



THE EMPLOYMENT TRIBUNALS

Claimant

Respondent

Ms A Yianoullou

v

Thomas Telford Limited

Heard at: London Central

On: 1-4 and 7-9 July 2021

Before: Employment Judge Glennie
Mr T Robinson
Mr M Reuby

Representation:

Claimant: In person

Respondent: Mr M Uberoi (Counsel)

JUDGMENT

The unanimous judgment of the Tribunal is that all of the complaints are dismissed.

REASONS

1. With the agreement of the parties, the hearing was conducted wholly remotely, by video (CVP). The Tribunal heard evidence and submissions (including receiving written submissions from both parties) on liability over 4 days; deliberated on days 5 and 6; and gave judgment with the essential elements of its reasons orally on day 7. The Claimant requested written reasons.
2. The complaints were of direct discrimination because of disability; discrimination because of something arising from disability; failure to make reasonable adjustments; and harassment related to disability.
3. The Tribunal heard and determined the issues as to liability in the first instance.

The issues

4. The issues were identified by Employment Judge James at a preliminary hearing on 29 April 2020. Two of these issues did not arise for decision in this hearing. One (whether any of the complaints were presented out of time) was conceded by the Respondent for the purposes of the present hearing. The other (whether the Claimant was at the relevant time a disabled person because of anxiety / stress / mental health issues) was decided by Employment Judge James in the Claimant's favour at a preliminary hearing on 7 July 2020. There remained an issue as to the Respondent's knowledge of the Claimant's disability which was relevant to the complaints of direct discrimination because of disability, discrimination because of something arising from disability and failure to make reasonable adjustments.

5. Direct discrimination. The issues were as follows:
 - (0) Did the following treatment occur:
 - 5.0.1 29 March 2019: During a meeting with John Weaver and Natalie Collins, after the Claimant broke down in tears, John Weaver told the Claimant that he did not want people who cry and get emotional in his department. He said that he did not think that the Claimant would be able to cope with "rude engineers" and that if she was upset by one, she would want to go home. He also said that he would be worried that the Claimant would not be able to cope if she was left in the office on her own.

 - 5.0.2 29 March to 24 April 2019: Natalie Collins had no regard for the Claimant's wellbeing and did not offer any support. After the meeting on 29 March, Natalie Collins barely communicated with the Claimant and did not give her any assistance. For example, on about 17 April 2019, Natalie Collins did not speak to the Claimant about the codes to entered for a particular training course, but just emailed a colleague Claire Hyams about it. Ms Collins would engage in banter and normal conversation and interaction with the Claimant's colleagues. She put the Claimant's upset down to being told about performance issues, not to her own behaviour, and did not ask the Claimant if she was ok.

 - 5.0.3 29 March to 24 April 2019: Claire Hyams began to act differently towards the Claimant, for example by becoming impatient with her, less friendly towards her than she was before, and not as open if the Claimant asked her to assist. The training given to the Claimant by Ms Hyams was delivered more quickly than the training to Wai Yau, who joined a month later. Linda Ejimonyeabala told the Claimant that Ms Collins and Ms Hyams had been openly discussing her.

5.0.4 16 April 2019: A one to one meeting was booked but Ms Collins did not turn up to it without reason and did not re-arrange it.

5.0.5 The Claimant's dismissal.

(1) Was that treatment "less favourable treatment", i.e. did the Respondent treat the Claimant less favourably than it treated or would have treated others ("comparators") in not materially different circumstances? The Claimant relies on hypothetical comparators and the actual comparator Mr Lau. It is alleged that between 14 March and 24 April 2019 Mr Lau received more training than the Claimant and the training was more in depth. Mr Lau had a colleague (Ms Hyams) assigned to train him, topics were practiced often and he was constantly supervised (whereas the Claimant was not); and he received access to and training on software and programmes before the Claimant. Further it is alleged that on 25 April 2019 Mr Yau was given support and understanding over a severe error described by Mr Weaver as having taken several hours to unravel. Mr Yau was told "not to worry, just be more careful". It is the Respondent's case that Mr Yau is not an appropriate comparator because he was employed in a different role to the Claimant.

(2) If so, was this because of the Claimant's disability?

6. Discrimination arising from disability (section 15). The issues were as follows:

(0) Did the following treatment occur:

6.0.1 13 to 25 February 2019: Ms Collins told the Claimant that she should not engage in conversations with the team. She advised that the rest of the team could chat but the Claimant was not permitted to do so. The Claimant felt humiliated explaining this to her colleague Sherazade Kappos.

6.0.2 13 to 25 February 2019: Ms Collins advised the Claimant that she was not permitted time for reviewing her learning and that she would need to learn "in her own time".

