EMPLOYMENT TRIBUNALS

Claimant: A

Respondent: Secretary of State for Justice

HELD AT: London South ET by Cloud Video Platform **ON:** 28, 29, 30, 31 March and 1 April 2022

BEFORE: Employment Judge Barker
Mr H Smith
Mr S Townsend

REPRESENTATION:

Claimant: In person
Respondent: Ms Robinson, counsel

JUDGMENT

The unanimous decision of the Tribunal is that

1. The claimant's claims of disability discrimination fail and are dismissed.

2. The claimant's claim of unlawful deductions from wages succeeds and the respondent is to pay to the claimant the sum of £1698.26, subject to the appropriate deductions for tax and National Insurance.

REASONS

1. By a claim form presented on the 25th of February 2020 the claimant brings claims of disability discrimination and unlawful deductions from wages. The respondent accepts that the claimant is a disabled person within the meaning of section 6 of the Equality Act 2010, by reason of dyslexia, scotopic sensitivity syndrome and musculo-skeletal problems with her back and neck which arose following two road traffic accidents.

2. The Tribunal heard evidence from the claimant on her own behalf, and from Mr Osman Nazir, Ms Selene Grandison and Mr Andrew Blight on behalf of the respondent.

3. Mr Ayodeji Ogunyemi provided a witness statement to the Tribunal but the parties and the Tribunal agreed that he did not need to be called to answer questions on this statement. The Tribunal has therefore read and considered his statement, but has not given it as much weight as the statements of the other witnesses who appeared to give further evidence before the Tribunal under oath and to answer questions. Miss Amrita Singh also provided a witness statement for the respondent but was unable to attend the hearing due to ill health. Her witness statement has also been read but has been given the same weight as that of Mr Ogunyemi, for the same reason.

4. The claimant works for the respondent as a Probation Service Officer. Her employment started in February 2015 and she is still employed.

5. The preliminary stages of this claim involved a case management hearing before Employment Judge Mason on 12 August 2020 and a second case management hearing before Employment Judge Ferguson on 25 November 2020 during which hearings the claim was amended and clarified.

6. An amended ET1 claim form was provided by the claimant on 9 September 2020 and there was subsequently an amended response provided by the respondent. A list of issues was drawn up and agreed by the parties before Employment Judge Ferguson and that has been used as the framework for deciding the claimant's claims at this hearing, with some discussion that I will describe in due course. The agreed list of issues is set out below.

7. The final liability hearing was originally listed for August 2021 but was postponed and re-listed and has been heard before this Tribunal.

Preliminary Applications Made

8. The claimant made several preliminary applications shortly before the hearing. She applied in early March to introduce two new witnesses, but at the time the application was made to the Tribunal no witness statements had been supplied to the Tribunal or the respondent, therefore at the time of the application there was no particular clarity as to what those witness statements would say.

9. There was also an application by the claimant to add unlawful deductions claims relating to alleged overpayments made by the respondent in relation to sick pay that were paid to the claimant in 2017 and 2018 that the respondent is currently attempting to recover, in 2022.

10. There was a third application by the claimant which was, because the contents of the bundle had not been agreed, the claimant wished to remove most of the evidence from the bundle on the grounds of confidentiality. This application was described by Ms Robinson for the respondent in essence as the claimant wanting none of the respondent's documents and all of hers in the bundle.

11. The Tribunal was able to review the list of documents that the claimant wanted to remove and notes that it covered the vast majority of the documents that were before the Tribunal in evidence. After a discussion with the claimant, in which it was explained by the Tribunal that the panel need to decide the claimant's case on the evidence before it and that a considerable number of those documents the claimant wishes to withdraw, particularly occupational health reports, would be helpful to the Tribunal in carrying out that task, the claimant withdrew her objection to these documents remaining in the bundle.

12. In relation to the two new witnesses, after a discussion with the Tribunal about concerns relating to the time available for the hearing and the fact that the respondent still had no indication of the content of those witness statements and had therefore not prepared to deal with them, the claimant said that if introducing them would delay matters then she was prepared to withdraw the application to introduce those witnesses. They were therefore not heard from.

13. In relation to the final application to add unlawful deductions from wages claims, it took some time for the Tribunal to receive all of the documents relating to that application and we took some time to consider them. The Tribunal delivered its assessment of that application at the start of day three of this hearing. We note that they relate to an entirely new strand of enquiry in these proceedings. That enquiry would involve examining the processing of these deductions by the third party payroll SSCL Limited. It therefore was not the case that any of the respondent's witnesses that were due to provide evidence at the hearing would have been able to deal with the issue, as they are not from SSCL.

14. Also the deductions do not relate to the period in question in these proceedings, but earlier than that (that is, 2017 and 2018). Currently those unlawful deductions claims from 2022 would not be out of time for presentation to the Tribunal by means of a new claim as the deductions have been made very recently even though they relate to payments made in 2017 and 2018, so the claimant can if she wishes issue fresh tribunal proceedings to ask another Tribunal to determine this issue. Taking the balance of prejudice in allowing the amendment or refusing the amendment into account, the balance of prejudice is in favour of rejecting the application to amend and proceeding without that issue being determined.

Conduct of the proceedings and reasonable adjustments

15. The claimant appeared in person without legal representation. Account has been made for this and the Tribunal's duty to provide a level playing field for litigants in person, as set out in the Employment Tribunals Rules of Procedure 2013. At the start of the hearing and for part of the second day, she was assisted by B, a litigation friend.

16. The Tribunal acknowledges that the claimant has issues with her back and neck. She asked for and was given breaks of approximately 5, 10 and sometimes 15 minutes approximately every hour and when she requested them.

17. The claimant is also dyslexic and has scotopic sensitivity syndrome which requires using coloured overlays to be able to read documents. More time was given to her to find and read documents in the bundle during the hearing, and assistance was given by the Tribunal in posing questions in cross examination and assistance was given with structuring her closing submissions. Taking into account the adjustments that the claimant requested and those that the Tribunal thought was appropriate, we consider that the claimant has been provided with appropriate adaptations and assistance in the conduct of these proceedings.

Issues for the Tribunal to decide

18. The Tribunal panel experienced some difficulties with fixing the endpoint for taking evidence in these proceedings. There is a fixed list of issues that were used (as set out below and as agreed with the parties at the Case Management Hearing before Employment Judge Ferguson) but in the bundle there was evidence of the ongoing situation with the claimant's work past the date of submission of the ET1. There was inevitably some discussion from witnesses in cross-examination as to what was happening to the claimant at work up to the present day. We emphasised that it was our job to decide the claim as was set out in the claim form and subject to any amendments that were formally applied for and accepted by the Tribunal. We therefore have not considered the ongoing evidence of the claim up to the present day. If there are any issues arising out of that, as with the issue of applying for the Tribunal to consider recent unlawful deductions from wages, it is open to the claimant to consider whether she wants to bring further proceedings.

