



## EMPLOYMENT TRIBUNALS

**Claimant**  
Ms S Kaur

**Respondent**  
Lloyds Banking Group

**Heard at:** By CVP **On: 18, 19, 20 January 2021**  
**Before:** Employment Judge Davies  
Ms H Brown  
Mr L Priestley

### Appearances

**For the Claimant:** In person  
**For the Respondent:** Ms L Badham (counsel)

## RESERVED JUDGMENT

1. The complaints of failure to make reasonable adjustments for disability are not well-founded and are dismissed.

## REASONS

### Technology

1. This hearing was conducted by CVP (V - video). The parties did not object. A face to face hearing was not held because it was not practicable and all the issues could be dealt with by CVP.

### Introduction

2. These were complaints of failure to make reasonable adjustments for disability brought by the Claimant, Ms Kaur, against her employer, Lloyds Banking Group. The Claimant represented herself, and the Respondent was represented by Ms Badham, counsel.
3. There was an agreed file of documents and everybody had a copy. We admitted a small number of additional documents by agreement during the course of the hearing.
4. The Tribunal heard evidence from the Claimant and from Mr M Brown, Mr S Sempezis and Ms E Elson for the Respondent.

## The Claims and Issues

5. The Respondent admits that at all relevant times the Claimant had a disability within s 6 Equality Act 2010, namely depression/anxiety/stress/panic attacks. The issues to be determined by the Tribunal were recorded by EJ Little following a preliminary hearing on 14 July 2020. That list did not include the question whether the Respondent knew or could reasonably be expected to know that the Claimant was put to the disadvantage she relied on. That issue was added to the list at the start of the hearing.
6. In addition, in the light of the content of the Claimant's witness statement, the Tribunal explored whether she wanted to contend that there was a second step the Respondent should have taken to avoid any disadvantage, namely paying the excess on her BUPA private health insurance benefit. For reasons given at the hearing, the Tribunal decided to allow the Claimant to rely on that second step. We adjourned to enable the Respondent to prepare further evidence and a witness statement, which it did by the start of the second day of the hearing.
7. The issues for the Tribunal to decide are therefore:
  - 7.1 At the relevant time (November 2019 onwards) did the Respondent know or could it reasonably have been expected to know that the Claimant had the disability?
  - 7.2 Did the Respondent's PCP of requiring employees on its graduate programme to engage with stakeholders and participate in collaborative projects put the Claimant at a substantial disadvantage in comparison with persons who are not disabled?
  - 7.3 Did the Respondent know or could it reasonably have been expected to know at the relevant time that the Claimant was likely to be placed at the disadvantage?
  - 7.4 Did the Respondent take such steps as it was reasonable to take to avoid the disadvantage? The Claimant says it should have:
    - 7.4.1 Paid for external training in confidence building and assertiveness delivered at the Swarthmore Education Centre; and
    - 7.4.2 Paid the excess on her BUPA private medical insurance in respect of CBT accessed through that benefit.

## The Facts

8. The Claimant started working for the Respondent as a Management Trainee on its Graduate Leadership Programme in September 2018. She has a history of depression and anxiety and the Respondent accepts she met the definition of disability at the relevant time by virtue of depression/anxiety/stress/panic attacks. No medical evidence was provided to the Tribunal. However, the Claimant explained that she was first diagnosed with depression and anxiety in around 2009. She was on antidepressant medication until 2015, but has not taken it since. She had CBT when she was at university and she has also had counselling.
9. On the Graduate Leadership Programme the Claimant had to undertake three 8-month placements. Her first placement was in Edinburgh and she was line

managed by Mr Rutkowski. She had some issues with her accommodation and personal events outside of work. Within two weeks of the placement starting she had also raised concerns about being excluded by her team within the workplace. That was the beginning of a series of concerns that led in due course to the Claimant raising a grievance. The events in the grievance were not the issue before the Tribunal and we do not address them in detail, but they are a relevant part of the background. The Tribunal noted that the Claimant's grievance was rejected in due course, as was her grievance appeal. We have proceeded on the basis that her allegations of bullying and harassment were not upheld.

10. The Claimant's line manager held regular one-to-one meetings with her. They were generally recorded in notes or follow-up emails. On 26 November 2018 during such a meeting the Claimant identified that she was struggling to settle in and was having difficulties with her accommodation, friendships outside work and drinking. The Tribunal considered that the records kept by Mr Rutkowski showed a supportive and constructive approach by him. He had already had discussions with the graduate group about inclusion and avoiding unconscious bias. Mr Rutkowski flagged up the issues the Claimant was having internally. The Claimant accepts that she did not tell Mr Rutkowski that she had a history of depression or anxiety, nor that her mental health was a concern at that stage. At the next one-to-one, in December 2018, the Claimant told Mr Rutkowski that she was feeling mentally in a better place. Mr Rutkowski gave her the number for the Respondent's Employee Assistance Program ("EAP"). The Claimant told him that she did not think it would be useful; she had not found counselling useful in the past.
11. There was an end of year discussion between the Claimant and Mr Rutkowski on 10 January 2019. As part of his feedback, Mr Rutkowski made a comparison between the Claimant's performance and that of her peers (as was required under the relevant appraisal process). The Claimant later texted him to say that she felt his comments were critical and not constructive. Although she felt that the two examples were valid, she felt that by comparing her to her peers Mr Rutkowski was implying that she was the worst graduate that he had had. She said this had deflated her confidence and left her feeling low. Mr Rutkowski replied to suggest that they discuss it the next day, which they did. He sent a follow-up email noting what they had discussed. That again seemed to the Tribunal to reflect a constructive and supportive approach. The Claimant spoke about her confidence being at an all-time low and Mr Rutkowski asked what would help to increase her confidence. The Claimant mentioned improving her technical skills. Actions were agreed, and Mr Rutkowski encouraged Claimant to tell him if she thought of anything else would help after the event. They agreed to have regular one-to-one meetings and the Tribunal saw emails indicating that this had taken place. There was no reference to the Claimant having poor mental health or symptoms of depression or anxiety or any other mental health condition.
12. In late March 2019, Mr Rutkowski and another manager, Mr Cox, exchanged emails about the Claimant. Mr Cox said that the Claimant was "anxious about Edinburgh." Mr Rutkowski replied that he had talked to the Claimant about anxiety. He could not go into it but was hopeful of a good solution. The Tribunal

did not hear evidence about this email exchange. Given the timing, it seemed to us most likely that it related to the planning that was then underway for the Claimant's next placement. The context was that the Claimant comes from Leeds and her family live in Leeds. She had moved to Edinburgh for her first placement and her next placement was also due to be in Edinburgh.

Unfortunately, her mother was unwell and this was a concern for the Claimant, in particular because she was so far away from her. Plans were subsequently made for the Claimant to undertake her placement remotely, and it seems likely that this was the solution Mr Rutkowski was referring to.