6.0.3 28 March 2019: During a one to one meeting, Ms Collins berated the Claimant about her memory, saying "the new trainee is picking it up faster than you did". Ms Collins asked the Claimant "what did I say yesterday?" and when the Claimant said she could not remember, Ms Collins shouted "that's the problem!" Ms Ejimonyeabala informed the Claimant that Ms Collins discussed this meeting with her.

6.0.4 The Claimant's dismissal.

- (1) Was that treatment unfavourable and did it amount to detriment / dismissal? The Respondent accepts that if it occurred as alleged, the treatment would be unfavourable and fall within section 39 of the Equality Act.
- (2) Did the following things arise in consequence of the Claimant's disability:
 - 6.2.1 The Claimant cried regularly at work and appeared "emotional".
 - 6.2.2 She regularly appeared stressed, disorganised and panicky and appeared to "get in a flap".
- (3) Was the treatment alleged in 5.1.1 to 5.1.4 above because of the things set out in 5.3 above?
- (4) If so, has the Respondent shown that the treatment was a proportionate means of achieving a legitimate aim? The Respondent relies on the need to maintain performance standards as its legitimate aim.
- (5) Alternatively, has the Respondent shown that it did not know, and could not reasonably have been expected to know, that the Claimant had the disability?

7. Failure to make reasonable adjustments. The issues are as follows:

- (0) Did the Respondent not know, and could it not reasonably have been expected to know, that the Claimant was a disabled person?
- (1) Did the Respondent subject the Claimant to the PCP of completing the training in a short time, without extension, without any allowances being made for her disability?
- (2) Did that PCP put the Claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, at any relevant time? The substantial disadvantage alleged is that the Claimant was, because of her disability, less able to pick up the role as quickly as a non-disabled colleague; was more prone to become stressed and anxious from the normal demands of the job; and became more tired in the afternoons.
- (3) If so, did the Respondent know or could it reasonably have been expected to know that the Claimant was likely to be placed at such a disadvantage?
- (4) If so, were there steps that could have been taken by the Respondent to avoid any such disadvantage? The Claimant alleges that between 13 and 25 February 2019 Ms Collins advised he that she was not

permitted time for reviewing her learning and said she would need to learn “in her own time”. The reasonable adjustments proposed are:

- 7.4.1 Time to reflect on her learning.
- 7.4.2 Being given new training topics in the morning rather than the afternoon as she found it harder to concentrate then.
- 7.4.3 Becoming fully trained in one aspect before being given another.
- 7.4.4 Additional training on certain topics.

(5) If so, would it have been reasonable for the Respondent to have to take those steps at any relevant time?

8. Harassment related to disability. The issues are:

(0) Did the Respondent engage in conduct as follows:

- 8.0.1 (a) 13 to 20 February 2019: during the Claimant’s first week at work, she informed Ms Collins that she was suffering from anxiety, was panicking and was struggling. The Claimant informed Ms Collins that she needed more time to absorb the learning. In response Ms Collins began to shout at the Claimant, telling her that she was “flappy” and “disorganised”.
- 8.0.2 (b) The same as 6.1.1.
- 8.0.3 (c) 13 February to 28 March 2019: Ms Collins constantly criticised the Claimant, telling her that she was disorganised but providing no specific reasons or suggestions to improve.
- 8.0.4 (d) 14 March to 24 April 2019: Ms Collins discussed the Claimant’s progress with her colleagues Claire Hyams and Ms Ejimonyeabala, and suggested that Mr Yau was picking up faster than she was.
- 8.0.5 (e) 28 March 2019: The same as 6.1.3.
- 8.0.6 (f) 29 March to 24 April 2019: Ms Collins barely communicated with the Claimant and when she did, acted passively / aggressively towards her. For example, when the Claimant said good morning, she received a curt reply; Ms Collins did not engage in conversation with the Claimant and did not really speak to her. The Claimant found Ms Collins to be condescending towards her, short and abrupt in her answers, and ignored her when she attempted to enter into conversation. The Claimant became scared of her and afraid to ask for guidance. This behaviour was observed by Ms Hyams, Mr Yau and possibly Ms Ejimonyeabala.

