IN THE COUNTY COURT AT SLOUGH

Case No: E7QZ6E4J

Courtroom No. 5

The Law Courts
Windsor Road
Slough
SL1 2HE

Tuesday, 2nd April 2019

Before:
DISTRICT JUDGE PARKER

B E T W E E N:

MS TSE

and

AVIVA LIFE SERVICES UK LTD

APPLICANT appeared In Person
MS L PRINCE appeared on behalf of the Respondent

JUDGMENT
(Approved)

DJ PARKER:

1. This is the case of Tse and Aviva Life Services UK Limited. This case was heard by me as a fast-track trial today. The claimant appeared in person. The defendant was represented by Ms Prince of counsel. I should say immediately that I am grateful both Ms Tse and Ms Prince for the very clear way in which they have set out their cases.
2. This is a claim for damages, a declaration and an injunction made under the Equality Act 2010. The claim relates to three letters sent by the defendant to the claimant. In relation to this I have heard evidence from the claimant herself and from the defendant's witness Gail MacPherson. Ms MacPherson is one of the defendant's Customer Relations Managers. Ms Tse and Ms MacPherson have both made witness statements, both of which are dated 30 November 2018.
3. The claimant is registered as blind and is a disabled person under the Equality Act. The defendant is a large financial institution with whom the claimant has a pension and also, through an employer, health insurance. The defendant is a service provider under Section 29 of the Equality Act and, thus, by Section 29(7), it is subject to a duty to make reasonable adjustments. Under Section 21(2) of the Act, a failure by the defendant to comply with the duty to make reasonable adjustments in relation to the claimant would amount to discrimination against the claimant.
4. The duty to make reasonable adjustments comprises three requirements, separately set out at Section 20(3) to Section 20(5) of the Act. We have not dwelt, at this hearing, on which of these three particular requirements are relevant here. It appears to me, if it matters, that it would be the first requirement which would apply, namely the requirement that, where a provision criterion or practice of Aviva's puts Ms Tse 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. I suppose it could possibly be said that one should also consider the third requirement: for brevity, I will not quote that third requirement. The difference between 20(3) and 20(5) does not appear to me to matter in this case, and neither party has suggested otherwise.
5. Under Section 20(6), which applies both in relation to the first and to the third requirement, where those requirements relate to the provision of information the steps which it is reasonable for the relevant party (in this case Aviva), to have to take include steps for ensuring that the information is provided in an accessible format.
6. The issue of accessible format is what this case is about. Aviva, naturally, sends out letters to its customers from time to time, together with other documents. It is common ground that the claimant needs all such correspondence to be in an accessible format.
7. The claimant says, and I do not believe the defendant disputes it, that she needs this format to be one of two things: either, first, if a hard copy printed document is sent to her it should be accompanied in the same envelope by a Braille version, so that she knows what the printed document said. Alternatively, second, she says it would be acceptable if Aviva sent the document electronically, in which case Aviva should not also send a printed copy - the reason being, of course, that she could not be sure that the printed copy she received matched the electronic copy, because they would not arrive simultaneously. Any such electronic version must be a Word document - which is not a difficult thing to achieve - so that it can be read by the claimant's computer.
8. By way of background, Ms Tse became a customer of Aviva in about October 2015. For at least a year, possibly a little more, Aviva sent Ms Tse documents in printed form only. That led to the first claim made by Ms Tse against Aviva. Ms Tse records in her statement that she issued her claim in October 2016 and settled it on 12 April 2017. I do not appear to

have in the bundle a full copy of the settlement agreement. I have the Tomlin order, but not the schedule to that order which embodies the actual terms of the agreement.

