EMPLOYMENT TRIBUNALS

Claimant		Respondent
Mrs M Fisher	**v**	**Dr Julia Brown** **Dr Debbie Ashcroft** **Dr Stephen Wild** **Dr Bridget Laybourne** **Dr Dylan Owen** **Mr Stephen Brown** **Ms Mandy Dargue** **A partnership operating as Leyburn Medical Practice**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

Heard at: Middlesbrough **On: 9, 10 and 11 May 2017**
Deliberations 16 June 2017

Before: Employment Judge Shepherd **Members: Mr Brain**
Mr Denholm

Appearances:

For the Claimant: **Mr Fisher**
For the Respondent: **Mr Flood**

RESERVED JUDGMENT

The unanimous judgment of the tribunal is that:

1. The claim of unfair dismissal is not well-founded and is dismissed.

2. The claim of wrongful dismissal (notice pay) is not well-founded and is dismissed.

3. The claims of disability discrimination are not well-founded and are dismissed.

REASONS

1. The claimant was represented by Mr Fisher, her husband, and the respondent was represented by Mr Flood.

2. The Tribunal heard evidence from:

Margaret Fisher, the claimant;

Colin Fisher, the claimant's husband;

Stephen Brown, Managing Partner;

Mandy Dargue, Managing Partner.

3. The Tribunal had sight of a bundle of documents consisting of 241 pages. The Tribunal considered those documents to which it was referred by the parties.

4. The issues to be determined by the Tribunal were identified by Employment Judge Wade at a preliminary hearing on 31 January 2017 as follows:

1. **"Constructive Unfair Dismissal (Employment Rights Act 1996)**

1.1. Did the respondent engage in conduct, without reasonable and proper cause, calculated or likely to destroy or seriously damage the implied trust and confidence between employer and employee? (the claimant is to provide a summary list of the precise matters relied upon):

1.2. Did the claimant affirm any breaches as found above?

1.3. Did the claimant resign at least in part in response to any breaches found above including any last straw?

1.4. Did the "last straw" contribute something or was it, objectively viewed, an innocuous act.

1.5. What was the reason for any proven dismissal?

1.6. Was it reasonable (Section 98(4)) for the respondent to dismiss for that reason?

2. **Wrongful Dismissal (the claim for notice pay)**

2.1. Was the claimant wrongfully (and constructively) dismissed (see the questions above?)

2.2. Did she suffer loss and damage during her notice period as a result?

3. **Disability**

3.1. Did the claimant have physical impairments at the material time (October to November 2016) namely chronic enteropathic arthritis and Crohns disease?

3.2. If so, did/does the impairment have a substantial adverse effect on the claimant's ability to carry out normal day-to-day activities?

3.3. If so, is that effect long term? In particular, when did it start and:

3.3.1. has the impairment lasted for at least 12 months?

3.3.2. is or was the impairment likely to last at least 12 months or the rest of the claimant's life, if less than 12 months?

3.4. Are any measures being taken to treat or correct the impairment? But for those measures would the impairment be likely to have a substantial adverse effect on the claimant's ability to carry out normal day-to-day activities?

3.5. The relevant time for assessing whether the claimant had/has a disability (namely, when the discrimination is alleged to have occurred) is October to November 2016.

4. **Section 26: Harassment related to disability**

4.1. Did the respondent engage in unwanted conduct as follows:

4.1.1. The tone, content and volume of correspondence to the claimant in October and November 2016;

4.1.2. The handling of her request for representation by Mr Borman including a period of silence in that communication and late communication such that the claimant was in difficulties in sourcing an alternative representative;

4.1.3. Its response to her request for a reference.

4.2. Was the conduct related to the claimant's protected characteristic?

4.3. Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

4.4. If not, did the conduct have the effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

4.5. In considering whether the conduct had that effect, the Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

5. **Section 15: Discrimination arising from disability**

5.1. Has the respondent shown that it did not know, and could not reasonably have been expected to know, that the claimant had a disability? If so, the section 15 claim cannot succeed, and if not the Tribunal will need to consider the questions below.

5.2. The "something arising in consequence of the claimant's disability" advanced by the claimant is: sickness absence (the relapse and two weeks' absence due to change in medication in September/October 2016).

5.3. The acts of discrimination advanced under Section 39 are the same as those advanced as harassment above?

5.4. Does the claimant prove that the respondent's treatment of her was because of sickness absence.

5.5. Does the respondent show that the treatment was a proportionate means of achieving a legitimate aim, that is appropriate and reasonably necessary to achieve its legitimate aim.

6. **Section 27: Victimisation**

6.1. Has the claimant carried out a protected act (made a complaint of disability discrimination) or done anything by reference to the Equality Act 2010?

6.2. If there was a protected act, was the respondent's response to her request for a reference because the claimant had done a protected act?

7. **Reasonable adjustments: section 20 and section 21**

7.1. Did the respondent apply the following provision, criteria and/or practice ('the provision') generally, namely the requirement for receptionists to cover both telephone and reception work stations during limited periods (such as lunch time) when only one member of staff was on duty?

7.2. Did the application of any such provision put the claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled in that she was thereby exposed to pain, suffering, fatigue, mental strain and stress which worsened her conditions?

7.3. Did the respondent take such steps as were reasonable to avoid the disadvantage? The adjustments asserted as reasonably required are identified as follows:

7.3.1. providing two lumbar support chairs (one at each work station);

7.3.2. appointing the claimant to the role of notes summariser which did not involve the movement between work stations or strain of reception.

7.4. Did the respondent not know, or could the respondent not be reasonably expected to know that the claimant had a disability or was likely to be placed at the disadvantage set out above?

8. **Remedies**

8.1. If the claimant succeeds, in whole or part, the Tribunal will be concerned with issues of remedy.

8.2. The claimant does not pursue reinstatement or re-engagement. The other remedies to be determined may be a declaration in respect of any proven unlawful discrimination, recommendations and/or compensation for loss of earnings, injury to feelings, psychiatric or physical injury, breach of contract and/or the award of interest.

