Case Number: 1802885/2022
1800113/2023

EMPLOYMENT TRIBUNALS

Mr P Rimmer **The Secretary of State for Work and Pensions**

Claimant Respondent

Heard: in person in Leeds **On:** **Reading Day: 12 April 2024**
Hearing: 15 - 19, 22-24 April 2024
Deliberations: 26 and 29 April 2024
Liability Judgment: 29 April 2024
Remedy Judgment: 1 May 2024

Before:
Employment Judge JM Wade
Mrs J Hiser
Mr K Lannaman

Representation:
Claimant: **Mr J Horan, counsel**
Respondent: **Mrs H Hogben, counsel**
BSL Interpreters:
Ms A Blohm-Pain
Ms S de Costobadie
Ms S Glendenning

The unanimous decisions of the Tribunal are:

JUDGMENT

Liability

1 The claimant's Section 15 complaint that the respondent failed to provide services to him from May to December 2021 succeeds.
2 His alternative reasonable adjustments case about the same matters (allegations 3 and 4) also succeed.
3 His Section 15 complaint of a sanction in 2017 is dismissed for limitation reasons.
4 His Section 15 complaint of a failure to provide services from March 2020 to May 2021 is dismissed.
5 Complaints 1 – 8 of failures to provide an auxiliary aid (BSL) are dismissed.
6 Allegations 9 to 11 of a failure to provide an auxiliary aid succeed.

7 Allegation 5 of the claimant's reasonable adjustment complaint also succeeds.
8 The claimant's alternative indirect discrimination complaints are dismissed.

Remedy

9 The claimant's claim for pecuniary loss/loss of a chance is dismissed.
10 The Tribunal awards the claimant £33,000 by way of injury to feelings incorporating aggravated damages of £5000.
11 The Tribunal awards £10,000 exemplary damages in respect of an email sent about him on 6 August 2022 (which emerged in the course of these proceedings).
12 The Tribunal awards £6880 by way of interest on non pecuniary loss running interest from 30 April 2022.
13 The total sum payable by the respondent to the claimant is £49880.
14 The recoupment regulations do not apply to these awards.
15 The Tribunal makes the following recommendation:

Within six months of this Judgment being sent to the parties, the respondent should provide training to the work coaches, team leaders and DEAs working at Park Place Job Centre which covers:

1 deaf awareness;

2 the key concepts in relation to disability discrimination to include victimisation; and

3 that a deaf person may reasonably need to be reassured of the qualifications of their interpreter for the task for which they are interpreting, by asking to see their "badge" or other evidence of registration and/or qualification.

REASONS

Introduction

1. The claimant is profoundly deaf and his first language is British Sign Language ("BSL"). He attended the Job Centre Plus at Park Place ("Park Place") in Leeds as part of the requirements for receipt of Job Seekers' Allowance (JSA) and to find work. He brought disability discrimination complaints about the services he received from Park Place, including BSL provision, from 2017 to 2022.

2. The claimant's first claim explained that a claim had also been issued in the county court in April 2022, but not served, because of some uncertainty in the correct forum for the complaints. An Employment Tribunal then decided as a preliminary issue that the respondent is an Employment service-provider for the purposes of Section 55 of the Equality Act and this Tribunal had jurisdiction to determine his complaints. It did not address (and neither of the parties' raised) a potential complexity in the reasonable adjustments scheme of the Act in this respect.

3. The claimant's Employment Tribunal complaints were contained within two claim forms and further particulars in the first claim. The first claim was presented in June 2022 and the second in January 2023. The second claim largely mirrored further

particulars in the first claim, including adding complaints about matters from June to October 2022.

Complaints, Issues and Hearing

4. The parties had previously been ordered to provide a draft agreed list of issues, which had been provided, subject to some minor disagreement on matters. That draft list included that the claimant makes the following claims: Discrimination in the provision of employment services (section 29) which was a reference to paragraph 2 of the claimant's particulars of claim in his first claim.
5. The claimant had confirmed in correspondence that he did not pursue his allegation (further particulars paragraph 6) that the respondent was liable for the acts of third party providers.
6. The Tribunal read into the case on Friday 13 April. The Tribunal sent both counsel a note comprising observations on the list of issues/pleadings and a list of issues which was more conducive to Tribunal decision making within the hearing window. That note said: section 29 claims to be struck out – not within this jurisdiction.
7. On 15 April 2024, before the final hearing commenced, a case management discussion took place before the Judge alone, with the parties' consent, pursuant to which:
   7.1. The claimant withdrew a strike out application concerning a lack of clarity and evidence in the respondent's justification defence;
   7.2. The claimant, the Tribunal and the respondent agreed a list of complaints and issues to be determined, and matters which were not to be pursued – neither Section 29 nor Section 55 (6) featured in that list, but the respondent was expecting to have to answer reasonable adjustment/auxiliary aid allegations;
   7.3. The respondent decided to take no point on the need for an amendment application concerning an allegation about the claimant's referral to the "JETS" program;
   7.4. The claimant made, and the Tribunal refused, an application to convert all factual allegations in the draft list to complaints of direct discrimination, for reasons explained at the time – principally, the lack of prejudice in refusal.
   7.5. The Tribunal discussed and confirmed the practical arrangements and needs for a fair hearing to enable the claimant to fully participate. In addition to the presence of three BSL interpreters throughout they included:
      7.5.1. Regular opportunities/time for the claimant's counsel to take instructions through BSL interpretation on the practical arrangements at least three times each day;
      7.5.2. display of the hearing file contents on a screen (to assist the claimant who has very limited written English but can read some words and phrases, and to assist the interpreters);
      7.5.3. regular breaks and shorter hearing days; and
      7.5.4. An agreed timetable.

8. The final hearing commenced with the claimant's evidence beginning on the afternoon of the first day.

9. On Friday 19 April the Judge invited the parties to consider and be prepared to make submissions on Wednesday the following week about the effect of Section 55(6) of the Equality Act, it appearing there were no reported cases to provide direct assistance on its consequence.

10. In the giving of its liability judgment on 30 April 2024 the Tribunal agreed with the parties a reasonable adjustment to our rules, recognising that in the time available it would not be possible to announce all the findings of fact made, law and reasons orally. Instead the decisions on each cause of action were given, with the findings of fact relating to the claimant's case for lost earnings from employment and the Tribunal's approach to the law in the reasonable adjustments part of the case and with the opportunity for the parties to ask for any particular aspect to be delivered in open Tribunal for BSL interpretation.

11. Further the Tribunal provided a draft of the reasons by that stage of the hearing (subject to correction for error, elegance of expression, or layout) and for the purpose of enabling them to consider whether any Rule 50 applications would be made, the consequences of those (in naming conventions or otherwise) and whether written reasons would require to be published.

12. The claimant did require written reasons, he did not seek anonymity, but made an application in connection with a number of paragraphs of our background findings. The respondent did not object to any redactions but the Tribunal explained the need for the reader to be able to understand fully the Tribunal's decisions, particularly on the Section 15 case. In the event, balancing the claimant's convention rights against the principle of open justice the Tribunal granted the redactions indicated below and no more.

13. The written reasons provided in draft to the parties addressed one part of the remedy case, because the bulk of the remedy case had yet to be addressed in submissions. Our subsequent remedy decision given extempore on the afternoon of the final day delivered reasons in short form, because of the time available and, but they, and in particular the law connected with remedy, is more fully explained below.

<u>The legal key concepts and the parties' cases in relation to the types of discrimination alleged</u>

<u>Section 15 Discrimination</u>

14. Section 15 relevantly provides:

(1) A person (A) discriminates against a disabled person (B) if—
(a) A treats B unfavourably because of something arising in consequence of B's disability, and

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

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

15. The "something arising in consequence of B's disability" sometimes has to be proven by a claimant, or sometimes is accepted by an employer. The claimant's two "somethings" were:
    15.1. Not able to speak English; and/or
    15.2. Only able to read/write simple sentences/paragraphs.

16. The respondent's position was: "the Respondent does not accept the Claimant is completely unable to speak and understand English, he does accept that he is only able to read/write simple sentences or paragraphs".

17. In T-Systems v Lewis (UKEAT/0042/15/JOJ) His Honour Judge Richardson sets out a four stage test for Section 15 discrimination in employment cases:

1 There must be a contravention of Section 39(2)(sensibly in these proceedings this is to be substituted by Section 55 (1) or (2))

2 There must be unfavourable treatment

3 There must be "something arising in consequence of the disability"; and

4 The unfavourable treatment must be because of the "something".

18. This means at stages 3 and 4 the Tribunal sometimes has to look at two different ways in which facts in the case relate to each other. The first is: does the "something" arise in consequence of disability?

19. Stage 4 is whether the unfavourable treatment was because of the "something". "Because of" at stage 4 means that the "something arising" operated on the mind of the person making the decision (consciously or sub-consciously) to a significant (that is material) extent. See Lord Justice Underhill at paragraph 17 of IPC Media Limited v Millar UKEAT/0395/12 SM and at paragraph 25.

20. The Tribunal, as its starting point, has to identify the individual(s) responsible for the decision or act or behaviour or failure to act which is being complained about. It does not matter whether the putative employer has knowledge that the something arose in consequence of disability, provided there is knowledge of the disability itself - City of York v Grosset [2016] ICR 1492 CA. See also the full guidance in Pnaiser v NHS England [2016] IRLR 710 EAT at 31. "A Tribunal may ask why A treated the claimant in the unfavourable way alleged....alternatively it might ask whether the disability has a particular consequence for a claimant that leads to "something" that caused the unfavourable treatment". Motive is irrelevant.

21. There is also often a "Stage 5" in a Section 15 claim: the respondent can say that the unfavourable treatment was appropriate and reasonably necessary to achieve its legitimate aim. The respondent contended that its legitimate aim for two of the

three Section 15 allegations was the efficient provision of public services to job seekers (in the context of lockdown which required their health and safety to be of paramount consideration).

22. This type of "justification" defence in section 15(2) is common to many other types of discrimination, including direct discrimination because of age, and indirect discrimination. Whether the employer's "means" are "proportionate" requires the Tribunal to determine whether they were "appropriate and necessary" (taking into account less discriminatory measures) (see Homer v Chief Constable of West Yorkshire [2012] UKSC 15 paragraphs 22 to 25). Section 15 does not derive directly from the European Equality Directive, but there is no judicial decision that the Homer approach should not be applied to Section 15 (2).While these authorities derive from employment cases, even on the bare statutory language, a structured approach is required to considering whether an employer has made out the defence.

23. Indirect discrimination

Section 19 relevantly provides: A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

(2)For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

(a)A applies, or would apply, it to persons with whom B does not share the characteristic,

(b)it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

(c)it puts, or would put, B at that disadvantage, and

(d)A cannot show it to be a proportionate means of achieving a legitimate aim.

(3)The relevant protected characteristics are—

…disability.

24. The claimant had pleaded four PCPs, in summary:
    24.1. The requirement for spoken and written English
    24.2. Limiting BSL to once a month or half of the claimant's appointments at Park Place;
    24.3. That interpreters were booked at the discretion of the work coach;

24.4. That there was no funding for BSL provision for third party training provision.

25. Indirect discrimination based on PCPs 2 to 4 is misconceived and dismissed for that reason – the claimant did not and could not show that these PCPs were applied to persons with whom the claimant did not share his disability. His indirect discrimination case is therefore confined to the PCP of the requirement for spoken and written English.

26. In the indirect discrimination case, the respondent relied on a legitimate aim of ensuring the efficient provision of services to job seekers given that the majority of JCP customers communicate in spoken or written English. The respondent said he did not apply the PCP to the claimant because interpretation services were available, and if he did, its application was proportionate and reasonably necessary because interpretation services were provided, and in simple terms, repeated its position in the reasonable adjustment complaints that the claimant was not put to disadvantage by the PCP. This is addressed in our findings on each complaint.

The duty to make adjustments

27. Section 20 relevantly provides:

(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.

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

28. Section 21 deals with failure to comply with the 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.

29. Schedule 8 of the 2010 Act sets out in relation to each relevant matter the interested disabled person. At paragraph 16 it provides that in relation to provision by A - the employment-service provider - of the service, the interested disabled person is a person to whom A provides the service. Further it is relevantly provided: "A is not subject to a duty to make reasonable adjustments if it does not know, and could not reasonably be expected to know that a disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement (Schedule 8, paragraph 20 (1) of the 2010 Act)"
30. At paragraph 6.28 of the Employment and Human Rights Commission Code of Practice on Employment (2011) ("the Employer Code") says: whether it is reasonable for a person to have to take a particular step in order to comply with a duty to make reasonable adjustments, regard shall be had, in particular to:
    the extent to which taking the step would prevent the effect in relation to which the duty is imposed;
    the extent to which it is practicable for him to take the step;
    the financial and other costs which would be incurred by him in taking the step and the extent to which taking it would disrupt any of his activities;
    the extent of his financial and other resources
    the availability to him of financial or other assistance with respect to taking the step;
    the nature of his activities and the size of his undertaking.

<u>The section 55 (6)/(7) problem – employment service providers/vocational service providers and reasonable adjustment obligations – the Tribunal's conclusion</u>

31. Section 29 (7)(a) of the Equality Act (in the part of the Act for which contraventions are typically pursued in the County Court) relevantly provides:

A duty to make reasonable adjustments applies to –
A service-provider (and see also section 55 (7));….