9. Ms Tse set out in her witness statement part of the settlement agreement. She quoted it at paragraph 10 of her statement, and she has not been challenged as to the accuracy of that quote. It was apparently recorded in one paragraph of the settlement documents that:

> '[Aviva] has now taken steps to review and amend its systems and processes to ensure that the claimant will receive all future documentation in Braille without having to make a specific request on each occasion. The Defendant has also taken steps to ensure the Claimant's policies held with the Defendant are managed by a specialist team, so as to ensure that any potential difficulties in the future are resolved as expeditiously as possible. The Defendant has explained these changes to the Claimant who is satisfied they meet her requirements'.

10. It is common ground, that between 12 April 2017 and around the end of 2018 Ms Tse received two letters from the defendant in the correct format. In other words, they were sent both as a printed copy and a Braille copy. In addition, over the same period she received four letters which were not in the correct format. The first three of those defective letters are the subject of this claim. The fourth was sent after this claim was issued, and Ms Tse has not applied to amend her claim to sue about that fourth letter.
11. Ms Tse additionally told me at the beginning of her evidence this morning that she had received further defective letters from Aviva in 2019, one in January and two in February. For reasons which I gave at the time, I did not allow Ms Tse to give evidence about those 2019 letters at this hearing. Essentially, it was my view that she had not given adequate notice to the Defendant of her intention to raise that issue. As I noted, it may be that Ms Tse will bring a third set of proceedings regarding the letters sent on and after 18 November 2018.
12. As to the letters themselves, briefly, my understanding is this.
13. The first letter is said in the pleadings to be dated 8 July 2017. It appears, in fact, to have been sent in June 2017, though the date does not strike me as particularly significant. It was a letter about a name [?] change to the pension fund.
14. The second letter was dated 6 February 2018, and it was about a reduction in management fees in relation to the pension.
15. The third letter was dated 21 May 2018. Ms Tse does not actually know what this letter said as she has never had a copy of it she could read, but she did not challenge the defendant's case that it was a letter essentially about privacy. According to the Defence, it concerned Aviva's privacy rules leading up to the introduction of the GDPR. In addition, there was then a fourth letter, not subject to this claim, but featuring in evidence: this was dated 3 November 2018 and it related to the transfer in to Aviva of a pension which Ms Tse had originally had with Nortel.
16. I need to discuss the evidence about the adjustments made by Aviva, and about what happened in relation to the particular letters Ms Tse complains about. That will involve considering the evidence of the two witnesses.
17. I would say that Ms Tse struck me as a careful and reliable witness on whom I would, generally, be prepared to rely; and that Ms MacPherson appeared to me a less satisfactory witness in several respects.
18. While I am not impugning Ms MacPherson's honesty, there were passages in her witness statement which did not stand up very well to close examination. The most obvious example which comes to mind, and which I will return to, is the assertion in her witness

statement that the vast majority of letters, or items of correspondence about Ms Tse's pension, had been sent in the correct format. That appears to be entirely misleading. Ms MacPherson accepted that, in fact, she could only confirm that two letters had been sent in the correct format, as against the four letters I have discussed which were not sent in the correct format. Her use of the word 'vast' is very questionable.

19. I will now consider what is said about reasonable adjustments. As I have already set out, Ms Tse quoted in her witness statement what Aviva told her and agreed to as part of the 2017 settlement regarding what would be done by them in terms of adjustments.

20. Ms MacPherson addressed this issue in various different passages in her witness statement. I will attempt to summarise as best I can. I consider, first, paragraph 5. Ms MacPherson said there that:

> 'Following this [April 2017] settlement Aviva took a number of steps… these included 5.1 placing local flags on Aviva systems and individual products to suppress automated mail and to ensure that it is flagged and placed in a dedicated mailbox or on a report which is then sent out'.

21. I do not always find the statement easy to paraphrase, because I find the language slightly obscure. Secondly, '5.2 Suppression of all automatic marketing materials to Ms Tse'. Third, '5.3 Provision of four specific named individuals in the Senior Manager Customers Relations Team to use as a primary point of contact to manage Ms Tse's products…'

22. In relation to that third point, Ms MacPherson gave more detail at paragraph 7, saying that she emailed Ms Tse on 21 April 2017, explaining that her team would be acting as her dedicated contact. I accept that she did do that: we have a copy of the email in the bundle. The email referred to a conversation involving Ms MacPherson, Ms Tse and another Aviva employee called Mr Stirland[?] which happened about a week before the email was sent. The email said, 'during our conversation I explained that my team will now act as your dedicated contact with Aviva'. In addition, it went on to give various contact details, including four phone numbers for four named individuals.