19. The issues for the Tribunal to decide were agreed by the parties before Employment Judge Ferguson as follows:

20. <u>Failure to make reasonable adjustments</u> (section 20 EA 2010):
    a. Did the Respondent apply a provision, criterion or practice of:
        i. working from the office 3 or 4 days per week;
        ii. requiring the Claimant to work form the High Path Probation Office from 2017 onwards;
        iii. not providing a permanent allocated car park space for the Claimant at the High Path office;
        iv. applying the sickness absence policy;
        v. not providing administration support since late 2018;
        vi. not organising an occupational therapist consultation visit at her workplace since December 2018; and
        vii. inflexible start and finish times.

21. Did any such provision, criterion or practice put the Claimant at a substantial disadvantage in comparison with persons who are not disabled? The Claimant alleges the substantial disadvantage is exacerbated pain levels, undue stress and anxiety.

22. Did the Respondent have a duty to make a reasonable adjustment (which would avoid the disadvantage) by:
    a) ensuring that the Claimant could work from home for two days per week;
    b) allowing the Claimant to transfer to Uxbridge Probation Office;

c) providing an allocated car park space;
d) issuing a sickness leave excusal for seven months of wages between 17 April 2019 -1 June 2020;
e) providing administration support;
f) organising an occupational therapist consultation visit
g) allowing flexibility in travel times.

23. But for the provision of an auxiliary aid was the Claimant put at a substantial disadvantage in comparison with persons who are not disabled? The Claimant alleges the substantial disadvantage is exacerbated pain levels, undue stress and anxiety.

24. Did the Respondent have a duty to make a reasonable adjustment (which would avoid the disadvantage) by provision of the following auxiliary aids:
a) Ergonomic keyboard
b) Ergonomic mouse
c) Upper and lower lumbar adjusted chair
d) Adjustable desk
e) Larger laptop screen

25. Unlawful Deduction from Wages (section 13 ERA 1996) / Breach of Contract:
    a. Did the Respondent make a deduction of wages properly payable from January 2020? The issue to be determined is whether there were any wages "properly payable" in that period. The Claimant was absent from work during that period of time. The Respondent avers that she was properly on half pay from September to December 2019 and nil pay from January 2020 to February 2020.

    b. Was the Claimant entitled to travel expenses of £1093.10?

    c. Was the Claimant entitled to reimbursement of the cost of disability glasses in the sum of £317?

    d. Was any such deduction unlawful under section 13 ERA 1 996 or a breach of contract?

26. Time: Did the Claimant bring her claims in time? Was there a continuing series of acts? If claims were out of time is it just and equitable to extend time?

27. Remedy: What financial loss and/or injury to feelings, if any, has the Claimant suffered as a result of the alleged claims?

Findings of Fact

28. It is accepted by the respondent the claimant a disabled person within the meaning in section 6 of the Equality Act 2010 by reason of her back and neck pain, her dyslexia and scotopic sensitivity syndrome. It was confirmed by the claimant that she was not alleging that she is disabled by reason of any mental health issues to do with anxiety, stress, panic attacks or similar.

29. The claimant started work in February 2015 but the period of time to which these complaints relate began in June 2017, when the claimant relocated to the High Path offices of the respondent in Wimbledon because the Kingston office was closing. Prior to that, and almost since the beginning of the claimant's employment at the respondent she had raised some complaints and grievances about issues relating to reasonable adjustments.

30. We also note that in 2017, disciplinary action was being taken against the claimant. There was a disciplinary investigation and also reference to action being taken regarding the claimant's attendance. That is not part of the claim and will be referred to only where necessary for the Tribunal to decide the issues in the list of issues.

June 2017 to September 2018

31. Shortly before the claimant moved to High Path in June 2017, she had a visit to assess her "AT" (that is, adaptive technology) and she was assessed as needing a standard keyboard and mouse at the visit on 12 June 2017. The relevant software for her AT was updated and loaded onto her laptop. It was noted that she was about to move to High Path and we accept that it would have been reasonable for any assistance that she needed with her workstation to be addressed once she had moved.

32. It was acknowledged by the respondent in a letter that was sent to the claimant in connection with that move that this meant a further travel time for her every day and she was told that she could take 30 minutes time off in lieu every day to compensate for the additional travel time. It was the respondent's assessment that thirty minutes was representative of the extra travel time that the relocation to High Path would entail, however the claimant told the Tribunal and told the respondent during the period of time to which these proceedings relate that this was an underestimate and that it sometimes took her up to three hours to get to and from work, but she did acknowledge in cross-examination that that would very much depend on the time of day that she was travelling.

33. In December 2017 the claimant began to be managed by Miss Singh. The claimant went off sick on 17 December 2017 because of issues connected with the disciplinary proceedings at work. She had an occupational health assessment and a report was published dated 20 December 2017 where the claimant reported to the occupational health therapist that reasonable adjustments were not being adhered to at High Path. She said she had no working from home, no disabled parking and issues with her AT. She told the occupational health assessor that an administrative assistant for proofreading and organising her work effectively would be helpful.

34. Miss Singh had asked occupational health whether the claimant would benefit from administrative support but the referral request noted that the claimant already had AT and equipment, flexible working and car parking. We accept that there were difficulties with car parking at High Path but we accept that the respondent did take steps to try and ensure that the claimant could park. The respondent was aware that parking was an ongoing issue.

35. The claimant was referred to Occupational Health for a formal workplace assessment in early 2018, but the occupational health recommendations in that report do not mention that the claimant required a keyboard, mouse, chair, desk or footstool or other auxiliary aids. The claimant was still off sick at the time of the occupational health report on 12 March 2018. The report was done by a mental health advisor, which we find was reasonable and appropriate because the claimant was off with stress and anxiety at the time. The claimant told the occupational health assessor that the workplace OT assessment that was recommended had not happened, but we find that it could not have happened and it was not reasonable of the claimant to expect it to have happened at that point because the claimant was absent from the workplace due to long term sickness.

36. The claimant told the occupational health assessor that she was subject to investigation and disciplinary allegations and was required to attend an interview about this at work, but that she would only consent to an interview when she was ready to be interviewed. We therefore find that the claimant was controlling the pace of her return to work and the respondent was waiting for her to indicate when she was prepared to proceed with the interview and could only do a proper workplace assessment when she was back in work.

37. Subsequently the claimant did return to work but in a different location because of the ongoing issues relating to her disciplinary investigation. She was temporarily assigned to Kingston Crown Court on 1 June 2018, again being managed by Miss Singh. The claimant had an occupational health assessment at the beginning of June 2018 which reported that she needed a DSE assessment and recommended that she had auxiliary aids provided to her.

