EMPLOYMENT TRIBUNALS

Claimant:	**Miss J A Gower**
Respondent:	**Babcock Land Defence Limited**
Heard at:	**Birmingham**
On:	**28, 29, 30 September, 1, 2, & 5 October 2020; by CVP on 11 January 2021 and in chambers on 18 & 19 January and 25 March 2021**
Before:	**Employment Judge Flood**
	Mr Khan
	Mrs Whitehill

Representation

Claimant:	Mr Flood (Counsel)
Respondent:	Miss Gould (Counsel)

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The respondent failed to comply with a duty to make reasonable adjustments (section 20 & 21 Equality Act 2010 ("EqA")) from 21 August 2018 until 4 March 2019 by failing to perform and implement a second stress risk assessment as recommended by an Occupational Health report sent to it on 26 February 2018.
2. The claimant's remaining complaints that the respondent failed to comply with a duty to make reasonable adjustments are dismissed.

REASONS

The Complaints and preliminary matters

1. The claimant is employed by respondent, with her employment having started on 23 September 2013. She is employed as a Procurement Manager/Contract Delivery Team Lead. By a claim form presented on 17 May 2019, following a period of early conciliation from 27 March 2019 to 27 April 2019, the claimant brought complaints of disability discrimination, by reason of a failure by the respondent in their duty to make reasonable adjustments (sections 20 & 21 EqA).

2. There was an agreed list of issues prepared in advance of the hearing which was set out in the Case Management Order of Employment Judge Butler of 17 September 2019 (page 34). This was amended as the hearing progressed as the claimant confirmed that she was no longer relying on the provision, criteria or practice ("PCP") that had been set out at paragraph 4 (v) b, c, and e of that Order and so was not pursuing the corresponding reasonable adjustments sought at paragraphs 4 (viii) b, e, f and g. The List of Issues was amended and is set out below (the matters no longer pursued have been shown in strikethrough text to avoid any confusion caused by a change in numbering). These issues were referred to throughout the hearing.

3. The respondent accepted that the claimant was disabled for the purposes of section 6 of the EqA with effect from December 2016 due to muscle dystonia of the throat and temporomandibular disorder. It does not accept that it knew or could reasonably have been expected to have known that the claimant was disabled.

4. Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 27 December 2018 is potentially out of time, so that the tribunal may not have jurisdiction to deal with it.

5. There was an agreed bundle of documents running to three volumes and an additional bundle of documents prepared by the claimant which the respondent says contains material that is not relevant. This bundle was admitted by the Tribunal but was not referred to in the main by the representatives or the witnesses in their evidence. References to page numbers in this judgment are references to pages in the bundles of documents.

6. The hearing had been listed for 6 days to include decision and remedy, if required. It was clear at the outset that this was unlikely to be possible given the number of witnesses and volume of documentation. The parties and representatives attended in person for the first 4 days of the hearing. On Day 5 an issue arose as to a potential Covid 19 contact involving one of the parties' representatives so the hearing was adjourned for the remainder of

that day. This was resolved and Day 6 of the hearing took place as planned with the Tribunal and the claimant attending in person and the parties' representatives and relevant witnesses all attending via CVP with the consent of all parties. The matter was relisted for a final day of evidence on 11 January 2021 (with all parties, representatives, witnesses and the Tribunal attending by CVP). Written submissions were provided by the parties by 18 January 2021 and the Tribunal met in chambers (via CVP) to make its decision on 18 & 19 January 2021. It was not possible for those deliberations to be completed within the time originally allocated so a further day of deliberations took place by CVP on 25 March 2021 (which was the first available time the Tribunal could meet). The Tribunal sends its apologies to the parties for the length of time it has taken for this decision to have been made and sent to the parties.

The Issues

7. The issues between the parties that potentially fell to be determined were:

Duty to make reasonable adjustments

7.1. Did the respondent not know, and could not reasonably have been expected to know that the claimant had the disability at the date when the duty to make adjustments is said to arise?

7.2. Did the respondent apply a provision, criteria or practice ("PCP") which placed the claimant at a substantial disadvantage in comparison with persons who are not disabled? - did the respondent have the following PCPS:

a. A practice of not following the recommendations contained within Occupational Health reports;
~~b. A practice of not following the recommendations of Speech therapists;~~
~~c. Requiring the use of voice at work;~~
d. Allocating/increasing the workload of remaining staff when individuals either leave employment or when new work comes in;
~~e. Practice of working at a computer with a standard chair, standard desk and standard telephone;~~
f. Practice of not following the grievance procedure.

7.3. Did any such PCP put the claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled at any relevant time, in that the claimant suffered a substantial disadvantage by reason of:

a. Exacerbated the symptoms of the claimant's impairment;
b. it impacted upon the claimant's health/stress levels that resulted in absences from work due to three reoccurrences of muscle dystonia and TMJ, with absences as follows:
    ii. 14 November 2016- 17 April 2017
    iii. 23 January 2019- 1 February 2019

iv. 30 August 2019- ongoing.

a. The claimant had great difficulty in sitting and working at her work computer.

7.4. If so, did the respondent know or could it reasonably have been expected to know the claimant was likely to be placed at any such disadvantage?

7.5. If so, were there steps that were not taken that could have been taken by the respondent to avoid any such disadvantage? The burden of proof does not lie on the claimant; however it is helpful to know what steps the claimant alleges should have been taken and they are identified as follows:

a. Follow the recommendations of the Occupational Health Reports;

~~b. Follow the recommendations of the speech therapist;~~

c. Reducing workload through reallocating some of the claimant's work to others;

d. Providing the claimant with assistance to complete work that was allocated to her;

~~e. Provide a chair that supports neck and face in the correct position;~~

~~f. Supply a suitable desk, and;~~

~~g. Supply a suitable telephone.~~

7.6. If so, would it have been reasonable for the respondent to have to take those steps at any relevant time?

7.7. Were all of the claimant's complaints presented within the time limits set out in sections 123(1)(a) & (b) of the Equality Act 2010 ("EQA")? Dealing with this issue may involve consideration of subsidiary issues including: whether there was an act and/or conduct extending over a period, and/or a series of similar acts or failures; whether time should be extended on a "*just and equitable*" basis; when the treatment complained about occurred; etc.

Findings of Fact

8. The claimant attended to give evidence and called J Gardner ("JG"), a former colleague at the respondent, H Evans ("HE"), former Head of Contract of Delivery at the respondent between January and October 2016, G Felton, an employee of the supplier of the respondent who worked with the claimant, and P Nugent, another former colleague of the claimant at the respondent. G Cloughley ("GC"), former Senior Contract Manager at the respondent and a former line manager of the claimant, I Parry ("IP"), Head of Procurement at the respondent and line manager of the claimant from January 2019 until August 2019, S J Timmis ("SJT"), Employee Relations Advisor at the respondent and A Ridler ("AR"), Senior Supply Chain Manager at the

respondent all gave evidence on behalf of the respondent. We considered the evidence given both in written statements and oral evidence given in cross examination, re-examination and in answer to questioning from the Tribunal. We considered the ET1 and the ET3 together with relevant numbered documents referred to below that were pointed out to us or referenced in statements, evidence or other documents.

9. We have made findings not only on allegations made as specific discrimination complaints but on other relevant matters raised as background as there may have been relevance to our conclusions.

10. The Tribunal resolved conflicts of evidence as arose on the balance of probabilities and assessed the credibility of the witnesses and the consistency of their evidence with surrounding facts.

11. We made the following findings of fact:

The claimant's health conditions and treatment for these

11.1. The claimant has a number of health conditions and we heard and considered a large amount of evidence about these. In summary the claimant suffers from a rare hereditary bone condition called aclasia which she believes was diagnosed in around 2010. This was something she was able to manage herself and it did not impact significantly on her daily life. She informed the respondent of this condition and the respondent agreed that she could have a car parking place close to the office to accommodate issues with mobility.

11.2. She was diagnosed with muscle dystonia in November 2016 and was further diagnosed with temporomandibular disorder in July 2017. The claimant gave convincing evidence on the effect that these various conditions had on her describing suffering from shearing pain and that on a scale of 1-10 at times it was at 10. Her health conditions appear to be complex and interconnected and it has taken many appointments with various medical specialists and therapists in order to develop a treatment plan for her. This is evidenced by the large volume of medical evidence supplied by the claimant about her conditions and her significant attempts to seek diagnosis and treatment for then in particular between November 2016 and April 2017(pages 68-125). She has had ongoing treatment including surgery and speech therapy. She has had several reoccurrences of her condition. We accepted that stress was a significant contributory factor which exacerbated the symptoms she was suffering.

Employment with the respondent

11.3. The claimant started working for the respondent following the transfer of her employment under the Transfer of Undertakings (Protection of Employment Regulations 2016 (as amended) ("TUPE") on or around 1 April 2015. She had been employed (since September 2013) by the

Defence Support Group ("DSG") which was part of the Ministry of Defence ("MOD"). This function was transferred to the respondent which took over responsibility for maintaining and repairing military equipment for the MOD and managing the storage of its UK land vehicle fleet.

11.4. The claimant's contract of employment was at pages 171-186. There are also a large number of policies and procedures that apply to her employment contained in the Bundle. Our attention in particular was drawn to the grievance procedure at pages 1240-1278 and associated process guidance where we noted in particular at clause 2.2 it states:

"*Every effort must be made to resolve the grievance as quickly as possible but if this has not been achieved within 25 working days the case should be reviewed by either HR or a senior manager. The purpose of the review is to ensure that the correct process is being followed to avoid unnecessary delays."*

And at clause 2.4 it states

"The formal grievance meeting will be held within 10 working days of the receipt of a formal written grievance. Exceptionally this may not be possible due to complexity of the grievance or the nature of the investigation; if there is any delay the Manager will notify the employee in writing, providing an explanation for the delay and an indication of when a meeting can be held."

And at clause 2.6:

"*An appeal meeting will be arranged to take place within 10 working days of the submission of a formal appeal, where practicable."*

11.5. The claimant has always worked in the Contract Let Team which is part of the respondent's procurement function. This team is responsible for the management and renewal of contracts with suppliers (predominantly acting as agent to the MOD). The team is split into two areas, Repairs and Consumables. The claimant is employed in the role of Contract Delivery Team Lead in the Consumables area of the Contract Let team. When she was working at DSG she had been employed as Procurement Manager.