23. There is a disagreement between the parties about what more, if anything, Ms MacPherson said in that April 2017 conversation. My understanding of Ms MacPherson's evidence (given when discussing the pension transferred in from Nortel) was that Ms Tse would not have had a letter about the Nortel pension sent to her in the wrong format if she had rung the dedicated support team as soon as she knew that transfer was intended to be made. Ms MacPherson suggested that Ms Tse was told in April 2017 that she should contact the support team whenever she wanted to take a new step in relation to Aviva, such as making investments or a new policy.

24. Ms Tse said that was not her recollection of the conversation, and that her understanding was that the support team was merely, as the name suggests, for support - a team of people to ring up if something became a problem.

25. On the balance of probabilities, which is the test I have to apply, I prefer Ms Tse's recollection as to this. I prefer her account for two reasons. First, because I regard her as generally the more accurate witness. Second, because if Aviva had wanted to make it clear to Ms Tse that, if she was going to initiate any new product with Aviva, she should do so through the support team, then it would have been very simple for Aviva to spell that out in the email I have quoted from of 21 April 2017. It did not do so. Simply to say the team will act 'as a dedicated contact' does not seem to me an adequately clear way of making that particular point. That, in turn, suggests to me that it was not, in fact, made clear to Ms Tse what Aviva intended she should do for everything to work smoothly.

26. Next, going back to the description in Ms MacPherson's witness statement of the

adjustments made by Aviva, she referred at paragraph 22 onwards to steps taken to train Aviva staff. She said in that paragraph that information on an intranet was updated, 'in respect of how to flag alternative format requests to ensure that this advice was clear, alongside other information pieces'. I am not sure what 'information pieces' means. What Ms MacPherson appeared to be describing was no more than a written instruction, which would be followed by anyone who looked at the intranet, rather than any more active training.

27. In addition, at paragraph 23 Ms MacPherson said, 'we also have vulnerable customer champions throughout the business' – but she did not say how many - 'who have regular meetings where these changes are flagged and explained to them'. I am not sure who 'them' would be in that context, but I suppose it means the customer champions themselves. Ms MacPherson continued, still at paragraph 23 'It is then their responsibility to ensure that these materials are disseminated to their teams. We have also delivered training on this topic, which is recorded on employment records'. No further detail was given about the frequency of the meetings, how the activity of the vulnerable customer champions was or is monitored, or what proportion of employees, or relevant employees, have had a record made on their personal records that they have received the relevant training. All of these issues were only advanced in a very general way by Ms MacPherson.

28. As a further point in relation to this, it became clear from Ms MacPherson's evidence today, particularly in relation to the Nortel issue and the November 2018 letter, that some Aviva products, including that one, were and are administered by third party subcontractors. In the case of the Nortel pension, she said the third party administrator was a company called FNZ.

29. In relation to FNZ she said to me that they will have a policy of vulnerable customer training, but she could not confirm to me precisely what that policy would entail. She did not appear to know very much about its content. She said to me she could not confirm, one way or the other, whether FNZ employees had had the training referred to in relation to Ms Tse's issues. However, she did then say, which seemed to me slightly inconsistent, that customer-facing FNZ employees would have had that training.

