EMPLOYMENT TRIBUNALS

BETWEEN

Mr Lakhbir Dhillon **(Claimant)**	**and**	**Royal Mail Group Ltd** **(Respondent)**

Held at: **Birmingham**

On: **7 and 8 July 2020**

Before: **Employment Judge T Coghlin QC**
Mr R White
Ms N Chavda

Representation:

Claimant: **In person, assisted by his friend Mr Ranjit Singh**

Respondent: **Mr Paul Bownes, solicitor**

JUDGMENT

The unanimous judgment of the tribunal is that the claimant's claims of disability discrimination and disability-related harassment are not well founded and are dismissed.

REASONS

Introduction

1. This is a claim of discrimination arising from disability as defined by section 15 of the Equality Act 2010 ("EqA") and of disability related harassment as defined by section 26 EqA.

2. The respondent was represented before us by Mr Paul Bownes, solicitor. The claimant in part represented himself but most of the advocacy was done on his behalf by his friend, Mr Ranjit Singh. The tribunal is grateful to them all for their assistance.

3. The claimant gave evidence himself and called evidence from Mr Amandeep Kooner, trade union representative, and Mr Les Marsons, retired health and safety lead. The respondent indicated it did not wish to cross-examine Mr Kooner. The respondent's position was that his evidence was irrelevant. We agree and although we read his statement we did not consider that it gave material assistance on the limited issues which we had to decide. Mr Marsons gave evidence via video link. His cross-examination by Mr Bownes was brief, the respondent taking the view, again rightly in our judgment, that little of Mr Marsons' evidence was of relevance.

4. The only witness called by the respondent was Mr Kishan Patel, Shift Manager at the respondent's National Distribution Centre in Northampton who is, and was the material time, the claimant's line manager.

The issues

5. The issues in the case were identified in a list of issues provided by the respondent and agreed as accurate by both parties at the outset of the hearing as follows:

Discrimination arising from disability (Section 15 Equality Act 2010)

Did the respondent treat the claimant unfavourably because of something arising from the claimant's disability when Mr Patel handed the claimant the occupational health consent form (pensions) on 10 July 2018. If so, was the treatment a proportionate means of achieving a legitimate aim?

The claimant suffers from depression and states that the 'something' which arises from his disability is heightened anxiety and headaches, panic attacks and long spells of low mood.

If so, was the respondent's treatment of the claimant a proportionate means of achieving a legitimate aim? The legitimate aim relied on by the respondent was to refer the claimant to an alternative occupational health provider (as he refused to be referred to OH Assist) to enable him to receive occupational healthcare support. Also so that managers could obtain a medical opinion from an occupational health professional to enable them to assist and support the claimant in the workplace with his medical condition.

The respondent says that a proportionate means of achieving a legitimate aim was to request and obtain consent from the claimant so that the referral alternative occupational health provider could be made.

Harassment (section 26 Equality Act 2010)

Did the respondent harass the claimant in relation to his disability when Mr Patel handed the claimant the occupational health consent for (pensions) on 10 July 2018?

Was this conduct unwanted and did it have the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

If yes, was this conduct related to the claimant's depression?

The facts

6. The claimant has been employed by the respondent since 7 September 1997. His job title is parcel sorter.

7. He has brought three previous claims against the respondent. This is the fourth.

8. We understand that the first claim was withdrawn by the claimant.

9. In the second claim (3328533/2017) the claimant alleged discrimination arising from disability (section 15 EqA) and victimisation (section 27 EqA), with both claims relating to his non-appointment to a position as Bay Marshal. The case was heard over four days before EJ Dimbylow and members (**"the Dimbylow tribunal"**). The tribunal dismissed the claims by a judgment dated 15 November 2018.

10. The third claim (3307153/2018) was also unsuccessful, and was dismissed by a judgment dated 3 September 2019 following a five-day hearing before EJ Hindmarch and members (**"the Hindmarch tribunal"**). That was a further claim of victimisation. The detrimental treatment in issue in the third claim was a delay in arranging an occupational health (OH) appointment in 2017 and 2018.

11. This fourth claim relates to the same process of arranging an OH appointment.

12. The central facts are not in dispute. In part they were determined by the Dimbylow and Hindmarch tribunals. The judgment given by the Hindmarch tribunal, in particular, covered a great deal of the ground which the claimant and his witnesses covered in their evidence and which Mr Singh, on his behalf, sought to cover in his cross-examination of the respondent's witness Mr Patel.