Section 55 of the Equality Act 2010 relevantly provides:

Employment service providers
(1) A person ("an employment service -provider") concerned with the provision of an employment service must not discriminate a person –
(a) in the arrangements the service provider makes for selecting persons to whom to provide, or to whom to offer to provide, the service;
(b) as to the terms on which the service-provider offers to provide the service to the person;
(c) by not offering to provide the service to the person…

(2) An employment service -provider (A) must not, in relation to the provision of an employment service, discriminate against a person (B) -
(a) in the arrangements the service provider makes for selecting persons to whom to provide, or to whom to offer to provide, the service;
(a) as to the terms on which A provides the service to B;

(b) by not providing the service to B;
(c) by terminating the provision of the service to B;
(d) by subjecting B to any other detriment….
…
(6) A duty to make reasonable adjustments applies to an employment service-provider, except in relation to the provision of a vocational service.

(7) The duty imposed by section 29(7)(a) applies to a person concerned with the provision of a vocational service; but a failure to comply with that duty in relation to the provision of a vocational service is a contravention of this Part for the purposes of Part 9 (enforcement).

Section 56 relevantly provides

Interpretation
(2) The provision of an employment service includes –
… (d) the provision of a service for finding employment for persons;
(f) the provision of a service in pursuance of arrangements made under section 2 of the Employment and Training Act 1973 (functions of the Secretary of State relating to employment) …

6)"Vocational training" means—
(a)training for employment, or
(b)work experience (including work experience the duration of which is not agreed until after it begins).
(7)A reference to the provision of a vocational service is a reference to the provision of an employment service within subsection (2)(a) to (d) (or an employment service within subsection (2)(f) or (g) in so far as it is also an employment service within subsection (2)(a) to (d)); and for that purpose—
(a)the references to an employment service within subsection (2)(a) do not include a reference to vocational training within the meaning given by subsection (6)(b), and
(b)the references to an employment service within subsection (2)(d) also include a reference to a service for assisting persons to retain employment.
(8)A reference to training includes a reference to facilities for training.

The Employment and Training Act 1973 provides:
2. Functions of the Secretary of State
(1) The Secretary of State shall make such arrangements as he considers appropriate for the purpose of assisting persons to select, train for obtain and retain employment suitable for their ages and capacities or of assisting persons to obtain suitable employees (including partners and other business associates).

<u>The Codes and the Section 55 (6) v (7) problem</u>

32. 11.57 of the Employer Code says this: "*Under the Act, an employment service provider has a duty to make reasonable adjustments, except when providing a vocational service. The duty to make reasonable adjustments is an anticipatory*

duty. Example: A woman who has dyslexia finds it difficult to fill in an employment agency's registration form. An employee of the agency helps her to fill it in. This could be a reasonable adjustment for the employer [sic] to make.

33. *11.58* continues: *[s55(7)] However, the anticipatory duty to make reasonable adjustments does not apply to vocational training (that is training for work and work experience) there the duty is the same as in employment.*
34. *11.59 says: ...."Employment service includes ...services for finding people employment, such as employment agencies and headhunters. It also includes services provided by, for example, Jobcentre Plus, ..."*
35. *11.62 says: Those concerned with the provision of vocational services are subject to different obligations which are explained further in the code on Services Public Functions and Associations under Part 3 of the Act (*"the public services code"*).*
36. The public services code contains only one reference to vocational services, which does not explain the difference between an anticipatory duty and the employment or ordinary duty, which is said to apply to vocational services.
37. The word "anticipatory" is not a common or readily understood concept in the Equality Act. It comes from the legislative notes to the section. The example above is unclear as to how it shows an "anticipatory duty" as opposed to fulfilment of the ordinary duty to make reasonable adjustments.
38. In the claimant's oral submissions, having been asked to address the Section 55 (6) point, the claimant relied on Section 55 ((2)(d) in support of a reasonable adjustment duty. In written submissions, under the heading jurisdiction, Mrs Hogben relied on Section 55 (6) to submit the Tribunal did not have jurisdiction to determine complaints about a failure to make reasonable adjustments/auxiliary aids. She then went on to address the allegations on merit.
39. The Tribunal, like the parties, had not appreciated the difference in provision between Section 55(6) and (7) and the link to Section 29(7). Its preliminary conclusion on the matter contained in the note suggesting strike out of the section 29 reliance was in error, or should have said "reliance on Section 29 other than subsection (7) is to be struck out, or something similar. To the extent that the services provided by Park Place were vocational services, the claimant could and did rely on Section 29 in issuing a County Court claim. He could also rely on Section 29(7) in this Tribunal. The Tribunal did not strike out the claimant's reliance on Section 29 – it was "to be struck out".
40. It is now clear from the scheme of the Act that a difference (although that difference is not illustrated by the Code example) was intended between an "anticipatory" duty and an "ordinary" duty to make adjustments and that different provision was considered necessary for vocational service providers. The Employment Tribunals were given jurisdiction to determine allegations of a contravention of Section 29(7) – the ordinary reasonable adjustment duty - by vocational service providers. The claimant had relied on Section 29 and no doubt this was part of the lack of clarity which had led also to a protective County Court claim being issued.

41. Neither of the parties took to Hansard to assist the Tribunal, no doubt because the Tribunal's jurisdiction had already been determined, the respondent expected to address the substantive reasonable adjustments duty, and the claimant considered

the matter beyond question – the respondent was subject to a duty to make reasonable adjustments in its provision to him was his straightforward position.

42. The interests of justice are served by the real matters in dispute being determined between these parties. This Tribunal has undoubted jurisdiction to determine the reasonable adjustment allegations. The respondent has not been prejudiced by the Tribunal's own identification of a problem – without identifying the solution – because his case has been addressed on its merits both in cross examination before the issue was identified, and in examination in chief and re-examination of those respondent witnesses after the problem was identified. There was no indication that the respondent considered it did not need to address substance and the written submissions did so.

43. In simple terms – the Tribunal has jurisdiction to determine all the claimant's complaints on merit, subject to time limits and we have been educated about this part of the Act in the process, albeit the typical sources are of little assistance.

The law - proving discrimination

44. Section 136 of the Act states:-

> (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.*

45. This is a two stage process: it is for the claimant to prove facts from which the Tribunal could conclude an act of discrimination has occurred before the respondent is called to provide an explanation. In examining those primary facts, poor treatment is not enough.

46. In **Igen Limited v Wong [2005] IRLR 258CA** the guidance issued in **Barton** in respect of sex discrimination cases and was said to apply and approved in relation to race and disability discrimination allegations. That guidance includes that finding direct evidence of discrimination is rare, and in considering the inferences or conclusions that can be drawn from the primary facts, the Tribunal must assume that there is no adequate explanation. The guidance mentions twice that evasive or equivocal replies to a questionnaire or indeed inadequate explanations for a failure to deal with code of practice provisions can lead to inferences being drawn where it is just and equitable to do so in such circumstances. At the final stage, the respondent must establish that the treatment is in no sense whatsoever on the grounds of the protected characteristic.

47. Inferences are further findings of fact and if there is an explanation for, for example, the conduct of litigation or a questionnaire reply or a lack of a witnss or documentation, such matters may be of no assistance in finding the mental processes of the alleged discriminator or answering the reason why question.

48. Underhill J in the **Martin v Devonshire Solicitors [2011] ICR 352, para 37** said: "Tribunals will generally not go far wrong if they ask the question suggested by Lord Nichols in **Nagarajan**, namely whether the prescribed ground or protected act had a significant influence on the outcome".

The Law - Limitation

49. Section 123 (3) provides: For the purposes of this section – (a) conduct extending over a period is to be treated as done at the end of the period. To establish such conduct the claimant must show (a) that the incidents are linked to each other and (b) are evidence of a continuing discriminatory state of affairs. Hendricks v Metropolitan Police Comr [2002] EWCA 1686. The claimant's primary case was one of a continuing act within Section 123(3).
50. Section 123(1) of the Equality Act 2010 provides: "Proceedings on a complaint within section 120 may not be brought after the end of - (a) the period of three 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.
51. Those periods are extended by the ACAS conciliation provisions where conciliation is commenced within the relevant time time either by the "stop the clock" provision or providing a further month from the close of conciliation.
52. Time runs from the date of the alleged discriminatory act (but lack of knowledge is relevant to the grant of an extension) - see Mr GS Virdi v Commissioner of Police of the Metropolis and another [2007] IRLR 24 EAT; In the case of a failure to make a reasonable adjustments, an omission, time runs from the date when a person does an act inconsistent with making the adjustment; or on the expiry of the period in which the person might reasonably have been expected to do it (Section 123(4)). See Matuszowicz v Kingston upon Hull City Council [2009] EWCA Civ 22 on the exercise of discretion in such circumstances.
53. The Tribunal considers "forensic prejudice" in assessing the prejudice to each party from an extension of time - see Wells Cathedral School Ltd v Souter EA 2020 000801 JOJ.
54. Kumari v Greater Manchester Mental Health NHS Foundation Trust [2022] EAT 132 makes clear that the Tribunal is entitled to consider the merits of a claim in the exercise of its discretion.
55. The Act confers the widest possible discretion on the Employment Tribunal in determining whether or not it is just and equitable to fix a different time limit Abertawe Bro Morgannwg University Local Health Board v Morgan [2018] EWCA Civ 640. That said the power of the Tribunal is a discretion, to be exercised judicially, assessing relevant factors and the weight to be given in each case. The onus is on the Claimant to persuade the Tribunal that it is just and equitable to extend time. Robertson-v-Bexley Community Centre 2003 IRLR 434 CA.
56. If there are circumstances which would otherwise render it just and equitable to extend time, the length of extension required is not of itself, a limiting factor unless

the delay would prejudice the possibility of a fair trial see Afolabi -v- Southwark LBC 2003 EWCA Civ 15.

57. In exercising discretion under the Section 123 (1)(b) case law has also established that the Tribunal must consider the length of and reasons for delay, and consider the prejudice to both parties.
58. Section 33(3) of the Limitation Act 1980 contains a helpful checklist of other matters which might need to be considered (in personal injury and other claims with longer time limits), but also for the Tribunal to bear in mind if relevant:

    the extent to which the cogency of the evidence is likely to be affected by the delay;

    the extent to which the party sued had cooperated with any requests for information;

    the promptness with which the plaintiff acted once he or she knew of the facts giving rise to the cause of action;

    the steps taken by the plaintiff to obtain appropriate professional advice once he or she knew of the possibility of taking action.

Evidence

59. The Tribunal had a hearing file of around 1500 pages. The claimant's evidence took place on days 1 to 4; the Tribunal then heard Mr Singh, who worked at Park Place JCP in 2022 and had three work coach meetings with the claimant that year; Ms Harter, who managed third party provision from "Reed" and others in the Leeds region; Ms Flaherty who worked with the claimant as a Disability Employment Adviser ("DEA") securing him a role in 2015; Mr Devine who was the claimant's work coach from 2021 to 2022; Mr Marshall, a DEA from 2021, who had been at Park Place from around 2012 in a number of roles; and Ms Comery, who became the claimant's work coach in November 2022, but was not involved in any of the allegations in this case.

60. The Tribunal heard from no team leaders or other managers who were involved at the material times including Stewart Locker and Darren Murr, nor from DEA Ms Passmore who was involved between July 2022 and March 2023 and has now retired.

61. A further evidential difficulty is that the Tribunal heard from no other witness on behalf of the claimant, for example those involved at LHSLS - Leeds Hearing and Sight Loss Service - or from friends or contacts involved or aware of events at the time. Further the claimant's limited written English meant that the material available to the Tribunal authored by him, at the material times, was limited to a handful of short Facebook messages, emails and texts.

62. The majority of the contemporaneous written material recording his thoughts about events at the time came through third-party recording, typically LHSLS - the Leeds hearing and sight loss service – which was required to keep records of its provision

to him and notes of consultations. The respondent's own "LMS" - labour market system – records of interactions with the claimant at the material times were either non-existent or extremely short. We were also told that there was no DEA file of information concerning provisions or adjustments for the claimant, his work seeking programs, or other valuable information which may have assisted. That also presented difficulty in establishing or corroborating accurately the chain of events.

63. The claimant's witness statement, on the other hand, was 89 pages and 306 paragraphs, which carefully explained the entirety of his case. He confirmed through BSL interpreters that his witness statement had been translated for him into BSL during the preparation of the case and there was nothing during his cross-examination over 3 ½ days which led the tribunal to consider him anything other than a witness of truth about these matters. That said, as with all witnesses doing their best to recall events over a long period of time, there were events about which the tribunal considered the contemporaneous records were more likely to be accurate than his recollection.

64. In truth it is only through this case that the claimant and his advisers have been able to review the provision of jobseeking services and support from the respondent over a lengthy period of time. As to making its findings, the Tribunal adopted its full range of fact finding tools, including deploying the wide industrial knowledge of its lay members. On occasions, where material was very limited and there was a dispute, we considered which party's case was more likely.

Submissions

65. Very helpful written submissions were prepared on behalf of the respondent in this case and Mr Horan addressed those orally on Wednesday 24 April 2024. The Tribunal gave its decisions on the facts and liability 30 April 2024.

66. During his submissions Mr Horan invited us to draw inferences from the evidential difficulties in the respondent's case, particularly that the respondent's initial disclosure was 26 pages of its LMS system, and three intranet pages about BSL interpretation services available. That was followed in June 2023 with a further 56 pages of LMS notes covering 19 months and six internal policy documents. The claimant made a subject access request and received over a thousand pages of documents in September 2023 which included the records of third party providers and it is that material which has largely formed our hearing file.

67. Secondly, the respondent's failure to secure the attendances of the witnesses above was said to be material from which we could draw inferences. Thirdly, the claimant drew our attention to the respondent's response to an Equality Act questionnaire and alleged defects in its grounds of resistance. Further it was alleged that the respondent's lack of record keeping was a failure to comply with the EHRC Code of Practice advice to keep records.

68. The tribunal's principal duty in a case of this kind is to make findings of fact. Inferences are further findings of fact about what is likely on the balance of probability to have occurred, and the reasons why both conscious and subconscious. Omissions in record keeping, or conduct of the litigation, can help with making such findings, but the tribunal must consider the explanations for those matters. This case was not one of harassment or direct discrimination or victimisation, where the thoughts of individuals are at the heart of establishing facts from which the Tribunal could conclude a contravention.