30. Ms MacPherson mentioned at paragraph 25 onwards of her witness statement that, following the 2017 settlement, Aviva took steps immediately in relation to Ms Tse. However, she also - and again I have to quote - recognised that:

> 'in the long term we would need to go further than these immediate actions, and ensure that we overhauled our systems so that they were able to deal with these sorts of requests automatically, with a reduced scope for human error to be involved - either in the form of separate teams working on their own initiatives or third parties acting in relation to Aviva.
>
> Therefore, from around July 2017 to date, Aviva has undertaken substantial work in developing its systems architecture in order to solve any lingering issues with its document systems at the primary level. This piece of work has at various times engaged 15 full-time employees of Aviva, and will completely revolutionise the way documents are handled across the business.
>
> Once completed, Aviva will have a comprehensive system which will capture requests for alternative format documents across all customer products and for all independent mailings. This will mean that customers needing documents in an alternative format will be flagged, so Aviva staff

> responsible know that an alternative format is required and to action promptly.
>
> Key parts of this programme are already being implemented and we will continue to develop it over the next few years'.

31. In relation to this, Ms MacPherson's evidence seemed to me to be somewhat variable. She said that at the time of the 2017 settlement Ms Tse was told that it would be 2020 before all the necessary adjustments were made. Ms Tse disputed that she was told that. Ms Tse put, with my assistance, to Ms MacPherson that Mr Stirland [?] had told her that the Aviva system would work immediately for all the matters concerning her, whether manual or automated. In relation to that, Ms MacPherson first of all only said that this was Mr Stirland's 'expectation', but when I pressed her to answer the question, she said that as far as she could recall, yes, Mr Stirland did tell Ms Tse that. At a later point in her evidence, however, she said that, although there had been immediate changes as regards the pension and health insurance for Ms Tse, throughout Aviva there were 200-odd different platforms and that was the project which may take up to 2020. Of course, Ms MacPherson's witness statement suggested it may take beyond 2020 for the project to be completed, as the witness statement, dated 30 November 2018, refers to 'the next few years'.
32. I turn now to the specific letters in issue, and look at the explanations for why Ms Tse did not receive them in the correct format.
33. The first letter is that of June 2017. I will deal later with the point about limitation which the defendant takes in relation to this letter, but even if the defendant succeeds on that it is relevant to consider the matter as background.
34. As to the June 2017 letter, Ms MacPherson's witness statement essentially said at paragraph 11 that the letter was sent by something called Aviva's Fund Governance Team, which had used a 'customer data extract', and 'as a result they had no controls in place for the data extract to highlight any alternative format requests'.
35. Thus, as I understand it, her explanation was that the flagging arrangement to highlight Ms Tse's requirements did not work when this Team extracted data to send a letter on a particular subject.
36. As to the February 2018 letter, the explanation seems to be similar. This letter was generated by a 'standalone team' - as Ms MacPherson described it - 'who had lifted the data extracts on their own initiative for the mailing'. In addition, she then said, 'when we had added the local flags to Ms Tse's group pension policy, this had not included the Three Pension Scheme records'. In relation to both these matters Ms MacPherson went on to say that having, identified the problem, she spoke to the relevant team to ensure that it was not repeated.
37. In relation to May 2018 letter, Ms MacPherson said that, after some delay when she was under the impression that the letter related to an entirely different subject, she was eventually able to identify that the letter was 'published by a back-office function having drawn down from a database of customers, therefore bypassing the flag on the correspondence.' The cause of the problem thus seems to be rather similar, albeit with different teams of personnel involved, to the problem with the previous two letters.
38. As regards the November 2018 letter, the Defendant's explanation is that the Nortel pension was transferred in through an independent financial advisor called LEBC. The witness statement tended to suggest that it was this IFA which was responsible for things going wrong, so that the letter went out in the wrong format. Ms MacPherson's evidence to me

tended more to suggest that it was the subcontractor, FNZ, which was responsible. I do not think it is really possible from the Defendant's evidence to be any clearer than that as to exactly what has gone wrong. However, one way or the other, the problem was that Aviva had not got matters set up so that a pension transferred in by an independent IFA, and then administered by a subcontractor, was identified as relating to someone who required documents in a particular format.