8.3. Should personal injury damages be pursued as part of remedy, expert or other medical evidence is likely to be required. For that reason I anticipate that the hearing listed will address liability only, but that is a matter for the Tribunal hearing the case.

8.4. Part of the claimant's remedy case is that the respondent's alleged acts of discrimination concerning her physical conditions worsened them and injured her mental health."

5. The respondent conceded that the claimant was a disabled person and it was also made clear that there was no suggestion of any exaggeration of the symptoms or unnecessary absences on the part of the claimant.

6. Having considered all the evidence, both oral and documentary, the Tribunal makes the following findings of fact on the balance of probabilities. These written findings are not intended to cover every point of evidence given. These findings are a summary of the principal findings that the Tribunal made from which it drew its conclusions.

6.1. The claimant was employed by the respondent as a Doctor's Receptionist from August 2001.

6.2. The respondent partnership is a GP practice.

6.3. The claimant initially worked 34 hours and 50 minutes per week. On 1 January 2014 her hours were reduced to 32 hours per week and on 1 May 2015 the claimants contracted hours reduced to 26 per week. These changes were as a result of the claimant's request and agreed.

6.4. On 9 May 2016 the claimant was absent from work and the statement of fitness for work was provided by Dr Debbie Ashcroft, acting as the claimant's GP, provided that the claimant was suffering from acute severe sciatica. The claimant remained absent from work and on 26 May 2016 Dr Ashcroft referred to the claimant's condition as nerve root impingement of sciatic nerve and back pain. The claimant remained off work and on 22 June 2016 Dr Ashcroft referred to Crohn's disease and spondyloarthropathy. It was also stated:

> "In the future Mrs Fisher may benefit from graduated return to work/amended hours, I have referred her to 'fit for work' to help with further assessment and support through this time."

6.5. On 27 June 2016 the claimant was assessed by Sarah Gosling, Case Manager from Fit for Work and the claimant was provided with an assessment on 30 June 2016. There was some confusion with regard to the respondents' receipt of this assessment. It appears that this was due to Fit for Work providing it to Dr Ashcroft in her capacity as the claimant's GP rather than to the respondent as the claimant's employer. Mandy Dargue eventually received a copy of the report on 3 August 2016. The assessment indicated that a phased return with reduced hours may be beneficial to the claimant. It was also recommended that a Display Screen Equipment assessment be carried out.

6.6 On 11 August 2016 a display screen workstation assessment was carried out by Shona Eyre, chartered physiotherapist of Health Fusion. In that assessment it was recommended that the claimant would benefit from a chair with additional thigh support and adjustable lumbar support. It was also recommended that the chair was labelled and that the claimant could move it between both desks as required. It was also recommended that a telephone should be moved to the left side of the computer screen and a telephone headset strongly recommended. It was also indicated that that the computer screen be raised and recommendations were made with regard to measures in respect of the brightness of the office area. A phased return to work was also recommended.

6.7 The claimant returned to work on 16 August 2016. She returned on a phased return to work with the target date for the claimant reaching full hours by 12 September 2016. The claimant was given the choice of chairs and the chair was ordered on 26 August 2016.

6.8 A number of discussions took place with the claimant in respect of the hours she could work. The claimant was struggling with the number of hours and there was discussion about whether the claimant could increase her hours. On 21 September 2016 there is a notable discussion with Mandy Dargue in which she indicated that a realistic target would be 15 hours per week over three days. The claimant indicated that the chair that had been provided was comfortable and that she had noticed the difference with regard to her pain and stiffness.

6.9 On 7 October 2016 the claimant sent a text message to Mandy Dargue indicating that her back was quite bad again. She indicated that she would take things easy over the weekend and hopefully would return to work on Monday, 10 October 2016.

6.10 On 10 October 2016 the claimant indicated that she would not be in work that week. On 19 October 2016 Mandy Dargue rang the claimant. The Tribunal had sight of a transcript of that telephone call and listen to an audio recording. It was an amicable conversation. Mandy Dargue indicated that they would need "a bit more of a formal meeting" and would probably have a phased return again. The time of the meeting was discussed and Mandy Dargue indicated that Stephen Brown wanted to be there as well.

6.11 At the meeting on 20 October 2016 there was discussion with regard to a further phased return to work over a three-week period and at the conclusion of the three-week period there would be consideration as to whether the claimant's employment would need to be terminated. The claimant said that the meeting was something of a shock. She felt she had been enticed into the meeting by entrapment. She was not offered any representation. She said was informed that there would be a further review in three weeks' time at which point they would either dismiss her for being unfit for work or agree to her request to reduce her hours to 15 per week but subject to the proviso that if she had a single day's absence from either of her disabilities she could face immediate dismissal.

6.12 On 20 October 2016 Stephen Brown wrote to the claimant setting out the points that had been discussed at the meeting. Within that letter it is stated:

> "At today's meeting we discussed your future employment with the Practice. As a relatively small business we are unable to cope indefinitely with the uncertainties around your ability to work on a regular basis. Consequently we may need to consider terminating your contract on grounds of ill health. Before reaching that decision we agreed that we will try one final phased return to work programme of 3 weeks. This will begin on Monday 24 October when you will work 3 hours; on Tuesday 25 October you will work 4 hours; and on Wednesday 26 October you will work 5 hours. The following 2 weeks you will work 3 consecutive afternoons of 5 hours each week.

> At the end of the 3 weeks (that is the week ending 11 November) a formal decision will be made whether to provide you with a new contract for 15 hours per week; or whether to terminate your employment on grounds of ill-health. To enable this decision to be made on a fair basis we will hold a formal meeting with you to give you the opportunity to put your case. You will be entitled to bring an advisor or colleague with you to this meeting for support, but please note that this cannot be a relative. We will agree the time and date of this meeting once you are back at work next week.
>
> I sincerely hope that your health improve sufficiently so that you will be up to remain as an employee of the Practice for the long-term. However, I should point out at this stage that even if your employment does continue after the phased return, any repeat period of sickness absence related to your current chronic illnesses within a period of 12 months from 11 November may result in the immediate termination of your contract on grounds of ill-health."