11.6. Following the transfer of the DSG to the respondent in 2015, there was a significant period of change within the business. A number of employees left the business on voluntary redundancy. Following restructures and reorganisations in 2016, the claimant was the only employee performing the role she was, there having been 9 Procurement Managers when the function was performed by DSG. The claimant was one of the only

employees managing and overseeing the team's contract portfolio (although specialists were dealing with particular matters such a regulatory matters). There was clearly a large amount of work that was required to be done and the claimant had rising stress levels during the period from April 2016 when the department was under resourced. On 28 April 2016 she complained in writing to her then line manager, G Brown about levels of work and support and that her health was being affected (page 188). This was acknowledged at the time but does not appear to have resulted in any action being taken. In May 2016 she started to experience high blood pressure and double vision.

11.7. In June 2016 the claimant was involved in the recruitment of 11 staff which she felt should have been done by Human Resources and Training (albeit she accepts she would need to have some involvement in the process as the line manager).

First Grievance

11.8. The claimant raised a grievance in June 2016 and a copy of the document she submitted was at page 189-191. She raised several issues at this point, a number of which are related to pay and grading. She also raises a complaint of "*Lack of support from senior management*" and "*Resource issues*". She makes reference to "*the effect of the environment has had on my health*" and that matters raised being a "*source of stress*". The respondent asked for a period of 2 weeks to "*detail and map out what needs to be done*" for the grievance (e mail from HE to the claimant on 13 June 2016 at page 192). There is no further action until claimant chases HE on 30 August 2016 (page 196). The claimant's grievance was acknowledged on 30 August 2016 (page 197). A grievance hearing was held on 8 September 2016 (minutes at pages 200-207) and the claimant was provided with the written outcome on 22 September 2016 (page 208-9). Parts of the claimant's grievance were upheld but the claimant went on to appeal against the outcome of the grievance page 213 and at this point stated that she had raised the issues of experiencing high blood pressure and double vision which she had reported to HE. The claimant was issued with a new contract to perform the role of Contract Delivery Team Lead on 13 October 2016 (pages 216-225).

11.9. In August 2016 GC was appointed as the Senior Contract Manager and the claimant's line manager. There was no formal handover of the role to him by the previous incumbent and GC was not aware that the claimant had previously complained about workload and lack of resource, although did know she had raised a grievance. GC undertook a restructure of the Contract Let Team in September 2016 carrying out a review of all the contracts being operated and setting up a database. He noted that there was a significant backlog (which the claimant also

described as being in place). GC introduced additional Contract Managers and split the Contract Let team into different cells. Each cell was made up of a Contract Manager and 2-5 Contract Officers and was responsible for a particular type of Contract. The claimant became the Contract manager for the Lethality of STSP Cell which looked after weapons contracts. Additional Contract Managers were recruited in September 2016 and later and the Contract Let team had an increase in resourcing from that point onwards .

11.10. Between September 2016 and November 2016 the claimant's workload appears to have been more manageable although there were significant differences in the operation of the business as part of the respondent than when the function was part of the MOD.

Sickness absence (14/11/16-17/4/17)

11.11. The claimant began a period of sickness from 14 November 2016. Her sick notes for this period show her absences as being for Pharyngitis, voice hoarseness, laryngitis, dystonia, stress at work and burning mouth syndrome (as shown in various fit notes in the bundle). The claimant's health became very poor during her absence and it was a frightening time for the claimant as she was in "*excruciating pain*" and explained she became "*very depressed, having high anxiety due to thinking what was wrong with me*, *and if I would ever be pain free or be able to eat and speak normally*" . The claimant's health did not improve quickly and she started to have exploratory appointments to try and find out what whether there was an underlying issue that was causing the problems. There was a large amount of correspondence in the bundle which evidences the claimant's efforts to find out what was causing her ill health. The fit note at page 234 was the first reference we saw to stress at work on 16 January 2017. It was noted regularly on the claimant's fit notes after this. The claimant was in communication with GC during her absence and updated the respondent about the treatment she was having via telephone and also via her partner who also worked at the respondent.

The first occupational health ("OH") report

11.12. In February 2017, the claimant was nearing being able to return to work and GC made an OH referral (at page 241-245). The referral was filled in by GC but the claimant added some additional comments and in particular the information provided at page 244. It is noted in the referral form that "*GP fit notes suggest a factor causing the absence may be associated with workplace stress*" and that the respondent wanted to "*understand potential triggers and identify potential modifications*". The claimant filled in a section of the form and raises the issues of stress adding that "*levels of stress at work re-occur due to lack of management support*". She also added that she "*had to put in grievance into company*

to try and address many issues that were promoting stress". The claimant attended an OH assessment on 13 March 2017 and a report was issued on 28 March 2017 (pages 250-254). The report notes that the "*stress levels [claimant] was under has contributed to the muscle tightness*" and that she was "*still stressed by the effects of the situation and had some significant clinical symptoms of anxiety and depression*" although her speech was "*now back to normal*". The report recommended a phased return to work and noted "*I strongly recommend that her working conditions are risk assessed in accordance with the advice on stress at work recommended by the HSE*.". It noted that the claimant had "*ongoing concerns about her workload increasing, due to loss of staff and lack of support from senior management*". The report concluded that at this stage that the claimant was "*unlikely at this early stage that she would be covered by the Equality Act 2010*" but ultimately this would be a matter for a Tribunal to decide. GC saw this report at the time and acknowledged in cross examination that this report made a connection between the claimant's absence and stress at work.

Return to work meeting

11.13. The claimant attended a meeting to discuss her return to work on 4 April 2017 with GC (see return to work form and notes at pages 262-3). The OH report was discussed and GC agreed to a phased return to work over a 4-week period and that "*a workplace assessment will take place together with H&S*" on the claimant's return to work. GC also noted that he would "*facilitate a monthly one to one to discuss wellbeing, what's going right and what could be done better to support [claimant]*". It was also noted that GC would "*Maintain re-distribution and balance of the contract let workload which has already been divided into cells.*" It was noted that the claimant's team (of 3) were at the time managing 26 contracts. The return to work form went on to state that "*whilst Babcock has a duty of care for its employees we also expected that the employee had a duty of care for themselves and concerns should be raised (where possible) prior to becoming an issue*" and that "*perceived stressors*" should be "*immediately raised to her Line Manager for consideration and discussion*".

11.14. The claimant returned to work on 17 April 2017. GC confirmed to the claimant on 28 April that he had requested a workplace assessment but had not got a date yet (email at page 273). The claimant attended a 1:1 meeting with her line manager GC on 17 May 2017

Discussions on first workplace risk assessment

11.15. The claimant stated that she then constantly chased the respondent about the completion of a stress risk assessment which she described in response to cross examination as the most important part of the OH

recommendations. There are e mails between the claimant and W Frawley, the respondent's Health and Safety Advisor at that time ("WF") in late May and early June 2017. Although the claimant is pushing this forward, WF is responding and met with the claimant at this time and then sent the claimant a questionnaire dealing with issues of stress at work to complete (shown at pages 292-3) and a draft document which appears to be the one at pages 294-5. The claimant completed this and added more information to this sending it back to WF on 7 June 2017. There appears to have been no response to her e mail and she sent an e mail chasing this up to WF (page 310). Having had no response to this the claimant e mailed GC on 25 July 2017 (page 315). In this e mail the claimant says she is "*increasingly concerned about the failure to provide a risk assessment particularly now that we find ourselves being re-organised again, staff leaving the organisation and workloads increasing again*". She asks GC to "*intervene*" and raises concerns of a relapse. In cross examination she stated that she felt that the "*only way*" to protect herself was to control the stress at work to avoid a repeat of her previous illness. GC replied the same day and says that this has been hastened with WF and indicates in this email "*from our last one to one I understand that you had received an assessment but requested changes – did I misunderstand or is that the current status and what's outstanding*". This indicates that there were some discussions about the stress risk assessment between the claimant and GC at this time. The claimant was then contacted by WF on 28 July 2017 to arrange a meeting (page 321) and they further corresponded by e mail on 9 August (page 330). They had a meeting on 15 August and WF sent the claimant her a further document on the 25 August 2017. She emailed WF again on 31 August with further issues and changes. It appears that final version of the risk assessment was completed towards the end of August 2017 and we saw a document labelled finalised version at page 339-341. This document was never signed or dated and the claimant's view was that this was therefore never finalised. She contended that this needed to be completed, signed and dated and put on her HR file and that it then became a "*bible*" which she could take with her wherever she was in the organisation and that it should be reviewed regularly. We find that although this stress risk assessment was never signed or dated, it had been completed sufficiently for the claimant and GC to be able to use it moving forward. It had been completed by the end of August 2017, albeit this was 5 months after this was recommended by the first OH report. We did not see any evidence that this risk assessment was referred back to or discussed in 1:1 sessions that took place after it was put in place.

11.16. Between April and October 2017, the claimant carried out her role as Contract Manager and managed two employees JG and M Kynaston ("MK"). The claimant was having regular one to ones with GC during this time where she had the chance to raise issues about workload and other

matters of concern to her. GC suggested that he offered much more support to the claimant than other managers and that in his opinion her cell had less work to complete than other cells. She gradually increased her working hours during this time but continued to be paid at her full-time rate as part of her phased return to work. It is noted that the respondent's sickness absence procedure provides that the normal period for a phased return is up to 13 weeks and so the respondent provided significantly longer than usual to allow the claimant to return to work without any financial detriment.

Respondent organisational restructure in October 2017

11.17. There was a further restructure of operations which took effect in October 2017. The claimant raised concerns about how this might impact her, raising the point that she is concerned during a meeting with GC on 26 September 2017 which she followed up in an e mail to GC of 29 September 2017 (page 358-359). This email gives an insight into the way the claimant was feeling about the upcoming changes. She makes reference to still trying to recover from the first bout of changes to structure in March 2016 noting that she felt she was "*still trying to get my health back to the level it was prior to the first restructuring"* and was concerned that *"all the work I have done with my medical team will be undone if I am once again forced to work under unreasonable pressure inclusive of but not limited to excessive workloads, increasingly tight deadlines, loss of direct resource and possible retraining of staff*". She mentioned that she had some forthcoming appointments and that she would alert GC to any detrimental effects. GC told us that during 1:1 meetings the claimant was constantly referring back to previous events and the changes that took place in 2016 before he became her manager. The claimant had considerable anxiety that she would be put in a similar situation as she felt she was in before and that this might trigger a repeat of the serious ill health she suffered. The claimant attributed the ill health she suffered to the restructure in March 2016. This level of anxiety perhaps informs how the claimant then approaches any level of change or increases in workload she experienced within the respondent.