- 8.0.7 (g) The same as 5.1.2.
- 8.0.8 (h) 29 March to 24 April 2019: Ms Hyams and Ms Collins openly discussed an issue about the Claimant's work in front of her and completely excluded her. This was a potential issue with the address on certificates to be sent to clients.
- 8.0.9 (i) 10 April 2019: Ms Collins excluded the Claimant during a discussion with Mr Yau, Ms Hyams and Ms Ejimonyeabala regarding the corporate induction day, and only engaged with Mr Yau, who had attended the day with her.
- 8.0.10 (j) 15 April 2019: Ms Collins engaged in banter with the whole team but completely excluded the Claimant, which was highly noticeable to others in the room.
- 8.0.11 (k) 17 April 2019: Ms Collins sent inappropriate emails about the Claimant to other members of the team ridiculing her for making a mistake. The Claimant was offered no help from Ms Collins regarding this mistake.
- 8.0.12 (l) 25 April 2019: During the dismissal meeting, after Ms Collins read from her list, the Claimant became emotional and Ms Collins visibly rolled her eyes.

- (1) If so, was that conduct unwanted?
- (2) If so, was it related to the protected characteristic of disability?
- (3) Did the conduct have the purpose or (taking into account the Claimant's perception, the other circumstances of the case, and whether it is reasonable for the conduct to have that effect) the effect of violating the Claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for her?

Evidence and findings of fact

9. The Tribunal heard evidence from the following witnesses:
- (1) The Claimant, Ms Yianoullou.
 - (2) Ms Paloma del Rio Lopez, Occupational Health and Safety Advisor.
 - (3) Ms Linda Ejimonyeabala, Training Coordinator.
 - (4) Mr Wai Yau, Customer Engagement Associate.
 - (5) Ms Brenda Moore, HR Business Partner.

- (6) Mr John Weaver, Head of Operations.
 - (7) Ms Natalie Collins, Training Operations Manager.
 - (8) Ms Sherezade Kappos, Training Coordinator.
 - (9) Ms Claire Hyams, Training Coordinator.
10. There was an agreed bundle of documents of something over 630 pages, and page references that follow in these reasons relate to that bundle.
 11. By way of an initial observation, where there were disputes of fact, the Tribunal had to resolve these by making findings of fact as a matter of probability. Where we have done so, it should not be thought that this means that we believed that the person whose account we have not accepted was lying. To the contrary, the Tribunal believed that all who gave evidence did so honestly, and that where there were disputes about events, these reflected differences of recollection and of viewpoint.
 12. The Respondent's business concerns the provision of training courses in the field of civil engineering to individuals (known as public training) and on a corporate basis (known as in-house training). In early 2019 the Respondent advertised a position as a training co-ordinator, and the Claimant applied for that position. She was interviewed by Ms Collins and Mr Weaver and their evidence was that she came across well and appeared to have relevant experience. The Respondent therefore decided to appoint the Claimant to this position.
 13. Before starting work the Claimant completed a health assessment form, which is at page 159. On this form, the Claimant stated that she had no disability and identified 4 physical conditions that affected her. She did not make any reference to stress, anxiety, or any mental health conditions.
 14. The Claimant commenced work on 13 February 2019. Her evidence was that she experienced anxiety from early on, and that initially she thought that this was simply a case of new job nerves. Her evidence was that on her second day, 14 February, she told Ms Ejimonyeabala that she did not know whether she was coming or going. In her evidence Ms Ejimonyeabala agreed that the Claimant probably did say this, and the Tribunal finds that she did.
 15. On 15 February (all dates from now on are in 2019) there took place an unscheduled meeting between the Claimant and Ms Collins. The Claimant's evidence was that Ms Collins said that she was not focused and was "flappy and disorganised". Ms Collins denied saying these words on this occasion. The Tribunal found it unlikely that she would have sent this on the Claimant's third day in the job. Ms Collins subsequently said that she "could not recall" saying these words at a later meeting on 13 March (falling short of a clear denial). The Tribunal found that she probably did say them then, and that the Claimant has confused the two occasions.