38. The claimant also had a stress risk assessment with Miss Singh dated 18 July 2018 which was signed as read by the claimant. In addition, we have had sight of her RAAP (reasonable adjustments action plan) which was completed in August 2018 by Miss Singh but which the claimant told us she had never seen. However, we note that it records what adjustments Miss Singh was attempting to put in place or had already put in place for the claimant.

39. The next occupational health assessment was by an occupational physician, that is, a doctor, on 20 July 2018. It notes that the claimant was still suffering from stress both due to what are described as *"internal working issues and domestic ones which have affected her work*". We note that the transfer from Kingston to High Path and the transfer to Kingston Crown Court will inevitably have caused issues in securing the claimant's reasonable adjustments and auxiliary aids because they involved repeated set-ups in a new workplace and in the case of Kingston Crown Court it was a temporary workplace because also because of difficulties with the claimant's previous manager Mr Jolly. Indeed, Miss Singh reports that she had no handover from him, no RAAP, and no DSE assessment.

40. Miss Singh also noted in the stress risk assessment document from July 2018 that there could not be any DSE or long term planning until the disciplinary investigation had been completed and they knew where the claimant's new and permanent workplace was going to be. We find that this was not unreasonable in the

circumstances because the claimant would likely have had to move and it was not known where the move would be to. There was also at the same time a number of changes organisation-wide as are acknowledged by Miss Singh. She notes that all staff were being subject to change and not just the claimant although of course that the claimant was also suffering some changes specific to her.

41. We note that the fact that the claimant's working conditions were not able to be specifically adapted to her at Kingston Crown Court was ameliorated by the fact that she had a significantly reduced workload at Kingston Crown Court and Miss Singh was attempting to put in place auxiliary aids and adjustments to her desk.

October 2018 at High Path

42. The claimant returned to High Path in October 2018 and this required a revision of the provision of her auxiliary aids and AT. She started work on 1 October 2018 being supervised at all material times by Mr Osman Nazir. She had a referral to occupational health on 18 October 2018 following her first supervision on 10 October 2018, so within a short period of time of her starting at High Path.

43. The claimant had also for some time by the time she moved to High Path been working from home a couple of days a week. This is contrary to some of the claimant's evidence, but we find that she had been working from home a couple of days a week while she was at Kingston Crown Court and this continued at High Path.

44. At High Path she worked from home for a day and she also had a day completely off work for physiotherapy and cognitive behavioural therapy (CBT). When this was put to the claimant in cross examination she attempted to qualify that by saying she still had to do work on four other days of the week. We accept that, but nevertheless she was being paid for five days a week and being given a day completely off for her therapy, which lasted until January 2019.

45. Working from home one day a week persisted until she went off sick in April 2019. The claimant told the Tribunal that she did sometimes have to come into work on days when she was supposed to be working from home and we accept that that might have been the case, and that it was not absolutely guaranteed that she be able to work from home one day a week. However, we accepted Mr Nazir's evidence that as far as business as usual was concerned that was a commitment that the claimant was able to have the benefit of.

46. The claimant's first supervision with Mr Nazir was on 10 October 2018. It is notable that this involved a discussion of cases that she had been allocated and that the claimant was back at work with Mr Nazir assisting her.

47. In the context of the claimant's history at work prior to her supervision by Mr Nazir, as of October 2018 the claimant had in the space of less than two years had a road traffic accident in 2017 that had worsened her back and neck problems, domestic violence issues and the investigation related to that that was ongoing while she was at Kingston Crown Court. In addition she had been off sick in connection with

stress to do with the disciplinary investigation, and returned to work on 1 June 2018 with temporary duties and reduced hours at Kingston Crown Court.

48. Therefore, her return to work under the supervision of Mr Nazir was her first return to work in quite some time and against a background of a significant number of personal difficulties. Mr Nazir’s evidence was that he was attempting to rehabilitate her back into her role, albeit with a very reduced workload and with his oversight of her cases. We accept that this was his intention and that this was a reasonable course of action. The initial arrangement with Mr Nazir was that she would be given one to two cases a week, increasing to three to four cases a week. By comparison, full-time PSOs had 40 to 50 cases to manage.

49. The claimant had a DSE assessment on 18 October 2018, at which it was recommended that she be provided with a chair with lumbar support, a keyboard and a mouse with wrist support, but not an ergonomic keyboard and not an ergonomic mouse. In fact, we note from the documentary evidence of the DSE assessment at the time that the claimant specifically rejected the provision of an ergonomic keyboard and mouse. The claimant was also recommended to receive a larger laptop and screen, a footstool and monitor riser and a document holder. There was reference also to an adjustable desk being required, but we accept the evidence of Mr Nazir that all desks were adjustable desks in High Path in any event, so that this was already available to the claimant in the office.

Complaints of stress and work pressure, November and December 2018

50. On 13 November 2018, the claimant complained to Mr Nazir by email that she was overwhelmed with the number of cases that had been allocated to her the previous day (12 November 2018). She said it had been her first day back from leave and she had been on morning duty. She reminded him that the agreement had been that she would be given two cases, increasing to three to four cases but that she had been given nine new cases. The claimant also reminded him that she had an appeal meeting relating to her attendance management process that day.

51. At a supervision two days later on 15 November, Mr Nazir reminded the claimant that she was not still on a phased return to work but that she was now formally back at work. He reminded her that he had a commitment to mentor her via enhanced oversight of her cases, but that she still only had 14 cases, including one which was in Ireland and so required minimal attention from her. We accept that Mr Nazir was not willing to relieve her of her duties but was providing her with help, mentoring and enhanced oversight but still rehabilitating her back into her role as a PSO. We find that Mr Nazir’s actions in doing so were reasonable and proportionate.

52. At the supervision on 15 November, Mr Nazir and the claimant discussed the auxiliary aids. They discussed the need for a chair, a keyboard and mouse, a gel pad and a larger screen. They discussed the fact that the claimant already had a height adjustable desk and Mr Nazir said he would order a document holder, footstool and monitor riser. They discussed administrative support and the claimant is recorded as saying that she would get back to Mr Nazir about that issue with information from her GP. She subsequently disputed that she agreed to do this,

but we find that the claimant never did provide the information she said she would. She complained about the fact that administrative support was not put in train, but we find that the onus had been on her to specify what it was that she wanted and to provide more information and she did not do that.

53. At the supervision, the claimant complained of a lack of support in the office, having disclosed difficult personal circumstances to Mr Nazir. We find that he was sympathetic to her circumstances but he did not excuse her from the work that she did have, albeit that she had a reduced workload. We find, taking all of the evidence from that time into account and the claimant's witness evidence to this hearing, that the claimant considered that he was not being supportive because he continued trying to rehabilitate her into her role and was not willing to provide her with a minimal workload.

