



EMPLOYMENT TRIBUNALS

Claimant

Ms Rebecca Owen

v

Respondents

1. Mr Paul Wright
2. London Borough of Enfield

Heard at: Watford (by CVP)

On: 17, 18, 19, 20, 21 October 2022
& 28 October 2022 (Deliberation)

Before: Employment Judge Alliot (sitting at Watford)
Mr D Bean
Mr A Scott

Appearances

For the Claimant: In person
For the Respondent: Mr Fergus McCombie (Counsel)

RESERVED JUDGMENT

The Judgment of the Tribunal is that:

1. The claimant's claim of disability discrimination is well founded.

REASONS

Introduction

1. The claimant was employed by the second respondent as a social worker within the Children's Services Referral and Assessment Team on 3 November 2017. From 6 January 2020 the first respondent was her team leader.

Claim 3305803/2021

2. At the time of the first claim, 3305803/2021, the claimant remained employed by the second respondent. By a claim form presented on 12 April 2021, following periods of early conciliation from 4-15 March 2021 (first

respondent) and 18-22 March 2021 (second respondent) the claimant brings complaints of disability discrimination.

Claim 3303495/2022

3. The claimant resigned her employment on 12 November 2021 giving two months' notice and it is agreed that her EDT is 11 January 2022. By a claim form presented on 21 March 2022, following a period of early conciliation from 15-17 March 2022, the claimant brings a complaint of unfair dismissal (constructive). Although the claim form names both the first and the second respondent, this claim must fail as against the first respondent (Mr Paul Wright).
4. The two claims were consolidated and ordered to be heard together by Employment Judge Wyeth at an open preliminary hearing heard on 28 April 2022.

The issues

Claim no. 3305803/2021

5. At the outset of this hearing it was not clear if the claimant was bringing a claim for s.15 Equality Act Disability Discrimination. The procedural position seems to be as follows:
6. A provisional list of issues was recorded by Employment Judge Lewis at a preliminary hearing heard on 9 December 2021. The following was recorded by Employment Judge Lewis:-

“1. The Complaints

1.1 The claimant is making the following complaints:

1.1.1 Disability discrimination by way of failure to make reasonable adjustments.

1.1.2 Subject to the issue of whether such claims have been withdrawn and can now be re-included, and as to whether permission to amend would be required to include such claims:

1.1.3 Harassment related to disability

1.1.4 Discrimination by reason of something arising from disability

(The above Order requires the claimant to clarify whether she also pursues a claim of direct disability discrimination)

2. The Issues

Subject to the issue of whether the claims other than in relation to failure to make reasonable adjustments have been withdrawn and whether they can now be reintroduced, and as to whether permission to amend would be required, the issues the Tribunal will decide are set out below.

3. Time Limits

- 3.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 5 December 2020 in the case of Mr Wright, and 19 December 2020 in the case of the Council may not have been brought in time.
- 3.2 Were the discrimination and harassment complaints made within the time limit in s.123 of the Equality Act 2010? The Tribunal will decide:
- 3.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
- 3.2.2 If not, was there conduct extending over a period?
- 3.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
- 3.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
- (i) Why were the complaints not made to the Tribunal in time?
- (ii) In any event, is it just and equitable in all the circumstances to extend time?

4. Disability

[Not set out here as the issue has been determined]

5. Reasonable adjustments (Equality Act 2010 s.20 & 21)

- 5.1 Did the respondent know or could they reasonably have been expected to know that the claimant had the disability? From what date?
- 5.2 Did the respondents fail to provide auxiliary aids, the lack of which put the claimant at a substantial disadvantage compared to someone without the disability? The claimant's case is that the following are auxiliary aids that ought to have been provided in relation to her disability:
- 5.2.1 Provision of a large monitor (the claimant contends that she was told she would have to pay for this herself).
- 5.2.2 Provision of a portable printer/wireless inkjet printer.
- 5.2.3 Provision of a screen overlay – blue.
- 5.2.4 Work related dyspraxia strategy coaching.
- 5.2.5 Effective provision of other assistive software which the second respondent provided but which required time off for assistive software training. The claimant states that three hour appointments were needed but that she was unable to undertake this due to the work demands placed upon her and the difficulty of coping with them due to

her dyspraxia and that without this training she could not benefit from the equipment provided.

- 5.3 A “PCP” is a provision, criterion or practice. Did the respondents have the following PCPs:
 - 5.3.1 The requirement to fill in car mileage and overtime forms to make car mileage and overtime claims.
 - 5.3.2 The way of working referred to as “collective process” which was introduced and applied from on or around 2 November 2020, including the daily use of spreadsheets which needed to be accessed and new forms, protocols and generation of a large volume of emails, and Mr Wright telling everyone that they would need to “crack on” and unless it was an emergency he would be busy.
 - 5.3.3 Focusing on negatives in Mr Wright’s supervision meetings with the claimant.
 - 5.3.4 The practice of requiring attendance at a 9am team meeting and the imposition of a heavy workload without time off for training.
- 5.4 Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant’s disability in that it was more difficult for the claimant to cope because of her dyspraxia?
- 5.5 Did the respondents know and could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?
- 5.6 What steps could have been taken to avoid or ameliorate the disadvantage? The claimant suggests:
 - 5.6.1 Support/assistance with car mileage and overtime forms
 - 5.6.2 In relation to the new collective process:
 - (i) Reversion to the previous way of working before introduction of the new collective process:
 - (ii) Offering the claimant the chance to move to another team so she could continue working in the way she had previously.
 - (iii) Provision of separate information as to the claimant’s own tasks, collected together for each family, such that the process would have the effect of a lot of emails from the other social workers coming into the claimant’s inbox.
 - (iv) Provision of hard copies of documents.
 - 5.6.3 Alleviating the workload on the claimant and affording time off for training/coaching.
 - 5.6.4 Starting supervision meetings with positives and/or constructive comments rather than with negatives.

5.7 Was it reasonable for the respondents to have to take those steps and when?

5.8 Did the respondents fail to take those steps?

6. Harassment related to disability (Equality Act 2010 s.26)

[Although the harassment related to disability claim has been struck out upon withdrawal, the treatment alleged was recorded as being the unfavourable treatment in the discrimination arising from disability claim and so the same is recited here.]

6.1 Did the respondents do the following things:

6.1.1 In September 2020, at Charles Babbage House, Mr Wright stating to the claimant she could not have a printer and justifying this on the basis that he said she had left a confidential paper out.

6.1.2 On the same day in September 2020 Mr Wright came off the phone and said someone had rung through wanting to make a complaint about a worker and asked the claimant if that was her, and when she was asked what it was about he said it did not matter as it was being dealt with.

6.1.3 On the same day in September 2020 later on the same day when the claimant was on the phone to a mother to arrange a home visit Mr Wright kept saying she had got her name wrong and that was why she was angry (whereas the mother had mental health issues and was known for being very angry) and that Mr Wright made many unsupportive responses about the case.

6.1.4 In October or November 2020, in response to the claimant expressing her need for support with mileage forms, Mr Wright stating that the claimant did not like “admin” (which the claimant states carried the implication that she could not be bothered to do it) when Mr Wright knew that it took the claimant longer to do things due to her dyspraxia and was struggling with the paperwork and getting behind with car mileage claims.

6.1.5 The introduction by Mr Wright, from on or around 2 November 2020, of a new way of working, referred to as “collective process”, involving daily use of spreadsheets and an associated build up of new forms, protocols and large volumes of emails, which was difficult for the claimant to cope with due to her dyspraxia.