16. Ms Collins said that on 15 February she gave the Claimant time to absorb what she was learning and encouraged her to ask for help if she needed it. The Tribunal found it probable that she said this at this particular point. The Claimant also said that she told Ms Collins that she was suffering from anxiety and panic. Ms Collins' evidence was that she did not believe that this was said on that occasion. Given the Claimant's evidence that in the early days of her employment she believed that she was experiencing new job nerves, the Tribunal found it unlikely that she would have used the words anxiety and panic at this time.
17. The Claimant continued that after work on 15 February while with Ms Hyams she burst into tears. The Tribunal accepts that she did so. Ms Hyams' evidence was that the Claimant was frequently emotional and quite often cried in her presence. She said that this was more often in connection with personal matters, but that the Claimant also often said that she found the workload overwhelming
18. Ms Collins also stated that during the first few days of the Claimant's employment "she didn't seem like the person we interviewed". Ms Collins further explained that she was very disappointed because the Claimant had seemed so promising at interview
19. On 18 or 19 February (it is not material which day it was) there was another unscheduled meeting between the Claimant and Ms Collins. It was common ground that something was said about chatting or talking at work. The Claimant's evidence was that Ms Collins said that she was not allowed to chat. It was put to the Claimant in cross-examination that what was said was that she should concentrate on her work before social conversation, and the Claimant agreed that there would be nothing wrong with that if it had been said. The Tribunal found that these two accounts amounted to much the same. Ms Collins thought that the Claimant was spending too much time chatting and should concentrate on her work, and said so.
20. In her witness statement the Claimant said that on this occasion she told Ms Collins that she was in an anxious state due to her condition. In her oral evidence she stated that she had not referred to a condition, but to anxiety. The Tribunal found that the Claimant probably said that she was anxious. Ms Collins had already observed that the Claimant seemed to be suffering from new job nerves. That being so, it matters little whether or not the Claimant put into words that she was feeling anxious. Ms Collins had observed something of that nature.
21. The Claimant gave evidence about two other matters occurring on 18 February. She stated that she told Ms Hyams that she was stressed and worried. This is consistent with Ms Hyams' evidence that the Claimant was often emotional, as described above.
22. The other matter was that the Claimant described breaking down during a training session with Ms Kappos and telling her that she was taking

diazepam before coming to work. The Claimant was cross-examined on the basis that her GP records did not show a prescription of this medication in February. The Claimant said that she had a stockpile of this, and the Tribunal accepted that she did.

23. Referring to the Claimant's first month at work, Ms Kappos said that she sometimes appeared stressed and cried on several occasions. Ms Kappos said that the Claimant referred to strained personal relationships on these occasions . She added that a couple of times Claimant cried at her desk and would get flustered and upset. In answer to Mr Reuby, Ms Kappos said that she thought that the causes of this were the Claimant being a new starter and problems in her personal relationships. The Tribunal accepted that this was what Ms Kappos believed: it was reasonable that she would do so, given what the Claimant had told her.
24. Ms Collins held one to one meetings with the Claimant on 4 and 6 March. The Claimant originally asserted that she cried at both meetings, but withdrew this in the course of her oral evidence. She agreed that on 4 March Ms Collins told her that she should get organised.
25. Also on 6 March, Ms Lopez gave a presentation on health and safety matters in the workplace. The Claimant's case was that one of the slides shown resonated with her and that after the presentation she spoke to Ms Lopez, saying that she suffered stress and anxiety, and became tearful. Ms Lopez said that she did not believe that the Claimant had referred to stress or anxiety on this occasion. She said that the Claimant told her about period pains and about her workstation, and that she (Ms Lopez) then referred her to the head of HR in connection with those matters. Ms Lopez continued that, if the Claimant had mentioned stress and anxiety, she would have acted on that also.
26. The head of HR contacted Ms Moore, and the latter met the Claimant on 11 March. The Claimant agreed that she probably did not mention stress and anxiety to Ms Moore. This assisted the Tribunal in finding, as it does, that the Claimant did not mention these matters to Ms Lopez. It seemed improbable that the Claimant would have raised stress and anxiety with Ms Lopez but not with Ms Moore, or that Ms Lopez would have omitted those matters from her referral had they been mentioned.
27. Ms Collins conducted a 1-month probation review on 13 March. The notes of this at page 234 said that the Claimant had settled in well with the team and had a good grasp of the procedures learned so far. They also recorded that she needed to work on her confidence, as at times she could be so flustered that the questions that she asked did not make sense.
28. The Claimant's evidence was that on this occasion she said to Ms Collins that her lack of confidence related to anxiety . The Tribunal found that she probably did so, and that in any event Ms Collins would have inferred that her lack of confidence and her getting flustered were signs of anxiety.