69. Generally, it will be apparent where submissions on behalf of the parties have succeeded before the Tribunal, and the advocates will understand why they have not been reproduced at length within these reasons.

70. The Tribunal's approach in these reasons has been to make necessary findings of fact across the period of allegations; decide the merit of those allegations absent limitation; consider limitation and reach final conclusions.

Background Findings of fact

71. The claimant is profoundly deaf, [redacted]. He was not quite pre-lingual (at 2 ½ years old) when made deaf. [redacted]. His education and family life was disrupted and he was discouraged from using his first language, BSL, although he was reliant upon it. [redacted] Lipreading works only with people he knows. Disrupted education meant that at all material times his written English is entry-level - that is he can read and text and email basic words and phrases, but no more. He sat GCSEs in English and Maths achieving grade F. An example of his texting in 2023 is as follows:

    71.1. *To the claimant: "unfortunately J at Reed is off work today and your appointment has to be cancelled. Apologies and unsure when J is back so I will ask her to contact you as soon she is. Can you acknowledge receipt please?*
    71.2. *From the claimant: "hello M thanks you let me know and can you let them know to interpreters sign language name Beth please thank you"*

72. The claimant did work experience in agriculture and as a motor mechanic, but remained without paid employment. He then attended college including Deaf Colleges in Doncaster and Devon. It was a revelation to be able to communicate and be amongst BSL speakers.

73. The claimant was without any stable employment when, in 2013 in his thirties he moved to Leeds city centre. He started attending the Park Place Job Centre Plus in Leeds (JCP), the largest JCP in the North with around 40 job coaches.

74. The claimant's life had included volunteering, including for some lengthy periods and as an access to sports/youth provision volunteer in the Deaf community. He has also done bar work as a volunteer. The claimant's educational/English attainment has been a major barrier to work.

75. His financial circumstances are that he has a little savings, and he receives PIP and JSA and local authority support managing within his means of about £1000 a month.

76. The claimant's verbal expression of language is very limited. He does make some sounds which are similar to English words or for short words, recognizable. BSL necessarily involved gestures, with its own particular and discreet grammatical structure. Like all of us, at times the claimant can become frustrated, whereupon the combination of demeanor, sound and signing can appear aggressive, particularly for those who have no understanding of the claimant's circumstances and the challenges he faces. However, there were no such incidences during the course of this hearing.

77. We reject Mr Singh's evidence that the claimant told him to "shut up" when he was taking part in a second meeting with him. Mr Singh said the comment was made during alleged interpretation by video link. This evidence was not within Mr Singh's statement - neither the comment, nor the context, although he did describe their interactions as difficult. There was no corroboration of this "shut up" comment in LMS or anywhere else; the comment was inconsistent with Mrs Flaherty's evidence that when she worked with the claimant they communicated in writing; no other witness alleged the claimant could "speak" to them in English. The Tribunal's experience of hearing the claimant's evidence over three a half days was that he did sometimes sound while signing and seeking to be understood, but clear speech in English was not present. It is likely that Mr Singh heard sounds which he understood as "shut up" in context, and he believed tha to have been said, but we have made our findings on the balance of probabilities and we consider he is mistaken.

78. <u>The claimant's Section 15 case that he cannot speak English, and/or is only able to read or write simple sentences/paragraphs is proven; these matters arise from his deafness.</u>

<u>Paid employment</u>

79. At Park Place the claimant became aware that BSL interpreters could be made available. He was supported by the Leeds Hearing and Sight Loss Service (LHSLS) to access public services. He attended Park Place for his fortnightly signing on appointments and through that provision he was able to secure a seasonal job with Marks & Spencer's during a Christmas (likely 2013) and subsequently a permanent job with Sanef from January 2015.

80. The Sanef job arose because the employer had discovered that the profoundly deaf worked well in its number plate recognition operations and had approached Park Place and an agency – PLUSS - with whom it worked to run a recruitment drive amongst the deaf community. That resulted in six work seekers being employed

and BSL provision being in place for them. Access to Work enabled that provision and the claimant was supported in this initiative by Ms Flaherty.

81. The claimant did well in that employment and PLUSS, which supported disabled people into work, considered that he could have become a supervisor. However, the claimant had wished to move away from his deaf colleagues and had then experienced non-deaf colleagues perceiving him as aggressive. He considered they were not deaf aware and misunderstood his direct communication and that the employer had not taken up encouragement to provide deaf awareness training. He had left that employment in May or June of 2015.

82. In the autumn of 2015 LHSLS helped the claimant to attend the citizens advice bureau "CAB" to discuss what had happened at Sanef, and to air his difficulties generally. Park Place considered it would not permit him to access PLUSS again, or further specialist support into work. LHSLS sent a letter of complaint to Park Place, explaining the claimant's position and asking that to be taken into account. That letter was not addressed by Ms Flaherty or anyone else, but the claimant's receipt of JSA continued and the following year specialist job seeking provision was resumed.

BSL Interpretation provision

83. The respondent undertook an equality impact assessment in January 2011 concerning its interpretation services for customers. The respondent recognised its commitment to providing the best possible services to meet the diverse requirements of all its customers. It acknowledged that it provided BSL interpreters "for face-to-face meetings and that it provided interpreters for those who can't communicate adequately in English, or who can't or do not want to provide their own interpreter".

84. The change that was introduced in 2011 was to replace face-to-face interpreting where possible with telephone interpreting that impact assessment recognised that community based, local services were providers of interpretation services. The 2011 changes provided that for BSL or other face-to-face interpreting unless community providers were cost free, the respondent's national contractors were to be used. There was a carveout for local BSL interpretation provided that value for money or a relationship with the interpreter was established.

85. Until the claimant moved to Leeds city centre he had not been aware of the opportunity for BSL interpreters at fortnightly appointments at Park Place. After he became aware of that, he sought BSL interpreters and they were provided on occasions, being supplied until 2017 by the Leeds Deaf Society, about which the claimant had no quality or other concerns.

86. In around April/May/June 2017 the claimant complained to his local MP about Park Place and a lack of interpretation. He took with him a representative from LHSLS.

87. From around 2017 to June 2022 interpreters were provided by the supplier, Big Word". From June 2022 it was a new supplier.

The return to seeking work

88. Through Park Place and LHS LS the claimant had been referred to the Doncaster deaf trust from around June 2016, which was again a specialist provision to help deaf work seekers. He had also secured a place at Leeds College to study for an NVQ level I in Tiling. This commenced in September 2016 and ended in the summer of 2017. His work with the Doncaster deaf trust did not secure employment before that provision came to an end.

89. On 21 June 2017 a meeting at Park Place took place with the claimant's work coach, Ms Flaherty, a BSL interpreter, and a representative from LHS LS. That meeting was to discuss the claimant's communication needs concerning job searching. He wanted somebody to be with him when job seeking because his English was not very good. Ms Flaherty had said that when they had worked together in 2015 they communicated in writing and there were no problems there. There was discussion of referral to another specialist organisation called SES, but the fact that the claimant was not filling out his booklet to evidence work searching was identified.

90. Suggestions were made, but the claimant insisted that it was his right to have an interpreter at all Park Place appointments and for support finding work. He was told that there was no funding for that but that they would do their best to ensure an interpreter at every other appointment - that is once a month. The claimant did not want to talk about his life outside of job seeking but there were further discussions including that the claimant wished to remain working in Leeds rather than travelling up to an hour and ½ away, which was said by his work coach to be the expectation. The claimant did not have further dealings with Ms Flaherty who may have moved away to be a DEA at a different job centre.

Work coaches, job seekers and the respondent's records

91. The respondent had a responsibility to encourage people to work and make work pay and his priorities included running an effective welfare system that enables people to achieve financial independence by providing assistance and guidance into employment.

92. The welfare system is in a period of change from JSA to universal credit. The 40 or work coaches, that is frontline job centre staff, at Park Place had around 4000 JSA claimants in 2018. Claimant's national insurance numbers dictated the day of the week which was there signing day and which week in the fortnightly cycle they were required to attend the job centre. By 2024 the legacy of JSA claimants has reduced to around 200 people covered by four or five work coaches.

93. In 2017 Ms Flaherty might have had an unofficial caseload of a thousand or so disabled work seekers. Typical JSA appointments were 10 minutes, but work coaches could and did increase that for the claimant. By late 2021 Mr Devine typically booked one hour appointments for the claimant and this was adopted by Ms Comery, when she took over as the claimant's work coach in November 2022.

94. The respondent's LMS – labour market system - recorded limited information about the claimant. This included his national insurance number age address, date of birth, his claim cycle or signing day, which was Wednesday, and that he was disabled, his ethnicity and various other summary records. These details were available to work coaches. They were also available to DEAs assisting him. There was also a record headed "conversations" in which work coaches could enter details of their conversations or actions at each fortnightly appointment. There was not always an entry made and most entries in this field were very short. This meant that for a number of allegations the respondent could not say whether any interpreter was provided or not.

95. The LMS records for 2022 - at 1001 - recorded that a sign language interpreter was required for face-to-face interviews. In a section about the impact on work of the claimant's disability – at 1000, there was recorded - "no environment where client would need to communicate through speech". The claimant's BSL use as a first language was consistently in the LMS record, but may have appeared on a different "tab" or "field" to the page where entries were routinely made.

96. We cannot be sure, and indeed it seems unlikely, that in 2017 the reasonable adjustment of BSL interpreters at every face-to-face interview was recorded on LMS, because that is inconsistent with the information given to him by his work coach and DEA in 2017 – see above. Ms Flaherty said they had communicated in writing (in 2015) and that there was no money in the budget for interpretation more frequently than every other appointment.

<u>FTMRA/s19 Allegation 1: 8 November 2017: Did the Respondent provide inadequate interpretation for a JCP interview – the fake interpreter?</u>

97. On 7 November 2017 the claimant wrote this to a messenger group: "*hello everyone and I am going again running next year the Leeds Abbey Dash 2018 fourth November [emoticons] any one interested come with us fun and enjoy running [emoticon] come on you will enjoy new experience tho [emoticon].* This was liked by 12 others in the group.

98. On 8 November 2017 the claimant wrote this to the messenger group: "*Guess what I can't believe it I went job centre appointment at 2 PM and Interpreter BSL too etc I never see him before interpreter BSL I was ask him what your sign level and can you show me your cards license for interpreter BSL proved etc and he didn't want show me cards I ask again did you have card he won't and he told other man I said no I ask you interpreter he won't because his not good sign language and he said*

to other man Paul not happy about it etc then give man papers sign went off and I cannot believe first time see interpreter never show me cards license etc I know all interpreter always show cards license make sure real interpreter experience sign language etc and job centre find cheap price for interpreter not fair waste my time for today appointment and any one did you been happen before??

99. This entry in the group received 110 comments generally supportive of the claimant's position. He was provided with advice about how to complain and he also told LHSLS, who recorded that Park Place was filling in a complaint about the interpreter and hopefully it wouldn't happen again.

100. In his meeting the claimant had asked for the interpreter's credentials, the interpreter would not provide them, the claimant considered he was a poor or "fake" interpreter and the claimant told him to leave by signing or saying, "out". The claimant considered he was entitled to end the meeting because of the poor interpretation.

101. Conclusion absent limitation: are these facts from which we could decide an unreasonable failure to provide an auxiliary aid?

102. The respondent had booked an interpreter using its established means, the claimant had concerns about the quality of the interpreter on this occasion. The work coach did not support the claimant in seeing the license or badge it seems, and the appointment was aborted. We did not hear from the work coach concerned, but ordinarily interpreters are not asked to provide their qualifications, because work coaches rely on the suppliers to ensure quality.

103. We do not know whether this work coach had had any deaf awareness training, but on balance it is unlikely, given that none of the work coach witnesses had received such training. The complexities of BSL were unlikely to have been understood by the work coach. In context, one occurrence of quality concerns, at a time when interpretation was typically every four weeks, and JSA was in payment, against the background facts above, are not facts from which we could decide the respondent has unreasonably failed to take such steps as it is reasonable to take to provide an auxiliary service. Albeit by this stage the respondent was beginning to expect the claimant to apply for jobs, there was, at the time the appointment was aborted, no suggestion of an adverse consequence for its abandonment.

104. Addressing the matter as detriment, for the purposes of the alternative indirect case, we could not conclude that the respondent on these facts, had subjected the claimant to a Section 55(2)(d) detriment by a quality issue with the interpreter and the way that was resolved. This the first proven occasion of a quality issue emerging, and it was not of the respondent's making.

Section 15 Alegation 1: 22 November 2017: The Respondent sanctioned the Claimant and suspended his benefits - was this as a result of problems with previous interpreter? Was this a proportionate means of achieving the legitimate aim?

105. On 22 November 2017 the claimant was very upset and attended LHSLS for support because his JSA had been stopped. The LHSLS note recorded this was for two weeks and because he had not been looking for work. He was recorded as "blaming the appointment on 8 November due to the interpreter walking out on the appointment".

106. On 6 December 2017 the claimant attended LHS LS and completed three job applications with their support, providing that to Park Place. The sanctioning of the claimant had been recorded on the respondents LMS system and also its reconsideration and removal.

107. The respondent system required details of a "basic oral explanation" and the respondent system recorded that "additional evidence of requirements for support and help over jobseeking due to hearing and other problems", was the reason to allow the claimant's appeal. The appeal decision appears to have been made by a manager on 18 December 2017.

108. Conclusion absent limitation: these facts establish that the simple reason the claimant was sanctioned was because of a lack of work seeking evidence; the reason the claimant had not provided that was because of his need for interpretation and help with writing English in order to complete job applications – an exemplar Code adjustment – providing help to complete applications.

