EMPLOYMENT TRIBUNALS

Claimant:	**Ms D Shaw**		
Respondent:	**Dr M M Cuthbert and Partners**		
Heard at:	**Leeds**	**On:**	**22-24, 26, 31 May 2017, 1, 19, 27 June 2017, 3 and (deliberations only) 4 July 2017**
Before:	**Employment Judge Maidment**		
Members:	**Mr T Downes**		
	Mr M Taj		
Representation			
Claimant:	**In person**		
Respondent:	**Mr S Roberts, Counsel**		

RESERVED JUDGMENT

1. The Claimant's complaints of unfair dismissal, disability discrimination pursuant to sections 20, 13 and 26 of the Equality Act 2010 and of victimisation pursuant to section 27 of the Act fail and are dismissed.
2. The Claimant's complaint of unfair dismissal fails and is dismissed.
3. The Claimant's complaint alleging an unauthorised deduction from wages is well founded and succeeds. The Respondent is ordered to pay to the Claimant the sum of £1652.40 in respect of such unauthorised deduction.

REASONS

1. **The issues**

1.1. The Claimant contends that she suffered from the following detriments:-

1.1.1. The Claimant contends that she was given a new role upon her return to work. The new role was poorly thought through

and was given to her without consultation or consideration, it included a requirement that she drive as part of the role.

1.1.2. The Claimant complains of the removal of a permanent workstation.

1.1.3. The Claimant complains of being reduced to half pay during a period in February 2015 whilst off ill although she accepts that this matter was rectified a year later as a result of her putting in her grievance.

1.1.4. The Claimant complains of being refused the right to take annual leave during February and March 2015.

1.1.5. The Claimant complains of only receiving 50% of the bonus to which she was entitled.

1.1.6. The Claimant complains of being required to move her place of work in May 2015.

1.1.7. The Claimant complains of the handling of a meeting between herself and Ms Winterbottom in which she was described as *"paranoid."*

1.1.8. The Claimant complains that she was removed from her role as deputy practice manager.

1.1.9. The Claimant complains that she was given a second new role in September 2015 which was effectively a 'non job' and into which she was slotted in order, at a later stage, to make her redundant.

1.1.10. The Claimant complains that she was not permitted to work [more] from home.

1.1.11. The Claimant complains that an informal request for information was treated as a formal complaint despite her having made it clear that she did not wish it to be so treated.

1.1.12. The Claimant complains that she was unreasonably criticised for working over the weekend and on her day off.

1.1.13. The Claimant complains that she was targeted and selected for redundancy.

1.1.14. The Claimant, having presented a grievance, complains that the Respondent failed to uphold her justified grievance.

1.1.15. The Claimant complains of having been removed from the Respondent's IT system and her account closed prior to her (constructive) dismissal.

1.1.16. The Claimant complains of the failure to uphold her appeal against the grievance decision.

1.1.17. The Claimant, during the redundancy process, was told that her role did not exist.

1.1.18. For all the reasons outlined above, the Claimant resigned and treated herself as constructively dismissed.

1.2. It is accepted by the Respondent that the Claimant was at all material times a disabled person by reason of her suffering from cancer and from the effects of a stroke she suffered and the consequential left sided weaknesses that she experienced. Particular reliance is placed by the Claimant in respect of these complaints on her stroke and the impairments arising as a result of it.

1.3. The Claimant maintains firstly that she suffered from direct disability discrimination in that all of the aforementioned detriments were aspects of unfavourable treatment because of her disability.

1.4. The Claimant further maintains that all of the aforementioned detriments amounted to disability related harassment – as already identified during the case management process, any complaints of direct discrimination because of the Claimant's disability can only be found if they have not already been found as complaints of harassment.

1.5. The Claimant further brings a complaint of victimisation reliant on two suggested protected acts. The first is contained in a conversation between herself and Ms Winterbottom on 6 March 2015 in which the Claimant contends that she complained, in relation to her new job, that the Respondent had failed properly to take her disability into account. The Respondent does not accept this to be a protected act. The Claimant contends that she did a second protected act when on 11 March 2016 she raised a grievance in which she alleged that she had been discriminated against. It is accepted on behalf of the Respondent that this does amount to a protected act. The Claimant contends that each of the aforementioned detriments arises as a consequence of her having made one or both of those protected acts save for any detriment which occurred prior to the first of those protected acts, namely giving her a new role on 14 January 2015, the failure to allow her to take holiday in February 2015, the paying of half pay during her sickness in that period and the failure to give her a permanent workstation upon her return to work.

1.6. Following the Employment Tribunal's Preliminary Hearing held on 10 November 2016 when the issues were identified, the Claimant corresponded further with the Tribunal and this Tribunal explored with the Claimant whether such correspondence amounted to her seeking to amend or in particular to add to the complaints she was pursuing. It was clarified by the Claimant that there was no addition sought to the acts of detriment alleged to have occurred. However, a further protected act was identified in the sense that it was said that the Claimant's son, Mr Oliver Gillespie, also an employee of the Respondent at the time, had raised a grievance in January 2015, part of which was his raising a concern regarding the treatment of his mother as a disabled person. It is maintained, reliant upon such grievance, that from its date the Respondent believed that the Claimant might do a protected act in terms of bringing proceedings or complaining about her own treatment. On behalf of the Respondent, Mr Roberts did not object to the inclusion of this as a further aspect to the Claimant's complaint of victimisation pursuant now to section 27(1)(b) of the act as well as sub paragraph (a).

1.7. Finally, in the context of complaints of disability discrimination, the Claimant brought four separate complaints alleging a failure to make reasonable adjustments. The first of these relied on the requirement of the role given to the Claimant from January 2015 to drive around the Bradford district which the Claimant said put her at a disadvantage because as a result of both her cancer, its subsequent treatment and her stroke, she found driving both fatiguing and painful. The Claimant contends that it would have been a reasonable adjustment to reduce or minimise the amount of driving involved in the new role.

1.8. The Claimant next relies upon the working arrangements which required the Claimant to 'hot desk' and a lack of workstation as a physical feature on her return to work in January 2015. She maintains that the lack of a permanent workstation put her at a particular disadvantage since her illness meant that she was readily fatigued and she literally had nowhere to sit and was required to share desks with other colleagues. The Claimant contends that a reasonable adjustment would have been to provide her with her own permanent workstation.

1.9. The Claimant next and thirdly in the context of reasonable adjustment complaints contends that, in relation to the requirement that she drive, the Respondent did not provide her at any locations where she was expected to work with a parking space close to the door to minimise the amount of walking she would have to do from her car to her office. She maintains this put her at a particular disadvantage because of her left sided weakness and the limitations that placed on her walking and also her fatigue caused by her cancer. The Claimant contends that a reasonable adjustment would have been the provision of such a parking space.

1.10. Finally and fourthly the Claimant relies as a 'provision criterion or practice' on the duties in the new role given to her in September 2015 which made an allowance for 10 hours working from home. The Claimant contends that the requirement in respect of her other working hours to attend the office put her at a particular disadvantage since she had to travel to the office (and had to walk often from distant car parking spaces) and since the act of getting up and getting herself ready to go to the office was fatiguing as a result of her condition. The Claimant maintains that a reasonable adjustment would have been to permit her to extend her working day for the first three days of the week by an extra hour to be worked in the office and allow her to work at home for two days per week.

1.11. The Respondent maintains that the reasonable adjustment complaints and detriment complaints occurring more than three months (after applying extensions for ACAS early conciliation) prior to the submission of her Tribunal application are submitted out of time and in circumstances where it would not be 'just and equitable' to extend time. The Tribunal explained that it would hear any evidence relating to such point as part of this main hearing and that it was for the Claimant, if she wished, to provide in her evidence any explanation for any delay in submitting her Tribunal application.

1.12. The Claimant separately brings a complaint of unfair dismissal where she contends that the Respondent's purported reason for her proposed dismissal, namely redundancy, was not the true reason and that she had been engineered into a 'non job' with the express intention of targeting her for dismissal. Such sham redundancy, together with the acts of discrimination the Claimant complains of, she says, singularly and more particularly cumulatively, amounted to a breach of trust and confidence entitling her to resign with immediate effect. She maintains that indeed she resigned in response to such fundamental breach such that she was constructively dismissed and that for the aforementioned reason the Respondent cannot show that it had a fair reason for such dismissal.

1.13. Finally, the Claimant brings a complaint of an unauthorised deduction from wages which relates to a decision made at her grievance appeal that there be a deduction of an amount representing the surplus paid to her in the period from January to March 2015 when the Claimant was working reduced hours as part of a phased return yet was paid full salary as if she had worked all her contracted hours. It was clarified with the Claimant that no separate complaint of discrimination/victimisation is brought in respect of the Respondent's decision to make this deduction from monies otherwise determined by the Respondents to be due to the Claimant.

1.14. It was raised with the Tribunal by Mr Roberts that there was reference within the Claimant's pleaded case and her witness statement to a 'without prejudice' discussion which had taken place between the Respondent and the Claimant's trade union representative. There was clearly a dispute between the parties as to whether or not any discussion and indeed a suggestion made regarding a possible settlement of the Claimant's dispute was truly 'without prejudice'. The Tribunal considered that if the Respondent wished to take issue with the admissibility of these discussions it would be for it to call relevant evidence regarding the nature of the discussions, how they arose and to make submissions regarding whether the discussions had to be disregarded by the Tribunal. It was clearly disproportionate for the matter to be dealt with as a preliminary freestanding issue and Mr Roberts himself wished to consider whether the Respondent wished to take the point at all in circumstances where he accepted that at the earlier Preliminary Hearing it had been confirmed that the Respondent did not seek to assert that evidence regarding such a discussion ought to be excluded on a without prejudice basis. As matters turned out no application/submission was made by the Respondent on this issue.

2. The evidence

2.1. The Tribunal had before it a bundle of documents numbering in excess of 700 pages. To this bundle were added during the course of the proceedings a number of photographs in particular showing parking areas around the Respondent's surgeries (or some of them) and a previous Employment Tribunal's written reasons issued in a claim brought previously by Mr Gillespie against the Respondent. This was allowed into the evidence bundle on the basis that it contained findings of fact made by that Tribunal on matters which were relevant to these

proceedings albeit it was accepted that by no means all of the Judgment and Reasons was relevant.

2.2. The Tribunal spent the first day of the hearing privately reading into the witness statements exchanged between the parties and relevant documentation. The live hearing commenced on the second day of the hearing during which the Tribunal spent some time in ensuring there was clarity between the parties as to the issues in dispute and where the Tribunal also had to resolve the issue of the Claimant having prepared a separate and differently paginated bundle of documents. On 18 April 2017, Regional Employment Judge Lee had, following consideration of correspondence from the parties, directed that the Claimant attempt to revise her page numbering in her own statement to reflect the Respondent's bundle of documents and that the Claimant's bundle might be used straightforwardly to view documents which were found not to be contained within the Respondent's bundle or where there was a dispute as to the correct version of the documents. The Claimant's statement before this Tribunal in fact continued to refer to her own page numbers but, given the previous directions, the Tribunal considered it appropriate to utilise the Respondent's bundle in circumstances where Mr Roberts would take the Claimant in her own cross-examination to the relevant documents in the Respondent's bundle and where the Tribunal could certainly pause to assist the Claimant if there was at any stage in the proceedings a difficulty in locating a document she wished to cross reference from within the Respondent's bundle. The Tribunal was of the view that in a case of this length, not least in terms of documentary evidence, it would not be satisfactory for it to be viewing the same documents in more than one place.

2.3. The Tribunal also stressed to the Claimant that, in terms of it making its own reasonable adjustments, it would wish her to make it clear if she was unwell or struggling and the Tribunal had no difficulty in taking additional breaks to assist her, for instance, in the case of fatigue. The Tribunal made it clear that it would not always be aware of when the Claimant might need a break and encouraged Mr Gillespie as her representative to alert the Tribunal if he thought his mother was struggling.

2.4. The Claimant commenced her live evidence at 11.55am on day two of the hearing. Following a break for lunch her evidence continued until 3.30pm when the Claimant was clearly too fatigued to continue. She recommenced giving evidence at 10am on day three and for the whole of that day after taking such breaks as were necessary. Dr Sara Helen Humphrey, GP and one of the Respondent's partners, was interposed due to availability issues at the commencement of the fourth day of hearing. However, by 11.15am Mr Gillespie was in personal difficulties regarding continuing to question Dr Humphrey. Having allowed a break and time for Mr Gillespie to compose himself the Tribunal continued after 1pm to seek to complete the Claimant's cross-examination given that Mr Gillespie was able to continue to act as the Claimant's representative in circumstances where he would not be expected that day to undertake any cross-examination himself.

Dr Humphrey's evidence was not therefore completed and had to be held over until another date when she was available.

2.5. Indeed, the Claimant's cross-examination had not concluded by the close of day four of the hearing. Unfortunately on day five of the hearing the Claimant felt unwell and whilst she indicated that she was prepared to *"see how it goes"* the Claimant was clearly disadvantaged such that the Tribunal determined it appropriate to adjourn the case until the following day, Thursday 1 June.

2.6. The Claimant's cross-examination therefore continued on day six of the hearing up to its conclusion at 12.16pm. The Tribunal then heard on behalf of the Claimant from Julie Varley, the Claimant's sister and then from 12.32pm from Mr Oliver Gillespie, the Claimant's son a former employee of the Respondent. Following a break for lunch his evidence was concluded at 2.41pm. Dr Matthew Pickering, a GP and another of the Respondent's partners was then called and gave evidence and was cross-examined on it. On day seven, 19 June, the Tribunal accepted on behalf of the Claimant a witness statement submitted by a Mrs Sharon Elliott, employed by the Respondent as an IT administrator on the basis of her signed written statement but making it clear that less weight could be attached to evidence where the witness was not present to be cross-examined. Finally on behalf of the Claimant the Tribunal heard from another sister of the Claimant, Mrs Jennifer Banks, before recalling Dr Humphrey on behalf of the Respondent who concluded her evidence at 11.45am.

