EMPLOYMENT TRIBUNALS

Claimant		**Respondent**
Mr P Curry	**v**	Driver and Vehicle Standards Agency

Heard at: Huntingdon

On: 30 November 2021 and 01, 02 & 03 December 2021.
16 December 2021 (In Chambers – no parties present)

Before: Employment Judge Ord

Members: Ms KL Johnson and Ms L Davies

Appearances
For the Claimant: Mr P O'Callaghan (Counsel).
For the Respondent: Ms H Masood (Counsel).

RESERVED JUDGMENT

It is the unanimous decision of the Employment Tribunal that the claimant's complaints that he was unfairly dismissed, dismissed in breach of contract and suffered discrimination on the protected characteristic of disability are not well founded. The claim is dismissed.

REASONS

Background

1. The claimant was employed by the respondent from 16 September 2015 until 25 February 2019 as a compliance caseworker. His employment ended by resignation tendered on 25 February 2019 in circumstances which the claimant says amounts to as dismissal within the meaning of s.95(1)(c) of the Employment Rights Act 1996.

2. Following a period of early conciliation which began on 7 February and ended on 19 February 2019 the claimant presented his claim form to the tribunal on 10 April 2019.

3. Originally the claimant also named The Office Of The Traffic Commissioner For The East of England, The Department For Transport and The Crown, Represented By The Secretary Of State For Transport as additional respondents but it was accepted at an early stage in the proceedings that the Driver And Vehicle Standards Agency was the correct respondent in relation to these complaints and the claims against the other respondents were dismissed on withdrawal.

4. The claimant is and was at all material times disabled by virtue of a condition known as Solar Urticaria. The respondent accepted the claimant was a disabled person within the meaning of s.6 of the Equality Act 2010 when filing its response to the claim.

5. The date of knowledge (actual or imputed) of the claimant's disabling condition remained in dispute.

The Issues

6. The claimant's complaints and the issues for the tribunal to determine were established at a preliminary hearing before Employment Judge Johnson on 2 October 2019 as follows:

Unfair Dismissal

(1) Was the claimant dismissed? In other words, did he resign from his employment in circumstances in which he was entitled to terminate his contract without notice by reason of the respondent's conduct?

(2) The claimant relied upon the implied term of trust and confidence and on the following acts of the respondent which he says constituted a fundamental breach of contract:

(i) A failure to consider the claimant's request for reasonable adjustments and/or medical evidence in a reasonable time or at all.

(ii) A failure to respond to the claimant's formal grievance of 10 January 2019 in a reasonable time or at all.

(iii) A failure to take action in relation to an Occupational Health report dated 26 October 2018 within a reasonable time or at all.

(iv) A failure to respond to claimant's correspondence dated 12 November, 19 November, 10 December, 20 December and/or 28 December 2018 within a reasonable time or at all.

(v) Failing to take action in relation to a report dated 6 December 2018 being an analysis of the Stress Risk Assessment undertaken by the claimant which indicated red stress factors right across the board within a reasonable time or at all.

(vi) A demonstration of inactivity in respect of both the claimant's disability and his desire to return to work (the claimant said he was able to give regular and effective service from 1 October 2018 onwards).

(vii) The respondent failing to facilitate a sensible phased return to work.

(viii) Requiring the claimant to undertake further Occupational Health assessment in 2019 despite, according to the claimant, having all required medical information already in hand in order to facilitate the claimant's return to work.

(ix) Failing to communicate to the claimant any progress or action in respect of putting in place reasonable adjustments.

(x) Failing to provide a detailed breakdown of one lump sum back payment to cover shortfalls in respect of the claimant's 2018 and January 2019 wages despite numerous requests.

(xi) Delaying or handling inadequately "the process generally" from July 2018 onwards.

(3) Did those events occur and if so did they cumulatively amount to a fundamental beach of the claimant's contract of employment?

(4) If so, did the claimant by his conduct waive any of the breaches detailed above.

(5) Did the claimant delay too long before resigning in response to any breach which he might establish so as to waive the breach?

(6) Did the claimant resign in response to any breach as found and not for some other unconnected reason?

(7) In the event that the claimant was dismissed, was that dismissal fair or unfair having regard to s.98(4) of the Employment Rights Act 1996?

Disability

(8) Did the respondent have the requisite knowledge of the claimant's disability at the material time and if so, on what date?

(9) Ought the respondent to have reasonably been aware of the claimant's disability and if so, from what date?

Failure to make reasonable adjustments

(10) Did the respondent apply a provision, criterion or practice requiring the claimant to work in an office which was an unsuitable environment for the claimant to work in owing to his condition?

(11) If so, did that PCP put the claimant as a disabled person at a substantial disadvantage in comparison with persons who are not disabled?

(12) The claimant relied on the following substantial disadvantages:

(i) Being exposed to direct sunlight and/or ultraviolet light.

(ii) Being positioned in the office too close to windows and/or direct heat or light.

(iii) A lack of an anti-glare computer screen.

(iv) A failure to provide specialist glasses to reduce ultraviolet exposure.

(v) An inability to work from home on certain days.

(vi) The respondent not offering the claimant a phased return to work despite multiple and repeated requests from the claimant.

(vii) Being required to attend multiple Occupational Health assessments.

(13) If so, did the respondent take such steps as it was reasonable to take to avoid the disadvantage (if any) at which the PCP placed the claimant?

(14) Did the respondent fail to comply with the duty to make reasonable adjustments? The claimant suggested the following would have been reasonable adjustments:

(i) Avoiding direct sunlight or ultraviolet light in the office.

(ii) Situating the claimant's desk away from direct sunlight, away from the window and away from direct light in a lower illuminated and cool area with the benefit of black out blinds.

(iii) Providing an anti-glare computer screen to reduce light from the screen.

(iv) Providing computer screen protection glasses.

(v) Allowing the claimant to work from home some days.

(vi) Giving the claimant a phased return to work with a recommendation of half days for the first week gradually increasing to 6 hours working time for another 2 weeks and then back to contracted hours.

(vii) Arranging the claimant's workstation away from areas that were exposed to sun or frequently became hot.

(viii) Allowing the claimant to work in a darkened room with blinds.

(ix) Providing the claimant with a cool or air conditioned office.

(x) Providing an anti-glare computer.

(xi) Providing computer screen protection glasses.

Wrongful dismissal

(15) Was the claimant dismissed?

(16) If so, was that dismissal in breach of the claimant's contract of employment?

(17) If so, what sums are due to the claimant?

Remedy

(18) If the claimant succeeds in his complaints or any one of them, what sums should be awarded to him by way of compensation including for injury to feelings?

(19) If the claimant's dismissal was unfair should any compensation be subject to reduction following the rule in Polkey v AE Dayton Services Ltd?

The Hearing

7. The claimant gave evidence as did Julia Morley-Clarke on his behalf.

8. On behalf of the respondent evidence was heard from Deborah Cosby (Support Manager and Senior Team Leader), Geoffrey Cowan (Team Leader), Sharon Lenton (Compliance Team Leader), Delocia White (Senior Team Leader), Kelly Francis (nee Galton) (Operations Delivery Manager and Colin Maddock (Head of Corporate Reputation).

