



EMPLOYMENT TRIBUNALS

Claimant: Satnam Singh

Respondent: Department of Work and Pensions

Heard at: Southampton (by video) **On:** 21-24 March 2022

Before: Employment Judge P S L Housego
Tribunal Member F Robertson
Tribunal Member K J Sleeth

Representation

Claimant: Christopher Meiring, of Counsel
Respondent: Owain Rhys James, Civitas Law

JUDGMENT

The claim is dismissed.

REASONS

Summary

1. Ms Singh was dismissed by reason of extended sickness absence. She claims that the way the DWP handled matters was a catalogue of disability discrimination. The DWP say that they did all that was reasonably required of them, and that the claim is out of time.

Law

2. Ms Singh was employed for more than 2 years but does not claim unfair dismissal. She does say that dismissal was disability discrimination.
3. The claim of disability discrimination relies on S15 of the Equality Act 2010, for which no comparator is needed:

“15 Discrimination arising from disability

(1) A person (A) discriminates against a disabled person (B) if—

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.”

4. Ms Singh also says that the Respondent did not make reasonable adjustments:

“20 Duty to make adjustments

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

(2) The duty comprises the following three requirements.

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

(4) The second requirement is a requirement, 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, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

(6) Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.

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

(8) A reference in section 21 or 22 or an applicable Schedule to the first, second or third requirement is to be construed in accordance with this section.

(9) In relation to the second requirement, a reference in this section or an applicable Schedule to avoiding a substantial disadvantage includes a reference to—

(a) removing the physical feature in question,

(b) altering it, or

(c) providing a reasonable means of avoiding it.

(10) A reference in this section, section 21 or 22 or an applicable Schedule (apart from paragraphs 2 to 4 of Schedule 4) to a physical feature is a reference to—

(a) a feature arising from the design or construction of a building,

(b) a feature of an approach to, exit from or access to a building,

(c) a fixture or fitting, or furniture, furnishings, materials, equipment or other chattels, in or on premises, or

(d) any other physical element or quality.

(11) A reference in this section, section 21 or 22 or an applicable Schedule to an auxiliary aid includes a reference to an auxiliary service.

(12) A reference in this section or an applicable Schedule to chattels is to be read, in relation to Scotland, as a reference to moveable property.

(13) The applicable Schedule is, in relation to the Part of this Act specified in the first column of the Table, the Schedule specified in the second column.

21. Failure to comply with duty

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

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

...”

5. Ms Singh does not claim unfair dismissal, direct or indirect disability discrimination, victimisation or harassment.
6. The particulars of all these claims were set out in a Case Management Order of 13 May 2021. They are:

1. *Time limits*

1.1 *Given the date the claim form was presented, which was the 25 September 2020 and the dates of early conciliation, (the Claimant approached ACAS on the 29 August 2020 and the ACAS certificate was issued on 1 September 2020) any complaint about any act or omission which took place more than three months before that date (allowing for any extension under the early conciliation provisions) is potentially out of time, so that the Tribunal may not have jurisdiction.*

1.2 *On the face of it the Claimant's approach to ACAS on 29 August 2020 was more than three months after her dismissal on the 29 April 2020.*

1.3 *Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:*

1.3.1 *Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act or omission to which the complaint relates?*

1.3.2 *If not, was there conduct extending over a period?*

1.3.3 *If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?*

1.3.4 *If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:*

1.3.4.1 *Why were the complaints not made to the Tribunal in time?*

1.3.4.2 *In any event, is it just and equitable in all the circumstances to extend time?*

2. *Disability*

2.1 *Did the Claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about? The Tribunal will decide:*

2.1.1 *Whether the Claimant had a physical or mental impairment. She*

asserts that she is disabled by the following physical impairment:

2.1.1.1 *Eye impairments (Iritis, Blepharitis and Chronic dry eye syndrome and floaters); and/or*

2.1.1.2 *Chronic migraines linked to eye condition; and/or*

2.1.1.3 *Musculoskeletal pain (back, neck and shoulder).*

2.1.1.4 *A mental impairment of anxiety and depression.*

2.2 *The Respondent admits that the Claimant's physical impairment of chronic migraines linked to her eye condition is a disability the purposes*

of the Equality Act 2010 .

2.2.1 Did any of the alleged impairments have a substantial adverse

effect on the Claimant's ability to carry out day-to-day activities?

2.2.2 If not, did the Claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?

2.2.3 Would any of the alleged impairments have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?

2.2.4 Were the effects of any of the impairments long-term? The Tribunal will decide:

2.2.4.1 did they last at least 12 months, or were they likely to last at least 12 months?

2.2.4.2 if not, were they likely to recur?