6.1.6 Mr Wright dismissing questions the claimant asked about the new way of working and the forms and protocols, and in response to her queries threatening to put the claimant on a formal performance process.

6.1.7 Mr Wright setting unrealistic tasks for the claimant to finish each day and saying he was going to go to HR and put the claimant on a formal performance process if the task was not done.

6.1.8 Mr Wright making comments in emails about the claimant’s work such as “another mistake again” and “at last you are showing some interest in escalating cases for families”.

- 6.1.9 Mr Wright saying to the claimant in an online supervision meeting in November 2020 that he was only going to talk about negatives.
- 6.1.10 Mr Wright putting the claimant on mute at a team meeting on 28 November 2020 and then praising the claimant's colleagues but not acknowledging the work the claimant had been doing.
- 6.1.11 Putting the claimant on mute on one further team meeting, then taking her briefly off mute towards the end of the meeting and then placing her back on mute after she said: "Careful he will put you on performance".
- 6.1.12 In December 2020, when the claimant had gone off work sick, saying to the rest of the team: "You will all go on to bright and better things".

7. Discrimination arising from disability (Equality Act 2010 s.15)

- 7.1 Did the respondents treat the claimant unfavourably in any of the ways set out at paragraph 6.1 above?
- 7.2 Was the unfavourable treatment because the claimant took longer to complete tasks and process information and needed equipment, and was this something arising from the claimant's disability?
- 7.3 Was the treatment a proportionate means of achieving a legitimate aim (to be identified within the respondent's amended grounds of resistance)?
- 7.4 The Tribunal will decide in particular:
 - 7.4.1 Was the treatment an appropriate and reasonably necessary way to achieve those aims?
 - 7.4.2 Could something less discriminatory have been done instead?
 - 7.4.3 How should the needs of the claimant and the respondent be balanced?
 - 7.4.4 Did the respondents know or could they reasonably have been expected to know that the claimant had the disability? From what date?

8. Remedy for discrimination...

- 8.1 Should the Tribunal make a recommendation that the respondents take steps to reduce any adverse effect on the claimant? What should it recommend?
- 8.2 What financial losses has the discrimination or harassment caused the claimant?
- 8.3 What injury to feelings has the discrimination or harassment caused the claimant and how much compensation should be awarded for that?"

7. In the case summary Employment Judge Lewis stated:

- "10. In the course of clarifying the claimant's complaints, and having been through the different types of claims of discrimination, it was apparent that

although the claimant refers to “bullying and harassment” she put some of her claims also as being discrimination arising from disability. If the respondents contend that those claims require permission to amend, that issue and whether permission should be given will also need to be addressed at the preliminary hearing.”

8. Accordingly, Employment Judge Lewis directed that an OPH be held to determine a number of issues including:-

“2.4 Any application for permission to amend the claim.”

9. On 4 February 2022 the respondent filed and served its amended response with a covering letter stating:

“The claimant is required to seek permission to amend her claim to introduce these additional claims.”

10. The OPH was originally listed for 28 April 2022 before Employment Judge Wyeth but could not go ahead. However, in his reasons Employment Judge Wyeth recites that in her constructive dismissal case the claimant relies upon many of the allegations against Mr Wright set out by Employment Judge Lewis under her harassment claim.

11. The OPH was heard on 7 and 8 July 2022 by Employment Judge Warren. The claimant was found to be a disabled person by reason of dyspraxia and her claims of harassment related to disability were dismissed upon withdrawal. In dismissing the harassment claims, Employment Judge Warren relied significantly on the fact that her draft list of issues, which only advanced a claim of failure to make reasonable adjustments, was produced with, and on, legal advice. He stated: “The respondents will still have to answer harassment allegations, but in the context of a complaint of constructive dismissal...” In dealing with the application for strike out and/or deposit orders Employment Judge Warren only dealt with the claims of constructive dismissal and failure to make reasonable adjustments. He did not address any s.15 Disability Discrimination claim. Employment Judge Warren did not deal with any application to amend, presumably as one had not been made.

12. During the course of these proceedings the claimant has made an application to amend on 22 January 2021 to include a claim of constructive unfair dismissal in the first claim. Hence, prior to the OPH hearings she was aware of the ability to apply to amend her claim but, despite the contents of employment Judge Lewis’s case management order, did not do so as regards any s.15 Disability Discrimination claim.

13. The claimant stated before us that she did wish to pursue such a claim.

14. We have examined closely the original claim form submitted by the claimant. The claimant expressly pleaded:-

“At this time Mr Paul Wright began to bully, harass and discriminate me threatening to go to HR and put me on performance whenever I raised my concerns.”

15. The claimant was given an opportunity to expand on her allegations against Mr Wright and those allegations have been captured within the case summary of Employment Judge Lewis. The respondent has therefore been on notice of the precise allegations made and the fact that they would be relied upon in the claimant's constructive unfair dismissal for some time.
16. We reject the contention of Mr McCombie that the respondent would be prejudiced by allowing these claims to proceed as s.15 Disability Discrimination. As recited, the respondent has been on notice of the specific allegations made which the respondent has had to deal with within the context of the constructive unfair dismissal claim. We do not consider that the respondent has been prejudiced by being unable to deal with the potential justification of any such discrimination.
17. In our judgment the claimant does need an amendment to characterise her claims as s.15 Disability Discrimination but that such an amendment constitutes mere "relabelling" and does not introduce a new factual claim. Accordingly we have treated the claimant as applying to amend her claim to include the claim for s.15 Disability Discrimination as set out in the Case Management Summary of Employment Judge Lewis and we have granted it.

The law

18. S.20 of the Equality Act defines the duty to make adjustments as follows:

"20. Duty to make adjustments

(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.

...

(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."

19. A relevant matter is any matter concerning employment by the employer.
20. As per the IDS Employment Law Handbook "Discrimination at Work" at 21.13:

"It is clear from s.20 that, in determining a reasonable adjustments claim, a Tribunal must consider the nature and extent of the substantial disadvantage relied on by the claimant; make positive findings as to the state of the respondent's knowledge of the nature and extent of that disadvantage; and assess the reasonableness of the

adjustment (ie “step”) that it is asserted could and should have been taken in that context.”

21. The duty is upon the employer.
22. Substantial disadvantage is more than minor or trivial.
23. As per the IDS Handbook:-

“Knowledge of disadvantage

Even where an employer knows that an employee has a disability, it will not be liable for a failure to make adjustments if it “does not know, and could not reasonably be expected to know” that a PCP, physical feature of the workplace or failure to provide an auxiliary aid would be likely to place that employee at a substantial disadvantage – see para 20(1)(b), schedule 8 Equality Act.”

24. Concerning ‘other factors’, as per the IDS Handbook:-

“

- Timing of adjustment – a Tribunal may take into account whether relevant adjustments were carried out in a timely manner. In Duckworth v British Airways plc ET case no. 330470/11 the Tribunal found that a delay of six months in implementing the transfer of a disabled member of the cabin crew from long haul to short haul flying duties was unreasonable. This amounted to a failure to comply with the duty to make reasonable adjustments even though the employee was eventually transferred.”

25. S.15 Disability discrimination.

As per the IDS Handbook:-

“In Secretary of State for Justice and another v Dunn EAT 0234/16 the EAT (presided over by Mrs Justice Simler, President) identified the following four elements that must be made out in order for the claimant to succeed in a s.15 claim:

- There must be unfavourable treatment.
- There must be something that arises in consequence of the claimant’s disability.
- The unfavourable treatment must be because of (ie caused by) the something that arises in consequence of the disability, and
- The alleged discriminator cannot show that the unfavourable treatment is a proportionate means of achieving a legitimate aim.”