9. A witness statement (unsigned) from Eleanor McKenzie was provided to the tribunal and has been given the appropriate degree of weight bearing in mind that the statement was not sworn to nor tested by way of cross examination.

10. Reference was made to a significant bundle of documents. The parties made closing submissions through counsel.

The evidence heard and the facts found

11. The claimant began work for the respondent on 16 July 2015. He worked in a team of six compliance case workers working on matters relating to the licencing and regulation of goods and public service vehicles.

12. The claimant had a period of absence between 8 and 24 February 2017 for reasons including work related stress after which he was placed onto an "improvement period" plan of 3 months to monitor his absence.

13. The claimant says he began to experience skin irritation in 2017 and consulted his doctor about this matter on 3 June 2017. The claimant said Mr Cowan, Ms Lenton and Ms Cosby were all aware of his suffering rashes and itchiness at this time in particular because of the Occupational Health report dated March 2017.

14. Mr Cowan, Ms Lenton and Ms Cosby all denied being aware of the claimant's skin condition at that time.

15. The Occupational Health report referred to the claimant's absence due to a chest infection, stress and high blood pressure. There is no mention whatsoever of a skin problem in the report. The report suggested that the medical problems experienced were short term.

16. In the circumstances we are not satisfied that the respondent was aware nor could it reasonably be expected to be aware that the claimant had at that time a skin condition which could amount to a disability.

17. After the claimant attended his general practitioner on 3 June 2017 he was diagnosed as suffering from Solar Urticaria an allergy triggered by exposure to natural and/or some artificial light sources.

18. The claimant says he relayed information about his condition to Mr Cowan and Ms Lenton when he returned to the office on 5 June 2017 and that he then told the remainder of the team about his condition at 10 o'clock on the same morning. He referred to making the team aware of this by reference to a "team huddle".

19. Mr Cowan accepted in his evidence that he was aware the claimant was having problems with skin in mid 2017 and that he was told by the claimant that the claimant's doctor had told him he was allergic or had become allergic to sunlight. According to Mr Cowan the claimant said that

as a result of this he would wear long sleeved shirts, not wear a tie and would keep his shirt collar unbuttoned. Mr Cowan says this information was passed to him as part of a general conversation whilst he and the claimant were at their desks at work but he had no recollection of the matter being raised with the wider team as the claimant suggested.

20. Ms Lenton said that she was not aware of the claimant's condition until April 2018 and could not recall any team huddle at which the matter was discussed.

21. Ms Morley-Clarke in her evidence said that the claimant made an announcement about his condition at a team huddle in mid 2017.

22. We are not satisfied on the balance of probabilities that the claimant did make any such announcement. Mr Cowan and Ms Lenton were clear in their recollection and whilst Mr Cowan admitted he was aware of the claimant having some irritation of his skin and an allergic reaction it was not something which was mentioned further.

23. Ms Morley-Clarke suggested (for the first time during the course of re-examination) that as well as the claimant raising the issue in a huddle she told Mr Turfitt (Traffic Commissioner and the senior person on site) about the problem on the same day as the claimant announced it. We do not accept that. We consider it to be a creative afterthought on the part of Ms Morley-Clarke. It was not mentioned at all in her witness statement nor in cross examination and was mentioned for the first time in re-examination.

24. Indeed Ms Morley-Clarke's evidence was almost exclusively no more than a catalogue of criticism of her views of the respondent's working practices, delivered from her position as a temporary agency worker. Other than to mention the alleged huddle she did not address any of the issues in the case.

25. The claimant also said that he verbally advised Ms Cosby in both 2017 and 2018 because of his skin condition he required to two tribunal rooms where enquiries were held to be at a constant, cool temperature. He said that this was not done. Ms Cosby denied that any such request was made and were are not satisfied on the balance of probabilities that it was. There is no record of any such request being made at the time, nor of any subsequent complaint that the request had not been actioned or otherwise responded to.

26. The claimant has throughout the history of this matter committed himself to writing, at length, on all matters which concerned him and has written many lengthy emails to his managers and supervisors concerning his complaints about workload, staffing levels and other matters as well as his medical condition. However there is not a single email at all about this alleged request and we are satisfied that had the request been made and

not actioned the claimant would at the very least have raised it in writing again with Ms Cosby and perhaps with more senior personnel.

27. For that reason we accept Ms Cosby's evidence that no such request was made.

28. We should also add that although the claimant has referred on many occasions to requiring a cool environment within which to work because of his skin condition we have not been taken to any medical evidence in support of that. The evidence refers to the impact of light on the claimant's condition but not of heat and nor have we been taken to any requirement for air conditioning which the claimant has referred to from time to time.

29. In his witness statement the claimant makes much criticism of the respondent's working practices and his complaints about workload going unheeded and his suffering as a result from stress.

30. There is no claim or complaint in that regard as part of the claimant's claim to have been the victim of discrimination on the ground of disability and stress/anxiety is not pursued by the claimant as a disabling condition in this case.

31. It has been further suggested by the claimant that his allergic reaction is exacerbated by stress but again we have not been directed to any medical evidence in support of that contention nor was it part of the issues in this case.

32. The next matter of note occurred on 8 June 2018. The claimant says he was experiencing high levels of stress at work and said that he was prompted that day by a colleague from another department to look in the mirror at lunchtime and he saw that he was suffering from an outbreak of hives/lesions on his face and chest. He made an urgent appointment to see his general practitioner that afternoon.

33. Miss White's evidence was that she had first become aware of the claimant's skin issue a few weeks before this when she noticed redness on his arm which the claimant told her he had "always had".

34. We are therefore satisfied that by this time the respondent was aware that the claimant had some difficulty regarding a skin complaint but they did not have any information to place them on notice that the claimant had a condition which could reasonably be considered to be a disability or to cause him substantial disadvantage. The Claimant said that this was something he had "always had" and nothing more. He made no complaint about any impact which the condition had nor could any such impact be implied from what he said at the time.

35. After his skin outbreak on the 8 June 2018, the claimant began a period of sickness leave. He was certified as being unfit for work by his general practitioner until 25 June due to a Urticarial reaction and on 23 June a

further fit note confirmed the claimant was absent from work and would remain unfit for work for one month due to "work related stress/Urticarial reaction".

36. Because of the events which led to the claimant needing an urgent general practitioners appointment and being absent from work, the respondent sought an Occupational Health report at a very early stage of his absence. Ms Lenton sought an appointment for the claimant with Occupational Health and we do not criticise her for this at all given the claimant's complaint that stress at work was exacerbating his condition as was light, including light from his computer screen. It was a reasonable and appropriate step for an employer to take in the circumstances.

37. On 22 June Ms Lenton emailed the claimant to confirm that an appointment had been made for the claimant to attend Occupational Health on 28 June. She asked if the claimant was able to return to work, whether his doctor had given advice regarding any adjustments that were necessary and that if not it would in any event be beneficial to consider what support could be given to facilitate the claimant's return to work.

38. On 25 June the claimant sent a text message to Ms Lenton to say he was too unwell to return to work or to attend the Occupational Health appointment.

39. As a result Ms Lenton arranged for an Occupational Health consultation to be conducted by telephone and told the claimant that had been arranged for 3 July 2018.