3. Discrimination arising from disability (Equality Act 2010 section 15)

3.1 Did the Respondent treat the Claimant unfavourably by:

3.1.1 Deducting money from her due to disability related sick leave and extended sick leave due to lack of reasonable adjustments.

3.1.2 constantly requiring the claimant to complete DSE assessments and undergo OH appointments which were not acted on and constantly moved around.

3.1.3 Dismissing the Claimant.

3.1.4 Offering the Claimant a low compensation payment post termination.

3.2 Did the following things arise in consequence of the Claimant's disability? The Claimant's case is that :

3.2.1 her need for reasonable adjustments; and

3.2.2 disability related sick leave arose from her disabilities:

3.3 Was the unfavourable treatment because of any of those things? (for example, did the Respondent dismiss the Claimant because of that sickness absence)?

3.4 Was the treatment a proportionate means of achieving a legitimate aim? The Respondent has not said what its aims were and will confirm what it relies on to the Claimant and the employment tribunal on or before 24 June 2021.

3.5 The Tribunal will decide in particular:

3.5.1 Was the treatment an appropriate and reasonably necessary way to achieve those aims;

3.5.2 Could something less discriminatory have been done instead;

3.5.3 How should the needs of the Claimant and the Respondent be balanced?

3.6 Did the Respondent know or could it reasonably have been

expected to know that the Claimant had the disability? From what date?

4. Reasonable Adjustments (Equality Act 2010 ss. 20 & 21)

4.1 Did the Respondent know or could it reasonably have been expected to know that the Claimant had the disability? From what date?

4.2 A "PCP" is a provision, criterion or practice. Did the Respondent have the following PCPs:

4.2.1 A requirement to work on the ground/first floor?

4.2.2 A requirement to undertake face to face meetings?

4.2.3 A requirement to travel to a different office to undertake back-office work?

4.3 Did the PCPs put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability, in that

4.3.1 The Claimant suffered increased pain and discomfort; and/or

4.3.2 Had to take increased sick leave; and/or

4.3.3 Led to the claimant suffering bullying and ostracism from colleagues; and/or

4.3.4 They led to a loss of confidence and decline in the claimants mental health; and/or

4.3.5 The Claimant was at greater risk of dismissal...?

And/or

4.4 Did a physical feature, namely the lack good quality lighting and lighting controls, and bright lighting put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability, in that

4.4.1 The lighting affected the claimant adversely because of her eye impairment and/ or migraines;

4.4.2 She suffered increased pain and discomfort;

4.4.3 The claimant to take increased sick leave; and/or

4.4.4 Led to the claimant suffering bullying and ostracism from colleagues; and/or

4.4.5 They led to a loss of confidence and decline in the claimant's mental health; and/or

4.4.6 The claimant was at greater risk of dismissal.

And/or

4.5 Did the lack of an auxiliary aid, namely adapted desk, chair and laptop with tailored settings, put the Claimant at a substantial disadvantage compared to someone without the Claimant's disability, in that

4.5.1 The claimant suffered increased pain and discomfort; and/or

4.5.2 Had to take increased sick leave; and/or

4.5.3 Led to the claimant suffering bullying and ostracism from colleagues; and/or

4.5.4 They led to a loss of confidence and decline in the Claimant's mental health; and/or

4.5.5 The claimant was at greater risk of dismissal.

4.6 Did the Respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?

4.7 What steps (the 'adjustments') could have been taken to avoid the disadvantage? The Claimant suggests:

4.7.1 provide a reasonable means of avoiding bright lighting, by allocating her a permanent room with good quality lighting/controls; and/or

4.7.2 provide her with permanent access to auxiliary aids (adapted desk, chair and laptop with tailored settings); and/or

4.7.3 allow her to work permanently from a fixed office on the second floor; and/or

4.7.4 excuse her from undertaking face to face meetings; and/or

4.7.5 allow her to undertake work for other offices and/or head office remotely.

4.8 Was it reasonable for the Respondent to have to take those steps and when?

4.9 Did the Respondent fail to take those steps?

7. Since that list was prepared, the Respondent has accepted¹ that the Claimant has disabilities, as follows:

As to disability it is conceded that the Claimant was disabled and that the Respondent had knowledge of such disability as follows:

a. Eye impairments (paragraphs 3.1 – 3.3 of the particulars of complaint) from February 2019.

b. 1.2 Chronic migraines (paragraph 3.4 of the particulars of complaint) from 11 December 2018.

c. 1.3 Musculo- skeletal condition (paragraph 3.5 of the particulars of complaint) from March 2015.

d. 1.4 Anxiety and depression (paragraph 3.6 of the particulars of complaint) from February 2019.

The Claimant maintains that she had these disabilities at all material times, and that the Respondent knew, or should have known, of them.