54. We find that despite the claimant having Wednesday and Friday out of the office from about the middle of November 2018 onwards there were a number of attendance issues that arose. For example, we accept the respondent's evidence that the claimant announced on 20 November 2018 that she would be working from home that day. She did not ask for permission but simply informed her colleagues she was doing this, even though it was a Tuesday which was not her working from home day and even though she was working from home as usual the following day.

55. The claimant reported significant personal stress on Tuesday 20 November in an email to Mr Nazir. She again mentioned the stress of her attendance appeal and disciplinary appeal and she criticised him for ignoring the issue of her disability. However, we find that there was no evidence whatsoever that he did that. We find he was providing her with support and a reduced workload and he was trying as best he could to move forward with the provision of the required auxiliary aids that had been recommended by the DSE assessment. However, we find that the claimant considered that the respondent should further reduce her workload because she was stressed about the two internal appeals that were ongoing. We do not consider this request to be reasonable, given the support that was provided to the claimant at the time.

56. Mr Nazir and the claimant had a supervision conversation the next day (21 November). The respondent's evidence, which we accept, was that the claimant was upset that Mr Nazir suggested that she contact the employment assistance programme that was available to the respondent's employees. He told the claimant that he appreciated that there was "*a lot going on for you at the moment*" which we found was appropriate and not unsympathetic. On the same day Mr Nazir sent the occupational health reports in to Miss Grandison in HR and asked whether Access to Work could assist with the procurement of the auxiliary aids.

57. The next day, Miss Khalid, an HR business partner, was involved in procurement of those auxiliary aids. We do not find that this was an unreasonable delay. On the contrary, the respondent was acting promptly to move the procurement of the auxiliary aids forward.

58. On 4 December Mr Nazir emailed regarding a review of the claimant's cases and we find that his comments were supportive and constructive but he was still

expecting that what work the claimant did have would have to be done and done in good time.

59. The claimant had a disciplinary hearing appeal in December 2018 and throughout December and 13 and 14 December in particular, there was an exchange of emails where the claimant asked for, and was given, quite detailed support on a number of her cases from Mr Nazir.

60. We find that there were a number of instances in December where the claimant did work from home other than on her agreed days and this we find this contrary to the claimant's allegations that working from home was very difficult and was non-existent.

January to March 2019

61. She had a conversation with Miss Grandison in December about the procurement of auxiliary aids and disability glasses through Access to Work and she was told by Miss Grandison that she needed to contact Access to Work to move that forward. Miss Grandison emailed the claimant on 9 January 2019 to chase her and to check that she had applied to Access to Work and reminded her that the claimant herself needed to contact them. We found this was entirely appropriate and that the respondent was being supportive to try and ensure that the claimant could get the support that she needed for her disability.

62. On 22 January Mr Nazir chased the claimant about some delays to her work. She replied explaining that this was because of IT issues but he did not accept that this explained a delay from October in completing a report. We find that this is evidence that the claimant was starting to not keep up with work even though her workload was still significantly reduced.

63. On 28 January the claimant complained to Mr Nazir about having to work her late night and then come in at the normal time the next morning. Mr Nazir told the claimant that she should take that time back as time off in lieu but that this was subject to her finding other people in her "pair" who could cover her. The arrangements in Mr Nazir's team were that staff were in "pairs" of either two or three people. We find that the claimant did not make arrangements as suggested to take time off in lieu.

64. At the beginning of February 2019 Mr Nazir gave consent to Access to Work to have an assessment of the claimant which took place at the end of January and then the grant was approved on 9 February 2019. We note that Access to Work did not assess that the claimant needed individual administrative support in that assessment.

65. The claimant was off sick on 13 February 2019 for seven days, but this was not covered by a fit note. She had been to hospital and told the respondent that she was told to take some time to recover. She asked Mr Nazir could she take this as annual leave rather than sickness leave because she did not want it to trigger any more absence issues. Mr Nazir was, we find, uncomfortable being asked to do this. We find it was reasonable of him to feel uncomfortable his job is to do proper

reporting of the absences of his staff and it would have been improper to record sickness absence as annual leave. He told the claimant that he needed to consider this request. In his evidence to the Tribunal he said that he'let this matter go so he had not recorded it as sickness absence.

66. The claimant then made a complaint against Mr Nazir on 15 February 2019. The complaint was made to Ms Grandison. It lists a number of complaints against him, focussed around his management style and what the claimant perceives to be a lack of concern and sympathy from him towards her during absences for medical reasons unconnected to her disability, including a "*nasty viral infection that is affecting lymph nodes in my stomach*". She also complained that he spoke inappropriately about the issues she had with her ex-partner and that "*he has not taken the opportunity to understand how the disciplinary investigation has affected me since December 2017*". Ms Grandison and the claimant did not then exchange emails about the complaint until 4 March 2019 and Ms Grandison and the claimant agreed that Ms Grandison would raise the issues with Mr Nazir the following day on 5 March.

67. The claimant had worked from home even though she was supposed to be on duty that week. She had telephoned her team on 21 February to say that someone else would have to cover her duty rota and her appointment. The email from the team member that reported this to Mr Nazir was before us in evidence and reports that the team "*as a whole are not happy with this*".

68. The claimant she had a supervision with Mr Nazir on 25 February and she was reminded by him that she had not signed the Access to Work reports as required by them. We find that the respondent was having to chase the claimant to go through the steps that she needed to complete to have the auxiliary aids provided to her.

69. There was some suggestion from the claimant as part of her pleadings that the respondent should simply have bought the aids anyway but we accept that this was not how the respondent's processes worked and the claimant knew this. She knew that she would have to participate in the process was not doing so in good time. The claimant had to be reminded to sign the Access to Work report again in early March 2018. The claimant's evidence to the Tribunal was that she did sign it before the final deadline for doing so, but this is inconsistent with her case before the Tribunal that the aids were not provided in good time. Part of the delay was due to her inaction and the respondent was required to take repeated steps to ensure her compliance with the process.

70. Ms Grandison's evidence, which we accept, was that she discussed the claimant's informal complaint with Mr Nazir on 5 March. Mr Nazir told Ms Grandison that he had put support in place but was concerned that the claimant was an experienced PSO but was relying on him to make routine decisions in her cases.

71. There were a number of communications between Mr Nazir and the claimant to discuss her cases. He sent an email to her on 7 or 8 March where he set out a number of constructive suggestions for how she should deal with some particularly

difficult cases. The claimant replied on 8 March 2019 to say that she found the tone and content of the email aggressive.

72. Mr Nazir's evidence was that she had sent the email accusing him of being aggressive while she was supposed to be in a supervision with him and he found this particularly frustrating, as she was late for the supervision at the time and he subsequently discovered that the reason for her lateness was that she was emailing him to tell him that he was being aggressive. We have read the email that the claimant thought was aggressive and we find that it was not reasonable of the claimant to interpret the email in this way. Mr Nazir was trying to help the claimant find a way forward with a particular situation at work.