109. There was no evidence of a "direction" being given at the appointment in late October, such that he would know he must complete a certain number of applications, which Mr Marshall told us, was an available step before sanction. The claimant was only able to have the sanction lifted by having help from LHSLS to complete the required applications and to explain his difficulties. It was difficult and stressful for him.

110. The test for Section 15 is whether the "something", namely the claimant's inability to speak English/limited writing ability was a material influence on the decision to sanction. We did not hear from the "sanctioner". These are facts from which we would, absent limitation, decide a contravention. The respondent did not pursue a justification defence in submissions. Its simple position was, the decision was because of a lack of work seeking evidence when the claimant knew of his work seeking commitment, and nothing to do with the interpretation difficulties at the previous appointment. The reason why submission has not born fruit for the reasons and in the circumstances above.

FTMRA/s 19 Allegation 2: 31 January 2018: Did the Respondent again engage the "fake interpreter" from the previous appointment that the Claimant considered to be inadequate ?

111. On 15 December 2017 the claimant told LHSLS that he had been invited to a telephone job interview that Friday, and that he would arrange an appointment with the CAB to complain about the Park Place staff – he could not take part in a telephone job interview.

112. On 17 January 2018 the claimant attended with an LHSLS worker who supported him with his work coach, "Bal", who agreed to work more closely with the claimant and the organisation Blue Apple to provide him with jobseeking support and that Park Place "would go a lot softer on Paul re sanctions".

113. At the claimant's appointment on 31 January 2018, the same interpreter as that attending on 8 November had been present and the claimant walked out of his appointment.

114. Conclusion absent limitation on the interpretation on 31 January. This is a second occurrence of an aborted appointment for interpretation reasons. There was no evidence that the respondent had confirmed the interpreter's qualifications with the supplier, or established through a complaint whether, in fact there was any issue. Absent limitation, these are facts from which we could conclude a failure to take such steps as it is reasonable to take to provide the auxiliary service and/or detriment for the purposes of Section 19. Such steps in our judgment include, if a quality issue affecting communication arises, resolving that issue with the supplier and if appropriate ensuring the interpreter is not used again. It is clear that the claimant is put to disadvantage by a failure of interpretation in at least two ways: if he wants to raise matters about the third party supplier of work seeking provision and/or if he is without that provision and needs to discuss further provision or mitigation of any proposed directions or sanctions. These matters are very difficult and qualitatively deficient if addressed only using the claimant's written communication skills.

Seeking work with Blue Apple/FTMRA adjustment 3/indirect discrimination: ensure the respondent provides service – meetings, training, other support to the same standard for those whose language is BSL – did the respondent fail to do so, and when?

115. From February 2018 the claimant was supported by specialist provider Blue Apple, where he was coached by a one-to-one adviser once a month with assistance in developing his CV and applying for jobs. This program was for 12 months and was funded in part by Leeds City Council. The claimant and his adviser visited a job fair together, the claimant had BSL interpretation during Blue Apple sessions, and for example in June 2018, 16 posts were applied for on behalf of the claimant, including for a specialist support worker at a charity. In September there were 10 applications and in October, 7.

116. Blue Apple's work did not result in employment for the claimant, but he saw other jobseekers no longer attending and he believed they had secured employment. He also raised access to training courses with Blue Apple, and ultimately became frustrated that the supply of funding for interpreters to support training was restricting his access because he saw fellow jobseekers accessing training apparently sooner than him.

117. His work coach at Park Place considered the claimant was seeking work provided he continued his attendance with Blue Apple. There were no records available in the claimant's LMS conversations to indicate the content of his appointments with his work coach during 2018 or any other matters. The claimant wanted the respondent to fund interpreters for the Blue Apple training course in IT. Blue Apple booked such interpretation in November 2018 for the following March.

118. Conclusion absent limitation: these are not facts from which the Tribunal would uphold this contravention. The respondent contracts with third party suppliers who are themselves providers of vocational services, who may then subcontract with training and education providers. All such providers are subject to duties to make reasonable adjustments, whether under Part 3 or Part 5. It is not a reasonable step for the respondent to have to fund separately BSL provision in training provided by others in our judgment. The claimant has an unjustified sense of grievance about this complaint – he has not been subjected to a detriment in our judgment for the reasons below and we would also dismiss the alternative indirect allegation.

119. In our judgment it is the obligation of the provider, which is in receipt of public funds for the provision of training, to make reasonable adjustments. We see below that the claimant completed digital skills qualifications through Blue Apple; his real concern is that he was delayed in doing so and could have completed a longer course. That, in our judgment, is not a failure of the respondent to make a reasonable adjustment. It may be that on occasions, the respondent would decide it was a good use of public funds to source BSL for a course itself, but it would no doubt bear in mind the other measures which would need to be in place to give such an investment a chance of yielding results, where in the past it has not done so.

FTMRA/s19 Allegation 3: 13 November 2018: Did the Respondent fail to provide interpreters at 3 successive JCP meetings?

120. On 13 November 2018 the claimant was helped to complain to the Big Word, the respondent's then interpretation supplier to the effect that his last three appointments at Park Place had not been attended by an interpreter. The complaint also recorded that Park Place staff had similarly emailed Big Word. This failure mattered to the claimant because he wanted to discuss with Park Place staff support for BSL interpretation to enable him to access training through Blue Apple.

121. At around this time Blue Apple had booked interpretation for the claimant to attend "Think Employment" IT courses, and that was to take place in March 2019. That was outside the 12 month duration of the programme, but the claimant did attend and was awarded the relevant Basic/Level 1/Level 2 Digital Skills qualification. He was disappointed and frustrated that he was unable to complete further digital skills and complained to Leeds City Council, the funder.

122. Conclusion absent limitation: the claimant has proven that on three occasions there was no interpreter for his JSA appointments, whether over six weeks or three months. This was to his detriment in the circumstances. Appointments had two purposes: to enable the claimant to access his benefits, and to facilitate him seeking work, typically by referral to other agencies and work with them. The claimant at this time was already "handed over" in work seeking to Blue Apple. The meetings were nevertheless still important to raise issues, if they were present, with the provision by suppliers. His sense of grievance that he could not raise issues of access to training is justified. These are facts from which we would conclude a contravention by the third occasion of failure. Reasonable steps in our judgment are firstly, booking a supplier. On the first occasion of failure, it is for the respondent to complain to the supplier is a reasonable step, such that it could be addressed and corrected. If not, in accordance with the 2011 impact statement resort could be had to local provision. By the third occasion there was no evidence of complaint by the respondent or resort to local provision.

FTMRA Allegation 4/s19 8 May 2019: Did the Respondent fail to provide an interpreter for a meeting at JCP which was then unable to proceed?

123. On 8 May 2019 the claimant attended Park Place with a supporter from LHS LS. He had wanted to complain that Park Place had not funded interpretation cost to enable him to continue with his digital skills. He also considered the failure to provide interpreters had been going on for seven years at that time. Unfortunately, the work coach at this appointment was standing in for his regular work coach, who was off sick. There was no interpreter in attendance and the claimant was very upset again. He arranged with LHS LS that they would accompany him for his appointment on 7 June. LHS LS encouraged the work coach in deaf awareness in that session.

124. We repeat the conclusion above, absent limitation we would conclude a contravention in respect the failure to provide an auxililary aid. The respondent has not proven that it had booked the interpreter, which was the reasonable step, which should have been undertaken far earlier than on the day - the absence of a staff member should not have been the deciding factor.

Work Seeking through Reed's better working futures/work and health programme

125. Park Place referred the claimant on to take part in a further work seeking programme with Reed on or around 23 August 2019 and the claimant started

attending that program for September 2019 commencing with an assessment of his barriers. The claimant continued to attend that program and the provider kept records of the discussions and actions involved. Those sessions were conducted remotely but with an interpreter, although in February 2020, again there was failure of an interpreter to attend and at the following session the claimant had been reluctant to complete actions. At the very least he had been clear that there were actions he could not do, for example completing a job application.

126. The claimant's sessions with Reed continued after the pandemic lockdown from March 2020, but Park Place no longer required him to attend his fortnightly JSA appointments.

127. The claimant's appointments with Reed were held by zoom, and over the summer of 2020 the claimant wanted to explore studying again, and in particular course in events management. He wanted Reed to provide BSL interpreters for him to be able to study and again there was difficulty between him and the provider about that. That resulted in a change in adviser.

The claimant considers legal action

128. In August 2020 a press release was issued by the respondent in conjunction with the Equality and Human Rights Commission. It concerned complaints by four deaf customers had been unable to access call centre services facilitated by a third party. The spokesperson of behalf of the respondent said this: "with over 87,000 [BSL] users currently living in the UK, it is vital that all of our services are accessible for deaf people and those with hearing loss. We are absolutely committed to continually improving the support we provide and this agreement cements that position and sets us on the right path for the future". The spokes person went on to describe an action plan identified in the complaint to the EHRC. It included the respondent committing to providing a video relay service enabling deaf users to contact the respondent via video relay using interpreters; improving the customer information system so disabled people's communication needs are recorded and shared and improving the use of a quality analysis in the design and delivery of all changes.

129. In September 2020 the claimant attended the CAB and an application was made on his behalf the legal aid in connection with a complaint of discrimination against the respondent in connection with his treatment.

FTMRA (PCP case)/section 19 Allegation 1: 1 December 2020: Did the Respondent tell Reed Recruitment to communicate with the Claimant by email?

FTMRA (PCP case)/section 19 Allegation 2: 21 December 2020: Did the Respondent make a referral of the Claimant to a service - JETS - which was inappropriate and did not have the required support for his disability?

130. In the summer of 2020 the claimant continued to explore with his Reed adviser difficulties when interpreters failed to attend, which resulted in appointments being cancelled; they communicated by email on short matters because texting, which was the claimant's preference, was not possible for Reed support workers. The claimant was told that his last day on the programme was the end of November and in liaison with Park Place the Reed adviser told the claimant that he was to be referred by the JETS programme and that a work coach would be in contact with him. That email from Reed was sent to the claimant on 1 December 2020 and the referral indicated that the claimant needed a BSL interpreter and that he was looking for full-time work.

131. The claimant attended that program on 15 December but there was no interpreter provided and it could not go ahead. He again attended on 21 December 2020 and again an interpreter had not been arranged but he asked an LHS LS worker to attend with him because it was in the same building. He was unhappy again, and asked for the complaints procedure from Reed. This was not provided for him, and he chased for it a couple of months later. The Reed JETS adviser explained that this program was for people that need minimal remote support. It was clearly an inappropriate referral for the claimant. The claimant was told that a work coach would be in touch with him and the Reed JETS adviser would provide the complaints procedure. Neither of these things happened.

132. Conclusion absent limitation: FTMRA 1 and 2: the claimant has not proven that the respondent told Reed to communicate with him by email. This allegation fails on its facts. It was clear that there were short emails back and forth and the claimant's evidence is that he does try to communicate in this form when he can. He preferred text and said so, but he did not say he could not communicate by email, and he could do so, to a limited extent.

133. The Reed sessions were in person or on Zoom with interpretation and that was the provision from the outset of this programme, albeit there were frequent changes in appointments. A Reed adviser did communicate with the claimant by email, but the claimant was able to read straightforward material, and to the extent the material was beyond him, meetings were arranged. These are not facts from which we could conclude the respondent did not ensure the claimant's additional needs were understood and the respondent failed to make that reasonable adjustment, or to ensure that support to him was the same as for others. It was Reed's obligation to provide adjustments to enable him to access its provision and that was understood.

134. As to the JETS (job entry targeted support) referral, while his BSL need was identified in the referral, and there was liaison to make sure interpretation was available, the provider was of the view this programme was not the right one for the claimant. Was it unreasonable for the respondent to make this referral and explore matters? It was not, bearing in mind that the challenges of the claimant's written English are not straightforward and exploring opportunities is reasonable.

135. The two adjustments contended for, beyond BSL interpreter provision are: ensuring the needs of BSL speakers are understood and the services are provided to the same standard for those whose first language is BSL. The JETS referral was not a failure by the respondent to understand the needs of a BSL speaker, or to fail to provide the same standard of services to a BSL speaker, it was a failure to understand the very particular circumstances of the claimant in relation to communicating in written English – not all BSL speakers have those same limitations in written English. That was the barrier he faced. He required more complex services to address that difficulty, rather than the same services, as others. These are not facts from which we would conclude a PCP based failure to make a reasonable adjustment.

Covid Guidance

136. From January 2021 the National guidance from the respondent was that job centres were open 10 AM to 2 PM to support customers who were unable to access services remotely, by telephone or otherwise. Work coaches were also said to be empowered to support customers through the most appropriate channels, whether online, by phone or in person. The claimant was not invited to attend Park Place, nor did he seek to attend without an invitation. This location was operating with a skeleton staff. At the time he accepted matters, but he has become angry since seeing this press release and the one below.

137. A press release also announced in January 2021 that a video relay service was available to access BSL help for all DWP service helplines. The claimant was not informed of this service directly, but the provision was delivering on the commitment made in the August 2020 press release to enable helpline access for BSL users.

138. In April 2021 the claimant told LHSLS he was in talks with his solicitor and believed he was being discriminated against by Reed in connection with its failures in service provision because of the inappropriate referral to JETS and the failure to put anything else in place.

FTMRA/PCP case/Section 19 Allegation 3: 5 May 2021: Did the Respondent refuse a request for a meeting via video link?

FTMRA/PCP case/Section 19 Allegation 4: 5 May 2021: Did the Respondent invite the Claimant to attend a telephone meeting?