11.18. GC responded to this e mail on 9 October and in this e mail he set out what he saw were the steps that he had already taken to assist the claimant namely the extended phased return to work; supporting attendance at medical appointments; monitoring and where possible reallocating workload; rebalancing resources; recruiting qualified staff (a reference to K Bevington ("KB") who was recruited to replace MK – see below); 1:1s; OH referral and completing a HSE risk assessment. The claimant responded the same day challenging some of the points made by GC and states; "*I cannot rely on words but actions and my medical team behind me has reminded me of the consequences of taking on to*

much work in the future and my health becoming permanently affected." There is clearly a mismatch of expectations here as to what the respondent and the claimant believe are necessary and required to support the claimant. GC makes references throughout his statement to pieces of work he allocated elsewhere to reduce the claimant's workload and that, in comparison with other cell managers, the claimant's workload was not as heavy. This may be correct but we find that in some cases GC failed to appreciate the fact that the claimant was in a different situation to other cell managers because of her health and ability to cope with workplace stress. Even though other managers may have managed a heavier workload, the claimant's health and the impact stress had on it meant that she was not able to sustain a comparable level of workload.

11.19. As a result of the restructure that took place in October 2017, MK left the claimant's team as he secured a different role within the organisation. The claimant became concerned as to how workloads would be covered. KB was allocated to the claimant's team in October 2017. The claimant contended that this did not amount to a like for like replacement as KB brought with her an existing workload on the GSEC contract (both managing the existing contract and the forthcoming relet of that contract). She contended that KB did not have time or capacity to take on any of the weapons workload that MK had carried out, and that MK had particularly useful data skills which the team found helpful. We accepted her evidence on this matter and noted that there was an impact on the team and the claimant's workload from October 2017 as they absorbed work that had been carried out by MK. On 12 October 2017 the claimant e mailed HR asking for a meeting stating that she needed "*to talk to you about my health and I feel I have exhausted all avenues with my line manager*." This meeting took place with J McElhinney ("JM") and the claimant's union representative also attended. JM e mailed the claimant after that meeting with a summary of what was discussed (page 378-9). It is clear that workload was discussed as JM mentioned raising with management an additional floating resource (although this does not appear to have materialised) and encouraged the claimant to raise issues of workload with GC. The claimant informed JM that she was in pain at that currently time and had upcoming medical appointments. The claimant's phased return was also discussed and JM included in her e mail the following comment: "[*JM] confirmed the business can no longer support a phased return to work and advised [claimant] she will be expected to work 37 hours a week from 1st November*".

11.20. The claimant was very upset to have received this email and replied on 30 October 2017 by e mail (page 376-7) stating that she felt that the respondent was putting pressure on her to return to a 37 hour week. She stated that following these discussions she had been in pain for 12 hours solidly and stated that she felt that doing the hours requested would

compromise her recovery. She stated "*I have a disability on temporomandibular disorder jaw and is a recognised condition and I would expect the company to support my recovery*" and that she was "*really upset at the lack of duty of care Babcock are showing me the 2nd time around*". The claimant mentioned raising a grievance and indeed subsequently did so. JM replied to this e mail on 6 November 2017 (page 383-4) responding to various points the claimant made and making suggestions about working hours to fit around the claimant's forthcoming appointments and suggesting she may wish to consider flexible working. She suggested that the claimant discuss any changes as a result of the recent restricted with GC as it had been her understanding that the claimant's role had been substantially unchanged. The claimant subsequently confirmed to JM by e mail (page 394) that she had agreed a "*temporary solution*" which was that she would move to 33 hours per week until the end of the year. JM confirmed this arrangement by e mail (page 393) and noted that the claimant's pay would be reduced to reflect hours worked. JM then recommended a further OH referral at the end of the year. The claimant's hours and pay were adjusted with effect from 1 November 2017 and she was issued with a letter advising her that her request to work part time had been approved and that she would now work 33 hours per week over 5 days (page 392). A correction was made to this on 21 November corrected the date of change from 1 to 7 November 2017 (page 406).

11.21. The claimant mentioned that she was considering a second grievance in an e mail to GC sent on 10 November 2017 (page 287-9). This appears to follow a meeting with GC the day before which is referenced in that e mail. The main issue the claimant was complaining about was that she felt pressured to return to full time hours from 7 November, even before her fit note expired on 10 November. She made reference to the company's policy that a phased return would usually be for 13 weeks (and she had been supported on full pay for 19 weeks) but said that this was "*not set in stone*". She went on to state: "*I now have had a condition for more than 12 months and this is classed as a disability and expect to be supported accordingly under the equality act."*

The claimant's second grievance

11.22. The claimant raised a second grievance on 22 November 2017 (page 417 and 437-8) complaining about what she perceived was a lack of support and that she felt she had been put under pressure to return to full time hours (and was being disadvantaged financially). She also complained about not being referred to OH despite she says this being mentioned in August 2017. A grievance meeting was held on 29 November 2017. The outcome turning down her grievance was issued to the claimant on 5 December 2017 (page 464-465). The claimant

appealed on 5 December 2017 (page 469) and an appeal hearing was held on 20 December 2017 (minutes at pages 492-498). The claimant's appeal was largely upheld, and the outcome to this appeal was sent to her on 29 January 2018 (page 552-553). The claimant was frustrated that she had to go through this process to get the correct decision and felt that her health had deteriorated unnecessarily. There was a delay to the outcome of the claimant's appeal being provided to her.

The second OH report

11.23. The respondent made an OH referral on 2 January 2018 (page 539-543). The claimant attended an OH appointment and the OH report was issued on 26 February 2018 and is shown at pages 598-601. This report makes findings that the claimant is likely to be covered by the EQA and recommended on three occasions that the respondent should complete a second stress risk assessment. In particular it noted:

"Both Miss Gower and myself remain concerned that her symptoms could return particularly if the stresses in the workplace continue. I note the actions you have taken in the workplace although Miss Gower feels that some of the recommendations from the HSE stress assessment have not been fully implemented. I would suggest that the stress assessment is repeated and further actions are considered."

It also noted

"5. Could the employee undertake light/alternative duties?

I see no need to modify Miss Gower's duties in the workplace specifically. Although as mentioned, she will require her workload to be closely monitored to ensure the significant stresses does not reoccur possibly leading to her becoming ill again."

And

"As mentioned previously I think it would be sensible for a HSE stress assessment to be performed again and to consider its outcomes. I am concerned that should Miss Gower's stress levels be significantly increased again, it may quite likely result in the recurrence of her muscle dystonia and jaw pain leading to further absences from work. This is clearly undesirable. It is important that Miss Gower monitors this and has regular meetings with her manager to provide support and direction. I would suggest that her workload needs to be regularly monitored and that she is not expected to routinely work overtime."

"As mentioned it appears that Miss Gower's absences caused by the muscle dystonia/jaw pain were related to periods of high stress and anxiety. Clearly avoiding these situations will be desirable."

"I strongly advise that a further stress assessment for Miss Gower, and perhaps for her work colleagues is performed and the outcomes are considered. This will hopefully guide any interventions that are required to assist Miss Gower, and her colleagues, in the workplace to reduce any stresses further."

The report also recommended that the claimant continue to see her medical specialists as required and this was acknowledged by all as always taking place without any restriction from the respondent.

11.24. The claimant returned to full time working hours on 1 March 2018 (see letter at page 608). Although the claimant reported her levels of workload as still being significant, there appears to have been a relatively uneventful period from her return to work until the summer of 2018 and the claimant said that the workload was being covered as a department. The claimant reported having to assist KB with some of her workload as the GSEC contract she was responsible for was being relet which involved a huge volume of work. KB had to take some leave at this time because her mother was unwell. The claimant was attending 1:1 meetings with GC during this period. GC also told us about additional team catch up meetings held around once a month which he held with the claimant and her team to discuss issues and concerns and provide advice and support. He explained that these were not held with other Contract Managers and his view was still that other Contract Managers managed a larger overall portfolio of contracts and had bigger teams to oversee with more line management responsibility.

Issues with workload and resourcing

11.25. On 27 June 2018, the claimant raised issues about workload with GC following a meeting she attended with him that day (page 613). She mentions increasing volumes of work and that all the team had been working on the new (relet) of the GSC contract. She reported to GC that her throat was tightening up again and that she had been referred back to her specialist ENT and speech therapy. She mentioned CBT sessions attended and noted that "*my GP has highlighted the environment I am working in needs to change. In regards to the levels of work, repetition, support from the organisation and realistic deadlines to elevate the levels of stress on the floorplate*." She acknowledged that GC had told her he intended to safeguard health and safety and she then referred back to the OH report from February 2018 and the actions from it. GC accepted in cross examination that the claimant was stressed at this time but he did not accept that her workload had increased in terms of numbers of contracts she was required to work on. A further meeting was held between the claimant and GC on 31 July 2018 and the claimant sent GC an email after it (page 617). In this e mail the claimant again states her throat is still tight and she was receiving treatment. She notes that KB

has at this point been offered another post and was awaiting an internal reference (although she had not resigned at this date). GC had asked the claimant to consider who could support KB's role upon leaving and the claimant suggested that Rob Fisher might be appropriate as he had relevant experience, although acknowledges this could cause a gap in another team. GC responds to this e mail on 2 August 2018 (page 616) noting that he believes the respondent had "*already started to address*" the claimant's concerns. He made reference to the movement of the GSEC/Tranche/RFQ activity to the sourcing team noting that if KB left that would leave a hole within the claimant's team. He mentioned that a recruitment campaign was underway bringing 3 people in and that KB would be replaced and that this was a "*must*". The issues of bottlenecks and duplication of effort that the claimant raised was acknowledged as being valid and GC informed the claimant of meetings being held with senior managers and actions with the customer about this. He reminded the claimant that she should keep him informed of her concerns during 1:1 meetings.

11.26. KB resigned very shortly after this and stopped working just under a week later on 9 August 2018 (as she had accrued annual leave to take). On 6 August 2018, the claimant sent a further e mail to GC after meeting with him that day (page 615). She had attended an ENT and speech therapy appointment the Friday before (3 August 2018). The claimant reported to GC that her throat was tightening and a further series of appointments would be needed to stop it getting worse. The claimant mentions KB leaving and that the GSEC/tranche work would be transferred, but then went on to describe the other remaining work that still needed to be done by herself and JG. She set out concerns about already being up to capacity and that a replacement for KB could be two months off (and that then training of a replacement would have to be carried out as well as the existing work). The claimant went on to state:

"*You have been informed the endless duplication, non movement with any decisions, work volumes, has all accounted to the stress levels and my muscle tightness reoccurring again back in my throat.*

The norm around me where everyone is up to the limit in regard to work makes me very concerned for myself in the present environment."