8. The Claimant must provide evidence from which this Tribunal might find disability discrimination. If she does so, it is for the Respondent to show that the reason was not, even in part, to do with disability². The question of

¹ Respondent's note submitted at the start of the hearing, paragraph 7.

² The law about burden of proof is comprehensively set out in *Royal Mail Group Ltd v Efoji* [2021] UKSC 33 and the Tribunal applied the approach there prescribed.

whether an adjustment is or is not reasonable is a value judgment for which there is no burden or standard of proof. The same applies when deciding whether a particular matter is a substantial disadvantage to a disabled person by reason of a provision criterion or practice, and whether it is a proportionate means of achieving a legitimate aim. The DWP clarified the legitimate aim prior to the hearing. It is the efficient management of workforce and budget.

Law – out of time: just and equitable

9. The law was set out in O'Neill v Jaeger Retail Ltd (JURISDICTIONAL POINTS - Extension of time: just and equitable) [2019] UKEAT 0026_19_0111:

29. As to the guiding principles in relation to the just and equitable test, there is a well-established body of authority familiar to practitioners in the field. As I have noted, there is no dispute, as such, that the Tribunal correctly directed itself by reference to the key authorities. I for my part cannot improve on the overview given in a decision mentioned by Mr Gorasia, that of Elisabeth Laing J in **Miller v The Ministry of Justice**[2016] UKEAT/0003/15, which I gratefully adopt:

"10. There are five points which are relevant to the issues in these appeals.

i. The discretion to extend time is a wide one: **Robertson v Bexley Community Centre** [2003] EWCA Civ 576; [2003] IRLR 434, paragraphs 23 and 24.

ii. Time limits are to be observed strictly in ETs. There is no presumption that time will be extended unless it cannot be justified; quite the reverse. The exercise of that discretion is the exception rather than the rule (ibid, paragraph 25). In **Chief Constable of Lincolnshire v Caston** [2010] EWCA Civ 1298; [2010] IRLR 327 Wall LJ (with whom Longmore LJ agreed), at paragraph 25, put a gloss on that passage in **Robertson**, but did not, in my judgment, overrule it. It follows that I reject Mr Allen's submission that, in **Caston**, the Court of Appeal "corrected" paragraph 25 of **Robertson**. Be that as it may, the EJ in any event directed himself, in the first appeal, in accordance with Sedley LJ's gloss (at paragraph 31 of **Caston**), which is more favourable to the Claimants than the gloss by the majority.

iii. If an ET directs itself correctly in law, the EAT can only interfere if the decision is, in the technical sense, "perverse", that is, if no reasonable ET properly directing itself in law could have reached it, or the ET failed to take into account relevant factors, or took into account irrelevant factors, or made a decision which was not based on the evidence. No authority is needed for that proposition.

iv. What factors are relevant to the exercise of the discretion, and how they should be balanced, are for the ET (**DCA v Jones** [2007] EWCA Civ 894; [2007] IRLR 128). The prejudice which a

Respondent will suffer from facing a claim which would otherwise be time barred is "customarily" relevant in such cases (ibid, paragraph 44).

v. The ET may find the checklist of factors in section 33 of the **Limitation Act 1980** ("the 1980 Act") helpful (**British Coal Corporation v Keeble** [1997] IRLR 336 EAT; the EAT (presided over by Holland J) on an earlier appeal in that case had suggested this, and Smith J (as she then was) recorded, at paragraph 8 of her Judgment, that nobody had suggested that this was wrong. This is not a requirement, however, and an ET will only err in law if it omits something significant: **Afolabi v Southwark London Borough Council** [2003] ICR 800; [2003] EWCA Civ 15, at paragraph 33.

11. **DCA v Jones** was an unsuccessful appeal against a decision by an ET to extend time in a disability discrimination claim. The Claimant had not made such a claim during the limitation period as he did not want to admit to himself that he had a disability. At paragraph 50, Pill LJ said this: **"The guidelines expressed in Keeble are a valuable reminder of factors which may be taken into account. Their relevance depends on the facts of the particular case. The factors which have to be taken into account depend on the facts and the self-directions which need to be given must be tailored to the facts of the case as found. It is inconceivable in my judgment that when he used the word "pertinent" the Chairman, who had reasoned the whole issue very carefully, was saying that the state of mind of the respondent and the reason for the delay was not a relevant factor in the situation."**

12. I should also say a little more about points 10(iii)-(v). There are two types of prejudice which a Respondent may suffer if the limitation period is extended. They are the obvious prejudice of having to meet a claim which would otherwise have been defeated by a limitation defence, and the forensic prejudice which a Respondent may suffer if the limitation period is extended by many months or years, which is caused by such things as fading memories, loss of documents, and losing touch with witnesses. As I understood their arguments, neither Mr Allen nor Mr Sugarman suggested that a lack of forensic prejudice to a Respondent was a decisive factor, by itself, in favour of an extension of time. But both argued, in slightly different ways, that the ET was bound in every case, in Mr Allen's phrase, "to balance off" the relative prejudice to the parties, and that, if the ET did not do so expressly, that was an error of law, even if there was, otherwise, no good reason to extend time.