39. Before I discuss whether I am satisfied or not that Aviva had made reasonable adjustments, I should consider the limitation issue in relation to the June 2017 letter. The difficulty faced here by Ms Tse is Section 118 of the Equality Act. Section 118(1) says that:

> 'Subject to [some irrelevant provisions] a claim may not be brought after (a) the end of six months starting with the date of the act to which the claim relates, or (b) such other periods that the County Court thinks just and equitable'.

40. As Ms Tse has highlighted, Section 118 (6) says that, 'conduct extending over a period is to be treated as done at the end of a period'. Ms Tse submits that her complaint is about conduct, the sending of letters, which extended over the period from June 2017 to 21 May 2018, and that she brought her proceedings within six months of the end of that period. In contrast, Ms Prince argues for the Defendant that there have been three unconnected and isolated incidents which do not amount to a course of conduct, so as to bring the case within s118(6).

41. Ms Prince helpfully referred me to the Court of Appeal's decision in case called Myson[?], which I have been able to consider briefly. I note at paragraph 17 that the Judge and Court of Appeal quoted a Circuit Judge, HHJ McMullen[?], who said, in relation to a different scenario involving complaints of racial discrimination that the question was whether numerous alleged incidents were linked to one another and amounted to evidence of a continuing state of affairs; there is reference also to whether something amounts to an ongoing situation.

42. I have not had a great deal of time to reflect on this, and I suspect there may be a good deal more authority on the point, particularly relating to employment cases with which this Court does not deal. But the best conclusion I can reach on a quick look at the authorities is that this complaint does relate to what could fairly be called an ongoing situation. Although the particular mechanisms leading to the different letters being sent were all slightly different, they all appear to have broad similarities. In addition, from the claimant's point of view, all the letters complained of amounted to entirely the same thing, in that she received letters in the wrong format which the defendant had failed to stop its systems sending out. It does seem to me it is reasonable to call that an ongoing situation or a single continuing state of affairs. Of course, it does not involve continuous acts. It involves a series of separate acts, the sending of separate letters, but it is, as a matter of common sense, broadly, a single problem. Therefore, I would be inclined to say that Ms Tse can bring herself within Section 118(6).

43. If that is wrong, I would also be prepared to say that in my view it is just and equitable to allow her to claim in relation to the earlier letter. It was reasonable of Ms Tse, on receiving that first letter, not to initiate action immediately, but to give the defendant the benefit of the doubt. She said herself that she was prepared to accept that everyone makes mistakes occasionally. The duty to make reasonable adjustment is not a duty to achieve perfection. Therefore, not taking action seems to be an entirely reasonable approach, which the Court should not criticise – to do so would suggest that Ms Tse should have rushed to issue proceedings at that stage. Given the history which then unfolded, it appears to me it was

then reasonable for Ms Tse to consider that the Defendants may have breached the Equality Act, because it was becoming apparent that what happened in June 2017 was not an isolated mistake in June 2017, but a question of repeated failings. Therefore, either on that basis or under s118(6), I accept that the claim can proceed as to the first of the three letters.

44. Turning back to the question of reasonable adjustments, I have already acknowledged that this duty is not a duty to do absolutely everything that is possible: it is not putting on the defendant a duty to achieve any kind of perfection.

45. In relation to this, Ms Tse has asked me to look at the Equality Act Code of Practice. The status of the Code of Practice is set out at paragraph 1.5. As it says there, the Code does not impose legal obligations. It is not an authoritative statement of the law, but it can be used in evidence in proceedings, and courts must take into account any part of the code that seems to them relevant. I will do that.

46. Ms Tse referred me to paragraph 7.4:

> 'The policy of the Act is not a minimalist policy of simply ensuring that some access is available to disabled people; it is. so far as reasonably practicable, to approximate the access enjoyed by disabled people to that enjoyed by the rest of the public…'.