Section 15 allegation of a failure to provide the claimant services from March 2020 to May 2021 and from May 2021 to December 2021

139. In May 2021 the claimant received a standard invitation letter for a JSA meeting at Park Place, save that the work coach had manuscript amended the

letter to say “telephone appointment”. This was around the time at which JSA claimants on job coaches case loads were being invited to take part in their appointments by telephone. He again sought support from LHSLS and they called Park Place for him. He asked whether he could have a zoom appointment instead with an interpreter, as he had with Reed, but was told it was not possible and he should simply wait to hear from them. He was not directed to the announced Video Relay service, nor was he invited to attend in person, albeit Park Place was open and the national guidance was to provide services in a way that they were accessible and safe. He was recorded as “happy” at the time but later found out about the national guidance, video relay service and that job centres were, “open”.

140. Conclusion absent limitation: between March 2020 and May 2021 the claimant was not treated unfavourably by the respondent because of matters arising from his deafness. He was treated in the same way as other JSA claimants – that is they were not required to attend Park Place nor to take part in remote meetings. It is suggested in the National press release that meetings may be happening from January 2021 but there were bound to be regional variations and on that we deploy both industrial knowledge and accept the evidence of the respondent’s witnesses.

141. From May 2021, however, the claimant has proven the facts of his allegations. They are facts which demonstrate that the job coach inviting him to the telephone meeting did not understand his deafness. Had they accessed the correct field of his LMS record, they would have done and this is an occasion of staff being “blind” to the claimant’s disability. Had they had any awareness of his disability at all, this invitation would not have been sent. We did not hear from this work coach or any manager involved at the time.

142. The context for that blindness includes that Park Place work coaches have little equalities training, on the evidence of those from whom we heard, and none had had deaf awareness training. When the matter was explored with the support of LHSLS, no other provision was put in place, despite the national guidance from January saying video relay was available for JSA, and all services, as it was for UC.

143. It was unfavourable treatment for the claimant to have no contact with his job coach from May 2021, when others were having contact. It was because of his inability to speak English – had he been able to speak English he would have been able to take part in telephone contact.

144. The respondent’s justification case was that failing to have contact with him from May to December was a proportionate means of achieving its legitimate aim. The efforts made in the autumn were ineffectual, and the national video relay service was not explored or communicated at all. This was at a time when the claimant was having no third party support in job seeking from Reed and accessed the services of psychological therapy from SignHealth, a charity, because his mental health was affected.

145. While there were still Covid variants circulating that year and there was still great concern, it was published nationally that offices were open, and there were a raft of mitigations which were in place in public life which could be deployed to enable three people – the claimant, a work coach and an interpreter - to work together at distance in a room. The fact that most people were not attending the office does not mean that it was not a reasonable adjustment to enable the claimant to do so, and the failure to do that informs whether the unfavourable treatment was appropriate and reasonably necessary.

146. In these circumstances the claimant has proven facts from which we would conclude the respondent failed to make the contended adjustment of ensuring work coaches were aware of his needs.

147. Equally he has proven that there was no provision for BSL speakers to access job coach appointments until later in the year. Given the August 2020 press release, and the failure to make any provision to have contact with the claimant until the autumn of 2021, these are facts from which we would conclude a failure to make reasonable adjustments to enable him to have the same access as others. After this length of time - December 2020 was the end of effective support with Reed - he waited another year, see below, for contact with his job coach.

148. These two contraventions would succeed subject to limitation as would the Section 15 allegation.

Park Place JSA meetings resume from 2022

Auxilliary Aid Allegation 5/Section 19: 12 January 2022: Did the Respondent fail to provide an interpreter for a meeting at JCP which was then unable to proceed

149. In September 2021 a work coach booked an interpreter for an in-person appointment with the claimant at Park Place in October 2021, but did not tell the claimant. By October Mr Devine has become the claimant's work coach, and he then sought to rebook an interpreter for an appointment, ultimately sending the claimant a letter dated 15 December 2021, which he had manuscript amended to confirm that an interpreter would be present on 12 January 2022. The claimant attended on 12 January at 2pm but no interpreter was present. Mr Devine had emailed him at 12:30 PM, to let him know that the interpreter was not available and the appointment would not be effective, but the claimant had not seen that email.

150. Mr Devine re-booked an interpreter for 26 January and when the claimant attended that appointment they were able to make some progress, albeit the claimant was frustrated having to explain his circumstances to a new work coach. He welcomed consistent appointments with Mr Devine thereafter and he found that interpreters were booked from then on.

151. Conclusion on January 12 allegation (which is in time). Mr Devine had booked an interpreter which was the reasonable step; sadly there was a failure error and he had tried to communicate the problem; it was. The claimant was understandably disappointed, but it was nearly three years since the claimant had last experienced an interpreter failure by the respondent (as proven). This occasion was, for Mr Devine a first failure and it did not arise from lack of awareness or failure to book. He fully understood the need from the respondent's LMS. He then did his best to ensure the meeting on 26 went ahead and he and the claimant established a good relationship. Albeit for the claimant, amalgamating experiences from 2017 to 2019, this may have felt like groundhog day, we do not consider this isolated (at the time) failure in supply is sufficient. This complaint does not succeed as contravention by failure to provide an auxiliary aid, nor the duplicating indirect or FTMRA cases (which to the extent this is not repeated in respect of each occasion when we so conclude, is repeated).

Auxilliary Aid/Section 19 allegation 6: 23 February 2022: Did the Claimant attend a meeting at JCP when the interpreter provided was Sign Supported English and not BSL

152. The claimant describes a clear recollection of his JSA meeting on 23 February 2022 over several paragraphs in his statement. Mr Devine's recollection was limited to a note of around six lines on LMS, which included that he had not had a reply from chasing provision through Reed and would keep trying, or words to that effect. He had no recollection beyond the notes on LMS. As to the SSE issue, the respondent suggested there was no SSE issue, in fact. The following is the claimant's evidence when the matter was put to him:

> *So paul says – bsl interp used – now that's the case isn't it – bsl was used – yes – you wanted him to state in writing – reed were at fault – yes*
>
> *I felt reed was at fault – I wanted him to write that down – he changed his mind and took it back – he says he was not prepared to write it down*
>
> *I asked him to write – the situation with reed – that they were at fault and reed*
>
> *And then you got into a dispute with the interpreter*
>
> *Okay – so I was signing away – and the interpreter – said – slow down – why – what is the problem – so they said – can you slow down please – because they were signing ss e-*
>
> *And I said no im not -I am signing in bsl – so they asked me to slow down – but I wasn't using sse*

I didn't know- interp said – sse – they say signing too fast – my speed was my natural speed – the interp said – im sorry but I use sse

So I believe passed on the wrong information – signing too fast – can I slow down

In any event at that meeting – you were able to say what you wanted to say to paul devine weren't you –

No - not fully – can you slow down – why do you want me to slow down

So then I had to modify my thoughts and feelings of the benefit of the interp

So a bit of a discussion – I suppose an argument – so argument or whether you used ssl or bsl – I believe I was using bsl – the interp was usins ssl;

And they would ask me to code switch for the benefit of the interp – so may be they misrepresented me in the course of doing their job

153. We can confidently find as follows. Mr Devine had booked an interpreter, but the interpreter had asked the claimant to slowdown and told him he was using SSE – sign supported English, which is a different communication method, and the interpreter had later said, "I'm sorry but I use SSE". The claimant was unhappy about both the interpretation difficulties and the substance of the discussions. The claimant wanted Mr Devine to record that Reed had been at fault. The claimant had been chasing Reed's complaints procedure and Mr Devine had been lobbying on his behalf for interpretation support for training and to resolve matters with Reed. On this occasion Mr Devine provided the claimant with information to access the DWP complaints procedure through.gov

154. Conclusion: Mr Devine had taken the reasonable step to provide the aid – he had booked an interpreter. There was a quality issue; but on this occasion these are not facts from which we uphold a contravention. The claimant was unhappy about Reed, and they were able to make progress on registering that complaint. The claimant has unjustified sense of grievance about this quality issue. It was a new kind of quality issue, unforeseeable given three years since the last one, and Mr Devine took steps to enable a complaint.

155. Mr Devine then sought to gain approval from DEA Mr Marshall, for the claimant to be moved onto Reed's "IPES" programme – "Intensive Personalised Employment Support", which involved one to one coaching for people with complex needs for 12 or so months. Mr Devine considered the claimant suitable and that he had been fully engaging with his JSA appointments.

156. In April 2022 Mr Marshall refused that request in stark terms. He met Ms Flaherty and Ms Passmore over Teams to discuss the claimant. He then described him in the following terms:

Paul Rimmer has been referred to DEA many times in the past and has failed to engage and complained about multiple provision has been referred to.
Therefore given his lack of engagement I can't support a referral to IPES without more commitment from him regarding alternatives to work or engaging elsewhere. When he has done this may be suitable for IPES but not before.

157. Mr Devine tried again but to no avail. He said this: "*I only started seeing claimant recently but he has attended all appointments and says he is keen to get support. Reed have said they wil take him for IPES and he seems suitable. He has already raised concerns about equality of treatment. I think we need to draw a line under past issues and try and make some progress?"*

158. Mr Marshall was resolute: "*Mr Rimmer has a history of complaints about treatment. I feel that IPES would be no different for him than Work Progamme/WHP which hasn't worked previously. If he wishes to remain declaring his fitness for work then other support like restart for more fit for work customer etc may be suitable. An email has come out today extending eligibility to JSA customers."*

159. Mr Devine then secured the claimant a place on the IPES scheme by approaching management and a different DEA, Mr Cummins, who scheduled a meeting for 4 May 2022.

<u>On or around 6 May 2022: Did the Respondent fail to provide an interpreter for a meeting at JCP which was then unable to proceed</u>

160. This allegation had a mistaken date, which was corrected in the claimant's statement. On 4 May 2022 the claimant was due to have a meeting to conduct a "warm handover" from his work coach to IPES with Reed and Mr Devine and very likely the DEA. The meeting had been booked two weeks' previously. The claimant took an LHSLS person with him to support him but on attendance the interpreter had not been supplied – Big Word the supplier being unable to source an interpreter. Mr Devine telephoned Reed, who in any event were joining the meeting remotely and it was rescheduled for 18 May 2022.

161. The claimant's own evidence was that Mr Devine routinely booked interpreters and this was, again, an interpreter letting them down. The respondent could not be said to have failed to take reasonable steps to provide the auxiliary service, and it is clear it sought to tackle issues by contracting with a new provider from around this time. This alleged contravention fails.

162. The claimant had his first meeting with Reed for the IPES program on 1 June 2022. That did not go well. The claimant was concerned about the advisor's ability to support deaf customers and through the interpreter and a manager it was agreed that a new advisor would be provided for a meeting on 30 June 2022. In fact that meeting did not happen, and the claimant was in limbo for some considerable time.

15 June 2022: Did the Respondent fail to provide an interpreter for an appointment at JCP and did the online interpretation service fail to work?

163. Mr Devine booked an interpreter through the new supplier for the claimant's appointment on 15 June. The claimant had had his handover for IPES on 18 May, and had been excused his attendance at Park Place on 1 June. 15 June was his next appointment but the supplier had said on 13 June that they had yet to source an interpreter. Mr Devine then tried, at the beginning of the appointment, to access remote interpretation, but that was not going well as it was his first time doing so. The claimant was then able to bring support from LHSLS, a contact there had his own interpreter and this person interpreted for the claimant at this appointment. Mr Devine was able to record that the issue of weekly (or not) sessions with Reed could be progressed and he agreed he would let the claimant know by email. These events are described on the LMS system where Mr Devine tended to record matters.

164. Conclusion: the claimant has proved his factual case. The question is whether from those facts we would decide, absent limitation, that the respondent failed to take such steps as are reasonable to provide the auxiliary service (and/or the associated indirect discrimination/PCP based adjustment questions). We have concluded that however the allegation is addressed, it would not succeed. Mr Devine did take such steps as are reasonable, albeit those steps were unsuccessful because of supplier failure. This was a time of technology change. The meeting was important for the claimant and he was able to mitigate the failure himself by accessing other support. This does not amount to a contravention, nor a discriminatory state of affairs perpetuated by Mr Devine; he was trying his best to overcome the challenges for the claimant.

The IPES situation and Mr Marshall's interventions

165. In the background and unknown to the claimant, Ms Passmore, DEA, now retired, and Mr Murr, a work coach team leader, were trying to resolve the claimant's complaint about being dis-engaged by Reed. We did not hear from Mr Murr. He asked Ms Harter to look into the complaint and she gave evidence, including that there are around 1000 BSL job seekers in the Yorkshire or north region. Successful efforts were made to enable the claimant to be re-engaged to IPES.

166. Communications were copied widely but at no time did any investigation involve asking the claimant for his version of events or his needs and challenges. This was the most recent of five or so complaints by the claimant over some years, excluding his complaint to his GP in 2017. It is clear from Mr Murr's communications that he appears to have no knowledge of the claimant's particular history or needs and he sent the claimant a holding response before 22 July by email, although that was not discussed in the hearing.

167. Ms Passmore and Mr Marshall both contributed to an email chain to the effect they had not been in favour of the referral to IPES in April. This was apparent in Mr Marshall's communications back at the time, and he took a further opportunity to say that he had been proven right, in effect.

168. Reed's position was that the claimant's behaviour on 1 June had been "quite aggressive" and was making demand [sic] that IPES could not necessarily facilitate, hence he was disengaged.

169. Mr Marshall had never met the claimant; he had no direct knowledge of events. His only knowledge had come from Ms Passmore and Ms Flaherty. He knew that the claimant had complained to his MP in 2017, but that was about the length of it. He did not know of other complaints. He wrote in an email on 22 July that the claimant had made many complaints or words to that effect and had a huge amount of support and he had not considered him suitable for IPES.