26. Constructive unfair dismissal

26.1 Was the respondent in fundamental breach of the claimant’s contract of employment and/or did the respondent breach the so called “trust and confidence term”, ie did it, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously to

damage the relationship of trust and confidence between it and the claimant?

26.2 If so, did the claimant affirm the contract of employment before resigning?

26.3 If not, did the claimant resign in response to the respondent's conduct (to put it another way, was it a reason for the claimant's resignation – it need not be the reason for the resignation)?

26.4 If the claimant was dismissed what was the principal reason for dismissal and was it a potentially fair one in accordance with s.98.1 and 2 of the Employment Rights Act 1996.

The evidence

27. We were provided with a hearing bundle of 1,017 pages. We have not been helped by the bundle being arranged in categories and not chronologically

28. In addition we had witness statements and heard evidence from the following:

28.1 The claimant (two statements)

28.2 Mr Paul Wright, the claimant's team manager and second respondent

28.3 Ms Linda Read, interim services manager within the People Department at the second respondent

28.4 Ms Julie Spillman, service management & governance asset lead within the digital services team.

The facts

29. Ms Owen has a Degree in Psychology and a Masters in Social Work. She is clearly an intelligent and articulate individual. She was awarded a Distinction in her Masters.

30. The claimant was at all material times a disabled person within the meaning of the Equality Act by reason of dyspraxia. In his judgment, Employment Judge Warren set out the adverse effects her disability had on her day to day activities as follows:-

“She could not organise filing her own emails, personal or work related.

She found it hard to concentrate if there were noises around her.

She found it hard and time consuming to complete forms, not just her mileage forms at work, but any sort of form, including in her personal life. She had to have a hard copy and to have family help her.

She had difficulties accessing and using Google Maps, WhatsApp or saving numbers to her phone.

She found it difficult to navigate her phone.

It took her a long time to compose simple text messages to her friends.

She had the same problem composing emails.

She struggled to remember and follow standard scripts in how to answer the phone at work.

She found herself with clumsy hands sometimes when using her phone or writing with a pen. Her handwriting sometimes became scruffy.

She found driving, in particular finding her way to somewhere she is not familiar with, a challenge.

She struggled to differentiate right from left.”

31. The respondents accept that at all material times they knew the claimant had the disability of dyspraxia.
32. The claimant was employed on 3 November 2017 as a full-time social worker. In her employment starter form she disclosed her disability as “mild dyspraxia”.
33. A pre-employment OH assessment dated 6 September 2017 suggested a display screen assessment.
34. On 8 November 2017 the claimant was referred to OH.
35. As will become apparent in this decision, we have relied significantly on the claimant’s supervision records in our assessment as to what happened and when. Whilst these documents were not produced by the claimant and, from 2020 were written by Mr. Wright, we nevertheless find them to be both fair and accurate records of the dealings between the claimant and her line managers. They are contemporaneous and at the time of creation litigation was not contemplated.
36. We have the claimant’s first supervision record on 27 November 2017. This records that a workstation assessment had been requested.
37. The claimant was assessed on 24 January 2018. It was a telephone assessment. The workplace assessment report was sent to the respondent on 22 February 2018. Her workplace difficulties included writing, getting her ideas down, reading and creating documents. A range of auxiliary aids was recommended.
38. In her first witness statement the claimant states:-

“When I began working for the Borough of Enfield Council during my assisted year (AYSE “Assessed Supported Year in Employment”) in 2017 I was told by my then manager that I did not need the equipment for work because I had passed the coursework and had a Masters Distinction in social work and my standard of work was good. Eventually after my AYSE I was provided some equipment...”
39. We have not been told what equipment was provided and when.

40. The claimant would have completed her AYSE towards the end of 2018. As a decision had been made not to provide the equipment so, in our judgment, time for bringing a claim arising out of that decision began to run as of then. Any claim arising is therefore nearly 3 years out of time. In our judgment it would not be just and equitable to extend time for such an old claim.
41. The claimant goes on to refer to new laptops rendering her existing software redundant, presumably some time in 2019.
42. The next supervision record we have is dated 23 April 2019. By this time, after a series of locums, the claimant's team leader was Ms Liz Forde. Concerns were raised about the claimant's case notes and visits not being completed or being just one line and the need for general improvement in her written work. The claimant disclosed her dyspraxia and it was agreed to chase a further assessment with HR.
43. The next supervision record is dated 25 May 2019. The following is recorded:-

“She [the claimant] shared that she completed a MA in Social Work and shared that her learning needs were in relation to note taking, starting sentences, condensing simple notes. She [the claimant] told me this does not affect her ability to complete assessments and her decision making – she shared that her needs were more visual.”
44. It would appear that Dragon software had already been requested but the claimant could not say why she had not progressed the matter.
45. The next supervision record is dated 9 July 2019. A range of performance issues were discussed. Some, but in our judgment not all, were attributed to the claimant's difficulties with record keeping due to her dyspraxia. Others were unrelated, for example where the following is recorded:-

“The risk assessment of cases again is not something I can address under the support requested for dyspraxia – this is a social worker skill that is to be met despite any disability and ensuring she shares her concerns of families with me – again is one of her core skills.”
46. It is clear to us that at that time a number of support measures were in place, such as advance practitioner support on visits and meetings, providing performance data weekly, templates for visits, case summaries and continuity.
47. We note that Ms Ford was raising as many performance issues as Mr Wright did in due course but no complaints have been made by the claimant about Ms Ford or any perceived negativity in her management.
48. On 12 August 2019 Ms Ford referred the claimant to Occupational Health. The referral states under performance:-

“I have managed Rebecca since February this year – and remain concerned for her performance which she believes is as a direct result of her Dyslexia [sic] condition.

I am concerned for her ability to work with difficult clients – she particularly reports a fear of working with fathers where domestic abuse is a feature. She does not read through case files and my management oversight – she states this is also due to her Dyslexia. She tends to over-assess the clients – returning for multiple visits. Her recording is a concern – she tells me she forgets to write her case notes and visits on the system, sharing that she needs things in a visual form in order for her to perform. I have suggested various ways of ensuring she remembers to complete the recordings by completing to-do lists leaving them on her desk therefore a visual – she has not managed to progress this – again stating that this is one of the features of her Dyslexia.”

49. On 16 September 2019 an OH reported as follows:-

“Ms Owen informs me that she finds it difficult to start writing sentences fluently. She will have to think about it and it takes her a long time to write notes. She informs me that a Dictaphone would be very helpful to her to make notes on a regular basis. She also informs me that she would like to have hard copies at her workplace if operationally feasible. She would also like to have speech recognition software (Dragon) loaded on to her computer if operationally feasible as soon as possible. She would also benefit from having a speech to text software installed on to her computer if operationally feasible, as soon as possible. She informs me that she doesn't have any problems combining moments into a sequence or in remembering moments in a sequence as such.”

50. Further:

“Occupational health opinion

... In my opinion Ms Owen is currently fit for her regular duties and hours with some workplace adjustments if operationally feasible. In my opinion, she is likely to benefit from having a Dictaphone to make notes and also to have Dragon software installed on to her computer as soon as possible, if operationally feasible.

Ms Owen would also benefit from having some training in filling in the overtime forms.”

51. The claimant was referred to the Access to Work Scheme.

52. The next supervision record is dated 14 October 2019. This records as follows:-

“The OH assessment was reviewed, and areas discussed in detail. Rebecca shared that she had already contacted disability employment adviser to complete a detailed assessment of her workspace.