6.13 The claimant was very distressed about the contents of the meeting and the letter of 20 October 2016 and she replied asking for some clarification. She asked why she was not warned in advance that this was to be a formal meeting, given the opportunity to properly prepare, and seek appropriate representation. She agreed that some reasonable steps have been made to assist her return to work but referred to a 2-3 week delay in the arrival of the lumbar chair, the lack of provision of a telephone headset and that she'd been asked to cover the back and front reception workstations on the day before she relapsed. Within the letter the claimant stated:

> "Obviously I appreciate the difficulty of my disability on the business which is why I had already taken the concessionary step of suggesting a further reduction in my hours but as I trust you can appreciate I need to ensure that this is not at the expense of my employment/termination rights. I therefore hope we can agree to a mutually acceptable resolution.
>
> If your intention is to offer me a minimum 12 weeks pay on my current 26 contracted hours at the meeting in November as full and final settlement due to ill-health, (with no expectation to work said notice as by definition you do not deem me fit to work) I would in my current circumstances probably be willing to look favourably on such a settlement.
>
> If however you are seeking to terminate my employment without taking my continuation of service into account, or to avoid through a new contract ACAS advise that I would have a legal recourse. Likewise ACAS advise that any new contract with unreasonable sickness conditions attached would in their opinion be effectively constructive dismissal and probably a breach of the Disability Discrimination Act.
>
> I'm sure these concerns are just generated by the vagueness in the letter rather than any actual intent, but for peace of mind I would be obliged if you could confirm your exact intentions and hopefully we can agree some amicable next steps to conclude."

6.14 On 31 October 2016 Stephen Brown wrote to the claimant. In that letter he apologised for any misunderstandings following the meeting and his subsequent letter. He indicated that the purpose of the process was to help the

claimant return to work and that the termination of her contract would be a regrettable and final step only if all reasonable alternatives failed. He agreed that the meeting on 20 October was not a formal meeting and that the claimant had been invited to come in for a chat but that Stephen Brown would be present as it would be the start of moving towards a more formal stage of the process. He Indicated that the chair had been ordered without delay once the claimant had made her choice and it was beyond their control that it was around three weeks before it arrived.

6.15 He referred to the telephone headset in the letter and indicated that Mandy was under the impression that the claimant would see how she got on without a headset and would let her know if the respondent should

> "Investigate further the acquisition of a headset. As you did not raise the matter again with her, Mandy assumed that you have no problems using the handset. Please let me know if you want us to see if a headset will work with the voice recording facility.
>
> I will discuss with Harriet the matter of her asking you to cover both of the reception workstations. My hope would be that she asked if you are happy to do that in such a way that you would have been able to refuse if you had any concerns about how it would impact on your condition. My understanding was that you attributed your relapse to bending down to pick something up, not moving between workstations. Nevertheless, it is not uncommon for staff to be asked to cover both workstations when we are short staffed. If you consider that you are not able to do this then we will discuss what reasonable adjustments may be possible to enable you to carry out this element of your job as a receptionist.
>
> In terms of the wording of my letter and the changes to your contract, I apologise for using wording that gave you the impression that we will issue you with a completely new contract if your hours are to change. You are quite right that I should have used the wording 'variation to contract' rather than 'new contract' . I can assure you that there was and will not be any attempt to reduce or remove your rights as a long-standing employee of the practice. Your contract quite clearly states that in the event of termination, you would be entitled to 12 weeks' notice based on your length of service.… If your employment continues on the basis of your working 15 hours per week and at some point within the next 12 months we need to consider again the matter of terminating your contract on grounds of ill-health, then pay in lieu of notice will be calculated using the number of hours per week that you are contracted to work at that point in time.
>
> I understand from Mandy's meeting with you last week that your phased return to work is going well and that you feel able to try working 15 hours this week. I hope that your progress continues and that this letter has provided you with the reassurance that you were seeking. I can confirm that at the end of your current phased return to work programme will arrange for a formal meeting to take place which will help us to agree whether the programme has been successful and that you're entitled to bring an advisor or colleague with you at that meeting."

6.16 On 1 November 2016 Mandy Dargue spoke to the claimant. The claimant had managed to work five hours that day and the day before. It was arranged that they would meet the following week.

6.17 On 2 November 2016 Stephen Brown wrote to the claimant requiring her to attend a sickness absence and return to work meeting on 14 November 2016. It was indicated that the possible consequences arising from the meeting might be that the claimant was issued with a variation of contract reducing the claimant hours to 15 per week and keeping the situation under review for 12 months or they terminate the claimant's employment on grounds of ill-health and pay her 12 weeks' wages in lieu of notice based on her current 26 hours per week contract. It was indicated that if the claimant wished to be accompanied she was entitled to be accompanied by another work colleague or a trade union representative.

6.18 On 2 November 2016 the claimant wrote to Mr Brown indicating that she felt too stressed to deal with certain employment issues and indicated that she had requested Councillor Bernard Borman-Schreiber (Mr Borman) to discuss or negotiate on her behalf. On that day Mr Borman sent a bundle of documents to the respondent which included "Notification of employment dispute." A letter from councillor Borman referred to a meeting between councillor Borman and Stephen Brown and stated:

> "The alternative to a settlement by mediation would, on the face of it, be an employment tribunal on the grounds of distress to Mrs Fisher and constructive dismissal of a disabled person. No doubt you are aware that constructive dismissal is no longer acceptable and, since Mrs F has been recognised as effectively a person with a permanent disability, she is also within the benefit of disability legislation. There is no point in analysing the legal situation here as this is only too clear from the correspondence. To visit the employment tribunal route would not only produce a great deal of unreasonable distress to Mrs F but would also be very costly to her employer."

6.19 On 4 November 2016 the claimant went off work suffering from severe anxiety.

6.20 On 9 November 2016 Mr Borman wrote to Mr Brown indicating that unless he received an agreed date for a meeting by the close of business following day the matter would proceed as constructive dismissal and harassment of a disabled person to the employment tribunal. He indicated that he had hoped there would be enough goodwill to come to a negotiated settlement but if there was no response he had no option but to "take a more torturous route".