13. That brings us to April 2019. In her witness statement, the Claimant said that the Respondent had been aware of her mental health issues since November 2018. She did not specify any occasion on which she said she had told anyone explicitly about her history of depression and anxiety or any mental health issue. For the first time in cross-examination, she said that she had told Mr Rutkowski in April 2019 that she had a history of depression and anxiety and had been on two or three different types of medication. Mr Rutkowski had not prepared a witness statement, given that this evidence was new in cross-examination, and he did not give evidence to the Tribunal. The Tribunal looked carefully at the contemporaneous documents when assessing the Claimant's evidence about this. For the reasons set out below, we did not accept her evidence.
14. Throughout her placement with him, Mr Rutkowski took advice from colleagues in the Graduate Leadership Programme team (Mr Howe) and HR (Mr Lee). On 25 April 2019 he emailed them with a detailed update on the latest position. He recorded that the Claimant had visited the doctor the previous Wednesday, after which he had spoken to her on the phone for about 30 minutes. The doctor had told the Claimant that she thought she was medically fit to be at work and that she needed to "reframe her perspective." Mr Rutkowski said that he could see sense in this advice, based on his own experiences. Mr Rutkowski also noted that the Claimant had told him that on top of her mother's situation and her low mood something else was causing her an issue, namely the work environment. The Claimant had raised concerns about colleagues in her team and the graduate population not meeting the Respondent's inclusion and diversity values. Mr Rutkowski had explored her concerns during the phone call and face-to-face on two further occasions. The Claimant had then texted him the previous evening to say that she would not be coming in that day and that this could be taken off her annual leave. She had texted again in the early hours to say that really she felt unwell, but medical opinion was that she was fine so she would not call in sick for this "supposed lack of wellness." Mr Rutkowski asked for his colleagues' views. There was no suggestion in the detailed email that the Claimant had told Mr Rutkowski that she had a history of depression and anxiety and had previously been on 2 or 3 types of medication, nor that she was experiencing an episode of mental ill-health, as opposed to low mood associated with her mother's illness and events at work.
15. Mr Lee replied to Mr Rutkowski advising on how to deal with the absence. He said that he was trying to think of "mental health" in the same way as any other health issue, and that they would not require a doctor's note for a day's sickness. He suggested telling the Claimant that if she was feeling unwell, Mr Rutkowski would rather log a day's absence instead of annual leave so that her poor health

did not impact her holiday entitlement. Mr Lee suggested that this would show they were “taking the mental health aspects seriously.” He also said that he thought it was worth mentioning EAP again. Mr Rutkowski replied accepting the advice. His reply did not make any reference to the Claimant telling him she had a history of depression or anxiety.

16. Mr Rutkowski sent a further update on 1 May 2019. This was another detailed email recording almost daily one-to-ones with the Claimant exploring the issues she had raised. It too appeared to reflect a clear concern on Mr Rutkowski’s part to support the Claimant and do the right thing by her. The Claimant’s principal concern was evidently about inclusion by her colleagues, and she had made specific complaints about two of them. The Claimant had also told Mr Rutkowski that she felt her first placement had been a “write-off.” When they discussed this, it appeared to Mr Rutkowski that the Claimant was fixated on her Excel skills and that her success criteria appeared to be completely binary based on those skills. There was no suggestion in Mr Rutkowski’s note of their discussions that the Claimant was raising any concern about depression or anxiety, nor any concern about lacking confidence or having problems working collaboratively with stakeholders. Mr Rutkowski recorded an exchange of text messages the previous evening. The Claimant had again said that she would not be coming in tomorrow. She said that she refused to be “laughed at and made to feel stupid.” She said that she thought she had “enough to go off to evidence this has affected my mental well-being.” This plainly referred to her concerns about a particular colleague whom she felt was laughing or smirking at her in the office. Mr Rutkowski replied to say that it was no problem that she was off and it was a day of sickness. He added “mental health is an important issue, as also previously mentioned.”
17. Taking into account the contemporaneous documents and the fact that the Claimant had never previously suggested that she told Mr Rutkowski in April 2019 that she had a history of depression and anxiety, the Tribunal did not accept that evidence. It seemed to us extremely unlikely given the content of his correspondence that if Mr Rutkowski had been told this, he would not have reported it to Mr Lee and Mr Howe when seeking their advice. It was much more likely that the Claimant was not accurately recalling what had happened. The question whether the Respondent knew or could reasonably be expected to know that the Claimant had the disability was one of the small number of issues to be determined by the Tribunal and was identified by EJ Little. The Claimant now says that there was one occasion on which she had expressly told the Respondent about her long-standing condition and previous treatment. If that had been the case, we considered that she would have said so before.
18. The Claimant was due to move to Mr Brown’s team. As mentioned above, she had by this stage requested a “remote” placement, working from her home in Leeds rather than being physically located with the team in Edinburgh. This request was made because of her mother’s health, and had been agreed.
19. On 2 May 2019, having taken advice from Mr Howe, Mr Rutkowski emailed Mr Brown to suggest a handover chat about the Claimant because there were a few issues Mr Brown needed to be aware of. They spoke on 9 May 2019 and Mr Brown followed up with an email. He said that he now had serious reservations

that a remote placement would be suitable. He had originally supported it when the main issue raised was her mother's health and the Claimant seemed motivated to make a remote placement work. In the light of the information Mr Rutkowski had shared, Mr Brown now had serious reservations and was concerned that it would lead to a sub-optimal experience for all involved. The Claimant would benefit much more from day-to-day coaching from a line manager in the same location. In his evidence to the Tribunal, Mr Brown said that during the call Mr Rutkowski said nothing to indicate that the Claimant had any form of underlying health condition and made no comment about her struggling with confidence. The Tribunal accepted that evidence. We have found that the Claimant had not told Mr Rutkowski about her history of mental ill health, but had told him she had seen the doctor, who had told her she was fit for work.