11.27. This was a clear indication to GC that the claimant was concerned that her health was being affected by her workload. JG confirmed in her evidence that the team had a heavy workload at this time with the normal being 8 ½ hours each day of solid work. GC met with the claimant and JG on 13 August 2018 to discuss the team's workload. At that meeting, both the claimant and JG recall that the team was given an additional three tactical hearing contracts to work on. Both describe these contracts arriving in a box and being in a very poor state and mixed up

requiring additional work to resolve. The claimant sent an e mail to GC later that day setting out the various items of work her team was carrying out (page 620-621). This mentioned the tactical hearing contracts with the claimant informing GC that the team did not have the capacity to do anything with these and that GC was going to get these covered elsewhere (although this did not in fact happen). On 15 August 2018 the claimant's GP wrote a letter stating that the claimant was having throat symptoms and her voice was affected since mid June 2018. It also noted that "*Due to her symptoms which she says become worse at work due to stress, she has been referred to speech and language therapist and is awaiting speech therapy. She mentions that she is increasingly distressed due to recurrence of her symptoms, which had taken a long time for her to recover."*

11.28. The claimant sent a further e mail to GC in the morning of 21 August 2018 again listing the items of work that the team was undertaking (page 623). She stated that the team were struggling to keep up with the demands. Later that day, the claimant e mailed GC again and attached the letter from her GP mentioned at para 11.25 above (page 627). This 2nd e mail stated that the claimant was "*formally advising*" that her health was being affected. She made reference to the levels of workload in the respondent generally and the issues of duplication raised before. The claimant made reference to the OH report and set out the section of that report referred to at para 11.21 above and also stated:

"*As you are aware my section is undermanned and we have major contracts to let and administer which would have been a struggle had [KB] remained with Babcock; I can confirm my one remaining staff member and I are now under significant stress. Whilst we have discussed at our weekly meetings my serious concern regarding my health I am disappointed to confirm that no additional support has been offered; whilst you have confirmed recruitment will be undertaken to replace [KB] this has not materialised. As the OH report stated it is not only stress but anxiety that has caused my symptoms to re-occur – so whilst the business can re-prioritise my tasks the knowledge that the tasks are still waiting to be completed is more debilitating and you do worry about it."*

The claimant stated that no stress risk assessment had been carried out as recommended in the OH report in February 2018. The claimant went on to request "*an immediate review of my workloads hitting SSP and a re-distribution of any excess work to ensure my health is not further compromised which could lead to further damage, that would again see me going off sick and go through the HR procedures again."* We could not see a response to this particular e mail.

11.29. On 4 September 2018, JG notified the respondent that she intended to retire. On 6 September 2018, there was a further meeting held between GC and the claimant and the claimant e mailed GC with a summary after (page 629-630). This confirmed that GC had agreed to remove the new GSEC requirement to A Johnson's ("AJ") team and the claimant set out outstanding actions on this piece of work. The claimant confirmed that her team would manage the existing GSEC contract that had been carried out by KB (the claimant explained to the Tribunal that JG and she had completed a significant amount of work sorting out issues with this piece of work and wanted to complete this). She made reference to the forthcoming retirement of JG and the fact that her 38 years' experience would be lost and asked for someone to be put in place now to be trained on the weapons contracts. SJT (who was now the HR manager who was involved in the claimant's area) replied to this on 7 September (page 631) stating "*It sounds as though he took on board your concerns? Are you feeling supported?*" and asking her to update SJT on the next meeting and come back to her if any further concerns. It is clear that the claimant was still unhappy as on 10 September 2018 she e mailed SJT (page 631) stating: "*We need to sit down today and discuss me doing a formal grievance*".

11.30. As a result of this email, SJT e mailed the claimant and suggested that before formal action was taken that a meeting should be held between the claimant, GC and her (page 634). A meeting was arranged to be attended by the claimant, GC and SJT which took place on 27 September 2018. The claimant prepared a statement for the meeting which she read out at the start which is at page 641. This stated that the claimant's medical condition had reoccurred and that she believed her health to be suffering as a result of stress at work. This acknowledged that there had been meetings between GC and the claimant to discuss workloads but that "*I feel we have not resolved anything just moved small packets of work to other sections, and need a plan of action that can be working alongside my treatment for the remainder of the year*". The claimant stated that her team was overworked and although she understood others were "*in a similar situation, I have this health problem which is getting worse due to the stress I am experiencing at work*". She went on ask the company to carry out 5 action points including an "*immediate injection of staff*" and a succession plan for JG. She also asked that her health condition be acknowledged and that clarity be provided on her sick pay entitlement should she be off sick again. During the meeting the claimant informed GC and SJT that she felt her condition had recurred and that this had been caused by stress at work. Following what appears to be a difficult conversation, a number of action points were agreed. The claimant sent a follow up e mail on 8 October 2018 (page 639) which listed the various action points that had been agreed. This included the agreement to provide 2 additional employees, that JG's

replacement was in situ by January 2019 (and she, the claimant, was involved in recruitment) and that the stress risk assessment recommended by the second OH report be carried out.

11.31. We heard evidence which we accepted from a number of witnesses about the difficulties involved in recruiting employees and the length of time it took employees to be trained even when recruitment took place. GC explained that the procurement and ex civil service nature of the respondent's business was a unique skill set and they tended to recruit former civil service or MOD employees which were difficult to find in the Telford area. Recruitment drives took place which were not always successful in obtaining any suitable employees. JG told us that she estimated it would take up to 3 months for a new employee to be trained and be competent to deal with the basics of contract management and GC confirmed this was correct. JG said it could take around 6-8 months to have someone who was fully trained to deal with the opening and running of a new contract and tender. GC accepted that for complex high value contracts it could take this long, but that this could be quicker for other contracts. He acknowledged that to have someone fully trained to carry out all tasks without supervision could take up to 12 months. GC told us that when the respondent was informed of the forthcoming retirement of JG that he appreciated that it was a serious situation in terms of resource in the claimant's team. He explained that two recruitment campaigns were under way at the time the first which started in July 2018 and the second in September 2018 and they aimed to recruit 8 new contract officers for the Contract Let team. This was intended to alleviate the resource issues that were being experienced in the claimant's and other cells due to the high volume of work. These recruitment exercises brought in three employees initially and then 4 more into 2019 (both internal and external recruitments) although the first exercise did not result in any suitable candidates being found.

11.32. The claimant's e mail went on to dealt with matters such as the provision of a chair (which we heard about but no longer forms part of the claim) and the attending of medical appointments as required. The claimant specifically listed that the respondent perform a stress risk assessment on the claimant as had been recommended in March 2018.

11.33. There was a further meeting between the claimant and GC on 30 October 2018 where further action points were discussed and the claimant emailed GC that day with the key points (page 651). She raises again to GC that the stress risk assessment has not been done and "*needs to be actioned going into more substantial changes in regards of resource and losing JG in March 2019*". There is reference to the outstanding recruitment of two people and that interviews were due to take place on 9 November and that training would be required. The

claimant expressed her concern in this e mail that the respondent would be slow in supporting her and preventing re-occurrences of stress levels. GC explained that there had been difficulties in recruiting sufficient new staff and the recruitment campaign was not going as quickly as they had hoped for. He said it was not possible at this time to transfer an experienced member of staff from another cell as those cells would then be under resourced. We accepted the difficulties GC was under at this time as to resourcing the various cells. The claimant was given the choice of which of the new recruits she wanted allocated to her team and she chose L Davies ("LD") following the second recruitment campaign.

11.34. In October 2018, the claimant completed a further OH referral form relating to her request for specialist office equipment (page 654). This was signed off by GC on 31 October 2018 and we noted that GC added a comment on a box that had been ticked by the claimant that she had frequent exposure to significant work place stress to the effect "*This is the employee's perception*". This would suggest that GC was not entirely convinced that the claimant's stress level was as significant as indicated and indicates the mismatch of perceptions as to how GC and the claimant assessed the impact of workload on the claimant. There was a further 1:1 between the claimant and GC on 16 November and claimant followed this up with an e mail on the 19 November (page 665). This went through all the actions discussed at the previous meeting and noted that she considered certain matters to be outstanding, including the recruitment of staff and the completion of the stress risk assessment. She noted again that she felt the volumes of work were too high. The claimant found out around this time that the first resources (which was to be LD, an internal recruitment) would not be in a position to join her team until January 2019 and the second resource had not been recruited. We saw an e mail the claimant sent to N Harris ("NH") on 22 November 2019 (page 667) asking for his advice as to how to broach the subject with GC and the respondent. NH was a manager within the respondent but did not manage the claimant. The claimant said he had been like a mentor to her. She mentions her concerns that she would have a relapse and that two suggestions she had to help were to have an experienced member of staff join the team to support the team and the new starter or that GC "*remove me from the department and transfer me to another department completely*". The claimant then raised a whistleblowing concern to the respondent's identified whistleblowing email address (page 669-70) which raised in very heightened terms that the claimant was concerned for her health. These two e mails showed the claimant's increasing desperation and worry about how she was able to cope at work and how it would affect her ongoing health. At this time the claimant had applied for 3 or 4 different jobs within the respondent outside the contract let team but was unsuccessful in her applications. She did not

ask GC whether she could be transferred out of the Contract Let team at this time.

11.35. The claimant e mailed GC on 5 December 2018 and having had no reply, forwarded this again to GC on 12 December (page 676). This e mail raised concerns about LD not starting until January 2019 and that the second resource promised had yet to be recruited. She mentioned that she was working on a plan for 2019 and to do as much preparation as she could but could not "*manage 35 contracts on my own plus 6 new sourcing projects*". She asked for support and that the second resource that was to be provided to her team was someone with procurement experience. Neither of these e mails appear to have been responded to.

11.36. In October 2018 GC took on the role as Head of Inventory and Repair Management ("I & RM") Integration. For the period between October and the end of December 2018 GC was carrying out a dual role as the interim Head of Procurement alongside his new role which he fully transitioned to in January 2019. IP joined the respondent in late October 2018 and spent a period of time familiarising himself with the business of the respondent. In January 2019 he started to transition into his new role as Head of Procurement and he assumed management responsibility for the Contract Let Team and took over as the claimant's direct line manager. IP recalls a handover conversation with GC around this time, although not specifically what was discussed and does not recall being directed to the second OH report relating to the claimant by GC. SJT confirmed that the OH report was not sent to IP by anyone in HR and this would not routinely be done when there was a change in manager. LD joined the claimant's team in January 2019 as a contract officer. She was an internal candidate who came from the respondent's Accounts Payable function and did not have specific procurement experience.