40. The claimant did not attend that appointment and Ms Lenton sought to re-arrange it but on 11 July the claimant sent a text message to Ms McKenzie saying he was too unwell to take part in a conversation. He said he was not monitoring his telephone or email messages because it was disruptive to his recovery but that he would meet Ms McKenzie when he was fit enough to return to work.

41. Ms Lenton remained of the view, reasonably, that obtaining a report on the claimant's health and condition was still required. She emailed the claimant on 13 July advising that a letter detailing a re-arranged appointment had been sent. The letter made a telephone appointment for 27 July.

42. The claimant did not attend that telephone appointment either and on 23 August a further appointment was fixed as a face to face appointment to take place on 4 September. Ms Lenton also invited the claimant to a meeting to discuss his absence to take place the following day (there had been an error in her letter when she referred to a meeting with herself on 4 September but this was swiftly corrected).

43. The claimant wrote to Ms Lenton on 3 September and said he was staying with family during his absence (but did not give a contact address). He went on to say that he would not be monitoring communications and had only seen the invitation to the Occupational Health appointment and the invitation to the meeting because a family member had picked up his post. He said that he would not attend any meeting until he returned work and that he would only do so with Ms McKenzie, privately.

44. Ms Lenton then asked the claimant to tell her if he felt able to take part in a telephone conversation in the future.

45. On 27 September the claimant said he expected to be fit to return to work after seeing his doctor on 1 October. He asked for a meeting with Ms McKenzie the following week and on 1 October sent to Ms Lenton a fit note saying that he was fit to return to work on amended duties and hours. The note did not specify the degree of such alterations to the claimant's working pattern but said that a meeting with the claimant to discuss them would be advantageous.

46. That correspondence was handed to Ms Lenton on 1 October. At that meeting the claimant is recorded as being asked if his condition was a disability. He replied that it was not but that it was a long term problem, albeit seasonal in spring and summer.

47. A further meeting was arranged for the claimant to see Ms McKenzie on 4 October. The claimant asked if it was possible to obtain an anti-glare screen for his computer and he said he was looking forward to being back at work.

48. The claimant asked to speak to Ms McKenzie before agreeing to an Occupational Health referral.

49. At their meeting on 4 October as he did with Ms Lenton on 1 October, the claimant claimed that his skin condition had been discussed when he had his Occupational Health appointment in March 2017 but that the report had failed to record it.

50. We do not accept that part of the Claimant's evidence. The claimant was sent a copy of the Occupational Health report under cover of a letter dated 9 March 2017 and the report is marked "Client would like a copy at the same time please". Yet at no stage between March 2017 and October 2018 did the claimant suggest that the report was incorrect or had omitted reference to his skin condition.

51. In any event the respondent was not made aware, even if it were the case, that the report was deficient until the claimant raised the matter in October 2018 and thus they could not be criticised for not taking cognisance of the condition as being part of the claimant's difficulties when receiving the Occupational Health report.

52. During his meeting with Ms McKenzie on 4 October the claimant was told that the office would be moving temporarily to a different room nearby whilst refurbishment work was carried out. On enquiry by the claimant it was explained that working from home was not ordinarily allowed save and except for odd days or urgent matters. There was concern, which we find to be reasonable, over the security of files which would not ordinarily be permitted to leave the Respondent's site save to be couriered to another site.

53. Ms McKenzie agreed to organise Stress Risk Assessment to be carried out for the claimant as well as arranging an up to date Occupational Health appointment.

54. On 22 October 2018 the claimant was advised that because of his period of absence he would have exhausted his entitlement to full sick pay on 3 December 2018 after which he would be in receipt of half pay until 16 May 2019.

55. The claimant had been continually absent from work since 11 June 2018.

56. The claimant attended the Occupational Health appointment 24 October 2018. The report was submitted to the respondent on 9 November 2018 having been amended three days earlier.

57. In that report the claimant was reported as being fit for work and it was said that his skin condition had improved. The report included comment from the claimant regarding stress and work and made reference to understaffing, a lack of communication from management and a lack of training. The claimant reported feeling bullied, intimidated and undervalued. The Occupational Health practitioner commented that these were the claimant's perceptions upon which he was not in a position to comment. It was stated that the resolution to these perceived issues lay outside the medical arena and remained dependant on the perceived stressors being identified and that the matters should be addressed by management.

58. By this time the respondent's office had moved into temporary accommodation whilst refurbishment was carried out.

59. On 7 November 2018 the claimant was told that his period of statutory sick pay would be exhausted on 27 December 2018 and was advised of the steps he was required to take.

60. The Occupational Health Report confirmed that the claimant's skin condition had been present since 2017 and that his absence had persisted since 11 June 2018. The condition was being treated by a combination of medication, staying indoors, using protective creams and wearing sunglasses and a wide brimmed hat when outdoors. The report concluded that the skin condition "may" be covered by disability legislation as it "significantly affects his day to day activities".

61. We find as a fact that on receipt of this report, which was the first proper analysis the respondent had been able to obtain on the claimant's skin condition, the respondent had knowledge of the claimant's condition, that it put him at a substantial disadvantage and that it amounted to a disability within the meaning of the Equality Act. It had already persisted for more than a year. Previously the Claimant had not given the Respondent sufficient information to alert them to the possibility of his condition amounting to a disability.

62. The Claimant's pleaded case was that the Respondent had knowledge of his condition from at least the receipt of this report and although it also refers to the respondent *being "aware of the Claimant's condition from 7 March 2017 onwards when Occupational health were aware, and in subsequent communication, and/or knew that the claimant was disabled at all material times"* there was no such indication in the Occupational Health report of March 2017 and nothing the Claimant subsequently did or said was enough to reasonably alert the respondent to the prospect of the claimant being disabled within the meaning of the Equality Act.

63. Other recommendations within the report were to position the claimant's desk away from direct sunlight and away from a window. Further the claimant should be away from direct light in a "lower illuminated area if this is possible". The claimant had been advised to contact his optician to obtain computer screen protective glasses as part of the report.

64. Additional musculoskeletal problems were mentioned which led to recommendations of a "micro break" every hour and if possible working from home on some days.

65. The anticipated return to work date was 12 November 2018.

66. Promptly on receipt of the report Ms Lenton sought to arrange a meeting between the Claimant and Ms McKenzie for the week commencing 26 November. On 15 November the Claimant asked for the meeting to be held during the week beginning 5th November but not on the Thursday or Friday (6th/7th).

67. Although the respondent's office space was undergoing refurbishment the evidence we have had, which was not challenged, was that the fit out of the office was outside the control of the respondent. The property was and is owned by a separate government agency and the fit out of the building was entirely within their control. An email from Ms Lenton to the claimant of 13 November stated that the respondent was "yet to see what [the office] would be like".

68. Ms Lenton also involved Mr Joe Wildash from the respondent's Human Resources team to become involved in the provision of necessary adjustments including an anti-glare screen for the claimant's computer screen as recommended by the Occupational Health report. Mr Widldash, we were told, is the person with the best understanding of considering and

procuring/putting in place what adjustments are necessary within their workplace.

69. Miss White then became involved in the management of the claimant's return to work. She spoke to the claimant on 21 November 2018. She discussed with the claimant that he might be entitled to help from Access to Work and how to obtain this. Further that he would be able to have an appointment with Access to Work once the respondent moved into its refurbished accommodation.