13. It seems to me that it is not necessary for me to deal with that bald submission, because, as I explain below, the EJ did, to the extent that he was required to, take into account prejudice to both sides. But if I had needed to, I would have rejected that submission. It is clear from paragraph 50 of Pill LJ's judgment in **DCA v Jones** that it is for the ET to decide, on the facts of any particular case, which potentially relevant factor or factors is or are actually relevant to the exercise of its discretion in any case. **DCA v Jones** also makes clear (at paragraph 44) that the prejudice to a Respondent of losing a limitation defence is "customarily relevant" to the exercise of this discretion. It is obvious that if there is forensic

prejudice to a Respondent, that will be "crucially relevant" in the exercise of the discretion, telling against an extension of time. It may well be decisive. But, as Mr Bourne put it in his oral submissions in the second appeal, the converse does not follow. In other words, if there is no forensic prejudice to the Respondent, that is (a) not decisive in favour of an extension, and (b), depending on the ET's assessment of the facts, may well not be relevant at all. It will very much depend on the way in which the ET sees the facts; and the facts are for the ET. I do not read the decision of the EAT in DPP v Marshall [1998] ICR 518 (and in particular pages 527H-528G, which were relied on by Mr Allen and Mr Sugarman) as contradicting this approach; but if it does, I bear in mind that the observations relied on are from the EAT, and pre-date DCA v Jones."

10. As to the Keeble factors, Adedeji v University Hospitals Birmingham NHS Foundation Trust [2021] EWCA Civ 23:

37. *The first concerns the continuing influence in this field of the decision in Keeble. This originated in a short concluding observation at the end of Holland J's judgment in the first of the two Keeble appeals, in which the limitation issue was remitted to the industrial tribunal. He said, at para. 10:*

"We add observations with respect to the discretion that is yet to be exercised. Such requires findings of fact which must be based on evidence. The task of the Tribunal may be illuminated by perusal of Section 33 Limitation Act 1980 wherein a check list is provided (specifically not exclusive) for the exercise of a not dissimilar discretion by common law courts which starts by inviting consideration of all the circumstances including the length of, and the reasons for, the delay. Here is, we suggest, a prompt as to the crucial findings of fact upon which the discretion is exercised."

*The industrial tribunal followed that suggestion and, as we have seen, when there was a further appeal Smith J as part of her analysis of its reasoning helpfully summarised the requirements of section 33 (so far as applicable). It will be seen, therefore, that Keeble did no more than suggest that a comparison with the requirements of section 33 might help "illuminate" the task of the tribunal by setting out a checklist of potentially relevant factors. It certainly did not say that that list should be used as a framework for any decision. However, that is how it has too often been read, and "the Keeble factors" and "the Keeble principles" still regularly feature as the starting-point for tribunals' approach to decisions under section 123 (1) (b). I do not regard this as healthy. Of course the two discretions are, in Holland J's phrase, "not dissimilar", so it is unsurprising that most of the factors mentioned in section 33 may be relevant also, though to varying degrees, in the context of a discrimination claim; and I do not doubt that many tribunals over the years have found Keeble helpful. But rigid adherence to a checklist can lead to a mechanistic approach to what is meant to be a very broad general discretion, and confusion may also occur where a tribunal refers to a genuinely relevant factor but uses inappropriate Keeble-derived language (as occurred in the present case – see para. 31 above). **The best approach for a tribunal in considering the exercise of the discretion under section 123 (1) (b) is to assess all the factors in the particular case which it considers relevant to***

whether it is just and equitable to extend time, including in particular (as Holland J notes) "the length of, and the reasons for, the delay". If it checks those factors against the list in Keeble, well and good; but I would not recommend taking it as the framework for its thinking." [emphasis added]

Evidence

38. The Tribunal heard oral evidence from the Claimant, and from the Claimant's last manager, Robert Rance, and from Lynne Grimes, the senior manager who dismissed the Claimant. There was an agreed bundle of documents and a chronology.

The hearing

39. The hearing was a recorded video hearing, and I also made a full typed record of proceedings.

Submissions

40. Both Counsel provided helpful opening notes and made closing submissions of about 30 minutes each which I recorded in my record of proceedings.