47. For brevity I will not quote the rest of that paragraph. Paragraph 7.21:

> 'Service providers should… not wait until a disabled person wants to use a service before they give consideration to their duty to make reasonable adjustments. They should anticipate the requirements of disabled people and adjustments that may have to be made for them…'.

48. It seems to me that this is material to the points raised by Ms MacPherson, to the effect that it will take an extremely long time for Aviva to modify all of its systems so that the adjustments can be made in all cases.

49. In addition, another part of the Code of Practice which was not mentioned by Ms Tse but which appears to me relevant, is paragraph 7.30. This sets out a non-exhaustive list of factors which might be taken into account in considering what it is reasonable in any particular case for a service provider to do. I will return to this list later.

50. It has to be accepted that Aviva did make a number of adjustments. The evidence of Ms MacPherson about that was not contradicted. How effective overall those adjustments were is demonstrated by what actually happened: what actually happened suggests to me that the steps taken by Aviva were, to a significant extent, ineffective. The proof of the pudding really is in the eating. Four different letters went out between June 2017 and November 2018 which should not have gone out. Because only Aviva knows what problems it faces in adjusting its internal systems, and is the only party able to give evidence about that, there is an evidential burden on it to explain why it was not possible to take more effective steps than it actually did.

51. As to this, as a first point, I would have expected that if, as Aviva now says, it was facing very serious problems of cost, complexity and delay in making all of its systems work properly, this would have been mentioned in some way to Ms Tse in 2017. It is notable that there was no express mention of that in writing.

52. Secondly, Ms MacPherson's evidence about the difficulties faced by Aviva and, indeed, the level of the efforts Aviva had made, was really quite vague. She has not explained in detail why it would take months, or even years, to have an effective flagging mechanism operating across all Aviva systems. Further, to the extent that it may not be possible to have an effective automatic flagging system operating across all systems, it has not been explained

to me why it would not then be possible to have issued standing instruction to all teams, both those which exist and those which are in future set up, so that any team which might violate the agreement Aviva had made with Ms Tse was warned that it would need to use accessible formats for communication with her, or with a particular list of customers including her.

53. Aviva would, presumably, not find it difficult to extract, from its databases, a list of those customers who were flagged as having special communication needs. Ms Tse's name would be on that list. In addition, anyone in charge of a team, such as the three pension teams dealing with reduction in fees, would simply be given a copy of that list and instructed to make a manual check about how correspondence was going out to people on that list.

54. It may be that it really is too expensive and too technically difficult and cumbersome for it to have been reasonable for Aviva to have put in place a system which would have prevented the letters complained of from being sent out. I do not know. But the question for me is whether Aviva has produced evidence to demonstrate, at least on the balance of probabilities, that it was too expensive and/or technically difficult for it to do that. In my view, Ms MacPherson's evidence does not establish that.

55. I should ask myself a further question: what about the support team arrangement? I accept that providing a support team could be part of a package of adjustments which would, overall, amount to reasonable adjustments and allow Aviva a complete defence to any claim of discrimination. Suppose, for example, that Aviva had persuaded me there were certain problems about certain types of correspondence, which it really could not fix at any proportionate cost or without further delay. In that case it seems to me that a support team arrangement, such as the one it set up, would be a perfectly reasonable way of filling the gaps. It could also be said that it is a perfectly reasonable way of covering the occasional slip, which is likely to happen in any system. As I have recognised, perfection is not required.

56. However, if, as it appears to me from the evidence, it is not established that Aviva had done everything it reasonably should have done to prevent the letters from going out, then in my view it is not good enough to say that Ms Tse should simply contact Aviva each time by ringing up the support team to get the matter sorted out. That would put Ms Tse in a different and less favourable position than anyone who did not have a disability.

57. Moreover, and I am afraid I did not mention this at an earlier point in this judgment, the evidence shows that in relation to the May 2018 letter, the support team mechanism failed. In relation to that, I accept Ms Tse's evidence that she made repeated attempts to contact Ms MacPherson by phone, and that she did not get an explanation from Ms MacPherson either about what the letter was, or why it was sent. Indeed, Ms MacPherson apologised during her evidence at the hearing for the fact that no Braille copy of that letter ever has been provided. The support team certainly did not provide an adequate way of dealing with the May 2018 problem.