2.7. Julie Winterbottom, the Respondent's managing partner, was then called and cross-examined by Mr Gillespie. Her cross-examination was broken by a break for lunch and resumed but concluded early at 2.45pm in circumstances where Mr Gillespie was in difficulties in terms of formulating questions. On the Claimant's side, the possibility was raised of the Claimant continuing and representing herself but the Tribunal was of the view that Mr Gillespie had clearly prepared detailed written questions and the Claimant would be at a distinct disadvantage if she was now, without warning, put in a position of having to cross-examine Ms Winterbottom. The Tribunal encouraged Mr Gillespie to review his written questions to determine in particular which questions were key and most relevant to the issues and encouraged him also to re-visit the Tribunal's Case Management Order which set out the list of detriments and seek to work through each in turn in. The Tribunal met again for day eight of the hearing on Tuesday 27 June and heard from Fiona Sherburn, an independent HR consultant whose witness evidence was interposed again due to availability issues. Her evidence was completed by 10.45am and the Tribunal then resumed the cross-examination of Ms Winterbottom whose evidence concluded that day at 3.30pm. The Tribunal concluded hearing evidence on Monday 3 July with Lorraine Wardle, associate managing partner, and as the parties had been forewarned on the previous day of hearing the Tribunal then proceeded to hear closing submissions firstly on behalf of the Respondent and then from the Claimant who presented her submissions by way of a written statement which she asked the Tribunal to read and which the Tribunal clarified thereafter she did not wish to supplement other than to raise a

specific submission regarding the allegation of her removal from the role of deputy. Having considered the relevant evidence the Tribunal makes the findings of facts as follows.

3. **The facts**

3.1. The Respondent partnership operates a group of GP medical practices in the Shipley/Bradford area.

3.2. The Claimant commenced her employment with the Respondent on 12 October 2009 as assistant practice manager working 34 hours per week at the Respondent's Westcliffe Surgery in Shipley. At the time this was the only surgery operated by the Respondent.

3.3. The Claimant worked closely from the outset with Julie Winterbottom who was effectively the practice manager, albeit with the title of business manager. The Claimant acted as her deputy, although there was no formal appointment of her as such, and she was regarded by Ms Winterbottom as her *"right hand woman".* The evidence, in particular from email correspondence between the Claimant and Ms Winterbottom during 2014, is of a very friendly, supportive and mutually relaxed relationship between them.

3.4. The Claimant had some staff management responsibilities but her core expertise and responsibilities lay in the field of data collection and management. This included the collation and submission of returns to the NHS which triggered payments to the Respondent. The Claimant was highly regarded by the Respondent's partners and her colleagues.

3.5. During 2013 the Respondent was considering a significant expansion of its GP surgeries and the acquisition of other practices. Thornton and Denholme had already been added from 1 April 2012. Shipley and Cowgill were acquired as additional practices on 1 April 2014, The Willows on 3 September 2014 and North Street on 1 December 2015. Also in October 2014 the Respondent had set up a separate limited company, Westcliffe Health Innovations Limited, through which a form of community hospital was operated.

3.6. Prior to the completion of the acquisitions, however, the Respondent had informal arrangements with these practices and the Claimant became involved in aspects of data management and systems development within them.

3.7. During 2013 Ms Winterbottom had started to consider a new management structure for the significantly enlarged group of practices and to share her ideas with the Claimant.

3.8. From the outset, Ms Winterbottom envisaged a single central management team responsible for all the practices rather than having a practice manager and assistant practice manager at each site. She told the Claimant that she intended to create, therefore, this new Practice Support Unit ("PSU").

3.9. She also discussed with the Claimant the disappearance of her existing assistant practice manager role and the creation of a team of managers reporting to Ms Winterbottom, but each with their own particular area of responsibility across all of the surgeries. The Claimant expressed a

preference to concentrate on data management which is where her main interest and expertise lay and Ms Winterbottom agreed this with her. By July 2013 it was envisaged that the Claimant would become a *"PSU manager"*.

3.10. The Tribunal accepts that the Claimant was aware that her role would involve travelling routinely to different practices: it was obvious to the Claimant anyway that being responsible for data management at five or more separate surgeries would involve enhanced travel and the need to work at sites other than Westcliffe including with staff at those various separate GP practices.

3.11. The Claimant was diagnosed with cancer in January 2014 and was at times absent from work in particular for hospital appointments and treatment and, whilst she continued to attend work, she also worked for periods from home. The Claimant then commenced a period of absence from March 2014 until a return to work in January 2015. The Claimant commenced a course of chemotherapy treatment on 17 March but suffered a significant stroke on 19 March which, as already noted, affected in particular the Claimant's left hand side.

3.12. Despite the Claimant's serious health issues she, throughout her absence, believed it would be of benefit to her own feeling of well being and self worth to continue to do some work whilst at home and undergoing treatment. One of the crucial monthly tasks for the Respondent to complete was indeed the submission of data to the NHS primary care trust to trigger payment for the services carried out. The Claimant had designed the system used by the Respondent and no one else knew what was involved. It therefore also significantly suited the Respondent for the Claimant to continue to work on the monthly submissions in particular.

3.13. The Claimant did not continue to undertake her full duties, but the amount of work she did was substantial and a significant undertaking for her given her state of health.

3.14. In February 2014 Oberoi Consulting were engaged to assist with data management and the Respondent's IT systems. They had previously been involved with the Respondent on a project basis exploring possible innovations and developments in the system including the clinical tree, templates and searches rather than on day to day data management.

3.15. On 19 March 2014, as described, the Claimant suffered a stroke. Nevertheless, the Claimant continued to complete the data submissions.

3.16. On 6 May 2014 she supplied to the Respondent a fit note confirming that she could work from home on reduced hours.

3.17. On 8 May 2014 the Claimant was admitted to hospital again for an operation on her neck.

3.18. It is noted at this stage that the Claimant's son, Oliver Gillespie, had worked at the Westcliffe Surgery as an IT administrator since 2012. The Respondent had concerns of a disciplinary nature regarding his absences from work and failure to notify them of his absences albeit these were not ultimately pursued at this stage.

3.19. The Claimant despite her physical impairments continued to work, including from her hospital bed. She remained in touch with Ms Winterbottom by email on work matters. Ms Winterbottom visited her in hospital and at the Claimant's sister's home where she was recuperating.

3.20. On 3 July 2014 Ms Winterbottom emailed the Claimant asking to see her to discuss her sick pay. The Claimant's contractual entitlement was to three months at full pay followed by three months on half pay. Given the Claimant's continued working, Ms Winterbottom had maintained the Claimant's full salary. She sent a further email to the Claimant on 24 July 2014 asking to see the Claimant to discuss her sick pay the following week and also to discuss a new piece of work to see whether the Claimant would be able to pick it up or if it was best to ask Oberoi to do it.

3.21. On 30 July 2014 Ms Winterbottom emailed the Claimant to say that her pay had been reduced to half pay as the Claimant had been on full pay for a period of six months. She said that due to the Claimant being such a valued member of staff, the nature of her illness and the fact she had been able to continue to do some work from home meant she could justify treating the Claimant differently and therefore doubling her sick pay entitlement to six months full pay followed by a period at six months half pay.

3.22. The Claimant was confused by this given the work she was continuing to perform. As noted this was particularly in the light of Ms Winterbottom having recently mentioned a new piece of work for the Claimant to possibly undertake capturing data for a new gastric service.

3.23. Ms Winterbottom then met with the Claimant at home on 5 August 2014. The Claimant asked for her full pay to be reinstated saying that she needed the money and that she would be increasingly able to pick up some more work. Ms Winterbottom said that there needed to be some structure around a phased return to work and GP approval. The Respondent confirmed to the Claimant on 8 August 2014 that her full pay would be reinstated.

3.24. On 6 November 2014 Ms Winterbottom emailed the Claimant saying that she hoped to draft a new job description for her.

3.25. On 18 November Ms Winterbottom emailed the Claimant referring to her new role as *"assistant director of data quality and information governance".* She focused the Claimant's targets for achieving her annual bonus of £5,000 as being now the production of an information governance tool kit for all of the Respondent's practices.

3.26. The Claimant noted the new title but thought nothing of it in circumstances where she thought Ms *Winterbottom "was always looking for fancy titles"*.

3.27. On 11 December 2014 Ms Winterbottom met with the Claimant to discuss her return to work and agreed a phased return to work indeed with 10 hours per week working from home. There was further discussion regarding the Claimant's role including in terms of her need to cover a number of separate GP practices and work from them. The Claimant was aware that there would be a team of senior managers,

including herself, working alongside each other. She was also aware that she was not intended to have a single base but would work from all the surgery premises. On balance, given these circumstances, it is more likely than not that Ms Winterbottom did refer to the managers as *"hot desking"* although the Claimant did not understand that that this meant that she might ever not have a workstation to work at. Ms Winterbottom came away believing that whilst the Claimant was nervous as to the effects of the changes made, she understood and agreed with the new methods of working.

3.28. The Claimant described received a lovely email from Ms Winterbottom on 19 December saying that she was looking forward to having her back at her side. The Claimant indeed was looking forward to returning to work.

3.29. Lorraine Wardle commenced employment with the Respondent on 5 January 2015 as head of human resources, corporate governance and complaints. Before she commenced work she was told by Ms Winterbottom that she would 'hot desk' and not have a dedicated workstation as her role was to support all the GP practices and there were a limited number of desks at Westcliffe.

3.30. On 6 January the Claimant attended occupational health who reported to Ms Winterbottom. Dr Smith referred to the Claimant's weakness in her left arm and leg due to her stroke and recommended an up to date work station assessment and parking spot close to the surgery with regular breaks for the Claimant to stretch. He stated that the Claimant was fit to work. He described the Claimant as walking slowly although steadily and her other main residual incapacity being that of fatigue. He approved a graduated return to work with the Claimant returning to work four days a week 10am until 4pm and doing 10 hours a week from home.

3.31. Ms Winterbottom wrote to the Claimant on 6 January thanking her for her work and acknowledging that she had not missed a month's submission of data. She said: *"we will make the adjustments they recommend so that you can return to work as per the above."* Indeed, above this statement, the terms of the return to work were set out which involved a month attending the office on only three days a week and working 10am to 4pm on those days with 10 hours worked from home. This amounted to a reduction in normal weekly hours from 34 to 28 per week for this transitional period. Ms Winterbottom referred to them having discussed her change of job role and being in the process of drawing up the job description.

3.32. The Claimant returned to work on 9 January 2015. She was pleased with the welcome she received from the staff at the Westcliffe Surgery. She mentioned to Ms Winterbottom that occupational health had suggested that she might use any accrued leave to assist in managing any fatigue. Ms Winterbottom told the Claimant that she had not been sick as she had continued to work and therefore there was no accrued leave.

3.33. During the Claimant's first week back, most likely on 13 January, she arrived to find Ms Wardle sat at the desk she had previously always sat

at. The Claimant said that Ms Wardle kindly asked if the Claimant would like her to move and then did so.

3.34. Ms Wardle raised the problem of a shortage of desks with Ms Winterbottom who reiterated that the *"Heads of"* had to 'hot desk'. She said that the Claimant was aware that no desk was allocated specifically for her and that if Ms Wardle was working at a desk she should not vacate it for someone else arriving later.

3.35. On 14 January 2015 the Claimant attended a meeting at the Thornton surgery. It had been snowing and was icy. Ms Winterbottom assured the Claimant regarding the state of the roads. However, on arrival the Claimant expressed some trepidation about having to traverse a steep and icy incline and having to go back down it when she left. There is no evidence of Ms Winterbottom pressurising the Claimant to work in a situation of risk to her.

3.36. On that day the Claimant and Ms Winterbottom discussed further what was required in her new role. It was decided that those at the Claimant's level i.e. herself, Ms Wardle and Caroline Davidson, who had been made responsible for patient services, would be called *"Heads of"* rather than assistant directors.

3.37. On 20 January 2015 the Claimant arrived for work having also driven her son into work. The Claimant climbed the stairs to the office to find Ms Wardle at *"her"* desk. The Claimant said that she put her bag down making it clear that she was exhausted. Ms Wardle acknowledged the difficult desk situation but did not offer to vacate her desk. The Claimant said that she stood in the office area clinging to her walking stick and feeling humiliated. At the same time the Claimant also told Ms Wardle that she had had difficulty that morning parking in the surgery car park. The Claimant's evidence before the Tribunal was that she had to drive round the car park on a number of occasions before a space became free.

3.38. The Claimant then walked into the main administration office next door but no other desks were available there. The Claimant and her son, Mr Gillespie, then sat down together on a couch.

3.39. Shona Holding, a nurse practitioner who had been sitting opposite Ms Wardle, offered to move to accommodate the Claimant and the Claimant thanked her and took up a seat at that desk.

3.40. She continued to work opposite Ms Wardle with no acrimony or difficult words exchanged between them during the rest of the working day.