170. A Teams meeting about matters took place on 5 August 2022 between Ms Harter (as she was then), the two team leaders Mr Murr and Mr Locker, and Mr Marshall. Ms Harter (as she then was) sent agreed action items on 6 August, and Mr Marshall said this in reply on 8 August 2022:

> "W*hile I am happy to do a one off three way appointment (I assume that will need to be in the office to have an interpreter present) I am aware that Mr Rimmer has recently refused to see anyone except a manager. However that he seems not to have a valid claimant commitment whatsoever needs to be addressed first as without it he doesn't have a valid claim to benefit?*
> *I can't promise to be present at every appointment with Mr Rimmer. Nor should there be any need for every appointment to need a DEA presence indefinitely (Mr Rimmer has been on benefit for many many years). What exactly would the very experienced JSA work coaches need one for? Mr Rimmers main barrier isn't his lack of hearing? His actions would support that he is actually one of the groups of customers who specifically is described as not suitable for DEA direct support.*
>
> - *"Have attended every provision without reasonable reason for no onwards progress"*
> - *"Have a health condition which is well managed and is not actually a barrier to employment"*

- *"Have indicated that they do not wish to engage and who have indicated they do not wish to work. The caveat here is that we know that the customers should want to work and engage in work related activities. However, we also know that there are a percentage of customers who will sabotage attendance and participation as a way of avoiding/delaying their journey towards the labour market and work".*

  He has also had a substantial amount of DEA input previously with no result. Also he would be receiving everything and much more than a DEA could possibly offer if he engages with IPES (and if he doesn't engage with them and behaves inappropriately then that needs to be addressed) Therefore I feel he actually needs firm work coaching and if coach needs support to do things like issue directions and sanction doubts they need to consult with their work coach team leader."

171. The bullet points above are extracts from guidance for the provision of DEA support, which was a limited resource.

PCP/Section 19 allegation 5: 27 July 2022: Did the Respondent fail to ensure that a JCP advisor, who was standing in for the Claimant's usual advisor while he was on holiday, knew the Claimant's history and the current situation regarding referral to IPES

172. No booking was made for the claimant's 27 July interpreter appointment and Mr Singh, who was standing in for Mr Devine, had no understanding that the claimant would need interpretation or his history and need to update on the IPES position. The claimant refused to see Mr Singh and saw a manager to complain about the lack of interpretation and lack of handover, which on the claimant's evidence, which we accept, Mr Devine had said he would leave by way of note. We conclude this meant a note on LMS which Mr Singh had not accessed.

173. These are facts from which we would conclude the respondent failed to make a reasonable adjustment. The groundhog day of this these events is clear and there was no mitigation. The PCPs engaged are spoken and written English and the practice of the work coach booking interpreters (and seemingly only the work coach). These together put the claimant at a disadvantage because on work coach change, interpretation failures were more likely and lack of understanding was more likely. There are a number of examples of the LMS record being no mitigation of this – ie - it was insufficient to put a marker on LMS without training staff or increasing deaf awareness or practice (which was not in place). There needed, reasonably, to be some greater handover, or assurance that his needs were understood, in relation to the claimant than of JSA claimants without his disability.

174. The claimant was still awaiting IPES provision and needed to discuss it. There was a failure of management, which was responsible for deploying cover and moving work coaches' activity. It was reasonable for the respondent to ensure his

additional reasonable needs were understood and accommodated, on work coach change. Moreover there was no follow up or documentation of the claimant's complaints at this time. The respondent's answer to this was that matters were to be "resolved on the ground". As events unfolded we know they were not. This contravention would succeed as a PCP based failure to make a reasonable adjustment, absent limitation.

175. On 11 August the claimant agreed that he would attend IPES fortnightly.

176. 7 September 2022: Did the Respondent fail to provide an interpreter for a meeting at JCP which was then aborted?

177. 21 September 2022: At his usual JCP sign-on meeting, did the Respondent provide a Sign Supported English interpreter instead of a BSL interpreter? When the Claimant asked to speak to a manager, was this refused without further explanation?

178. 5 October 2022: Did the Respondent fail to book an interpreter for the Claimant's appointment at JCP?

179. Mr Devine was allocated to universal credit claimants from September, but there was no communication in advance of that to the claimant. When the claimant attended for his appointment on 7 September, there was no interpreter, and Mr Singh had been designated his work coach. He could provide no further information about when the claimant would be able to recommence IPES appointments. The claimant was very frustrated and angry and accessed LHSLS and an advisor went back with him to explain that frustration. The claimant insisted on a meeting with the manager, with a BSL present, and the manager indicated they would try to organise that. On balance we find an interpreter had not been booked.

180. At the next appointment on 21 September an interpreter was present. Again the claimant considered the interpreter was SSE rather than BSL. Mr Singh and the claimant established there was still no start date for the claimant's IPES provision. The claimant again sought help from LHSLS and made a further complaint about the interpretation provision, which was put in writing for him. He was not provided with access to a manager.

181. On 5 October the claimant attended for his JSA appointment and again there was no interpreter in attendance, and matters were again fractious. The claimant sought help from an LHSLS adviser via its interpreted video call which took place at LHSLS.

182. The following facts derive from the LHSLS note on that day, as neither Mr Devine, nor the LMS notes, nor any other respondent witness could help on this matter. A Park Place employee was called by LHSLS and came on the call to explain why Mr Devine was no longer the claimant's job coach and that the

interpreter that day had cancelled. Mr Devine also joined the call and discussion of the SSE interpreter took place, with a name being provided to ensure that that person was not booked in future, or by Reed. The claimant was also assisted to check that the interpreter was registered, and the interpreter was.

183. Interpretation had been booked for 5 October, but it was subject to last minute cancellation.

184. These three occurrences are the climax of "groundhog day" in the claimant's claim. It is the third occasion of interpreter failure by a new supplier and the second occurrence that year of a quality issue. Against the full background of these events, and the Reed situation, the occasions on 7 September, 21 September and 5 October succeed as failures to take such steps as were reasonable to provide the auxiliary service/failures to make reasonable adjustments.

185. Events in July and before should have resulted in additional management vigilance on handover/understanding the needs of the claimant by training staff or otherwise. The respondent managers (from whom we did not hear) failed it seems to take any of these steps to take the reasonable and necessary booking step in readiness for 7 September. On 21 September no steps were taken to raise a quality issue with the supplier. Had that been done, it is less likely there would have been supplier failure on 5 October and/or video mitigation could have been in place. These complaints succeed in all the circumstances above.

Limitation.

186. The claimant's pleaded case included that his summary of events showed a "continuing act of discrimination", including but not limited to policies regarding the provision of BSL interpretation. He further said this: "Given the Claimant's experience of discrimination over an extended period of time, and the serious impact this has had on the Claimant's life and prospects, it is just and equitable in the circumstances to extend the time limit to include all incidents complained of....the Respondent is a public authority with extensive resources and would be expected to have detailed records to further illuminate the Claimant's claim during the period described above".

187. The claimant's commenced ACAS conciliation in the first claim on 8 April 2022 with a certificate provided on 13 May. The claim was presented on 10 June. The allegations before 9 January 2022 fall outside the Section 123(1)(a) time limit.

188. The claimant's second claim ACAS certificate is from 2-6 December 202 with the claim presented on 6 January 2023. Allegations between 11 June and 3 September 2022 are outwith the Section 123(1)(a) time limit and there was no application to amend pursued or granted as an alternative to the second claim.

189. Standing back the Tribunal must consider on the basis of our conclusions so far whether the contraventions we would find are linked in some way. The sanction in late 2017 arose in particular circumstances and was, had a complaint been

presented in time, Section 15 discrimination by an unknown team leader. The five failures to provide interpretation between January 2018 and May 2019 were at a time when the claimant was receiving interpreted specialist help via Blue Apple. There was not a discriminatory state of affairs, but discreet failures to book interpretation ten and then six months apart, including in circumstances of staff absence. The respondent's LMS identified the claimant's disability and his need for interpretation was recognised after his January 2018 meeting helped by LHSLS – the respondent would go easy, re sanctions – and he did. There were no repeats of sanctioning for a failure to provide work seeking evidence.

190. The pandemic then intervened. On our findings we have concluded there was not discriminatory conduct extending over a period. If there was, and we are wrong about this period - four contraventions November 2017 to May 19, on our findings, that contravening conduct did not then continue, until the failure in May 2021 to provide access to work coaching until January 2022. Upon Mr Devine's appointment as the claimant's work coach, with his clearly helpful approach, there was then a further period which was contravention free before potential and actual contraventions occurred on four occasions, July to October 2022.

191. The 2022 contraventions occurred against the background of information being shared about the claimant that he was a complainer, and his lack of hearing was not a barrier to work. This was said by the Disability Employment Adviser for Park Place, who was the only witness who said he had taken part in deafness awareness training, albeit some time ago and as part of general disability training. He had neither met the claimant, nor discussed his challenges with him, nor the substance of his needs or complaints.

192. Mr Marshall had also himself worked directly with only one deaf customer he could recall, and it was through, we find, the same Sanef programme in late 2014/2015, which was also successful for the claimant. He did not hear again from that deaf customer (whose other language was Portuguese).

193. It was in this context that further contraventions occurred, and indeed there appeared to be an escalation of them. They are linked because they arise against this context, where adverse emails about Mr Rimmer are being widely shared, and in the absence of any management action to properly investigate the history, involve Mr Rimmer, ensure an understanding of his needs by all, or at least the main staff who were allocated to deal with him.

194. We therefore consider the July contravention is part of the September/October discriminatory conduct extending over a period and it too, is upheld.

195. As to a just and equitable extension to enable the 2017/2018 contraventions to be declared, the claimant's case was unclear because he did not address it in his witness statement. It was, in truth, a submission on his behalf, in circumstances where the Tribunal has found that the claimant knew of the CAB and its capacity to help him, having approached in 2015 concerning Sanef, and again in 2020. He

complained to his MP in 2017 and, in our judgment, a complaint about the 2017-2019 events could reasonably have been presented in 2020 or not long thereafter.

196. In making that conclusion we do not underestimate the difficulties for advisers, and the extra time required to take instructions from the claimant, but the short particulars lodged in June 2022 about the earlier events could and should, reasonably, have been presented sooner.

197. We take into account the prejudice to the claimant in losing out on remedy and declarations for four contraventions in 2017 –2019, but the interests of justice reasons for maintaining the Section 123 (1) time limits are well known. We also consider the forensic prejudice to the respondent in stale complaints, most pertinently, the lack of hearing from the relevant work coaches and managers at that time. The respondent has its reasons - data principles – for storing information for the 14 month period it does, albeit it is clear that older information was on the LMS, but not the conversations field. Its case has been limited in its defence.

198. In the round and on balance we consider a just and equitable time limitation period to permit the 2017-2019 contraventions we would otherwise find to be declared is not in the interests of justice. To do so would not affect the claimant's pecuniary loss case, which on our conclusions of fact is in difficulties, and his injury to feelings and other non pecuniary loss heads can properly take account of his feelings, against the background of what had gone before.

Indirect discrimination

199. It is convenient to explain that the claimant's alternative indirect discrimination case is dismissed for limitation reasons/factual findings and as follows. We have found and upheld the contraventions above. They involve consideration of justification of the treatment of the claimant, or the reasonableness (or not) of adjusted provision for him. His indirect complaint requires us to identify the detriment, on each occasion, which is said to amount to the act of indirect discrimination. In that we agree with Mr Horan's submission. We then have to balance the discriminatory effect of English as the applied language against the reasonable necessity for, and appropriateness of, applying English as the communicative language. The PCP was applied to the claimant on the occasions we have upheld contraventions – that is evident across the time line, and in particular when communications were in writing and/or interpretation provision failed and/or when he was expected or taken to web based information or other written information). Nevertheless, even balancing those discriminatory effects, upheld in other contraventions, against applying English as a reasonably necessary and appropriate means of achieving the efficient provision of services to job seekers, we consider it was reasonably necessary and appropriate to do so – that is the PCP is justified, where the particular treatment of the claimant is not justified (for the purposes of Section 15) and/or was a failure to make a reasonable adjustment).

The law and submissions on remedy

200. Any award of compensation for discrimination will be assessed under the same principles as apply to torts (see s124(6) and s119(2)). The central aim is to put the claimant in the position, so far as is reasonable, that he or she would have been had the tort not occurred (Ministry of Defence v Wheeler [1998] IRLR 23 and Chagger v Abbey National plc [2010] IRLR 47).

201. Where loss has occurred as a result of the discrimination, tribunals are expected to award compensation that is both adequate to compensate for the loss and proportionate to it (Wisbey v Commissioner of the City of London Police [2021] EWCA Civ 650) - loss must be made good in full.

202. The assessment of damages involves the Tribunal doings its best having regard to the material available to it. Translating hurt feelings into hard currency is bound to be an artificial exercise.

203. In employment cases Tribunals are first required to assess the severity of the tortious conduct applying the Vento bands. The top band is for the most serious conduct, typically involving a lengthy campaign of discriminatory harassment, the middle band is for serious cases, and the lowest band for less serious discriminatory conduct - an isolated or one off occurrence, or conduct not properly in the middle band.

204. Both counsel considered it was appropriate to deploy the Vento bands in this case. The claimant sought £33,000 to £35,000 which was said to be the lower of the top band. The respondent said this was a lower band case and Mrs Hogben helpfully provided the bands for 2021 and 2022, with £29,600 being the 2022 ceiling on mid band awards, and £9900 the ceiling on a lower band award. Both counsel were agreed that a cumulative award, rather than separate awards for each contravention, was in the interests of justice.

205. Awards for injury to feelings awards are compensatory in nature and not punitive. They compensate for subjective feelings of upset, frustration, mental anguish, anxiety, depression and mental torment. Aggravated damages are available as an aspect of injury to feelings and can be described as awardable for three additional sources of upset: the manner in which the defendant has committed the tort; the motive for it; the defendant's conduct subsequent to the tort but in relation to it, for example the conduct of the litigation.