11.37. The claimant sent an e mail chasing the stress risk assessment to SJT on 22 January 2019 (page 699). SJT informed the claimant that this was the responsibility of GC and she then followed this up with GC that day asking him whether this had ever been followed up and suggesting that IP may need to pick this up. SJT sent some follow up e mails to find out about the stress risk assessment at this time and at page 706 we note that she has discovered that GC did not complete a new assessment as one had been done in August 2017. SJT informed IP that he should meet with the claimant and involve WF who had been involved in the previous version.

11.38. The claimant was off sick between 23 January and 1 February 2019. We saw some e mails about this period of absence at pages 700 to 703 where the claimant states that she "*will not be in for the rest of the week as I don't seem to be getting any better when I am in work due to the number of people who have this flu and coughing around me. I am off ill*

with influenza, loss of voice and trying to prevent my throat dystonia getting worse"; the claimant also states that she had picked up a viral infection and the fit note in respect of the period of absence at page 707 confirmed that the absence was due to "*Viral infection, NOS, throat tightness*". Shortly after the claimant's return to work, she had her first 1:1 meeting with IP on 6 February and we see her e mail to IP with a summary of that meeting at page 732. The claimant raised concerns with IP during this meeting about what she felt was a lack of duty of care and progress to protect her health. She raised the issue of the stress risk assessment not having been done. Following this meeting, IP contacted WF that evening to follow up on the claimant's comments regarding the stress risk assessment not having been completed and asks for his input on to how to initiate this and WF sends IP a copy of the document done in 2017. IP then followed up with the claimant by an email sent on 11 February (page 741). He informed the claimant that the stress risk assessment would be followed up with WF. He also confirmed that having discussed the claimant's concerns about the retirement of JG and having LD recently joining, that he had asked AJ (another cell leader) to provide the induction and training of the new recruit and take some work whilst doing this. He informed the claimant that a weekly contract led load and capacity review would be carried out across the team to ensure work load was balanced. He also mentioned a further OH referral taking place. The claimant replied by informing IP about the issues that arose when KB joined the team with her own workload and then left, which left her and JG "overwhelmed". She also made reference to the OH report from March 2018 which she says the respondent had not heeded.

11.39. WF got in touch with IP following a further e mail from him on 12 February 2019 when he advised IP that he had not been in contact with the claimant since August 2017. He also informed IP that he was shortly leaving the respondent's employment and had a heavy workload to complete before he left and would not have time to complete the stress risk assessment before he left and he would discuss with his manager, A Knowles ("AK"). IP responded by stating "*Appreciate your soonest response as Julie feels strongly that the company is failing her*". Shortly after the claimant met with WF on 14 February 2019 to discuss the stress risk assessment, she had completed a questionnaire before this meeting and had sent it to WF. A further meeting was arranged to discuss the outcome.

11.40. The claimant sent an e mail on 18 February 2019, raising concerns about her health and wellbeing including stating that she needed to be moved out of procurement if things did not improve. The claimant noted in that email that IP had only been here for 11 weeks and "*had done more for me in the last two weeks that anyone else has in the company"*. There was some correspondence about whether a further OH referral

should take place and following this, SJT asked the claimant to confirm her list of actions required and whether actions other than the completion of the stress risk assessment remained outstanding from the previous OH report. SJTe said she felt that "*Since IP has been managing you I am confident that the majority of this list is being actioned*" and that only the stress risk assessment was outstanding. As WF was shortly to leave the respondent, there appears to have been some difficulty with completing the work on the stress risk assessment. The claimant organised a meeting with AK on 26 February 2019 and we then saw an exchange of e mails where AK suggested he would not be able to attend for long, and that he wanted to get a new starter, an OH adviser, involved in the work as well. The claimant was frustrated with this response and expressed this frustration in an e mail to AK stating that her medical specialist had advised her that the company must act and that she was not happy with a new starter dealing with this. She expressed disappointment as she felt she was low down on the priority list of the respondent. This meeting did take place and the claimant e mailed the stress risk assessment prepared arising out of this to IP on 4 March 2019 (pages 797-832). K Dennis ("KD") joined the claimant's team in March 2019. She was externally recruited and did have some limited procurement experience, although not in the defence sector.

11.41. IP and the claimant then met regularly, roughly every two weeks between March and May 2019 and the stress risk assessment was discussed and added to during these conversations (for example the e mails of 7 May 2019 at page 970 make reference to a 1:1 meeting to discuss it). We entirely accepted IP's evidence that it was a live document from this time onwards which was intended to develop over time and was a tool for discussing the risks and hazards identified and finding and putting control measures in place to support the claimant, with the document itself acting as a record of the ongoing discussions. This was further discussed at a 1:1 meeting on 12 May 2019 (see e mail at page 975 within which IP refers to the stress risk assessment as a live document). We saw a further version of the stress risk assessment at pages 976-996 which showed entries being added for tasks completed at 1 May 2019. This document was a clear and constructive way for the claimant and the respondent to record the risks identified at work and control measures implemented or to be implemented and set a clear plan for how stress levels would be managed.

11.42. IP arranged for the training of new staff to be carried out by AJ to remove some of this workload from the claimant (see emails at pages 971, 973 and 1020). The claimant acknowledged that IP was doing as much as he could at the time to support and that AJ provided training to KD and LD on an ad hoc basis as matters came up. Weekly stand up meetings were held so that any areas of repetition or bottlenecks could

be identified and resolved. IP described himself continuing to monitor the claimant's workload and of this being a key control measure. IP said he noticed that despite the claimant appearing to be successfully managing her workload (as she regularly reported at meetings that she was "green"), she still raised concerns about this. As the claimant continued to report workload difficulties, especially her work with the new starters, IP offered to reallocate these two individuals to another team to remove the line management time commitment. The claimant turned down this offer. This did in fact take place in July 2019 after the events to which this claim relates (see e mail at page 1081). There were also some discussions in 1:1 about moving an experienced member of staff to the claimant's cell from another cell. IP explained that this would be difficult to do as each cell was very different to the other and there would be training required for anyone who transferred into the claimant's cell. There would also be an additional burden on the cell that that person had left. We accepted his evidence on this matter. JG retired on 29 March 2019. The claimant's specialist chair and desk were provided by the respondent in late March/early April 2019.

Claimant's third grievance.

11.43. On 11 March 2019 the claimant submitted a grievance to IP and SJT (page 833-4). This complained in strong terms about the company's failure to complete a stress risk assessment and other matters including her ongoing concerns with workload and training of new staff. The claimant appears to have been frustrated that although steps had been taken at this stage to progress the stress risk assessment, she felt she had had to do most of the work herself. We can understand the claimant's frustration, particularly given the issues arising on the change of personnel which did cause a delay to this process. Nonetheless we are satisfied that at this stage the stress risk assessment had been carried out and in place as a working tool (see para 11.40 and 11.41 above). She was e mailed to inform her that the respondent thought her grievance should be carried out by IP as her line manager (as none of the complaints appeared to relate to him). The claimant replied by e mail on 13 March confirming that she would prefer that her grievance was carried out by another manager (page 837).

11.44. The respondent appointed AR to investigate the claimant's grievance. AR emailed the claimant on 14 March 2019 to inform her he had been appointed and to let her know what would happen. AR also telephoned the claimant on 14 March and a note of their discussion was at page 844. AR told us that this was not officially part of the grievance procedure but he had done this as he had felt that the claimant had lost confidence in management and he wanted to reinstall this confidence and trust in senior management by carrying out a thorough procedure. Following this

discussion, the claimant sent AR additional documents that she felt were relevant including the stress risk assessment recently undertaken and other documents and correspondence. AR described the volume of documents received as being much more than he expected and it took him a long time to go through this all. He explained that conducted the grievance had to be balanced with his everyday responsibilities as a manager and that he had a very high level of workload at that time driven by the respondent's client, the MOD. The claimant was e mailed by AR on 3 April 2019 to update her on the progress of the grievance. AR told us that he had a conversation with someone in HR at the time about the way he was carrying out the grievance and they felt that because the claimant and HR were being kept informed, it was acceptable for the process to take longer than it might otherwise do. SJT said she also recalled this conversation and it was with her. We accepted that this conversation took place as both these witnesses recalled. AR also started to get into contact with colleagues to try and find out information he needed for the investigation, including e mails to GC and IP on 4 April (page 901-2) and IP on 6 April 2019 (page 903-4). He received responses to these e mails from GC on 15 April 2019 (page 918) and in person from IP towards the end of April.

11.45. The claimant provided AR with further documents on 29 April 2019. She met with AR for a first grievance meeting on 2 May 2019 (lasting over 2 hours) and then met again with AR on 15 May 2019. The minutes of these meetings were transcribed (as this had been offered as an option to the claimant rather than have a note taker attend) and sent to the claimant (notes of 1st meeting at pages 951-968 and of the second meeting at pages 1005 to 1018)2. The claimant presented her Tribunal claim on 17 May 2019. AR took steps to interview AJ and LD on 23 and 29 May 2019. There was correspondence between the claimant and AR about the transcription of the two grievance meetings held between 8 and 16 June 2019. The claimant e mailed AR on 18 June 2019 to confirm that she wished to withdraw her grievance (page 1046-7) and after AR sent a response to this email (page 1046), this grievance was not pursued further. The claimant had a further period of absence between July and October 2019 (after the events which form the subject of this claim).

The Law

12. The relevant sections of the EqA applicable to this claim are as follows:

4 The protected characteristics

The following characteristics are protected characteristics: …
disability"

6 Disability

(1) A person (P) has a disability if -
(a) P has a physical or mental impairment, and
(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

20 Duty to make adjustments

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

(2) The duty comprises the following three requirements.

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

21 Failure to comply with duty

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

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

(3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.

Section 123

(1) 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 of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable.

…

(3) For the purpose of this section –

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something –

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.'

136 Burden of proof

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

(3) But subsection (2) does not apply if A shows that A did not contravene the provision.

Section 212(1) EqA defines substantial as being "*more than minor or trivial*".

Paragraph 20 (1) (b) of Schedule 8 provides that an employer is not subject to a duty to make reasonable adjustments if the employer does not know and could not reasonably be expected to know that the employee had a disability and was likely to be placed at the relevant disadvantage.

13. In relation to a claim for failure to make reasonable adjustments under sections 20 and 21 EqA, the importance of a Tribunal going through each of the parts of that provision was emphasised by the EAT in *Environment Agency –v- Rowan [2008] IRLR 20*.

14. The Equality and Human Rights Commission Code of Practice on Employment ("the Code") paragraph 6.10 says the phrase "provision, criterion or practice" ("PCP") is not defined by EqA but

> "*should be construed widely so as to include for example any formal or informal policy, rules, practices, arrangements or qualifications including one off decisions and actions*".