73. Mr Nazir emailed the claimant in early March to remind her that he had not completed or updated her stress risk assessment. During the exchange of emails where the claimant accused him of being aggressive, the claimant eventually told Mr Nazir that she would refuse to meet him to discuss the stress risk assessment because of the complaint that she sent to Miss Grandison against him in February.

74. We note that on the one hand the claimant was complaining that her needs were not being properly managed at work, but on the other hand was not participating in the process is that would allow the respondent to do precisely that.

75. On 12 March, the claimant emailed Ms Grandison with further complaints about Mr Nazir's approach and lack of support. Ms Grandison told the claimant that a "stress at work assessment" would be set up to understand her issues better. On 13 March Mr Nazir forwarded the claimant's email accusing him of aggression to Miss Grandison and asked whether mediation between the two of them would be appropriate. He also continued to chase the claimant to sign the Access to Work form. We find, therefore, that even though their relationship was beginning to break down at this point, Mr Nazir was nevertheless trying to procure the auxiliary aids that were recommended in October for the claimant.

76. On 16 March Mr Nazir made another referral to Occupational Health for the claimant, which appointment did not eventually go ahead because the claimant cancelled the appointment on 10 April 2019. Mr Nazir was, we find, trying to assist the claimant but that the claimant was not participating in that process. We accept that the claimant's evidence is that she was stressed at the time, but the claimant's complaint to this Tribunal is that the respondent failed to accommodate her disabilities. However, the respondent we find was trying throughout this period of time to do exactly that.

77. Mr Nazir suggested to Miss Grandison in an email in mid-March that he should order the equipment anyway without Access to Work because he was growing concerned about the claimant's lack of participation in the process.

78. Miss Grandison and the claimant had an exchange of emails around 18 March 2019 where Miss Grandison asked to talk to her about her complaint and the claimant indicated that she wanted the matter to be escalated to a formal grievance.

79. Mr Nazir tried again on 29 March to schedule a stress risk assessment but the claimant refused to participate. On the same day she booked annual leave for the first week of April which Mr Nazir approved. Also on 29 March, the claimant asked to take all of her accrued time off in lieu of 40 hours but Mr Nazir told the claimant that he could not endorse that until the claimant could account for how she had accrued so much in such a short space of time and on reduced duties.

80. The claimant complains to this Tribunal about not being able to take time off in lieu, but we find that this was not the way in which the respondent envisaged that time would be taken. It was reasonable of Mr Nazir to have asked for an explanation of how she had accrued so much time.

81. On 15 April the claimant spoke informally with Miss Grandison about her grievance and they subsequently had a formal meeting on 16 April. The Tribunal has read the minutes of that meeting and we note that the claimant's complaints were all about Mr Nazir's management style which she describes as uncaring and unsupportive. The claimant's complaints were not about the provision of auxiliary aids or the lack of reasonable adjustments, but all about stress, his management style and the fact that he was uncaring. Ms Grandison's evidence, which was not contested by the claimant, was that she told the claimant that she disagreed that Mr Nazir did not have the claimant's well-being at heart and that it was his role to ensure that standards of work were maintained, which could inevitably result in difficult conversations. Ms Grandison disagreed (as did the Tribunal) with the claimant that Mr Nazir's emails were aggressive.

82. This distinction is important to note, because when the claimant eventually raised a formal grievance about her treatment, including by Mr Nazir, on 8 December 2019 the terms of her grievance had changed in in a very significant way and related to the failure to accommodate her disabilities and not Mr Nazir's management approach. The grievance of 8 December 2019 was also about Ms Grandison.

The claimant's absence from work 17 April 2019 onwards

83. On 17 April the claimant went off sick, initially with tonsillitis and then subsequently with stress and anxiety and she did not return to work between 17 April 2019 and the submission of her claim to this Tribunal. Although she has now returned to work, she has not ever returned to the office. The respondent's obligations regarding the reasonable adjustments in the provision of the auxiliary aids were suspended once the claimant went off sick on 17 April because at that time there was no work being done by the claimant. Therefore, any adjustments or aids that were to allow her to work and to carry out her job were not required as of 17 April 2019 as she was not working during this time.

84. The claimant did not engage with the respondent regarding her absence. Almost all attempts to arrange absence review meetings were unsuccessful because the claimant did not attend. In September 2019 she moved to half pay and that month did start to engage with Occupational Health. Her chair and desk arrived at High Path in July 2019 having been ordered eventually through Access to Work. In

November 2019 the claimant formally requested a "compassionate transfer on health grounds" to Uxbridge.

85. There was an absence review meeting on 14 November 2019 and the claimant's formal grievance in December 2019 against Mr Nazir. As has been discussed above, the formal grievance in December 2019 was almost entirely concerned with the alleged failure of the respondent in the provision of auxiliary aids. However, the reason why the claimant went off sick and remained off sick for such a long time was at the time she went off sick said to be because of Mr Nazir putting too much pressure on her.

86. However, by the time she raised her grievance in December 2019 that had changed to be

> *"since my return to work several reasonable adjustments have not been fully put in place, some reasonable adjustments have been taken away without consultation, some have been continuously ignored. I was working from home two days a week since returning in late 2018 this has been reduced to one day a week without consultation.*"

87. We do not find that the description of her circumstances in the December 2019 grievance were accurate. We accept that all of the reasonable adjustments and the auxiliary aids that had been ordered in October 18 were in place and waiting for her at High Path during her absence from work in 2019. We accept that the claimant's condition may well have progressed over the period of time that she was off, and she gave some evidence that her condition had got worse and we accept that that may well have been the case. However, in terms of what was required at the last assessment in October 2018 we accept that that had been provided for her at that point. We also accept that it would have been reasonable for the respondent to ask her to come back to work to the office so that they could do further assessments in the workplace, particularly given that her evidence was that her condition had deteriorated over that time.

88. As stated above, in late 2019 the claimant requested a move to another office. From the evidence before the Tribunal a move to Uxbridge was requested formally in a meeting with Mr Nazir in November 2019 and again in February 2020. The claimant's evidence was that this was mentioned some considerable time ago but were provided with no evidence of that. The claimant was informed that the transfer would likely be adjourned until her return to work by Ms Grandison in an email of 17 February 2020. The claimant brought her claim to the Tribunal on 24 February 2020. It was the respondent's case on receiving the request that she return to work first to be formally assessed for a move. However, the formal assessment took place after the claimant's claim was submitted to the Tribunal and is outside the period of time the Tribunal is being asked to consider.

89. The claimant's sickness leave excusal application was decided in her favour in late 2020, outside the period of time to which these complaints relate, and applied to 182 days sick leave which was reclassified as "work related stress". The claimant was granted funding via Access to Work for personalised administrative support of

20 hours per week in late 2020, again outside the period of time to which these complaints relate.