206. Where a tortious act is high handed, malicious, insulting or oppressive, this might be a reason to incorporate an aggravated damages award. -– see Rooks v Barnard [1964] AC1129 and Commissioner of Police of the Metropolis v Shaw UKEAT/0125/11/ZT. Aggravated damages are also compensatory not punitive. The risk of double recovery or duplication is considerable – the Tribunal must stand back and examine the award as a whole to determine whether as compensation

for the claimant it is just, proportionate, and will command public respect, having regard to awards generally for injury.

207. Exemplary damages are punitive not compensatory. They are reserved for the worst cases of the oppressive use of power by public authorities, where the wrongdoing was conscious and contumelious. It must be oppressive, arbitrary or unconstitutional conduct by the agents of government (or calculated to make a profit which may well exceed the compensation paid to the claimant).

208. The parties' submissions on aggravated and exemplary damages can be summarised as folllows. Mr Horan relied on the claimant's pleaded position as the grounds for both, but he narrowed the ground for exemplary damages to the communications of Mr Marshall, and he relied on the Rooks v Barnard criteria having been met. He increased the pleaded sum to £50, 000 being sought in exemplary damages, on the basis of the developments in the hearing – simply put that there was no excuse for the communications of Mr Marshall.

209. In addition to submitting this was a lower band case, Mrs Hogben considered the absence of impact on benefits from the contraventions, that feelings of isolation should be treated with caution given the likely primary cause was the pandemic, and that generally the contraventions were unintentional and of the less serious nature. She submitted that none of the conduct was based on prejudice or animosity and the claimant had enjoyed good relations with Mr Devine. As to Mr Marshall's conduct, she relied on there being a range of legitimate approaches by job coaches, some more robust than others, and that he relied openly in his evidence on others – Ms Passmore – for his knowledge of the claimant's position. She relied on Tameside v Mylott [2011] UKEAT/0352/09/DM.

210. As to exemplary damages she submitted the claim was misconceived, and that such an award was reserved for the most serious cases of abuse of an executive power, which this was not. She further submitted that such an award should only be made if compensation is insufficient to punish the respondent (which must mean generally in the round including pecuniary awards because injury to feelings and aggravated damages are expressly not to punish).

211. Mrs Hogben also helpfully referred us to Kuddus (AP) v Chief Constable of Leicestershire Constabulary [2001] 2 WLR 1789, which involved an appeal against the striking out of a claim for exemplary damages by Mr Kuddus where a police officer had forged his signature on a document withdrawing a complaint, resulting in a theft investigation being ceased. The case is very helpful because it traverses the law of exemplary damages and the inherent tension above.

212. The usual common law rules of mitigation apply to claims for compensation in discrimination cases: a claimant is expected to take reasonable steps to mitigate their loss. The burden of proof is on the respondent, as the wrongdoer. The claimant does not have to prove that they have mitigated their loss.

213. On pecuniary loss, we remind ourselves of paragraphs 22 to to 26 of Mr J Edward v Tavistock and Portman NHS Foundation Trust [2023] EAT 33:

22 The approach to loss of earnings (both past and future) was addressed by the EAT in the well known series of cases brought against the Ministry of Defence by servicewomen who had been dismissed on grounds of pregnancy. The parties put Ministry of Defence v Hunt [1996] ICR 554 before me. Hunt draws on the general guidance set out in Ministry of Defence v Cannock [1994] ICR 918. In Cannock, the claimants argued that if they had not been dismissed they would have returned to service after a period of maternity leave and would have progressed their service careers. Morison J began his general guidance as to compensation by referring to the principles stated by the House of Lords in Mallett v McGonagle [1970] AC 166 (a fatal accident case). He cited (949F-G) the following passage of Lord Diplock:

*"**The role of the court in making an assessment of damages which depends on its view as to what will be and would have been is to be contrasted with its ordinary function in civil actions of determining what was. In determining what did happen in the past the court decides on the balance of probabilities. Anything that is more probable than not it treats as certain. But in assessing damages which depend on its view as to what will happen in the future or would have happened in the future if something had not happened in the past, the court must make an estimate of what are the chances that a particular thing will or would not have happened and reflect those chances, whether they are more or less than even, in the amount of damages which it awards."***

*23 Morison J then went on to consider a series of hypotheticals that would arise in assessing compensation. In doing so he made the following observation (951A-C): "w**hat are the chances that had she been given maternity leave and an opportunity to return to work, the applicant would have returned? The answer is not, with respect to some industrial tribunals, a question of fact at all….. The question is to be answered on the basis of the best assessment that the industrial tribunal can make having regard to the available material."***

214. On loss of a chance assessment, see Allied Maples Group Ltd v Simmons & Simmons [1995] WLR 1602 and Timothy James Consulting Ltd v Wilton UKEAT/0082/14/DXA. The claimant also relies on a third party loss of chance: an employer would have employed him and retained him in employment, but for the respondent's contraventions.

Remedy findings of fact on the pecuniary loss case (provided to the parties before remedy submissions)

215. The claimant's first claim form in June 2022 sought unquantified damage estimated to be between £9,000 and £29,600 and a declaration he had been

discriminated against. Short particulars of claim were attached. The claimant's further particulars/second claim in December 2022/January 2023 sought a declaration, a recommendation that the respondent improve services for the claimant, compensation for injury to feelings, compensation for loss of a chance, and interest.

216. The claimant's final schedule of loss (7 March 2023) sought Chagger pecuniary loss on the basis that, but for alleged discrimination from 2015, when his most recent period of continuous signing on took place, May 2015, he would have earned sums above minimum wage and rising to the median value after seven years to November 2023. He did not seek future loss. The total sum claimed for lost earnings was £233,102, with a further £30,000 sought for in work professional development.

217. His schedule of loss then sets out £35,000 sought for injury to feelings. Aggravated damages of £15,000 and exemplary damages of £30,000.

218. The Tribunal agreed with the parties that it would hear the parties' remedy related evidence with the liability evidence.

219. Our factual findings on the remedy evidence for pecuniary loss are as follows. We repeat our background findings as to the claimant's background and his educational disruption. We also repeat the findings about why the claimant's Sanef employment ended.

220. The claimant's history is that he has obtained training or qualifications but then not been successful in obtaining employment in the field in which he has secured the qualification. The tiling course is an example - he did the course from 2016 to 2017 but did not then secure employment as a tiler. There are other examples and the pattern is repeated.

221. The barriers to success in an ordinary recruitment process are clear: an example is being offered a telephone interview by an employer, but there are very many others. The limit of his written English is also a considerable barrier. Many applications have been made on his behalf and all since 2015 have failed, despite Ms Flaherty telling us that Access to Work will provide BSL interpreters in work and the claimant was then willing to consider a range of jobs.

222. The occasion when employment was secured and lost in 2015 is instructive. The recruitment process was bespoke and modified to address challenges for deaf applicants. The claimant was doing well and could have been a supervisor; he preferred to work amongst hearing colleagues and their perception of his behaviour caused him to leave. The problem was nothing that the respondent did or did not do, but the employer had likely not provided to those with whom the claimant chose to work, deaf awareness training. Equally as important for someone with distinct challenges at work is the need for colleagues to have awareness of that individual's particular and unique circumstances. Generalised training can help, but it is unlikely

to be sufficient because humans are unique and the consequences of a condition and the way a person lives with the individual consequences of deafness, which can vary enormously.

223. That 2015 experience is bookended in June 2022, by the result of a further choice made by the claimant. After a "warm" successful handover to Reed for the IPES programme in late May, at his first appointment with BSL interpretation he chose to challenge the competence of the Reed worker to help him. That resulted in the programme commencement being considerably delayed because a new worker had to be found.

224. The claimant has complex barriers to work and they include his personality and his history. They also include the choices he makes. As Mr Marshall said, with bespoke provision of work seeking support, as was present in 2015, the claimant may again have been able to secure new work and may do in the future.

225. However. the claimant has chosen to limit (and we make no comment on whether these limitations are reasonable or unreasonable) the work he will consider. Early in the chronology he is described as seeking work as a tiler, but not being interested in apprenticeships because of the low pay in comparison with the sums he receives in benefits. By 2022 he had decided to limit his training search to courses in "events management", because a job in that field would be his "dream job" and he would not consider other applications. There are other examples of the limits the claimant has placed on the work he will consider.

226. Events management is a particularly difficult choice. It is frequently seasonal and low paid, despite some niche areas such as Premier League football being very well paid. It is also a sector in which enthusiasts often given their time for free – examples are the split between paid and unpaid volunteers at the London Olympics, but there are countless other examples. It is also the dream job for many people. It is for these and other reasons a very difficult sector for those with challenges, absent a committed employer wishing specifically to target particular disadvantaged groups for its own reasons – as Sanef did. Events was also badly hit by the pandemic and now faces the challenges of the digitalisation of experiences.

227. Finally, most, if not all, job seeking activity and employment involves moments of frustration and disappointment. The claimant has faced and will continue to face more than most. Those with BSL as a first language are less likely to be employed than those with English as the first language. He, like all of us is capable of occasional rudeness in context – the example is telling an interpreter, "out", when he was dissatisfied with the quality of that interpretation. The claimant is more likely than a hearing person to have his behaviour perceived negatively unless, as indicated above, personalised awareness is provided to colleagues working with him.

228. Even with that personalised awareness, in March 2023, the claimant's involvement in the IPES programme was again under strain because he was reported as being rude to an interpreter, accusing him of a bad attitude and that "I pay you". The interpreter was unwilling to work with the claimant again. We make these findings on the basis of the contemporaneous emails discussed in this hearing. It appeared that this hearing has been the first occasion of the respondent discussing these matters with him.

229. In all of these circumstances, we have to address the claimant's but for case – the counter factual case – what would have happened if the respondent had not committed the contraventions we have upheld. It will be apparent from these findings that the claimant has not proven, and has fallen a long way short of proving, that but for the contraventions he would have obtained and retained employment.

Further Remedy Conclusions

Pecuniary loss/loss of a chance

230. Perhaps anticipating the findings above, on Monday 29 April the claimant handed up an alternative pecuniary loss case, which asserted that the claimant had a 31% chance that he would have secured employment after a one year "re-start" scheme, had that been provided by the respondent. It was said that the Tribunal could make this assessment on two bases:

230.1. The respondent's failure to put any evidential material before the Tribunal as to the efficacy of work seeking or training provision, when he has all that material available to him. From this failure the Tribunal should assess the claimant's remedy case on what would have happened at its highest – the claimant relied on Mr Brian MacKenzie v Alcoa Manufacturing (GB) Limited [2019] EWCA Civ 2110.

230.2. He sought permission to put before the Tribunal documentary evidence about the efficacy of the respondent's "re-start" scheme.

231. The Tribunal refused the application to adduce further evidence at this stage of the proceedings. The application had been made or at least indicated on Monday and the material had been provided to Mrs Hogben, but it had been very clear to both parties that all remedy evidence was to be addressed during the evidence of the witnesses on days 1 to 8. By the final day, Wednesday 1 May, when the application became clear, remedy submissions were due to be made There was not time to re-call any respondent witness to deal with additional evidence, not least because no respondent witnesses were present, but also because it was disproportionate. The Tribunal could take judicial notice of, and accept, the simple contention that the respondent was unlikely to spend considerable public funds with third party providers unless that provision was statistically and demonstrably efficacious – ie that a worthwhile proportion of job seekers would be helped to employment by the provision. Together with the respondent's lack of remedy

counter evidence, it was said, the Tribunal could properly make an assessment and award pecuniary loss on the claimant's secondary loss of a chance basis.

232. To address this submission we revisit the contraventions found: the respondent failed to make reasonable adjustments in two ways in from May 2021, with the result that the claimant's access to work seeking help was delayed until January 2021, ultimately commencing in May 2022 with a warm handover to the IPES programme. The claimant was then subject to a further failure to make a reasonable adjustment, of the same kind that arose in May 2021, namely that his impairment and needs were understood, and further failures to take the steps reasonable to provide BSL. The result was again delay in resumption of IPES.

233. The IPES programme had a maximum duration of provision of 639 days, or approximately eighteen months pre work support and six months in work support (although this is taken from the contract and it may have reduced to 15 months – see below). Nevertheless, at the conclusion of IPES in February this year the claimant remains without work. His loss of a chance case asks us, in effect, to assess whether that, or a similar programme, would instead have been successful, and successful sooner, had the claimant not been subject to the contraventions we have found, against the background we have found.

234. Is there a chance, such that we should apportion financial loss? We have concluded that it would not be in the interests of justice to do so. We have to tie such an assessment to evidence. The fact that specialist work seeking provision works for some, or even many job seekers, does not lead us to reject all the counter evidence. We would need to find that had the claimant started provision in Mid 2021, his decisions and search remit would have been different to those in 2022. Ordinarily, upset from discrimination can affect matters which then unfold, but the difficulty is that at the time of the contraventions in 2021, the claimant accepted matters which caused delay, because he did not know that other facilities were available.

235. Being sent a letter with invitation to a telephone meeting was profoundly upsetting, but it is not such as to enable us to assess that if that had not happened, and the other contraventions had not happened, the claimant would have widened his search, a third party employer would have employed the claimant, and he would have remained in that employment. In our judgment, the likelihood is so remote in all the unique circumstances of this case, that we conclude it to be zero. The effect of contraventions on the claimant is remediable in injury to feelings, and we consider that is the proper assessment to undertake in this case because the claimant has provided a great deal of evidence of the impact on him of matters at various times in his lengthy statement. The alternative loss of chance case is without that evidential base and most, if not all indicators, are against it.