70. Miss White confirmed the contents of the call by email the following day and invited the claimant to attend the temporary office space and suggested he arrange a meeting for Access to Work for a date after the return to the refurbished office which would be during the weekend of 14-17 December 2018.

71. The claimant declined to attend the temporary accommodation and in his email of 24 November stated that this would be counter-productive as, in his view, was contacting Access to Work at that stage. He referred to his request for a "cool or air conditioned semi-darkened office with zero or minimal exposure to the sun's ultraviolet rays and artificial light" as being of "paramount importance".

72. We note that the claimant was requesting in his description of his needs substantially more by way of adjustment than was recommended by the Occupational Health report and his requests were not based on any disclosed medical evidence.

73. Unfortunately the claimant's Stress Risk Assessment had been misfiled in another of the respondent's locations and was not processed until 27 November. On the same day this was explained to the claimant and Ms Lenton told the claimant she was arranging a further meeting. She provided the claimant with a disability notification form to enable the claimant to remain on full pay through the respondent's Disability Adjustment Leave process. That form was returned to the respondent on 29 November.

74. On 5 December 2018 the claimant was asked to consider working, temporarily, from another location specifically a driving test centre in Cambridge which the claimant declined.

75. On 10 December 2018 the claimant sent Ms Lenton a letter some 12 pages long and a further 4 page letter on 20 December 2018 asking why he had not had a substantial response to the earlier letter and raising other matters. In this correspondence the claimant was focussed on matters not related to his disability but rather focussing on what he saw as flaws or failures in the way the respondent operated.

76. The respondent moved into their refurbished accommodation on 13 and 14 December 2018.

77. On 24 December 2018 Miss White wrote to the claimant confirming that she was now managing his absence and was working "with the aim of helping [the claimant] back to work". She confirmed that the claimant's Stress Risk Assessment and his letters of 10 and 24 December would be fully discussed at a meeting to take place in January, drew the claimant's attention to the fact that the Disability Adjustment Leave ("DAL") application would be invalidated by the claimant's fit notes indicating that he was not fit for work and suggested that his GP might provide a letter amending them so that his DAL payment (payable only when an employee is certified as fit for work provided certain adjustments are put in place, but those adjustments have not yet been provided) could be considered.

78. Miss White also referred to the claimant's letter of 10 December as setting out matters not within the Occupational Health report previously received in October and she therefore asked the claimant for permission to obtain a further follow up report from Occupational Health. She asked the claimant to provide her details to Access to Work so that she could have a dialogue with them to address appropriate adjustments as required to assist the claimant's return to work.

79. The claimant's reply of 28 December 2018 confirmed that Miss White's details had been provided to Access to Work. He referred to "multiple failures" which he set out in his reply and which he said he required to be investigated by an "impartial third party" and said that he would look forward to receiving Miss White's detailed response, "promptly and by no later than Friday 4 January 2019 to help clarify your specific approach and to my health, safety and wellbeing". He suggested the wellbeing meeting should be held on 11 January at 10.30 am which would allow him time to receive the reply and prepare for the meeting accordingly.

80. He declined a further referral to Occupational Health and indicated that he would be submitting a formal grievance. The issue of a further report from Occupational Health was not further pursued by the Respondent. The Claimant declined to give Miss White his Access to Work reference number, necessary if Miss White was to liaise with Access to Work directly.

81. After consideration Miss White wrote to the claimant on 10 January inviting him to a Formal Attendance Review Meeting. The claimant had been absent for 214 days and the meeting was to discuss how he could be helped back to work. The meeting would discuss the Occupational Health report, the Stress Risk Assessment, the Disability Adjustment Leave application and the claimant's correspondence. The claimant was offered two dates for the meeting, either 21 or 22 January at 11.00 am.

82. Miss White also noted that she had identified a meeting room which took into account all the claimant's requests regarding lighting and asked if any other special arrangements were needed.

83. That letter was emailed to the claimant at 1.58 pm on 10 January and the claimant replied at 3.15 pm and again at 3.27 pm; on each occasion he forwarded a grievance letter which he said had been prepared prior to receipt of Miss White's letter.

84. The claimant's covering emails referred to his disappointment that there had been no attempt to resolve his concerns prior to the meeting which he considered "astonishing". The grievance was said to be copied to Ms Moulds (HR Business Partner) and the respondent's Chief Executive Mr Llewellyn.

85. On 11 January 2019 Miss White acknowledged the grievance. In her letter Miss White confirmed that DAL was only available when an employee was fit to return to work subject to adjustments being made but not in circumstances where the employee is considered to be unfit for work. She suggested that the claimant might seek clarification from his GP that he was in fact fit for work during the relevant period (subject to adjustments).

86. She also confirmed that a phased return would be arranged at the next meeting, that some of the adjustments he sought were already in place and others would be discussed at the meeting.

87. Those that were in place were those which had been referred to in the Occupational Health report. Those that were for discussion, we were told, and we accept, were those that were outside the Occupational Health report; those in the report being in place.

88. The claimant replied in a lengthy email of 14 January 2019 reciting the history of his fitness for work and complaints and asking the respondent for its response. He said he would "Consider attending an informal return to work and wellbeing meeting".

89. On 15 January 2019 Miss White emailed the claimant with a copy of the respondent's Grievance Policy and asked the claimant to confirm whether or not he wish to pursue the grievance formally or informally, at least at the initial stage.

90. On 17 January 2019 Miss White wrote to the claimant again stating that she was referring the DAL issue to the appropriate manager. It was accepted and backdated the following day. She also confirmed that the claimant's workplace had been set up with comfort cooling and an anti-glare screen, that she was investigating the possibility of black out blinds being fitted and asked if the claimant would speak to Mr Wildash regarding the suitability of LED lighting. She confirmed that provided the claimant had a "blue badge" a disabled parking space was available and that a 5 week phased return to work would be discussed at their meeting. She asked to discuss the issues raised by the claimant of bullying and harassment face to face and repeated her request for the claimant to confirm whether the grievance was to be dealt with formally or informally.

91. Importantly Miss White emphasised that it was hoped that the claimant would attend the office to observe the appropriateness of the adjustments made and/or to be made to his workplace.

92. Miss White suggested a meeting on 30 January to enable Mr Wildash and the claimant to discuss the lighting issues before the meeting.

93. On the same day the claimant asked Miss White for an agenda for the meeting on 23 January and who would attend it. On 21 January Miss White replied stating that the meeting would discuss workplace adjustments, obtain the claimant's input into any further adjustments required, explore the concerns in the claimant's Stress Risk Assessment and agree a phased return. She further confirmed that a note taker would be present and that the meeting would be scheduled to last two hours.

94. Mr Wildash contacted the claimant to discuss lighting on 18 January and on the same day Miss White sent the claimant photographs of the workplace. The claimant objected to shiny surfaces on the furniture and Miss White contacted Mr Wildash as he would be able to assist. She said that the furniture was not the respondent's and could not be altered but the issue could be resolved. Ultimately it was resolved by the purchase of anti-glare mats for the claimant's desk which was done on the 4 February 2019.