20. Mr Rutkowski replied the following day to say that he agreed with Mr Brown. He noted that when the Claimant had first raised her mother's health issues, she had not said anything about her issues with Mr Rutkowski's team and also she had not seen the doctor. They agreed that the two best options were for the Claimant to stay in Edinburgh with Mr Brown to guide her, or that they work quickly with the Graduate Programme to support the Claimant in finding a Leeds-based placement in a different team. Mr Rutkowski suggested seeking guidance from the Graduate team and HR again. This eventually led to agreement with the Claimant that she would spend two weeks in Edinburgh getting to know the new team, before working remotely from Leeds. As well as Mr Brown, she would have line manager support from Ms Patel who was based in Leeds.
21. Meanwhile, the Claimant continued to be unhappy about her treatment by the two particular colleagues in Mr Rutkowski's team. She started a period of sickness absence. She spoke by phone to Mr Rutkowski and he sent an update email to Mr Lee and Mr Howe. The Claimant evidently intended to remain off work for the remainder of her placement and was asking to take the eighth calendar day of absence (the last day of the placement) as unpaid leave. Mr Rutkowski told her that the HR advice was that he should decline this request, because it would be masking sickness absence. Therefore, she would need a fit note from the doctor if she wanted to remain off work. As regards her concerns about the way colleagues had treated her, Mr Rutkowski told her that the HR advice was that she should not leave her placement with these concerns "festering" and he suggested an issue resolution meeting with the colleagues.
22. Mr Rutkowski, Mr Brown, Mr Lee and Mr Howe remained in contact. On 15 May 2019, Mr Rutkowski confirmed that the Claimant had requested an informal issue resolution meeting with one of the two colleagues. Mr Rutkowski had suggested to the Claimant that she proactively contact Mr Brown about arrangements for the first day of her placement with him. She had been planning just to turn up, but she agreed that was a good idea.
23. Mr Rutkowski and the Claimant continued to communicate about the Claimant's sickness absence. The Claimant remained reluctant to obtain a fit note for her last day's absence in her first placement, because on the previous occasion she had been open with the doctor but the doctor had told her there was nothing wrong. Again, Mr Rutkowski's notes make no mention of the Claimant telling him

that she had a history of depression or mental ill-health. Mr Rutkowski was clear with the Claimant that if she remained absent this would trigger the Respondent's unauthorised absence process. But he also explained that he had found out from HR that if she obtained a retrospective fit note that would be accepted. Eventually, the Claimant saw the doctor on 24 May 2019 and was retrospectively signed off for 17 May 2019 with "stress at work."

24. The Tribunal also saw the notes kept on the Respondent's HR system when Mr Rutkowski sought advice. Those indicate that he had set out detailed information about the Claimant and the issues that were arising when seeking advice from HR. The notes contain no reference to any history of depression or poor mental health on the Claimant's part. They contain no reference to any concern about confidence or working collaboratively. They refer to the Claimant having "low mood" in the context of her concerns about team members and her mother's illness.
25. The Claimant moved into Mr Brown's team on 20 May 2019. Early in the morning on 20 May 2019 Mr Brown emailed Mr Rutkowski to say that he had heard nothing from the Claimant and did not know what her plans were for the day. He proposed to put in a "placeholder" for 9:15am for the three of them to catch up. Mr Rutkowski replied agreeing with the plan. He added that he had discussed multiple times with the Claimant during her placement the idea of communication and stakeholder management and suggested that she had still not taken it on board. Mr Brown's evidence to the Tribunal was that he understood these matters were issues because of the things he and Mr Rutkowski had discussed at the time. His evidence was that Mr Rutkowski had never mentioned that the Claimant had any form of underlying health condition.
26. The informal resolution meeting took place on 21 May 2019.
27. On 22 May 2019 Mr Brown provided an update to Mr Rutkowski, Mr Howe and Mr Lee. He said that the Claimant had shown signs of engagement but he still had a few concerns. His major concern was how isolated the Claimant would be in Leeds and the challenges that provided for someone with her "reserved personality." He asked whether the Respondent had a duty of care to offer her a level of support. In cross-examination Mr Brown explained that the Claimant was given the option of moving to a placement based in Leeds, but she preferred to continue the placement with Mr Brown and was willing to accept the downside in terms of location.
28. By 29 May 2019 Mr Brown emailed Mr Rutkowski to say that the early signs with the Claimant had been good. She was "very reserved" and did not come across as enthusiastic, but she had made good progress with reading to build up her knowledge and had impressed Mr Brown with her logical approach. Mr Brown was asked in cross-examination about his description of the Claimant in this email. He said that he just thought it was a matter of personality. The Claimant appeared to him to have an introverted personality and to be reserved.
29. The Claimant's mother remained unwell and was eventually diagnosed with serious illness. Mr Brown wrote in an email to Mr Rutkowski on 18 June 2019 that the Claimant had told him she had had some less than positive news on her

mother's health and Mr Brown was "slightly concerned" about the "impact this would have on her well-being." Mr Brown had spoken to the Claimant about EAP. She told him that Mr Rutkowski had also spoken to her about it, but she was still not keen. Mr Brown was asked about this email in cross-examination. He said that his concern about the Claimant's well-being was about the lack of a support network outside of work for dealing with her mother's illness and reticence to engage with treatment. He thought it was entirely natural that the Claimant was feeling down given the circumstances. He never had any thoughts that there was an underlying health concern relating to the Claimant.

30. The Tribunal saw internal messages exchanged between Ms Patel and Mr Brown about the Claimant. They discussed her progress, identifying suitable pieces of work for her, her skills and other matters. On 28 August 2019 Ms Patel said that she was a bit worried about the Claimant and asked Mr Brown whether he had got the feeling she was "down." The Claimant had told Ms Patel that her mother had an operation coming up. Ms Patel mentioned EAP but she did not think the Claimant "believed" in therapy. Mr Brown said that he got the sense that the Claimant was "generally quite subdued" and did not really get "overly buoyant about things." He too had suggested EAP to the Claimant multiple times but she was very dismissive. He suggested that they needed to keep making the Claimant aware of the support and offering to help as and when she wanted it. Ms Patel sent an email to the Claimant, offering support and providing information about EAP and links to information about things like "resilience" and "caring for yourself whilst caring for others." The clear focus was supporting the Claimant to cope with her mother's illness.
31. Mr Brown spoke to the Claimant on 30 August 2019. Her mother had decided to cancel her surgery and Mr Brown offered the Claimant suggestions for how she could approach that. He noted that the Claimant had now reached out to EAP and thought she would benefit from speaking with someone face-to-face who could offer a much better level of support that he was able to. The Claimant emailed Mr Brown to thank him for his advice and support.
32. The Claimant then accessed counselling through EAP. It is evident that she continued to have concerns about events in her first placement and it appears her counsellor advised her to raise a grievance to try and bring closure. The Claimant therefore submitted a formal grievance on 11 November 2019, which she said related to "workplace bullying I was subjected to between September 2018 and May 2019." The grievance identified a number of instances where the Claimant considered her colleagues had bullied her. She concluded the grievance:

I felt aggrieved, humiliated, belittled, isolated and upset. The bullying I experienced has had a lasting impact adversely affecting my confidence – I cannot do the smallest of things such as engage in small talk with colleagues about the weather for instance, as I fear repeat incidences of what happened during my first placement – this only affects my interactions with colleagues who sit in the nearby vicinity. I was suffering from low morale due to the experience I had – colleagues not upholding the group's values is demoralising. Going back to the Port Hamilton office triggers a stress response. To date, I have had four sessions of face-to-face counselling through Validium to try and help me move on from the bullying and rebuild my confidence. I am wanting formal action to be taken as the company simply cannot show themselves to be advocates of



positive mental health and inclusion and diversity and ignore issues such as those I have experienced which are adversely impacting my mental health and professional relationships to this day.