236. If we are wrong on the assessment of pecuniary loss, we record that Mrs Hogben asked us to consider, on the basis of our existing findings, that the claimant had acted unreasonably in failing to mitigate his loss by not widening his job search

beyond events management. Even if we were so to declare, the difficulty with the submission runs into the same difficulty as our analysis above. It relies on a third party employer employing the claimant. The respondent did not adduce evidence of an employer who had been willing to engage the claimant through this period, and therefore without that material the Tribunal was not in a position to decide in the alternative.

Further findings on non pecuniary loss

The value of money as a compensatory measure for the claimant

237. The claimant passed his driving test before March 2020 but does not currently own a car. He is reliant on public transport or friends. No doubt money sufficient to buy a car would be of great value to the claimant and would go some way to compensating him for the contraventions we have found.

The claimant's feelings at the time of the contraventions

238. The claimant describes his feelings at length in his statement. None of that evidence was challenged. We do not repeat it all here but identify the most relevant parts as we see them.

239. When the claimant received the invitation to a telephone meeting, it was profoundly unsettling for him, because it was another incident against the history of "deaf blindness" by someone at Park Place. He lives alone, he was not able to see friends or contacts as usual, and he felt upset that the letter should not have been sent.

240. When he explored the position, and the need to attend JSA meetings (or not) , with LHSLS' assistance, he accepted the respondent's explanation, after an apology by telephone. He was nevertheless disappointed and felt like he was in limbo. He assumed it was the same for everyone.

241. The claimant was accessing counselling in 2021, and albeit the isolation he felt was substantially as a result of the covid pandemic, that is the context in which he was not provided with contact by the respondent - and it made matters worse for him.

242. He had previously regularly attended Park Place, and, as all of us no doubt felt at the time, the opportunity to engage in permitted activity with other people, such as meetings or work, was profoundly important. He was recorded as being happy on the call in May 2021, but that was in against a background of sanction in 2017. That "happiness" was clearly at least partly in the knowledge that his benefits would continue without sanction despite their being no obligation to attend meetings at Park Place. We accept that lack of work coach contact for seven months was further isolating for him and held him "in limbo" and made him depressed about his prospects of finding work, and against a background of such frustration over many years.

243. When he later found out that a video service was available, around mid 2022 when commencing these proceedings, after the January 2021 press release was shown to him by his solicitors, he felt like he had not been a priority and that he had been left without support, which increased his upset.

244. The claimant's levels of frustration from the contraventions, against the background found above, have been significant. He has felt that he is constantly fighting for things other people take for granted. He felt, with considerable justification. misunderstood. The July to October 2022 contraventions are examples of a failure to understand his history and needs, and ensure interpretation services, at a time when he was seeking re-engagement to the Reed programme. They were a source of yet further upset.

245. The person giving evidence before the Tribunal is clearly a resilient person. He has had the benefit of support and advice from a law centre which has deeply understood his difficulties and provided advice to properly advance his case. That observation of his resilience in these proceedings does not diminish the profound impact of the contraventions on him on each occasion or when he became aware of the respondent's published position. 2020/21 to 2022 was a time of great difficulty for many, but even greater difficulty for him with the challenges he faced.

246. Assessing each contravention, and putting a monetary value on it to compensate him for the effect on his feelings, is a difficult assessment. It must take into account that on each occasion of damage to the claimant's mental wellbeing, whether by frustration or upset or depression or isolation, the cumulative effect was considerable. It was further depressing and despairing with each repeating occurrence against the background of some years we have found.

247. We have assessed that cumulative injury at £28,000, and calculate interest on this part from 30 April 2022 at £4480. In doing so we note that Mr Horan had said that he agreed Mrs Hogben's suggestion that interest run from November 2022, a month after the last contravention. Bearing in mind the period of contravention and its effect on the claimant that we have found (from May 2021 until October 2022), but that the cause of the exemplary damages award only became known in disclosure later in 2023, we consider interest on non pecuniary loss should properly, and conveniently, be calculated from 30 April 2022, which is around the time the claimant became aware of the full nature of the 2021 contraventions. February 2022 would be the mid point between the main contraventions, but what the claimant loses in this respect he gains from the inclusion of the exemplary damages below in the calculation of interest from April 2022. Time does not permit us hearing further from the advocates with their interest calculations.

<u>Aggravated damages</u>

248. We repeat the findings above concerning the number of complaints made by the claimant and the lack of any investigation with him, and the lack of any written

outcome to any of them. As Mr Horan made clear when cross examining the respondent witnesses, he could not say whether the claimant's behaviour had been inappropriate or otherwise as alleged, because there had been no investigation involving the claimant with interpretation or otherwise, and whether of the claimant's "disengagement" from the IPES programme, or otherwise complaints. That lack of investigation with him was the case for all complaints made by the claimant.

249. The respondent's approach may well have been to try to tackle matters on the ground and no doubt on occasions that would be effective. However, the claimant was clearly asserting discrimination complaints about equality of treatment and there was no documented response or investigation findings provided to him, despite, on one occasion, the Tribunal being told that a "holding response" had been sent. Further, we did not hear from the managers or team leaders charged with investigating.

250. These proceedings, have, in effect, been the process which no doubt the respondent's complaints procedure would expect to have been carried out on the ground, namely collating all the relevant information available, discussing it with relevant people, and weighing it independently, and providing an outcome.

251. The claimant was delayed because of lack of engagement in 2021 for seven months. He was complaining in 2022 about being delayed again in the IPES re-engagement and he subsequently complained about interpretation in that context. The lack of a response to these, let alone earlier complaints, has increased his anger and upset. These are further failures after the proceedings had commenced, against similar failures beforehand. They are hurtful not least because the lack of evidenced based investigation and documentation facilitates anecdotal and prejudicial views to prevail without challenge. The claimant has had no written apology at any stage from the respondent, which, deploying our knowledge of public service, is surprising in these circumstances.

252. The respondent's post contravention conduct in failing to investigate has been aggravating and we award an additional £5000, which is to be incorporated into the injury to feelings award and stands to have interest assessed on the same basis.

253. We then stand back and observe that this places the global award just into the top bracket of Vento at the time. In our judgment that is not disproportionate or manifestly unjust in all the circumstances of this case.

<u>Exemplary damages</u>

254. As for Mr Marshall's 8 August email, the details are recorded above. This was alleged by the claimant to be an oppressive act by an agent of government, such that an award should be made. That broad submission succeeds.

255. We add to our findings that the subject heading of the email was RE: Official Sensitive: Complaint. It was a reply to Ms Harter's delivery of outcomes from a Teams meeting about the claimant's complaint and the position with IPES. She had said, "*thank you for your time yesterday helping to find the best course of action for this customer....as agreed although Mr Rimmer is Elligible for the IPES programme he is currently not necessarily Suitable due to.....want to work and volunteer for IPES (the answer to this question must be yes*)."

256. She then set out the steps for the claimant's next appointment, saying the DEA should be part of a three way conversation and "this should continue at each appointment". She set out the further steps needed of a claimant commitment to be undertaken, and then small steps such as a CV and proof of job search before support through IPES would continue. She then set out the nature of that support in clear bullet points. The level of support was encouraging.

257. Ms Harter had undertaken that meeting with Mr Marshal and two Park Place team leaders. Mr Marshall's response sought to unwind what appeared to have been agreed. He copied his response to: the two Park Place team leaders (Messrs Locker and Murr), Mr Devine, Korful Bibi (DWP People, Capability and Place), whose involvement was unclear, Ms Passmore, a Ms Brownbill, and Ms Flaherty.

258. This email was discussed with Mr Marshal at length during his evidence. The claimant's case on oppressive and wrongful conduct were put to him. As to the reasons why he would speak in such damming terms of the claimant, he was unclear about whether he had seen any documents to support his views about the claimant, other than the LMS record. It was surprising he then expressed a view in such very strong terms - it was an assassination of the claimant's character. Mrs Hogben submitted that this email was simply the expression of his opinion and that it could not be put to him that his conduct was unlawful. We do not accept that submission.

259. He knew that the claimant had made complaints about equality of treatment – discrimination complaints – because Mr Devine had wisely told him in the April 2022 exchange of emails. We find he did not know of these proceedings, because it strikes us as likely that the short holding response/grounds of resistance presented by the respondent in July 2022 did not involve collating information from him. (We may be wrong about that – as with all our findings we make them doing our best with the evidence before us). Nevertheless he knew of the direct complaints to Park Place about equality of treatment, and, without any source material, with no minutes of the earlier meeting by Teams with Ms Passmore, and extrapolating what others had told him, much of which was anecdotal and out of date, he included within this email:

259.1. a wholesale assault on the claimant's character by suggesting that he did not want to work, that his lack of hearing was not his main barrier, and that he had sabotaged participation in order to delay his journey towards work;

259.2. that further DEA support was not appropriate in meetings; and

259.3. advice on the way in which work coaches should deal with him in the future, that is "firmly" and with directions and sanctions – in effect to punish the claimant.

260. Mr Marshall's evidence about his justification or reasons why he made such comments included that DEA resource was scarce and in the past DEAs had been given a caseload informally which prevented them doing their main role. As to sanctions he said the average for a work coach to refer to their team leader was 3 customers, when his was ninety "something" - his approach had been firm when he was a work coach. He also said that as DEA he should not have had influence over sanctions and he was quoting guidance about the type of customer for whom further provision was unsuitable.

261. He had earlier said that resourcing for the IPES provision was about 10 customers per month from Leeds, and when, in April 2022, he had said he did not think the claimant was suitable at that time, his August email reflected that he had been proved right.

262. We would have found the sanctioning of the claimant in 2017 to be a contravention for the reasons above. Mr Marshall was aware of an equal treatment complaint and yet 1) he wished to withdraw his support as agreed in the meeting; and 2) he did so on the basis of denigrating the claimant. That is detrimental treatment which we find was influenced by the claimant's equality of treatment complaint – a protected act pursuant to Section 27. When discussing his April email, which was also critical of the claimant, Mr Marshall appeared to consider there was something wrong with the claimant complaining of his treatment to his MP in 2017. The August email repeated this victimising approach.

263. In the round his email was conduct which was victimising and unlawful as a contravention of the Equality Act, and oppressive, because he, as DEA, could influence others in their treatment of the claimant. It was also conduct which deterred legitimate complaint from a vulnerable person. This from a person expected to have good knowledge of the challenges and circumstances of disabled customers. On this occasion he indicated withdrawal of his help and denigration of the claimant. This is the sort of email or conduct which anyone in receipt of services from a job centre would fear, that if job coaches or others are challenged, there will be reprisals. That is all the more so for the claimant who continues to attend and use its job seeking services.

264. Kuddus has traversed the position on whether exemplary damages are available in such circumstances and until there is law reform, they are. The claimant could alternatively have presented a new complaint or sought to amend his claim to add a victimisation complaint but understandably he did not do so in a case where a second claim had already been presented and there were delays in reaching a final hearing. Having heard Mr Marshall's evidence, Mr Horan increased the sum he sought for exemplary damages to £50,000 – that is perhaps an indicator of the very troubling nature of these events.

265. As a punitive award, we bear in mind that the respondent is fixed with liability arising from the conduct of Mr Marshall and that in such circumstances that could be considered unfair, but we consider there is no injustice substantively, because the complaint could have been pursued as victimisation for which the Secretary of State would, in any event, have been liable. Any sum must in the round command public respect, and in this context and for these reasons we consider £10,000 to be appropriate. A very low sum does not achieve the objective, and a very large sum would equally be wrong and capable of being seen as the route to untaxed riches.

Recommendations

266. The claimant said this at the conclusion of his lengthy statement: "*I feel* li*ke, if I could find work I could start to live my life more fully. I would have more self-esteem and be able to have better relationships and a better quality of life. I want to be able to contribute and find my place in the world, but at the moment, unfortunately that doesn't seem possible. I am trying to stay positive, but my referral with IPES ended in January 2024, and I don't know what will happen after that. ...I do feel that the Job Centre and the DWP have not wanted to help me because it is too difficult and too expensive for them. I also feel that most DWP staff do not understand the difficulties facing me as a profoundly deaf person. I know that things have improved when individual staff have over time become aware and realised what the problems are, but that is all lost when staff change and I seem to go back to square one again. I would like to be able to work positively with DWP to get me into employment but this needs staff to be better trained and have the resources to provide the support I need."*

267. It follows that obviating the impact of the contraventions on the claimant's feelings is important for his future dealings with the respondent. On the final day of the hearing he was able to put forward a written list of recommendations on which the Tribunal gave its observations. There was then a discussion between the parties and they were able to agree a recommendation, subject to the Tribunal determining the period in which, broadly speaking, training needed to be undertaken.

268. The remainder of the recommendation seeks to address both what is practical and doable, but also the Tribunal's findings. In essence, whatever the requirement for annual equality training, none of the job coach witnesses spoke as having participated, and the only deaf awareness training undertaken by those from whom we heard was by Mr Marshall, for whom it was not recent, and as part of general disability awareness. It is also the case that there are complexities to the provision of interpretation which the claimant needs to have understood by work coaches and others – quality issues – as described above. The third part of the recommendation seeks to address this concern based on the information the claimant provided with his draft. An interpreter between two parties needs to have the confidence of both, and it is not unreasonable for both parties to be reassured

as to the attending person's qualifications. It will be obvious why the recommendations we have made obviate or reduce the effect on the claimant of the matters in these proceedings.

269. Finally, the Tribunal is unanimous in these conclusions, which draw fully on the Tribunal's lay experience, just as we are unanimous in wishing that any one of us could source for the claimant a permanent post that would be secure, and would deliver him all the benefits of employment. Nothing in these reasons should suggest that he does not have complex barriers to finding that post, but we very much hope that he does find that post and that those that can, assist him to do so.

JM Wade

Employment Judge JM Wade

Date: 7 May 2024

Judgment sent to the parties on:

Date: 9 May 2024

For the Tribunal Office

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