3.41. Mr Gillespie, supported by the Claimant, maintains that he was immediately upset at the adverse treatment he perceived Ms Wardle was guilty of in not vacating the Claimant's desk. Mr Gillespie maintained that he reacted angrily to the situation and complained. As has been referred to, Mr Gillespie brought his own complaints before an Employment Tribunal following his resignation from the Respondent's employment and that Tribunal issued detailed reasons for its Judgment on 26 November 2015. The Tribunal concluded that when the Claimant attended work and said that there was a lack of car parking spaces and no desks, Ms Wardle replied to the effect that the shortage of desks was

affecting everybody. The Tribunal concluded that Mr Gillespie, who was there at the time, did not say anything (contrary to what he was now maintaining in evidence before it). That conclusion was reached with the Tribunal having the benefit of hearing from Ms Shona Holding who had said that Mr Gillespie's arrival was in a similar joking manner to normal and there was no conversation between him and Ms Wardle. The Tribunal noted that she was relatively new to the practice and had not formed any particular allegiance to one group or another. This Tribunal has not had the benefit of hearing from Ms Holding and has no basis for coming to a finding of fact in respect of Mr Gillespie's behaviour at odds with the previous Tribunal particularly in circumstances where it notes that Ms Wardle was not, when cross-examined, challenged in terms of her own account of the events of 20 January 2015. Again the Tribunal notes that there was no continuance of any form of acrimony certainly as between the Claimant and Ms Wardle through the remainder of the day.

3.42. The Claimant as noted as part of her phased return attended work, when she came into the office, at around 10am so that whilst there were frequent comings and goings of the staff there, she might find herself effectively beaten to an available desk by others who started earlier.

3.43. However, her evidence to the Tribunal was that there was no further occasion in her employment with the Respondent that she was not able to find a workstation to sit at. The Claimant said indeed that she *"did invariably sit at [her] desk after that point."* Indeed, whilst the Claimant may have on an odd occasion from January to April 2015 sat at another workstation, the evidence is that she habitually found the workstation she had previously sat at to be free and worked from it. As already noted, the new role of 'Heads of' involved individuals at that level working from all of the surgeries routinely such that there would be occasions when neither Ms Wardle nor indeed Ms Winterbottom, who was also subject to the 'hot desking' arrangement, nor Ms Davidson would be at the Westcliffe Surgery coinciding with the Claimant.

3.44. The Claimant reported that she felt unwell on 30 January and was told by Ms Winterbottom to take the day off. Ms Winterbottom asked Ms Wardle to complete a further occupational referral. Ms Wardle's own evidence was that she understood from conversations with the Claimant herself that the Claimant was *"struggling"* at work due largely to fatigue issues.

3.45. The Tribunal notes at this stage that on 23 January 2015 Mr Gillespie did not attend work and as a consequence of what amounted, in the Respondent's view, to repeated failures to comply with sickness attendance policy and notify absences he was invited to a disciplinary meeting. Mr Gillespie reacted by emailing Ms Winterbottom questioning whether the disciplinary hearing was *"a joke."* He concluded that he was going to hand in his notice and gave four weeks notice of the termination of his employment.

3.46. Ms Winterbottom responded by email that day saying that she considered Mr Gillespie's reaction to be unhelpful and giving him a cooling off period to consider whether he should withdraw his resignation. Mr Gillespie responded complaining about Ms Wardle who

he said: *"rudely sits at mother's desk and doesn't budge or lift her head up."*

3.47. The Respondent clearly wished to continue with the disciplinary meeting and added to the issues to be considered, Mr Gillespie's reaction to the invitation to the disciplinary hearing. Mr Gillespie duly attended a hearing on 2 February and it was decided by Ms Winterbottom that he be given a final written warning. Mr Gillespie's employment terminated in any event on 28 February 2015 on his resignation. He raised grievances against Ms Winterbottom and was invited to an appeal hearing dealing with the grievance and disciplinary issues which took place on 25 March with. A decision letter was sent dismissing his complaints on 7 April 2015. Mr Gillespie subsequently issued Employment Tribunal proceedings claiming unfair dismissal and unlawful age and sex discrimination. That claim was not heard until the beginning of November 2015.

3.48. Reverting back to the chronology of the Claimant's own situation, she was referred to occupational health on 3 February 2015 and was absent from work for a period of two weeks from around that date, largely related to stress and fatigue.

3.49. Ms Winterbottom took steps to seek to recruit a data quality administrator quickly to assist the Claimant and kept the Claimant informed of this.

3.50. On 26 February 2015 she sent to the Claimant her draft *"Head of"* job description and invited comments. The Claimant did not respond.

3.51. On 24 February 2015 the Claimant had received her pay slip which reflected a period of half pay. She raised this with payroll and Ms Winterbottom and was told that she had exhausted her full sick pay entitlement. The Claimant asked if she could apply some accrued leave to the period of sickness to bring her back up to full pay. Ms Winterbottom told her that: *"it doesn't work like that"* or such similar words.

3.52. Ms Winterbottom explained to the Tribunal that she understood the Claimant to have exhausted her full pay sick entitlement due to the preceding lengthy period of sickness during 2014 when she had been in receipt of full pay throughout.

3.53. The Claimant did not pursue the matter. She accepted before the Tribunal that she did not request to take any days off as paid annual leave. Rather she thought she might have a means of compensating for any loss of pay due to the reduction in sick pay by utilising any accrued holiday entitlement.

3.54. On 6 March 2015 Dr Smith provided a further occupational health report having seen the Claimant on that day. He stated: *"In terms of risk assessments I think that Debbie will need to have an up to date workstation assessment. If this highlights any specific requirements then she may need a dedicated desk … other reasonable adjustments may need to be (i) disabled parking spot; (ii) time to get up at work and stretch and move around, perhaps every half hour."* He made other recommendations including relating to travelling, that it be better for her to do so in good weather and during daylight hours, probably on a

permanent basis. The Claimant when not working from home, the Tribunal notes, was working from 10am to 4pm only.

3.55. The Claimant confirmed in evidence that she at no stage mentioned any difficulty she might have in her actual driving to occupational health. She raised no such difficulty before the Tribunal.

3.56. The Tribunal has noted that the Claimant had raised with Ms Wardle on 20 January a difficulty getting parked.

3.57. Prior to her 2014 absence, the Claimant had possessed a permit obtained by the Respondent for her and others to park on the road adjacent to the Westcliffe Surgery free of charge. However, the Council had since withdrawn such permits.

3.58. At the Westcliffe Surgery the Respondent had seven parking spaces of its own, but those were allocated to the seven resident doctors and Ms Winterbottom as managing partner. They might and indeed were also on occasions used by visiting doctors and other medical practitioners. Sometimes cars had to park across occupied spaces of other doctors blocking them in and there was, the Tribunal finds, a great deal of pressure on those parking spaces.

3.59. Immediately adjacent to these spaces were spaces in a Council 'pay and display' car park. These did include a small number of disabled car parking spaces for blue badge holders. The Claimant was awaiting the processing of an application for a blue badge but told the Tribunal that this was delayed and that in any event at this point the requirement was that an individual be unable to walk 50 metres so that she would not actually have qualified. The Claimant said to the Tribunal that her mobility at the time of her return to work with the Respondent was not as bad as it is now.

3.60. Immediately adjacent to the disabled spaces and indeed still to the Westcliffe Surgery spaces were a significant number of spaces for public use. Whilst the Claimant might have more difficulty in parking there and in the spaces closest to the surgery due to her later start time, the evidence was that she almost always found a space to be immediately available. It is noted that she never again after 20 January 2015 raised any problem with parking as an issue with the Respondent.

3.61. The Westcliffe Surgery adjoined the very large car park of an Asda supermarket where parking was always available, albeit with a limit of two hours free parking unless the vehicle was then moved to another space. Nevertheless its location meant that there was less pressure on the Council's 'pay and display' car park immediately outside the Westcliffe Surgery entrance.

3.62. The Respondent's Shipley surgery was located a relatively short distance away from Westcliffe, effectively at the opposite corner of the same, albeit very large, Asda car park. The Shipley surgery had a larger car park itself than at Westcliffe. It had its own disabled spaces which could have been used at any point by the Claimant regardless of a lack of blue badge status as their use was determined by the Respondent rather than the Council. The Claimant said that she did on more than one occasion use the disabled spaces there, but felt awkward doing so.

Her evidence was that there were some occasions when she was unable to find a space at Shipley and, in such instances, parked behind the surgery in another car park. She said that she had no issue regarding the walking distance from this nearby car park to the Shipley surgery but was lacking in confidence due to the rough pathway which had to be traversed to get to the surgery rather than the availability of an ordinary smooth pavement area. The Tribunal's conclusion, on balance, is that the Claimant could ordinarily find a space in the Shipley surgery car park and, if not, was able to park at this alternative car park at the rear of it. It was put to the claimant in cross-examination that she never raised any complaint about parking at Shipley in reply to which she said that she had *"probably lost the will."*

3.63. Ms Winterbottom met with the Claimant on 6 March. There was a discussion regarding the further occupational health report. The Claimant said she had explained to occupational health that she was suffering from fatigue and struggled with the concept of having no fixed workplace. However she had advised that she now had an agreement that she would have a designated workplace as part of the phased return. Indeed, Ms Winterbottom confirmed her agreement that the Claimant could be based at the Shipley practice and, rather than routinely spending set times working at the other surgeries throughout the working week, would only have to travel to them for meetings. The other 'Heads of' were expected to work one day per week at each different site.

3.64. Also, there were more desk spaces available at Shipley such that the Claimant was to have a permanent workstation there rather than having to 'hot desk'.

3.65. Ms Winterbottom explained to the Tribunal that she also saw the Claimant working from Shipley as a demonstration to other members of staff that the Claimant had indeed changed her role rather than having the Claimant viewed as still continuing in her old position and being bothered with queries which now fell outside her remit. Furthermore, Shipley had more space available to locate members of the Claimant's data team.

3.66. During this meeting the Claimant did not raise any difficulty with car parking and her focus was on having a fixed workplace.

3.67. The Claimant did express feelings of insecurity at the meeting and a confusion regarding the scope of the new job. Ms Winterbottom had made it clear that the Respondent needed someone performing the Claimant's 'Head of' role and wanted that to be the Claimant. However if the Claimant was unable to fulfil that role there were possibly other roles which might be more suitable. The Claimant asked what was available and what the pay might be and Ms Winterbottom explained that that would depend on what the Claimant felt able to do and her hours but that the pay would be commensurate with the activity and responsibility being undertaken.

3.68. The Claimant queried whether the Respondent wanted her *"out"* as she felt uneasy since her return with the many changes and the new structure. Ms Winterbottom emphasised the support given to the

Claimant during her 2014 sickness period and said that she was a valued member of staff. However she noted that the Claimant in her view seemed to be distancing herself and adopting a rebellious mode of: *"I'll show them."* The Claimant was noted as agreeing that this was how she was feeling.

3.69. The notes of this meeting were sent by Ms Winterbottom to the Claimant in early April and the Claimant was asked to sign these off. However the Claimant said that she did not agree with the notes as they were one sided although she was reluctant to put forward any amendments to them as she did not want these to *"come across wrong and it was difficult to word."* She said that she felt that when she was asked to simply email her proposed amendments she felt this was some form of trap and therefore did not respond.

3.70. Ms Wardle wrote to the Claimant by letter of 11 March 2015 stating that further to the latest occupational health report the Respondent *"will make all reasonable adjustments to support you in the workplace."* She then referred to specific paragraphs in the report. Ms Wardle said that clarity would be obtained regarding the reference to duties which shouldn't be undertaken by the Claimant (it was confirmed that the comment related purely to travelling to other sites in the context explained within the report). Ms Wardle stated in the 11 March letter that the Respondent was happy that any travelling be undertaken in good weather and during daylight hours. Ms Wardle then said a workstation assessment would be organised which at present would be for the workplace area at Westcliffe. Dealing with Dr Smith suggesting that a disabled parking spot be considered, Ms Wardle explained that the disabled spaces at Westcliffe were part of the car park owned by the Council. She said, however, that the parking at each of the other medical practices would be investigated. Ms Wardle's evidence before the Tribunal was that indeed she had reviewed the parking arrangement at each practice the Claimant might visit and considered that there was sufficient parking available at each of the surgery sites close to the surgery itself. It was confirmed to the Claimant that there was no issue with her getting up periodically to stretch and move around.

3.71. Also on 11 March the Claimant emailed Ms Winterbottom saying that she had given serious thought to her role since the 6 March meeting and due to her current issues believed she would struggle having to go from place to place on a daily basis. In those circumstances she said she was happy to be based at Shipley.

3.72. On 17 March 2015 Ms Wardle confirmed by email to the Claimant that she had left a workstation assessment form on her desk to complete. Ms Wardle chased the Claimant up for this on 20 and 22 April and then again on 17 June. By a date in late April the Claimant had in fact relocated, as agreed, to be permanently based at Shipley. The Claimant replied that she did not wish to carry out an assessment as she was happy with her workstation. Indeed before the Tribunal the Claimant said that at Shipley she was *"comfortable"* had *"plenty of space"* and a *"fixed place of work."* She expressed herself to be excited with the move and a fixed base where she was able to get a team together.

3.73. The Claimant has never suggested, either during her employment with the Respondent or before the Tribunal, that there was any issue regarding any disadvantage caused by the particular set up of any particular workstation or that she needed any adaptations to the workstation or particular equipment to assist her in her work.

3.74. On 7 and 8 April 2015 an exchange of emails illustrates that Ms Winterbottom had concerns that the Claimant appeared to be working from home outside normal working hours and that it had become difficult to understand when she would be working, not least in terms of her accessibility to others in the team.

3.75. On 8 April 2015 Ms Winterbottom sent to the Claimant a "Heads of" job description. On 10 April Ms Winterbottom met with the Claimant and it was agreed between them that the Claimant's phased return to work which had been extended beyond what had originally been anticipated would now end on 20 April 2015. From that date she would revert from 28 to 34 hours per week attending the office on four and not three days each week albeit still from 10am to 4pm on Tuesday, Wednesday, Thursday and Friday. The remaining 10 hours could be worked at home. The Tribunal finds that there was an element of flexibility as to when the Claimant worked those additional 10 hours, albeit, as just noted, there was some concern that she might be doing those hours at times when she might not be contactable by others and indeed at times in evenings or at weekends which also caused Ms Winterbottom some concern in terms of the Claimant's health and possible adverse effects in terms of her fatigue.