33. The detailed grievance contains no reference to any history of depression or anxiety, nor to the Claimant experiencing depression or anxiety during the placement in question. The entire thrust of the grievance is that the perceived workplace bullying, much of which related to not being included in social events or the perception of being laughed at in the office, had affected the Claimant's confidence and caused a stress response.
34. The Claimant's therapist wrote a letter on 29 November 2019. She explained that the Claimant had been referred to her for support with a presentation of "low mood and reduced confidence as a direct result of workplace bullying." The therapist said that the Claimant had explained in detail the circumstances around the workplace bullying and that it was evident that this had had a "great impact on her confidence levels and her ability to assert herself in work-based interactions." This had caused the Claimant high levels of distress and she had concerns about how her "low confidence and assertiveness" might be perceived professionally. She was also concerned about how these matters would restrict her level of personal development overall within the Respondent. The counsellor then wrote:

Within the counselling sessions together we have identified particular reasonable adjustments that need to be put in place to accommodate and support [the Claimant's]s current presentation in the workplace. This needs to include access to some provision around confidence building and assertiveness training. It is my understanding that there are resources available within the Lloyds Banking Group but a series of weekly personal development classes which address these two issues would be beneficial. This can be provided externally. It would prove most effective if this were to run alongside consistent one-to-one support with a Lloyds Banking Group employee who can adopt a mentoring role for the duration of this provision. It is hoped that by putting this in place this will satisfy Lloyds Banking Group duty of care to an employee who has directly been affected by workplace bullying as well as provide [the Claimant] with opportunities to rebuild her confidence in the workplace and grow her personal development.

35. Again, the clear thrust of the counsellor's letter was that workplace bullying had affected the Claimant's confidence. She made no reference to current or historic depression, anxiety or mental ill-health. There was no suggestion that any such mental health issue affected the Claimant's confidence or ability to work collaboratively with stakeholders.
36. The Claimant and her trade union representative attended a grievance hearing on 12 December 2019. The manager hearing the grievance was Ms Ingram. The Claimant gave her a copy of the counsellor's letter. Notes were kept of the grievance hearing. The Claimant did not make any reference to current or historic depression, anxiety or mental ill-health. The Tribunal saw detailed notes of investigation meetings held with Mr Rutkowski and the two colleagues about whom the Claimant complained.

37. On 6 January 2020 Ms Ingram sent the Claimant the written outcome to her grievance. It was not upheld. The Claimant emailed Ms Ingram the same day to say that there was no mention in the outcome letter of any additional support the group could provide regarding confidence building and assertiveness as recommended by her counsellor. She asked for confirmation that this was being actioned. Ms Ingram suggested that the Claimant pick this up directly with her line manager to identify the best option for her. She explained that all the Respondent's "learning" was located on its system called "Workday."
38. The Claimant forwarded this email exchange to Mr Brown the same day. She said that for context she attached the letter from her counsellor, which outlined the support that needed to be provided. The letter was not attached and the Tribunal accepted Mr Brown's evidence that it was never provided to him. However, he responded by offering to meet the Claimant the next day to discuss the matter and did so. The Tribunal accepted Mr Brown's evidence that the Claimant was very unhappy with the grievance outcome and told him as part of their discussion that her experience had impacted on her confidence and that she was worried about working in a team environment. He tried to encourage her to draw a line under the issues and look forward. He advised her that they could put a plan in place to develop her confidence and work with Mr Sempezis, who was shortly to become her line manager, to ensure she was provided with appropriate support in her third placement.
39. Mr Brown and Ms Patel had already devised a simple plan aimed at building the Claimant's confidence. It identified simple actions, such as greeting a colleague, for the Claimant to complete. Mr Brown accepted that this was basic. He said that it was a stepping stone towards building confidence following the challenges the Claimant faced in her first placement. Mr Brown's evidence in cross-examination, which the Tribunal accepted, was that he understood the plan to be part of the Claimant's general development and desire to build confidence, rather than related to or in response to any particular medical concern or need for an adjustment to her role. Mr Brown told the Tribunal that the Claimant did generally mention as part of their development discussions and regular chats that she wanted to work on her confidence and stakeholder management, but that was not in relation to any specific piece of work or concern. She said that the issues in her first placement had impacted her confidence but she did not say that her confidence was affected by any health condition or concern. It was quite usual for something like this to be flagged as part of a development programme and Mr Brown was not under the impression that the Claimant was facing any particular difficulties beyond those to be expected from someone at her grade and level of experience. He did not expect a graduate to come in as the finished article and even people at a much later stage in their career often highlighted this as an area of development. The Claimant never indicated to him that she required any specialist training course to reflect any disability or condition. The Tribunal accepted that evidence. There was nothing to suggest that the Claimant had expressly or implicitly linked the fact that she wanted to work on her confidence and stakeholder management with any disability or mental health issue.
40. Returning to the chronology, as noted, the Claimant was due to start her third placement with Mr Sempezis. Following his discussion with the Claimant on 7

January 2020, Mr Brown arranged for them to have a three-way call with Mr Sempezis on 14 January 2020. It was clear that the Claimant referred to “anxiety” during that call. Mr Brown’s evidence in cross-examination was that she said she was feeling anxious about coming into a team again, not that she had the condition “anxiety.” The Claimant agreed in cross-examination on the first day of the hearing that she did not tell Mr Brown at any stage that she had anxiety or depression. She also agreed that the first time Mr Sempezis found out about these conditions was as a result of the Tribunal proceedings. However, on the second day of the hearing she said that she told Mr Brown and Mr Sempezis during the three-way call that she had anxiety. When questioned, she said that she told them that she was apprehensive about joining a new team and that it “was anxiety producing to engage with stakeholders.” It was put to her that she did not say that she had an anxiety condition, rather she spoke about feeling anxious. She said that the word “anxiety” was used more than once during the call as something she struggled with and something that affected her in being able to engage with stakeholders. Mr Sempezis could not recall whether the word “anxiety” was used at all although he remembered that lack of confidence was discussed.