95. On 20 January the claimant wrote to Miss White setting out six bullet points which he wished to be addressed before the meeting on 23 January which included "How exactly will you improve what you do and how you do it" and "How will you improve the working culture at OTC Cambridge to enable a positive environment and improve the wellbeing of staff".

96. Miss White's reply of the same day stated that the claimant's enquiry was outside the scope of the meeting on 23 January the purpose of which had been set out in her earlier letter.

97. On 22 January a letter from the claimant's solicitor stated that he would not attend the meeting on 23 January.

98. On 23 January Mr Greenwood (Health & Safety Advisor) wrote to Miss White suggesting two methods to enable the claimant to return to work. One was to use the "PI" room which was suitable to meet the claimant's needs the other was to have the claimant work at Kingswood Driving Test Centre, again with some adjustments. Mr Greenwood suggested the latter would be more feasible as the PI room was used for enquiries from time to time.

99. On 5 February 2019 the claimant submitted his grievance form.

100. On 6 February Ms Moulds acknowledged the grievance and added that an independent manager would be appointed to carry out investigations with a separate manager appointed as decision maker. Also she confirmed that Miss White would continue to liaise regarding the claimant's return to work and workplace adjustments.

101. On 14 February Ms Moulds confirmed to the claimant that Miss Galton (now Mrs Francis – we refer to her throughout this judgment as Miss Galton) would be the investigating manager and Mr Maddock the decision maker.

102. On 14 February 2019 Miss White invited the claimant to an informal meeting to discuss workplace adjustments on either 25 or 26 February.

103. The claimant replied and said that he required "a structured meeting … spread over 3 days". He proposed that these meetings should take place on 25, 26 and 27 February at 1.00 pm, each meeting to last no more than 45 minutes.

104. Miss White was unable to attend a meeting on 27 February but agreed to meet on 25 and 26 February.

105. That confirmation was sent by Miss White on 19 February but the claimant did not reply and on 25 February she wrote to the claimant asking him to respond. On the same day the claimant resigned.

106. The claimant's letter of resignation said that he was resigning after consideration of "all factors particularly with respect to my personal health, safety and wellbeing".

107. The claimant said that the respondent was aware of his complaints of constructive unfair dismissal, breach of the implied term of trust and confidence, disability discrimination and a failure to make reasonable adjustments in a timely matter and breach of the implied right to work. He referred to an environment which was unsupportive, oppressive and restrictive; that it was debilitating to work in "intolerable and unhealthy conditions" and referred to reductions in staff, excessive workloads, as well as "coercive behaviour by management (covert bullying) and improper conduct". He said all of this had caused a decline in his health and said his decision was final and irrevocable.

108. That letter was sent by email at 7.01 am on 25 February. On the same day at 3.33 pm Ms Moulds acknowledged the resignation, reminded the claimant that there was a meeting scheduled that date to discuss returning to work and adjustments to the workplace and asked the claimant to confirm by 1 March if he would like that meeting re-instated before she processed his resignation. She also asked if the claimant wanted the respondent to continue to process the claimant's grievance in the event that his resignation proceeded.

109. No reply was received and on 4 March Ms Moulds sent a further letter to the claimant. She said that the claimant's resignation would be processed and that his effective date of leaving was 25 February.

110. As the grievance investigation manager, Miss Galton had attempted to meet the claimant on 15 March. She asked the claimant to confirm that he would attend that meeting by 13 March and that if nothing was heard it would be assumed that the claimant did not wish to continue with his grievance.

111. On 11 March 2019 the claimant confirmed that he wished the grievance process to continue but on the same day told Miss Galton that he would not attend the meeting as he was waiting for his legal representative to be available. He sent her some supporting documents.

112. Ultimately the meeting was re-arranged for 26 March. The claimant refused to meet at the respondent's premises and required his legal representative to be present. The respondent's policy permitted representation by either a colleague or a Trade Union official. The claimant also stated that he would not be able to attend the meeting for more than 45 minutes due to his medical condition.

113. Notwithstanding that she was neither a colleague nor a Trade Union representative the claimant attend with Ms Morley-Clarke on 26 March. Miss Galton allowed her to attend the meeting in order to make progress.

114. Miss Galton thereafter interviewed Miss White, Ms McKenzie, Mr Wildash and Mr Cowan during April 2019 and advised the claimant on 30 April that as Ms Lenton was absent from work she could not complete her investigation.

115. Miss Galton told us that further delay in completing the grievance investigation report occurred because the claimant provided her with three files of papers each with over 200 pages of documents in them and thereafter he needed to provide copies of text messages which he had referred to previously.

116. The claimant was kept informed of matters and ultimately the investigation report was completed on 24 October 2019 and received Mr Maddock on 14 November.

117. Mr Maddock endeavoured to meet the claimant to discuss the investigation and the grievance as was his normal practice but no date could be agreed. He decided to conclude the grievance on the basis of the information provided.

118. The grievance letter was not sent until 12 May 2020. The grievance was partially up held in relation to the provision of Disability Adjustment Leave, the misfiling of the Stress Risk Assessment and in relation to staffing issues and work procedures which were likely to impact on the claimant's workload. In all other respects the grievance was not upheld.

119. The claimant had presented his claim to the Employment Tribunal on 10 April 2019.

120. It is against that factual background that the claimant brings his complaints.

The Law

121. Under s.94 of the Employment Rights Act 1996 an employee has a right not to be unfairly dismissed.

122. Under s.95(1)(c) an employee is dismissed by his employer if the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

123. Under s.98(1) of the Act in determining whether a dismissal is fair or unfair it is for the employer to show the reason, or if more than one the principal reason, for the dismissal and that it is either a reason falling within sub-section (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

124. Under s.98(4) if the employer has fulfilled that requirement the determination of the question of whether or not the dismissal is fair or unfair, having regard to the reason shown, depends on whether in the circumstances including the size and administrative resources of the employer's undertaking the employer acted reasonably or unreasonably in treating it as sufficient reason to dismiss the employee and shall be determined in accordance with equity and the substantial merits of the case.

125. Under s.4 of the Equality Act 2010 disability is a protected characteristic.

126. Under s.20 of the Act a duty is imposed upon employers to make reasonable adjustments where (s.20(3)) a provision, criterion or practice of the employer puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled. The duty is to take such steps as it is reasonable to have to take to avoid the disadvantage.

127. Under s.20(4) where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, an employer must take such steps as it is reasonable to have to take to avoid the disadvantage.

128. A failure to comply with those duties is a failure to comply with the duty to make reasonable adjustments (s.21).

129. An employer is not subject to the duty to make reasonable adjustments if the employer does not know and could not reasonably be expected to know that the disabled person has a disability and is likely to be placed at a substantial disadvantage (Schedule 8 para 20(1) of the Equality Act and see Wilcox v Birmingham CAB Services Limited [2011] EQLR 810).

130. Knowledge of disability is of the facts constituting disability as identified in s.6 of the Equality Act 2010 namely:

    (i) That the individual has a physical or mental impairment;

    (ii) Which has a substantial and long term adverse effect on

    (iii) His ability to carry out normal day to day duties.

131. If the employer does not have actual knowledge whether a disability or disadvantage, the tribunal must consider the question of constructive knowledge i.e. what could the employer could reasonably be expected to know. It is not incumbent upon an employer to make every enquiry where there is little or no basis for doing so (A Limited v Z [2020] ICR 199).