3.76. On 17 and 21 April emails from Ms Winterbottom to the Claimant encouraged her to train others on the data management work. Ms Winterbottom considered that the Claimant could have been delegating more to junior members of staff. The Tribunal notes at this point an email from the Claimant to Ms Winterbottom of 21 April where the Claimant states: *"Just been over to Shipley, the office is fantastic for my team, it will allow us to work closely together, I have arranged for us to make the move next Tuesday … very excited now about the move and being able to put some structures in place!"*

3.77. On 23 April 2015 the Claimant and Ms Winterbottom met for the Claimant's annual appraisal. No appraisal forms were completed in common with the other 'Heads of' appraised by Ms Winterbottom around the same time.

3.78. Ms Winterbottom had heard from other employees that the Claimant was making negative remarks in particular regarding her new role and the structure. One employee had told her of a rumour that the Claimant had encouraged another employee to take action against the Respondent. Ms Winterbottom was concerned about raising this with the Claimant, including in circumstances where Mr Gillespie had resigned from his employment and it was anticipated that he would be taking legal proceedings against the Respondent. In view of this Ms Winterbottom took legal advice which was to the effect that there was no bar on her raising her concerns openly with the Claimant. Ms Winterbottom indeed raised the above matters with the Claimant and said that she was feeling

vulnerable with what the Claimant's son was doing. She said that she was becoming paranoid and thinking *"what master plan does mother and son have against Westcliffe and against her."* She said that the partners felt the same way. The Claimant responded saying that anything her son was doing was independent of herself. The Claimant said she felt she was no longer wanted to the point where she was asking herself whether the partners wanted her out.

3.79. On 24 April 2015 in an effort to reassure Ms Winterbottom and the partners the Claimant sent an email thanking the partners for her bonus, their support through her illness and saying that she had had five happy years working at Westcliffe. The Claimant said that she received a *"lovely"* email from Dr Cuthbert expressing that she was a highly valued member of the team.

3.80. The Claimant's wage paid to her on 29 April in fact included a £2500 bonus, i.e. half of her possible entitlement. Ms Winterbottom accepted before the Tribunal that her communication of the decision to pay the Claimant less than the full bonus was lacking. The Tribunal considers that the Claimant was aware before 29 April of the bonus amount in circumstances where it has already noted the Claimant thanking the partners for her bonus earlier than that date in circumstances where the Tribunal does not accept that this was, as the Claimant said in evidence, a reference to a previous year's bonus and where the Tribunal finds it more likely than not that if the Claimant knew that she was receiving a bonus she would have known at the same time in what amount. It is noted that the Claimant did not raise any complaint about her bonus award at this time.

3.81. In terms of the payment of only 50% of the bonus, Ms Winterbottom said that whilst the IG tool kit had been produced (as was the Claimant's target), the Claimant had received considerable assistance from Oberoi and other managers and that therefore an award which reflected that the attainment of the target was not the Claimant's sole/own achievement was appropriate. On that basis she had determined that it would be fair to give an award of 50%. The Claimant in her own evidence before the Tribunal agreed that she had needed help to achieve the bonus objective over the three month period during which it had to be completed. She also confirmed that the first time she had raised the issue as a matter of complaint was in her subsequent grievance in 2016.

3.82. On 5 May Ms Winterbottom emailed the Claimant her notes of the appraisal meeting. The Claimant disagreed with comments suggesting that the Claimant had simply submitted monthly data and appeared not to recognise the scope of her new role. The Claimant told Ms Winterbottom she disagreed with the notes and was asked to put any amendments she felt ought to be made in writing. The Claimant declined to do so.

3.83. On 10 July the Claimant was upset to receive an email sent to a number of staff members by Ms Winterbottom providing an update on changes to the management team. One of these changes was the departure of Paula Geary who had previously been a partner at the Shipley practice, had become the Respondent's Head of Quality on the acquisition of that

practice but had decided to leave the Respondent's employment in August 2015. The announcement, however, which upset the Claimant was a confirmation that Ms Wardle had been appointed to the role of associate managing partner and Mrs Winterbottom's deputy following a recommendation made by the CQC that there needed to be a formal deputy appointed for Ms Winterbottom.

3.84. Ms Winterbottom did not regard herself as having any deputy other than that the 'Heads of' effectively all deputising for her in their specialist areas. The CQC had identified on an audit a weakness in the Respondent's structure without a designated deputy with particular regard to Ms Winterbottom's status of "registered manager." Ms Winterbottom regarded Ms Wardle as the obvious choice for such role given her corporate governance emphasis and that she had operated before at a strategic level within the NHS.

3.85. She did not consider it necessary to open up the role to a competition between the existing 'Heads of' but that Ms Wardle should simply be appointed as the most suitable person.

3.86. The Claimant was absent due to sickness from 13-28 July 2015 referring in her return to work statement to "malaise" and "fatigue."

3.87. On 11 August the Claimant went to speak to Ms Wardle to register concerns she said she had with her role. Ms Wardle kept a note to the effect that the Claimant was not sure whether she wanted to do the job and that she was receiving requests from people to do work which was not part of her responsibility. Ms Wardle agreed that she would speak to Ms Winterbottom. As a result Ms Winterbottom met with the Claimant on 14 August to discuss the Claimant's issues further. The Claimant reiterated that she had not lost her previous duties and felt she was being bombarded with other work, particularly from the gastroenterology service. Ms Winterbottom's view was that the Claimant had not been developing others and delegating more of her work. The Claimant said that she did not want to carry out the 'Heads of' role. The Claimant said in evidence before the Tribunal that Ms Winterbottom and Ms Wardle *"agreed to remove responsibilities that they agreed did not fall under my remit. At the time, I felt that they had listened to my concerns and I thanked them."* Indeed, Ms Wardle and Ms Winterbottom reviewed the Claimant's job description noting that the Claimant wanted to drop staff management and strategy and focus on SystemOne development. Ms Winterbottom agreed to prepare a revised job description for the Claimant's comments.

3.88. Changes to the Claimant's role were further discussed between the Claimant, Ms Wardle and Ms Winterbottom on 30 September where Ms Wardle had before her at the meeting a draft job description against which she made various notes reflecting the matters discussed. The Claimant told the Tribunal that a new role of SystemOne development manager with no staff responsibility, the same salary but no bonus, as was indeed proposed, sounded fair.

3.89. On 1 October 2015 the Claimant went to see Ms Wardle and confirmed her acceptance of the role. Ms Wardle's evidence is preferred in this regard as being a clear and precise recollection and as being

corroborated by subsequent steps she shortly thereafter took to announce the Claimant's change of role.

3.90. The Claimant had, however, not seen any final form of job description for the new role at that stage. This was given to the Claimant by Ms Wardle on 27 October. However, in line with the Claimant's indication of acceptance on 1 October, Ms Wardle had before 5 October discussed further with the Claimant that she would take over herself line management responsibility for the data team. On 6 October Ms Wardle met with the team to advise them of the changes and that they had come about at the Claimant's request. The Claimant was present at this meeting and commented that she was looking forward to actually doing the work she enjoyed.

3.91. The Claimant said to the Tribunal that when she received her job description she realised she had been *"set up".* She based that conclusion on wording which suggested the role involving the creation of certain documents and templates in circumstances where she had already done the work. Ms Wardle and Ms Winterbottom understood that they were referring to the Claimant's continuing development of the systems and creation of new templates/searches etc which was indeed a continuous task.

3.92. The Tribunal concludes that this perception was not raised by the Claimant at the time and that it is more one reached in hindsight following the identification of her role as at risk of redundancy.

3.93. The Claimant met with Ms Wardle on 17 November clearly feeling unwell and fatigued. The Claimant asked if she could work more hours from home. The Tribunal concludes that this was not a specific request in terms of the exact number of additional hours the Claimant wished to work from home. Ms Wardle challenged her saying that she needed to rest and not work late hours and weekends. Ms Wardle was concerned that the Claimant was at times working late at night and that this might impact on her health. There was a consideration that the Claimant had worked late into an evening in circumstances where she was not then fit the following day to come into the office as she had arranged to do.

3.94. Ms Wardle's primary concerns related to health and she said that she could not agree to the Claimant's request for that reason and where the Respondent's concerns also related to confidentiality issues if the Claimant's son was at home. Confidential information it was believed he had disclosed as part of his own Employment Tribunal claim had created a concern regarding his access to systems. Ms Winterbottom was also consulted regarding the Claimant's request and was of the view that the Claimant still needed to be more visible to members of the data team such that she did not wish to see an expansion of the Claimant's hours worked away from the office environment.

3.95. Ms Wardle asked for the return of the Claimant's signed contract for her new role and the Claimant said she would get it to her.

3.96. On 17 November the Claimant sent an email to Ms Wardle at 7.30pm apologising that she had had to log on to the system to sort out a problem she had started working on for Dr Cuthbert. Effectively the

Claimant in doing so realised and appreciated that Ms Wardle had expressed a concern that the Claimant not work during evenings and explaining why she was having to do so on that occasion immediately after Ms Wardle had in fact raised the issue of concern.

3.97. On 23 November Ms Winterbottom asked the Claimant to spend some time at the newly acquired practice in North Street, Keighley. She told the Claimant that she now wanted to recruit someone else to help the Claimant deal with data management to reflect the expansion of the work – a move indeed designed to assist the Claimant.

3.98. The Tribunal notes in terms of chronology that Mr Gillespie's own Employment Tribunal complaint was heard on 2, 3 and 4 November 2015 with a Judgment sent to the parties dismissing his complaints on 6 November 2015.

3.99. The Claimant maintains that on 1 December 2015 she went to see Ms Wardle to raise some matters on an informal basis which had been troubling her for some time and to seek clarity. This related to whether she had been regarded as having been off sick during 2014 or not.

3.100. There was, during the meeting which ensued, some discussion regarding Mr Gillespie's Employment Tribunal complaint. The Claimant said that she had not wished to raise her matters of concern when Mr Gillespie was pursuing his case and Ms Wardle asked whether she knew he was appealing the Employment Tribunal Judgment.

3.101. On 2 December Ms Wardle sent to the Claimant her note of the conversation they had had confirming that she would treat the concerns as a grievance. The Claimant replied saying that she did not want the matters treated as a grievance, so that Ms Wardle promptly agreed to try to resolve them informally. Ms Wardle's genuine (mis)understanding had been that the Claimant had wanted to raise the matters on a formal basis. Shortly thereafter Ms Wardle did speak to Ms Winterbottom regarding how the 2014 period of sickness had been viewed and then took some time to review the Claimant's file before reaching her own conclusion that the Claimant had been absent due to sickness for this period despite conflicting views having been expressed after the end of that period of absence. Ms Wardle had intended to communicate this to the Claimant but did not have the opportunity prior to the Claimant commencing a further sickness absence period.

3.102. On 7 December Ms Winterbottom emailed the Claimant to say that rather than employ someone else to assist her with the daily tasks as had been communicated to the Claimant a little earlier the Respondents were going to explore buying in some expertise from Oberoi.

3.103. The Claimant was absent due to sickness and, in particular, stress from 10 December 2015.

3.104. On 14 December 2015 the Claimant received an email sent by Ms Winterbottom to a number of members of staff outlining a piece of work being commissioned from Oberoi. This was with reference to patient recalls.

3.105. Around this time the Respondent became aware of funding cuts and looked to review costs at senior management level and whether they might be reduced. The head of patient services role held by Caroline Davidson was identified as potentially redundant. Ms Lorraine Wardle herself was excluded from two partners meetings around this time and was aware that management costs were under consideration which might impact on her own role.

3.106. On 3 January 2016 Oberoi emailed Ms Winterbottom with regards to a second project undertaken on data submissions for payment and informing her that they had come up with a solution that *"will completely automate this for you. Currently there is too much manual time being spent by various staff on this area which impacts man power and accuracy … We will set up the automated system that will take the information into Excel .. Following the development it will can be trained out to the teams and we can look how to train this so across all sites in no more than a day … However this will save a good number of man days every single month as when it is up and running it will merely be a couple of clicks to produce the report – I think Steve has estimated a saving of approximately 15 man days per month."* Discussion continued in terms of widening the data submission automation across other practice areas.

3.107. In addition, from November 2015 the Respondent had enjoyed the services of what was known as a "free good", Michael Hart, provided as an additional resource from the Clinical Commissioning Group free of charge. He had significant IT expertise and had become involved in simplifying templates. Essentially there was a move to use nationally developed and centrally updated templates rather than, as before, the bespoke templates created largely by the Claimant which required continuing review and updating by her or someone else involved in SystmOne development.

3.108. On 11 December 2015 Ms Wardle had written to the Claimant to tell her that she must not undertake any work whilst sick and that the Respondent would remove access to her account if she was. This communication was sent out of concern for the Claimant's own health and in view of the Claimant having previously carried on working during periods of sickness.

3.109. On 31 December Ms Wardle sought a report from the Claimant's GP. This was provided on 5 January 2016 where the Claimant was referred to as struggling from stress and depression.

3.110. Ms Wardle thought that the Claimant's access to the SystemOne and the IT network ought to be suspended given her sick leave appeared to be continuing into the longer term and in view of the Claimant having worked whilst absent due to sickness previously. She contacted the NHS IT service providers to ask that the Claimant's account be suspended together with access to SystemOne. Ms Wardle understood this to have been done. However this did not in fact occur. The Claimant's access to the system was not at this point denied, albeit the Claimant did not seek to access the systems whilst absent during this period of sickness.

3.111. Against the aforementioned background of cuts and the measures initiated by both Oberoi and Mr Hart, the Claimant's role was identified by Respondent as potentially redundant. Ms Wardle was informed of this decision and telephoned the Claimant on or shortly before 18 February 2016 to inform her of this proposal rather than allowing the Claimant to find out for the first time when she received written notification.