6.21 On 10 November 2016 Stephen Brown wrote to Mr Borman indicating that he did not accept the assertions that had been made and, notwithstanding the claimant's letter of authorisation, as her employer he would continue to communicate directly with the claimant. Mr Brown also wrote to the claimant on that date with regard to the meeting scheduled to take place on 14 November 2016. In the letter he indicated that he would encourage the claimant to bring along a companion if she wished, this could be a colleague or a trade union representative/official. He also stated:

> "The purpose of this meeting will be to discuss your current absence, the adjustments that have been put into place to accommodate you in the

> workplace and what, if any, further support we can provide. For the avoidance of doubt, your employment will not be terminated in this meeting. I would encourage you to bring along a companion if you wish, who can be a colleague or a trade union representative/official.
>
> You will be aware that I have recently received correspondence from Mr Borman-Schreiber on your behalf. Mr Borman-Schreiber has raised some concerns which, as your employer, it is right and proper that I address directly with you. I have written to him today declining his offer of a meeting and to say that I will be maintaining direct communication with you rather than via him. I would like to discuss the issues he has raised at our forthcoming meeting, but please let me know if you feel any of those concerns amount to a separate grievance, about which you would prefer to invoke the practice's grievance procedure."

6.22 On 10 November 2016 Colin Fisher, the claimant's husband, wrote to Julia Brown, a partner in the practice. In that letter Mr Fisher referred to the claimant having put been put through intolerable pressure by Mr Brown. The initial indication that

> "She was then told she could have any friend or colleague (apart from me) represent her at this meeting on or around 11th November where her fate would be decided. Then this goalpost was moved to work colleague or union rep after Cllr Borman had already kindly agreed to represent her
>
> He then ignored Cllr Borman's initial correspondence and second email by replying to refute his representation at the 11th hour. During this period he has made no contact with Maggie though his belated response suggests he had no intention of ever accepting Cllr Borman's kind attempts at mediation.
>
> The intolerable strain and deliberate abstinence of response has been too much for Maggie who is now signed off with work-related stress due to this man's actions. I would like to think that after all these years of loyal service Maggie would be better thought of and better treated than this and cannot believe that you are fully aware of the facts and condoning this action.
>
> I must ask that he refrain from further distressing Maggie with his callous and in my opinion illegal actions and appeal to you as the senior partner to intervene in this matter."

6.23 On 10 November 2016 Mr Borman sent an email to Mr Brown referring to

> "your intention to bully Mrs Fisher into leaving by means of aggressive, verbose and intimidating correspondence."

It was also stated in that email:

> "As indicated, I will now, on behalf of Mrs Fisher, pursue a case of constructive dismissal of a disabled person who has an exemplary employment record. There is now no point in you contacting either Mrs Fisher, or myself as her representative, but you will hear in due course from ACAS and you will be held to account for your unreasonable and unacceptable conduct towards a person for whom you and your medical partners have a duty of care."

Mr Borman referred to "what I would call your loutish email." and said that the claimant was entitled to appoint whom she likes to negotiate on her behalf or to represent her.

6.24 On 11 November 2016 Mr Borman sent a further email indicating that:

> "Mrs F will not communicate with you direct, but you will hear from me as I have given you a further thinking-over the period, until Monday 14 Nov at 1700 hrs. If there is no response, or a negative response, this matter will proceed to the ACAS employment tribunal route without further notice."

6.25 On 17 November 2016 Stephen Brown sent the claimant a menu for the practice's Christmas dinner.

6.26 The claimant provided a further sicknote on 22 November 2016 and Stephen Brown wrote to her on 23 November 2016 indicating that he was sorry to hear that she was still unwell and that she had now been signed for a further two months. It was indicated that it would be helpful for the respondent if they could have a medical assessment that could indicate whether she was well enough to attend meetings and what further support could be given and it was stated that he would like to refer her for another Fit for Work assessment.

6.27 On 26 November 2016 Mr Borman sent an email to Stephen Brown. This commenced:

> "I have been asked to respond to your letter 23 Nov to Mrs Fisher. Let me begin by quoting Mark Twain "it is better to keep your mouth closed and that people think you are a fool than to open it and remove all doubt". Your letter has no particular purpose in relation to Mrs Fisher's employment in the practice. It is merely an exercise to show that you are doing something, and not necessarily what you've been asked to do, and that you're trying to "wrongfoot" Mrs Fisher. It is precisely this kind of behaviour which has contributed substantially to her diagnosed work-related stress (Dr Ashcroft and Dr Payne). However, I will endeavour to help you out because you clearly do not grasp the reality of the situation."

The email went on in confrontational terms and, at times, in capital letters referring to a suggestion of financial settlement and exit from employment which had been made.

6.28 On 30 November 2016 claimant wrote to Stephen Brown stating:

> "Due to your letters 20th and 31st October, your subsequent refusal to any mediation with my representative, Cllr Borman and your refusal to negotiate any conciliatory settlement through ACAS, I now consider myself to be the victim of unfair constructive dismissal.
>
> I consider the employer/employee relationship to be irrevocably broken by your refusal to negotiate, your actions which have caused further stress, distress and subsequent illness and the unacceptable new terms you wish to impose on me for you to allow me to continue my employment. As a consequence I have referred this matter to the Employment Tribunal who will no doubt be in contact with you in due course. In the meantime I request my reference.

> You have been asked several times to address any correspondence via Cllr Borman and have a signed letter of authorisation from me to this effect. This far you have resolutely ignored these requests and continue to write to me direct causing more unnecessary distress. Please forward my reference and any response via Cllr Borman as previously and again requested. Failure to do so will result in me making a formal complaint under the Protection From Harassment Act 1997.
>
> This letter in no circumstances suggests my willingness to resign or my acceptance of your treatment towards me."

6.29 On 6 December 2016 Stephen Brown wrote to the claimant care of Mr Borman's address acknowledging her letter of resignation and indicating that he didn't believe they had yet fully explored how the practice could support the claimant's return to work and inviting her to reconsider her decision. With regard to the request for a reference, it was indicated that the policy of the practice had also been to respond in writing to reference requests and they would be pleased to provide a reference if requested in writing to do so by prospective employer.