13. The claimant has at all relevant times been disabled by reason of depression, and the respondent accepts that it had actual or constructive knowledge of that disability at the relevant time.

14. In early 2018, the claimant was pressing to have an OH referral made in order to help accommodate his mental health needs. This had been a fairly long-standing issue and was one which the claimant was continuing

to raise with his managers, in particular his line manager Mr Kishan Patel. The facts in relation to this have been explored by the Hindmarch tribunal at paragraphs 15-21 of its judgment. As explained in that judgment, the claimant was not prepared to be assessed by the respondent's sole contracted OH provider, Atos, later called OH Assist, due to his past experience of that organisation. As the Hindmarch tribunal found at paragraph 19 of its judgment, at a meeting on 18 January 2018

"Mr Patel sought to understand why the Claimant was reluctant to be referred to Atos/OH Assist. The Claimant accused them of "inhumane treatment". In the Respondent's bundle at page 59, is an email where the Claimant had accused Atos of 'inhumane treatment done over the phone during 2011 using some sort of techniques (hypnotherapy) which comes under the Official Secrets Act.' Mr Patel suggested that a referral be made to OH Assist but that a different practitioner assess the Claimant. The Claimant remained resistant to any referral to OH Assist."

15. The Claimant continued to press Mr Patel in the spring and early summer of 2018 for an OH referral.

16. On or shortly before 6 June 2018 Mr Patel had a telephone conversation with Loraine Cliffe, a representative of AXA PPP, with a view to obtaining ad hoc OH services so that he could arrange for an OH assessment for the claimant through a provider other than ATOS/OH Assist.

17. Ms Cliffe emailed Mr Patel on 6 June 2018 setting out details of AXA PPP's services, include among other things general OH services and referrals for ill-health early retirement (IHER) assessments for the purposes of pension applications.

18. Mr Patel was experienced in making OH referrals for employees, but had not previously worked with AXA as he was familiar only with the processes of the respondent's provider ATOS/OH Assist.

19. On 10 July 2018, Mr Patel printed off one of three documents which were attached to Ms Cliffe's email. He thought what he had printed was an OH

referral form. However he had printed the wrong attachment. What he printed was in fact a referral form for the purposes of an IHER process. It was entitled “Occupational Health consent form (Pensions)”. Mr Patel did not read the title of the document, or if he did, he failed to appreciate what it was. Nor did he read the form itself. He gave the form to the claimant about 15 minutes before the end of the claimant’s shift. He told the claimant that he could take the form home, and asked him to read it, complete it and return it to him.

20. That afternoon or evening, after he started to complete the form, it became clear to the claimant that the form was connected to ill-health retirement and must be the wrong one. The next day he spoke to Mr Les Marsons, a union officer, who confirmed that this was indeed a form relating to an ill-health retirement process. That was quite clear to Mr Marsons, as it was to the tribunal, and would have been to anyone reading the form, not only from its title but also from its contents.

21. The claimant and Mr Marsons spoke to Mr Patel the next day and said the form was wrong. Mr Patel at first said it was the right form, but then he said that he had not actually read it upon it being shown to him he accepted that it was incorrect.

22. The same day, Mr Patel emailed Ms Cliffe from AXA saying:

“Thanks for this, just went through this with our potential employee who would like this referral being put in place. We have printed out the referral form and [it] comes out with pensions, can we have the correct form sent over please, in hindsight this will be for counselling for depression. Your help would be much appreciated.”

23. Ms Cliffe told Mr Patel what needed to be done:

“Referrals are placed and tracked through our online portal. Can you please complete the client set up form and I can send to our Legal team in order for you to sign off on our T&Cs.”

24. It is not clear whether this actually happened, and it appears that no referral was ultimately made. However there is no complaint before us in relation to a subsequent failure to make such a referral.

25. The claimant says that the receipt of the wrong form made his mood deteriorate rapidly and he went sick a few days later.

26. The claimant's case, from which to some extent he appeared to retreat when being cross-examined, was that Mr Patel had deliberately given him the wrong form: that he had been "caught in the act". The claimant's position appeared to be that by giving him the wrong form to complete, Mr Patel had been trying to trick him into signing an IHER OH consent form so that the claimant could then be dismissed against his will on ill health grounds. It was also suggested in closing that Mr Patel had given him the wrong form in order to humiliate the claimant.

27. Mr Patel, for his part, maintains that he gave the claimant the wrong form by mistake, having failed first to read it.