She told me she was not assessed as having a learning disability – she just felt she needed Dragon to enable her to complete her work within timescales.

I reiterated that Dragon would not address the concerns in relation to analysis, risk and general anxiety in relation to her engagement with clients – however agreed to support her in progressing the tools required moving forward if she felt this would improve her performance.

I agreed to chase the original request for Dragon but also asked her to chase this with Sylvia.”

53. During that supervision a number of performance issues were raised with the claimant. Again, in our judgment, some appear to be directly related to her dyspraxia and some not.
54. The notes under performance conclude as follows:-
- “The supervision ended in a difficult place due to Rebecca being of the view that a request to complete her work prior to going on leave was not acceptable.
- Rebecca then shared with me that she was considering moving to another part of the service.”
55. Finally, under “AOB” the following is recorded:-
- “Performance plan to be drawn up during the next supervision.”
56. The DWP Workplace Assessment Report is dated 4 December 2019. This recommended the following auxiliary aids:-
- Dragon professional software
 - Claro read pro-software
 - Inspiration mind mapping software
 - Encrypted Dictaphone
 - Blue overlay
 - Portable printer
 - A headset
 - 3 x 2 hour work related dyspraxia coaching
 - 5 x 3 hour assistive software training
 - Access to ‘Remploy’ (The claimant appears to have been already made aware of mental health support through the Access to Work scheme)
57. The respondent received notification of an Access to Work grant on 16 December 2019 of £1,736 towards the £3,036 total cost.
58. Mr Paul Wright began as the claimant’s team leader on 6 January 2020.
59. Mr Wright observed the claimant’s practice on 8 January 2020. Areas for improvement were identified and she was given feedback for which she is recorded as thanking him as it had not happened before. It is notable that the report begins with six strengths before going on to areas for improvement. The following is also recorded:

“Rebecca and I had a discussion about her dyspraxia, which means that some tasks do take her longer and that she has had an occupational health assessment that states she needs equipment and software to help. Paul explained that he will chase this up as soon as possible to support Rebecca.”

60. The next supervision record is dated 9 January 2020. There is a reference to “mild dyspraxia – impacts with things taking longer”. It is also recorded that Paul agreed to chase up the equipment being purchased as a priority for Rebecca.
61. At that time the claimant had 44 children cases which Mr Wright recorded as very high and needed to be addressed straight away.
62. Mr Wright gave us evidence that, whilst Enfield did not only work on case numbers, generally social workers would have 25 cases. Obviously each case would involve variable amounts of work.
63. On 10 January 2020 Mr Wright sent an email chasing up the provision of equipment and asking what needed to be done.
64. The claimant was off sick from 14 January to 2 February 2020 and then took annual leave until 12 February 2020.
65. The next supervision was on 19 February 2020. At that time the claimant had only 3 cases. The claimant told us they were complex cases.
66. The following is recorded:-

“DWP Report

Rebecca has progressed with this and now has her funding secured. The DWP are progressing this and buying the equipment. I explained that this is all employee led and therefore it needs to come from her. I explained that I would be willing to make reasonable adjustments in terms of her workload such as the phasing in of work and giving clear direction around tasks and expectations.

Rebecca hasn't done any car mileage since August and also hasn't claimed any overtime...

The DWP tools will support Rebecca in completing these tasks.”

67. At that time the claimant had 3 cases. Although the claimant told us that they were complex cases, this obviously represented a significant reduction in her workload. Performance issues were discussed. In her oral evidence the claimant accepted that she had a lower workload and that she had been given clear directions about tasks and expectations. It is fair to say that the supervision record includes the following:-

“Rebecca feels that there are a lot of positives that haven't been noted. I explained that I was pleased that some of the tasks that Rebecca completed were good, however I wanted her output to be higher and complete more tasks.”

68. The next supervision record is dated 19 March 2020 but nothing of relevance to this claim was discussed. It was principally concerned with the pending Coronavirus situation.
69. On 23 March 2020 the Prime Minister announced the National lockdown. This obviously impacted on all the parties' working arrangements. As social workers, the claimant and the first respondent were key workers. The claimant's evidence is that they worked from home unless coming in for duty every six weeks. However, the second respondent's office remained open and the claimant could go in if required at any time.
70. In the office the claimant was able to work at a large monitor. This facilitated her reading script. In addition, in the office, the claimant was able to print out documents which facilitated her reading them.
71. Although the work assessment had recommended a portable printer, the second respondent's remote working ICT user guide provides as follows:

“Data Protection

Whilst working from home it is important that all employees ensure the confidentiality of all information is always maintained.

...

No paperwork of a sensitive or confidential nature should be taken home or printed from home and any data incidents must be reported immediately, through the ICT service.”

72. The second respondent's Information Governance Remote Working document provides:-

“

- **DO NOT** request for printers for printing work at home.”

73. The claimant suggested that social workers regularly took confidential paper home but we find that that was clearly in breach of the second respondent's express data protection requirements and responsibilities and should not have happened.
74. There was some confusion as to when it was that the claimant had requested a printer and the provision of a printer had been declined. It is a fact that the claimant was not supplied with a printer. We find that the failure to supply the claimant with a printer was a proportionate means of achieving a legitimate aim. The legitimate aim was the protection of sensitive data in line with the second respondent's policies. If the claimant wanted to read hard copies of documents then she could go to the office and print them off there.
75. The evidence from Ms Spillman was that the Dictaphone, headset and screen overlay were delivered to the Council on 24 March 2020.

76. The next supervision record is dated 21 April 2020. A number of issues were covered. The claimant was having some domestic issues with childcare and moving house. There is a record of a complaint being made regarding the claimant's handling of a case. Other performance issues were raised.
77. On 30 April 2020 Mr Wright sent an email to the claimant requesting completion of five overdue assessments. At 19:12 hours on 30 April the claimant replied that she had some ICT issues. In her oral evidence the claimant told us that she was having to work in the evening and was struggling against what she characterised as threats of being placed on a performance improvement plan.
78. The next supervision record is dated 19 May 2020. In the initial discussion the following is recorded:-
- “First time had a low case load that is manageable. Rebecca feels like it is manageable. Rebecca loves her job at the moment as she feels like she can get through the cases and complete her work and make a difference to children. She has breathing space. TM [Mr Wright] explained that Rebecca has been protected slightly.”
79. Once again a number of performance issues were raised. One involved a 12 year old girl who had reported to the claimant that she had had chilli powder rubbed in her eyes by her mother. This was explored in oral evidence before us. The performance issue was that the claimant had only informed Mr Wright of it during a supervision one month after it had happened. This was a concern to Mr Wright as he considered that the police should have been called and the matter escalated there and then rather than delayed. Mr Wright raised this issue as an example of a performance issue relating to the claimant's judgment rather than any dyspraxia related problems. We agree. A constant theme in this case is that performance issues raised involved not only dyspraxia related issues but also problems unrelated to dyspraxia
80. The following is also recorded:-
- “Paul explained that if Rebecca's key performance indicators did not improve then we would consider the performance process. This will be reviewed every week in supervision and then again formally after four weeks.”
81. On the back of that the action column recorded that the claimant and Mr Wright were to have weekly supervision on cases.
82. Under AOB the following is recorded:-
- “Equipment – Paul is still chasing this. Paul will copy Rebecca into emails so that she can chase up where it is. It appears there is an impact on the supply chain of Covid-19.
- Paul is chasing Florah about whether LBE could provide a solely administrative role during the Covid-19 restrictions. Florah is looking into this.”