6.30 On 5 December 2016 the claimant presented a claim to the Employment Tribunal in which she brought claims of Disability discrimination, Redundancy payment, Notice pay and Holiday pay. The claims in respect of redundancy payment and unpaid holiday pay were dismissed upon withdrawal at a preliminary hearing on 31 January 2017.

6.31 On 7 December 2016 Mr Borman sent an email to Stephen Brown indicating that it was unacceptable that he had sent the practice correspondence to Mr Borman's address to the claimant and that it should have been addressed to him personally 'in the matter of Mrs M Fisher'. He went on to refer to the actions of Mr Brown as threatening and bullying. He referred to the letter suggesting that the respondent was not willing to provide a written reference. He stated that he was always available to negotiate and it was:

> "…entirely your high-handed attitude, which was not only discourteous but insulting, which caused this matter to now take the legal path."

6.32 On 5 December 2016 the claimant presented a claim to the Employment Tribunal. She brought complaints of unfair constructive dismissal and disability discrimination.

7 The Law

Constructive dismissal

Section 95 Employment Rights Act 1996 states:

> (1) For the purposes of this Part an employee is dismissed by his employer if …
>
> (c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."

This is known as constructive dismissal. It is well established that the test to be applied is a contractual test. The case of **Western Excavating – v – Sharp [1978] IRLR 27** provides guidance. The Court **of** Appeal stated

> "There must be a repudiatory breach of contract, that is, a significant breach of contract going to the root of the contract which shows the employer no longer intends to be bound by one or more essential terms of the contract. The employer's breach must cause the employee to resign as a result".

In the case of **Woods – v – W M Car Services (Peterborough) Ltd**, the Court of Appeal quoted from the EAT Judgment of Sir Nicholas Brown-Wilkinson, the then President of the EAT.

> "It is clearly established that there is implied in a contract of employment a term that employers will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. To Constitute a breach of this implied term it is not necessary to show the employer intended any repudiation of the contract. The Employment Tribunal's function is to look at the employer's conduct as a whole and determine whether it is such that its cumulative effect judged reasonably and sensibly is such that the employee cannot be expected to put up with it.

In the case of **Wright v North Ayrshire Council UKEATS/0017/13/BI** the EAT found that the Tribunal had been wrong to rely on the principle that, where there was more than one cause, it was only the main (i.e. effective) cause of the resignation which should be considered to decide whether there had been a constructive dismissal. The EAT said that the search was not for one cause which predominated over others, or which would on its own be sufficient, but to ask whether the repudiatory breach had 'played a part in the dismissal'. It was enough that the repudiatory breach was an effective cause and not the effective cause of the resignation.

8 **Last Straw Doctrine**

In the case of **Lewis v Motorworld Garages Limited** [1985] IRLR 465 Glidewell LJ said this at para 37:

> "If the employer is in breach of a contract of employment, of such seriousness that the employee would be justified in leaving and claiming constructive dismissal, but the employee does not leave and accepts the altered terms of employment; if subsequently a series of actions by the employer might constitute together a breach of the implied obligation of trust and confidence; is the employee then entitled to treat the original action by the employer which was a breach of the express terms of the contract as a part - the start - of the series of actions which, taken together with the employer's other actions, might cumulatively amount to a breach of the implied terms? In my judgment the answer to this question is clearly 'yes'."

The authorities on the last straw doctrine in constructive dismissal were reviewed by HHJ Peter Clark and members in **Gab Robins (UK) Ltd v Triggs** UKEAT/0111/07 at paragraph 32, where this appears.

> "32. We derive the following principles from Omilaju: ([2004] AER 129)
>
> (1) the final straw act need not be of the same quality as the previous acts relied on as cumulatively amounting to a breach of the implied term of trust and confidence, but it must, when taken in conjunction with the earlier acts, contribute something to that breach and be more than utterly trivial.
>
> (2) Where the employee, following a series of acts which amount to a breach of the term, does not accept the breach but continues in the employment, thus affirming the contract, he cannot subsequently rely on the earlier acts if the final straw is entirely innocuous.
>
> (3) The final straw, viewed alone, need not be unreasonable or blameworthy conduct on the part of the employer. It need not itself amount to a breach of contract. However, it will be an unusual case where the 'final straw' consists of conduct which viewed objectively as reasonable and justifiable satisfies the final straw test.
>
> (4) An entirely innocuous act on the part of the employer cannot be a final straw, even if the employee genuinely (and subjectively) but mistakenly interprets the employer's act as destructive of the necessary trust and confidence."

9 **Duty to Make Reasonable Adjustments**

Section 20 of the Equality Act 2010 states:

> "(1) Where this Act imposes a duty to make reasonable adjustments of 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 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 take to avoid the disadvantage.

(4) The second requirement is a requirement, where a physical feature 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 the disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid".

10 **Discrimination arising from the consequence of a disability**

Section 15 of the Equality Act 2010 states:

"(1) A person (A) discriminates against a disabled person (B) if –

(a) A treats B unfavourably because of something arises in consequences of B's disability, and

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

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

Under section 15 of the Equality Act 2010 (discrimination arising from the consequence of a disability) there is no requirement for a claimant to identify a comparator. The question is whether there has been *unfavourable* treatment: the placing of a hurdle in front of, or creating a particular difficulty for, or disadvantaging a person; see Langstaff J in Trustees of Swansea University Pension & Assurance Scheme & Anor v Williams UKEAT/0415/14 at paragraph 28. As the EAT continued in that case (see paragraph 29 of the Judgment), the determination of what is unfavourable will generally be a matter for the Employment Tribunal.

The starting point for a Tribunal in a section 15 claim has been said to require it to first identify the individuals said to be responsible and ask whether the matter complained of was motivated by a consequence of the Claimant's disability; see **IPC Media Ltd v Millar [2013] IRLR 707**: was it because of such a consequence?

11 The statute provides that there will be no discrimination where a respondent shows the treatment in question is a proportionate means of achieving a legitimate aim or that it did not know or could not reasonably have known the Claimant had that disability.