Facts found

41. Mrs Singh worked for the DWP for about 30 years. She was an administrative officer. She had a car crash in 2015. It was at this point that her health began to decline.
42. She suffered migraines, iritis, probably linked with the migraines (or vice versa), and bright lights exacerbated the problem with migraines. The accident also made worse spinal problems. She had a bad back before, but in addition she had neck and shoulder problems.
43. She completed several display screen equipment forms (DSEs) with a view to getting specialist equipment. Early on she was allocated a special chair, which was a generic bad back chair, with lumbar support which was all she needed for her bad back prior to the accident.
44. Mrs Singh worked in the Basingstoke office. It had a large staff turnover. She had a series of managers. This got in the way of effective management of her problems. What she needed was a special keyboard and mouse, a rise and fall desk, and a bespoke chair. She found difficulty with brightness of screens, and needed one she could adjust.
45. By December 2019 she had got everything she wanted and needed. This was evidence both documentary and oral which was not challenged. There was a recommendation for a 27" monitor. That was from an IT person not someone with an ergonomic or reasonable adjustments background. Mrs Singh rejected this suggestion, on the basis that the larger the screen the more brightness there would be. Mrs Singh wanted a program called f lux, which adjusts screen contrast or brightness

automatically. She did not get this. However, the screens she had were linked to computers the brightness and contrast of which could be adjusted by her. While this involved going to system preferences, then selecting one icon, then making the adjustments (so several levels down in the software) when done the screen was satisfactory for her. While this might take her 5 minutes to do (on her account) and might need doing several times a day, there was no adverse consequence to this: it was not that she was told her productivity was too low, for example.

46. Mrs Singh was away from work from 08 November 2018 – 03 March 2019. She was then away from 16 July 2019 – 10 September 2019. She went off again on 31 October 2019 and remained on sick leave until dismissed on 29 April 2020, when she was given pay in lieu of notice.
47. Mr Rance became Mrs Singh's manager in May 2019. She was not at work for much of the time from then. He was plainly a thoughtful careful and considerate manager who did his very best to get Mrs Singh's needs met, and (while he agreed it took too long to get what he had organised in place, for procurement reasons out of his control) succeeded in doing so. Most was in place by 14 August 2019³.
48. Mrs Singh had been moved around different workstations over the years, including hot desking. She felt there was a degree of hostility towards her from other members of staff, on the 1st floor, as she would adjust the computers and this was an irritant to them. She found overhead lighting harsh and would turn off lights, and when this was in rooms shared with others or in communal areas this, she felt, was also a cause of friction. There was no evidence of this at the time, such as a grievance, or contact with human resources. It was her perception, but not the reality.
49. On 11 February 2019 there had been an occupational health assessment, recommending a permanent new workstation. Mr Rance organised a bespoke chair for her, which had to be set specifically for her by the supplier, and Mr Rance organised this for 10 September 2019⁴, her first day back after the absence which had started on 16 July 2019. She went back to room 211, where her new desk, chair, keyboard and mouse were located, but this was only ever going to be short term, as there was no admin work that could be done, and it was not a room in which the public could be seen.
50. Mrs Singh was to be allocated a specific room on the 1st floor, and she was told which. She was not happy, because she had previously occupied it, and did not want to return to it as she thought it would bring back unpleasant feelings generated from the time she had used that room before, which she thought would be made worse by the resentment she expected from those moved out of that room.
51. She did not like the rooms suggested for her on the ground floor as she did not want to see customers and because they did not have windows (but did have secondary natural light).

³ Page 152

⁴ Page 154

52. On 12 November 2019 Mrs Singh was signed off with stress anxiety and depression. She was signed off for this reason from then until her dismissal. She was not signed off for any physical impairment.
53. Mr Rance did all he could to get her back to work. Ultimately, Mrs Singh's position was that she would only return to work if she was working in room 211 on work that was not customer facing⁵. She had lost her confidence and could not face working in a customer facing role. She did not want to work on the ground floor for that reason. She did not want to work on the 1st floor, because of the hostility she thought she would get from those she thought were offended from before. She did not think the rooms she had been offered were satisfactory from the light perspective.
54. It was simply not possible for Mrs Singh to work in room 211, because her work was customer facing and customers were not permitted in the 2nd floor, and there was no admin work for her to do.
55. Mrs Singh was employed throughout her 30 years in a customer facing role. There had been some project admin work transferring customers to universal credit, but that had ended. There was no admin work carried out in the Basingstoke office.
56. There was some admin work carried out in Southampton, Portsmouth and in Swindon, and (in another region) in Guildford. But Mrs Singh said that her back neck and shoulder problems meant that she could not drive to any of those offices. So she was restricted to work in the Basingstoke office.
57. If Mrs Singh was doing customer facing work it could not be done on the 2nd floor (where room 211 was situated) because the public were not permitted on that floor, for which there were no security arrangements.
58. Mrs Singh said that the rooms on the ground and 1st floor were not suitable for her. In fact they were: she said some were internal, and they were, but they had a glass wall through which a window could be seen, and through which they received daylight. Mrs Singh said that she could not work on the ground floor as customers were there, but her job was seeing customers.
59. She said she could not work on the 1st floor because of her fear of hostility from those who worked there. There was nothing wrong with the room itself.
60. Mrs Singh had lost her confidence and did not feel able to work face to face with customers.
61. The combination of these stipulations meant that after she was signed off on 31 October 2019 there was no possibility of Mrs Singh returning to work in the Basingstoke office.