Car Parking at High Path

90. We accept that the car parking at High Path caused difficulties for the claimant until early 2019. Until that time, there was no clear demarcation of disabled spaces, although people were instructed not to park in a particular space because that was where the disabled parking was supposed to be. When the claimant arrived in October 2018 she did experience difficulties and we accept that that would have been inconvenient for her, particularly with mobility issues. We find that this was remedied in part in an email on 30 November 2018 sent to management at High Path that the claimant and the other disabled member of staff would be given a specific space and the other members of staff should park there and that markings should be painted on the floor to ensure that that was the case.

91. The claimant told the Tribunal that she had never seen that email from 30 November, but we nevertheless accept that it was sent to management. The management instruction was given to members of staff concerning the claimant being given priority in terms of parking as a disabled person. The claimant's evidence was that subsequently the situation regarding parking at High Path did get better, however we accept that nevertheless on occasion there were still issues, in that people did sometimes still park in her parking space. We find that the respondent did try as best it could to ensure that car parking at High Path was available for the claimant even though the undisputed evidence of the respondent was that the car park was not particularly large (approximately 17 spaces) for the 70 or 80 members of staff who worked there.

The Provision of Administrative Support

92. It was, we find, reasonable for the respondent to require that the claimant's need for administrative support should be assessed through Access to Work. The first Access to Work assessment that was carried out, as referred to earlier, did not conclude that administrative support was required by the claimant. The second assessment concluded that administrative support was required and Access to Work agreed to provide funding in late 2020.

93. As we have already concluded, the provision of this support needed to be properly assessed. The claimant asserted that she could have just been given the interim support that was eventually provided by Mr Ogunyemi. However, that was provided when it had already been approved and pending a formal appointment of an assistant. We accept the respondent's submissions that the provision of support was expensive and needed to be appropriate. Prior to the second Access to Work assessment there had not been a clear and definitive assessment of what would be required by the claimant. It was not sufficient for administrative support to be referred to in general terms in occupational health or occupational therapy reports. Furthermore, as has been previously referred to, the claimant was asked for further information, but this was not provided to the respondent.

94. The claimant asserts that the respondent has failed in its duty to make reasonable adjustments in relation to this support, however in terms of a delay in the provision of the support, there was a significant period of sickness absence when the claimant was not in the workplace at all. We do not find that the respondent has failed in its duty in relation to the provision of administrative support.

The Law

95. **Duty to make reasonable adjustments: Provision, criterion or practice** (**s20(3) Equality Act 2010**). Did the respondent have a provision, criterion or practice (PCP) that put the claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled at any relevant time? If so, did the respondent know or could it reasonably have been expected to know, that the claimant was likely to be placed at any such disadvantage? If so, were there steps that were not taken that could have been taken by the respondent to avoid any such disadvantage? If so, would it have been reasonable for the respondent to have to take those steps at any relevant time?

96. **Duty to make reasonable adjustments: auxiliary aids (s20(5) Equality Act 2010):** Would the claimant, 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 at any relevant time? If so, did the respondent know or could it have been reasonably expected to know the claimant was likely to be placed at any such disadvantage? If so, were there steps that could have been taken by the respondent to provide such an aid to avoid any such disadvantage? If so, would it have been reasonable for the respondent to have to take those steps at any relevant time?

97. **Substantial disadvantage (section 212(1) Equality Act 2010):** “Substantial” means more than minor or trivial but it is for the Tribunal has to identify the nature and extent of the disadvantage. It is necessary to identify the steps that should be taken to prevent the claimant suffering this disadvantage. The claimant is to identify or assist the Tribunal in identifying what steps should have been taken and the respondent may assert either that this would not have reduced the disadvantage or that the step itself was not reasonable. The Tribunal needs to assess what the effectiveness of any step would be.

98. Schedules 8 and 21 Equality Act 2010, and the Equality and Human Rights Commission Code of Practice on Employment provide guidance to Tribunals in determining complaints of a failure to make reasonable adjustments.

99. **Burden of proof: Section 136(2) Equality Act 2010** states that if there are facts from which the Tribunal could decide, in the absence of any other explanation, that a person contravened a provision of the Equality Act, the Tribunal must hold that the contravention occurred. This means that once there are facts from which a Tribunal could decide that an unlawful act of discrimination has taken place, the burden of proof is then on the respondent to prove a non-discriminatory explanation for any less favourable treatment. Section 136(3) states that this does not apply if the person shows that he or she did not contravene the relevant provision.

100. An employer must act reasonably in helping a disabled person make an application to Access to Work. In *Bishun v Hertfordshire Probation Service (2011 EAT/0123/11),* a claimant had failed to properly complete an Access to Work assessment. In that case the respondent monitored the claimant's application but ultimately the EAT found that the failure was the claimant's to engage properly with Access to Work and there was no failure to take reasonable steps by the respondent. Responsibility for providing contact with Access to Work was not solely that of the employer.

101. Discrimination complaints are subject to the time limits set out in the Equality Act 2010 at s123(1), as follows:

"…proceedings on a complaint within section 120 may not be brought after the end of –
(a) the period of 3 months starting with the date to which the complaint relates, or
(b) such other period as the employment tribunal thinks just and equitable."

102. Section 123(3) Equality Act 2010 make special provision relating to the date of the act complained of as follows:

"For the purposes of this section…conduct extending over a period is to be treated as done at the end of the period"

103. The Tribunal must consider a number of factors in deciding whether a claim presented late can still be considered on a "just and equitable" basis.

104. These include, but are not limited to, the prejudice each party would suffer as a result of the decision reached, and the circumstances of the case, such as the length of the delay and the reasons for the delay, the extent to which the evidence might be affected by the delay and the steps taken by the claimant to obtain advice once she knew of the possibility of taking action. The Tribunal should also take into account the merits of the claim.

105. In discrimination claims, a claimant must engage with ACAS Early Conciliation before an ET1 can be submitted. The ACAS Early Conciliation must begin within three months of the date of the act complained of.

106. The provisions on protection of wages are in Part II of the Employment Rights Act 1996. Section 13(3) states

"where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion"

107. Section 27(1)(a) defines "wages" as "*any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise.*"

Application of the Law to the Facts Found

108. The claimant alleged that a number of PCPs were applied to her. Taking each of these in turn, the first is to work from the office three or four days a week. We find that there was a provision criterion or practice that staff had to work from the office on at least three or four days a week to provide the appropriate levels of cover and the appropriate service. The claimant says that the adjustment should have been to work from home two days per week. During the course of the hearing the claimant clarified this to mean that it should have been guaranteed that she was able to work from home two days per week irrespective of business requirements.