3.112. Such written notification was provided by a letter from Ms Wardle dated 19 February 2016 where she advised that because of a significant reduction in funding it had been necessary to review the way they worked. It was then advised that the Claimant's post had been identified as at risk of redundancy. The Claimant was told that she would be invited to a consultation meeting.

3.113. There was further contact on 1 March between the Claimant and Ms Wardle regarding her continued sickness absence and the Claimant was advised by a letter of 8 March that from that date she would be remunerated on the basis of half normal pay in accordance with her contractual entitlement.

3.114. By letter of 11 March 2016 the Claimant wrote to Dr Humphrey stating that she wished to raise a formal grievance about Ms Winterbottom and Ms Wardle. She referred to persecutions she had suffered since her return to work in January 2015 and having been humiliated. She also felt that monies had been withheld and that she had been bullied into roles she did not want. She stated that she was quite happy as the Respondent's assistant practice manager a role she said which had been taken from her without consultation or explanation following her illnesses. She went on to refer to the desk issue and the "paranoid" comment made by Ms Winterbottom. The Claimant also referred to her request to work more hours from home and suggested that Ms Wardle raised the subject of her son at every opportunity.

3.115. Dr Humphrey acknowledged the Claimant's letter in writing on 14 March and enclosed a copy of the Respondent's grievance procedure. She said that the Claimant would have an opportunity to attend a meeting and on 23 March invited the Claimant to a grievance hearing on 12 April where she said that Mrs Fiona Sherburn (an external consultant) would attend as HR representative in circumstances where it was clearly felt inappropriate for Ms Wardle to be involved her being the subject of part of the Claimant's grievances. It was understood at this stage that Mr Ray Alderman would attend as the Claimant's union representative.

3.116. The Respondent decided not to progress with the redundancy proposals and consultation with the Claimant until her grievance issues had been resolved.

3.117. The Claimant duly attended the grievance meeting on 12 April together with Mr Alderman representing her. There was a full discussion regarding the Claimant's sickness and holiday pay issues. The Claimant also referred to difficulties on her return to work and then said that she had been "stitched up" in terms of the offer of the new SystemOne development manager role which was now at risk of redundancy.

3.118. The Claimant was given an opportunity to comment on the notes that she took and indeed the Respondent agreed to add additional matters of complaint which the Claimant then raised but which had not been brought up by her at the meeting.

3.119. One of the passages added was an account of a section of the meeting where it was recorded that the Claimant asked Mr Alderman if he would like to say anything. Mr Alderman is recorded as stating that he was there to act in the Claimant's best interests and had a lot of concerns feeling it would be very difficult for the Claimant to return to work considering the circumstances and that they may need to reach a compromise agreement. He said however that they would hopefully know a better way forward once the written report was issued in respect of the grievances.

3.120. Mrs Sherburn's uncontested evidence was that she spoke to Mr Alderman who said that his suggestion was of some form of settlement agreement and that she replied that they would need to pick this up outside of the meeting. This conversation occurred in the Claimant's presence.

3.121. Around a month after the grievance meeting Mrs Sherburn met with Mr Alderman alone in a branch of Café Nero in Leeds. They spoke for about an hour. Mrs Sherburn sensed that Mr Alderman was trying to support the Claimant but was struggling to know how he could resolve the issues. He said he wondered if a settlement agreement where the Claimant would leave the Respondent's employment might be something she would go for. They then talked around some figures which Mrs Sherburn stated was on a 'without prejudice' basis and it was clear to Mrs Sherburn that Mr Alderman was looking for something which equated to at least six months salary.

3.122. After this meeting Mrs Sherburn spoke to Ms Winterbottom to see whether or not she felt any offer to be appropriate. She did and Mrs Sherburn reverted to Mr Alderman on the basis that he would speak to the Claimant.

3.123. The Claimant's evidence is that Mr Alderman came to her home on 23 April 2016 and raised with her that the Respondent was offering her a settlement sum. She said that she was upset because she believed the Respondent did not wish to look into her grievances and that this confirmed that her redundancy was pre-determined. It is understood that the Claimant or her son made a recording of this conversation albeit without Mr Alderman's knowledge. No recording or transcript thereof was before the Tribunal.

3.124. On 26 April 2016 the Claimant's access to the Respondent's systems was "terminated". Shortly prior to that date Ms Wardle's evidence was that she had discovered from speaking to the Claimant's colleagues that there were a significant number of items recorded against the Claimant's name as things to do. This demonstrated that despite her belief regarding the suspension of the Claimant's account in January 2016, this had not in fact occurred. Ms Wardle therefore contacted the NHS IT services department again who issued her with a form which she populated with the relevant information and returned. Her understanding

was that whilst the form was headed "termination of network account" this was also the form to be used for a suspension of an account and that this is in fact what was being actioned. In fact the Claimant's account was terminated which Ms Wardle said had never been her intention. Her reason for re-contacting IT services was, as it had been in January, to ensure that the Claimant could not access work systems and indeed carry out work during her period of sickness.

3.125. Mrs Sherburn interviewed Ms Winterbottom and separately Ms Wardle at length on 6 May 2016 raising various questions with them which arose out of the Claimant's grievance. This included questioning the rationale for the Claimant's redundancy in response to which Ms Winterbottom explained the trigger being cuts to funding and the identification of Caroline Davidson's role as being at risk but not the Claimant's. However, the work conducted by Oberoi and Mr Hart and the consequential move to using a central repository of templates rather than to develop and maintain their own meant that the entire SystemOne manager job *"has vastly depleted over a very short space of time".* As regards when the Claimant was expected to work her agreed 10 hours from home, Ms Winterbottom said that it was up to the Claimant to decide and it was originally assumed that she would perform them on a Monday i.e. a day when she was not required to attend the office albeit the Respondent didn't really mind as long as the work got done and it didn't impinge on her office hours – Ms Winterbottom referred, as an example of hours which would be problematical, to the Claimant working during the night.

3.126. It is noted that at this stage that whilst the Claimant's earlier sick certificates from 9 December onwards referred to stress, fatigue and depression one issued on 18 May 2016 referred to work related stress.

3.127. Dr Humphrey received the notes of Mrs Sherburn's investigation and considered what those interviewed had said together with the Claimant's own expanded grievance notes and relevant supporting documentation. Her evidence, which the Tribunal accepts, is that she spent a considerable amount of time in considering her conclusions before issuing an outcome letter dated 27 May 2016 which seeks to address the Claimant's points of grievance over a closely typed 11 page explanation.

3.128. Dr Humphrey upheld the Claimant's grievance that her absence during 2014 had been treated as sick leave. She accepted the Respondent's approach might have been confusing and said that she would ensure that the Claimant was paid for any untaken holiday entitlement which arose from this period. Dr Humphrey also upheld the Claimant's grievance regarding her receipt of only 50% of her bonus. She noted that the Claimant said that the reduction was unfair given that when she accepted help and support she did not realise that this would impact on her bonus. This element of the Claimant's grievance was upheld.

3.129. Dr Humphrey did not however agree that there had been a lack of consultation regarding the Claimant's loss of the assistant practice manager role effective when she returned to work in January 2015. She believed that the Claimant was aware of the changes made to her role and did not object to them. Dr Humphrey also rejected the Claimant's

grievance that she had been treated badly on her return to work in January 2015. Dr Humphrey referred to adjustments having been put in place as recommended by occupational health which included the provision of a car parking pass. This was not an accurate statement and represented a misunderstanding of the difference between the cancelled car parking permit which prior to the Claimant's sickness had allowed her to park nearby on the road and the availability of the Council 'pay and display' car park next to the Westcliffe surgery. Dr Humphrey also referred to moves taken by the Respondent to undertake a workstation assessment which the Claimant failed to engage with, stating that then the Claimant made clear that she was happy with her workstation in Shipley.

3.130. Dr Humphrey next dealt with the Claimant's request to work more hours from home. She noted that the existing 10 hours per week could be worked in a flexible manner. She recounted that Ms Winterbottom had stated that she was required to work across sites with face to face meetings to discuss issues and development needs for SystemOne. She considered that there had been a lack of communication as to the Respondent's reasons for the decision and that on that basis the grievance should be partially upheld. Her grievance regarding a lack of referral for physiotherapy was not upheld nor did Dr Humphrey uphold part of the grievance regarding Ms Wardle raising the subject of the Claimant's son. She noted in her findings that the first occasion (of only two where she found that Mr Gillespie was raised) was related to a confidentiality issue and the second related to Mr Gillespie's Tribunal appeal in circumstances where the appeal mentioned correspondence between the Claimant and Ms Wardle. This grievance was not upheld.

3.131. A grievance relating to the provision of Excel training was rejected. A separate grievance about a lack of clarity regarding times the Claimant was expected to work her contracted 10 hours from home was rejected in circumstances where Dr Humphrey thought that the Respondent had been supportive in terms of the amount of flexibility granted.

3.132. Dr Humphrey did uphold an element of the Claimant's grievance where she complained that Ms Winterbottom had made a statement that the Claimant had only managed to submit the monthly data return since her return to work. Ms Winterbottom, she considered, had made this comment relating to the early days of the Claimant's absence and that she did acknowledge that other work had been completed.

3.133. Dr Humphrey said that Ms Winterbottom had acknowledged that the Tribunal case of Mr Gillespie had created some tensions but there was no evidence to suggest the Respondent had treated her badly and on the contrary she thought significant efforts had been made to retain the Claimant's skills and to re-design her job in an effort to play to her strengths. She considered that the Respondent had tried to be very accommodating regarding the Claimant's disability. As regards the Claimant not signing to agree the contract of SystemOne development manager, she concluded that the evidence was that the Claimant had no issues with the contract and was happy to work in that new role.

3.134. Dr Humphrey concluded by making a number of recommendations of a policy and practice nature which had originated from the Claimant's grievances and confirmed some changes to the payment arrangements.

3.135. Dr Humphrey accepted that she did not make any specific finding regarding the eleventh numbered grievance issue raised by the Claimant which questioned why Ms Winterbottom had instructed Ms Wardle not to move from her desk leaving the Claimant with nowhere to sit. Dr Humphrey maintained this was an accidental omission in circumstances where she thought she had dealt with the issues regarding the Claimant's return to work after her 2014 sickness already.

3.136. The Claimant submitted detailed grounds of appeal against Dr Humphrey's conclusions in a letter of 14 June 2016. This was acknowledged by Dr Humphrey's letter of 20 June seeking to arrange a hearing at stage 3 of the grievance process before Dr Pickering accompanied by another external HR consultant, Helen Farrar, on Thursday 30 June. The Claimant responded on 21 June regarding the location of the appeal at the Willows which she referred to as being on the other side of Bradford and raising difficulties regarding travelling longer distances. She also said that she wished to be accompanied by Mr Gillespie. Dr Humphrey responded re-arranging the hearing for Shipley. She stated that as Mr Gillespie was neither a fellow worker nor trade union representative he did not fall within the categories of persons allowed to accompany the Claimant. She agreed however that he could accompany the Claimant in his capacity as her carer on the basis that he would not be able to take part in the hearing. By this stage the Claimant had noted that her email access had been disabled and Dr Humphrey stated that this had been done because of the length of time she had been absent from work. It is noted that the Claimant sought to make various subject data access requests at around this time as well.

3.137. The Claimant wrote again on 23 June asking if Mr Gillespie might represent her and Dr Pickering responded holding the Respondent's original line. The Claimant wrote further on 27 June enclosing a witness statement of Mr Gillespie.

3.138. On 29 June Dr Humphrey wrote the Claimant consequential on her own grievance conclusions advising her that she would be paid the sum of £3993.30 in respect of 29 days of holiday entitlement from 2017 and an amount of £1500 representing 50% of the bonus award. This latter figure was £1000 short. The Claimant was told that a special payment was being made with her June salary for these amounts.

3.139. The Claimant duly attended the grievance appeal hearing on 30 June accompanied by a colleague Ms Sharon Elliott and Mr Gillespie as her carer. Over approximately a three hour meeting Mr Pickering went through the Claimant's continuing complaints and on a number of points noted that he would look into what she had said further.

3.140. Dr Pickering asked Helen Farrar to undertake the further investigation required as he was absent then on leave. She spoke again to Ms Wardle and Ms Winterbottom. From Dr Pickering's evidence it was clear that he put significant reliance upon Ms Farrar to investigate the issues and advise as to the appropriate outcome. She indeed drafted a

provisional outcome letter and provided it to Dr Pickering for his consideration.

3.141. He wrote to the Claimant on 14 July with his outcome which he stated represented the conclusion to this grievance.

3.142. As regards the 2014 absence he concurred with Dr Humphrey that this ought to have been treated as sickness. He agreed further that if her pay was halved in February 2015 for 2 weeks then this should not have been the case and that she should now be paid in full. He noted however that in the same period the Claimant was paid full pay during her phased return to work when he found that she should have been on reduced pay such that her back pay would be adjusted accordingly. This resulted in a deduction from the amounts now assessed as due to the Claimant of £1652.40 which represented a six hour per week shortfall in her working hours as against her normal contractual hours in the phased return period from January to March 2015. It is noted that by a letter of 8 July 2016 Ms Wardle had already acknowledged that a mistake had been made in the bonus calculation and that a further payment of £1000 would be made to the Claimant, bringing the total bonus paid to her up to the full unpaid entitlement of £2500.

3.143. As regards the change of the Claimant's role from assistant practice manager to head of data quality, on consideration Dr Pickering considered that there might have been misunderstandings between a potential role of practice support manager and the new head of data and quality during discussions in 2013 and 2014 and that on that basis her grievance was partially upheld. However he considered that the Claimant had accepted the subsequent further role of SystemOne development manager.