83. We have a redacted email chain concerning the provision of equipment. On 23 April someone appears to be chasing the equipment. On 19 May 2020 it is probably Mr Wright requesting an update on the situation concerning equipment. On 21 May 2020 the ICT service officer sent an email, probably to Mr Wright, saying as follows:-

“So... we have the following items ready and prepped for collection from the ICT stores at the Civic Centre.

...

- Screen overlay – blue
- Olympus Dictaphone
- Double headset – to replace broken one
- Dragon naturally speaking software has been installed on to Rebecca’s device and training has been procured. I have passed both yours and Rebecca’s email address to the training company... so they will be in touch to arrange the training for Dragon and strategy coaching.

I am still waiting back to hear about the other two items of software – mind mapping and Claro Read. We need to ensure they are compatible with our Win10 platform before they can be procured and installed.”

84. It would appear that on 21 May that email was forwarded to the claimant by Mr Wright who stated:-

“Please can you liaise with xxx to pick up your equipment?”

85. We find that the Dragon software had been installed on the claimant’s computer on 26 March 2020. We find that the Dictaphone, headset and overlay were available for collection from 21 May 2020. We find that the software training and dyspraxia strategy coaching had been arranged and were available from 21 May 2020. We find that in all probability the printer had already been refused to the claimant on the grounds of the respondent’s remote working policy. Hence, of the ten recommendations by Access to Work, six were available by 21 May 2020. We have found that it was reasonable not to provide the printer. The claimant had already been referred to ‘Remploy’. This meant that only two items of auxiliary aids, namely the Claro Read Pro and Inspiration Mind Mapping remained outstanding as of that date. The reason they remained outstanding was their compatibility with the second respondent’s system needed to be checked.
86. We have considered whether the delay in the provision of the aids was a failure to make reasonable adjustments. Taking into account the problems clearly presented by the Covid lock down we have concluded that there was no such failure.

87. The next supervision record is dated 3 June 2020. As regards the equipment the following is recorded:-

“Equipment – Rebecca is still to pick up her equipment – when are you going to pick it up? Tomorrow. In terms of the equipment the training starts next Monday. The software is installed on the computer. Rebecca feels its outrageous that the equipment has taken so long. Rebecca is looking forward to having the equipment to support her moving forward. TM [Mr Wright] is hoping that this will make life a lot easier for Rebecca moving forward.”

88. The claimant accepted that the Dragon software had been installed but stated that it was not activated as she could not use it. We find this somewhat surprising as the claimant was clearly familiar with the Dragon software having used it previously. Nevertheless, she was to have training and did have training shortly thereafter.

89. We have been provided with a Personal Improvement Plan for the claimant dated 3 June 2020. Although Mr Wright referred to this as an informal Personal Improvement Plan, it appears somewhat formal to us. It is four pages long, detailed and has provision for all parties to sign it although the copy we have is unsigned. A number of required outcomes and levels of performance are set out which include, to a substantial degree, in relation to record keeping. It is recorded that the claimant had been provided with the means of procuring equipment to support her dyspraxia and that it was important that it was taken up. It is also recorded that the claimant had access to Dragon software to help her complete case notes and written work in a time effective manner.

90. The next supervision record is dated 9 June 2020. As regards the provision of equipment the following is recorded:-

“Rebecca has still not picked up her equipment. Rebecca was not able to do it because her daughter was unwell. Rebecca felt she could not pick up the equipment with her daughter in the car.”

And

Under performance management

“Went through the PIP template. TM [Mr Wright] raised that Rebecca has still not got her equipment which means she will not working optimum level. Rebecca explained that she will pick this up tomorrow.

All indications from supervision suggest that Rebecca is hitting all of the targets so far.”

And

Under training & development

“Rebecca has a lot of training with the equipment which will need prioritising.”

91. In her oral evidence, the claimant stressed that while she was hitting performance targets she was only doing so by staying up late and getting through it.
92. The next supervision record is dated 16 June 2020. Overall it is positive. It is noted that the claimant had started her training for her specialist equipment and that it was intense and three hours at a time.
93. The next supervision record is dated 23 June 2020. The following is recorded:-
- “Rebecca has handled the cases and it was manageable. Rebecca said that she felt that she had the space to prepare for going out. How are you getting on with new equipment and training? Another session on Friday. Rebecca still hasn’t been able to do this yet. Friday you feel that you can use it properly when the computer is able to pick up Rebecca’s voice.”
94. At that stage the claimant’s caseload was 19 which was recorded as being high with the expectation that it would come down quickly.
95. Quite apart from being on the informal Personal Improvement Plan, it is clear to us that Mr Wright was pushing for improvement in her performance. The following is recorded:-
- “TM [Mr Wright] explained that Rebecca should be working harder/smarter/faster.”
96. Under training & development the following is recorded:-
- “Rebecca has to prioritise your dragon software training to support working in a quicker and smarter way.”
97. The next supervision record is dated 2 July 2020. It is recorded that Mr Wright praised the claimant and in her oral evidence she accepted that Mr Wright did praise her sometimes. The PIP was discussed and it was recorded that the claimant did not have anything out of time in terms of her KPIs. This was said to be positive.
98. Under training & development the following is recorded:-
- “Rebecca is still completing her dragon software. Rebecca explained that she is practising her dragon software before she takes the next session. Rebecca is going to leave this for a couple of weeks.”
99. The next supervision record is dated 16 July 2020. The claimant is recorded as saying that her workload is comfortable and she feels okay. It is recorded that the claimant was being supported by a trainee dealing with her caseload. As usual, performance issues were raised. She had missed some KPIs but this was apparently due to ill health.
100. Under training & development the following is recorded:-
- “Dragon software training is still being practised. Rebecca thinks it alright – Rebecca needs to practise it more to get used to it.”

101. We have an email trail around this time. On 19 May 2020 Mr Wright had sent an email to the claimant asking her if she had got any of the equipment. The claimant responded on 16 July 2020 as follows:-

“Yes I have all the equipment, although the Aqua overlay arrived dented. (I will follow this up). In regard to the dyspraxia strategy coaching – I am not sure who is doing this? The assisted training has begun which involves three hour sessions.”

102. Mr Wright replied on 16 July 2020 as follows:-

“This email was from nearly two months ago and I’ve asked you on multiple occasions during supervision whether this was being sorted.

Can you speak to xxx [a redacted email address] to confirm what has happened to your training.”

103. In her oral evidence the claimant asserted that she had been requesting a monitor for working at home around this time on a number of occasions. We note that no such request is recorded in any contemporaneous documentation. We doubt whether she was requesting a monitor at this stage. This is because, as will be referred to in due course, there is a reference to the claimant only realising she needed a monitor much later and, when she did raise the issue, Mr Wright sent her the contact details of what to do.

104. On 22 July 2020 Ms Spillman sent an email to the claimant stating as follows:-

“All items have been collected from ICT stores, although I understand this was only recently. Understand training is underway but as this is scheduled direct with the third party training company and yourself, I am not clear what is outstanding, if any.

The other software- Claro Reed and Inspiration Mind Mapping, we are still awaiting confirmation from our infrastructure team on its compatibility. As we operate on a WIN 10 platform, I was seeking their advice. I have chased them again today.”

105. The claimant was on annual leave in August 2020.

106. The next supervision record is dated 1 September 2020. A performance issue was raised concerning a complaint by a family that the claimant had contacted a child’s school without consent. This performance issue does not appear to us to have anything to do with the claimant’s dyspraxia.