29. On 28 March Ms Collins held a one to one meeting with the Claimant. It was common ground that Ms Collins made criticisms of her work. The Claimant agreed that Ms Collins said that her desk was disorganised and messy, and suggested that she should use calendar reminders, but did not accept that Ms Collins had given examples of her getting dates mixed up. In the list of issues, the Claimant's case was recorded as being that Ms Collins told her that Mr Yau was picking up the job quicker than she was, although in her witness statement this was attributed to Mr Weaver. The issues also recorded that Ms Collins said that the Claimant had a poor memory and asked her "what did I say yesterday"; when the Claimant replied that she could not remember, Ms Collins shouted "that's the problem". These matters did not appear in the Claimant's witness statement. The Tribunal considered whether or not these particular words were used did not add a great deal to the case: Ms Collins was expressing criticisms of the Claimant's work performance.
30. As the meeting continued, the Claimant started crying. Something happened to the papers that she was holding: the Claimant stated that she dropped them on the floor; Ms Collins maintained that she threw them. In any event, Ms Collins decided that she was not able to continue with the meeting alone and went to find Mr Weaver. He in turn came to speak to the Claimant.
31. Mr Weaver described the Claimant as "ranting", saying that Ms Collins had bullied her and that they were "in league with her mother". He said that she was clearly upset and was going on about "different things", saying that she was having difficulty getting her head round things. In answer to Mr Reuby Mr Weaver said that with hindsight he could have interpreted this as involving "other things", which the Tribunal understood as meaning something more than being upset about the issues that had been raised with her work
32. After this meeting Ms Ejimonyeabala saw the Claimant crying and looking red in the face. She asked her what had happened.
33. Mr Weaver met the Claimant again on 29 March. The Claimant's case was that in the course of their conversation Mr Weaver said that he did not want people who cried in the team, and that she would not be able to cope with "difficult engineers". When cross-examined about this Mr Weaver said that this would be a ridiculous thing to say, and that it would have compounded the problem. He said that, in relation to the alleged comment about engineers, the Claimant appeared to be confusing this occasion with something that had been said in the course of the second interview.
34. The Tribunal accepted Mr Weaver's evidence that he did not make the remark about crying, essentially for the reason that him he himself gave.
35. The Claimant then went to see Ms Moore. It was common ground that she was crying or sobbing. Ms Moore said that the Claimant referred to family problems and to Ms Collins expecting too much of her. The Tribunal

accepted this evidence as it was consistent with that given by other colleagues.

36. In paragraph 63 of her witness statement the Claimant said that later on 29 March she informed Mr Weaver that she was ok and smiled at him.
37. On 30 March the Claimant approached Ms Collins and apologised to her for what had happened on 28 March, adding that she believed that they would be able to work together in future. Ms Ejimonyeabala either observed or heard about this and complimented the Claimant on being able to do this.
38. Ms Collins then sent the Claimant a list of objectives which appears at page 591. In paragraph 43 of her witness statement Ms Collins said that after 29 March she restricted herself to professional communications with the Claimant and limited their social interactions. She said that she did this for two reasons, one was to protect herself, and the other was to avoid distracting the Claimant from her work.
39. The Claimant stated that, following this, there was an occasion when Ms Collins and Ms Hyams openly discussed an issue about her work in front of her. With regard to this, in paragraph 44 of her witness statement Ms Collins said that it was the case that she discussed the Claimant's training progress with team members in order to obtain feedback and gauge her needs. The Tribunal found it plausible that she would do so, and saw nothing sinister in a situation whereby Ms Collins and Ms Hyams discussed such matters in the Claimant's presence.
40. It was also the Claimant's case that on 10 April Ms Collins asked Mr Yau about a corporate event that he and the Claimant had attended and did so in a way that excluded her. She referred to a note of this incident at page 506. Mr Yau did not recall this occurring. The Tribunal had no context for or detail about this alleged event, and observed that a manager might ask one out of two people who attended a particular event about it for reasons other than wanting to exclude them, such as that the other attendee was busy working at the time. The Tribunal also had in mind Ms Collins' evidence about restricting communications to professional matters and considered that it was likely that if an event of this nature occurred, it was because of this.
41. The Tribunal reached a similar conclusion about the complaint that on 15 April Ms Collins engaged in banter with the team to the exclusion of the Claimant, who again made a note which appears at page 508. Although Ms Collins denied generally excluding the Claimant, the Tribunal found that this allegation fitted with her decision to restrict their interactions to professional matters, and found that such an event probably did occur.
42. On 17 April at page 501 Ms Collins sent an email to Ms Hyams which showed a cartoon of an individual holding her hand to her forehead and which read:

“Wanna hear something not funny, but funny.

“I had a look at this campaign to check the below, and there are 3 other delegates that either don't have pre reqs, only have 1 pre reqs, or have a duplicate of the same pre reqs.”