3.144. Dr Pickering then looked at the matters arising out of the Claimant's return to work and her feeling of poor treatment in respect of the desk, car parking arrangements, workstation assessment, travel requirements and occupational health reports. There was found to be no evidence of any intention to humiliate the Claimant in respect of the desk situation and that a practice of 'hot desking' had recently been introduced. He recognised that Council permits had been removed prior to the Claimant's return to work but considered that there was sufficient parking at Westcliffe and certainly at Shipley. He noted that the Claimant had not completed a workplace assessment and had then stated that she was happy with the arrangements at Shipley. He noted that the Claimant's requirement to travel was reduced. He believed that Dr Humphrey had unintentionally omitted to specifically deal with the Claimant's issue regarding her desk.

3.145. He agreed with Dr Humphrey that the refusal of additional hours working from home could have been communicated better. He also agreed that there had been two occasions when Ms Wardle had referred to the Claimant's son and these were appropriate. As regards the appraisal undertaken by Ms Winterbottom and the implication that the Claimant's work had been limited since her return he noted following Dr Humphrey's findings that this element of her grievance was upheld that she had already been apologised to for any upset caused by the comments.

3.146. Finally as regards access to the IT systems Dr Pickering said that restricting email access when someone off sick was normal practice albeit he could not inform the Tribunal how he had learned of that practice, such that it was clear that this had formed part of Helen Farrar's belief albeit evidence for that does not appear on the face of the documents arising out of her further investigatory meetings.

3.147. By this stage the Respondent resolved to recommence the redundancy consultation process, but felt that this should not involve Ms Winterbottom and Ms Wardle given the recent grievances against them and therefore Mrs Sherburn was asked to conduct a redundancy consultation meeting with the Claimant. She spoke to Ms Winterbottom and Ms Wardle in advance of that meeting regarding the 'at risk' situation and any possible alternatives.

3.148. By letter of 18 July 2016 she wrote to the Claimant inviting her to a consultation meeting to be held on Friday 29 July. The Claimant responded by letter of 27 July raising a number of questions including seeking further explanation of the reason for her redundancy. She also on 27 July wrote to Dr Pickering with comments on his appeal outcome.

3.149. Mrs Sherburn duly met with the Claimant accompanied by Mr Gillespie to discuss further the redundancy situation with her. Mrs Sherburn felt somewhat vulnerable at the meeting considering that the Claimant and her son were not engaging constructively with her and were quick to misconstrue what she was saying. She wrote to the Claimant by a letter dated 29 July confirming what had been discussed which included reference to funding cuts and an explanation of how matters had moved on regarding the data management system. She said that clinical tree work had been undertaken by Mr Hart who had also assisted in devising a new way of making the process of recalls more efficient and streamlined across all the practices. She referred also to SystemOne template development and that many of the Respondent's own bespoke templates had been replaced by those from the central repository. She said that the Respondent's plan to migrate to the full use of that free facility negating the need to develop and maintain their own templates.

3.150. Mrs Sherburn noted the Claimant's opinion that the redundancy exercise was a sham.

3.151. Mrs Sherburn also confirmed discussions regarding offers of assistance to gain alternative employment elsewhere within the NHS or otherwise. She recorded that they had agreed to meet again on 15 August for a further consultation meeting.

3.152. Ms Sherburn discussed with Ms Wardle possible alternative roles and Ms Wardle mentioned that all she had identified as potentially available were some receptionist positions which were vacant. These were not mentioned to the Claimant. The Claimant in her evidence before the Tribunal was clear that she would not have regarded those as suitable roles in terms of both their job content and a likely significant reduction in pay.

3.153. The Claimant wrote to the Respondent's partners on 14 August 2016 informing them that she would not be attending the redundancy

consultation meeting and was resigning from her employment with immediate effect. She said that following the outcomes of her grievances she had lost all trust and confidence in the organisation. She referred to failures on Ms Wardle's and Ms Winterbottom's part from her return to work in January 2015 starting with the taking away of her desk leaving her feeling humiliated and embarrassed. She said that she could no longer put up with *"this ill treatment*".

4. **Applicable law**

4.1 In order to bring a claim of unfair dismissal an employee must have been dismissed. In this regard the Claimant relies on Section 95(1)(c) of the Employment Rights Act 1996 which provides that an employee is dismissed if she terminates the contract under which she is employed (with or without notice) in circumstances in which she is entitled to terminate without notice by reason of the employer's conduct. The burden is on the Claimant to show that she was dismissed.

4.2 The classic test for such a constructive dismissal is that proposed in **Western Excavating (ECC) Ltd v Sharp 1978 IRLR 27CA** where it was stated:

"If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed. The employer is entitled in those circumstances to leave at the instant without giving any notice at all or, alternatively, he may give notice and say he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. Moreover he must make up his mind soon after the conduct of which he complains; or, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract".

4.3 The claimant asserts there to have been a breach of the implied duty of trust and confidence arising out of the unlawful discrimination/victimisation she claims to have suffered.

4.4 In terms of the duty of implied trust and confidence the case of **Malik v Bank of Credit and Commerce International 1997 IRLR 462** provides guidance clarifying that there is imposed on an employer a duty that it *"will not without reasonable and proper cause conduct himself in a manner calculated [or] likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee".* The effect of the employer's conduct must be looked at objectively.

4.5 The Court of Appeal in the case of **London Borough of Waltham Forest v Omilaju 2004 EWCA Civ 1493** considered the situation where an employee resigns after a series of acts by her employer.

4.6 Essentially, it was held by the Court of Appeal that in an unfair constructive dismissal case, an employee is entitled to rely on a series of acts by the employer as evidence of a repudiatory breach of contract. For an employee to rely on a final act as repudiation of the contract by the employer, it

should be an act in a series of acts whose cumulative effect is to amount to a breach of the implied term of trust and confidence. The last straw does not have to be of the same character as the earlier acts, but it has to be capable of contributing something to the series of earlier acts. There is, however, no requirement for the last straw to be unreasonable or blameworthy conduct of the employer, but it will be an unusual case where perfectly reasonable and justifiable conduct gives rise to a constructive dismissal.

4.7 If it is shown that the Claimant resigned in response to a fundamental breach of contract in circumstances amounting to dismissal (and did not delay too long so as to be regarded as having affirmed the contract of employment), it is then for the Respondent to show a potentially fair reason for dismissal.

4.8 The duty to make reasonable adjustments in this case arises under Section 20(3) and (4) of the 2010 Act which provides as follows (with a "relevant matter" including a disabled person's employment and A being the party subject to the duty):-

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

(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."

4.9 The Tribunal must identify the provision, criterion or practice applied/relevant physical feature, the non disabled comparators and the nature and extent of the substantial disadvantage suffered by the Claimant. A substantial disadvantage is one that is more than minor or trivial and it must arise from her disability.

4.10 The case of **Wilcox –v- Birmingham Cab Services Ltd EAT/0293/10/DM** clarifies that for an employer to be under a duty to make reasonable adjustments he must know or reasonably ought to have known both firstly that the employee is disabled and secondly that she is disadvantaged by the disability in the way anticipated by the statutory provisions.

4.11 Otherwise in terms of reasonable adjustments there are a significant number of factors to which regard must be had which, as well as the employer's size and resources, will include the extent to which the taking the step would prevent the effect in relation to which the duty is imposed. It is unlikely to be reasonable for an employer to have to make an adjustment involving little benefit to a disabled person.

4.12 In the case of The **Royal Bank of Scotland –v- Ashton UKEAT/0542/09** Langstaff J made it clear that the forerunner legislation, the Disability Discrimination Act, when it deals with reasonable adjustments is concerned with outcomes not with assessing whether those outcomes have been reached by a particular process, or whether that process is reasonable or unreasonable. The focus is to be upon the practical result of the measures which can be taken. Reference was made to Elias J in the case of **Spence –v- Intype Libra Ltd UKEAT/0617/06** where he said: *"The duty is not an end in itself but is intended to shield the employee from the substantial disadvantage that would otherwise*

arise. The carrying out of an assessment or the obtaining of a medical report does not of itself mitigate, prevent or shield the employee from anything. It will make the employer better informed as to what steps, if any, will have that effect, but of itself it achieves nothing."

4.13 If the duty arises it is to take such steps as is reasonable in all the circumstances of the case for the Respondent to have to take in order to prevent the PCP/physical feature creating the substantial disadvantage for the Claimant. This is an objective test where the Tribunal can indeed substitute its own view of reasonableness for that of the employer. It is also possible for an employer to fulfil its duty without even realising that it is subject to it or that the steps it is taking are the application of a reasonable adjustment at all.

4.14 The claimant complains of direct discrimination and harassment.

4.15 In the Equality Act 2010 direct discrimination is defined in Section 13(1) which provides: *"(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others."*

4.16 *"Disability"* is one of the protected characteristics listed in Section 4. Section 23 provides that on a comparison of cases for the purpose of Section 13 *"there must be no material difference between the circumstances relating to each case".*

4.17 The Act deals with the burden of proof at Section 136(2) as follows*:-*

> *"(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravenes the provision concerned, the court must hold that the contravention occurred.*
>
> *(3) But subsection (2) does not apply if A shows that A did not contravene the provisions".*

4.18 The complaint of harassment is brought pursuant to Section 26 of the Equality Act 2010 which states:

"(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.……

(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."

4.19 Harassment will be unlawful if the conduct had either the purpose or the effect of violating the complainant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.

4.20 A claim based on "purpose" requires an analysis of the alleged harasser's motive or intention. This may, in turn, require the Employment Tribunal to draw inferences as to what the true motive or intent actually was. The person against whom the accusation is made is unlikely to simply admit to an unlawful purpose. In such cases, the burden of proof may shift from accuser to accused.

4.21 Where the Claimant simply relies on the "effect" of the conduct in question, the perpetrator's motive or intention – which could be entirely innocent – is irrelevant. The test in this regard has, however, both subjective and objective elements to it. The assessment requires the Tribunal to consider the effect of the conduct from the complainant's point of view. It must also ask, however, whether it was reasonable of the complainant to consider that conduct had that requisite effect. The fact that the Claimant is peculiarly sensitive to the treatment accorded her does not necessarily mean that harassment will be shown to exist.

4.22 Harassment and direct discrimination complaints are mutually exclusive. A claimant can not claim that both definitions are satisfied simultaneously by the same course of conduct – *'detriment'* does not include harassment (Section 212(1) of the 2010 Act).

4.23 The Claimant also complains of victimisation pursuant to Section 27 of the Equality Act 2010 which provides:-

"(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"

4.24 Subsection (2) defines what a protected act may be which includes *"making an allegation (whether or not express) that A or another person has contravened this Act".* A 'bad faith' exclusion from protection is provided for in subsection (3). The reason for the detriment must be that the Claimant has done a protected act.

4.25 The Tribunal notes in the context the burden of proof provision at Section 136(2) of the 2010 Act (relevant to the Claimant's complaints of direct discrimination, harassment and victimisation) the guidance set out in the case of **Igen v Wong [2005] ICR 935.** More recently the Supreme Court in **Hewage v Grampian Health Board [2012] UKSC 37** made clear that it is important not to make too much of the role of the burden of proof provisions. They will require careful attention where there is room for doubt as to the facts necessary to establish discrimination. However, they have nothing to offer where the tribunal is in a position to make positive findings on the evidence one way or the other. The Tribunal can look as a first stage to the employer's "reason why", recognising that it is not necessary for the discriminator to be consciously aware that he or she is victimising.

4.26 The right not to suffer an unauthorised deduction from wages is contained in Section 13 of the Employment Rights Act 1996 and Part II of that Act.

4.27 Applying the relevant legal principles to the facts as found, the Tribunal reaches the following conclusions.

5. **Conclusions**

5.1. The Tribunal considers firstly the Claimant's complaints of a failure to make reasonable adjustments. The first of these relates to the provision, criterion and/or practice contained within the requirement in the first changed role of 'Head of' given to her in January 2015 that she drove around the Bradford district whereas her previous work had not had such a driving element. The Claimant contends that this requirement put her at a disadvantage because of her disability arising out of both her cancer and its treatment and her stroke in that she found driving to be both fatiguing and painful.

5.2. The Claimant's evidence however was not supportive of such a disadvantage and the Claimant was clear that when she was being required to drive to different sites the issue was in how she got from her car to the surgery and back again, rather than any difficulty in actually completing the drive. Throughout the period from the Claimant's return to work following her 2014 sickness to her resignation she drove each day to work and did so without any evidenced problems.

5.3. Whilst the Claimant might be required to visit a number of different surgeries the distances involved were not always great and indeed at most added an extra journey of around 7/8 miles and obviously the return journey from such more outlying surgery. The Claimant was at no stage pressurised to drive to work in poor weather conditions or when it was dark. Indeed driving in darkness was unlikely given the Claimant's working hours being from 10am to 4pm only, particularly once the Claimant had got past the winter period following her return to work in January 2015. Furthermore, if there had been any disadvantage to the Claimant this was substantially removed by the agreed move of the Claimant to the Shipley surgery which was to be regarded as her permanent base. Instead of being required to travel on a routine basis visiting each different surgery at least on one day per week she could treat Shipley as her permanent base being required to travel only when required for specific meetings or to deal with specific issues which arose. No duty to make reasonable adjustments therefore arose in respect of any driving requirement and in any event the Respondent certainly by late April 2015 had altered the Claimant's working arrangements such that the requirement for her to drive was substantially reduced and thereafter there was certainly no disadvantage caused to her arising out of her disability.

5.4. The Claimant next raises as a failure to make a reasonable adjustment the failure to provide her with a proper or permanent workstation upon her return to work. In fact, on the evidence and particularly the Claimant's own evidence, the issue was never regarding a 'proper' workstation in the sense that she needed a workstation with a particular layout or with any adaptations or additional equipment provided. The

issue was solely that the Claimant maintained that she was at a disadvantage by not having a permanently allocated desk.