107. The ClaroRead Pro was installed on the claimant’s computer on 6 October 2020 and the Mind Mapping software was installed on 12 October 2020. Hence, by 12 October 2020 the claimant had been provided with all auxiliary aids recommended by the DWP Workplace Assessment report (excluding the printer). The claimant told us that the ClaroRead was not activated as she had not done the training but, as is clear to us, the onus was on the claimant to arrange her training with the third party provider and it was her

responsibility to do so. Again, we find that the delay in the provision of the equipment was excusable and we do not find that the delay constituted a failure to provide reasonable adjustments.

108. The first three allegations of unfavourable treatment relate to events that took place on a day in September 2020. The first is an allegation that Mr Wright told the claimant she could not have a printer and justified this on the basis that she had left out a confidential paper. Mr Wright's evidence was as follows:-

“The claimant did request portable printer as part of her Access to Work but this was not provided. ... I had let the claimant know in early March 2020 that a portable printer would not be provided as there were no roles which allowed for this and reiterated this in July/August 2020. I provided the example of the claimant having left confidential documentation out previously to stress the importance of the risk of disclosure of such information and the denial of a mobile printer.”

109. We have already found that the claimant was probably denied a printer much earlier than September 2020. We have already found that not providing the claimant with a printer was for a reasonable and justifiable reason. However, as a matter of fact, we do find that Mr Wright refused the claimant a printer and gave as a reason that she had previously left confidential information out.
110. Whilst the claimant may have found the non-provision of a printer to be unfavourable treatment, we find that this was not consequent upon anything arising in consequence of her disability but was consequent upon the respondent's data protection policies.
111. The second issue in September was Mr Wright telling the claimant that someone had rung through wanting to make a complaint and asking the claimant if it was her. It is alleged that when the claimant asked what it was about, Mr Wright simply said “it doesn't matter as it was being dealt with”. We find that this was no more than routine management. It is inevitable that if a complaint was telephoned through to Mr Wright he might ask members of the team if they were involved. We do not find that this was unfavourable treatment and, in any event, we do not find that it was because of anything arising in consequence of the claimant's disability.
112. The next allegation is that whilst the claimant was on the phone to a mother Mr Wright kept saying that she had got the service users name wrong. The claimant's own evidence is that the service user had mental health issues and in her witness statement the claimant acknowledges that she accidentally got the service user's name wrong which angered the service user. Again, we do not find that this incident was anything other than routine management. The claimant got a service user's name wrong on the telephone and Mr Wright pointed it out. We do not find that this is unfavourable treatment and, in any event, we do not find that the treatment was because of anything arising in consequence of the claimant's disability.

113. The next supervision record is dated 30 October 2020. We note that this is approximately two months after the previous supervision record. We had no explanation as to why there is such a gap.
114. There is reference to an assessment being out of time and it is recorded that the claimant and Mr Wright discussed that admin tasks tended to slow the claimant down which caused drift and delay.
115. We were taken to an email from 26 October 2020, sent to the entire team, wherein Mr Wright was asking the whole team to ensure that, when opening an assessment, one of the 'factors' was ticked. As a follow up to the supervision meeting on 30 October, we were shown an email wherein Mr Wright was complaining that the claimant had failed to tick the correct factor. The claimant acknowledged that she had made this error. Mr Wright concluded, "Please don't do it again".
116. In her oral evidence, the claimant characterised this as Mr Wright singling her out and sought to explain it by the fact that her software was not activated and she had not completed the training. However, we find that Mr Wright was perfectly justified in raising concerns about the claimant's inability to complete the required documentation accurately. When dealing with issues of child protection and safety we readily understand how important it was to get the documentation correct. From Mr Wright's perspective, the claimant had the requisite software and Dictaphone and had at least begun the training on it. In our judgment, it was not unreasonable for him to expect an improvement in the claimant's performance.
117. On 2 November 2020, Mr Wright introduced a new way of working referred to as the "Collective Process". As such, the respondent did have this as a PCP. Without going into too much detail, assessment tasks were broken down into four distinct categories. New forms were introduced with a single template at its heart. The spreadsheet was to be completed by Mr Wright but it did require each social worker to enter data onto it as they performed one of the four tasks. We accept that the collective process involved daily use of spreadsheets which needed to be accessed, new forms and protocols and that the volume of emails may have increased as all social workers kept each other informed. As such, we readily accept that it posed a challenge not only to the claimant but no doubt to all social workers in adapting to a new system of working.
118. We find that the introduction of the collective process was not unfavourable treatment. It was a reform to the way of working for the whole team. It was not introduced because of something arising in consequence of the claimant's dyspraxia.
119. We have considered whether the introduction of the collective process, as a PCP, put the claimant at a substantial disadvantage compared with those who were not disabled. We accept that potentially it could put the claimant at a disadvantage due to her difficulties processing data and entering it into

forms. However, by this time the claimant had all the auxiliary aids recommended and access to the relevant training to use them.

120. Further, we find the next supervision record to be important. Although dated 30 October 2020 it was actually held on 11 November 2020. The following is recorded-

“Rebecca said that the assessment script and the agency checks that had been brought in by the TM [Mr Wright] to help her inform her assessments is an easier way. Rebecca likes the collective approach that we are currently taking to ensure cases are progressed. Rebecca feels like she gets it now and at first found it tricky.” [our underlining]

121. Further, the following is recorded under “Performance Management”:

“Assessment script – C + F assessment. TM raised concerns about the following:

- XXX assessment is going out of date today and Dad hasn’t been spoken to.
- CIN plan was closed down rather than being progressed as a CIN.
- XXX data was entered into XXX section 47 data.
- Rebecca has recently been given an assessment script to prompt her in what questions to ask for a C + F assessment. The completed form was not a satisfactory standard for the TM. They were one line and TM questioned the quality of Rebecca’s recording. Rebecca questioned about whether the level of detail was necessary. The TM found it concerning that Rebecca does not understand the level of detail we need to assess parenting is in depth. Rebecca explained that she is learning and will try harder. TM was worried as the form already contained lots of prompts. “

122. Not for the first time, we find that some of the significant concerns raised by Mr Wright about the claimant’s performance concerned issues of judgment and the undertaking of her job that are unrelated to her dyspraxia. Even where dyspraxia related in terms of organisation and recording of data, by this time the claimant had all auxiliary aids recommended by the Workplace Assessment Report, albeit that her training was incomplete.

123. We find that the claimant was struggling to perform satisfactorily in her role as a Child Social Worker irrespective of the difficulties posed by her dyspraxia. In this context, it is particularly illuminating that the following conversation was recorded in the supervision record:-

“Rebecca and TM discussed different types of social work and whether Rebecca was happy in the chaotic world of frontline child protection, given the instability in her personal life. Rebecca explained that she will think about whether this is working for her.”

124. Again in this context, we were taken to an email dated 12 November 2020 wherein Mr Wright raised with the claimant another example of her being

careless in finalising an assessment without ticking the physical assessment box.

125. The respondent did have a PCP requiring the claimant to fill in car mileage and overtime forms to make car mileage and overtime claims. The issue of mileage and expenses is referenced in the supervision record from 11 November 2020. The following is recorded:-

“Other than this Rebecca is fine. Rebecca still hasn’t been able to claim mileage and expenses. How long do your expenses go back? May 2019. TM advised Rebecca that she will struggle to claim this back. Rebecca explained that she struggles to fill in forms and navigate the paperwork that is requested that goes along with these things.”