Under sections 20 and 21, discrimination by reason of a failure to comply with an obligation to make reasonable adjustments, the approach to be adopted by the Tribunal was as set out in **Environment Agency v Rowan [2008] ICR 218,** where it was indicated that an Employment Tribunal must identify the provision,

criterion or practice ("PCP") applied by or on behalf of the respondent and also the non-disabled comparator/s where appropriate, and must then go on to identify the nature and extent of the substantial disadvantage suffered by the claimant. Only then would it be in a position to know if any proposed adjustment would be reasonable.

12 S.26 Harassment

(1) A person (A) harasses another (B) if—

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of—

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(2) A also harasses B if—

(a) A engages in unwanted conduct of a sexual nature, and

(b) the conduct has the purpose or effect referred to in subsection (1)(b).

(3) A also harasses B if—

(a) A or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex,

(b) the conduct has the purpose or effect referred to in subsection (1)(b), and

(c) because of B's rejection of or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—

(a) the perception of B;

(b) the other circumstances of the case;

(c) whether it is reasonable for the conduct to have that effect.

The Tribunal also **considered the case of Grant v HM Land Registry [2011] IRLR 748** with regard to harassment in which the court of appeal said

" Tribunals must not cheapen the significance of the words " intimidating, hostile, degrading, humiliating or offensive environment". They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment."

13 Victimisation

Section 27 of the Equality Act provides as follows:-

(1) A person (A) victimises another person (B) if A subjects B to a detriment because--

(a) B does a protected act, or
(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act--

(a) bringing proceedings under this Act;
(b) giving evidence or information in connection with proceedings under this Act;
(c) doing any other thing for the purposes of or in connection with this Act;
(d) making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

14 In a victimisation claim there is no need for a comparator. The Act requires the tribunal to determine whether the claimant had been subject to a detriment because of doing a protected act. As Lord Nicholls said in **Chief Constable of the West Yorkshire Police v Khan** [2001] IRLR 830:-

"The primary objective of the victimisation provisions ... is to ensure that persons are not penalised or prejudiced because they have taken steps to exercise their statutory right or are intending to do so".

The Tribunal has to consider (1) the protected act being relied on; (2) the detriment suffered; (3) the reason for the detriment; (4) any defence; and (5) the burden of proof.

15 To benefit from protection under the section the claimant must have done or intended to or be suspected of doing or intending to do one of the four kinds of protected acts set out in the section. The allegation relied on by the claimant must be made in good faith. It is not necessary for the claimant to show that he or she has a particular protected characteristic but the claimant must show that he or she has done a protected act. The question to be asked by the tribunal is whether the claimant has been subjected to a detriment. There is no definition of detriment except to a very limited extent in Section 212 of the Act which says "Detriment does not ... include conduct which amounts to harassment". The judgment in **Shamoon v Chief Constable of the Royal Ulster Constabulary** [2003] IRLR 285 is applicable.

16 The protected act must be the reason for the treatment which the claimant complains of, and the detriment must be because of the protected act. There must be a causative link between the protected act and the victimisation and accordingly the claimant must show that the respondent knew or suspected that the protected act had been carried out by the claimant, see **South London Healthcare NHS Trust v Al-Rubeyi** EAT0269/09. Once the tribunal has been able to identify the existence of the protected act and the detriment the tribunal has to examine the reason for the treatment of the claimant. This requires an examination of the respondent's state of mind. Guidance can be obtained from the cases of **Nagarajan v London Regional Transport** [1999] IRLR 572 and **Chief Constable of West Yorkshire Police v Khan** [2001] IRLR 830, and **St Helen's Metropolitan Borough Council v_Derbyshire** [2007] IRLR 540. In this latter case the House of Lords said there must be a link in the mind of the respondent between the doing of the acts and the less favourable treatment. It is not necessary to examine the motive of the respondent see **R (on the application of E) v Governing Body of JFS and Others** [2010] IRLR 136. In **Martin v Devonshires Solicitors** EAT0086/10 the EAT said that:

> "There would in principle be cases where an employer had dismissed an employee in response to a protected act but could say that the reason for dismissal was not the act but some feature of it which could properly be treated as separable."

17 In establishing the causative link between the protected act and the less favourable treatment the tribunal must understand the motivation behind the act of the employer which is said to amount to the victimisation. It is not necessary for the claimant to show that the respondent was wholly motivated to act as he did because of the protected acts, **Nagarajan v Agnew** [1994] IRLR 61. In **Owen and Briggs v James** [1982] IRLR 502 Knox J said:-

> "Where an employment tribunal finds that there are mixed motives for the doing of an act, one or some but not all of which constitute unlawful discrimination, it is highly desirable for there to be an assessment of the importance from the causative point of view of the unlawful motive or motives. If the employment tribunal finds that the unlawful motive or motives were of sufficient weight in the decision making process to be treated as a cause, not the sole cause but as a cause, of the act thus motivated, there will be unlawful discrimination."

In **O' Donoghue v Redcar and Cleveland Borough Council** [2001] IRLR 615 the Court of Appeal said that if there was more than one motive it is sufficient that there is a motive that there is a discriminatory reason, as long as this has sufficient weight.

18 **Burden of Proof**

Section 136 of the Equality Act 2010 states:

> "(1) This Section applies to any proceedings relating to a contravention of this Act.
>
> (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
>
> (3) But sub-Section (2) does not apply if (A) shows that (A) did not contravene the provision.
>
> (4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or Rule.
>
> (5) This Section does not apply to proceedings for an offence under this Act.
>
> (6) A reference to the court includes a reference to –
>
> (a) An Employment Tribunal."