5.5. This must relate to the period of the return to work from January to late April 2015 in Westcliffe as we know that the Claimant thereafter worked at Shipley where there was sufficient desk space available such that the Claimant worked permanently from a fixed workstation.

5.6. However, even at Westcliffe the evidence is only that on one single day the Claimant attended work to find that there was no immediately available unoccupied desk for her to work at. Clearly the Claimant was disadvantaged if she was required to stand for lengthy periods waiting for an available desk, but the reality was that she stood waiting for a resolution for a matter of minutes, indeed sitting down in the general office area, prior to the practice nurse quite quickly offering her own desk location to the Claimant to work from which the Claimant took up for the remainder of that working day. Thereafter on the evidence there was not one occasion where the Claimant did not immediately find a desk available from which she could and did work from. Indeed the Claimant said that thereafter she invariably sat at the desk which she always regarded as 'her' desk. The Claimant had been requested in March 2015 to complete a workstation assessment but took no steps to do so and in particular at Shipley with her dedicated desk from late April 2015 notifying Ms Wardle that there was no need to complete one as she was happy with the arrangements there. Again the Tribunal does not conclude there to have been any failure to make a reasonable adjustment in respect of desk arrangements.

5.7. The Claimant next in respect of the requirement of her to drive maintains that there was a failure to make a reasonable adjustment in providing a parking space close to the surgery door to limit the amount of walking from her car to the surgery. Again the Claimant maintains in her pleaded case that this put her at a substantial disadvantage because of her left sided weakness and limitations affecting her mobility and also the fatigue she was suffering from. However, the evidence and the Tribunal's findings of fact do not support such disadvantage. The Claimant only ever raised as a matter of concern with the Respondent parking and her inability to park on one occasion which was when she arrived in the office for work on 20 January 2015 to find Ms Wardle sitting at 'her' desk. Essentially the point she raised was that she had to drive round the Council car park adjacent to the surgery for a few minutes before a space became free.

5.8. The Tribunal's findings are such that whilst the Claimant was not provided at Westcliffe with a parking space immediately adjacent to the doctor's surgery, there was parking available a very short further distance away from the surgery in circumstances where the Claimant's evidence was that she did not struggle with a slightly longer walk to the surgery. She referred to not qualifying for a disabled blue badge because of her ability to walk more than the maximum allowable distance to attain a blue badge saying that her ability to walk had not been as bad when she returned to work with the Respondent as it was now. The Claimant again was able habitually to find quickly a parking space in the car park immediately outside the Westcliffe surgery and indeed habitually

at Shipley and any other site she visited. There were simply occasions when she could not find a space at Shipley and when she then parked in a separate car park to the rear of the surgery relatively nearby and which caused her no difficulty in terms of the distance albeit she was nervous about walking across an unpaved rough pathway. Essentially, the Claimant in this complaint has attached great weight to the comment of occupational health that there ought to be specific parking provision for the Claimant but in circumstances where the Claimant was not at a disadvantage if there was available to her, reasonably close by, a parking spot which was, on the facts, indeed the case.

5.9. The Claimant's final complaint alleging a failure to make reasonable adjustments relates to the requirement to attend the office in circumstances where the Claimant maintains that a reasonable adjustment would have been to permit her to extend her working day by an extra hour to allow her to work a day less in the office and an additional three hours from home. The Claimant contends that the requirement to attend the office put her at a disadvantage because of a need to travel to work, her having to walk to the surgery often from a distant car parking space and the act of getting up and getting herself ready was fatiguing in itself. Firstly the Tribunal has heard no evidence whatsoever regarding the Claimant being caused fatigue by her getting up and getting ready for work and notes that on the days the Claimant did attend the office it had been agreed and the Respondent was happy to continue with an arrangement whereby she started work at 10am rather than the earlier normal start time. Furthermore, the Tribunal has already found that the Claimant had no particular disadvantage by reason of her disability in travelling to the office nor indeed in the walk she had from her car to the surgery which was usually indeed from a nearby car parking space. The Claimant was not on the facts disadvantaged as a disabled person by this arrangement such that the duty to make reasonable adjustments does not arise.

5.10. The evidence before the Tribunal was that the Claimant in fact made an open ended request to work more hours from home rather than simply three additional hours. In any event, the Tribunal does not regard such a change in arrangement to be reasonable in that the Respondent had a genuine and real interest in the Claimant being visible and accessible to other members of staff and including in particular members of her team. The Respondent also had a legitimate concern that when the Claimant worked hours from home she did so at times when she would not be accessible to other members of staff and indeed at times which might be problematically in terms of her own health and well being. The Respondent had already allowed the Claimant a revised working pattern which reduced the time she spent at any of its practices. There was in this respect no failure in any duty to make a reasonable adjustment.

5.11. The Tribunal next looks at the 18 pleaded detriments as potential complaints of disability related harassment, direct disability discrimination and/or victimisation.

5.11.1. The Claimant complains about her new role on her return to work in January 2015. This predates any protected act and therefore does not sound as a potential complaint of victimisation.

The Claimant maintains that the new role was poorly thought through and given to her without consultation or consideration including a requirement that she drive as part of the role. The Tribunal's findings of fact are that there was significant discussion with the Claimant over an extended period prior to her return to work regarding her change in role and in particular a new management structure where she would be one of a number of senior managers reporting to Ms Winterbottom each responsible for their own specialist areas. The Claimant was also well aware that the role involved working at and from all of the practices in the expanded group of GP surgeries the Respondent now operated. It followed inevitably from that that the Claimant would be required to drive from site to site and to different sites on different working days. Indeed, that was made absolutely clear to her by Ms Winterbottom. The Claimant was treated in exactly the same manner as the other members of staff at a 'Heads of' level and the requirement that she drove had nothing at all to do with the Claimant as a disabled person but was solely because of the change in management structure and the expanded nature of the Respondent's activities.

5.11.2. The Claimant makes a complaint regarding the removal of a permanent workstation. Again, this predates any alleged protected act. Furthermore, there was no less favourable treatment in that none of the 'Heads of' or indeed Ms Winterbottom had a permanent workstation in circumstances where there was a requirement that they all 'hot desk'. This again was against a background of the individuals moving from practice to practice and having, it was envisaged, no fixed base. Again, the removal of the Claimant's permanent workstation at Westcliffe was an act completely unrelated to her disability and solely due to a lack of available desk space within the Westcliffe Surgery for all of the 'Heads of' and Ms Winterbottom and in circumstances where there was a requirement that they work from different sites on a day to day basis.

5.11.3. The Claimant's next complaint relates to the reduction of half pay during her absence in February 2015. Again this predates any alleged protected acts save that the Claimant maintains that after Mr Gillespie raised his concerns in January 2015 – his alleged angry reaction to the Claimant's treatment on 20 January – the Respondent believed that the Claimant might do a protected act. On the Tribunal's findings, there was no raising of concerns on that day as alleged. The Tribunal notes however that Mr Gillespie did subsequently raise as a complaint the treatment of the Claimant albeit by/around then the Claimant had raised the need for reasonable adjustments with Ms Winterbottom herself such that Mr Gillespie's suggested intervention adds little. He did , however, also pursue his own discrimination complaint before the Employment Tribunal which was not unrelated to how he viewed the Respondent's treatment of the Claimant. Throughout its deliberations, the Tribunal has been mindful of the contention that the Respondent believed that the Claimant may do

a protected act and whether this influenced the Respondent in the actions it took. It should be said that it has done so despite a lack of exploration with the Respondent's witnesses as to the existence of any such belief. As is clear in the subsequent findings of the Tribunal, it has been possible in many incidents to positively identify the Respondent's reason for its treatment of the Claimant.

The Tribunal has found no facts from which it could conclude that the Claimant's reduction in pay for this two week period was less favourable treatment because of her disability in the sense that any employee who had been absent on long-term sick for a period of around 10 months in the preceding year and was regarded as having exhausted sick pay would have been treated in exactly the same way. Indeed, in terms of the reason for this treatment of the Claimant, the Tribunal is again clear that this was completely unrelated to the Claimant's disability. Her treatment arose out of a confusion in Ms Winterbottom's mind as to whether or not the Claimant had been absent due to sickness during the greater part of 2014 or whether she ought to be classed as having been at work during that period. Indeed, Ms Winterbottom was not consistent in her view as to the status of that period of 10 months in 2014. However, this confusion and muddle was genuine in that it did arise from what was genuinely (and to some extent understandably) considered by the Respondent as a grey area where the Claimant had clearly not been working and at work as normal, was too ill to work normally, yet had agreed and had delivered a significant amount of work during the period. Had the Claimant exhausted her sick pay entitlement by her 2014 absence then Ms Winterbottom might legitimately have reduced the Claimant's sick pay entitlement for February 2015. Ms Winterbottom regarding her at the point of the February 2015 sickness as having done so was again completely unrelated to the Claimant's disability.

5.11.4. The Claimant next complains of an alleged refusal of her to take annual leave during February and March 2015. This is the first complaint chronologically where the Claimant might succeed in a complaint of victimisation given reliance on the conversation she had with Ms Winterbottom at her meeting with her on 6 March. As regards such meeting the Tribunal concludes that the Claimant raised her disability and her future working arrangements and sought to explore those with Ms Winterbottom in circumstances where she was clearly looking at and requesting that the Respondent make reasonable adjustments. Indeed, it is clear from the occupational health reports produced by that stage that the concept of reasonable adjustments was one live in both the Claimant's and the Respondent's mind and both parties to the conversation were aware that the Claimant was therefore*: "Doing any other thing for the purposes of or in connection with [the Equality Act]."* The Claimant had done a protected act. However, the Claimant's particular complaint is unfounded on the facts and on her own evidence in that she conceded that she had never

requested paid leave and such a request had never been refused. Having been absent due to sickness and paid at 50% of her salary the Claimant instead explored with Ms Winterbottom whether or not any element of accrued holiday could be applied so as to effectively compensate her for her loss of pay during sickness and make this up to full salary. Ms Winterbottom declined to agree to such request but for reasons completely unrelated to disability in circumstances where she genuinely considered this to be impermissible and a blurring of periods of absence due to holiday with periods of absence due to sickness. There is no evidence from which the Tribunal could reasonably conclude that her decision was because of the Claimant's disability and/or that she would have treated an individual in similar circumstances making such request any more favourably including where such person was not, as the Claimant was, a disabled person. Nor therefore was the position taken by Ms Winterbottom because of the Claimant's protected act.

5.11.5. The Claimant complains of only receiving 50% of her annual bonus. This decision has its background in the Claimant having been absent due to her disability, being set a new target and, on the Respondent's case, requiring assistance (as the Claimant accepts) to fulfil it. The Tribunal looks to the Respondent to explain the reason for such payment in circumstances of course where it was ultimately held on appeal that the full payment ought to be made to the Claimant. The Tribunal accepts Ms Winterbottom's explanation that she had set the bonus entitlement dependent solely on the performance of a particular task which was to be completed in the last few months of the bonus year. Further, whilst such task was completed, she considered that within her discretion indeed only 50% of the bonus ought to be paid to the Claimant because the Claimant had, as she indeed admitted before the Tribunal, received help from other members of staff in achieving the completion of the tasks. This was her genuine view and her decision not to pay the full bonus was, the Tribunal is completely satisfied, unrelated to the Claimant's aforementioned protected act or to her disability. The bonus parameters were related to the Claimant's absence which also impacted on the Claimant's capacity to perform. However, the Claimant would the Tribunal is convinced, have been treated in exactly the same manner had she been, for instance, absent due to long-term sickness and only able to work towards her bonus target in the latter period of the bonus year in circumstances where she had not been disabled. In the context of a harassment claim, in addition, the Claimant's reaction at the time to her bonus award demonstrates that the decision did not create the hostile, offensive etc. environment necessary for a finding of harassment.

5.11.6. The Claimant's next complaint is of her being required to move to work from the Shipley surgery in May 2015. On the facts, this complaint has no basis in circumstances where the Claimant was happy to move to Shipley, agreed to the move and expressed

her satisfaction that the move provided her with, in particular, a fixed base and permanent workstation. This indeed satisfied the Claimant's concerns at that time in circumstances of course where, on the facts, the Claimant was not concerned and did not have any continuing complaint regarding parking arrangements. Any complaints regarding a move to Shipley, in circumstances where this was something which the Claimant was pleased to do, must fail. There was no unfavourable or detrimental treatment.

5.11.7. The Claimant next complains about the handling of a meeting between herself and Ms Winterbottom in which, on the facts, Ms Winterbottom described herself (not the Claimant) as feeling *"paranoid*". The Tribunal notes that Ms Winterbottom approached raising these issues with the Claimant with some trepidation and in circumstances where she had taken legal advice. The Claimant herself admitted that she had shown an element of rebelliousness in her recent behaviour and the Tribunal accepts Ms Winterbottom's evidence that concerns and rumours had reached her from others regarding the Claimant's attitude which she felt she needed to address. Her feelings of paranoia which she expressed stemmed from the Claimant's behaviour or at least her perception of it and her understanding that the Claimant's son was soon to be involved in legal proceedings against the Respondent. The Claimant was not treated detrimentally in the sense of this matter being raised because the Respondent believed that she would bring her own Employment Tribunal complaint. As noted already, the Claimant has sought to add an additional element to the victimisation complaint in the sense that she maintains that by in fact Mr Gillespie's raising of concerns in January 2015 the Respondent believed that the Claimant would bring proceedings or pursue allegations of disability discrimination. The Respondent did not consider that the Claimant would do so in circumstances where, by this stage in fact, the Claimant had expressed herself as happy with the new working arrangements at Shipley which would satisfy any concerns she had. The effective questioning and being open regarding her concerns, were not actions by Ms Winterbottom related to the Claimant's disability and the Tribunal has found no facts from which it could conclude that she was treated in this way less favourably than would an employee in similar circumstances but not disabled.