15. The obligation to take such steps as it is reasonable to have to take to avoid the disadvantage is considered in the Code. A list of factors which might be taken into account appears at paragraph 6.28, but (as paragraph 6.29 makes clear) ultimately the test of reasonableness of any step is an objective one depending on the circumstances of the case.

16. The duty to make reasonable adjustments arises when a disabled person is placed at a substantial disadvantage by the application of a PCP etc. *Abertawe Bro Morgannwg University Local Health Board v Morgan 2018 ICR 1194, CA*, -the duty to comply with the reasonable adjustments requirement under S.20 begins as soon as the employer can take reasonable steps to avoid the relevant disadvantage.

17. *Griffiths v Secretary of State for Work and Pensions 2017 ICR 160, CA* **-** The nature of the comparison exercise under s.20 was to ask whether the PCP put the disabled person at a substantial disadvantage compared with a non-

disabled person. The fact that they were treated equally, and might both be subject to the same disadvantage when absent for the same period of time did not eliminate the disadvantage if the had a more substantial effect on disabled employees than on their non-disabled colleagues. In addition, in relation to whether an adjustment is effective the Court of Appeal said '*So far as efficacy is concerned, it may be that it is not clear whether the step proposed will be effective or not. It may still be reasonable to take the step notwithstanding that success is not guaranteed; the uncertainty is one of the factors to weigh up when assessing the question of reasonableness.'*

18. Tribunals must consider the essential question whether a particular adjustment would or could have removed the disadvantage experienced by the claimant *Romec Ltd v Rudham EAT 0069/07.*

19. *Ishola v Transport for London [2020] EWCA Civ 112, [2020] IRLR 368, [2020] ICR 1204* confirmed that whilst a one-off decision or act could amount to a practice, it will not necessarily be one and the term generally connotes 'some form of continuum in the sense that it is the way in which things generally are or will be done'.

20. The conflicting line of cases including *Mid-Staffordshire General Hospital NHS Trust v Cambridge [2003] IRLR 566 , Tarbuck v Sainsbury Supermarkets Ltd [2006] IRLR 664, HM Prison Service v Johnson [2007] IRLR 951 and Watkins v HSBC Bank Plc [2018] IRLR 1015*, suggest that it may not be freestanding 'reasonable adjustment' to carry out a consultation/assessment (although it is best practice so to do) because it does not remove the advantage of itself although the provision of management support may amount to the taking of such a step (per HHJ Richardson at para 30 of Watkins).

21. *Hendricks v Metropolitan Police Commissioner [2003] IRLR 96, [2003] ICR 530.* This makes it clear that the correct focus must be not on whether there is something which can be characterised as a policy, rule, scheme, regime or practice, but rather on whether there was an ongoing situation or continuing state of affairs in which the group discriminated against (including the claimant) was treated less favourably.

22. *Kingston Upon Hull City Council v Matuszowicz [2009] EWCA Civ 22, [2009] IRLR 288, [2009] ICR 1170* - a failure to make a reasonable adjustment can be a 'continuing omission', and that the provisions of the legislation stating that the expiry of the period in which P might reasonably have been expected to do something was the relevant date for time purposes applies equally to deliberate and inadvertent omissions to making reasonable adjustments.

23. The duty to make an adjustment which is reasonable may amount to a continuing duty - 'if there is such a duty it requires to be fulfilled on each day

that it remains a duty' (at para 25 of *Secretary of State for Work and Pensions (Jobcentre Plus) v Jamil UKEAT/0097/13 (26 November 2013, unreported)*.

Conclusion

24. It is conceded by the respondent and we acknowledged that, from December 2016, the claimant was a disabled person under s6 EqA as a result of muscle dystonia of the throat and temporomandibular disorder.

When was the respondent aware that the claimant was a disabled person?

25. When looking at the claimant's complaint under sections 20 and 21 EqA, we firstly need to determine from when the respondent was aware that the claimant was a disabled person. The respondent does not admit it had any such knowledge during the relevant time (albeit it submits that it at all times treated the claimant as if she were a disabled person despite that lack of knowledge). The claimant submits that the respondent was clearly was aware of her disability from 26 February 2018 onwards when it received the second OH report. We accept that at this point the respondent was actually aware that the claimant was a disabled, but we conclude it also had at the least "constructive" knowledge of disability from 30 October 2017, when the claimant sent an e mail to JM about the difficulties she was experiencing with her health and the discussions about bringing her phased return to work to an end (see findings of fact at paragraph 11.20 above). The claimant makes express reference to disability in this e mail. Given the background to the claimant's illness, the fact that she had by this stage been on an extended phased return and that she was still attending regular appointments, our conclusion is that this should have alerted the respondent to the fact that the claimant's health condition was serious, was ongoing and was in all probability a disability. From 30 October 2017 the respondent could reasonably have been expected to know that the claimant was a disabled person, and as such was fixed with constructive knowledge of the claimant having a disability under Paragraph 20(1) (b) of Schedule 8 to the EqA. By 26 February 2018, this was confirmed by the respondent's own OH advice and the respondent had actual knowledge that she was a disabled person.

26. In considering a complaint of failure to make reasonable adjustments we took note of the case law above that each element has to be considered carefully. We firstly looked at whether any of the PCPs identified and relied on by the claimant applied and, if so, when. We then had to consider whether any such PCP put her at a substantial disadvantage compared to non-disabled people (and what that disadvantage was), considering the appropriate comparator. We then looked at the whether the respondent knew that the claimant was placed at that disadvantage at the relevant time. We finally had to consider what adjustments could have been made to avoid that disadvantage and whether it was reasonable for the respondent to have taken such steps at the relevant time.

Were PCPs in place at the relevant time?

27. The first PCP relied upon is at paragraph 7.2 a. which is a practice of "*not following the recommendations contained within Occupational Health reports*" ("PCP1"). The evidence the claimant relies upon to establish PCP1 relates to her allegation that the respondent failed to follow the recommendations of the second OH report issued following the 26 February 2018 OH appointment. We set out our findings of fact as to what was recommended in this report at paragraph 11.23 above. The key action that came up again and again and which the claimant says was not done, was the recommendation to carry out a second stress risk assessment. There is no doubt that the respondent did not do this at the time of the report and for a substantial period of time thereafter. In particular we note at paragraphs 11.28, 11.30, 11.32, 11.33, 11.34 and 11.37 above the various times the claimant informs the respondent that this has not been done between June 2018 and January 2019. This was not started until IP instigated action on the evening of 6 February 2019 after his first 1:1 meeting with the claimant (see paragraph 11.38). It was put in place in some form by 4 March 2019 (albeit that the claimant has significant input in doing this) and was in use by the claimant and IP after that point (see paragraph 11.40 and 11.41).

28. There was a period of approximately one year when there was an outstanding action from the second OH report to perform and implement a stress risk assessment. It was not clear to us why this was not done. Ms Gould submitted that the stress risk assessment that had already been completed in 2017 (paragraph 11.15) was sufficient and that the actions arising out of this to reduce stress were discussed regularly between the claimant and GC. She went on to say that the respondent's managers were at this stage dealing with ongoing concerns as to stress and workload and that a new risk assessment being carried out would have made no difference. She essentially submits here that although the formal action of a second risk assessment had not taken place, the actions that this would have recommended were already in place and being taken. We do not accept that submission. There was a very clear recommendation from the OH report sent after 26 March 2018 that the stress risk assessment be repeated. This was not done and this was despite the claimant asking line management and HR representatives at the respondent to do this on various occasions. There appears to have been a lack of ownership of this particular task and we see from the emails in January 2019 (see paragraph 11.37) that this appears to have been something that fell between the various stools of HR, line management and the Health & Safety team. The transition of GC moving from his interim Head of Procurement role and IP starting this role substantially in early 2019 perhaps did not assist (see paragraph 11.36). Whatever the reason, this important task was not actioned for a long time and amounted to a continuous and ongoing failure to comply with a recommendation of the second OH report sufficient to amount to a "practice" in place with respect to the claimant and potentially other employees.

29. It is not that the claimant was not getting any support from GC during this period. Particularly during August and September, they were holding meetings to discuss the workload and GC had moved the GSEC requirement away from the claimant's team (see paragraph 11.29 above). GC was taking steps to try and address some of the claimant's concerns. This was however reactive and piecemeal to try to address matters as they arose and the support seems to have dropped off from October 2018 onwards, perhaps at the same time GC was trying to perform a dual role at the respondent (a task we do not underestimate). We therefore conclude that this continuous failure to carry out the stress risk assessment did amount to a PCP which was in place between 26 February 2018 and 4 March 2019.

30. The second PCP that the claimant relies upon relates to "*Allocating/increasing the workload of remaining staff when individuals either leave employment or when new work comes in*" ("PCP2"). This is a generalised allegation about working practices which the respondent takes exception to because of its lack of specifics and evidence. We do not accept that this is the case. We have heard and accepted evidence of various incidences over the history of the claimant's employment where her workload increased as employees left the business as a result of restructures and other business change. The claimant in her evidence described the difficulties experienced in 2016 where she was the only Procurement Manager left out of 9 following reorganisational changes and a voluntary redundancy exercise (para 11.6). It is this period of time that the claimant believes contributed to her initial ill health. Following a restructure in October 2017, MK left the claimant's team for another role and whilst KB was subsequently moved to the claimant's team after this, the net effect was still that the workload to be covered by the claimant and JG increased (see 11.19). The departure of KB with very little notice in early August 2018 also clearly left a gap in resource that at least initially the claimant's team had to cover (see paragraph 11.28). It is absolutely acknowledged that the respondent did take steps to address the resourcing gaps by recruitment but inevitably there was a period of time when the workload of the claimant and her team increased when individuals left employment. We are therefore satisfied that PCP2 has been established as being in place from October 2017 until January 2019 when new recruits started to arrive in the claimant's team.

31. The third PCP relied upon is the "*Practice of not following the grievance procedur*e" ("PCP3"). The evidence relied upon to establish this PCP appears to be based on the grievances raised by the claimant which we heard evidence on. The claimant does not say precisely how the respondent is said to have not followed the grievance procedure and how this amounted to a PCP, but we gleaned from her evidence and cross examination that the handling of the claimant's first grievance submitted on 8 June 2016 and in particular the delay in dealing with this grievance (see paragraph 11.8) is relied upon. No specific complaint is made about the handling of the claimant's second grievance raised in November 2017 save that the claimant says she had to wait for a written outcome for her appeal and that she was frustrated that she had to go through the grievance and appeal process to

achieve the outcome she originally asked for (see paragraph 11.21). The claimant does complain about the handling by AR of her third grievance raised on 11 March 2019, primarily about the delay in progressing this.