58. Aviva has emphasised further details of its response after the event. These essentially amount to two things: first, attempts to prevent a particular problem with that particular team reoccurring; and secondly, the provision of compensation. Any compensation actually paid must, of course, be taken into account when I look at any damages.

59. As to attempts to prevent the particular problem reoccurring, I accept it is likely that these attempts were made and were probably successful in that each letter appears to have come from a different team. However, those attempts seem clearly to have been too narrowly focused and did not address the overall problem: Aviva contains many different subgroups and teams, and letters were going out from other parts of the organisation.

60. My overall conclusion is that there has been a failure by Aviva to make reasonable adjustments.

61. I then need to consider the quantum of the claim. Ms Prince has very helpfully set out in her notes the upgraded bands of damages, based on quite an old Court of Appeal case, called *Vento*, the so-called *Vento* Guidelines. She would say the lower band is now a bracket of £900 to £8,600; the middle band going up from there to £25,700; and the top band going on to £42,900. She submits that the correct award would be somewhere between £1,000 and £2,000 in respect of the three letters sued upon. She has helpfully given me the benefit of her research into a number of different County Court cases, none of them very similar to this: they are civil cases, mostly in the County Court; there is also, a note about a complaint to an Ombudsman regarding a bank's mistreatment of a deaf customer.

62. Ms Tse's position is that I should award compensation of around £10,000. She has set out in her witness statement the effect of these letters on her. I can highlight some passages from paragraph 13 onwards. She said that Aviva's conduct made it 'unreasonably difficult and stressful' for her to use Aviva's services. At paragraph 14, she said that the receipt of each letter has left her feeling 'upset and angry'. She also feels 'disappointed'. She says that she feels that she was tricked, or conned, as she puts it, by Aviva into having accepted the 2017 settlement, given the inadequacy of their response after that. In addition, she says at paragraph 18 that she is experiencing 'hopelessness, anxiety, and [is] feeling vulnerable and anguish', not only when she receives a letter, but also subsequently worrying about when she is next going to receive a letter; and she adds that she feels 'dread and fear having other people reading and knowing about [her] financial affairs'. She pointed out in her submissions that, to some extent, there is a cumulative effect, so that the effect on her gets worse as she receives more letters.

63. In Aviva's favour it may be said that none of the letters, in fact, contained any confidential material; they were all generic. However, as Ms Tse has pointed out, of course, she did not know that: that was the very problem she had - she could not tell what the letters said. She therefore could not tell whether by getting someone to read them to her she was revealing confidential information about her finances or not.

64. I would say that the nature of the impact on her is the one part of Ms Tse's evidence which I find difficult to accept in its entirety. She does express herself extremely strongly about this in the passages I have quoted. In addition, while I accept that the letters will have left her feeling upset, angry, disappointed, conned (that is the word she chooses to use), and anxious, it does appear to me that to say she that she is feeling anguish and dread may be slightly overstating it. I do have the impression, having spent the day with Ms Tse, that she is quite a competent person and that level of reaction seems to me somewhat excessive.

65. In terms of guidance from other cases, I do not consider the Ombudsman's award of £500 is of any assistance to me. It is by no means clear whether the Ombudsman was even considering how to apply the *Vento* Guidelines. As regards the various reported cases, they are all very different from the facts I am dealing with. I accept the submission for the defendant that this case appears to be less serious overall than that of *Royal Bank of Scotland v Allen*. In the case of *Allen*, Mr Allen, over a long period, although it is not clear quite how long the period was, was unable to achieve physical access to his branch of the Royal Bank of Scotland. The bank suggested alternatives but denied him, effectively, face-to-face banking, which people not in a wheelchair could enjoy: the award was £6,500 for the injury to Mr Allen's feelings.