5.11.8. The Claimant next complains regarding her removal from her role of deputy practice manager. The Claimant was no longer deputy practice manager from her return to work in January 2015 which obviously predates any protected act. Again, this change in role was unrelated to disability and the Tribunal is satisfied that there are no facts found from which it could reasonably conclude that this amounted to less favourable treatment because of disability in circumstances where a non disabled person in the Claimant's circumstances would have been treated in exactly the same way. The reason for the removal of deputy role related solely to the management re-organisation whereby there was no

deputy, formal or informal, within the structure but instead three and then subsequently four 'Heads of' each responsible for their own specialist areas and effectively deputising in respect of those special areas for Ms Winterbottom as managing partner. In this complaint, the Claimant also complains of a later occurrence, as found, where it was announced by Ms Winterbottom that Ms Wardle had been appointed as a new deputy to her and to the new position of associate managing partner. This did not amount to the removal of the Claimant from her role of deputy practice manager and/or her replacement by Ms Wardle. As already stated, the Claimant had long since relinquished any informal role as Mrs Wardle's number two in circumstances where the structure had expanded with managers below Ms Winterbottom responsible for their own separate specialist areas. In any event, the appointment of Ms Wardle to her new role, which did indeed for the first time create a formal deputy role, was a decision taken on the basis of Ms Wardle's particular area of expertise and experience in a more strategic role within the NHS. She was viewed by Ms Winterbottom as the preferred candidate and indeed in circumstances where, to her, she was so obviously the most suitable candidate that neither the Claimant nor the other (non disabled) 'Head of' were given any consideration for it. Again, the Claimant's disability played absolutely no part at all in this decision. The Claimant's previous number of years' service as Ms Winterbottom's *"right hand woman"* did not put her in pole position nor should it lead to the possibility of any inference of discrimination in that the Claimant had acted as such in the context of a single surgery practice and in circumstances where the scope of the Respondent's operations had expanded dramatically with at the same time a significant increase in the level and breadth of expertise required to ensure its proper management.

5.11.9. The Claimant next complains that she was given her new role in September 2015 which was effectively a 'non job' and as part of a plan to make her redundant at some future point. Again, such allegation is not supported on the facts. The Claimant's new role emanated out of her own desire, expressed to Ms Wardle and Ms Winterbottom, to relinquish certain responsibilities and then was formulated in consultation with her and indeed put in place with her agreement. The Tribunal is clear that the Claimant did not view this as a 'non job' at the time. The reason for her appointment to SystemOne development manager rose out of her feeling of being bombarded with work and also people calling upon her to do tasks which she regarded as outside her responsibilities. The Claimant was keen to concentrate again on SystemOne development work which is where her expertise and main interest lay. The Claimant's main interest was not in the management of staff and she was happy to relinquish that to Ms Wardle. Her move into this job, therefore, was completely unrelated to any protected act and/or indeed her disability. It was not an act of less favourable treatment because of her disability in

circumstances where this was not detrimental treatment at all (the Claimant wanted to undertake the new role) and was a move prompted by the Claimant herself. The Tribunal finds no evidential basis whatsoever for the Claimant being in any sense manoeuvred into this new role in order to terminate her employment by reason of redundancy. The Tribunal concludes that no such plan had been hatched by the Respondent.

5.11.10. The Claimant complains that she was not permitted to work greater hours from home. The Tribunal has already in the context of the reasonable adjustments complaint related to this subject matter noted the Respondent's reasons for not wishing the Claimant to work additional hours from home. That indeed was the reason for the refusal of her, it has to be said, open ended and vague request which was unrelated to her having done any protected act or to her disability.

5.11.11. The Claimant complains that an informal request for information was treated as a formal complaint. This complaint relates to the Claimant querying with Ms Wardle what her status had been during her period of absence during 2014. On the facts, this complaint goes nowhere. Even if the Claimant's account was accepted she raised a matter informally and said she wished it to be treated informally, Ms Wardle notified the Claimant that she would treat the matter as a formal grievance, the Claimant corrected her and Ms Wardle then agreed to deal with it informally. No detrimental or unfavourable or less favourable treatment can arise out of this and indeed the Tribunal's findings are that Ms Wardle, putting the Claimant's case at its highest, genuinely misunderstood the Claimant's intentions but, once she realised the way the Claimant wished the matter to be dealt with, complied with her wishes.

5.11.12. The Claimant complains that she was unreasonably criticised for working over the weekend on her day off. The Claimant was not 'criticised' in the sense of the word she relies upon, but was advised to work her hours at times which were within more normal working hours and not for instance at times when she ought to be having time off and resting. The primary concern of Ms Wardle was that the Claimant could, when not in the office, be working excessive hours and at times, including late in an evening, which she thought might impact adversely on the Claimant's fatigue and firstly be bad for her health and secondly indeed impact upon when the Claimant might then be able to attend the office as she was to do as part of her normal working arrangements. Ms Wardle wanted to seek to manage the Claimant for her own good and welfare with a view to achieving a full recovery and had good reason to do so given past history – this is not a criticism of the Claimant who was committed to her work to the extent she might prioritise it above her own well being. Again, this had nothing at all to do with the Claimant raising a request for reasonable adjustments or being believed to be possibly going to pursue a complaint of discrimination, cannot be regarded as unwanted

conduct and there is no basis upon which the Tribunal could conclude that it could amount to less favourable treatment because of disability in circumstances where the evidence is instead that Ms Wardle would have acted similarly in respect of any employee working such hours with a background of non disability related sickness.

5.11.13. The Claimant next complains that she was targeted and selected for redundancy. This redundancy situation/proposal in fact was entirely genuine and, the Tribunal is satisfied, unrelated to the Claimant's disability or any protected act. The Tribunal has accepted the Respondent's explanation that it came against a background of a need to reduce costs where indeed all of the 'Heads of' positions were under consideration and where another 'Head of', Caroline Davidson, was also made redundant. Furthermore and in a completely un-predetermined manner, the Respondent utilised the services of Michael Hart and Oberoi Consulting which resulted in there being an identification of significant cost savings which could be made and a reduction in employee hours of particular and obvious direct impact on the Claimant's role in the Respondent's future use of national templates and in the automation of systems whereby data management could be done much more quickly and indeed delegated to a lower level of staff.

5.11.14. The Claimant complains that the Respondent failed to uphold what she terms as her justified grievance and similarly also of the decisions on appeal. Whilst the Claimant might have legitimate grounds for complaint of some aspects of the decision making at both stages and/or the explanations given, these were, stepping back and looking at the decision making in the round, insubstantial and not material to the findings of Dr Humphrey and Dr Pickering. Dr Humphrey in particular approached her task with great care, willing to devote a significant amount of time to coming to what she thought was the right decision. Indeed, she considered that her decision was correct, as did Dr Pickering on a review of such decision, and their decision making, the Tribunal is entirely satisfied, was in no way a reaction to or influenced by any protected act or related to the Claimant's disability. There is no basis upon which the Tribunal could conclude that the rejection of the grievances and the rejection at appeal stage amounted to less favourable treatment because of disability. The decision makers genuinely thought there to be no substance to the Claimant's complaints regarding her ill treatment save in some minor respects and save for matters of financial entitlement where indeed there was a willingness to find in the Claimant's favour when justified on the facts.

5.11.15. The Claimant complains regarding her removal from the Respondent's IT system and the closing of her account prior to her leaving the Respoondent. On the evidence, Ms Wardle sought to suspend the Claimant's access in January 2016 but failed to do so. This was not a reaction to the Claimant's

protected act and was the Tribunal finds completely unrelated to her disability or her as a disabled person. Ms Wardle was mindful of the Claimant's history in terms of seeking to perform work, primarily out of her own conscientiousness, whilst absent due to sickness and would have made the same decision to seek to suspend the Claimant's IT access regardless of her disability status. Also, the Tribunal finds within Ms Wardle's considerations were her belief that the Claimant's son, Mr Gillespie, had access to confidential information whilst living with his mother. Again, such belief was genuinely held, was not baseless and had nothing at all to do with the Claimant's disability or any protected act she had done or any suspicion that she might in the future do a protected act.

5.11.16. The Claimant complains that during the redundancy process she was told that her role did not exist. Again, this was information given to the Claimant completely unrelated to her disability. This was a genuine redundancy situation because of the aforementioned cost pressures and efficiency savings found by adaptations of the SystemOne programme and different ways in which the Respondent might in the future conduct data management. The statement that her role did not exist was part of the Respondent's redundancy proposal. Its proposal that the Claimant's role was at risk of redundancy arose out of its consideration in the proposal that her role disappear from the structure and the Tribunal does not conclude that this was a pre-emptive statement or illustrated that the Claimant was inevitably to be dismissed on the grounds of redundancy but was straightforwardly how the Respondent sought to appraise the Claimant of her situation during the progress of a period of redundancy consultation.

5.11.17. The Claimant finally complains, as an act of discrimination and/or victimisation, of her dismissal in the circumstances where she maintains that she resigned from the Respondent's employment with immediate effect because of the above listed detriments in circumstances where she was entitled indeed to leave without giving notice in response to the Respondent's fundamental breach of contract. On the Tribunal's aforementioned conclusions such claim must also fail in that, whilst the Claimant might and has pointed to some legitimate concerns and individual failings, her complaints of detrimental treatment ultimately have all failed in circumstances where it cannot be found that there was any discriminatory dismissal.

5.12. The Tribunal in any event has concluded that the detriment complaints at paragraphs 1.1.1 to 1.1.12 (inclusive) together with the complaints alleging a failure to make reasonable adjustments were brought outside of the applicable time limits. The complaint was lodged with the Tribunal on 20 July 2016 after a period of ACAS Early Conciliation which in terms of time limits "stopped the clock" for a period of 31 days. The effect is that a complaint in respect of any act occurring before 20 March 2016 is out of time. The Claimant has provided no explanation for not having

brought her complaints earlier. She was aware of the concepts of disability discrimination contained in the Equality Act certainly since early 2015. She was aware of the right to complain to an Employment Tribunal and how to do so. She had significant health issues but not so as to act as an impediment restricting her ability to commence proceedings. Her pursuit of the internal procedures is illustrative of that. In the absence of an explanation the Tribunal would not have considered it to be just and equitable to extend time. Obviously, the Tribunal's findings do not assist the Claimant in terms of the acts complained of being part of any continuing course of conduct.

5.13. The Claimant also of course brings a freestanding complaint of unfair dismissal, albeit one which is reliant on her having resigned from her employment in response to the Respondent's breach of trust and confidence encapsulated within the aforementioned detrimental discriminatory treatment claims. Again, on the Tribunal's findings, it cannot be said that the Respondent acted in a manner which was intended to or, objectively viewed, likely to destroy trust and confidence. Obviously, its embarking on a redundancy consultation process was the commencement of a process which might and indeed was likely to lead to the termination of the Claimant's employment. It doing so, however, cannot be viewed as a breach of trust and confidence in circumstances where the redundancy situation was genuine and the Respondent sought to conduct a full and genuine process of consultation which would have included an exploration of possible alternative employment both within the Respondent and any opportunities which could be identified outside. Of course, this was not concluded, but in circumstances where the Claimant took the decision not to allow the Respondent to conclude the period of consultation but to resign from her employment. When she did so, however, she did not do so in response to any fundamental breach of contract on the Respondent's part. The Claimant's complaint of unfair dismissal must fail in circumstances where the Claimant was not dismissed.

5.14. Finally the Claimant brings a freestanding unauthorised deduction from wages complaint in respect of the sum of £1652.40 which was deducted as part of the grievance appeal outcome decision. This amount related to the difference between the full pay which the Claimant received from January to March 2015 and reduced pay to reflect the six hours per week less than normal contracted hours the Claimant was actually working. The Tribunal notes that the Respondent was fully aware of the circumstances of the Claimant's phased return and had no issue at the time in paying her full salary. Only some 14 months after this period was there any re-visiting of the issue, it appears, prompted by an external human resources consultant. This deduction was made in circumstances where the Tribunal must conclude that the full amount of salary for the period of January to March 2015 was the sum properly payable to the Claimant. This was the effective contractual arrangement. Had the parties turned their mind specifically to the point at the time they would, the Tribunal is convinced, have concluded that there would be no reduction of the Claimant's pay to reflect the fact that she was working 28 rather than 34 hours per week. This, of course, is in the context of the Respondent having paid the Claimant her full salary entitlement for a

period during which she was absent from work due to sickness and not attending the workplace albeit still performing some work. It is hard to fathom that the Respondent would have been willing to maintain full salary during that period yet when the Claimant was back at work and able to work all but six hours of her contracted hours per week would reduce pay. Indeed, given the Claimant's conscientiousness the Respondent would not be surprised if the Claimant in fact worked greater than the 28 hours. It is likely that and everyone knew that the Claimant would do whatever was necessary to get, in particular, the data management returns completed in a timely fashion. The Respondent had no basis for revisiting this arrangement at the stage of the appeal outcome and for seeking to reclaim monies which at the time were and had been properly paid to the Claimant as part of her contractual arrangement. The Respondent had ample opportunity if it had intended to reduce pay to make that clear in the phased return to work arrangements. Instead those arrangements document a change in hours but are silent as regards payment in circumstances where again the Tribunal is clear that it was indeed the parties' intention that full pay be maintained as indeed it had been since March 2014. The Claimant's complaint in respect of an unauthorised deduction of wages is therefore well founded and succeeds.

5.15. Since this hearing Employment Tribunal fees as paid by the Claimant in these complaints have been declared to be unlawful and she will be able to recover her fees through the Government's scheme for repayment of fees incurred.

Employment Judge Maidment

Date: 25 August 2017