32. Mr Flood pointed out that in both cases the respondent did not hold a formal grievance meeting within 10 working days had not resolved the grievance within 25 working days. We refer back to the timescales set out in the respondent's grievance procedure which are set out at para 11.4 above. There is indeed reference to the grievance being resolved within 25 working days (otherwise a HR or senior manager should review this); that a formal grievance hearing should be held within 10 working days (unless not possible due to complex grievances and with delays being notified and explained) and that an appeal meeting should take place, where practicable within 10 working days. There was slippage on these deadlines on the first and third grievance raised by the claimant. However we do not accept that this amounted to not following the grievance procedure even in these particular examples. In the case of the first grievance, the respondent informed the claimant of an initial delay, and whilst there was a further delay before the grievance hearing was held, it then progressed quickly and the claimant received an outcome within a reasonable period.

33. The third grievance did involve a long delay whilst AR took initial steps to investigate and a meeting did not take place within 21 working days, nor was the matter resolved within 25 working days. However, we conclude that this was within the realm of exceptional circumstances due to the complexity of the grievance as envisaged by clause 2.4 of the grievance procedure (see paragraph 11.4 above). Mr Flood suggests that this was a simple grievance but we do not accept this. There was a long history to the case which we have heard much of over a lengthy Tribunal hearing. There was a large amount of documentation to review. The claimant was informed regularly of what was happening and was actively involved sending information to AR to progress matters which contributed to the elongation of the process. AR consulted HR when it became clear to him that the process was taking longer than planned. (see paragraph 11.39). AR offered to transcribe the meetings held with the claimant and it is really after this point, the process began to become difficult and the claimant ultimately decided to withdraw. However we concluded that AR was thorough and supportive to the claimant during this process and dealt with it as best he could under difficult circumstances. We do not conclude that the delays are sufficient to put the claimant in breach of its grievance procedure as the exceptions envisaged by that procedure clearly applied. In light of this and other findings above, the claimant has not been able to show that the respondent operated a practice of not following its grievance procedure which was applied to her and this part of the allegations goes no further.

<u>Did any PCP place the claimant at a substantial disadvantage when compared to non-disabled people?</u>

34. Having found that PCPs 1 and 2 applied to the claimant, the next issue we

considered was whether either of those PCPs put the claimant at a substantial disadvantage compared to non-disabled people. The claimant says that each PCP that was applied to her put her at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled at any relevant time, in that it firstly exacerbated the symptoms of the claimant's impairment ("Substantial Disadvantage 1") and that secondly, it impacted upon the claimant's health/stress levels that resulted in absences from work due to three reoccurrences of muscle dystonia and TMJ, with absences from 14 November 2016- 17 April 2017; from 23 January 2019- 1 February 2019 and from 30 August 2019- ongoing ("Substantial Disadvantage 2"). The third substantial disadvantage pleaded that the claimant had great difficulty in sitting and working at her work computer no longer applies as it related to the elements of the claim no longer pursued.

35. Dealing with Substantial Disadvantage 2 first, that the application of the PCPs impacted on the claimant's health/stress levels that resulted in absences from work, Ms Gould made detailed submissions as to why the claimant has not been able to show that the substantial disadvantage pleaded here existed for any of the PCPs. She says that the first period of absence relied upon, from 14 November 2016 until 17 April 2017 took place 10 months before she says the respondent was even aware of disability, so cannot be relevant to trigger a duty to make a reasonable adjustment. We have actually concluded above that the respondent was aware of the claimant's disability a little earlier than that conceded by the respondent, from 30 October 2017 (see paragraph [25] above). However, this is still well after the dates of absence pleaded here. These periods of absence can therefore not be relevant to any substantial disadvantage said to be caused by a PCP found to be in place well after this absence. Ms Gould's submission is correct.

36. The second period of absence relied upon is from 23 January 2019 to 1 February 2019 which is plainly after the respondent was aware of the claimant's disability in October 2017. However when we consider the reason for the claimant's absence from work for this period (see findings of fact at paragraph 11.38 above) we are not satisfied that it is the claimant's disability that was the reason for this period of absence. The claimant was suffering from flu/a viral infection and took some time off work. We entirely accept that the claimant had been suffering from her disability at this time too and indeed had been alerting this to the claimant for some time (see paras 11.24 relating to June 2018, paras 11.25 and 11.26 in August and para 11.28 in September). The claimant's disability symptoms were ongoing and significant but did not actually cause the absence from work during this period. This absence from work happened later and was triggered by the claimant suffering a viral infection. Therefore we are not able to conclude that this absence was a substantial disadvantage that related to the claimant's disability, but was in fact a short period of absence for another matter.

37. As to the final period of absence from 30 August 2019 onwards, we do not consider this period of absence has any relevance to this claim as it relates to a period well after the claim form has been presented on 17 May 2019 which is the latest point that the Tribunal can find that the respondent should have made reasonable adjustments. Accordingly, the claimant has not satisfied us that Substantial Disadvantage 2 resulted from the application of either PCP and so we have not considered this matter further.

38. We then looked at Substantial Disadvantage 1. We had to consider whether PCPs 1 and 2 above put the claimant at a substantial disadvantage compared to non-disabled people in that they exacerbated the symptoms of the claimant's impairment. Ms Gould states generally that this substantial disadvantage is too vague for the claimant to be able to establish for any PCP. However we considered each PCP in turn and considered whether the PCP we found in place at the relevant time put the claimant at a substantial disadvantage by exacerbating her symptoms.

39. Firstly we considered whether the respondent applying PCP1 exacerbated the symptoms of the claimant's impairment. PCP1 was applicable because the respondent did not follow OH advice by completing and implementing a stress risk assessment for the claimant between 26 February 2018 and 4 March 2019. We had to decide whether failing to do this put the claimant at a substantial disadvantage when compared to non-disabled people who did not have her particular condition. Stress was a contributory factor which exacerbated the symptoms of the claimant's disability (see para 11.2). There was clear evidence from the claimant's GP and the respondent's OH reports of this (see paras 11.12, para 11.23, para 11.25 and 11.27). However that is not the question for us to consider. We must consider whether the failure to carry out a stress risk assessment between February 2018 and March 2019 (and not just stress itself) exacerbated the claimant's symptoms so putting her at a substantial disadvantage.

40. On the basis of our findings of fact above we conclude that it did. The claimant relied on the stress risk assessment being in place as a way of controlling stress in the workplace and her anxiety. She placed significant importance on the completion of the first stress risk assessment in the summer of 2017 (see paragraph 11.15). She referred to this as her "bible". The workload increase following the sudden exit of KB in August 2018 caused a significant increase in the claimant's stress levels (see 11.28). Being informed of JG's upcoming retirement in September 2018 created considerable anxiety about how that workload would be managed moving forward, again causing stress to the claimant (11.30). This anxiety about how workloads would be managed in the future is an important element to this case. It is clear to us that the claimant considered her health affected by this increase in stress levels and anxiety. It is also at this point that we notice a serious escalation of the intensity of e mails being sent by the claimant to the respondent (2nd e mail of 21 August 2018 – see paragraph 11.28 and e mail

of 8 October 2018 enclosing written statement – see paragraph 11.30) and that the claimant starts to focus on the failure to carry out the stress risk assessment. This failure was raised by the claimant at the end of October 2018 (see paragraph 11.32) and again on 19 November 2018 (see paragraph 11.34). The failure to carry out the stress risk assessment is mentioned in the claimant's whistleblowing concern (paragraph 11.34). This was clearly on the claimant's mind and it was an important element in the claimant's approach to controlling her stress levels. Stress had a particularly detrimental impact on the claimant as her specific physical disability was worsened by stress. The failure to acknowledge and record that concern and plan for it by carrying out a stress risk assessment was not only a problem in itself (on mental health and overall wellbeing) but had an additional and more serious effect on the claimant as it was a contributor to a worsening of an existing physical condition. We are therefore satisfied that not carrying out the stress risk assessment impacted much more on this claimant, with her particular condition, than other employees without this particular condition. The management of stress at work (of which the having in place a valid and up to date stress risk assessment was part) was of particular importance to the claimant given the significance managing stress had on her health. The ability to plan how future changes might impact stress levels and analyse the risks around this and take evasive action was one of the most important concerns the claimant had, not just simply reacting to things as they happened. We are therefore satisfied that the application of PCP1 between February 2018 and March 2019 put the claimant at a substantial disadvantage from August 2018 onwards following the departure of KB from the claimant's cell.

41. We concluded above that PCP2 (Allocating/increasing the workload of remaining staff when individuals either leave employment or when new work comes in) was in place from October 2017 until January 2019 when resource issues were being addressed. The next question is whether this PCP put the claimant at a substantial disadvantage (when compared to non-disabled people who did not have her particular condition) because stress exacerbated her condition. From our findings of fact we have concluded that the respondent did have difficulties during this period of change in keeping resources levels at an adequate and stable level. We heard about the difficulties with recruitment and the demands being placed on the respondent from its clients. When individuals left the business or moved away from the area they were working on, there are inevitably and were in this case, gaps in resource, at least temporarily. This may have impacted any employee in the claimant's role heading a busy procurement cell. However we are satisfied that this has a particularly detrimental impact on the claimant because of her health condition and the fact that it was exacerbated by stress. An increase in workload following a loss of resource may not be a major matter for many employees (or at least was something they may be able to control temporarily) but this particular claimant was impacted more severely as a result of having a condition that became worse when she was stressed. We are therefore satisfied that PCP2 put the claimant at a substantial

disadvantage (compared to non disabled people without her disability) between October 2017 and January 2019

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Did the respondent have knowledge (actual or constructive) of the substantial disadvantage (and if so, from when)?

42. Having determined that PCPs 1 and 2 were applied to the claimant and that she was placed at a substantial disadvantage compared to non disabled people because of this, we must ask the question as to whether the respondent knew or could reasonably have been expected to know the claimant was likely to be placed at any such a disadvantage and, if so, from when. Dealing with PCP 1 we concluded that between 26 February 2018 and 4 March 2019 this exacerbated the claimant's condition and put her at a substantial disadvantage. We conclude that the respondent was (or could reasonably have been expected to be aware) that its failure to carry out a stress risk assessment was exacerbating her condition from 27 September 2018. We place particular reliance on our findings of fact at paragraphs 11.30 above. The opening statement prepared by the claimant for the meeting held on 27 September 2018 made reference to her view that her health was suffering as a result of stress and made reference to a plan of action being put in place. As a result of this meeting the respondent agreed that it would action the stress risk assessment. We conclude that the respondent was or should have been aware at this point of the importance of carrying out the stress risk assessment and that its failure to do so was contributing to the claimant's stress levels and so impacted her health. The claimant also makes it clear in her opening statement that although other colleagues may be in a similar situation, she was in a different situation because of her health condition, namely she was particularly impacted. This should have alerted the respondent to the potential for the claimant as a disabled person to be more severely impacted by any failure to carry out recommendations of its OH advisers with regards to stress at work.