Conclusions

132. The claimant suffers from Solar Urticaria (SU) a condition which causes an itchy rash or hives to affect skin exposed to the sun. It can also result in a reaction to ultraviolet light.

133. The respondent has accepted that the condition amounts to a disability within the meaning of s.6 of the Equality Act 2010 but the date of knowledge (actual or imputed) remained in dispute.

134. We have found that the date on with the respondent knew or ought reasonably to have known that the claimant had a condition which could amount to a disability was 9 November 2018, the date on which the respondent received the Occupational Health Report following the claimant's appointment with Occupational Health on 24 October 2018.

135. Prior to that date the claimant had received a diagnosis of SU on 3 July 2017. He did not communicate this diagnosis or the impact of his condition to the respondent at the relevant time. He made one comment to Mr Cowan saying that he would be wearing a long sleeved shirt but no tie and not fasten his top button. That was said in casual conversation but would not put Mr Cowan on notice that the claimant was referring to a condition which could be considered a disability.

136. The receipt of the Occupational Health Report was the first occasion when the respondent had information available to it which was sufficient to establish that the claimant was or could be a disabled person within the meaning of s.6 of the Equality Act and prior to that date the respondent could not have been reasonably expected to know that the claimant was suffering from a disabling condition.

137. We say this because although the claimant had been absent from work for some months prior to the Occupational Health Report being obtained, that delay was because the claimant himself was unable or unwilling to attend for an Occupational Health assessment (even over the telephone). In that time the claimant, whilst he was able to engage in email correspondence, told the respondent that he was not monitoring either his emails, telephone messages or post and was not at home but staying with family whilst he was recuperating. He gave no address for contact. The respondent therefore was unable to make further enquiry or obtain information regarding the claimant's condition.

138. The Occupational Health Report dealt with the claimant's complaints around stressors at work including alleged understaffing, communication issues and an alleged lack of training. It was stated in the report that these were the perceptions of the claimant only on which the Occupational Health practitioner could not comment.

139. The report, however, confirmed that the claimant's SU had been present since 2017 and was being treated by a combination of medication, staying indoors, using protective creams and wearing sunglasses and a wide brimmed hat whilst outdoors. The report confirmed that the condition "significantly affected the claimant's day to day activities".

140. We are satisfied that the date on which the report was sent and received by the respondent (9 November 2018) was the date upon which the respondent had knowledge of the claimant's condition amounting to a disability and they did not have sufficient information prior to that date to could reasonably know that the claimant was disabled. We are conscious of the EHRC Employment Code stating that an employer must do all it can reasonably be expected to do to find out whether a person has a disability. The respondent was seeking Occupational Health advice for that very purpose, earlier efforts to obtain information regarding the claimant's well-being, his condition and it's impact were stymied by the claimant's refusal to communicate with the respondent.

141. The Occupational Health Report made recommendations. In particular it stated that an anti-glare screen for the claimant's computer should be provided, that his desk should be positioned away from direct sunlight and away from a window, that he should be allowed to work in a "lower illuminated area" if possible and advised that the claimant had been told to contact his optician to obtain protective glasses.

142. There were further recommendations not connected to the claimant's stated disability. Because of unrelated musculoskeletal problems it was advised that the claimant should have a "mini break" every hour and if possible work from home on some days.

143. It is important to note that the issue of homeworking was said to relate to a possibility of "occasional" working from home due to musculoskeletal issues and was not related to the claimant's SU.

144. The respondent attempted to act promptly thereafter.

145. The claimant was invited to a meeting during the week commencing 26 November 2018 but the claimant wished to defer the meeting until the following week and not on the Thursday or Friday of that week although no specific reason was given.

146. The respondent also asked Mr Wildash who had personal specific expertise in the provision and procurement of necessary adjustments to become involved in the matter. He ordered an anti-glare screen for the claimant's computer.

147. Miss White suggested to the claimant that he should contact Access to Work and should arrange for an appointment with them once the respondent had moved back into its refurbished offices. At this time the respondent was working from a temporary office within the same building whilst its offices were being refurbished but it had no control over the refurbishment work. The claimant declined the opportunity to visit the temporary offices and said he required a "cool or airconditioned" office with "zero or minimal exposure to the sun's rays and artificial light". We find that these requests went beyond the recommendations of the Occupational Health Report.

148. The claimant's stress related complaints (which are not part of his disability related complaint in this case) were addressed through a Stress Risk Assessment. There was some unfortunate delay in dealing with that due to the mis-filing of some documents but the matter progressed after 29 November 2018.

149. Having declined to visit the temporary office the claimant also rejected a proposal that he could work, temporarily, from another office in Cambridge.

150. The respondent moved into its refurbished offices on 13/14 December 2018.

151. The claimant was seeking payment under the DAL Scheme, payable where an employee is fit to work provided adjustments are in place but those adjustments are yet to be provided. The claimant's GP did however certify the claimant as unfit for work so Miss White suggested that the claimant should speak to his GP and asked him to reconsider the position.

Ultimately the DAL payment was made although the claimant subsequently complained this was not broken down sufficiently but rather paid in a lump sum. That complaint was not made until after the claimant had resigned his employment.

152. As the claimant was seeking, in his letters to Miss White, adjustments outside the recommendations in the Occupational Health Report Miss White asked the claimant to attend a further Occupational Health appointment to discuss these alleged needs to facilitate the claimant's return to work. She did this in her letter of 10 December. The claimant's reply of 29 December referred to "multiple failings" by the respondent, required a reply by not later than 4 January 2019 (28 December was a Friday and thus the claimant was asking for reply within less than 5 working days bearing in mind the new year holiday) saying that he would then be willing to attend a meeting on 11 January 2019 having had the opportunity to consider the respondent's reply. He declined to be seen again by Occupational Health and refused to give Miss White his Access to Work reference number thus preventing her from liaising directly with Access to Work.

153. The respondent did not pursue the issue of an additional Occupational Health report any further.

154. Miss White replied on 10 January 2019. She invited the claimant to a formal attendance review meeting, given that he had been absent from work for 214 days, to discuss how the respondent could facilitate the claimant's return to work. The claimant replied twice that afternoon, each time submitting a grievance which he said had been prepared earlier. Although Miss White said that the meeting was to discuss the Occupational Health Report, the Stress Risk Assessment, the DAL application and the claimant's correspondence the claimant said that it was "astonishing" that "his concerns" had not been addressed prior to the meeting.

155. In her reply Miss White confirmed that the claimant's reasonable adjustments were in place in accordance with the Occupational Health Report and that the rest of the matters that he sought were to be discussed.

156. The claimant said that he was only willing to "consider" attending an "informal return to work and wellbeing meeting". Miss White's reply again invited the claimant to attend the work place to observe the adjustments made and/or to be made on 30 January with an opportunity for the claimant to discuss lighting with Mr Wildash first.

157. Photographs of the workplace were sent to the claimant who objected to "shiny" surfaces. This was, as he was told, resolved by the purchase of anti-glare mats for the claimant's desk.

158. On 20 January sought to lay down additional matters for discussion on 23 January in particular "how will you improve what you do and how you do it … [and] … the working culture …" which Miss White confirmed in her reply were outside the scope of the meeting.