43. Ms Collins agreed that this was about mistakes apparently made by the Claimant, and said that she sent the email out of frustration. She also accepted that she would have felt uncomfortable about this email in the Claimant's position and that she regretted sending it. The Tribunal considered that the Claimant was entitled to feel upset on discovering this email, but accepted what Ms Collins said about the reason for sending it, namely that she was frustrated by mistakes made by her.
44. The Claimant also made a complaint that on 16 April Ms Collins failed to turn up to a booked one to one meeting without giving a reason. In cross-examination the Claimant accepted that Ms Collins told her that she was running late at the booked time of 4:00 pm, and that she realised by 5:15 when she was getting ready to go home that the meeting was not going to happen that day. The Tribunal concluded that this was not in reality a case of Ms Collins “failing to turn up” or of not giving a reason; she contacted the Claimant at the time arranged and explained that she was running late.
45. On 17 April Ms Collins prepared a list of mistakes made by the Claimant. It is not necessary to go into this in detail, as the Claimant agreed in general terms that in the course of her employment with the Respondent she did in fact make mistakes. She was taken to some of these in cross-examination. As examples, there was an occasion when she put a delegate on the wrong course; a case where she prepared an email to inform delegates that they would receive their certificates but put on an incorrect address; and another that involved a mistake about the pass mark for a course.
46. On 25 April Ms Collins called the Claimant into a meeting and informed her that she was being dismissed. She used a script for the meeting at page 543.8. When cross-examined about the reason why the Claimant was dismissed, Ms Collins said that she was making consistent errors and that these were having an impact on the whole team. She said that it would have been unfair to bypass such a large number of errors. When it was put to her that the reason that she dismissed the Claimant was that she did not want someone in the team who was “crying and spluttering”, Ms Collins denied this, saying that the only occasion on which she had seen the Claimant crying was 28 March – which the Tribunal found to be correct.
47. The Tribunal accepted Ms Collins' evidence about the reason for the dismissal. There was no doubt that the Claimant had been making errors, and the Tribunal found that Ms Collins and Mr Weaver were disappointed that she had not lived up to the promise that they had seen in her interviews.

48. The events of 28, 29 and 30 March must have troubled Ms Collins and Mr Weaver, but the Tribunal found that they were not reasons for the dismissal. On 28 March the Claimant had become emotional and upset but then appeared to recover herself, telling Mr Weaver that she was OK and later apologising to Ms Collins. Nearly a month had passed from those events to the taking of the decision to dismiss the Claimant, and the Tribunal concluded that they were not a reason for that decision.
49. There was also an issue about Ms Collins' behaviour during the meeting, in that it was common ground that the Claimant became emotional, and she complained that when she did so, Ms Collins rolled her eyes. Ms Collins' evidence, which the Tribunal accepted, was that she had the list of errors with her at this meeting, but did not go through it in detail because she did not wish to embarrass or upset the Claimant (the Claimant did not suggest otherwise). That being so, we found that if Ms Collins showed any facial response to how the Claimant was reacting, it was involuntary: she would not have intentionally done something that was likely to upset the Claimant.

The applicable law and conclusions

50. As stated earlier in these reasons, the issue of the Respondent's knowledge of the Claimant's disability is directly relevant to the complaints of direct discrimination, discrimination because of something arising from disability, and failure to make reasonable adjustments. Knowledge can also be relevant to the issue that arises in respect of a complaint of harassment as to whether the conduct complained of was related to the relevant protected characteristic, although it is not decisive of that issue.
51. The relevant provisions in the Equality Act 2010 on this aspect are as follows. In relation to direct discrimination, section 13 provides:
- (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.*
52. Section 15 makes provision about discrimination because of something arising in consequence of disability. Subsection (2) states that:
-Subsection (1) does not apply if A shows that A did not know, and could not reasonably be expected to know, that B had the disability.*
53. Schedule 8 to the Equality Act includes the following provision with reference to the duty to make reasonable adjustments:
- (1) A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know –*
- (a).....*
- (b)..... that an interested disabled person has a disability.....*

54. The issue of knowledge therefore arises with regard to direct discrimination because the acts complained of cannot have been done because of the Claimant's disability if the Respondent was unaware of the disability (or, at least, the facts that mean that the Claimant fell within the Equality Act definition of a disabled person). Subsection (2) of section 15 provides that discrimination does not occur if the Respondent shows that it did not know and could not reasonably be expected to know that the Claimant had the disability. In a similar way, paragraph 20 of schedule 8 provides that the duty to make reasonable adjustments does not apply if the Respondent does not know, and could not reasonably be expected to know, about the disability.
55. Although the three provisions are expressed in slightly different terms, the Tribunal took the same approach to each of them, and in particular considered that it was for the Respondent to prove its case about knowledge. We also reminded ourselves that, that which an employer could reasonably be expected to know includes that which would have been known following enquiries which it could reasonably be expected to make.
56. The Tribunal has found that the Respondent did not have actual knowledge that the Claimant was disabled. The Claimant did not tell anyone that she was disabled and on the health assessment form stated that she was not. As we have found, the Claimant did not say that she had a condition relevant to anxiety, whether on the form or at any other time, although she did identify 4 other physical conditions. The factors which the Tribunal will outline below in relation to whether the Respondent could reasonably be expected to know that the Claimant was disabled are also relevant to the question whether they did in fact know.
57. Turning to the question whether the Respondent could reasonably be expected to know about the disability, it is equally the case that the matters the Tribunal has referred to in relation to actual knowledge are relevant here.
58. Drawing on its collective experience of life and workplace issues, the Tribunal considered that individuals often experience anxiety without there being any disability. Anxiety can be provoked by matters such as personal or relationship problems, a heavy workload, or feeling unable to cope with the requirements of a job, without involving any question of there being a disability. Symptoms of anxiety in such circumstances can be significant and apparent to other people.
59. The Tribunal found that the following matters also had relevance to this question. During the first few weeks of the Claimant's employment, although there was a dispute about whether she told Ms Collins that she was experiencing anxiety, the Tribunal has found that essentially it does not matter whether the Claimant said this expressly or not because Ms Collins