43. With respect to PCP 2 by August 2018, we conclude that the respondent knew or could reasonably have been expected to know that the issues around increased workload caused by the departure of KB leading to the application of the PCP of allocating increasing work of staff when people leave was already exacerbating the claimant's impairment. The e mail sent by the claimant on 21 August 2018 where she raises issues around resourcing following KB's departure and its impact on stress levels and her health was very clear and should have put the respondent on notice that the claimant was likely to be placed at a substantial disadvantage when compared to someone without her particular condition (see paragraph 11.28). The claimant informed the respondent that she was particularly perceptible to the effects of stress caused by an increase in workload because of her health condition.

What steps could the respondent have taken to remove the disadvantage and would it have been reasonable to take those steps?

44. Having concluded that the respondent was under a duty to make reasonable adjustments to avoid the disadvantages caused by the application of PCP1 from 27 September 2018 and from PCP2 from 21 August 2018, the next question was whether there were steps that were not taken that could have been taken to avoid the disadvantage. The claimant identifies several steps that she says could have been taken at paragraph 7.5 above. We have considered the proposed adjustments set out at 7.5 a. c. and d. above. Those proposed adjustments numbered b. and e. – g. relate to PCPs no longer relied upon so are not of relevance. The burden of proof does not lie on the claimant to show what adjustments should have been made, it is helpful to know what steps the claimant alleges should have been taken so we looked each of these in turn and then went on to consider whether any other adjustments would have been reasonable for the respondent to make and from when.

45. The first adjustment that the claimant suggests should have been done was that the respondent "Follow the recommendations of the Occupational Health Report" and it is logical given our findings and conclusions above that this relates to the respondent carrying out the stress risk assessment as advised in the report of 26 March 2018. We conclude that this was an adjustment that it would have been reasonable for the respondent to make in respect of both PCP1 and PCP2 so from the point it was aware of Substantial Disadvantage 2 on 21 August 2018. In practical terms this should probably have been done much earlier than this (as it had been recommended on 26 February 2018). However in the context of the complaints made by the claimant and our findings and conclusions on these, we are satisfied that carrying out the stress risk assessment could have reduced the claimant's stress levels and reduced or at least slowed the exacerbation of her symptoms from 21 August 2018 until 4 March 2019.

46. We have given careful consideration to Ms Gould's submissions on this matter and whether the carrying out of a stress risk assessment of itself could amount to a reasonable adjustment in particular the line of case law we make reference to at paragraph 20 above. However we conclude that the carrying out of the stress risk assessment and having this in place was in this case not simply a consultation/assessment of a one-off nature but was much more akin to the provision of management support as referred to in the case of Watkins v HSBC plc above. The claimant placed considerable importance on the respondent acknowledging the impact that stress was having on her and having a clear and consistent plan on how to deal with this. The stress risk assessment was the obvious route and could have given the claimant reassurance at a very difficult time that something was being done. Having the stress assessment in place and in use, of itself, was something that could have helped control the claimant's stress levels and exacerbation of her

condition. We are satisfied that earlier action to put the stress risk assessment into place at this most fraught time for the claimant may have reduced stress and acted to prevent her physical symptoms from getting worse. Her e mails of this period are abundantly clear as to her increasing desperation and worries for the future (see paragraph 11.34 and 11.35). Had the claimant had a stress risk assessment in place, this could have been a useful mechanism to address specifically how changes coming up could in particular address the claimant's stress levels. Once this was done from 4 March 2019 it was clearly used as a living document and a tool for management and the claimant to provide her with support (see paragraph 11.41).

47. We have also considered here at what point this failure to make this reasonable adjustment took effect. Again we have considered in detail Ms Gould's detailed submissions on this matter and Mr Flood's counter submission to this. We conclude that there was an ongoing and continuous failure to make this reasonable adjustment from 21 August 2018 until 4 March 2019 when the second stress risk assessment was in place and being used as a management tool by IP. In failing to carry out the stress risk assessment throughout the whole of this period, we find that the respondent was in continuing breach of its duty to make reasonable adjustments in this regard throughout this entire period and for each day of this period as such this was conduct extending over a period as envisaged by section 123 (3) (a) EqA as the duty to make that particular adjustment continued. We have considered the submissions made on section 123 (4) (b) that because the claimant suggested that the second stress risk assessment should have been carried out by September 2018 that this is the expiry of the period when the respondent might reasonably have been expected to do this and so the date from which the failure to make the reasonable adjustment took place. However we are not persuaded that this applies to this set of circumstances as the claimant remained employed in the same role beyond this date, the recommendation to carry out the stress risk assessment was still in place and relevant; and the claimant was still raising the fact that his needed to be done at this point and indeed much later. Therefore we conclude that this was a continuing duty to make a reasonable adjustments and the respondent's failure to make this adjustment continued up to the point that it was made and the second stress risk assessment was in place and in use on 4 March 2019 onwards (see Secretary of State for Work and Pensions (Jobcentre Plus) v Jamil above)

48. The second adjustment proposed by the claimant is that of "Reducing workload through reallocating some of the claimant's work to others". As workload was a major factor in the claimant's stress levels, it is clear that reducing workload was something that would help. However we conclude that the respondent did in fact make adjustments to workload at the time. Following the meeting on 6 September 2018, GC transferred the new work on the GSEC contract to AJ's team (see paragraph 11.29 above). The claimant

has not identified any other work that the respondent should have reallocated to other employees at the time and indeed the claimant retained some of the GSEC work to complete with her agreement (see paragraph 11.29). We accept the submissions of Ms Gould on this particular issue that the claimant has not advanced to the Tribunal (and indeed was not able to identify during her employment) what other work could be reallocated from her to other employees. We are therefore unable to make a specific finding or conclusion about what the respondent could have done and whether it was reasonable for it to have done so at any time. Therefore we do not find that this was an adjustment that the respondent failed to make.

49. The third adjustment pleaded was "*Providing the claimant with assistance to complete work that was allocated to her*". This primarily relates to the provision of resources to the claimant's cell to assist her to carry out the work allocated to the cell, either by the recruitment of additional staff (internally or from external sources) or by moving another employee from another cell into the claimant's cell to assist her. It is acknowledged by all that the claimant's cell was in a difficult situation following the relatively sudden departure of KB. This was made worse as far as the claimant was concerned when she learnt of the forthcoming retirement of JG just a few weeks later.

50. If we look at what could have been done by the respondent firstly with regard to recruitment, clearly had the respondent been able to immediately provide the claimant's cell with a suitably qualified replacement for KB in August 2018 (and indeed in March 2019 when JG retired) this could very well have removed or alleviated the substantial the disadvantage experienced by the claimant particularly as regards to PCP2. Nevertheless, we do not find that the respondent could reasonably have done more to provide the claimant with suitable new recruits at the relevant time. Our findings at paragraph 11.31 set out the particular difficulties the respondent faced in both recruiting staff and getting them in the position by training to be able to carry out the highly technical and specialist role the claimant and her team (and others in the business) were carrying out. This was not something that could be done quickly or easily. The respondent was already aware of resourcing issues in this area of its business and commenced a recruitment campaign in July 2018 even before KB left. This did not go as well as expected and it did not result in any suitable candidates being found. A further recruitment campaign was started in September 2018 and this did find candidates and the claimant was able to select which of the candidates would be allocated to her team. Whilst it was hoped that this would happen earlier, we also acknowledge that it was not possible for LD to join the claimant's team until January 2019. The next available new starter, KD, was in place before JG left at the end of March 2019. Clearly neither of these new starters would be able to carry out the role that JG had been doing as she had 38 years' experience and the loss of JG to the claimant was undoubtedly significant. However, we conclude that by the time KD and LD had started to work with the claimant in January and March 2019, the respondent was putting in place other steps to support the claimant

in particular that the training of LD and KD would be carried out by AJ (see paragraph 11.42). IP also offered to remove these employees and their workloads from the claimant but this was declined.

51. We also conclude that it was not a reasonable adjustment for the respondent to have transferred one of its existing Contract Managers from another cell into the claimant's cell, for example, R Fisher. As we found at paragraph 11.42 above, this would not only impact on the workload of the other cell from which that person was transferred, but because the claimant's cell was specialised, there would be an element of training and getting up to speed, on such a transfer in any event. This may not therefore have been effective in reducing the claimant's workload. We ultimately concluded that although the claimant was in a difficult position as a result of the loss of resource in her team, and this had a disproportionate effect on her as a disabled person, there was nothing further that the respondent could have done at the particular time to remove this disadvantage by way of additional resourcing. Therefore we do not find there was a further adjustment in this particular manner that the respondent failed to do.

52. We have gone on to consider whether there were any further adjustments that the respondent could have made to avoid the disadvantages caused by the application of PCP1 from 27 September 2018 and from PCP2 from 21 August 2018. In particular we considered whether the claimant should in fact have been moved out of this cell or procurement entirely (as she had mooted to her mentor privately at the end of 2018) or whether she should have had her two direct reports moved away from her earlier than they ultimately were in July 2019. We did not hear evidence or submissions on any other possible adjustments and we cannot make any conclusions as to whether any of these might have removed or reduced the substantial disadvantage suffered. The claimant was performing a very challenging role at a respondent that was on any examination perhaps overstretched and under resourced. Her capability to carry out the role at the time was severely compromised. Other than the adjustment we have already identified, we could not identify any other action that the respondent might reasonably have taken during this particular period to alleviate the disadvantages being suffered by the claimant. Things have clearly moved on since the time of the events leading to the claim. However our examination must be restricted to the period during which we concluded that there was a duty to make reasonable adjustments and confine our examination to what reasonably could have been done at that time.

Were the claimant's claims presented in time?

53. The final issues we have to consider was whether the claimant's complaint was presented within the time limit set out in section 123 (1) (a) EqA. We refer to our conclusions at paragraph 21 above and confirm that as there was a continuous and ongoing failure to make this required adjustment up to 4 March 2019, the claimant's complaint was presented in time. It is not necessary to go on to consider issues of whether time should be extended on

a just and equitable basis.

54. The remedy for the successful claims will be determined at a further hearing, if necessary. The parties will apply to the Tribunal within 28 days of receiving this judgment and written reasons if they are unable to reach agreement and require a remedy hearing to be listed.

Signed by: Employment Judge Flood

Signed on: 21 April 2021