⁵ 21 August 2019, page 156

62. On 08 January 2020 Mr Rance met Mrs Singh⁶. He set out that everything was in place for her in a new office with just her IT equipment to be moved from the 2nd floor to the new office. Mrs Singh said:

"I am not good, tired, exhausted and finding historical events within the workplace very difficult to overcome it is not good for me." And

"I have lost my confidence I'm unsure I can go back to how things were... things take too long and so much has happened, I don't feel I can face customers again."

63. She then advised her trade union representative Paul Lowman that she would not be happy in the room allocated to her. He wrote to her on 08 January 2020⁷ to say that that she really had three options:

"Following your Attendance Management review meeting today you have now advised me that you would not be comfortable working in the room detailed above (with the equipment provided) because you feel uncomfortable with the fact that a colleague has been moved from that room to accommodate you. Furthermore you have advised me that due to the circumstances of what has gone on previously in which you feel you have been discriminated against you now feel unable to carry out any form of direct customer contact work that involves face to face interviews. This is due to the impact upon your confidence of how you feel you have been treated.

My advice, in light of this information is outlined below with some of your options –

- 1. Ask your GP to provide a fit note with a recommendation that you can return to work in your old location doing back office work only*
- 2. Ask your GP to provide a fit note recommending that you return to work in the office identified as suitable on the first floor doing back office work only*
- 3. Ask your GP if he would support an application for Ill Health Retirement"*

Mrs Singh did not provide any of these.

64. Mrs Singh's position was the same for the remaining time she was employed by the DWP. She was asked to look forward, but felt that historical issues (never set out in any detail) and fear of seeing customers⁸ meant she could not face anything but doing admin work from a specific room, 211, on the 2nd floor. She declined to access a stress risk assessment or the DWP's counselling service, always available to her and offered on several occasions.

⁶ Minutes 165 et seq

⁷ Email page 169

⁸ For example in the 3 month review meeting on 30 January 2020, page 179-180

65. After Mr Rance had all the adjustments made (by December 2019, and most by summer 2019) he could see no way that he could make progress. His last meeting with her was on 04 March 2020⁹. In this:

- a. Mrs Singh was not able to answer the question of when she might be able to return now all the reasonable adjustments had been made.
- b. Mrs Singh said she was not *“in a place to deal with customers face 2 face”*.
- c. She was unwilling to travel to any other office, saying her health would not permit it.
- d. Mr Rance noted that (as previously notified) ill health early retirement was not possible (because Mrs Singh was not unfit for all work), so there were only two options: a phased return to work, or a reference to a decision maker to review whether her employment could continue. He asked if she was able to return to work, but Mrs Singh did not feel able to answer that question.
- e. He asked her if there was anything else they could do to help her, but Mrs Singh did not know of anything, and could not give any further answer.

66. Mrs Singh had expressed a wish for ill health early retirement. On 10 March 2020 Mrs Singh was informed by her trade union representative Paul Lowman that, following the report from an occupational health referral on 22 January 2020¹⁰ and completed on 11 February 2020¹¹, ill health early retirement was not going to be appropriate. The review found that Mrs Singh was able to return to work but the issue was now psychological¹².

67. Mr Rance held a last review meeting with her on 10 March 2020. It was clear that she was, in effect, saying that she was not coming back to work¹³, and she felt unable to do so.

68. She emailed Mr Lowman on 18 March 2020:

“I feel that under the circumstances, I am unable to come back to work as I have been suffering for many years. I have been put through so much mentally and physically that I am exhausted. I just feel that, why do you think things will be any different now when one manager makes a decision, next time with change of management, I am then going to go through the same things again and again. I don’t have any confidence left in management and I have seen no positive commitments from the management which enables me to consider otherwise.”