109. In terms of working from the office three or four days a week did that put the claimant a substantial disadvantage? We accept that driving to the office aggravated her back and neck condition and the respondent knew that. Mr Nazir's evidence was that he could not absolutely guarantee that the claimant would always be able to work from home. The claimant told the Tribunal that she did have to come to the office on some working from home days, but she did not provide the Tribunal with evidence as to how often this happened. We accept Mr Nazir's evidence that it was "*business as usual*" for the claimant to be able be at home for two days every week, one of which was a non-working day, until at least January 2019. We also find that there were, in February, March and half of April 2019, significant periods of absence or days when the claimant simply informed the respondent that she was not coming in to the office. We therefore find that the substantial disadvantage did not occur. The claimant was not in the office for two days a week for a regular period. We have also taken into account the availability of time off in lieu to the claimant and do not consider it the responsibility of the respondent that the claimant did not properly take advantage of the TOIL that was made available to her by taking it as had been envisaged by the respondent.

110. Secondly, was there a requirement for the claimant to work from High Path from 2017 onwards? We find there was such a requirement, because the Kingston office closed at that time. Applying the law on the duty to make reasonable adjustments strictly, this is not a "provision, criterion or practice" ("PCP") because it was not applied to all persons equally; it is specific to the claimant. However, if the PCP is considered to be the transfer of those who worked in Kingston to High Path due to the office closure, it did apply to a number of the respondent's staff equally. However, the claimant was temporarily assigned to Kingston Crown Court for a significant number of months in 2018 so she did not work entirely from High Path from 2017 onwards. Did any such PCP put the claimant at a substantial disadvantage when compared with others who were not disabled? The respondent acknowledges that travel to High Path involved a longer journey for the claimant and we accept that this would cause her, due to her back issues, a disadvantage that was substantial in that it was "more than minor or trivial" (s212(1) Equality Act) when compared with others. However, the respondent did make adjustments of TOIL and working from home and a day off for therapy each week for the claimant. The claimant did not properly take advantage of TOIL. The claimant did work a significant number of days from home.

111. The claimant says that the adjustment should have been to transfer to Uxbridge Probation office. We were not provided with evidence as to when the claimant first requested a move to Uxbridge, which she says was done a considerable time before her formal request was made in November 2019 and February 2020, when she had been off sick for a considerable period of time. The respondent required that she had to return to work to be assessed for a move to Uxbridge before a compassionate transfer could be approved. There was no evidence of any formal request for that transfer until she was off sick in 2019. We find that it was therefore reasonable for the respondent to not consider a transfer to Uxbridge until she requested one. In the absence of any such request, we find that there was not a failure on the part of the respondent to make reasonable adjustments. Reasonable adjustments other than a move to Uxbridge were made to avoid the disadvantage.

112. Thirdly, was there a provision criterion or practice of not giving the claimant a permanent car parking space at High Path? Again, this PCP is not correctly pleaded as it is specific to the claimant. We find that there were disabled parking spaces at High Path and therefore if the PCP is that the respondent refused to provide disabled parking spaces, we find that there was no such PCP. We accept, as described earlier, that there were difficulties with parking from October 2018 until December 2018 in that other members of staff did not always respect the disabled parking spaces, but once the claimant had returned to work and raised the issue the respondent did then take further reasonable steps to ensure that a disabled space would be permanently available to her. The claimant says that she should have been provided with an allocated parking space. We find that she was, as of January 2019.

113. Fourthly, did the respondent apply its sickness absence policy to her? We find it did apply the sickness absence policy to her, although we would note that that Mr Nazir did overlook the week's absence that the claimant asked to take as leave in early 2019, even though he was uncomfortable doing so. The claimant says that the respondent's sickness absence policy caused her a substantial disadvantage in comparison with persons who are not disabled. She says that the adjustment should have been issuing a sickness leave excusal for seven months of wages between 17 April 2019 -1 June 2020 to allow her to receive full pay while off sick. The claimant did apply for and was subsequently granted sickness leave excusal. She alleges in these proceedings that deductions have been made from her wages in this regard and we have considered that issue separately.

114. Did the application of the respondent's sickness absence policy cause the claimant a substantial disadvantage when compared with persons who are not disabled? The claimant's sickness absence from 17 April 2019 to 31 May 2020 was not because of her disability. We make this finding having carefully assessed the claimant's disclosed sick notes and her grievance to Ms Grandison immediately before she went off sick. The contents of the claimant's grievance are almost entirely concerned with workplace stress and anxiety. We note that some of the claimant's earlier sick notes refer to a flare up of her back problem but every single sick note describes that cause of absence as stress at work and anxiety, with some also referring to panic attacks and PTSD.

115. Therefore the primary reason for the claimant's absence and the application of the sickness absence policy was stress and anxiety. Therefore, this did not substantially disadvantage her because of her back and neck problems, her dyslexia and her scotopic sensitivity syndrome when compared with someone not so disabled. The claimant was not absent because of her disability. This is despite the claimant subsequently stating that she was absent because of reasons connected with her disability in her grievance in December 2019. However, this was not the case according to her medical evidence and the terms of her original grievance. Therefore the application of the sickness absence policy was not a failure to make reasonable adjustments in that it did not put her at a substantial disadvantage in comparison with people who are not disabled. A non-disabled person absent because of stress and anxiety would have been treated in the same way as the claimant was – the disadvantage was not because of her disabilities.

116. Fifthly, did the respondent have a provision criterion or practice of not providing administration support since late 2018? If the question is posed as to whether the respondent had a PCP of not providing individual administrative support to any employees during that time, it is clear that the respondent did provide individual administrative support to disabled employees in the workplace and so there was no such general PCP. It was not provided to the claimant during the period of time to which these proceedings relate, as this was not initially assessed as being necessary. A specific support worker was subsequently (in late 2020) made available to her through an application with proper assessment via Occupational Health and Access to Work. There was therefore no bar to her having a specific support worker, but she was required to go through the proper process and when she did, a support worker has been provided to her. We accept that this took longer than the claimant wished it to, but the respondent did not act unreasonably in this regard.

117. Was there a provision criterion or practice of not organising what the claimant describes as occupational therapist consultation visits at her workplace since 2018? Applying the law on the duty to make reasonable adjustments strictly, this is not a "provision, criterion or practice" ("PCP") because it was not applied to all persons equally; it is specific to the claimant. However, if the PCP is considered to be not organising OT visits in the workplace, this is clearly not the case as the claimant's case itself is based on the fact that a colleague or colleagues have had different and what she considers to be more thorough occupational therapy visits in the workplace that she would have benefited from and the respondent should have made such adjustments for her.

