon the colleague's wellbeing, effectiveness and level of engagement".
- (7) The effect of the respondent's failure was to exclude the claimant from her workplace and to prevent her from fully participating in a role which she was evidently passionate about and from which she derived a great deal of satisfaction and self-esteem.
- (8) We find that this failure impacted not only on the claimant's work but also on her personal life as well as her physical and mental wellbeing.

109.3 The respondent had many opportunities to put this right. They knew how to put this right. It took a week for the respondent to make the required adjustments at the Oxford Circus branch. There was no reasonable explanation for the delays in Fenchurch Street.

109.4 We also take account of the respondent's size and resources, and by its manifest failure to comply with the provisions of the best practice guidance.

**Interest**

110. The interest payable on discrimination awards is to be calculated in accordance with the Employment Tribunals (Interest on Awards in Discrimination Cases) Regulations 1996. Under regulation 2 the tribunal shall consider whether to award interest and if it chooses to do so then under regulation 3 the interest is to be calculated as simple interest accruing from day to day. Under regulation 6 the interest on an award for injury to feelings is to be from the period beginning on the date of the act of discrimination complained of and ending on the day of calculation. Following the Employment Tribunals (Interest on Awards in Discrimination Cases) (Amendment) Regulations 2013 the rate of interest payable is 8%.
111. 378 days have elapsed between the date of the discrimination on 19 February 2019 and today's date. Interest at 8% on £10,000 is £2.19 per day. We award interest for 378 days which is £827.82.

**Recommendations**

112. The claimant seeks a recommendation that the respondent is ordered to provide her with a straight-edged desk with sufficient depth. As we have not upheld this part of her claim we make no recommendation for this. However, we take note that Mr Khoshdel, for the respondent, informed us that it is continuing to review the claimant's desk and we do no more than emphasise the potential benefits to both parties of obtaining a medical opinion to evaluate whether the claimant's desk setup exacerbates her frozen shoulder condition and if so, to recommend any adjustments necessary to obviate this.

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**Employment Judge Khan**

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Date 4th March 2020

REASONS SENT TO THE PARTIES ON

06/03/2020

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FOR THE TRIBUNAL OFFICE