observed it. She said that the Claimant did not seem like the person interviewed, and put this down to new job nerves.

60. Ms Kappos gave similar evidence to the effect that it was not unusual for the Claimant to be tearful and emotional when they spoke. She said that the Claimant stated that she found the workload overwhelming and spoke about personal matters. Ms Kappos also thought that the Claimant was experiencing a combination of relationship issues and the stress of starting a new job. The Claimant herself initially believed that she was experiencing “new job nerves”.
61. The Tribunal has found that the Claimant did not tell Ms Lopez that she was suffering from stress or anxiety, and it was common ground that this was not discussed with Ms Moore.
62. There was, as we have described, a significant incident on 28 March. The Claimant’s reaction to criticisms of her work was perhaps somewhat extreme. The events of 28 March, however, cannot be seen in isolation. The context includes the Claimant’s interactions with Mr Weaver and Ms Collins on 29 and 30 March, which would have tended to reassure them that this was a one-off event. The Tribunal also noted that the Claimant did not at this point tell anyone that she had a condition related to stress and anxiety, and that this was or might have been a factor in what had happened.
63. The Tribunal asked itself whether these events were such as to put the Respondent on notice that the Claimant might be disabled by such a condition such that the Respondent should have inquired into that.
64. We found that they were not of such a nature. Generally, those who were aware that the Claimant was suffering from anxiety attributed this to new job nerves, as she herself did at first, and to personal problems that she spoke about. The incident on 28 March was clearly significant, but it cannot be viewed in isolation from the apology and forward-looking comments that the Claimant made afterwards. When in an emotional state, the Claimant said that she was having difficulty getting to grips with what was expected of her at work, and she again referred to her personal relationships. A day or two later she was much calmer and apologised to Ms Collins. There were no more incidents of this sort over the remaining four weeks or so of the Claimant’s employment.
65. These matters would not, in the Tribunal's judgement, cause an employer to wonder whether the employee might be suffering from a condition that gave rise to disability. The reasonable employer would be entitled and likely to believe that various factors, some work related and some not, were causing the Claimant difficulty and anxiety and that these caused her to become anxious and tearful as a number of colleagues witnessed, and as occurred in particular in the meeting on 28 March .

66. The Tribunal's conclusions about knowledge of disability means that the complaints of direct discrimination, discrimination arising from disability, and a failure to make reasonable adjustments are unsuccessful. We have made findings of fact earlier in our reasons about the matters complained of in respect of these heads of claim. We concluded that it would not be proportionate to analyse these further in relation to the statutory tests given our clear conclusions on the issue of knowledge of disability.
67. Section 26 of the Equality Act makes the following provisions about 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.*
68. The Tribunal also refers to its findings of fact above in relation to the complaints of harassment. In relation to this head of claim, it is relevant to the issue as to whether the acts complained of were related to disability, but not decisive, that the Tribunal has found that the individuals concerned did not know, and could not reasonably be expected to know, that the Claimant was disabled.
69. The Tribunal's findings on the individual allegations of harassment are as follows, using the letters in paragraph 8.1 above to identify them:
- 69.1 (a) The Tribunal has found that the event complained of did not occur on the date alleged. To the extent that it occurred on a different date, this was related to Ms Collins' view of the Claimant's performance, and not to disability.
- 69.2 (b) The Tribunal has found that the Claimant was told that she should not engage in conversations with the team, in the sense that she was told to prioritise work over social conversation or chatting. Again, the Tribunal finds that this was related to Ms Collins' view of the Claimant's performance at work and not to disability .
- 69.3 (c) The Tribunal has found that Ms Collins told the Claimant that she was disorganised and made criticisms of her work. Again, this was related to her view of the Claimant's work and not to disability.
- 69.4 (d) This was a very general allegation, but Ms Collins discussed the Claimant's progress with her colleagues Ms Hyams and Ms

Ejimonyeabala and suggested that Mr Yao was picking up the work faster than she was. The tribunal has found that there was at least one occasion when Ms Collins discussed the Claimant's progress with colleagues, but it would be natural for a manager to do so. In any event this was related to Ms Collins' wish to monitor the Claimant's progress and not to disability.