159. On 22 January 2019 the claimant's solicitor advised the respondent that the claimant would not attend the meeting on 23 January and on 5 February the claimant submitted a formal grievance (previously he had been asked if his grievance was to be considered through the respondent's informal or formal processes but he had not responded).

160. The grievance was acknowledged on 6 February and on 14 February the claimant was advised of the identity of the Investigating Officer and the Grievance Manager/Decisionmaker.

161. On 14 February the claimant was invited by Miss White to an informal meeting to discuss the workplace adjustments to be held on 25 or 26 February. The claimant's response was that he required three meetings to be held at 1 pm each day on 25, 26 and 27 February, each meeting to last no more than 45 minutes. No specific reason for this demand was given but on 19 February Miss White agreed to meet on 25 and 26 February (she could not meet on 27th as she explained to the claimant).

162. As the claimant had not replied Miss White sent a further email seeking a response on 25 February. On that day the claimant resigned. The respondent gave the claimant time to reconsider his decision to resign but he did not do so.

163. The respondent continued with the claimant's grievance process. An investigative meeting (delayed at the claimant's request) took place on 26 March. The finalisation of the grievance process was delayed as one of the witnesses (Ms Lenton) was absent from work and because the claimant submitted three files of additional documents each over 200 pages long and thereafter submitted copies of text messages.

164. It was not until 24 October that the investigation concluded. The report was finalised and sent to Mr Maddock, the Grievance Manager/Decisionmaker on 14 November. He made efforts to speak to the claimant without success and thereafter decided to conclude the grievance by dealing with the paperwork alone sent the final grievance outcome to the claimant on 12 May 2020. Any delay after the claimant's resignation on 25 February is not, however, relevant to his decision to resign.

165. Turning to the issues in the case we reach the following conclusions:

    165.1 The claimant was not dismissed. He resigned. His resignation was not made in circumstances where he was entitled to terminate his employment on the basis of the respondent's conduct. The

claimant relied on eleven matters as amounting to breaches of the implied term of trust and confidence and we deal with those in turn:

1. The request for reasonable adjustments was properly considered. Those recommended by Occupational Health were put in place within a reasonable time bearing in mind the respondent's relocation of offices. What the respondent did not put in place (other than comfort cooling) were those things which the claimant said he required which went further than the Occupational Health advice and which they wished to discuss with the claimant. The claimant failed to attend meetings to discuss the position with the respondent and laid down pre-conditions to meetings which went well beyond any issues raised in the Occupational Health Report and beyond the bounds of reasonableness. The respondent was attempting at all times to deal with the claimant's issues in a reasonable way and facilitate a return to work. The claimant was placing barriers in their way.

2. The claimant's grievance was submitted on 10 January 2019, he resigned on 25 February 2019. The grievance had been acknowledged, the Grievance and Investigation Officer and a Grievance Manager/Decisionmaker had been identified and their details had been provided to the claimant on 14 February. The claimant resigned on 25 February, the day before Mr Maddock as Grievance Manager set out the terms of reference to Ms Galton, the Investigating Manager. We do not find that the respondent had by 25 February, failed to respond to the claimant's grievance in a reasonable time.

3. The respondent took action in relation to the Occupational Health Report promptly. By 10 January 2019 all of the adjustments recommended by the Occupational Health Report of 26 October, sent on 9 November, were in place. As the claimant well knew the respondent was working from a temporary office and thus adjustments could not be in place until the respondent had access to the refurbished offices. The claimant declined to visit the temporary office which might have been suitable for a return to work. The respondent acted at all times with reasonable promptness.

4. The claimant's communications of 12 November, 19 November, 10 December, 20 December and 28 December were responded to within reasonable timescales. The claimant attempted from time to time to impose timescales on the respondent for replies which were arbitrary and in part unreasonable. We have not found any occasion when the respondent's replies to the claimant's correspondence, or the way they managed the claimant's complaints were in any way unreasonable.

5. The Stress Risk Assessment was to be discussed at the meeting with Miss White which the claimant required to be rescheduled and which he then, through a letter sent from his solicitors, refused to attend. The respondent acted promptly and properly throughout. There was a short delay due to the mis-filing of a document but that was fully explained to the claimant at the time.

6. Although the claimant says that he was able to give regular and effective service from 1 October 2018 onwards this was not reflected in the fit notes submitted by the claimant. The respondent was at all times acting promptly and as effectively as it could to assist the claimant to return to work. We conclude that the barriers to that came predominately from the claimant's unwillingness to meet the respondent and the claimant's presentation of requests for adjustments and additional matters which were not reflected in the Occupational Health Report but which the respondent was willing to discuss.

7. A phased return to work was to be discussed at the meeting with Miss White which the claimant failed to attend. Interestingly the claimant elsewhere in this case referred to seeking a phased return over a 3 week period when Miss White was offering a phased return of up to 5 weeks for discussion.

8. The respondent did not require the claimant to undertake a further Occupational Health assessment in 2019. The respondent did not have all required medical information in hand in order to facilitate the claimant's return to work. The claimant was asking for adjustments as a pre-condition of his return to work which were outside those recommended by the Occupational Health physician. On that basis the respondent reasonably requested a further Occupational Health report in order to ascertain whether these were necessary. The claimant declined to attend a further Occupational Health assessment and the respondent did not further request that he do so.

9. The respondent was in regular contact with the claimant regarding the adjustments recommended by Occupational Health and by 10 January 2019 (within one month of the respondent returning to its regular office) these were in place. The claimant declined to visit the premises to observe the adjustments and to discuss any further adjustments he was seeking prior to his resignation.

10. The request for a detailed breakdown of the lump sum back payment made through the DAL Scheme was not raised until after the claimant's resignation. It was subsequently provided. Given that the claimant did not seek any breakdown prior to his resignation we fail to see how the failure to provide such a breakdown could amount to a breach of trust and confidence prompting his resignation.

    We understand that this incident is said to be the "final straw" but as we have said no complaint about the provision of payment through a lump sum was made until after the claimant resigned.

11. The claimant refers to delaying or handling inadequately "the process generally" from July 2018 onwards. The matters raised by the claimant were dealt with, or the respondent attempted to deal with them, promptly throughout. The allegation that the respondent delayed or handled these matters inadequately is not particularised unless it is intended to be simply a repetition of the ten points above.

    At all times the respondent acted properly. It took steps to manage the claimant's absence, sought assistance and advice from Occupational Health in a timely proportionate and reasonable manner. The respondent put in place the adjustments recommended by Occupational Health and when the claimant (who did not attend the respondent's offices to view and consider the changes made), asked for more adjustments they wished to both discuss them with him and obtain further guidance from Occupational Health on their necessity. The claimant refused both of those proposals and failed to participate in discussions to enable a return to work to take place. The respondent's conduct was at all times within the terms and spirit of the claimant's contract of employment. There was no breach of the implied term of trust and confidence by the respondent.

166. For those reasons the claimant's complaint that he was (constructively) dismissed fails. The respondent did not act in breach of the implied term of trust and confidence.

167. As the claimant was not dismissed his claims of unfair dismissal and wrongful dismissal (breach of contract) fail and are dismissed.

Disability

(8) Did the respondent have the requisite knowledge of the claimant's disability at the material time and if so, on what date?