41. The Tribunal accepted that the word “anxiety” was used during the three-way call. Mr Brown and the Claimant both remembered that, and it was referred to by Mr Brown in a follow-up email. That email was sent to Mr Sempezis shortly after the call. Mr Brown wanted to follow up the call with a couple of comments to provide some additional context. He said that as the Claimant had alluded to, she had had some issues in her first placement, which Mr Brown had always sought to draw a line under. However, the Claimant had told him in early December that she was raising a grievance against the colleague from her first placement. That process had only concluded last week. The grievance was not upheld and the Claimant intended to appeal. Mr Brown then wrote, “It was only in conversations following the initial outcome that she spoke about feeling anxious about coming back into a team environment, hence my suggestion for us to have a call. We have spoken throughout her placement about developing her confidence but she has never raised any feelings of anxiety prior to the last week.” Mr Brown said that he had hoped that the grievance would have concluded before the Claimant started in Mr Sempezis’s team, hence not raising it with him before. However, given it was still ongoing and her comments around anxiety, he thought it important that Mr Sempezis was aware. The Tribunal found that Mr Brown’s email reflected another manager keen to support the Claimant and ensure she was able to “flourish” in her new team. His comments about the three-way call seemed to the Tribunal to be consistent with his evidence to us – that the Claimant had spoken about feelings of anxiety coming back into a team environment, rather than talking about having the mental health condition “anxiety.” That was also consistent with the fact that the Claimant had been working remotely for much of her placement with Mr Brown, so she had not had the experience of working in a team environment since her first placement, which had given rise to the allegations of bullying. The Claimant’s evidence in cross-examination was inconsistent between the first and second days, and was somewhat vague: she did not give a clear answer to the question whether she had told Mr Brown and Mr Sempezis that she had the mental health condition “anxiety” during the three-way call. The Tribunal preferred Mr Brown’s evidence, which was supported by his email written the same day. We found that the

Claimant did not tell Mr Brown and Mr Sempezis that she had the condition “anxiety”. She told them that she was feeling anxious about coming back into a team environment, linked to her experience of her first placement.

42. Apart from her oral evidence about the three-way call, the Claimant did not suggest that she had ever told Mr Brown about any current or historic mental health issue. There was no written evidence to suggest he had ever been told of such an issue and the Tribunal had no hesitation in accepting his evidence that he was not aware at any point before preparing for the Tribunal hearing that the Claimant had depression, anxiety or stress. Mr Brown said that he was aware that the Claimant was facing some difficult circumstances at home and that these impacted her well-being and mental health, but he never believed them to be long-standing conditions or something that impacted her day-to-day health. In cross-examination Mr Brown confirmed that when he took over from Mr Rutkowski he was aware that the Claimant was off work sick. He said that he understood this was to do with accusations of workplace bullying, and the Tribunal accepted that evidence. During the coming months he agreed that there were occasions he spoke to the Claimant and she was “down.” However, he explained that the Claimant was in Leeds and he was in Edinburgh; the focus of a lot of their conversations was her mother’s health and her issues dealing with that. He said that it would have been strange if the Claimant were “overly buoyant” in that context. His understanding was that it was because of the issues relating to her mother’s health that the Claimant went to EAP. He thought that the Claimant had a reserved personality anyway. Put simply, the issues with her mother’s health were the obvious explanation for the Claimant feeling down during this period and Mr Brown never considered whether there was another explanation. The Tribunal accepted Mr Brown’s evidence about his thought processes at the time.
43. As noted above, the Claimant and Mr Brown had discussed her request for confidence training after she forwarded him the email from Ms Ingram on 6 January 2020. It was left that the Claimant would put in a training request. The next thing that appears to have happened was that the Claimant emailed Mr Sempezis on 11 February 2020 simply writing, “Please open the attached Excel document to review and approve this training request.” The attached document said that the training was in “Building self-esteem and confidence”. It was a public event at Swarthmore, Leeds, costing £90. The Claimant did not provide any other information. Mr Sempezis replied the same day to ask what the training was. He suggested discussing it tomorrow. The Claimant replied to say that she had discussed it with Mr Brown towards the end of her placement but not with Mr Sempezis. She was happy to chat about it tomorrow. She followed up with an email attaching the letter from her counsellor that she had given to Ms Ingram during the grievance. She explained that Ms Ingram had told her that she needed to speak to her line manager about it, adding “I told [Mr Brown] that it was/is felt that the provision of weekly coaching sessions is something the group should support considering the cause of my distress is work related. I told him I’d identified a course focusing on confidence building and assertiveness and that I would be putting in a training request form for this.” The Claimant explained that the next start date was April. The Tribunal noted that this was again framed as a request for coaching to assist with “distress” caused by events during the first placement. There was no mention of any disability or mental health issue.

44. The Claimant had appealed against the outcome of her grievance on 14 January 2020. The grievance appeal meeting took place on 19 February 2020. The appeal manager was Mr Standage. The Claimant again attended with a trade union representative. There was some discussion during the appeal hearing about the Claimant's request for weekly coaching. The Claimant referred to the letter from her counsellor and said that the hearing manager did not take it seriously. She said that EAP counselling offered 20 support sessions. She told Mr Standage that she had been to the GP a number of times from December 2018. The GP had concluded it was due to stress and suggested counselling. Mr Standage asked the Claimant to elaborate. She told him that she struggled to communicate with other team members as a result of the "bullying." She took up 20 counselling sessions and was advised by her counsellor that additional support was still required. The Claimant also said that she would go via BUPA and that the Group should pay the £150 excess towards it.
45. The reference to BUPA was a reference to the private healthcare insurance provided by the Respondent. This is a taxable benefit provided to all of the Respondent's 70,000 or so employees. They do not have to pay to be part of the scheme. Under the terms of the scheme, employees were, until 1 January 2020, required to pay the first £200 for the cost of their treatment in any 12 month period. That excess was reduced to £150 on 1 January 2020. Once the excess has been paid, an employee can claim up to £50,000 worth of medical treatment in any one scheme year. That would include, where appropriate, the cost of CBT.
46. Following the appeal meeting, the Claimant emailed Mr Standage, attaching a piece of evidence relating to the substance of the grievance, the letter from her counsellor and a letter from her GP. The GP letter was dated 4 February 2020. It said that the Claimant had consulted a number of the GP's colleagues over the past 12 months with "work-related stress." The GP understood that her workplace offered CBT and the Claimant was keen to engage with this. The GP thought this was an excellent way forward in helping the Claimant address the difficulties she experienced "in relation to her work-related stress." The letter made no reference to depression, anxiety or any mental health condition. The Claimant's evidence was that she understood she needed confirmation from her doctor in order to access the CBT that was available through the BUPA benefit and that is why she obtained the letter.
47. Meanwhile, on 19 February 2020 the Claimant sent a message to Mr Sempezis about the training request she had emailed him. She asked if he had clicked "approve." Mr Sempezis told the Tribunal that he had. The next step was that the request went to the Respondent's training team. A Learning Coordinator from that team emailed the Claimant on 20 February 2020 to say that she had received her booking request for building self-esteem and confidence and asking whether the Claimant had any particular supplier in mind. The Claimant replied with the details of Swarthmore Education Centre. The Learning Coordinator responded the following day to say that this particular supplier was not "on-boarded" so she could not proceed with it. However, she had found similar courses from a supplier called Think Confidence and she asked the Claimant to let her know what she thought. She provided a link. The Tribunal noted that on its Workday online platform, the Respondent provided access to a wide range of

online courses accessible to its employees and also access to a range of in-person training courses run by a variety of “on-boarded” suppliers. The Claimant replied to ask whether there was any other way the course and provider she had suggested could be taken up. The courses run by Think Confidence were not held in Leeds where she was based. On 24 February 2020 the Learning Coordinator told her that she could start the on-boarding process with the supplier, but this might take months. Alternatively, the Claimant could contact her local HR team for the “claiming expenses back” procedure after booking with the supplier by herself.