19 Guidance has been given to Tribunals in a number of cases. In **Igen v Wong [2005] IRLR 258** (a sex discrimination case decided under the old law but which will apply to the new Equality Act) and approved again in **Madarassy v Nomura International plc [2007] EWCA 33.**

20 To summarise, the claimant must prove, on the balance of probabilities, facts from which a Tribunal could conclude, in the absence of an adequate explanation that the respondent had discriminated against him. If the claimant does this, then the respondent must prove that it did not commit the act. This is known as the shifting burden of proof. Once the claimant has established a prima facie case (which will require the Tribunal to hear evidence from the claimant and the respondent, to see what proper inferences may be drawn), the burden of proof shifts to the respondent to disprove the allegations. This will require consideration of the subjective reasons that caused the employer to act as he did. The respondent will have to show a non-discriminatory reason for the difference in treatment. In the case of Madarassy the Court of Appeal made it clear that the bare facts of a difference in status and a difference in treatment indicate only a possibility of discrimination: "They are not, without more, sufficient material from which a Tribunal 'could conclude' that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination".

21 In **Tarbuck v Sainsbury's Supermarkets Limited [2006] IRLR 664** the EAT said that an employer's failure to make an assessment of a disabled employee is not of itself a failure to make a reasonable adjustment. This was followed by the EAT in **Scottish & Southern Energy v Mackay UKEAT LL75/06**.

Conclusions

Constructive dismissal

22 At the time of her resignation the claimant had been invited to a meeting and been assured that she was not going to be dismissed at that meeting.

The claimant repeatedly referred to the earlier letters of 20 October 2016 and 31 October 2016 and said that trust had gone and could not be recovered. The letter of 20 October 2016 was admitted by and on behalf of the respondent to be unfortunate and badly worded. It certainly was. However, the claimant had returned to work and was in the middle of a phased return. She had indicated to Mandy Dargue that the new chair was extremely comfortable and that she was managing. The relationship did not appear to have reached the point by which the claimant felt unable to continue working for the respondent at that stage. The letter of 20 October 2016 was written following the meeting on 20 October 2016. The claimant's submission was that the first breach of trust became apparent on 20 October 2016. She contends that the meeting came as a shock and a breach of trust. However, the Tribunal listened to the recording of the telephone conversation on 19 October 2016. This was an amicable discussion and it was said that they needed to have "a bit more of a formal meeting". The meeting was not a formal meeting.

23 The letter of 20 October 2016 was largely straightforward and reasonable. The references to termination of employment and, in particular, the reference to immediate termination if there was any repeat period of sickness absence was badly worded. The respondent accepted that was the case. The claimant responded in a letter asking for clarification of some points and the respondent then sent a more reasonable letter providing the claimant with assurances. The claimant returned to work and the Tribunal is satisfied that both parties were working towards the claimant returning to the hours she could manage.

24 The Fit for Work recommendations had been considered and a workplace assessment had been carried out by another organisation. A chair had been provided and the claimant had indicated that it was comfortable. No one, including the claimant, had thought there was a need for a second chair. The position with regard to the telephone headset was that the respondent understood that the claimant would let the respondent know if she was having any difficulty using the handset.

25 The Tribunal does not accept, on balance, that the respondent had committed a repudiatory breach of contract. The requirement that the companion to accompany the claimant would be either a Trade Union representative or a work colleague is common requirement and in line with the statutory requirement and the ACAS code of practice. Stephen Brown said that he used a standard template letter from ACAS. The Tribunal does not accept that the respondent had committed a repudiatory breach of contract.

26 The claimant was in the course of a phased return to work and adjustments were in place and on Tuesday, 1 November 2016,the claimant informed Mandy Dargue that everything at work was ok but that she was feeling tired.

27 it was at that stage that the claimant informed the respondent that she had asked Mr Borman to deal with employment issues on her behalf. On 2 November 2016 Mr Borman sent a 'notification of employment dispute' with a list of exhibits and entered into a confrontation with the respondent. Stephen Brown indicated that he wished to maintain direct communication with the claimant following which the correspondence from Mr Borman became increasingly aggressive and confrontational.

28 On 26 November 2016 Mr Borman wrote to Mr Brown in respect of a suggestion of a financial settlement and exit from employment and referring to constructive dismissal and discrimination indicating that it would be argued before an Employment Tribunal. This was four days before the claimant's letter of resignation and it appeared that Mr Borman was providing these indications without instructions from the claimant.

29 The letter of 10 November 2016 made it clear that the meeting scheduled to take place was to discuss the support that could be put in place to accommodate the claimant in the workplace and it was stated that the claimant's employment would not be terminated in that meeting. The claimant was encouraged to bring a companion and the respondent indicated this could be a colleague or trade union representative. It was also indicated that Mr Brown was of the view that it was right and proper to address matters directly with the claimant rather than with Mr Borman. It was also indicated that the claimant could raise a separate grievance in this regard. The Tribunal has consider this aspect carefully and is not satisfied that this letter alone or together with the other matters raised represented a repudiatory breach of contract.

30 It was submitted on behalf of the claimant that the Christmas menu being posted to her on 11 November 2016 was hurtful and insensitive. It was submitted by Mr Flood on behalf of the respondent that, the claimant remained in employment, she was off sick and Mr Brown would have been criticised if he had not sent the menu to the claimant as he had two other employees and, in effect, he was damned if he did and damned if he did not. The Tribunal accepts Mr Flood's submission, the act of posting the menu to the claimant was not an unreasonable or inappropriate thing for Mr Brown to do.

31 The letter of 23 November 2016 was a letter indicating that the respondent was sorry to hear that the claimant had been signed off a further two months and indicating that it would be helpful if they can have a medical assessment. The letter of 24 November 2016 was an explanation of a correction shown on the payments payslip. Both of these letters were entirely appropriate and the Tribunal does not accept that those letters, together with the provision of the Christmas dinner menu were unreasonable or conduct amounting to a repudiatory breach of contract.

32 The Tribunal has considered the position carefully. The meeting with the claimant on 20 October 2016 and the subsequent letter could have been handled more reasonably. However, this was not sufficient to amount to conduct, without reasonable and proper cause, calculated or likely to destroy or seriously damage the implied trust and confidence between employer and employee. Also, the respondent apologised for any misunderstandings and provide the claimant with assurances. The Tribunal accepts that the respondent was making genuine attempts to accommodate the claimant's return to work.