126. Clearly the requirement to fill in these forms did put the claimant at a disadvantage in that she had difficulties doing so. However, the claimant had been provided with support/assistance in completing these forms as all auxiliary aids had been provided by this time.
127. The claimant alleges that in October or November 2020, in response to the claimant expressing her need for support with mileage forms, Mr Wright stated that the claimant did not like “admin”. The claimant took this to be a slight on the basis that it suggested that she could not be bothered to do her mileage claim forms whereas it was her dyspraxia that was presenting her with difficulties in doing so. Mr Wright’s evidence was that he could not recall saying this. Whether or not this comment was made, we find that it is somewhat equivocal and does not necessarily have the connotations that the claimant asserts that it does. We have quoted the reference to the claimant having difficulties with admin tasks in one of the supervision reports above. Mr Wright was clearly aware of this. The allegation is not dealt with in either of the claimant’s witness statements which would suggest that it was not of major importance. We find that this was a one off minor comment and of little or no consequence such that it can be regarded a de minimis.
128. As regards the practice of requiring attendance at a 9am team meeting, we have relatively little evidence of this point. The claimant does not deal with it in either of her witness statements. Nevertheless, Mr Wright conceded that there were regular 9am team meetings. However, he told us and we accept that these meetings were not set in stone and there was a high degree of flexibility to accommodate the needs of the various social workers involved, especially during times of covid. By way of example we have been shown a screen shot from the text messages exchanged on 8 December where unidentified colleagues were asking for the meeting to be put back and Mr Wright was agreeing. Consequently, we find that there was a PCP of requiring attendance at 9am team meetings but that that did not put the claimant at a substantial disadvantage because of her dyspraxia. Indeed, her main difficulties appear to have been caused by childcare commitments and the school run.

129. The second part of this alleged PCP was the imposition of a heavy workload without time off for training. We have no doubt that at times the claimant's work as a social worker was pressurised and time consuming. As such, we find that the workload could be heavy at times. However, having reviewed all the supervision notes, it is clear to us that generally speaking the claimant was coping well and we do not accept that there was never any time off for training. As has already been observed, the onus was on the claimant to obtain her training which was to be provided by a third party and we do not accept that the claimant never had time to access this training had she wanted to.
130. We do not find that the respondent had a PCP of "focussing on negatives in Mr Wright's supervision meetings with the claimant". This is more a criticism of Mr Wright's management style, which, in any event, we do not accept. Having reviewed all the supervision records, we find that they are both positive and negative. As has already been observed, it is inevitable that the negatives will stand out as far as any employee is concerned.
131. We have taken the alleged treatments 6.1.1 – 6.1.12 as being said to have taken place after the introduction of the collective process on 2 November 2020. As recorded before, we find that all the auxiliary aids, with the exception of the completion of her training, had been provided to the claimant by this time. As already recorded, the onus was on the claimant to arrange her training and ensure that it took place. However, as recorded in the grievance report of 3 March 2021, Mr Wright was not sure if the training had happened.
132. As regards the collective process, as recorded above, in the supervision record of 11 November 2020, the claimant felt that she 'got' the collective process by then. We find that Mr Wright did not dismiss the claimant's questions about the new way of working and the forms and protocols.
133. We find that Mr Wright did not set unrealistic tasks for the claimant to finish each day. We find that Mr Wright was broadly supportive of the claimant albeit in the context where she was clearly struggling to perform in an optimum manner.
134. Mr Wright acknowledged that he had made comments in emails about the claimant's work along the lines of "another mistake again" and "at last you are showing some interest in escalating cases for families". Mr Wright acknowledged that his tone was inappropriate and apologised for it. We have considered whether those remarks were because of something arising in consequence of the claimant's disability, namely that it took her longer to complete tasks and process information. We have concluded that it did not. In our judgment, these remarks were prompted by perceived failings in the claimant's practice unrelated to her dyspraxia and to do with her judgment.
135. We find that Mr Wright did not say to the claimant that he was only going to talk about negatives. The supervision record notes make it abundantly clear that Mr Wright provided feedback that was both positive and negative. It is perhaps inevitable that someone in the claimant's position may have a

perception that the feedback is all negative as that, inevitably, is what is dwelt upon by management seeking to improve an employee's performance.

136. As regards the team meeting where the claimant had a perception that she was being put on mute by Mr Wright for no legitimate reason, Mr Wright denies having done this. Once again, in neither of the claimant's witness statements does she deal with these allegations. We find that the claimant does not prove that these allegations took place and that, even if they did take place, then any such unfavourable treatment was not because of the claimant's disability. Lastly, we do not find that Mr Wright saying to the rest of the team in December 2020, "You will all go one to bright and better things" constitutes unfavourable treatment.
137. What we do find is that the claimant had been put on an informal performance improvement plan on 3 June 2020 and that throughout this period Mr Wright was indicating that the matter may be escalated to a formal performance process unless there was improvement. Informal and formal performance improvement plans are staging posts towards capability dismissals. We find that that was unfavourable treatment and that, in part, it was because of something arising in consequence of her disability.
138. The last supervision record we have is from 27 November 2020. Clearly, relations between Mr Wright and the claimant had all but broken down at that point, The record begins:-
- "TM is aware that Rebecca has contacted HOS requesting a mediator".
139. The claimant was complaining about being bullied by Mr Wright. The claimant was placed on a formal Performance Improvement Plan. The notes go on to record the claimant saying that she had only just worked out that she needed a monitor.
140. As regards the monitor, Mr Wright then forwarded to the claimant on 25 November 2020 an email that had been sent round on 12 June 2020 which stated as follows:-
- "Monitors
- There is no stock of these for working from home, however, it has been agreed that managers can approve staff to buy their own monitor and the manager will be able to reimburse the cost."
141. Whilst the claimant does not appear on the distribution list, we have no doubt that had the claimant raised the issue earlier with Mr Wright he would have referred her to that email at the time. There was no reason for him not to.
142. Also on 27 November 2020, the claimant raised a grievance against Mr Wright. This alleged harassing and undermining behaviour against Mr Wright. It does complain about a lack of support and states:-

“Especially knowing I have learning difficulty and am still undergoing training on my LD packages”.

143. A grievance meeting was held with Nicole Gibson on 16 December 2020. In our judgment, an important exchange took place during the course of this meeting. The following is recorded:-

“NG – Can you elaborate further on “harassing” and “undermining behaviour” ?
When did this alleged conversation take place and why?

RO – I was shocked – Up til then he was really supportive, and I was pleased to have him. He was shouting and he’d only talk about negatives about my work. This was the start of everything up until was fine. He was negative, I shut down.”

144. We find this exchange important as it demonstrates to us that the reality of the situation was that until a relatively short time prior to 27 November 2020 the claimant and Mr Wright had a reasonably good working relationship and that many of the allegations that pre-date this time have been drawn up retrospectively in the context of this litigation.

145. In due course, the grievance report was produced on 3 March 2021. This confirms that, following the grievance meeting on 16 December 2020, a decision was made by management to move the claimant on a temporary basis to another team. The claimant was contacted with this information on 17 December 2020 but was informed by the claimant that she had been signed off sick. Consequently, she was not moved to another team at that stage.

146. The claimant’s grievance was rejected and she was informed of this in an outcome letter on 11 May 2021.

147. On 17 May 2021, the claimant appealed the grievance outcome. There was a grievance appeal hearing on 8 July 2021, heard by Mr Mark Bradburn. In an outcome letter dated 25 August 2021 the claimant was informed that her appeal had been rejected.

148. On 11 November 2021, Ms Linda Reed had a discussion with the claimant concerning her return to work. The discussion was about referring the claimant to Occupational Health for guidance on the claimant’s return to work and it was indicated that she could join a new team.