28. We accept that Mr Patel made a genuine mistake in giving the wrong form to the claimant. We found Mr Patel a credible witness. The suggestion that he gave the claimant the wrong form deliberately was inherently implausible. As a means of seeking to trick the claimant, Mr Patel's action in giving him the form was obviously hopeless. The form is clear and its nature and purpose would be apparent to anyone who read it. Mr Patel did not force the claimant to sign it there and then: on the contrary he gave it to the claimant to take away and read before signing it. As the form states, it formed part of a process (involving the Pensions Trustees) which was not underway; and dismissal would not automatically have followed from an OH assessment: there would have needed to be a discussion with the claimant, and there was provision for appeal. So the idea of Mr Patel seeking deliberately to trick the claimant into signing the wrong form seems enormously unlikely. Nor does it seem to us plausible that Mr Patel would deliberately give the claimant the wrong form in order to humiliate him.

29. By contrast Mr Patel's explanation of an honest mistake is entirely plausible. He provided it when he had for some time been pressurised by the claimant to refer him for an OH assessment. The claimant fairly accepted when cross-examined that Mr Patel was trying to help him, and was trying to facilitate an OH assessment for him. We accept that Mr Patel was unfamiliar with the AXA PPP forms and that he simply printed the wrong attachment from Ms Cliffe's email. When challenged by Mr Marsons and the claimant the next day, he initially said that the form was correct (an assertion based on his belief that he had printed the right one), then said that he had not read it and then acknowledged that it was the wrong one. He then immediately sought to correct the mistake and to obtain the right form from AXA PPP.

30. Mr Patel's explanation is plausible, we found him a credible witness, and we accept that he gave the claimant the wrong form due to a genuine error.

The Section 15 claim

31. Section 15 of the Equality Act 2010 provides:

> **(1) A person (A) discriminates against a disabled person (B) if –**
>
> **(a) A treats B unfavourably because of something arising in consequence of B's disability, and**
>
> **(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.**
>
> **(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.**

32. The exception in sub-section (2) does not apply here, because the respondent accepts that it knew about the claimant's disability.

33. In **Pnaiser v NHS England** [2016] IRLR 170 at [31] Simler P set out the correct approach to claims under section 15:

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

(b) The Tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a section15 case. The 'something' that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.

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

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

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

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

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

stage involving consideration of whether (as a matter of fact rather than belief) the 'something' was a consequence of the disability.

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

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

34. The first question is whether giving the claimant the wrong occupational health form to fill out – a thing which was plainly an accident as would have been immediately obvious to the claimant – could be regarded as "treating him unfavourably."

35. The term "unfavourably" is not defined in the EqA. However we understand the term to have essentially the same meaning as that of "detriment", which is to say, putting the disabled person at a disadvantage.

36. The Equality and Human Rights Commission's Code of Practice on Employment states at paragraph 5.7 that it means that the disabled person 'must have been put at a disadvantage'.

37. The Explanatory Notes to the EqA explain at paragraph 70 that section 15 "is aimed at re-establishing an appropriate balance between enabling a disabled person to make out a case of experiencing a detriment which arises because of his or her disability, and providing an opportunity for an employer or other person to defend the treatment."

38. In **Williams v Trustees of Swansea University Pension and Assurance Scheme and another** [2019] ICR 230 (SC), Lord Carnwath, giving the only judgment in the Supreme Court, observed:

> **"in most cases (including the present) little is likely to be gained by seeking to draw narrow distinctions between the word "unfavourably" in section 15 and analogous concepts such as "disadvantage" or "detriment" found in other provisions, nor between an objective and a "subjective/objective" approach. While the passages in the Code of Practice to which she draws attention cannot replace the statutory words, they do in my view provide helpful advice as to the relatively low threshold of disadvantage which is sufficient to trigger the requirement to justify under this section."**

39. The threshold is therefore low. But we do not consider that the claimant could justifiably complain that he was in any real sense disadvantaged by being given the wrong form to fill out, in circumstances where it was obvious that this was a simple error by his manager, an error accepted by the manager when it was pointed out to him the next day. Any disadvantage was transitory (bearing in mind that this claim does not include an allegation of a subsequent failure to provide the right form or to make an OH referral) and trivial.