66. At the other end of the scale, below or at the bottom of what the defendant suggests would be appropriate, we have an award of £1,000 to Mr Ross, who attended Stansted Airport and

was told unlawfully by Ryanair that he could not have a free wheelchair: if he wanted a wheelchair he would have to pay for one.

67. In addition, we have an award in the case of *Roads v Central Trains* of £1,000 for Mr Roads, who was also a wheelchair user; he was unable readily to access one platform at Thetford station. The railway company suggested he should deal with that by getting a train in the wrong direction, changing at Ely and coming back, adding an hour or so to his journey. Mr Roads said the railway company should make available a taxi. The first instance Judge disagreed with Mr Roads, but the Court of Appeal thought that Mr Roads was right. They awarded him £1,000.

68. It seems to me that the present case involves more serious injury to feelings than would have been suffered by Mr Ross in a brief isolated occasion at the airport; or by Mr Roads, who would, at least, have accepted, I think, that there must be some doubt whether the law did require the train company to go as far as providing a specially adapted taxi or not.

69. On receipt of each letter Ms Tse would have felt let down and would have experienced concern that the letter she had received was not going to be the last letter she was to receive in the wrong format. Her feelings about the first two letters sued upon will have been alleviated, in my view, by the way in which the defendant then dealt with the matter. As noted, it did respond reasonably quickly on those occasions to her enquiries. It did provide an accessible format version, and it did provide compensation. I am inclined to think it was Ms Tse who raised the question of compensation and not the defendant (as Ms MacPherson claimed), but nevertheless the defendant did make a financial payment to Ms Tse.

70. The third letter has aggravated the situation, it appears to me, because the Defendant did not respond to Ms Tse's enquiries about it. That much appears from the Defence, which pleads that the reasons behind the failure to get the third letter in the correct format, were still at that time unknown. There has subsequently been a letter which is missing from the bundle. However, it is most unlikely that the missing letter in the bundle gave Ms Tse gave any adequate explanation for why that letter was sent. In addition, as I have noted, Ms Tse has never received an accessible copy version of that correspondence.

71. Having reflected carefully about what Ms Tse has experienced, considered all of the cases cited, and having noted that the *Vento* guidance does not say that the lowest end of the bracket in less serious cases is *only* for isolated one-off occurrences, but says it is for less serious cases, such as where the act of discrimination is a one-off, I have eventually come to the view the correct award globally for the three letters would be £3,300.

72. Although this may be an unnecessary point of detail, if I had to break that down between the three letters, I would have been inclined to give figures of approximately £600, £900 and £1,800. The effect on Ms Tse's feelings was becoming worse as each successive letter was written, and markedly worse because of the failure to deal properly with the aftermath of the third letter.

73. I accept, however, as I said, I have then got to give credit for the money already paid, which I understand is £1,200. My award of damages would therefore be £2,100.

74. I am willing to make a declaration that Aviva has discriminated against Ms Tse by failing to make reasonable adjustments, and in particular by failing to provide correspondence in accessible formats. It appears to me that this must follow from the judgment I have given, and that Ms Tse is entitled to have that confirmation that she has been vindicated.

75. I am not willing to make an injunction against Aviva. That is, briefly, for these reasons. A breach of injunction exposes Aviva potentially to a fine or committal proceedings. As I have mentioned more than once, the duty to make reasonable adjustments is not a duty to achieve 100% perfection. It is possible that through no fault of Aviva's the occasional letter might be sent which it really could not have prevented without taking steps going beyond

what the Equality Act requires. In addition, there is the important point that there is nothing at all to suggest to me that Aviva has been acting maliciously. Therefore, I have no reason whatever to suppose that Aviva would deliberately continue a course of conduct which is unlawful

76. I do not, therefore, see that, as a matter of discretion, an injunction would be appropriate.

End of Judgment

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This transcript has been approved by the judge.