149. On 12 November 2021, the claimant sent an email to the respondent as follows:-

“I am formally writing to give my notice of resignation from work. I have been off sick since December 2020 and am on nil pay and will be unable to return.”

150. The claimant was asked for her reason for resignation and replied in an email dated 3 December 2021. This reads as follows:-

“Further to our conversation and email around my reason for resignation I can only provide this as follows: At the time of resigning I felt panicked about the thought of returning as I am still trying to recover and am still have a sick note up until January 2022. It has been a very long time and clearly there is a severity of the situation which can only be further validated from my GP. However, in regards to why I feel my only option is to resign is the main about my mental health. After our conversation around going to HR for an assessment on my return this seemed to trigger so much stress and even a flash back of the two previous times I went to HR where I had the hope of receiving my learning disabilities equipment to be in place and it just not being provided, which meant I was put under tremendous strain and I feel I was in a very unsafe, unprotected environment where while I was still waiting for all my equipment to arrive I was given case loads as high as 43 and put on performance. Because I cannot be sure things have really changed and I am still suffering from the after effect with anxiety and depressive disorder as a direct result of Enfield Council’s negligence, this is why I am having to chose to focus on my recovery and not return back to work.”

151. The glaring inaccuracy in that explanation is that, as we have found, prior to the claimant going off sick in December 2020, all the recommended auxiliary aids had been provided to the claimant albeit that she had not, for whatever reason, completed the training that had been provided.

Conclusions

Auxiliary aids

152. We do not find that the respondent failed to provide the claimant with a large monitor. A monitor was always available to the claimant had she required one. She would have had to buy it herself but would have been reimbursed by the respondent for it. We find that the claimant only raised the issue of the monitor in the supervision on 27 November 2020 and that Mr Wright responded promptly in relation thereto.
153. We find that the respondent did not provide a portable printer/wireless inkjet printer for the claimant to use at home but that that was justified and that consequently there was no failure. She had free access to the printer in the office.
154. We find that there was provision of a screen overlay, work related dyspraxia strategy coaching and other assistive software. We find that the training was arranged and the claimant was informed that it was for her to liaise with the third party provider in order to have that training. We do not accept that the claimant’s workload precluded her from undertaking that training over the many months when she should have had it. Nevertheless, we accept that the claimant did not in fact conclude her training and communicated this to Mr Wright in the various supervisions leading up to the supervision on 27 November 2020. Consequently, we do not find that there was a failure to provide those auxiliary aids notwithstanding that the claimant had not actually completed the training.

Reasonable adjustments

155. We find that the respondent did have the PCPs of requiring the claimant to fill in car mileage and overtime forms, working pursuant to the collective process and a general requirement to attend 9am team meetings.
156. We find that in relation to filling in the car mileage and overtime forms and in relation to the collective process that the claimant was put at a substantial disadvantage by reason of her dyspraxia. Further, we find that the respondents knew of this. We do not find that the practice of requiring attendance at a 9am team meeting put the claimant at a substantial disadvantage because of her dyspraxia.
157. As regards completing car mileage and overtime forms, we have considered what steps could have been taken to avoid or ameliorate the disadvantage. The obvious steps were the provisions of the auxiliary aids that the claimant was in fact provided with. It was reasonable of the respondent to provide those auxiliary aids and we have found there was no failure to do so.
158. In relation to the particular steps suggested, we make the following findings:
- 158.1 As regards completing car mileage and overtime forms, support and assistance was provided in terms of the auxiliary aids.
- 158.2 As regards the collective process, we find that it was not reasonable for the respondent to have an entirely different way of working for the claimant to the rest of her team.
- 158.3 As far as the provision of hard copies of documents is concerned, we have found that the claimant had access to hard copies as necessary in the office.
- 158.4 As regards alleviating the workload on the claimant and affording time off for training/coaching, we find that the claimant's workload was ameliorated on frequent occasions. Further, we have found that the claimant could and should have been able to have time off for training/coaching which was her responsibility. Mr Wright is documented on a number of occasions encouraging her to have her training. Accordingly, we do not find that there was a failure to take these steps.
- 158.5 Our review of the supervision records is that Mr Wright, on many occasions, is documented as highlighting positives as well as negatives.
159. Consequently, we find that there was no failure to make reasonable adjustments.

Section 15 disability discrimination

160. With the exception of being placed on the informal and formal Performance Improvement Plans, we have found that each of the alleged items of treatment 1-12 were not unfavourable treatment, or if unfavourable

treatment, such treatment was not because of anything arising in consequence of the claimant's dyspraxia or were not proved.

161. We have found that the claimant was put on an informal Performance Improvement Plan on 6 June 2020 which was escalated to a formal Performance Improvement Plan on 27 November 2020. We find that that is unfavourable treatment.
162. We find that being placed on performance plans constituted conduct extending over a period and not a one off event with lasting consequences. As such we find that the claim is not out of time. Even if it was out of time, it is only out of time by 9 and 23 days respectively and we would extend time on a just and equitable basis.
163. The claimant was put on the Performance Improvement Plans due to deficiencies in her practice as a social worker. We have found that some, but not all, of those deficiencies arose because of something arising in consequence of her disability.
164. We find that clearly, there was a legitimate aim in seeking to monitor and improve the claimant's performance. That legitimate aim was child protection and safety.
165. We have considered very carefully whether or not the imposition of the informal and formal Performance Improvement Plans was a proportionate means of achieving that legitimate aim. We find that monitoring the claimant's performance and seeking to improve her conduct as a social worker was proportionate. However, we find that being placed both on informal and formal Performance Improvement Plans had obvious potential implications for the claimant's long-term employment. We find that putting the claimant on those Performance Improvement Plans at a time when, in fact, she had not completed her training on the software provided, was disproportionate. Consequently, we find that the claimant's case of disability discrimination succeeds to the extent that she was treated unfavourably by being placed on the informal and formal Performance Improvement Plans.
166. Having made this finding, there will obviously be a remedy hearing. At that remedy hearing we will hear further submissions on what, if any, difference there would have been in the treatment of the claimant in all probability had she not been placed on the Performance Improvement Plans until such time as she had managed to complete her training on the software.

Unfair dismissal (constructive)

167. The claimant went off sick on 17 December 2020. Thereafter her only interaction with the respondent was in relation to her grievance and grievance appeal. The grievance appeal was finally determined on 25 August 2021. Thereafter the only contact the claimant had with the respondent was when Ms Reed contacted the claimant with a view to

facilitating her return to work, referring her to OH and suggesting a transfer to a new team.

168. It is not suggested by the claimant that the way in which the grievance and grievance appeal and the outcomes thereof constituted breaches of the claimant's contract of employment. Further, it is not suggested that Ms Reed's contact constituted a breach of the claimant's contract of employment.
169. The allegations of breach of contract all relate to the allegations of treatment dealt with under the disability discrimination claim. Notwithstanding that we have found that the imposition of the Performance Improvement Plans constituted unfavourable treatment constituting disability discrimination, we do not find that that was sufficiently serious to constitute a fundamental breach of the claimant's contract of employment. Accordingly, the claimant's claim for unfair dismissal must fail.
170. In any event, had any of the respondent's conduct been sufficiently serious to constitute a fundamental breach of contract, then we find that the claimant had, by the time of her resignation in November 2021, affirmed that contract and lost the right to rescind it. Nearly a year had expired since she had gone off sick.
171. The claim of constructive unfair dismissal is therefore dismissed.

Employment Judge Alliot

Date: 27 January 2023

Sent to the parties on: 27 January 2023

For the Tribunal Office