168. The respondent had knowledge of the claimant's disability from 9 November 2018 when it received the Occupational Health Report.

(9) *Ought the respondent to have reasonably been aware of the claimant's disability and if so, from what date?*

169. The respondent did not have sufficient information to have been reasonably aware of the claimant's disability before that date.

(Failure to make reasonable adjustments)

(10) Did the respondent apply a provision, criterion or practice requiring the claimant to work in an office which was an unsuitable environment for the claimant to work in owing to his condition?

170. We are not satisfied that the claimant has established that the respondent applied a PCP of "requiring [him] to work in an office which was an unsuitable environment for the claimant to work in owing to his condition".

(11) If so, did that PCP put the claimant as a disabled person at a substantial disadvantage in comparison with persons who are not disabled?

171. For the reasons which we set out below we do not accept that the respondent applied this provision, criterion or practice to the claimant let alone to their employees generally. In summary, the respondent had put in place the reasonable adjustments which were recommended by Occupational Health and the environment was, we find, suitable for the claimant. The respondent had also put in place comfort cooling. The claimant insisted on other matters being considered as a pre-condition of his even discussing his return to work and requested additional adjustments not identified either in the Occupational Health Report or in any other medical evidence which he provided.

(12) The claimant relied on the following substantial disadvantages:

(i) Being exposed to direct sunlight and/or ultraviolet light.

172. The claimant was not exposed to direct sunlight and/or ultraviolet light after the respondent had knowledge of his condition and would not have been on returning to the office. The respondent had made adjustments to the working environment to prevent or limit as far as possible such exposure. The claimant however refused to view the adjustments made. We were told that the claimant's desk was not next to a window, that black out blinds were provided and that he would work with LED lighting, not ultraviolet light.

(ii) *Being positioned in the office too close to windows and/or direct heat or light.*

173. The respondent had made adjustments to the working environment to ensure the claimant was not close to a window and/or direct light. The claimant refers to a disadvantage caused by being exposed to "direct

heat". The respondent had put in place comfort cooling and there is no medical or other evidence before us, other than the claimant's request, to indicate that it was necessary for the claimant to avoid "direct heat". We repeat that the claimant refused to visit the premises to observe the adjustments that had been made.

(iii) A lack of an anti-glare computer screen.

174. An anti-glare computer screen was provided.

(iv) A failure to provide specialist glasses to reduce ultraviolet exposure.

175. The claimant had specialist glasses to reduce ultraviolet exposure, he obtained these on the recommendation of the Occupational Health therapist.

(v) An inability to work from home on certain days.

176. The claimant was not disadvantaged in relation to his disability in relation to not working from home on certain days. The recommendation from Occupational Health to work from home on occasion related to musculoskeletal difficulties. The respondent in any event could accommodate ad hoc working from home but not regular homeworking.

(vi) The respondent not offering the claimant a phased return to work despite multiple and repeated requests from the claimant.

177. The claimant was asked to attend a meeting to discuss a phased return to work over a period of five weeks. The meeting dates/times/length were adjusted at the claimant's request but he did not attend the meetings.

(vii) Being required to attend multiple Occupational Health assessments.

178. The claimant was not required to attend multiple Occupational Health assessments. The request to obtain Occupational Health reports was both reasonable and appropriate. The respondent sought a report from Occupational Health early in the claimant's period of absence (22 June 2018) but the claimant did not attend for assessment until 24 October. When the claimant sought adjustments beyond the recommendations of that report the respondent reasonably asked the claimant to attend a further appointment. When the claimant declined the matter was not pursued further.

179. Accordingly, the claimant did not suffer any of the alleged disadvantages that he relies upon.

(13) If so, did the respondent take such steps as it was reasonable to take to avoid the disadvantage (if any) at which the PCP placed the claimant?

180. As the claimant did not suffer the disadvantages relied upon it cannot be said that the respondent failed to take such steps as it was reasonable to take to avoid the disadvantage which the PCP placed on the claimant, even if that PCP was applied.

(14) Did the respondent fail to comply with the duty to make reasonable adjustments?

181. In relation to the allegations of a failure to comply with reasonable adjustments and dealing with those adjustments which the claimant suggested we find as follows:

181.1 The respondent had arranged the claimant's office space to avoid direct sunlight and ultraviolet light. Blinds had been installed and LED lighting was to be discussed.

181.2 The claimant's desk was away from direct sunlight, away from the window and away from direct light. The claimant was unwilling to visit the premises to consider the suitability of the office. Whilst he requested a "cool area" comfort cooling had been put in place.

181.3 An anti-glare computer screen was provided and another anti-glare screen for his laptop was to be discussed with the claimant.

181.4 The claimant had computer screen protection glasses.

181.5 The recommendation for allowing working from home did not relate to the claimant's disability but to other musculoskeletal conditions. Notwithstanding that the respondent was prepared to accept ad hoc working from home but not regular or persistent homeworking. The Occupational Health Report suggested this would only be required (and, we repeat, not because of the disability on which the claimant relies) from time to time. Given that the claimant refused to attend meetings to discuss arrangements to be put in place to facilitate his return to work it cannot be said that the respondent did not put this adjustment in place. There was no medical evidence before the respondent to indicate that it was because of the claimant's disability he needed to work from home at any time.

181.6 The claimant refused to attend a meeting to discuss a phased return to work. Although the claimant's suggestion was for a "recommendation of half days for the first week gradually increasing to six hours working time for another two weeks and

then back to contracted hours" the respondent was wishing to discuss with the claimant a phased return for a period of up to five weeks but the claimant did not attend the meeting.

181.7 The proposed adjustment of arranging the claimant's workstation away from areas exposed to sun or frequently became hot is no more than a repetition of the adjustment at (12) above.

181.8 We have found that blinds were fitted.

181.9 Comfort cooling was fitted and installing air conditioning to a building that did not have it was not an adjustment which could be considered reasonable. Further and in any event, the requirement for a "cool or air conditioned office" was not supported by any evidence relating to the claimant's disability.

181.10 and 181.11 Are repetitions of adjustments (3) and (4) set out above.

182. Accordingly we are not satisfied that the claimant has established an appropriate provision, criterion or practice as required by s.20(3) of the Equality Act 2010.

183. In any event, the respondent did not require the claimant to work in an office which was an unsuitable environment for him owing to his condition of Solar Urticaria.

184. The claimant has not established that he suffered substantial disadvantage.

185. Further the respondent had put adjustments in place to avoid any disadvantage which the claimant would otherwise suffer. It took steps to avoid the claimant being exposed to sunlight by the location of the claimant's desk, the provision of blinds, the provision of an anti-glare screen and anti-glare mats on the claimant's workstation. The claimant had anti-glare glasses.

186. For those reason the claimant's complaint that the respondent failed to make reasonable adjustments is not well founded and is dismissed.

Summary

187. The claimant resigned, he was not dismissed and his complaints of unfair dismissal and wrongful dismissal fail.

188. The respondent complied with its duty to make reasonable adjustments and the claimant's complaint that the respondent failed to do so is not made out.

189. For those reasons the claimant's claim is dismissed.

_____
Employment Judge Ord

Date: 22 March 2022

Sent to the parties on: 25 March 2022

For the Tribunal Office