⁹ Minutes 181 et seq

¹⁰ Set out in review meeting notes page 187

¹¹ Mrs Grimes’ notes, page 193

¹² Compensation payment application page 239 refers

¹³ Summary in box 4 of the review notes, page 189

69. Accordingly, after following the procedure of 28 day reviews for some months Mrs Singh's case was referred to a decision maker, as he must, given 121 days away from work with no foreseeable return to work.
70. Mrs Grimes was allocated that role. The task she had was to decide whether there was a case to continue to support the absence of Mrs Singh, who had now used up all her 6 months full pay and 6 months half pay in a rolling 4 year period.
71. Mrs Grimes was empathetic and very aware that after 30 years the DWP should lean over backwards to try to help.
72. There was a meeting between Mrs Grimes and Mrs Singh on 16 April 2020¹⁴. While Mrs Singh's physical impairments remained, it was clear that it was not this stopping her returning to work. Mrs Singh did not dispute Mrs Grimes statement that the equipment and room was all in place. Mrs Singh stated "*I mentally can't cope.*" This was the reason (and it was the reason on her fit notes). She was clear that she could not travel to any other office.
73. She asked if Mrs Singh wanted a stress risk assessment¹⁵. Mrs Singh's reply¹⁶ was that:

"This has been going on for so long that I cannot cope with this any longer, this is not about me coming back and getting help from work as it is too late now. I have lost all my confidence in coming back to work."

and after briefly recapping the history of delay in getting reasonable adjustments for her back, said

"I have been suffering for too long and can't deal with it anymore."

She ended her email:

"I have been put through so much that I like to put this to end."

74. Accordingly, for the whole of 2021 Mrs Singh had been telling first Mr Rance, then Mr Lowman, then Mrs Grimes, first that she was not going to do anything other than admin work from room 211 in Basingstoke, and then that she felt unable to come to work at all.
75. Mrs Grimes came to the (inevitable) conclusion that Mrs Singh was unlikely to return to satisfactory attendance within a reasonable period of time, and having followed all the necessary procedural checks¹⁷, that Mrs Singh's employment would have to be ended.
76. Mrs Grimes informed Mrs Singh of this on 29 April 2020.
77. The civil service has a compensation scheme for those whose

¹⁴ Minutes at 205 et seq

¹⁵ Email 22 April 2020, page 214

¹⁶ 27 April 2020 page 215

¹⁷ 217 et seq

employment ends in this way. It is part of the pension scheme. It is called Compensation for Efficiency Departure Compensation. The compensation is to make up for the diminution in pension caused by leaving. The way it is calculated is not germane: it is an arithmetic and actuarial calculation done by the pension trustees. The decision maker decides how much of that compensation the person being dismissed is to receive, expressed as a percentage, from 0 – 100%, depending on how engaged the employee has been.

78. Mrs Grimes noted that Mrs Singh had not taken up counselling or stress risk assessments, but decided (with considerable insight) that this was because of her mental health issues of anxiety and depression and was therefore not deliberate. She awarded 100% of the possible compensation. The pension trustees set the amount, and Mrs Grimes was unable to say how long it would take them to do so.
79. The letter of dismissal dated 29 April 2020¹⁸ set out the reasons and gave 10 days to appeal, save in connection with the compensation, for which the appeal could be made 10 days after she was notified of the amount, and that an appeal about the amount had to be made to the pension fund. This is confusing, for since Mrs Grimes had awarded 100% there was nothing to appeal. Mrs Singh did not appeal her dismissal, which the Tribunal finds she was expecting, and did not consider unfair. She replied to Mrs Grimes on 30 April 2020¹⁹:

“I feel sad to say that after working for nearly thirty years in the department that my job will end this way. May be it was for the best, and I don't know what else I could have done under the circumstance.”

80. The application for the compensation payment was notified to Mrs Singh on 19 August 2020. She thought it was low. This is because she was within three years of being able to retire on full pension at 60 (as she had been in the Civil Service so long), and so the amount is tapered.
81. Following this she sought advice from her trade union representative (to whom she had also spoken after the decision letter was received). She had not intended to bring any Employment Tribunal claim, as she thought the compensation payment would be greater than it was. She asked him about bringing a claim. He told her she was out of time. She contacted Acas on 29 August 2020, got the certificate on 01 September 2020 and issued this claim on 25 September 2020.

Conclusions

82. The Tribunal's findings can be summarised thus:
- a. Mrs Singh had significant physical health problems which needed to be addressed by physical alterations to her workstation and careful choice of office.