118. We do not accept that the respondent had any provision criterion or practice of not organising OT visits in the workplace. We find that the claimant had a DSE assessment which she did not consider was the right kind of OT visit, but it is not true to say that there was a practice of not providing OT visits. A different type of OT visit was to be arranged but events overtook that the provision of that OT visit and part of the problem was that the claimant was out of work sick for a significant period of time over the period of time to which this claim relates. This, of course, hampers workplace visits. Furthermore, the claimant had a temporary workplace for a significant period of time. In conclusion, we find that there has been no PCP of this nature applied to the claimant. We have taken into account the considerable

difficulties that the claimant's circumstances (that is, significant issues with stress and anxiety and consequential absences from the workplace) caused the respondent in trying to organise occupational therapist or other workplace assessments for the claimant.

119. Finally, was there a PCP of inflexible standard work start and finish times? We do not accept that there was such a PCP applied. There were core hours in the workplace, but the claimant and her colleagues were allowed to make use of flexi time. The claimant herself was permitted time off in lieu to adjust for her increased travel time. The claimant says that this was she was prohibited from taking her flexi and time off in lieu. Our finding of fact on this issue is that she only tried to take it once and then requested leave of 40 hours at once. It had been envisaged that the claimant should take time off for this reason little and often and with some notice. This does not, we find, amount to a policy of inflexibility on the part of the respondent.

Unlawful deduction from wages

120. Two items which are in the List of Issues as complaints of unlawful deductions from wages, those being the travel expenses and disability glasses, are dismissed on withdrawal by the claimant because she accepts that they have already been paid.

121. One item in the List of Issues is that the claimant alleges that the respondent has made unlawful deductions from her wages "payable from January 2020 onwards". When the claimant amended her claim in September 2020 she made it clear that she was asking for the wages that should have been paid as part of her 12 month sickness absence which goes to April 2020. This is to be classed as an amendment to her claim because it goes beyond the date of submission of the ET1.

122. It was not clear to the Tribunal whether the respondent expressly accepted this amendment. It has not been rejected by the Tribunal at any stage in the proceedings. We have considered whether it is in the interests of justice to determine the claimant's unlawful deduction from wages complaints relating to her sickness absence up to April 2020. Our decision is that for reasons of expediency we will determine this issue on the basis of the information that is before us. Should the respondent wish to apply for a reconsideration of this decision and adduce further evidence on this point, this is a course of action that is open to them.

123. On consideration, we find that the balance of prejudice to the parties is in allowing the amendment and determining the issue at this hearing. Mr Ogunyemi has provided evidence on this issue in his witness statement, and the respondent has also provided documentary evidence from SSCL as to their calculation of the claimant's sick pay and entitlement. The claimant was not able to provide much assistance to the Tribunal in assessing her claims in this regard.

124. Furthermore, the Tribunal is aware that the claimant is still employed by the respondent and that the parties would benefit from some degree of certainty on this issue. Therefore, we have allowed the claimant to amend her claim as is stated

in her amended ET1 dated 9 September 2020 to ask for recovery of what she says should be the balance of her sick pay for the period of sickness absence from 17 April 2019 for 12 months forward from that period.

125. The claimant's contract of employment is clear, contrary to Mr Bright's evidence that there is no qualifying period for sick pay entitlement. There is also no suggestion of incremental rises with increased periods of service. The wages we find that are properly payable to the claimant, as per section 13 Employment Rights Act are six months' full pay and six months' half pay in any 12 month period of sickness absence.

126. For the 12 month period of sickness absence that started on 17 April 2019 the claimant should, according to her contract and the respondent's sick pay policy, have been paid six months full pay and six months half pay. This did not happen as the claimant moved to half pay in September 2019, whereas we find it should have been not until 17 October 2019. She moved to nil pay in January 2020, however, we find that nil pay should have been delayed until 17 April 2020. We have not been able to establish whether an earlier period of sickness had been taken into account in that assessment and nobody from the respondent was able to assist the Tribunal in that regard. We have assumed, looking at the information from SSCL in the bundle, that earlier periods of sickness were not taken into account as there is no reference to this in SSCL's records.

127. The claimant applied for and was granted sickness leave excusal by the respondent in late 2020. This, and the reasons for it, were not in issue in these proceedings. Neither party has drawn the Tribunal's attention to the reasons for this and they are not disputed. This should therefore entitle the claimant to her contractual six months full pay for sick leave and a further six months full pay (as opposed to six months half pay) for the remainder of the twelve month period. That she is entitled to this is not disputed by the respondent. The period in question contains a leap year with 366 days (2020).

128. We find on the balance of probabilities that an error has been made in the calculations by SSCL. This is because SSCL reports that from 28 October 2019 to 14 March 2020 is 120 days. However, having done this calculation ourselves, it is not 120 but 139 days, which had led, we find, to an under-payment for that period of 19 days. The year 2020 was a leap year which resulted in an additional day in February. Therefore the under-payment was in fact 20 days.

129. Furthermore from 15 March 2020 to 31 April 2020 is also not 66 days as calculated by SSCL, but 78 days. This has resulted in a shortfall of 12 days of half pay, as the claimant had been absent for 12 months as of 17 April 2020 and so after that point was to be paid half pay. 12 days half pay is equivalent to 6 days full pay. 20 plus 6 is 26 days full pay and therefore our conclusion is that the claimant is owed 26 days' pay for that period of sickness absence.

130. We have calculated the sum payable to the claimant as follows. The claimant received a gross salary of £23,841 in April 2020. This is £65.32 per day gross. 26 days pay is therefore £1698.26 gross, that is, without the deduction of tax and National Insurance.

Are any of the complaints out of time?

131. It is the respondent's case that, as the Claimant approached ACAS on 11 January 2020, any incident which occurred prior to 11 October 2019 is out of time. It is their case that as the claimant was off sick from 17 April 2019 and did not return to work until 1 June 2020, there was no continuing series of acts and it would not be just and equitable to extend time to allow the claimant's complaints to be determined.

132. The Tribunal finds that, while there is no continuing series of acts due to the claimant's sickness absence (for reasons not related to her disabilities), and therefore her claims are out of time, it is just and equitable to extend time to allow her complaints to be determined. The balance of prejudice falls in favour of doing so. The complaints are well-documented and a considerable amount of contemporaneous evidence was before the Tribunal. At the outset of the proceedings, it was clear to the respondent what the claimant's claims were and it was clear to the Tribunal that the respondent was well-prepared to deal with them. The claimant is still an employee and has conducted ongoing internal procedures during her absence and has returned to work since the proceedings were commenced. The claimant suffers from stress and anxiety and has disabilities that affect her ability to concentrate. On balance therefore, the claims were presented within a period that was just and equitable and may be considered by the Tribunal.

133. These written reasons were requested by the claimant at the conclusion of the hearing on 1 April 2022, reasons having been given as part of the extempore judgment on that date.

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Employment Judge Barker

Date: 6 June 2022