48. The Claimant forwarded this exchange to Mr Sempezis on 3 March 2020, simply directing him to the email exchange and informing him that it was easier to go with the second option and claim the cost of the course back as expenses.
49. The Tribunal was not shown any further documentary evidence in relation to this course. Mr Sempezis explained that it would be for his line manager to approve the expense but he did not know whether the line manager had been approached. It does not appear that the Claimant took any further steps until December 2020. The Tribunal noted that the course is now run online free of charge and that the Claimant is booked to attend and the relevant time off has been approved. Mr Sempezis gave evidence that he recalled a discussion shortly after 3 March 2020 in which he told the Claimant that the Respondent had cancelled all face-to-face training because of the pandemic. Given that the Claimant did not pursue this matter between March and December, the Tribunal accepted Mr Sempezis’s evidence that this discussion took place.
50. The Claimant’s grievance appeal was rejected in full in a letter dated 3 March 2020. On 5 March 2020 she emailed Mr Standage asking for copies of the documentation considered in the grievance and on 10 March 2020 she asked him to confirm whether the business would be reimbursing the £150 BUPA CBT excess. Mr Standage replied on 16 March 2020. He said that it was not his decision regarding reimbursement of BUPA costs. She would need to speak to her line manager. The Tribunal saw evidence that Mr Standage had taken HR advice before responding.
51. On 18 March 2020 the Claimant emailed Mr Sempezis. She mentioned that her therapy sessions through EAP would shortly be coming to an end and said that one of her requests, supported by her GP, was taking up CBT. She attached a copy of the GP’s letter from 4 February 2020. The Claimant explained that CBT was available through BUPA but that there was a £150 excess to pay. She requested that the group reimburse it as and when she incurred it, “as the reason for taking up the therapy is work-related.” She asked Mr Sempezis to let her know if this was something the group was willing to accommodate and said that if not she would be extremely disappointed. Mr Sempezis was on annual leave the time. He took HR advice on his return.
52. In a file note made for his own records, Mr Sempezis noted that during a phone call on 1 April 2020 the Claimant told him that her mental health was not good and that she was annoyed and disappointed about the appeal decision. Mr Sempezis also noted that he had forwarded the Claimant’s email about the CBT excess to his line manager and HR for advice. Mr Sempezis evidently told the

Claimant that he was asking HR for advice, and on 24 April 2020 she emailed to ask whether they had got back to him. Mr Sempezis replied to say that the advice was that the Claimant needed to pay the excess. He attached an extract from the policy. He acknowledged that the Claimant would be disappointed and said that he was happy to discuss further. The Claimant replied simply saying “disappointing but not surprised.” Shortly afterwards the Claimant called Mr Sempezis. His file note recorded that she was upset and angry and her voice was raised. She was talking about bringing Tribunal proceedings and making the respondent “pay.”

53. These proceedings were indeed started by a claim form presented on 28 April 2020.
54. Mr Sempezis’s evidence to the Tribunal was that he did not know that the Claimant had the mental health conditions of depression, anxiety or stress before these proceedings started. He knew she had difficult home circumstances and that these had affected her mental health, but he never believed these were long-standing conditions or something that affected her day-to-day health. In addition, whilst he was aware that she wanted to develop her confidence, he was not aware that the Claimant felt disadvantaged by a requirement to engage with stakeholders and participate in collaborative projects, because of a mental health condition.
55. The Tribunal accepted Mr Sempezis’s evidence that he did not know the Claimant had the conditions of depression, anxiety or stress. The Claimant initially accepted this in her evidence. Although her evidence changed somewhat, for the reasons explained above the Tribunal found that she did not tell Mr Sempezis during the three-way call that she had the condition of anxiety. Mr Sempezis accepted in cross-examination that he had seen the Claimant irritable, sad and angry on occasions, but he said that these were all on the back of specific conversations about the grievance process and her personal circumstances. He probably would not describe her as “happy” during the time he managed her, but the context was what she was experiencing in her home life. He believed that her personal circumstances and the ongoing grievance were what lay behind her low mood. He did not consider whether she might be depressed. When she told him her mental health was not good on 1 April 2020, he thought she was just talking about how she felt about the appeal outcome. The Tribunal accepted Mr Sempezis’s evidence about his thought processes at the time.
56. We also accepted his evidence but he did not know that any issue dealing with stakeholders or working collaboratively had anything to do with a mental health difficulty. Mr Sempezis described strengths and weaknesses in the Claimant’s skills and indicated that there was nothing particular about her work with stakeholders or collaborative working that raised any concern. The Tribunal saw no evidence to suggest that Mr Sempezis was made aware of any mental health issue affecting the Claimant’s ability to deal with stakeholders or work collaboratively.

## Legal principles

57. Claims of discrimination are governed by the Equality Act 2010, s 4 of which provides disability is a protected characteristic. The duty to make reasonable adjustments is governed by s 20-21 and schedules 1 and 8 of the Equality Act 2020, which provide, so far as material:

### **20 Duty to make adjustments**

(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements.

(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

...

(7) A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty.

...

### **21 Failure to comply with duty**

(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

...

58. Paragraph 20 of schedule 8 makes clear that the duty to make reasonable adjustments does not apply if the employer does not know and could not reasonably be expected to know both that the employee has a disability and that the employee is likely to be placed at the relevant disadvantage.
59. The Claimant has the initial burden of proving on the face of it that the duty has arisen and that there are facts from which the Tribunal could infer, absent an explanation, that the duty has been breached. The Claimant must identify in broad terms the nature of the adjustment that would ameliorate the substantial disadvantage. The burden then shifts to the employer to show that the disadvantage would not have been eliminated or reduced, or that the proposed adjustment was not reasonable. It is for the employer to prove that it did not have the requisite knowledge of disability and disadvantage.
60. The Equality and Human Rights Commission's Code of Practice on Employment is relevant to the duty to make adjustments and the Tribunal considered its provisions.
61. A Tribunal should identify the PCP, and the nature and extent of the substantial disadvantage. It must identify with precision the step the employer is said to have failed to take: see *Environment Agency v Rowan* [2008] ICR 218 EAT; *HM Prison Service v Johnson* [2007] IRLR 951 EAT.



62. As regards the employer's knowledge, the Tribunal should consider first, whether the employer knew that the employee was disabled and was at a substantial disadvantage and if not, secondly, whether it ought to have known: see *Secretary of State for Work and Pensions v Alam* [2010] ICR 665 EAT. Employers must do all they can reasonably be expected to do to find out whether an employee has a disability. That includes making reasonable enquiries based on the information given to them: see e.g. *Alam* and the EHRC Code.
63. Knowledge of substantial disadvantage is separate from knowledge of disability. An employer will not be liable for a failure to make reasonable adjustments unless it had actual or constructive knowledge of both the disability and the disadvantage: see *Wilcox v Birmingham CAB Services Ltd* [2011] UKEAT 0293/10/DM.
64. The EHRC Code advises that if the employee's line manager or an HR officer knows about a person's disability, the employer cannot claim that it did not know.
65. The Tribunal must take a holistic approach when considering the reasonableness of adjustments in circumstances where it takes a combination of adjustments to ameliorate the substantial disadvantage: see *Burke v The College of Law* [2012] EWCA Civ 87 CA.

## Application of the Law to the Facts

66. Applying those principles to the detailed findings of fact, the Tribunal's conclusions on the issues were as follows.
67. The Respondent did not know at any point before these proceedings were started that the Claimant had the disability of stress/anxiety/depression/panic attacks. We have made detailed findings of fact above about the knowledge of each of her line managers. As explained, the Tribunal found that the Claimant did not tell Mr Rutkowski in April 2019 that she had a history of depression and had been treated for that. Nor did she tell Mr Brown and Mr Sempezis in January 2020 that she had the condition of anxiety. We accepted the evidence of Mr Brown and Mr Sempezis that they did not know that the Claimant had the mental health conditions of stress, anxiety, depression or panic attacks. There was no evidence that she told her line managers or anybody else about any of these conditions at the relevant time. She did on occasion refer to being low, or having low mood, or to her mental health but these references must all be seen in context. The context was either that dealing with her mother's illness was causing her to feel low, or that her perceptions about her recent treatment in the workplace were doing so. The context was never that she had any mental health condition or disability.
68. Further, the Tribunal found that the Respondent could not reasonably have been expected to know that the Claimant had any of those conditions at any point before these proceedings were started. In particular:
  - 68.1 In April 2019 the Claimant did not tell Mr Rutkowski that she had a history of depression or anxiety. In fact, she told him that her doctor had told her that she was fit for work and needed to "reframe her thinking." Mr Rutkoswki knew that her mother was unwell and that she had concerns about her treatment in the team. That provided an obvious explanation for

her references to low mood and mental wellbeing. Indeed, she expressly linked her treatment with an impact on her “mental well-being” at the start of May 2019. Her relatively short sickness absence at the end of her first placement was again linked to her perceptions about her treatment in the team. The doctor retrospectively signed her off with “stress at work” for the last day. Given what the Claimant was saying about why she felt low, and given that her doctor was not identifying any mental health condition, there was nothing to put Mr Rutkowski on notice, or to make it reasonable for him to ask further questions to find out whether the Claimant had a disability. The reference to “stress at work” in context did not suggest that Mr Rutkowski should explore more widely whether the Claimant had stress or any other mental health condition.

- 68.2 The Claimant never told Mr Brown that she had any mental health condition. Mr Brown clearly had concerns about the Claimant’s wellbeing during her placement with him. However, these were again explicitly linked to her mother’s ill-health. The Tribunal accepted Mr Brown’s evidence that he thought it was entirely natural that the Claimant was feeling down in the circumstances and that he never thought there was any underlying health concern on her part. We accepted that in encouraging her to access EAP and offering other support, Mr Brown was seeking to address that particular issue in the Claimant’s personal life and that there was nothing to put him on notice that the Claimant was experiencing mental ill health herself as distinct from simply feeling low because of the situation with her mother. That was compounded by his view that the Claimant is naturally reserved. Further, the Claimant was sharing personal information with Mr Brown and evidently appreciative of his support. He might reasonably have supposed that if she had a health issue herself, she would have told him about that too. On the information before him, it was not reasonable to expect him to make further enquiries of the Claimant.
- 68.3 The Claimant’s detailed written grievance made no reference to any underlying mental health condition, historic or current. Its entire thrust was that perceived workplace bullying had affected the Claimant’s confidence and caused her stress.
- 68.4 The letter written by the Claimant’s therapist likewise made no reference to any underlying mental health condition, historic or current. It too simply linked a presentation of low mood and reduced confidence with perceived workplace bullying. That letter was provided to Ms Ingram, Mr Standage and Mr Sempezis.
- 68.5 The Claimant did not tell Mr Brown and Mr Sempezis in January 2020 that she had the condition of anxiety. She told them she was anxious about returning to work in a team, after her perception of what happened in her first placement and a period of working remotely from her team after that. Neither Mr Brown nor Mr Sempezis thought that there was any underlying health concern for the Claimant and the Tribunal found that on the information before them, it was not reasonable for them to have to make further enquiries at that stage. The Claimant was not off sick. She was still dealing with her mother’s illness outside of work and she still had unresolved concerns about her first placement and was upset about the grievance outcome. Those matters provided the obvious explanation for her expressing concerns about anxiety and confidence.