¹⁸ 227-230

¹⁹ 231

- b. Most of that had been done by August 2019, and it was all done by December 2019.
 - c. The only thing that was not done was to provide a computer program which automatically adjusted screen brightness, but Mrs Singh was able to do that manually whenever she felt the need (the 27" monitor was not an ergonomist's recommendation, and Mrs Singh did not want it).
 - d. For the whole of 2020 the issue for Mrs Singh was psychological. She could not face seeing customers. She did not want an office on the ground floor for that reason. She did not want an office on the 1st floor perceiving likely hostility from staff there. There is no evidence that this was, in reality, likely.
 - e. Mr Rance and Mrs Grimes did all they could.
 - f. Dismissal was inevitable. Mrs Singh was not going to be coming back to work.
 - g. Mrs Singh had no intention of bringing a claim until she got the compensation payment notified to her.
 - h. She was able to bring a claim had she wished: there is no medical evidence that she was not, and her own oral evidence was unconvincing on this point.
 - i. It took from 19 August 2020 to 25 September 2020 for her to issue the claim.
 - j. The compensation payment cannot be discrimination. It is entirely arithmetic. Mrs Grimes awarded 100% of whatever that sum turned out to be – there is no unfavourable treatment.
 - k. Mr Rance and Mrs Grimes were exemplars – they followed the processes to the letter, and in the right spirit, with care for Mrs Singh. The policies they followed were fair.
 - l. The dismissal was at the start of the first lockdown, but working from home was never in anyone's contemplation.
83. It follows that there was nothing that could be said to be discriminatory after the end of 2019. The claim was brought in late September 2020. It is a long way out of time.
84. Mrs Singh was capable of bringing her claim at all times. She accepted that her mental health was worse in August 2020 than before, but she was able to bring her claim.
85. There was no fact unknown to her at any material time. She had a trade union representative to whom she spoke throughout the process. She did not say she was unaware of the time limit.

86. It was a conscious decision not to claim, and she would not have claimed if the compensation payment had been as large as she was expecting.
87. Applying the case law to these circumstances, it is obvious that the claim must be dismissed as out of time. The length of, and the reasons for the delay are the most important factors. It was a substantial delay, and the reasons are set out above. It would not, in these circumstances be just and equitable to extend time.
88. The delay in this Tribunal hearing is far longer than the delay in bringing the claim, and there is limited prejudice to the Respondent in defending the claim. However looking at the reason for the delay - that, while knowing everything, and not being so ill that she could not do so, she did not intend to claim until dissatisfied with the compensation payment - this claim must be dismissed.
89. Having heard all the evidence in any event no part of the claim would succeed. The disabilities were in existence and known to the Respondent at all times.
90. The S15 claim:
- a. Sick pay and reasonable adjustments arise from the physical disabilities.
 - b. The sick pay policy is not unfair – 6 months full pay and 6 months half pay in a rolling 4 year period. There was a period, July-September 2019 when there was a delay in getting equipment. Mr Rance had this as extra full pay absence, as it was not the Claimant's fault. Subsequently this was recouped by the payroll department, being thought to be an error. Mrs Singh did not raise a complaint about this. It was not connected with disability, simply a mistake.
 - c. Mrs Singh accepted that a new DSE assessment was needed for each new desk, periodically in any event, and whenever her physical health changed, as it did. She was moved around, but largely to try to find a solution for her.
 - d. Dismissal and the compensation payment are covered above.
 - e. The actions throughout were proportionate means of achieving the legitimate aim of efficient management of the workforce.
91. The reasonable adjustments:
- a. Those relating to equipment were all made, as set out above, by December 2019, and most by August 2019. There were regrettable delays, but there was, in the end, no failure to provide reasonable adjustments;
 - b. It was not a reasonable adjustment to put Mrs Singh permanently in

room 211. Hers was a customer facing role, and customers were not able to go to the 2nd floor. It was reasonable to put Mrs Singh in a room on the ground or 1st floor. The rooms offered to her were suitable.

- c. It was reasonable for her to undertake face to face work with customers. This was her job. There was no admin work for her to do in Basingstoke. She would not go anywhere else.
 - d. None of the physical conditions were made worse by the DWP. As her condition changed the reasonable adjustments needed were changed in response.
 - e. There is no detail or credible evidence of any bullying or harassment.
 - f. There is no evidence of loss of confidence and a decline in mental health being due to any improper action or inaction by the DWP.
92. The complaints about lighting are rooted in a genuine difficulty for Mrs Singh with iritis and migraines. Where lighting was too bright, maintenance removed bulbs on request. The offices offered to Mrs Singh were ones where she would have control over the level of illumination.
93. This explanation is brief, because the claim must be dismissed on the jurisdictional out of time point.
94. It is clear that the claims would all fail on their merits. Mr Meiring sought to establish a chain of causation for every aspect of the claims back to Mrs Singh's physical ailments, such that he submitted that the mental health problems were themselves the result of a failure to make reasonable adjustments or were within S15. The Tribunal finds that, on the contrary, Mrs Singh's objections to the 1st and ground floor offices were because of her mental health problems and lack of confidence in seeing customers, not the result of discriminatory actions.

Employment Judge Housego
Date 25 March 2022

Judgment & reasons sent to parties: 8 April 2022

FOR THE TRIBUNAL OFFICE