- 69.5 (e) The Tribunal has found that Ms Collins said something to the effect that Mr Yao was picking up the work faster than the Claimant was, and was critical of the Claimant's memory . This again related to Ms Collins' view of the Claimant's work, and not to disability.
- 69.6 (f) After 28 March Ms Collins restricted her communications with the Claimant in the sense that she spoke about professional matters only and did not socialise with her. The Tribunal finds that this was related to what had happened on the 28 March and not to disability.
- 69.7 (g) The Tribunal's conclusions on this aspect are the same as under (f) above.
- 69.8 (h) The Tribunal has found that Ms Collins did discuss issues with the Claimants work with colleagues: her doing so was related to her view of the Claimant's work and not to disability.
- 69.9 (i) There was an occasion when Ms Collins spoke to Mr Yau about a corporate induction day without involving the Claimant. The Tribunal has found that there may have been no significance to this, but that if it was related to anything, it was related to the events of 28 March and Ms Collins' decision to restrict her communications with the Claimant.
- 69.10 (j) The Tribunal has found that there was an occasion on which Ms Collins engaged in banter with the team, without including the Claimant, and that this was related to what had happened on 28 March. This was not, therefore, related to disability.
- 69.11 (k) The Tribunal has found that sending the email on 17 April 2019 was related to Ms Collins' frustration with the errors that the Claimant was making and not to disability.
- 69.12 (l) The Tribunal has found that, if Ms Collins gave some facial signal of her reaction to the Claimant's distress at the meeting, this was involuntary. We also find that, if this occurred, it was related to the events of 28 March and not to disability.
70. The Tribunal has also considered whether any of the acts concerned were done with the purpose of harassing the Claimant in any of the ways identified in section 26, or had the effect of harassing her.

71. Here, the Tribunal had in mind section 136 of the Equality Act, which provides that:
- (1).....
 - (2) *If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.*
 - (3) *But subsection (2) does not apply if A shows that A did not contravene the provision.*
72. In the well-known cases of **Igen v Wong** and **Madarassy v Nomura** the Court of Appeal identified a two-stage approach to the burden of proof in the earlier and similar anti-discrimination legislation. The Tribunal should first ask whether the facts are such that, in the absence of any other explanation, it could properly find that discrimination (here, in the form of harassment) had occurred. It would not be enough to find only a difference in treatment and a difference in protected characteristic: there would have to be something more (which might not in itself be very significant) to provide a proper basis for a finding of discrimination. If that stage of the test is satisfied, the burden is on the Respondent to prove that it did not discriminate against the Claimant.
73. The Tribunal found that the facts did not provide any basis for finding that any of the conduct in relation to the complaint of harassment was done with the purpose of harassing the Claimant. The Tribunal's findings are such that there is no basis for finding that Ms Collins or Ms Hyams (to the limited extent that she was involved) acted as they did other than by way of straightforward responses to issues that had arisen with the Claimant's work.
74. Alternatively, if the first stage of the test has been satisfied, the Tribunal would for the same reasons find that the Respondent has proved that these acts were not done with the purpose of harassing the Claimant.
75. With regard to the question whether any of the acts concerned had the effect of harassing the Claimant, the Tribunal had in mind subsection (3) of section 26, which provides that the Tribunal must take 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.*
76. The Tribunal accepted that the Claimant's perception was that the conduct complained of had the effect of harassing her. The other circumstances of the case include the important factor that she was undeniably making mistakes in her work, and that Ms Collins could not be expected to ignore or overlook these. With the exception or allegation (k) above (the email of

17 April), the Tribunal found that the matters complained of, to the extent that they occurred, were within the range of ordinary work-related interactions, and that it would not be reasonable for the conduct concerned to have the effect of harassing the Claimant.

77. The email of 17 April was in a somewhat different category: as Ms Collins recognised, it would have been better had she not sent it. The Tribunal nonetheless concluded that it was not reasonable for this to have the effect of harassing the Claimant: it was a single email which the Claimant was not intended to see. It was not seriously offensive.
78. The Tribunal therefore concluded that, if it were necessary to decide the point, that the facts were not such that, in the absence of any other explanation, it could properly find that the conduct concerned had the effect of harassing the Claimant.
79. Alternatively, the Tribunal would find that the Respondent had proved that it did not harass the Claimant.
80. The effect of all the above is that each of the complaints fails and is dismissed.

Employment Judge Glennie

Dated:10 October 2021.....

Judgment sent to the parties on:

11/10/2021.

For the Tribunal Office