40. Even if we are wrong about that, and the provision of the wrong form amounted to "unfavourable treatment", the section 15 claim in our judgment fails anyway. Assuming that there was unfavourable treatment, it was giving the claimant the wrong form. The reason and only reason for that unfavourable treatment was a mistake on the part of Mr Patel. That may have been somewhat careless of him, but it was a genuine and honest mistake. That mistake had a *connection* with the claimant's disability in the sense that the claimant's disability and its effect on him provided the context within which the mistake came to be made: had he not had his disability there would have been no need to fill out an occupational health form of any sort. But that mistake cannot in our judgment sensibly be described as a thing which arose in consequence of his disability.

41. For these reasons the section 15 claim fails.

Harassment

42. Section 26 of the Equality Act 2010 gives the definition of harassment:

> **(1). A person (A) harasses another (B) if -**
> **(a) A engages in unwanted conduct related to a relevant protected characteristic, and**
> **(b) the conduct has the purpose or effect of—**
> **(i) violating B's dignity, or**
> **(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B…**
>
> **(4). In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—**
> **(a) the perception of B;**
> **(b) the other circumstances of the case;**
> **(c) whether it is reasonable for the conduct to have that effect.**

43. The relevant protected characteristic here is disability.

44. The first question under section 26 is whether there was unwanted conduct? We consider that the provision of the wrong OH form was indeed unwanted conduct.

45. Second, was that conduct "related to" disability? This is not a straightforward question. We were referred to the case of **Tees Esk and Wear Valleys NHS Foundation Trust v Aslam** [2020] IRLR 495. At paragraphs 20 to 22 of that judgment, the EAT (HHJ Auerbach and members) made general observations as to the relevant legal test, quoted relevant passages from the leading case of **Unite the Union v Nailard** [2019] ICR 28, and concluded at paragraphs 23 to 25:

> **"23. It is important to note that much of the discussion in Nailard concerned whether there was harassment related to sex, by virtue of what is called the motivation of the particular individuals concerned, because that was the focus of the particular issue in that case. The Tribunal in that case, it was said, needed to focus on the motivation for the conduct of the employed officials, as opposed to that of the lay officials, about whose alleged conduct complaint had been made to the employed officials.**
>
> **24. However, as the passages in Nailard that we have cited make clear, the broad nature of the "related to" concept means that a finding about what is called the motivation of the individual concerned is not the necessary or only possible route to the conclusion that an individual's conduct was related to the characteristic in question. Ms Millns confirmed in the course of oral argument that that proposition of law was not in dispute.**

25. Nevertheless, there must be still, in any given case, be some feature or features of the factual matrix identified by the Tribunal, which properly leads it to the conclusion that the conduct in question is related to the particular characteristic in question, and in the manner alleged by the claim. In every case where it finds that this component of the definition is satisfied, the Tribunal therefore needs to articulate, distinctly and with sufficient clarity, what feature or features of the evidence or facts found, have led it to the conclusion that the conduct is related to the characteristic, as alleged. Section 26 does not bite on conduct which, though it may be unwanted and have the proscribed purpose or effect, is not properly found for some identifiable reason also to have been related to the characteristic relied upon, as alleged, no matter how offensive or otherwise inappropriate the Tribunal may consider it to be."

46. In **Nailard** the Court of Appeal held (at paragraph 92) that the statutory definition of harassment in the Equality Act was intended to cover cases where the acts complained of could be described as "associated with" the proscribed factor as well as those where they were "caused by" it.

47. We consider that the act of giving the claimant the OH (pensions) referral form was "related to" disability. Mr Patel was engaged in an attempt to assist the claimant with the effects of his disability by giving him an OH referral form. Giving the wrong form was for that reason intimately connected with, "associated with" and in our view "related to" disability. The fact that he made a genuine error (which itself was not made because of disability or something arising consequence of it) in doing this does not in our view mean that the unwanted conduct in question was not "related to" disability. We are satisfied that it was.

48. The third question for us is whether the conduct had the necessary proscribed purpose or effect of violating the claimant's dignity or creating for him an intimidating, hostile, degrading, humiliating or offensive environment.

49. In light of our primary findings, there is no question of Mr Patel's conduct having had that *purpose*: his sole purpose was to help the claimant by providing him with a form to effect the very OH referral for which the claimant had been asking for some time, and providing the incorrect form was a simple and genuine error.

50. That leaves the question of whether the conduct had the proscribed *effect or effects*?

51. The application of the statutory tests was considered by Langstaff P in **Betsi Cadwaladr University v Hughes** UKEAT/0179/13 at [9]-[13]:

> **"9. The question is, first, whether the conduct has the purpose or, alternatively, the effect of creating the proscribed consequences. Here, the Tribunal decided to acquit the employer of any intent. It came to the conclusion, as we have set out above, that that was the effect of what happened. Whether it has that effect is a matter of fact, to be judged by a Tribunal. It is to be judged objectively. In determining that, the subjective perception of the Claimant is relevant, as are the other circumstances of the case. But, as was pointed out in Richmond Pharmacology v Dhaliwal [2009] ICR 724, it should be reasonable that the actual effect upon the Claimant has occurred.**
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> **10. Next, it was pointed out by Elias LJ in the case of Grant v HM Land Registry [2011] EWCA Civ 769 that the words "violating dignity", "intimidating, hostile, degrading, humiliating, offensive" are significant words. As he said:**
>
> > **"Tribunals must not cheapen the significance of these words. They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment."**
>
> **11. Exactly the same point was made by Underhill P in Richmond Pharmacology at paragraph 22:**
>
> > **"..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 grounds covered by the cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase."**
>
> **12. We wholeheartedly agree. The word "violating" is a strong word. Offending against dignity, hurting it, is insufficient. "Violating" may be a word the strength of which is sometimes overlooked. The same might be said of the words "intimidating" etc. All look for effects which are serious and marked, and not those which are, though real, truly of lesser consequence.**
> **13. It was agreed, too, that context was very important in determining the question of environment and effect. Thus, as Elias LJ said in Grant, context is important. As this Tribunal said, in Warby v Wunda Group plc, UKEAT 0434/11, 27 January 2012:**
>
> > **"...we accept that the cases require a Tribunal to have regard to context. Words that are hostile may contain a reference to a particular characteristic of the person to whom and against whom they are spoken. Generally a Tribunal might conclude that in consequence the words themselves are that upon which there must be focus and that they are**

discriminatory, but a Tribunal, in our view, is not obliged to do so. The words are to be seen in context…""

52. In **Grant v HM Land Registry** [2011] EWCA Civ 769 the Court of Appeal upheld the observation that was made by Underhill P in **Richmond Pharmacology v Dhaliwal** [2009] ICR 724 that

"one question that may be material is whether it should reasonably have been apparent whether the conduct was, or was not, intended to cause offence (or, more precisely, to produce the proscribed consequences): the same remark may have a very different weight if it was evidently innocently intended than if it was evidently intended to hurt."

53. The claimant's evidence was that he was seriously affected by this incident, in that it caused his mood to deteriorate and his depression to deteriorate, with knock-on effects on his home and personal life.

54. He did not, however, give any evidence that he perceived or experienced a violation of his dignity or the existence of the relevant proscribed "environment".

55. Furthermore even if that had been his perception or his experience, we are satisfied that this perception would not have been reasonable.

56. We consider that it was clear to the claimant, and would have been obvious to any reasonable person reading the form that he was given, that Mr Patel had given it to him in error rather than to cause offence, or to humiliate him, or as a step towards a contrived and underhand dismissal. As the claimant himself says, Mr Patel gave the form to him in response to his repeated requests for an OH referral, and told him to take it away, read it and sign it. When he sat down to do so, he almost immediately realised that it was the wrong form, and Mr Marsons confirmed that to him the next morning. Mr Patel quickly acknowledged his error to the claimant the next day. And since it was clear that the form was given in error, it must also have been equally clear that Mr Patel's intention was not merely neutral but that he had been positively trying to assist the claimant. As we have said, the claimant accepted in his oral evidence that Mr Patel had indeed been trying to help him.

57. We remind ourselves of the strength of the words used in the statute: it requires a “violation of dignity” or the creation of “an intimidating, hostile, degrading, humiliating or offensive environment”. We do not consider that, in all the circumstances of the case, the provision of an incorrect form had anything approaching the requisite effect, or could reasonably be perceived as doing so.

58. For these reasons the claim of harassment related to disability, like the claim of discrimination arising from disability, fails. The claimant’s claims are dismissed.

59. We reach the above findings on both the section 15 claim and the harassment claim without having recourse to a shifting burden of proof (see section 136 EqA). However the application of a two stage approach would produce the same result. The claimant has not proven primary facts from which in the absence of an explanation we could properly conclude that there was either discrimination under section 15 or harassment under section 26; and even if the burden had passed to the respondent we are satisfied that it has discharged that burden of showing that it did not commit either unlawful discrimination arising from disability or harassment relating to disability.

Employment Judge Coghlin
8 July 2020