- 68.6 The Claimant did not tell Mr Sempezis that she had any mental health condition. She provided him with her counsellor's letter, which did not refer to any such condition. She told him that her request for coaching was because of distress caused by events during her first placement, not because of any health condition. She provided him with her GP's letter of 4 February 2020, which did not refer to any underlying health condition, but to work-related stress. Mr Sempezis did see the Claimant angry, sad and irritable on occasions, but these were always specifically linked to her grievance or her home life. He believed that this was what lay behind her low mood. She was not absent from work. The Tribunal again found that there was nothing on the information before him that made it reasonable for Mr Sempezis to ask further questions about whether the Claimant had a mental health condition or disability. The obvious explanation for her presentation was her mother's illness and her ongoing grievance, and her counsellor and GP, who might be expected to identify any such condition when writing on the Claimant's behalf, did not do so.
- 68.7 During her grievance appeal, in the context of the Claimant's request for weekly coaching, she spoke about having 20 counselling sessions and visiting her GP several times. She said that the GP had suggested it was "due to stress." When Mr Standage asked her to elaborate, she told him that she struggled to communicate with other team members because of bullying. Immediately after the meeting, the Claimant sent Mr Standage the GP's letter of 4 February 2020, which simply referred to "work-related stress" and made no mention of any underlying health condition or disability. On the information before him, it was not reasonable to expect Mr Standage to ask further questions about whether the Claimant had such a condition or disability.
69. If the Respondent did not know and could not reasonably be expected to know about the Claimant's disability, the duty to make reasonable adjustments did not arise, and the claim cannot succeed. However, even the Respondent had known or could reasonably have been expected to know about the disability, the Tribunal would have found that the claim was not well-founded in any event for the further reasons summarised below.
70. The Claimant did not provide medical evidence about whether the Respondent's PCP of requiring employees on its graduate programme to engage with stakeholders and participate in collaborative projects put her at a substantial disadvantage in comparison with persons who are not disabled. She said in her witness statement that because of the Respondent's "failure to implement reasonable adjustments" she had suffered with increased anxiety and stress, including heart palpitations and panic attacks, when attending, hosting or speaking at face-to-face meetings and webex meetings. She said that her ability to engage effectively with stakeholders had been significantly impeded, making it challenging to progress assignments. She said that she had become extremely self-conscious in the workplace. Saying that a failure to implement adjustments caused these impacts is not the same as saying that the disability caused them. However, she was not cross-examined about whether her disability put her at a substantial disadvantage and the Tribunal was prepared to assume for the purposes of the remaining issues that it did. The substantial disadvantage was that she experienced symptoms of anxiety and stress when attending, hosting or

speaking at face-to-face and webex meetings, and that she was self-conscious in the workplace and found it more difficult to engage effectively with stakeholders.

71. However, the Tribunal found that the Respondent did not know and could not reasonably have been expected to know at any time before she started these proceedings that the Claimant was likely to be placed at that disadvantage by a disability. In particular:
- 71.1 Fundamentally, every time the Claimant said she needed either confidence training or coaching or CBT, she said that the reason was because her perceived treatment in her first placement had knocked her confidence and affected her ability to engage. She never said to anybody that a condition of depression, anxiety, stress or panic attacks made engaging with stakeholders or participating in collaborative projects more difficult for her or that she needed adjustments because of that.
- 71.2 There was nothing to suggest that the Claimant told Mr Rutkowski that she lacked confidence generally or had any issue working collaboratively or with stakeholders. Mr Rutkowski did discuss communication and stakeholder management with the Claimant but not with reference to any disability or mental health related concern.
- 71.3 In her written grievance and at the grievance meeting, the Claimant expressly said that “bullying” had affected her confidence and her ability to interact with colleagues. Her request for counselling was linked to the impact of that on her. She did not suggest that any underlying mental health condition caused a lack of confidence or difficulty engaging with stakeholders. Indeed, she did not mention any underlying mental health condition. The approach of the Claimant’s therapist was the same. If a mental health professional said that the Claimant needed confidence building and assertiveness training as a direct result of workplace bullying, and made no mention of any underlying mental health condition, it was not reasonable at that stage to expect the Respondent to make enquiries about whether such a condition was putting the Claimant at a disadvantage. The use of the words “reasonable adjustment” in the therapist’s letter must be seen in context. That context does not point to the need for reasonable adjustments for any disability, rather to the use of that expression in a request for support for an issue arising out of perceived bullying.
- 71.4 The Tribunal accepted Mr Brown’s evidence that it was perfectly common for graduates to want to work on their confidence and stakeholder management, that there was nothing to suggest the Claimant was facing any particular difficulties beyond those to be expected at her grade and level of experience, and that the Claimant never told him that she required any training because of a disability or condition. He did not know that a mental health disability put the Claimant at this disadvantage, and there was nothing on the information before him that made it reasonable to expect him to ask. The reference to the Claimant feeling anxious in the three-way call in January 2020 was explicitly about the Claimant feeling anxious returning to a team environment, linked to her experience of her first placement. It was not about having a condition of anxiety, or needing help with confidence or assertiveness as a result of such a condition.

- 71.5 The Claimant did not tell Mr Sempezis that she needed confidence or assertiveness training or any other adjustment because of any mental health condition or disability. She did not say so in her rather brusque email on 11 February 2020 with the first training request, and the evidence she provided subsequently was the therapist's letter to which we have referred. Her own subsequent email again said that weekly coaching sessions should be supported because the cause of her "distress was work related", not because of any disability. The GP's letter of 4 February 2020, which the Claimant gave to Mr Sempezis on 18 March 2020, did not identify any disadvantage said to be caused by a disability. It supported a request for CBT because of "work-related stress." The Tribunal accepted Mr Sempezis's evidence that he did not know that the Claimant felt disadvantaged by a requirement to engage with stakeholders and participate in collaborative projects because of a mental health condition. There were strengths and weaknesses in her skills, but nothing particular about her work with stakeholders or collaborative working raised any concern. On the information before him it was not reasonable to expect Mr Sempezis to ask whether a mental health condition was causing difficulties with such matters.
72. The Tribunal also had doubts about whether either of the steps contended for by the Claimant would have been reasonable steps for the Respondent to have to take prior to the bringing of the claim in any event.
- 72.1 There was nothing to put the Respondent on notice that it needed to be pro-active in considering adjustments for the Claimant's disability. The Claimant's initial request for the training at Swarthmore Education Centre was made as part of her grievance. That was not upheld and nor was her appeal. It was not until January 2020 that she raised it as a training request with her line manager. It was left to her to put in a training request and she did so a month later. She made clear that the next start date for the course was April at that time. It seemed to the Tribunal perfectly reasonable for the Respondent to ask the Claimant to consider alternatives that it was already in a position to provide. When she indicated that she wanted to proceed with the course she had identified, it told her how to go about that. However, before the matter could be concluded and before the start date for the course, the pandemic intervened and put an end to face-to-face training.
- 72.2 In reality, the second adjustment the Claimant was asking the Tribunal to make was not to provide CBT, but to waive the excess on her private medical insurance. She did not make clear how her disability put her at a substantial disadvantage in respect of the payment of that excess, compared with her non-disabled colleagues. She earned a generous graduate salary and enjoyed the benefit of a generous private medical scheme, through which she was able to access CBT. That CBT might ameliorate the disadvantage caused by her mental health disability, but the adjustment she was seeking was not the provision of CBT, it was the payment of the excess.
73. For all these reasons, the complaints of failure to make reasonable adjustments do not succeed.

74. The Tribunal noted that all of the Claimant's line managers appeared on the evidence before us to have been extremely supportive and pro-active in seeking to ensure that she thrived in the workplace, even when they did not know that she had a disability or mental health condition. We noted that the Claimant has since been referred to Occupational Health and we have no doubt that the Respondent will again review the position now that it is more fully informed about the Claimant's disability and will continue to seek to support her in making a success of her employment. That will require constructive engagement on her part too.

**Employment Judge Davies  
10 February 2021**