33 The Tribunal has found that there was no repudiatory breach of contract and in the circumstances, there was no dismissal. Also, it is apparent that the reason for the claimant's resignation was as a result of the respondent not engaging with Mr Borman and a refusal to negotiate a settlement. Mr Fisher, on behalf of the claimant agreed that Mr Borman's passions sometimes ran high but also indicated that Mr Brown admitted that he knows Mr Borman well. He lives in close proximity to the respondents' surgery and is a patient of the respondent.

The aggressive and confrontational intervention of Mr Borman was a major cause of the breakdown of the relationship. It is clear that the respondent could have handled the position more sympathetically at the commencement. However, there was no repudiatory breach of contract. There was nothing that the respondent did that evinced an intention not to comply with an essential term of the contract. In the circumstances, the claim of the constructive dismissal is not well-founded and is dismissed.

34 With regard to wrongful dismissal, the Tribunal has found there was no dismissal. The claimant resigned and did not work her notice period. There was no breach of contract by the respondent.

35 With regard to disability it is accepted that the claimant was a disabled person within the meaning of section 6 of the Equality Act 2010.

36 The claim of harassment refers to the unwanted conduct in respect of the tone, content and volume of correspondence to the claimant. The letter of 20 October 2016 was unfortunate and its tone and was not appropriate together with the content. However, the Tribunal does not accept that it was conduct that had the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant. The claimant was clearly upset by the meeting and the subsequent letter. She did return to work and was settling back in well. The Tribunal has taken into account the claimant's perception and the other circumstances and finds that the conduct of the respondent did not amount to harassment.

37 The handling of the request for representation by Mr Borman was not conduct that had the purpose or the effect of violating the claimant's dignity et cetera and the Tribunal has taken into account the claimant's perception in this regard. The respondent was seeking to achieve a resolution of the situation and to enable the claimant to return to work. It was not conduct that amounted to harassment.

38 The letter explaining a discrepancy in her wages and the invitation to the Christmas dinner were not acts of harassment within the legislation. The Tribunal accepted the claimant was suffering from anxiety and interpreted the contact by the respondent as unnecessary and causing distress. However, the Tribunal does not find that they were acts of harassment.

39 The response to the claimant's request for a reference was entirely reasonable, normal practice and did not amount to harassment. Once again, the Tribunal has take into account the claimant's perception in this regard. However, it is not reasonable for the conduct to have the effect of establishing harassment pursuant to section 26.

40 With regard to discrimination arising from disability, the same acts of discrimination alleged are those advanced in respect of harassment and the Tribunal does not accept that they amount to discriminatory treatment and, in any event, the Tribunal accepts that the respondent showed that it was a proportionate means of achieving a legitimate aim, that of continuing to run the practice and seeking to enable the claimant to return to work.

41 The claim of victimisation is expressed to be in respect of the response to the request for a reference It was not in response to a protected act. The protected act was not specified. However, it would be the raising of a complaint of disability discrimination which was set out in the correspondence from Mr

Borman. The response to the request for a reference was to indicate that the practice policy was to respond in writing to written reference requests from prospective players and the respondent would be pleased to provide a reference in those circumstances. That was not an act of victimisation. It was normal practice.

42 With regard to reasonable adjustments the PCP set out in the Preliminary Hearing referred to the requirements as receptionists to cover both telephone and reception work stations during limited periods when only one member of staff was on duty. There was a request for a lumbar support chair following an assessment by Fit for Work and the workstation assessment by Health Fusion. The respondent took reasonable steps as recommended. A suitable chair was obtained which the claimant indicated was comfortable and she was managing much better.

43 In the Preliminary Hearing it was asserted that a reasonable adjustment required was that of providing two lumbar support chairs. This was never an issue identified in the Fit for Work report, the workstation assessment or by the claimant at the time of her return to work or at any other time during her employment. Indeed, the claimant gave evidence to the Tribunal that the question of the respondent providing two chairs had never crossed her mind until her relapse. It was not shown that there was a PCP that put the claimant at a substantial disadvantage. It was never raised with the respondent and the Tribunal finds that there was no failure to make a reasonable adjustment in this regard.

44 Also identified at the preliminary hearing was an assertion of an adjustment that was required was that of appointing the claimant to the role of notes summariser. The Tribunal heard evidence in this regard. The vacancy was at another location and required technical skills which the claimant did not have. At the time the vacancy arose the claimant was back at work and making good progress on her phased return to work. The Tribunal is not satisfied that this was an adjustment that would have avoided any substantial disadvantage to the claimant.

45 There was a workstation report provided which recommended a lumbar support chair which was obtained. At the time of the claimant's return to work there was no issue with regard to a requirement of two chairs. The workstation assessment recommended that a chair be provided which was labelled and the claimant could move it between both desks as required. This recommendation was followed although there was no evidence with regard to the labelling of the chair, this did not appear to be an issue. The claimant was comfortable with the chair and the respondent had put in place reasonable adjustments in this regard.

46 The claimant also raised issues with regard to the height of the computer screen, telephone headset and placement of the telephone. These were not identified at the preliminary hearing. It was not established that there was a PCP which placed the claimant at a substantial disadvantage in this regard. The Tribunal is not satisfied that there was a duty to make reasonable adjustments in respect of these items. With regard to the headset, Mandy Dargue gave evidence that she understood that the claimant was to let her know if she had any problems using the handset but she did not. The telephone was moved to the other side of the computer screen. The height of the screen was discussed

with the claimant. There was a stand to raise it which the claimant felt was unnecessary and it was agreed that the respondent would remove the stand to see if it would help. If there was a duty to make reasonable adjustments in this regard, the Tribunal is satisfied that these were discussed with the claimant and there was no failure to make such adjustments. There were also discussions with regard to lighting and the need to take regular breaks and getting up in order to walk around.

47 The Tribunal has concluded, in all the circumstances, that the claims of unfair dismissal and disability discrimination brought by the claimant are not well founded and are dismissed.

_____

Employment Judge Shepherd

Judgment signed by Employment Judge on

21 June 2017

Judgment sent to the parties on:

23 June 2017

And entered in the register

G Palmer

For the Tribunal: