EMPLOYMENT TRIBUNALS

Claimant: Miss M Creedon

Respondent: Barclays Bank PLC

Heard at: Manchester **On:** 5-9 February 2018
15-17 May 2018
22-23 May 2018
30-31 July 2018
(in Chambers)
30 August 2018
(in Chambers)

Before: Employment Judge Langridge
Mrs D Radcliffe
Mr S Stott

REPRESENTATION:

Claimant: In person
Respondent: Mr A Ohringer, Counsel

JUDGMENT

The unanimous judgment of the Tribunal is that:

1. At the time of the relevant events, the claimant was not a disabled person within the meaning of section 6 Equality Act 2010.

2. Accordingly, the claimant's claims under the Equality Act 2010 in respect of unlawful harassment, failure to make reasonable adjustments and direct discrimination all fail.

3. The claimant was not subjected to any detriment because of a protected disclosure and her claim under section 47B Employment Rights Act 1996 fails.

4. The claimant was not dismissed by the respondent and her claim of constructive unfair dismissal therefore fails.

5. All claims are dismissed.

REASONS

Introduction

1. This claim arose from the claimant's employment with the respondent as a senior agent in their Collection and Recoveries department, between 1 May 2010 and 6 December 2016 when she resigned. In her application to the Tribunal the claimant alleged that she was forced out of her job by bullying behaviour and corruption arising from business improvements. She said that she blew the whistle on "heinous working conditions". The claimant's resignation came about, she said, as a result of the respondent's conduct from 29 April 2016 onwards. She brought claims for unfair dismissal and unlawful detriment under the Public Interest Disclosure provisions of the Employment Rights Act 1996. In addition she made various claims under the Equality Act 2010 relating to disability. The claimant asserted that she was disabled on the grounds of four conditions: psoriasis, psoriatic arthritis, post-traumatic stress disorder (PTSD) and generalised anxiety disorder. On the grounds of these disabilities the claimant alleged that she had been directly discriminated against and harassed contrary to the Equality Act, and that the respondent had failed to make reasonable adjustments under that Act.

2. In its Response the respondent did not concede that the claimant was disabled, leaving that question for the Tribunal to decide. It denied all the claims and alleged that some of them were out of time. Preliminary hearings to deal with case management took place on 2 May and 8 December 2017, and as a result a number of claims or allegations were struck out. The remaining claims were set out in table form in the respondent's opening submissions and were agreed by the claimant (subject to two amendments) at the beginning of the hearing on 5 February 2018. This Schedule of Issues was used by the Tribunal as a working tool throughout the hearing and it has formed the basis (with minor amendments for clarity) for the way the issues are set out in this judgment.

3. Throughout the case the claimant represented herself, and although she proved herself quite capable of that task, she did at times experience some difficulties in maintaining her focus on relevant issues. The Tribunal offered assistance as needed, whether by allowing the claimant extra time, or by referring her to the Schedule of Issues to help her identify relevant cross-examination questions, and later to sum up her case.

4. On the first day of the hearing on 5 February a considerable amount of time (around three hours) was spent dealing with a few somewhat contentious preliminary matters. The following is a summary of the key issues discussed:

4.1 Witness statements had not been exchanged between the parties.

4.2 There was a dispute about the order in which the evidence should be presented. The respondent suggested presenting its case first so as to set out a structured chronology of the facts to assist the Tribunal. The

claimant objected on the grounds that she wished to present her case first.

4.3 It was during the course of the ensuing discussion that it became apparent that the claimant had not completed the preparation of her witness statement. This was the reason that exchange had not taken place, as the respondent's witness statements were all ready. The claimant said she was still only halfway through her witness statement. She complained that the delay had been caused by the respondent's late production of documents in December 2017. The respondent countered this by saying the additional documents were produced only because the claimant requested them, and there was a dispute about their relevance.

4.4 One outcome of this part of the discussion was the making of an unless order for service of a witness statement by the claimant on the respondent by no later than 9 March 2018 (it being clear from the outset that the case would go part-heard). This date was identified and agreed in discussion with the claimant. It allowed her 5 weeks to complete her statement, while also giving the respondent time to deal with its contents before the hearing resumed in May.

4.5 The Tribunal then decided to hear the respondent's evidence first. This enabled the time available in February to be utilised and a postponement avoided. The respondent agreed to this course on the understanding that it would unilaterally serve its witness statements on the claimant that day, and request to recall witnesses at a later date should the need arise after seeing the claimant's statement. As the remainder of the first day was used for pre-reading, the claimant had this additional time to review the respondent's statements and finalise preparation of cross-examination questions.

4.6 During this opening discussion the claimant made numerous complaints about the respondent's past conduct of the proceedings, focussing mainly on questions about disclosure of documents, but these issues were not relevant to the present hearing, which was designed to address only the question of liability for the claims. The claimant was advised that her complaints might become relevant at a later stage, for example if an application for costs were made.

4.7 The claimant had found it difficult to handle the preparation of the paperwork without professional assistance and had disputed the content of the respondent's bundles. Due to disagreements about the respondent's bundles (comprising 1,360 pages in three lever arch files), the claimant produced an additional set of her own bundles (2,959 pages in a further three level arch files). This made the Tribunal's task very difficult, though as the hearing progressed it became apparent that there was a significant amount of duplication between the two sets of bundles. Both parties were made aware from the outset of the hearing, and throughout, that if there were important documents in the six sets of lever arch files presented to the Tribunal, it was their responsibility to draw them to the Tribunal's attention.

5. Due to the volume of documentation, the Tribunal indicated that it would use the respondent's bundles for consistency, subject to the claimant introducing anything from her bundles which the Tribunal needed to see. In the event, the claimant referred the Tribunal to a very small number of such documents.

6. The claimant relied on PTSD and generalised anxiety disorder in asserting her status as a disabled person, so the Tribunal was mindful of the burden upon her of preparing for and conducting this hearing. During the preliminary discussion referred to above, the possibility of the hearing being postponed arose. Initially the claimant presented herself as ready and willing to proceed, indeed preferring to present her evidence first rather than have the respondent do so. It was only when the Tribunal said it wished to hear the respondent's evidence first that the claimant argued for a postponement. After careful consideration, that request was refused for the reasons set out in the unless order dated 5 February 2018. In the discussion about that order the Tribunal first gave the claimant the option to let her detailed claim form and later particulars of claim to stand as her witness statement, but she declined this offer. When making the unless order the Tribunal gave the claimant guidance on the structure of the statement and how to link it to the agreed Schedule of Issues.

7. It was apparent from this preliminary discussion, and throughout the hearing, that the claimant had a tendency to speak at length and to range away from the relevant points. At times, the claimant's presentation of her case lacked cohesion and coherence. The Tribunal urged the claimant many times to be more concise and more relevant, so that it could understand her case and in order to do the case justice. Despite this, the claimant made lengthy and often irrelevant statements, which tended to focus on the respondent's solicitors' prior conduct of the proceedings. One example of this was the repeated references to the respondent's "libel papers", a term used by the claimant to refer to documents whose contents she disputed and which she had obtained after her resignation as a result of a Data Protection Act subject access request.

8. Notwithstanding the difficulties which the claimant had experienced in preparing her documents and witness statement, she was able nevertheless to argue her points well and had a clear grasp of the points she wished to address. This was maintained throughout the ten days of the hearing, though the claimant did make the Tribunal aware on occasion that she was finding the process difficult and stressful. She was nevertheless able to conduct a detailed cross-examination of the respondent's witnesses and demonstrated an ability to recall from memory the detail of dates and page numbers in the bundles.

9. Faced with these difficulties, the Tribunal nevertheless felt that it was important to begin hearing the evidence in the case and directed that the respondent should present its case first on the understanding that this would put the five days set aside in the week commencing 5 February to good use.

10. The Tribunal heard from six witnesses on the respondent's behalf: Nicholas Ellyard (Operations Manager), Christine Mcaleese (Team Leader), Philip (known as Alex) Bell (Collections and Recoveries Team Leader), Jake Mairs (Learning and Development Lead in Collection and Recoveries), Robert Cockcroft (Business Change Analysis and trade union representative), and finally Leanne Davidson (HR Business Partner).

11. Mindful of the pressure on the claimant, the Tribunal made her aware throughout the hearing that we could accommodate any needs which she had such as regular short breaks or (in light of the arthritis) the ability to stretch. In the event no special arrangements were needed.

12. It is fair to say that throughout the ten day hearing the Tribunal had to intervene on many occasions, explaining its reasons, so as to ensure the claimant was relevant in presenting herself during this case. The Tribunal was satisfied that the claimant understood this and indeed she indicated as much.

13. Having completed the respondent's evidence by Friday 9 February, the Tribunal re-listed the case for a further five days in May 2018, when the claimant's evidence was heard. The claimant gave evidence on her own behalf and in addition called three former colleagues: Graham Tomlinson (a Collection Agent), Thurstan Hacking (a former colleague who was unfit to attend and whose witness statement was introduced with the caveat that it would carry less weight than if Mr Hacking had attended in person), and Mujahid Amin (Collection Agent).

14. By the time the hearing resumed in May the claimant had served a witness statement on the respondent very shortly before the deadline on 9 March; it ran to 47 pages but the claimant said it was still incomplete, not fully edited and not fully cross-referenced to documents. The statement as served on the respondent was accepted into evidence.

15. At the outset of the resumed hearing on 15 May a number of further issues arose which delayed the start of the evidence. This arose because a few days beforehand, the claimant had sent a ten-page email to the Tribunal complaining about various matters, mainly relating to the respondent's solicitors' conduct, the onerous nature of the case and the burden it represented for her, and the Tribunal's failure to address either of those things or the impact on her health. The claimant then sent a further email to the Tribunal, dated 14 May, in which she requested an adjournment to enable her to instruct solicitors to represent her. These lengthy emails, the claimant's application for an adjournment and the related discussion occupied the Tribunal for the entire morning of 15 May, when the adjournment was refused for the reasons set out in the order of that date. The rest of that afternoon was spent reading the claimant's lengthy witness statement.

16. The remainder of the hearing dates in May were occupied by the respondent's cross-examination of the claimant, and finally submissions were given on 23 May after which the Tribunal reserved its judgment.

The issues

17. The scope of the claims was very broad, even after being narrowed to some extent following earlier case management orders. A claim of discrimination arising from disability had been struck out, as were multiple factual allegations supporting the surviving claims. By the time of this hearing, the Schedule of Issues identified the issues of law and fact set out below.

18. Whether the claimant was at the material times a disabled person within the meaning of section 6 Equality Act 2010, relying on four conditions:

(i) psoriasis

(ii) psoriatic arthritis

(iii) post-traumatic stress disorder (PTSD)

(iv) generalised anxiety disorder

19. In support of her claim to be disabled the claimant referred the Tribunal to numerous different medical records and an impact statement she had written. Her witness statement touched on the four conditions but relied mainly on cross-references to medical documents comprising GP records, consultant reports, occupational health records and some materials of a generic nature which she produced for the purposes of this claim.

20. Subject to the claimant's ability to establish her status as a disabled person, she made three further claims under the Equality Act for the Tribunal to determine: harassment, failure to make reasonable adjustments and direct discrimination.

21. Whether the claimant was harassed within the meaning of section 26 Equality Act 2010, for reasons related to disability, by reference to the following allegations:

(i) The respondent put up barriers so the claimant was not provided with adequate training to function in her role;

(ii) Barriers were put up to dealing fairly with the claimant’s complaints about training adjustments and disorientation forcing her on late shift without warning impacting medical schedules;

(iii) On 16 August 2016 Christine Mcaleese said, “Are you even fit to do the job?”

(iv) The claimant’s mental health was mocked by Philip (Alex) Bell on 18 August 2016 when she mistakenly attended work on a training day.

(v) On 26 August 2016 Christine Mcaleese said, “Are you even in the right job?”

(vi) On 27 September 2016 Christine Mcaleese said, “Do you not remember, I told you this last time, I’m not going to repeat myself, no” and “Are you incapable of retaining feedback?”

(vii) On 6 October 2016 Christine Mcaleese said “Marie is just not passing, she is struggling with behaviours on every call”.

(viii) On 11 October 2016 Christine Mcaleese said, “You should leave and find a job you want to do”.

(ix) On 27 October 2016 the claimant was told by her union representative that Nick Ellyard had said, “Marie can’t do her job”.

(x) On an unspecified date Nick Ellyard said, “Are you even fit to be here?”

(xi) The claimant had to make up time taken to attend a medical appointment.

22. Whether the respondent failed to make reasonable adjustments under sections 20-21 Equality Act 2010, in relation to the following allegations:

(i) The claimant was required to have breaks at set times. Because of her psoriatic arthritis she needed regular micro-breaks.

(ii) The claimant was required to meet standard targets when she returned to work which disadvantaged her because of anxiety and PTSD.

(iii) The claimant was required to work a mixed shift pattern with late shifts up to 9pm which put her at a disadvantage because she needed to take mediation at 7.30pm.

(iv) The claimant was required to be trained to the same standard as everyone else which put her at a disadvantage because of her anxiety. She should have been placed in Academy Classroom Theory for four weeks and then Academy Calls for a further four weeks.

23. Whether the claimant was discriminated against directly because of her disability contrary to section 13 Equality Act 2010, in relation to the following allegations:

(i) The respondent made the claimant read a 500 page procedure guide as a training tool.

(ii) The claimant was forced onto live calls between 1519 August 2016.

(iii) The respondent refused to allow the claimant to attend Academy Theory training.

(iv) On 6 October 2016 Christine Mcaleese said “Marie is just not passing, she is struggling with behaviours on every call”;

(v) On 11 October 2016 Christine Mcaleese said, “You should leave and find a job you want to do”;

(vi) Workplace adjustments were not actioned or were dragged out beyond reasonable timescales.

24. Whether the claimant was subjected to detriments because she had made protected disclosures, contrary to section 47B Employment Rights Act 1996, by reference to the following allegations:

(i) Failing to train the claimant.

(ii) Making the claimant work late shifts when she came off her phased return to work.

(iii) Failing to put in place workplace adjustments on working time.

(iv) Christine Mcaleese continued to ring and harass the claimant whilst off work with work-related stress, asking about the intricate points of her grievance; she was ringing daily.

(v) Bullying and harassing the claimant throughout, and creating "libel records".

(vi) Fitness suspension.

(vii) References by Christine Mcaleese to the claimant's mental state, and harassment up until 11 October 2016.

(viii) The assessment of the claimant's work, amounting to bullying and harassment.

25. Whether the claimant was unfairly dismissed in that she resigned in response to the respondent's conduct towards her, and whether that conduct amounted to a breach of the implied term of trust and confidence. The claimant confined the scope of the events relied on to those occurring from 29 April 2016 until her resignation on 6 December 2016, although during the course of the hearing events predating that time were often referred to. The Tribunal treated those as forming part of the background to the events more directly in issue.

26. The claimant did not single out any specific aspects of the respondent's conduct as entitling her to resign, but in effect relied on everything that happened after her return from sick leave on 29 April 2016 as together amounting to a breach of the implied term of trust and confidence. This was apparent from her witness statement, though this lengthy document did not set out any clear explanation for her decision to resign. The statement included reference to examples of breaches of the implied duty of trust and confidence such as: excessive regulatory changes; unjustified warnings or criticism; failure to investigate properly an employee's complaint; and reprimanding an employee in front of others. The claimant also referred to many events pre-dating April 2016 and post-dating the termination of her employment, the latter including the handling of a grievance made in 2017, and the creation by the respondent of "libel records".

27. The above were the six claims which the Tribunal had to determine and the key issues of fact relating to each.

Relevant law

28. The relevant legal principles applicable to the six core legal issues can be summarised as follows.

Disability status:

29. Section 6 Equality Act 2010 defines a disability as follows:

(1) A person (P) has a disability if—

(a) P has a physical or mental impairment, and

(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

30. The word "substantial" is defined in section 212(1) as meaning "more than minor or trivial".

31. Schedule 1 of the Act provides additional guidance. Paragraph 2 provides that the effect of an impairment is long-term if it has lasted for at least 12 months, is likely to last for at least 12 months, or is likely to recur.

32. Paragraph 5 of Schedule 1 provides that medical treatment should be ignored when assessing the substantial adverse effect of an impairment:

> *33. An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if—*
>
> *34. (a) measures are being taken to treat or correct it, and*
>
> *35. (b) but for that, it would be likely to have that effect.*

36. Guidance was issued in 2011 by the Secretary of State on matters to be taken into account in determining questions relating to the definition of disability. Section A of that guidance deals with the main elements of the definition of disability, and paragraph A4 provides:

> *Whether a person is disabled for the purposes of the Act is generally determined by reference to the **effect** that an impairment has on that person's ability to carry out normal day-to-day activities.*

37. Section B deals with the effects of treatment, which could include the effects of counselling or medication. Paragraph B6 recognises that a person may have more than one impairment and that, taken together, they may have a substantial adverse effect on the person's ability to carry out normal day-to-day activities. It does not necessarily follow that two unrelated impairments may be combined so as to render a person 'disabled' under the Act. Such an argument failed in Purohit v Hospira UK Ltd UKEAT/0520/13.

38. Paragraph D3 of the guidance contains provisions on normal day-to-day activities:

> *In general day-to-day activities are things people do on a regular or daily basis, and examples include shopping, reading and writing, having a conversation or using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport and taking part in social activities. Normal day-to-day activities can include general work-related activities and study and education-related activities, such as interacting with colleagues, following instructions, using a computer, driving, carrying out interviews, preparing written documents and keeping to a timetable or shift pattern.*

39. Paragraph D19 of the guidance states:

> *A person's impairment may adversely affect the ability to carry out normal day-to-day activities that involve aspects such as remembering to do things, organising their thoughts, planning a course of action and carrying it out, taking in new knowledge and understanding spoken or written information. This includes considering whether the person has cognitive difficulties or learns to do things significantly more slowly than a person who does not have an impairment.*

40. The guidance also includes an appendix which sets out an illustrative and non-exhaustive list of factors which, if they are experienced by a person, it would be reasonable to regard as having a substantial adverse effect. Those factors include the following:

> *Difficulty using transport; for example, because of physical restrictions, pain or fatigue*
>
> *Difficulty understanding or following simple verbal instructions*
>
> *Persistent and significant difficulty in reading or understanding written material … for example, because of a mental impairment*
>
> *Persistent distractibility or difficulty concentrating*

41. There are also examples of factors where it would not be reasonable to regard them as having the required effect, including:

> *Inability to concentrate on a task requiring application over several hours*

42. The EAT decision in Herry v Dudley Metropolitan Council [2017] ICR 610 (relied on by the respondent) distinguished a mental impairment from a reaction to stressful events, developing a point made in J v DLA Piper LLP [2010] ICR 1052, where the EAT drew a distinction between clinical depression and a reaction to "adverse life events".

Harassment:

43. Sections 26(1) and 26(4) Equality Act 2010 provide as follows:

> *(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.*

44. In order to constitute harassment, an act must be sufficiently serious and not trivial, though a one-off act or comment may suffice: Insitu Cleaning Co v Heads 1995 IRLR 4. It is a question of fact and degree according to the circumstances of the case and the context in which the alleged harassment took place.

45. When examining the effect on the claimant, the test has both subjective and objective elements. In Richmond Pharmacology v Dhaliwal 2009 ICR 724 the EAT gave guidance on how to apply the test as to the 'effect' on a claimant. First, the

Tribunal should establish whether the claimant did perceive that her dignity was violated, or that a certain environment had been created under section 26(4)(ii), and then go on to consider whether it was reasonable for her to have experienced that. Dhaliwal also provides guidance on the importance of context when assessing the purpose or effect of the act in question, stating that it is "important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase".

Reasonable adjustments:

46. The duty to make reasonable adjustments arises from section 20 Equality Act 2010, the relevant parts of which state:

> *(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.*
>
> *(2) The duty comprises the following three requirements.*
>
> *(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.*

47. Section 21 provides that a failure to comply with such a duty amounts to discrimination. In order for the claim to succeed, the claimant must show that she was subjected to a provision, criterion or practice (PCP) and that this put her as a disabled person at a disadvantage.

Direct discrimination:

48. Section 13(1) of the Equality Act 2010 states that:

> *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.*

49. It is for the claimant to show that there are facts from which the Tribunal could conclude that she was treated less favourably than a comparator because of her protected characteristic of disability. It is enough for the claimant to show that the alleged treatment was to her detriment in the sense set out in Shamoon v Chief Constable of the RUC 2003 IRLR 285, in that it was something which a reasonable employee in her position could consider to be a disadvantage. An unjustified sense of grievance is not enough.

50. A causal connection between disability and the less favourable treatment has to be made out. It is not enough simply to say that an employee was disabled and then make assumptions about the reason why the employer conducted itself as it did. The Act requires the Tribunal to ask whether the treatment was caused by the disability. In Johal v Commission for Equality and Human Rights UKEAT/0541/09, the EAT adopted the reasoning of the House of Lords in Shamoon and summarised the question as follows:

> *"Thus, the critical question we think in the present case is the reason why question posed by Lord Nicholls: "Why was the Claimant treated in the manner complained of?"*

51. The leading Court of Appeal decisions in Igen v Wong [2005] ICR 931 and Madarassy v Nomura International plc [2007] IRLR 246 established the principles to be followed. Firstly, a claimant must prove facts from which the tribunal could conclude that the respondent had committed an unlawful act of discrimination. This is subject to the possibility that the respondent is able, through its evidence, to put forward an adequate explanation to displace any inference of discrimination. This may be approached as a two-stage process, but following the guidance in Shamoon, the two stages need not be separated in such a structured way. Instead, it is permissible to seek out the 'reason why' the claimant was treated in the way complained of. Whether the burden of proof shifts to the respondent in a formal way or not, dealing with the 'reason why' may usefully address both stages of the analysis.

52. In Madarassy the Court said that the words 'could conclude' must mean 'a reasonable tribunal could properly conclude' from all the evidence before it. The second stage, which only applies when the first is satisfied, requires the respondent to prove that he did not commit the unlawful act. If the burden does shift, then the employer is required only to show a non-discriminatory reason for the treatment in question.

53. The Equality Act 2010 introduced a statutory statement of this principle in section 136, which provides that:

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

54. In Hewage v Grampion Health Board [2012] IRLR 870, the Supreme Court agreed with a warning given by Underhill J in Martin v Devonshires Solicitors [2011] ICR 352, 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. But they have nothing to offer where the tribunal is in a position to make positive findings on the evidence, one way or the other."*

55. This approach has recently been reaffirmed in the case of Ayodele v Citylink Ltd [2017] EWCA Civ 1913. In that case, the Court of Appeal not only re-stated that a claimant bears the burden of proving primary facts from which discrimination might be inferred, but also identified three questions which Tribunals may consider:

(i) Did the alleged act occur at all?
(ii) If it did occur, did it amount to less favourable treatment of the claimant when compared with others?
(iii) If there was less favourable treatment, what was the reason for it? In particular, was that reason discriminatory?

Whistle-blowing detriment:

56. The meaning of 'protected disclosure' is set out in section 43A Employment Rights Act 1996. In order to be protected, the disclosure must be a qualifying one under section 43B and must have been made in accordance with the statutory rules. Section 43C is relevant to the present case, as it protects disclosures made to the employer.

57. The relevant parts of section 43B provide as follows:

> *(1) a "qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—*
>
> *(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject*

58. Under section 47B:

> *A worker has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer done on the ground that the worker has made a protected disclosure.*

59. In examining this claim the Tribunal had to decide whether the disclosure made by the claimant to her employer on 22 August 2016 was a qualifying disclosure. If so, then the Tribunal had to determine whether the claimant was subjected to any of the detriments alleged and if she was, whether a causal connection was made out between her disclosure and each detriment.

60. Where a breach of a legal obligation is relied on, the claimant should identify the legal obligation in question: Fincham v HM Prison Service EAT/0925/01 and Blackbay Ventures Ltd v Gahir 2014 ICR 747. In Blackbay Ventures the EAT set out a suggested approach to such claims, which can be summarised as follows:

(i) Each disclosure should be separately identified by reference to date and content.

(ii) Each alleged failure or likely failure to comply with a legal obligation […] should be separately identified.

(iii) The basis upon which each disclosure is said to be protected and qualifying should be addressed.

(iv) Save in obvious cases if a breach of a legal obligation is asserted, the source of the obligation should be identified and capable of verification by reference for example to statute or regulation.

(v) The Employment Tribunal should then determine whether or not the claimant had the reasonable belief referred to in section 43B(1) and […] whether it was made in the public interest.

Unfair dismissal:

61. For the purpose of her constructive unfair dismissal claim, it was for the claimant to show that she had been dismissed by her employer, in the circumstances set out in section 95(1)(c) Employment Rights Act 1996:

> *(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2), only if)—*
>
> *(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.*

62. The Tribunal took into account the key authorities relating to constructive unfair dismissal cases, including the decision of the Court of Appeal in London Borough of Waltham Forest v Omilaju [2005] IRLR 35, which helpfully summarises the long-established principles in Western Excavating v Sharp [1978] 1 QBD 761, Malik v BCCI [1998] AC 20 and Woods v WM Car Services [1981] ICR 666. In essence, an employer must not, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. Conduct which is merely unreasonable does not meet the required threshold. The conduct has to be a fundamental breach of the contract going to the root of the relationship. These principles were affirmed by the Court of Appeal in Bournemouth University v Buckland 2010 ICR 908: it is not a question of whether the employer's actions fell within a band of reasonable responses.

63. While it is necessary to examine the respondent's conduct leading up to the claimant's resignation, it is also appropriate for the Tribunal to consider the claimant's response. The test to be applied when considering the claimant's reaction to the conduct is an objective one; in other words, the question is whether it was reasonable for the claimant to regard the respondent's actions as a fundamental breach of her contract.

64. This case turned not on breaches of express terms of the contract, but rather an alleged breach of the implied duty of trust and confidence. Such a breach will be regarded as a repudiatory one going to the root of the employment relationship: Morrow v Safeway Stores [2002] IRLR 9. In effect, the claimant alleged that the respondent's behaviour towards her between her return from sickness absence on 29 April 2016 and her resignation on 6 December 2016 amounted cumulatively to a breach of the implied term.

65. Such a course of conduct, viewed cumulatively, could amount to a repudiatory breach of contract. Where a last straw event is relied on, it does not have to be of the same character as the earlier acts in the series, provided that "when taken in conjunction with the earlier acts on which the employee relies, it amounts to a breach of the implied term of trust and confidence. It must contribute something to that breach, although what it adds may be relatively insignificant." – Omilaju.

66. If the claimant persuaded the Tribunal that she was dismissed, it was then for the respondent to show that there was a potentially fair reason for dismissal under

section 98(2) ERA 1996. The next stage would be to consider whether any dismissal was fair or unfair in all the circumstances of the case, pursuant to section 98(4) ERA.

Findings of fact

67. The claimant's employment with the respondent bank began on 1 May 2010. In the last few years of her employment she worked in the Collection and Recoveries team. Her line managers during that time were initially Nicholas Ellyard and then Christine Mcaleese, who had taken over as the line manager of the team in February that year.

68. The employees working in Collection and Recoveries were required to handle calls with customers and to discuss and agree solutions with them in order to manage their financial issues. In order to do this effectively, and to meet the respondent's regulatory standards, employees had to maintain up to date knowledge of the solutions and guidance they should offer. Agents worked in a highly regulated environment which required of them adherence to high professional standards. The regulatory standards and protocols changed regularly and this created a certain amount of pressure on management to introduce and manage change, and pressure on staff to ensure they were up to date and compliant.

69. Agents were expected to make around 20 calls a day, but there were no targets for the number of calls. Performance was measured by reference to KPIs relating to factors such as the amount of time spent making notes after a call, and the number of hours spent on calls. Time was measured on a system called TotalView. An Adherence Manager would monitor staff's activities once they were logged in to the system. If they were not logged in, or if someone was off sick or had a scheduled day off, the TotalView record showed the time as grey. When TotalView showed white it meant the employee was adherent to the schedule, doing what was expected. Red meant they were out of adherence, for example working through a break or not logged in. Green meant they were over-adherent, for example still on the phone when they were scheduled to be on a break.

70. Throughout her employment the claimant consistently achieved good standards of work and the respondent rated her performance as strong.

71. Some time during 2011 the claimant raised a grievance alleging that she had been bullied and harassed by her former colleagues in another team. According to her disability impact statement, the claimant "named all operation managers and managers involved all the way up to Regional Director level" in her complaint. The grievance was also about a lack of recognition and poor training. It was not upheld, though the claimant remained aggrieved about the issue throughout her continuing employment. After the grievance was dealt with, in around August 2012, the claimant transferred to the Collection and Recoveries team working in other premises at 4 Piccadilly Place, Manchester.

72. During this early part of her employment the claimant was seeking medical advice about aspects of her physical and mental health. The claimant's GP records show an entry dated 8 November 2011 identifying "stress at work – new". This was consistent with the subject-matter of the claimant's grievance that year.

73. In July 2013 the claimant took some time off work in connection with a biopsy, to explore the possibility of an arthritic condition. A report dated 2 October 2013 from the claimant's consultant noted that at that time she did "not have any psoriatic arthritis". In her oral evidence to the Tribunal, the claimant explained that she experienced pain or tightness in her forearm muscles, sometimes in her calf muscles. She said the joint pain was sometimes intermittent, for example in her knees, though constant in her wrists, hands and back. To manage the pain, she said she needed to move around regularly. Until 2013 she had managed the pain with ibuprofen and then she started to take prescription medication to stop the progression of the condition. The claimant said she still experiences some stiffness, sometimes has mobilisation issues and pain, and the pain has increased. During her employment the claimant had no sickness absence relating to her arthritis except to have the biopsy. She made no requests for reasonable adjustments relating to the arthritis, until the last few months of her employment.

74. The claimant's GP recorded psoriatic arthritis for the first time in a note dated 4 September 2014. A consultant's report of the same date noted some inflammation in her joints "though not at a very high level" and said that the "probable diagnosis is psoriatic arthritis". The consultant also reported that he claimant "probably" had psoriasis by then. The claimant's evidence was that this was on her scalp, and that it did not affect her daily activities, though she found it itchy and annoying. The claimant did not consult her GP about arthritis or problems with her joints at any time between this date and her employment coming to an end, the main contact being in relation to the stress symptoms she was experiencing.

75. Some time before October 2014 the claimant experienced a stress reaction to the news that the former colleagues whom she alleged had bullied her in 2011 were moving into 4 Piccadilly Place, though working on another floor. The claimant was apprehensive about bumping into them.

76. In a report dated 24 February 2015 from AXA (obtained by the claimant privately rather than through her employer) it was noted that there was "no definitive diagnosis" of joint swelling and muscle stiffness but that psoriatic arthritis was "suggested". The claimant was not on any active treatment at that time.

77. A psychiatric needs assessment on 4 March 2015 (at a time when the claimant was absent from work on sick leave) noted that she was reporting anxiety symptoms relating to a previous episode of bullying, which she felt had not really been dealt with. In her evidence to the Tribunal the claimant said that the move into her office of these former colleagues "triggered a PTSD reaction in 2015, reliving the trauma from 2011".

78. The claimant attended a series of counselling sessions through the respondent's occupational health service between around March and July 2015, on the grounds of what the records noted as "perceived bullying at work". The claimant asked for the counselling to be extended beyond the usual period offered but Mr Ellyard did not agree to do this. He did not refuse her access to counselling, as alleged, as it was simply a case of the claimant having used up her free sessions. During her evidence to the Tribunal the claimant conceded there was no evidence supporting her allegation of a refusal.

79. A letter written much later (on 24 May 2017) by the claimant's therapist to her GP noted that she had had 18 sessions of therapy and presented symptoms suggestive of trauma-related anxiety and low mood linked to bullying at work. No dates were identified over which period these symptoms had presented. When asked by the Tribunal about the impact of her mental health conditions on day-to-day activities the claimant said that she was no longer doing art on a regular basis, and suffered some anxiety if travelling by train in the dark. The other effects which she identified in answer to this question related not to mental health but to arthritis, being problems sitting for long periods also and standing, for example on trains. She said her family were having to help with housework because her arthritis was causing pain. She said, "It was more kind of exhausting, I couldn't do it for a long period".

80. Returning to events at work, in July 2015 the claimant was told that she had not qualified for a bonus based on her performance targets, and that issue triggered a dispute which later fed into the events of 2016. The reason the bonus issue became so contentious was that the claimant felt one of the respondent's managers, David Cornes, had made an implication of theft on her part. Mr Cornes was at the time the manager of the claimant's line manager, Mr Ellyard. During the course of this hearing the detail of Mr Cornes' comment became apparent. The gist of what he said was that the claimant "could be trying to confuse the investigator by including accounts that should not be in there, to gain a financial reward". This was the way the comment was framed by the claimant in a cross-examination question. In essence, the claimant was unhappy that the respondent's method of assessing performance for the purpose of bonus was incorrect and felt her own figures should be used. She interpreted Mr Cornes' comment as tantamount to an accusation of theft, which it was not. In reality the claimant was simply being told that the data she was relying on for calculating bonus was incorrect and the respondent's data was accurate. Despite that, the claimant maintained then (and throughout this hearing) her stance that an implication of theft had been made.

81. In his evidence to the Tribunal the claimant's former union representative, Robert Cockcroft, said he had no recollection of such an allegation being made, even impliedly, about the claimant. He "absolutely disagreed with every element" of the claimant's account of this issue.

82. On 20 November 2015 the claimant began a period of sick leave relating to stress at work, returning on a phased basis from 29 April 2016. In her evidence to the Tribunal the claimant said this was a PTSD reaction, because she was reliving the trauma from 2011 and the grievance about bullying. The claimant conceded during her oral evidence that she had not had any diagnosis of PTSD.

83. During this extended period of sickness, various entries were made in the claimant's medical records which reflected the reason for her absence. On 25 November her GP noted "stress at work – new", reflecting the fact that stress had not featured in her GP appointments since November 2011. From this point on, stress at work became a regular feature of the medical notes. On 2 December the claimant attended a further consultation with her GP. The fact that she was still experiencing stress at work was noted, including symptoms of insomnia and generalised anxiety. The notes give no indication as to the period of time over which these symptoms were presenting. The GP also indicated that the claimant was given medication for the arthritis, referred to as "her rheumatological condition".

84. From January 2016 the claimant started attending therapy sessions with her own therapist, which included cognitive behavioural therapy, and after around 20 sessions they ended in June 2016. In her oral evidence the claimant said her therapist had treated her for PTSD symptoms, although no such diagnosis was ever made.

85. In a GP letter dated 18 February 2016 the claimant was described as still being unfit for work due to stress in the workplace. The GP commented, "I would expect no functional impairment once the treatment is complete…There are no other issues…" and furthermore, "the main issue here is the anxiety she feels".

86. In report from AXA dated 28 April 2016 it was noted that the claimant associated her current sickness absence with perceived work-related stress primarily linked to her former department. Medication had been prescribed in December 2015 and the dose had been increased two months prior to the report. At that time the claimant's symptoms had improved significantly, particularly her anxiety.

87. On 29 April 2016 the claimant was fit to work and Mr Ellyard conducted a return to work meeting that day. The role had not changed materially during the sick leave, though there had been some regulatory changes on which the claimant needed to be trained. Although she was experienced and excelled at her work, the claimant had concerns about her concentration levels and short-term memory due to anxiety. Her phased return was managed with some suggested adjustments made with the benefit of input from the claimant's therapist, from Occupational Health, and from the claimant herself. Key amongst these were phased working hours and access to retraining to refresh the claimant's knowledge and confidence in her role.

88. During the phased return the claimant's working day started at the usual 8am but finished early at 4pm. She was not required to work the usual mixed shift pattern which included one late shift (up to 9pm) in every 6 shifts plus some Saturdays.

89. Neither at this point nor at any other time after her return from sick leave was the claimant given any performance targets. She raised no concerns about targets to her line managers or her union before her employment ended in December 2016.

90. The recommendations made by AXA were implemented by line managers, and these included allowing the claimant to take micro-breaks as needed rather than at set times. These breaks were self-managed and could not be scheduled, as it was simply up to individuals to take them. The breaks were recorded after the event and did not need prior authorisation by line managers. Although the claimant in her evidence said it was Mr Ellyard's responsibility to complete a form showing these micro-breaks, she was unable to identify or take us to any such document.

91. At no time during her employment did the claimant raise any issue with her line managers or her union about being unable to take micro-breaks. This is because in reality she was able to manage short breaks herself and was not denied the opportunity to take such breaks.

92. Following the claimant's return to work Mr Ellyard and later Ms Mcaleese (after her return in June from a period of sick leave) held weekly meetings with the claimant in order to support her. Although this was not usual, Mr Cockcroft also attended the meetings as her union representative.

93. The following is a summary of the key events which took place between May and December 2016.

94. In the first 12 weeks of her phased return the claimant did nothing but attend training. This took various forms, with some time spent in classroom-style training in the respondent's Academy, combined with one-to-one support and handling supported calls.

95. Changes to solutions had been made in December 2015, driven by regulatory changes and banking reforms. Other employees had attended a one day course, as did the claimant following her return to work. This course was supported by a 500 page procedure guide as well as a work book. The claimant was given a copy of the guide for reference purposes, but was not required to read it all. It was an interactive document and could be searched and bookmarked. The claimant knew how to navigate her way around it so as to home in on any particular areas. She was asked to use the guide to help with short-term memory issues.

96. The other training was provided on a bespoke basis. Experienced colleagues acted as training buddies to support the claimant in making calls; she had access to a performance coach, with whom she spent 7 hours on new solutions training; she spent a half day on role plays, working with scenarios relevant to the new solutions; she had week of classroom theory; she spent three weeks working with one to one support from colleagues; and she had call listening support. This took the form of 48 hours of side by side call listening, enabling the claimant to observe colleagues.

97. The claimant did not do Academy Theory training because this was an induction course used for new joiners. She was very unhappy about this and her request to spend 4 weeks in such training, plus 4 weeks taking calls in the Academy environment, formed a significant part of her complaints about the training. None of the training was satisfactory to the claimant, though management felt that she received more than enough training during this period, and that the quality was good. The claimant complained that one colleague (a very experienced person with 8 years in his role) had simply read out PowerPoint slides to her, but this was not the case and it was an interactive session.

98. On 11 May the claimant applied for a workplace assessment which led to a report being produced on 26 May. As a result, new equipment was installed at the claimant's workstation (a chair and a computer mouse) by 15 July. This was the first occasion on which the claimant sought any such adjustments at work. She did not raise any concerns about the lack of such adjustments after this, nor had she complained before 15 July that the time taken to provide the equipment was causing her problems.

99. On an unspecified date in around June or July Mr Ellyard is alleged to have said to the claimant, "Are you even fit to be here?" In his evidence Mr Ellyard said it was common for managers to ask something like this from a welfare perspective, and "That's the way I would have asked the question". He denied making any such comment in the derogatory way suggested by the claimant. Having heard both witnesses, the Tribunal accepted Mr Ellyard's evidence. He did make such a comment, but it was a benign one driven by concerns for the claimant's welfare. This is because she had come across to him as "confused, erratic and repetitive" in

her requests for training. Contrary to what the claimant alleged, Mr Ellyard did not propose a fitness suspension.

100. On 6 July the claimant made a flexible working request, asking to finish at 3.30pm and to work Monday to Friday only. The claimant referred to her difficulties with concentration and the need to take her medication at a set time in the early evening in support of her request.

101. The claimant was then absent on annual leave for three weeks from 25 July. On her return to work on 15 August her phased return to work was at an end. All the training she could have been offered had been exhausted and she was ready to resume normal duties. The new equipment was set up at her desk by then, and the claimant did not raise any issue with this again. By this time she was scheduled to return to her normal hours of work in accordance with the respondent's TotalView roster. That roster was available five weeks in advance, so the claimant knew these arrangements were in the pipeline. In the week commencing 22 August the claimant was scheduled to (and did) work one late shift until 7.30pm. In these claims the claimant described these arrangements as amounting to being "forced to work late shifts".

102. The events of 15 August were in dispute before the Tribunal. A meeting took place that day between the claimant, Mr Ellyard and Jake Mairs. The claimant was told that she was to resume her normal schedule, although she later disputed this. She was also told she was to be put on live calls in the Academy setting, an arrangement made by the respondent in order to bridge the gap between theory and taking customer calls. The time was not measured and she could take as long as she needed. Floor walkers were there to provide support. The claimant was reluctant to go on live calls because she was insisting that she should continue to receive training, in particular Academy Theory training even though this was aimed only at new starters. She alleged that she was "forced" to take live calls and was "frogmarched" to her desk by Mr Mairs, and shouted at.

103. The meeting that morning was a challenging one. The claimant was given an instruction to go on live calls and expressed her reluctance to do so, but the discussion ended in the claimant agreeing to do as asked despite her dissatisfaction. Mr Mairs then walked with her to the desk. There was no frogmarching or other hostile behaviour.

104. In resolving this conflict in the evidence the Tribunal weighed up the evidence given by the witnesses and accepted that Mr Mairs and Mr Ellyard gave honest accounts of the day's events. The Tribunal also noted that when cross-examining Mr Ellyard about this the claimant had framed her question as his having "instructed" her to go straight on live calls, not "forced".

105. The next day the claimant raised the fact that she had been "frogmarched" with Ms Mcaleese, who told her that the environment was supportive, not hostile.

106. The claimant alleged that on 16 August Ms Mcaleese said, "Are you even fit to do the job?" Ms Mcaleese strongly denied this comment, saying that she was supportive towards the claimant and encouraging her. The Tribunal accepted that explanation and accepted that even if the comment had been made, it was in the

nature of an enquiry about the claimant's welfare, and neither hostile nor bullying and harassing.

107. A further incident is alleged to have taken place on 18 August, when Mr Bell was said to have mocked the claimant's mental health when she mistakenly attended work on a training day, saying something like “Maria, can’t you remember you’re not in today”. Mr Bell did not recall the day in question or any such conversation. He accepted that he may well have made a comment about why the claimant had attended that day, believing that she was not due to be at work, but not in a mocking or harassing manner.

108. Mr Bell checked the respondent’s TotalView records after the event, because of these proceedings. Originally the claimant was not due to be in work on 18 August but Ms Mcaleese changed the entry and recorded the day as all day training. Mr Bell could see that the time was shown as grey both before and after this change.

109. The claimant's evidence about this allegation was lacking in detail. She had alleged that Mr Bell “was mocking my mental health, trying to encourage the other surrounding management to participate …” and she made other generalised assertions about him creating a hostile environment. When cross-examining Mr Bell, she put the comment in this way: “Why have you come in on your day off?” which is a far cry from hostile or mocking conduct. She also suggested a witness (Zareh Nerssian) was present, to which Mr Bell said Mr Nerssian worked on the other side of the office in workflow management. The Tribunal noted that Mr Nerssian was not referred to in the claimant’s witness statement.

110. Having evaluated all the evidence of this interaction the Tribunal accepted Mr Bell’s evidence as an honest account of the exchange that took place.

111. By the following week, commencing 22 August, the claimant was working a normal shift pattern and taking customer calls. This was the one occasion after returning from sick leave when she worked until 7.30pm.

112. On 22 August the claimant sent Mr Cockcroft 35 emails, as a result of which he stepped down from his role as her union representative. Other members of Unite continued to provide support after this date.

113. On that same day, 22 August, the claimant made a telephone call to the respondent’s whistle-blowing helpline. She later alleged that this was a protected disclosure. The recipient of this call summarised the issues in a written note which identified five areas that the claimant said were “in need of improvement” within Collections and Recoveries:

113.1 That management were changing procedures to the detriment of employees and “making up the rules”.

113.2 That management were “controlling” by performance-managing employees and controlling bonuses. The claimant linked this to her own failure to meet a bonus in July 2015 and the allegation of stealing (as she saw it).

113.3 The relentless pressure on staff, leading to 70% of the team either leaving or taking sick leave. Again, the claimant linked this to her own case, referring to her PTSD, extreme anxiety, a lack of any referral to Occupational Health and a lack of equipment. The latter two points were both factually incorrect.

113.4 That the claimant had had insufficient training on her return to work after sick leave.

113.5 That the claimant was unhappy with the outcome of the 2011 grievance, which she linked to the "bullying mentality" in her current workplace.

114. The disclosure was kept confidential to the specialist team which investigated the matter and at no time disclosed to any member of the claimant's management team or her trade union.

115. The whistleblowing complaint raised issues which were mainly personal to the claimant, including her grievance from 2011 which had been investigated at the time. There was a possible wider issue about attrition levels in the department and low morale. A director from Glasgow moved down to deal with this, working with the union.

116. The next interaction between the claimant and her line management was at a meeting on 23 August to discuss her flexible working request. The meeting was continued on 25 August when an outcome was reached. The time taken between the claimant's request on 6 July and the meetings in late August was not untoward but contributed to by the fact that both the claimant and Ms Mcaleese were away on annual leave in the intervening period. At the meeting on 25 August agreement in principle was reached that the claimant could work flexibly, subject to checking her train timetable for travelling home so that she could take her medication at 7.30pm. The claimant said it was necessary on medical advice to take her medication at this time, though in fact the medical advice was not so specific and simply recommended a regular time in the evening. It was agreed that the claimant would finish no later than 7pm one day a week and otherwise at 5.30pm, with effect from 29 August.

117. On 26 August a review meeting took place between the claimant and Ms Mcaleese considering training needs and targets. Although the claimant said when cross-examining Ms Mcaleese, "I had no indication whether I was doing well or not", Ms Mcaleese had in fact provided her with feedback about how well she was doing after her return to call handling. For example, in an email dated 19 August Ms Mcaleese had stated, "I hear great things about the calls you've been taking while supported by the Academy". In her reply the claimant said she had been requesting theory support and added, "I will be pursuing a grievance". She said, "I haven't had sufficient training to feel ready" to go back onto calls. In the week commencing 15 August the claimant had scored well on call samples, achieving 100% on policy and procedure. On behaviours she achieved 87.5% against a KPI of 80%. She was rated as "strong" for the performance year in 2016. One call was scored by Ms Mcaleese at 65 but the claimant felt this should be higher. The score was calibrated and validated. Ms Mcaleese did not discuss the scores in front of anyone else. Some development points were identified, but generally she achieved positive scores.

118. On 26 August Ms Mcaleese was also alleged to have said to the claimant in an insulting tone, “Are you even in the right job?” which she denied. Ms Mcaleese in fact asked the claimant whether she wanted an opportunity to explore other roles within the bank, in which case she would be more than happy to help her do this. It was not a hostile remark.

119. At around this time, Ms Mcaleese made a comment to the effect that if the claimant “wasn’t happy in her role then I would be willing to explore other roles with in the bank with her and arrange job shadowing for her”. This too was a supportive comment by a line manager.

120. A more up to date medical opinion was provided in a report from AXA dated 6 September. It noted that the claimant had reported feeling bullied, “which she perceives is due to her ongoing personal injury claim against the Bank”. The report stated that the claimant’s symptoms had “improved significantly” with medication and psychotherapy and she was “functioning normally on a day-to-day basis” though her concentration level was not back to 100%. The claimant was considered to be fit to work and no new adjustments were recommended, nor was any follow up from Occupational Health felt necessary.

121. On 13 September a meeting took place regarding the claimant's requests for further training and on 27 September this was provided by Luke Hassett, a subject-matter expert who was used to providing support to colleagues. The claimant was as unhappy with the quality of his sessions as she was about all the other training. She told Mr Hassett she intended to raise a grievance against him, though did not in fact do so. Mr Hassett was upset about this, and described the claimant as having been very obstructive with him.

122. On 27 September Ms Mcaleese is alleged to have said to the claimant in a hostile manner, “Do you not remember, I told you this last time, I’m not going to repeat myself” and “Are you incapable of retaining feedback?” These comments were also denied, Ms Mcaleese saying that any such remarks would be counterproductive. She was aware of the claimant’s mental health giving her some difficulties with retention and recall. The Tribunal accepted her denial.

123. The main ongoing contact with the claimant’s GP related to her stress symptoms and a letter from her GP dated 30 September 2016 recorded the fact that she had presented in November 2015, ten months previously, with stress symptoms including anxiety and depression. She had been prescribed a mild antidepressant in December 2015. The letter noted that, “Since the restoration of her sleep pattern, her functional capacity would not be impaired”, stating that the claimant had responded well to an increased dose. The medication was to be reconsidered over the following few months.

124. The claimant alleged that she was “on a target from October, on behaviours and policy-making”. In fact, no targets were set either before or after October 2016, and Ms Mcaleese confirmed that there was no discussion about what would happen after that.

125. On 6 October the respondent’s whistle-blowing case closing report was issued following investigation, concluding that there was no need for any further investigation or action. A meeting had taken place between the claimant and an

independent manager and the conclusion was that all the issues had been dealt with through the claimant's 2011 grievance. The report noted that there was some evidence of attrition and sickness rates, but these were not felt to be excessive in comparison with other areas of the organisation. The overall conclusion was that "all cases have been managed appropriately".

126. A further disputed comment is alleged to have been made by Ms Mcaleese to the claimant on 6 October, to the effect that the claimant was not passing the respondent's standards and was struggling with behaviours on every call. In evaluating the evidence about this comment, which Ms Mcaleese denied, the Tribunal took into account the fact that in reality the claimant was passing the respondent's standards, and doing extremely well, albeit there were a few development points on her 'soft skills'.

127. In other ways the working relationship was not going well, partly because the claimant was making threats against colleagues that she intended to raise grievances about them. By 6 October she was "adversely impacting the team", with a "very negative" and "demotivating" influence, as Ms Mcaleese put it. The claimant was felt by management and even her union to have unrealistic expectations, she was verbose in meetings and it was felt she could be "quite rude" in her manner.

128. An internal HR record dated 6 October 2016 showed that the Operations Manager (Rebecca Coulson) made a request for advice about the claimant. Line managers and other colleagues were "uncomfortable" and it was felt that the "allegations were spiralling out of control". The note recorded that the claimant had "asked Unite to support a settlement to leave the bank for £62,000". She had indeed emailed her union with such a suggestion. Ms Mcaleese knew nothing about any settlement discussions. They did not progress.

129. One of the allegations which the claimant presented most forcefully was that there had been 'collusion and entrapment' involving her union and management, designed to force her out of the job. She said she had overheard Ms Mcaleese discussing a settlement figure with a union representative, Carolyn Cliff, in the office and said she had an email which would support her allegation. The claimant took us to an email she sent to the union on 9 October. The reply from Ms Cliff dated 10 October says this:

> "I would not and will not discuss this with Christine [Mcaleese] as she has no autonomy to agree anything".

130. The next event about which the claimant complained was a comment on 11 October when Ms Mcaleese is alleged to have said, "You should leave and find a job you want to do". As before, Ms Mcaleese denied making any such comment though accepted that she may have discussed with the claimant the option to explore other roles within the bank. There was no suggestion that the claimant should leave the respondent's employment and the comment was not made as alleged. Ms Mcaleese knew that the claimant had been a high performer and she hoped to build on this.

131. On 13 October the claimant made what she later described as a second protected disclosure, via a telephone call to her trade union. She complained about the behaviour of her line management, saying she believed they were retaliating due to the previous whistle-blowing disclosure. The claimant alleged that management

were over-scrutinising her work, bullying her and trying to force her to leave. By the time this allegation reached the Tribunal, it had been withdrawn as an independent allegation of whistle-blowing and no allegation of detriment relating to the disclosure to the trade union was pursued. It is worth noting that the complaint was investigated by the respondent, who found it to be unsubstantiated. The closing report dated 4 August 2017 noted the link between this complaint and the 2011 grievance issues, and took the view that this was an HR matter not a protected disclosure. The investigation also found no evidence that management had had access to the claimant's email account as alleged by her.

132. Between 17 and 20 October the claimant was absent on sick leave.

133. On 27 October, after her return to work, the claimant said her union representative (Mo Etman) had reported to her a comment made by Mr Ellyard. This was to the effect that, "Maria can't do her job". That comment was denied by Mr Ellyard, who had little to no contact with Mr Etman (who was not called as a witness). The Tribunal accepted that he made no such comment. It would have been contrary to the evidence that the claimant had always been a strong performer and remained so even after her sick leave and her phased return to work.

134. Mr Ellyard was also alleged to have sought details from the claimant about her grievance at around this time, but the Tribunal did not accept that this was the case. Although the claimant did at some point send a draft grievance to her union, none had been submitted to the company. She did intimate an intention to raise a grievance, for example telling Ms Mcaleese on one occasion that her grievance was about her. This was about having to take calls without further training. The claimant also suggested she would raise a grievance against some of the trainers. However, no new grievance was raised about bullying and harassment, or discrimination, or whistle-blowing detriments.

135. Between 29 October and 12 November the claimant was away from work on holiday, and after returning to work she began a new period of sick leave from 14 November onwards. From this time the claimant did not return to work.

136. An occupational health report written on 3 November had noted that the claimant was experiencing reduced concentration, anxiety and insomnia and that it was being managed by medication. The claimant was taking sleeping tablets. She was considered to be fit to work without any functional impairment as long as her insomnia was managed, though the report noted that her psychological health was affected by ongoing work issues.

137. During her sickness absence the claimant was contacted by Ms Mcaleese in accordance with the respondent's guidance, which meant contact by weekly phone calls. A call made on 16 November was a welfare call only, and contrary to what was alleged, no questions were asked about any grievance.

138. On 29 November Ms Mcaleese phoned the claimant for the weekly call but as she was about to leave home for a doctor's appointment, they agreed to put this back to the following day. Ms Mcaleese therefore phoned again on 30 November. There were no other occasions when phone calls were made on consecutive days, nor were the calls hostile in any way.

139. On 6 December the claimant submitted her resignation letter, to take immediate effect. The following is a summary of the key reasons set out in this letter. The claimant:

139.1 Said she had experienced disability discrimination and bullying and harassment orchestrated by Mr Ellyard and Ms Mcaleese, with Mr Mairs also being one of the "main bullies". She referred to excessive regulatory changes, and to the allegation of being frogmarched on 15 August, as well as the comments attributed to them above.

139.2 Referred to the whistle-blowing disclosure and specifically the rates of attrition and sickness. She said this issue had escalated the behaviour of management, as had her personal injury case. She linked this to her 2011 grievance.

139.3 Referred to her long-term sick leave between 20 November 2015 and 29 April 2016 on the grounds of work-related stress, as she was "dealing with PTSD and anxiety due to these Regulatory excessive changes/bullying & ill treatment at hands of C&R management & on telling Operation Manager Rebecca Coulton 8th February 2016 of the Personal Injury case, I received hostility from my return to the office".

139.4 Linked her current sickness absence with some specific allegations against her managers. These were that Mr Ellyard and Ms Mcaleese has sought from her details about the content of her grievance (which had been "sent and held by the Union") in order to protect their own interests. Ms Mcaleese was accused of continuing to "harass me on a daily basis", referring to the phone calls made on 29 and 30 November.

139.5 Alleged entrapment and collusion between management and the union, who had suggested she had put in an offer to leave.

139.6 Referred to her work being "sabotaged" by Mr Ellyard and the fact that Ms Mcaleese had marked her work unnecessarily harshly, by reference to the scoring of one particular call. She saw this as part of management's deliberate attempts to force her out of the role.

140. Despite references in the resignation letter to a personal injury claim and a recent grievance, in fact neither complaint had been provided to the respondent at any point before her resignation. A grievance made after the employment ended was later withdrawn due to the death of the claimant's father. No issue was raised by either party about this.

Conclusions

141. This case proved difficult to harness due to the volume of evidence, the number of overlapping allegations, and a general lack of cohesion. In the introduction to this judgment the Tribunal sought to replicate the allegations as framed by the claimant, and intends broadly to adopt this structure in its conclusions. That said, it is inevitable that aspects of the case will need to be grouped together and discussed in a more thematic way, for ease of expression and reading.

142. If the allegations were to be grouped thematically, the case could be summarised as comprising broadly the following:

142.1 Poor or insufficient training – which in turn fed into allegations about disability harassment, failure to make reasonable adjustments, direct discrimination and whistleblowing detriment.

142.2 Forced to work late shifts – linked to allegations of disability harassment, failure to make reasonable adjustments and whistleblowing detriment.

142.3 Inability to take micro-breaks – failure to make reasonable adjustments.

142.4 The imposition of targets – failure to make reasonable adjustments.

142.5 Comments by managers and colleagues – disability harassment and whistle-blowing detriment.

142.6 Being forced onto live calls – direct discrimination.

142.7 The constructive dismissal claim relied upon broadly the same allegations as the other claims relating to disability and whistleblowing, as well as bullying and collusion between managers and the union.

Disability:

143. The first issue was whether the claimant was at the material times a disabled person within the meaning of section 6 Equality Act 2010, relying on four conditions. The Tribunal considered such medical evidence as was produced, though it did not present an entirely coherent picture and no single report was obtained for the purposes of these proceedings.

144. The Tribunal also took into account the claimant's evidence, which in her pre-prepared witness statement was lacking in detail on the reasons why she believed each of her four medical conditions amounted to a disability. The Tribunal sought to clarify from the claimant in her oral evidence what symptoms she experienced and in particular, what substantial adverse impact she experienced as a result of the conditions.

145. The claimant's disability impact statement was also considered. This was lengthy and descriptive but somewhat generic in its content. It was interwoven with references to the claimant's complaints about the respondent's conduct. Some of the content appeared to have been adopted from other materials and tended towards broad generalised statements rather than being linked to the claimant's individual case. The impact statement was not matched by the claimant's evidence about her medical conditions, particularly on the subject of the impact on day-to-day activities. When questioned by the Tribunal about this, the claimant struggled to identify such an impact in respect of any of the four conditions, and certainly not a substantial one. This, and some of the terminology of the disability impact statement, led the Tribunal to conclude that the document included content copied and pasted from other sources, without being edited to represent the reality of the claimant's case. For example, the summary notes in the impact statement described how a

hypothetical person might be affected by PTSD, not how the claimant herself was affected. The claimant was relying on such descriptions without applying any filter so as to accurately describe her own mental health.

146. The first condition relied on was psoriasis. The Tribunal accepts that the claimant did have this condition on her scalp by around early September 2014, when it was noted in her medical records as a "probable" diagnosis. It is a long-term condition, which the claimant still has. It is itchy and the claimant understandably finds it "annoying". However, when asked about the effect this condition had or has on her day-to-day activities, the claimant was unable to identify anything other than it being itchy and annoying. She did not seek medical treatment for the condition at any time. The Tribunal's conclusion is that the claimant's psoriasis is not substantial, and does not meet the requirement in section 6 Equality Act 2010 for it to have a substantial and long-term adverse effect on her ability to carry out normal day-to-day activities.

147. The evidence of psoriatic arthritis was not entirely clear. In her oral evidence the claimant said the joint pain in her knees was intermittent, but constant in her wrists, hands and back. She said she needed to move around regularly and until 2013 had managed the joint pain with ibuprofen before then starting to take prescription medication to stop the progression of the condition. However, an exploratory biopsy having been carried out in July 2013, a consultant's report dated 2 October 2013 stated that the claimant did "not have any psoriatic arthritis" at that time.

148. The position appears to have changed around a year later. The claimant's GP recorded the condition for the first time in a note dated 4 September 2014. The consultant's report of the same date noted a "probable diagnosis" of psoriatic arthritis though added that the inflammation in her joints was "not at a very high level".

149. A later report from AXA dated 24 February 2015 noted that even by then there was "no definitive diagnosis" of joint swelling and muscle stiffness but that psoriatic arthritis was "suggested". The claimant was not on any active treatment at that time,

150. On 2 December 2015 the claimant's GP indicated that the claimant was given medication for "her rheumatological condition". That was the last reference to the claimant seeking medical advice about the issue before her resignation in December the following year. During her employment the claimant had no time off sick arising from issues with her joints (excepting the biopsy). She made no requests for reasonable adjustments relating to arthritis until May 2016 when she requested a new mouse and chair for her workstation.

151. The Tribunal accepts that the claimant has been experiencing low level symptoms of psoriatic arthritis since around 2014 and that this is a long-term condition from which she continues to have some effect. The claimant said she still experiences some mobilisation issues and stiffness, and the pain has increased. When asked to describe the effect on her day-to-day activities, she was unable to provide much substance, beyond finding it difficult to sit for long periods or stand on a busy train. She also has some help with housework. These are difficulties which many people might complain of, but the Tribunal concludes that on their own they fall short of amounting to a disability. A comparison might be made with someone who finds it difficult to read without glasses. There is often a spectrum of difficulties and it

is possible to experience some joint pain or discomfort without being disabled under the Equality Act. For these reasons, the Tribunal concludes that the condition does not meet the requirement in section 6 of the Act for it to have a substantial (as well as long-term) adverse effect on her ability to carry out normal day-to-day activities.

152. The third condition relied on by the claimant was generalised anxiety disorder (GAD). It is convenient to deal with this alongside the fourth condition, post-traumatic stress disorder.

153. No formal diagnosis of GAD was ever made, though the claimant did consult her doctor about stress at work in 2011 and again in 2015 when she reported anxiety symptoms relating to the events of 2011.

154. The claimant conceded during her oral evidence that she had not had any diagnosis of PTSD either, although she maintained that her therapist had treated her for this condition. The causes of the PTSD were put forward somewhat differently by the claimant at different times. In her disclosure to the respondent's whistle-blowing team in August 2016 she described the "relentless pressure" on staff in the Compliance & Regulation team and linked this to PTSD and extreme anxiety in her own case. In her resignation letter the claimant, referring to her sick leave between November 2015 and April 2016, made the same connection, saying she was "dealing with PTSD and anxiety due to these Regulatory excessive changes/bullying & ill treatment at hands of C&R management …" The management she was referring to were Mr Ellyard and Ms Mcaleese. However, the latter did not actively manage the claimant until after April 2016.

155. In her disability impact statement the claimant again linked the PTSD to issues in the Compliance and Regulation department. She alleged that management placed excessive demands on employees, leading to sickness absence and "mental anguish". She put forward no evidence of such pressure or demands, and the reference to mental anguish was a typically overstated expression from the claimant, who demonstrated throughout this hearing a propensity to exaggerate.

156. Finally, in her oral evidence to the Tribunal the claimant gave a different reason, saying it was the discovery that her former colleagues were to relocate into her office building which "triggered a PTSD reaction" because she was "reliving the trauma from 2011".

157. When the claimant went off sick in November 2015 her GP noted that the cause was "stress at work – new", because she had not consulted the GP about stress since November 2011. In a note dated 2 December the GP noted that the claimant had symptoms of insomnia and generalised anxiety. No indication was given as to the period of time over which these symptoms had been presenting. A few months later, in a letter dated 18 February 2016, the GP identified the "main issue" as being "the anxiety she feels". The doctor's statement said: "I would expect no functional impairment once the treatment is complete…There are no other issues…"

158. In early 2016 the claimant attended a series of counselling sessions through occupational health. Her private therapist wrote later, on 24 May 2017, confirming that she had also attended a number of sessions with her, though the letter did not identify the period of time over which the claimant's symptoms had presented.

159. The AXA medical report dated 28 April 2016 confirmed that the claimant associated this sickness absence with perceived work-related stress primarily linked to her former department. Medication had been prescribed in December 2015. By April the claimant's symptoms had improved significantly, particularly her anxiety. By 9 June, by which time the claimant was back at work, her therapist confirmed that she was no longer functionally impaired. Her GP expressed the same view on 3 September that year. The occupational health report prepared on 3 November 2016 considered the claimant to be fit to work without any functional impairment, as long as her insomnia was managed. None of the medical records suggested a diagnosis of GAD or PTSD.

160. In her disability impact statement the claimant described the generalised anxiety disorder as having been "triggered by a traumatic bullying experience and heinous working conditions", referring to the bullying allegations dating back to 2011. By the time she went off sick with stress symptoms in November 2015, some four years later, the difficulties with her working conditions were yet to arise. Having examined the time line in this case, the Tribunal was not satisfied that there was any continuity in the symptoms experienced by the claimant periodically during her employment. The evidence led us to the conclusion that at times the claimant had an adverse stress reaction to events at work, particularly where she disagreed with colleagues and management about outcomes, but these were not such as to amount to a disability of generalised anxiety disorder or post-traumatic stress disorder. They were episodes which presented themselves because of the claimant's strong feelings about the way she perceived she had been treated. They were stress reactions, and although anxiety presented itself as a symptom, the claimant was not impaired by either of these conditions at all (in the case of PTSD) or on any long-term basis.

161. Although the claimant was unfit to work due to work-related stress in the five months between November 2015 and April 2016, when she was experiencing anxiety symptoms, the Tribunal saw no evidence that in the intervals between her stress reactions the claimant was experiencing any symptoms of GAD or PTSD. It may be that she was suffering an impairment relating to anxiety during the five months of her sickness absence, given that she was unable to work, but there was no evidence of an enduring impact suggesting that the symptoms had lasted or might continue for 12 months or more. On the contrary, the evidence from those treating the claimant at the time supports the conclusion that the effects were short-lived and that insomnia was the only lingering symptom. This did not change even when the claimant went off sick again in November 2016, as noted by Occupational Health at that time.

162. Turning to the question of whether there was a substantial adverse effect on the claimant's ability to carry out normal day-to-day activities, again the claimant struggled to identify matters of sufficient substance. In answer to questions about the impact of her mental health conditions, the claimant said she was no longer doing art on a regular basis, and suffered some anxiety if travelling by train in the dark.

163. In considering these mental health conditions, the Tribunal also had regard to the distinction made in the case of Herry, recognising that a person may have a long-term mental impairment (as GAD might well be), or they may simply be experiencing

a short-term reaction to events at work. The reasoning in Herry seems very apt to describe this case:

> "Although reactions to adverse circumstances are indeed not normally long-lived, experience shows that there is a class of case where a reaction to circumstances perceived as adverse can become entrenched; where the person concerned will not give way or compromise over an issue at work, and refuses to return to work, yet in other respects suffers no or little apparent adverse effect on normal day-to-day activities. A doctor may be more likely to refer to the presentation of such an entrenched position as stress than as anxiety or depression. An Employment Tribunal is not bound to find that there is a mental impairment in such a case. Unhappiness with a decision or a colleague, a tendency to nurse grievances, or a refusal to compromise (if these or similar findings are made by an Employment Tribunal) are not of themselves mental impairments: they may simply reflect a person's character or personality. Any medical evidence in support of a diagnosis of mental impairment must of course be considered by an Employment Tribunal with great care; so must any evidence of adverse effect over and above an unwillingness to return to work until an issue is resolved to the employee's satisfaction; but in the end the question whether there is a mental impairment is one for the Employment Tribunal to assess."

164. The Tribunal's conclusion is that the claimant did not have a mental condition of generalised anxiety disorder at the time of these events, nor post-traumatic stress disorder, and that the symptoms she was experiencing were periodic and short-term stress reactions on each occasion. Those symptoms did not amount to an impairment nor did they create any substantial or long-term adverse effect on her ability to carry out normal day-to-day activities. Accordingly the claimant does not meet the definition of disability under section 6 of the Equality Act in respect of either of the mental health conditions relied on.

165. It follows that the claimant's claims which rely on her being a disabled person must fail, being the claims for harassment, direct discrimination and failure to make reasonable adjustments. Nevertheless, the Tribunal has included its detailed conclusions on these claims in order to show that, even if we had reached the wrong conclusion about disability under section 6, these other claims would have failed on their merits.

Harassment:

166. The next issue for the tribunal to decide was whether the claimant was harassed for reasons related to disability, by reference to the 11 allegations put forward. The Tribunal has already set out its findings of fact in relation to these issues, and in doing so has drawn conclusions about which version of the facts to accept after weighing up the conflicting evidence. It is therefore appropriate to begin this part of our conclusions by making some general observations about the Tribunal's views about witnesses.

167. In every instance where there was a conflict of evidence we concluded that the claimant's account of events was not a reliable one. We reached this view after evaluating all the relevant evidence relating to that conflict, including documents where they existed. We were impressed by every one of the respondent's witnesses

and found their evidence to be conscientious, consistent and credible. By contrast, we found that the claimant was prone to misunderstand, misremember or misrepresent the events relating to her claims and prone to exaggeration. We accepted the respondent's submission to that effect. Her case was characterised by forthright and repetitive assertions about how she perceived events, and this was sometimes completely at odds with clear evidence to the contrary. Examples included the claimant's insistence throughout the hearing that she had raised a grievance in 2017 before resigning, and had made a personal injury claim. Neither of these things had happened. At best, the claimant had discussed such complaints with her union and she had intimated to the respondent an intention to pursue a grievance. Another example was the claimant's insistence that an email would prove that she overheard a conversation between Ms Mcaleese and the union in which they were colluding about a settlement, when in fact the email contradicted the point completely.

168. The specific allegations of harassment required the Tribunal to consider first whether the events happened as described by the claimant. In every case, our findings of fact found that they did not. In some cases there was evidence that a comment had been made, but not in the manner characterised by the claimant. This is important because in order for the allegations of harassment to succeed, the claimant would have to show that the respondent's conduct was unwanted and that it had the purpose or effect of creating a hostile or degrading working environment for her. The context was therefore important on each occasion, partly to make sense of the conduct in question and partly because of the requirement that it was reasonable for the claimant to perceive that the conduct had that effect, in accordance with section 26 Equality Act.

169. The first allegation of harassment was that the respondent put up barriers so that the claimant was not provided with adequate training to function in her role. It was far from clear what barriers the claimant was referring to, but it is fair to say that a great deal of time during this hearing was spent dealing with the question of the training provided on the claimant's return from sick leave in late April 2016. During her cross-examination of the respondent's witnesses, more or less the entire focus of the claimant's case was on the training and her questions barely touched upon the questions of direct discrimination, reasonable adjustments or unfair dismissal.

170. Having found that the respondent provided as much training to the claimant as it could possibly have done, the Tribunal is satisfied that it was not only adequate but went beyond what was actually needed in order to get the claimant back to her normal successful performance. The respondent provided the training in a variety of ways and through numerous colleagues, all experienced in their roles, and yet the claimant was scathing about all of them. She threatened to raise a grievance against one trainer, Mr Hassett, which could not have been warranted in that context. It was an example of a disproportionate reaction on the part of the claimant, who by then was already shown to be performing well and who had no need of further training after 12 weeks of doing nothing else. She had had positive feedback to that effect from Ms Mcaleese by then.

171. Even if we had found that the training was less than adequate to assimilate the claimant back into work after her sick leave, the Tribunal does not accept that this amounted to an act of harassment in breach of section 26 Equality Act. It bears no comparison to the statutory language, which requires unwanted conduct related

to a protected characteristic whose purpose or effect was to violate dignity, or create an intimidating, hostile, degrading, humiliating or offensive environment. Firstly, the manner in which the respondent provided the training was designed specifically to support her difficulties with concentration and short-term memory in a constructive way, and no barriers were created. The conduct was not unwanted, because the claimant was repeatedly asking for more training, specifically the Academy Theory offered to new recruits. It was entirely reasonable for the respondent not to make that training available. Secondly, the environment created by the respondent's provision of the training was far from the hostile one required under the Act. Thirdly, and importantly, the respondent's handling of the training arrangements was in no way "related to" her as a disabled person.

172. The second allegation was that the respondent put up barriers to dealing fairly with the claimant's complaints about training adjustments, and forcing her on late shift without warning, which impacted upon medical schedules. As training has been dealt with above, this part of our conclusions will deal with the allegation of being forced to work late shifts.

173. We have already found as a fact that the claimant was required to work one late shift until 7.30pm in the week commencing 22 August 2016. This arose by virtue of the phased return to work ending such that she was rostered to resume her normal shift pattern. The claimant knew to expect this. The respondent did not "force" this upon the claimant as it formed part of her contracted working pattern. Although she was unhappy about it and raised a flexible working request on 6 July, the claimant did not suffer any particular difficulty by virtue of this late shift being worked. The Tribunal noted that her medical records did not require medication to be taken at a particular time, contrary to the claimant's assertion, but rather at a regular time in the evening. It is also noteworthy that in her request to work flexibly the claimant sought to finish work as early as 3.30pm, though a 5.30pm finish was later agreed, with periodic late shifts up to 7pm.

174. Even if we had found that the claimant was compelled to work a late shift in an improper way, we could not conclude that this was an act of harassment for the same reasons as set out above in relation to the first allegation. It was not conduct falling within section 26 and was not related to disability.

175. The third allegation was that on 16 August 2016 Christine McAleese said "Are you even fit to do the job?" It is convenient to deal with our conclusions on this allegation along with the fifth, sixth, seventh and eighth allegations as they all relate to comments attributed to Ms Mcaleese. We have already found as a fact that this comment was not made in the manner alleged, and that Ms Mcaleese was in fact supportive towards the claimant. Even if the comment had been made, it was not an act of harassment but the action of a manager enquiring about the welfare of an employee recovering from a period of ill health.

176. The fifth allegation was that on 26 August 2016 Christine McAleese said, "Are you even in the right job?" The Tribunal has found that Ms Mcaleese asked whether the claimant wanted an opportunity to explore other roles within the bank, in which case she would be happy to help her do this. It was not a hostile or insulting remark.

177. The sixth allegation was that on 27 September 2016 Ms McAleese said, "Do you not remember, I told you this last time, I'm not going to repeat myself, no", and

"Are you incapable of retaining feedback?" The Tribunal has found that Ms Mcaleese was aware of the claimant having some difficulties with retention and recall, and accepted that she made no such remarks as they would have been counterproductive.

178. The seventh allegation was that on 6 October 2016 Ms McAleese said "Marie is just not passing, she is struggling with behaviours on every call". The Tribunal accepted Ms Mcaleese's denial of this comment, which lacked any credibility in light of the fact that the claimant was doing well, meeting or exceeding the respondent's standards. While a few development points had been drawn to her attention on behaviours, the claimant was scoring very highly on all aspects of her work.

179. The eighth allegation was that on 11 October 2016 Ms McAleese said, "You should leave and find a job you want to do". The Tribunal again accepted Ms Mcaleese's denial that she made any such comment in the hostile manner alleged. It seems credible that a benign comment was made in the context of a discussion about the possibility of exploring other roles within the bank. Ms Mcaleese did not say this in an attempt to encourage the claimant to leave, as she had always been a high performer for the respondent and was on track to maintain that for the future.

180. Having found that none of these allegations against Ms Mcaleese was made out on the facts, the Tribunal concludes in any event that none of them amounted to conduct falling within section 26 of the Equality Act, and none related to disability.

181. Returning to the fourth allegation, Mr Bell was said to have mocked the claimant's mental health on 18 August 2016 when she mistakenly attended work on a training day. We accepted that Mr Bell may well have made a comment about why the claimant came to work that day, given the late change to her working schedule, but not in a mocking or harassing manner. In our evaluation of the evidence about this incident, the Tribunal noted that in her witness statement the claimant added entirely new allegations of bullying on Mr Bell's part, and embellished her case by including matters not set out in the claim form or the further particulars provided. Rather than boost the claimant's credibility, this only served to undermine it.

182. The ninth and tenth allegations relate to comments attributed to Mr Ellyard. On 27 October 2016 he was alleged to have said, "Marie can't do her job". The Tribunal has already accepted that this was not said. In weighing up this evidence we took account of the fact that it would have been completely contrary to the evidence of the claimant's strong performance. Furthermore, although the claimant said the comment was relayed to her by Mr Etman, we did not have evidence from him and accepted Mr Ellyard's evidence that the two men had little to no contact.

183. Given that the comment was not made, this allegation of harassment is not made out on the facts. Even if it had been said, there is no basis upon which it could be said to be conduct related to disability.

184. The tenth allegation was that Mr Ellyard said, "Are you even fit to be here?" The Tribunal has found that he did make such a comment but that it was a benign question in the context of concerns for the claimant's welfare. It was not conduct falling within section 26 of the Equality Act, and furthermore it was not related to disability.

185. The eleventh and final allegation was that the claimant had to make up time taken to attend a medical appointment. This was barely pursued during the hearing of these claims, and no evidence was produced by the claimant to support this bare assertion. The Tribunal accepted as credible the respondent's evidence that working time never had to be made up by employees attending occupational health appointments at its request. There being no evidence to support this allegation, it was not made out on the facts. It would not, in any case, have met the definition of harassment under section 26 of the Act.

Reasonable adjustments:

186. The next set of claims related to an alleged failure to make reasonable adjustments. The claimant did not identify directly any provision, criterion or practice (PCP) which put her at a disadvantage as a disabled person, but expressed her complaints by reference to the respondent's requirements that she: take breaks at set times; meet standard targets; work a mixed shift pattern including some late shifts; and be trained to the same standard as others.

187. Dealing with the first allegations, the claimant said she needed regular micro-breaks because of her psoriatic arthritis but instead was required to have breaks at set times. The Tribunal does not accept that the claimant was denied the opportunity to take micro-breaks at times of her choosing or was required to take breaks at set times. Indeed, she provided no evidence whatsoever, wither in her witness statement or oral evidence, to support this allegation, relying simply on a plain assertion. The Tribunal accepted the respondent's evidence that such breaks could be self-regulated and did not need to be approved in advance by a manager, being instead taken as needed and recorded after the event. The claimant did not speak to managers or her union at the time to say that she was having any difficulty managing her own short breaks. This allegation was not therefore made out on the facts. It failed at the first hurdle, because the claimant did not show that she was subjected to any requirement, or PCP, to take breaks at set times.

188. The second allegation was that the claimant was required to meet standard targets when she returned to work, which disadvantaged her because of anxiety and PTSD. The claimant produced no evidence at all that any targets were imposed, and the Tribunal accepted the respondent's evidence that they were not. Mr Cockcroft confirmed that the claimant raised no such issue during her employment. This claim fails because the claimant did not show that she was subjected to any requirement, or PCP, to meet targets.

189. The third allegation was that the claimant was required to work a mixed shift pattern with late shifts up to 9pm, which put her at a disadvantage because she needed to take medication at 7.30pm.

190. Having found that the claimant was required to work a late shift up to 7.30pm on one occasion in the week commencing 22 August 2016, the Tribunal went on to consider whether this requirement (a PCP) put the claimant at a disadvantage. Our conclusion is that it did not. The claimant did not in fact need to take medication at 7.30pm but at a consistent time in the evenings, and not too late. Her later agreement to work late shifts up to 7pm supports that conclusion. Mr Cockcroft confirmed that the claimant did not raise any issue with the union about this during her employment. This claim therefore fails on the grounds that the claimant was not

put at a disadvantage. No adjustment was needed and the duty was not breached by the respondent. To the extent that the claimant's case relied on a general requirement to work 9pm shifts occasionally, this requirement was never applied after her return from sick leave and, if a duty had arisen during that period it was met by the adjustment made as part of the flexible working agreement.

191. The fourth allegation was the requirement that the claimant be trained to the same standard as others, which put her at a disadvantage because of her anxiety. The claimant identified the adjustment as allowing her to spend four weeks on Academy Theory training, followed by four further weeks taking calls in the Academy environment.

192. The PCP in relation to this allegation is less clear, and the argument somewhat inconsistent with other parts of the claimant's case. On the one hand, she complained that the training was lacking in quality and quantity, and yet under this heading the claimant seeks to argue that she should not have been required to be trained to the same standard as her colleagues. If there was a PCP that the claimant be trained as if she were an experienced agent (which she was), then it is difficult to see how she was put at a disadvantage by that. The extensive and thorough training provided over a 12 week period was aimed at avoiding any disadvantage and achieved that aim. The claimant was ready to and did work to the respondent's standards after her phased return to work was completed. Even if a duty had arisen, it was not reasonable for the respondent to allow the claimant to work to any lower standard, given the highly regulated environment in which she worked.

193. Even if there was a PCP which put her at a disadvantage, which the Tribunal does not accept, the claimant put forward no evidence that undertaking a further 8 weeks' training alongside new starters would have had any beneficial effect in removing any disadvantage. For all of these reasons, this claim fails.

Direct discrimination:

194. The next issue was whether the claimant was treated less favourably than others because of her disability, which would amount to direct discrimination contrary to section 13 of the Equality Act. The claimant made six allegations in support of this part of her claim, relying on a hypothetical comparator who was not a disabled person. It was for the claimant to prove primary facts relating to these allegations, from which the Tribunal could infer that she had been treated less favourably. If those facts were established, the respondent would bear the burden of showing that the reason for the treatment was not because of any disability which the claimant had.

195. Applying Ayodele, the Tribunal asked itself whether there was evidence that the facts actually occurred as described by the claimant. If so, the next question was whether the respondent's actions amounted to less favourable treatment. If that was established, then the Tribunal needed to examine the reason for the respondent's actions and decide, after hearing the respondent's explanation, whether that reason was discriminatory or not.

196. The first alleged act of direct discrimination is that the respondent made the claimant read a 500 page procedure guide as part of her training. The Tribunal has

found that she was given a copy of the guide but that this was for reference purposes and the claimant was not made to read it. It was provided in order to support her training and specifically to help manage short-term memory issues. This did not amount to less favourable treatment and so this allegation was not made out on the facts. In any event, the respondent's explanation for why the guide was provided was enough to displace any inference of discriminatory treatment.

197. The second allegation was that the claimant was forced onto live calls between 15 and 19 August 2016. The Tribunal has found as a fact that the claimant was not "forced" to go on live calls but rather given an instruction to do so, and that she agreed to this, albeit after expressing her reluctance. This was a reasonable instruction given that the claimant had completed 12 weeks of retraining and initially her calls were taken in the supportive Academy environment. It was not less favourable treatment and nothing in the evidence could have given rise to any inference of direct discrimination. Even if the burden of proof had passed to the respondent, its explanation for its actions would have been accepted by the Tribunal as being free of any discrimination.

198. The third alleged act of discrimination is that the respondent refused to allow the claimant to attend Academy Theory training. The Tribunal's conclusions about this issue have been dealt with already. Suffice to say that the respondent did deny the claimant this training, but it was not less favourable treatment by comparison with a person without a disability. Any experienced employee needing retraining after an absence, whether disabled or not, would have been treated as the claimant was. The fact that such training was provided only to new employees during their induction made this clear. Again, the respondent's explanation for its decision would have been enough to displace any inference of discriminatory treatment even if there had been evidence of less favourable treatment.

199. The fourth allegation is the comment attributed to Christine McAleese on 6 October 2016: "Marie is just not passing, she is struggling with behaviours on every call". This too has been addressed in earlier conclusions. The claimant did not establish that this comment was made and the Tribunal found that it was not. It was contrary to the evidence that the claimant was performing well and inherently lacking in credibility. In any event, the comment cannot be said to amount to less favourable treatment as nothing on its face points obviously to that conclusion.

200. The fifth act of discrimination relied on is that on 11 October 2016 Ms McAleese said, "You should leave and find a job you want to do". As set out in the conclusions above, the Tribunal has not found that any such comment was made, and so no facts have been put forward by the claimant to support this allegation. If, as seems possible, a benign comment to this effect were made, nothing about it would lead readily to the view that it amounted to less favourable treatment. A manager giving honest advice to an employee who was unhappy in their role might say such a thing.

201. The sixth and final allegation of discrimination is that workplace adjustments were not actioned or were dragged out beyond reasonable timescales. This point was barely touched upon by the claimant during the hearing and had the appearance of a make-weight allegation. The only adjustments it could relate to are the provision of a special chair and mouse for her work station. This was requested on 11 May, a report was provided on 26 May and steps were taken within a reasonable period of

time to install the equipment by 15 July. This did not amount to less favourable treatment and the claimant provided no evidence to support that argument.

202. Even if the claimant had produced evidence to support her assertions that she was treated less favourably in respect of any of these six allegations, the Tribunal is satisfied that there was no basis at all upon which it could infer that the reason for the treatment was disability. The respondent's witnesses gave clear and full explanations for their actions which did not allow for any such inferences to be made.

203. Another factor which the Tribunal took into account is that even the claimant was unable to explain why she believed her treatment was because of disability. On the contrary, she explicitly stated that her treatment was "all to do with the underlying issue" of the personal injury claim. She gave the same explanation for adjustments not being done promptly, saying that "the agenda behind the scenes was the PI claim".

Whistle-blowing detriments:

204. The next issue for the Tribunal was whether the claimant was subjected to detriments because she had made a protected disclosure. Here the claimant made eight allegations, some of which overlap with issues already dealt with.

205. The Tribunal had to determine whether the claimant's call to the respondent's whistle-blowing team on 22 August 2016 amounted to a qualifying disclosure, and if so, on what basis. The claimant's case was based broadly on a breach of a legal obligation, under section 43B(1)(b) Employment Rights Act 1996, though she did not make clear which specific legal obligations applied. Our consideration included the question whether the claimant reasonably believed the disclosure was made in the public interest. The next question was whether the claimant was subjected to detrimental treatment because she made this disclosure. This required examination of the question whether the respondent's managers, Mr Ellyard and Ms Mcaleese, had knowledge of the disclosure.

206. The disclosure of 22 August 2016 covered five areas, and the Tribunal considered each area separately in determining whether they were protected under the Act.

207. The first concern was that management were changing procedures to the detriment of employees and "making up the rules". The changing of procedures from time to time in order to comply with changing regulatory duties does not amount to a breach of any legal obligation. On the contrary, that adherence was necessary for the respondent to ensure it was compliant as a regulated provider of banking services. The respondent had to adapt in this highly regulated environment to changes affecting its duties and standards. The Tribunal accepted the respondent's evidence that it made conscientious efforts to ensure that its staff were trained to be compliant.

208. If true, the second part of this allegation could be a breach of a legal obligation, in that the respondent would be in breach of its regulatory duties if it were in fact "making up the rules". That would also be a matter in the public interest. The difficulty with this, however, is the complete absence of any information showing the

basis upon which the claimant held this belief, none being produced when making the disclosure, nor to the Tribunal at this hearing.

209. The Tribunal is not satisfied that this first concern amounts to a qualifying disclosure. The claimant did not have a reasonable belief in information tending to show that the respondent was failing to comply with a legal obligation. She knew that the respondent was obliged to change its procedures in order to remain compliant, and she had no foundation for alleging that it was "making up the rules".

210. The second concern was that management were "controlling" by performance-managing employees and controlling bonuses. This was not supported by any evidence or information, except that the claimant made a connection to her own failure to meet the threshold for a bonus in July 2015 and the related allegation of stealing (as she saw it). This interpretation was based on an exaggerated perception of what had been said. This was not a disclosure in the public interest. It related solely to the claimant's ongoing sense of grievance about missing out on a bonus payment a year earlier. It was not a qualifying disclosure and the claimant did not have a reasonable belief that the respondent was failing to comply with a legal obligation.

211. The third concern was about relentless pressure on staff, leading to 70% of the team either leaving or taking sick leave. In principle this could amount to a qualifying disclosure if systemic issues were putting at risk the health and wellbeing of a large number of staff. It could be a health and safety issue in the public interest. That said, the claimant linked the statement squarely to her own situation, referring to her PTSD, extreme anxiety, a lack of any referral to Occupational Health and a lack of equipment. The latter two points were both factually incorrect, as the claimant well knew. This was not a qualifying disclosure because there was in fact no public interest element, and in any event the claimant did not have a reasonable belief that the respondent was failing to comply with a legal obligation.

212. The fourth concern was that the claimant had had insufficient training on her return to work after sick leave. There was no public interest element to this allegation and it did not therefore amount to a qualifying disclosure. Furthermore, the Tribunal does not accept that the claimant had a reasonable belief that the respondent was failing to comply with any legal obligation in this regard.

213. The fifth concern related to the claimant's 2011 grievance, about which she remained unhappy. She made a connection to the "bullying mentality" in her current workplace. There was no public interest element to this allegation, which related only to the claimant's private sense of grievance, and it did not therefore amount to a qualifying disclosure. As before, the Tribunal does not accept that the claimant had a reasonable belief that the respondent was failing to comply with any legal obligation.

214. Although the Tribunal does not accept that any of the disclosures made were qualifying disclosures to as to protect the claimant from any detrimental treatment, we have given consideration to the question whether the claimant did suffer any such detriment.

215. Returning first to the question of knowledge, the claimant was evasive about the basis for alleging that her managers knew about her blowing the whistle. She

made general assertions that documents in the bundles supported her argument, but in reality no such documents existed. This became apparent during her cross-examination of the respondent's witnesses, and when pressed, the claimant finally conceded there was no such written evidence.

216. During her questioning of Mr Cockcroft the claimant was asked by the Tribunal whether she was alleging the union had told management about her blowing the whistle. To this the claimant replied, "I'll say no … I'm not sure". She added that she had asked told another of her union representatives whether he'd told management and said he wouldn't answer. Her allegation that management had knowledge was therefore based on a flimsy assumption and nothing more.

217. Mr Cockcroft had no knowledge of any conversation within the union discussing the whistle-blowing. He said, "We'd run a mile, it was not for us to deal with". He would "absolutely not" feel obliged to tell management about it. The Tribunal accepted his evidence.

218. Without knowledge on the part of the line managers the subject of these allegations, it follows that their actions could not be motivated by the making of a protected disclosure, nor was there any suggestion that any other person had knowledge, such as to taint the actions of Mr Ellyard and Ms Mcaleese with an improper motive.

219. Eight detriments were alleged, most of which form the subject-matter of other allegations already dealt with. The first was failing to train the claimant. The second was making her work late shifts. The third was failing to put in place workplace adjustments. The Tribunal has not accepted that any of these claims was factually correct. Even if the claimant had made a protected disclosure, she was not actually subjected to any detriment in respect of these actions.

220. The fourth alleged detriment was a new point: that Christine McAleese rang and harassed the claimant on a daily basis while she was absent with work-related stress, and asked to know intricate details about her grievance. As we have found, there was neither daily nor unreasonable contact during this last sickness absence, and no questions were asked about the grievance, which had not been submitted. Ms Mcaleese was following standard procedures by making a weekly welfare call. There was only one occasion when calls were made on consecutive days, on 29 & 30 November, necessitated by the fact that 29 November was not convenient. The allegation of daily harassing calls is therefore a complete exaggeration of the reality. Ms Mcaleese did not subject the claimant to any detrimental treatment, and certainly not because she had made a protected disclosure, as Ms Mcaleese had no knowledge of that.

221. The fifth alleged detriment was a general assertion that the claimant had been bullied and harassed, and the respondent had created "libel records". Looking at the respondent's conduct towards the claimant as a whole, during the latter part of her employment, it cannot be said that she was bullied or harassed. So far as the harassment has been put forward under different headings in these claims, the Tribunal does not accept that the conduct took place at all, or in the manner alleged by the claimant. No other examples of bullying or harassment were put forward. Making line management decisions on a reasonable and proper basis, even if those decisions are badly received, does not constitute bullying or harassment.

222. As for "libel records", this is a false basis upon which to allege detrimental treatment due to making a protected disclosure. This is because the records in question are documents produced to the claimant in response to a subject access request made under the Data Protection Act after her employment ended. These records were referred to throughout this hearing and the label was the claimant's description of documents whose contents she did not agree with. The claimant was subjected to no such detriment during her employment. (It is relevant to add that the claimant had a tendency during this hearing to adopt the worst interpretation in relation to documents, alleging on several occasions that the respondent had doctored or fabricated some documents. The Tribunal saw no foundation for those allegations, and did not need to make detailed findings about them as they were not directly relevant to the issues we had to determine.)

223. The sixth alleged detriment was a fitness suspension threatened by Mr Ellyard, another matter which was barely pursued during the hearing. The claimant did not provide any evidence to support the assertion, and the Tribunal had no difficulty accepting Mr Ellyard's denial that this happened.

224. The seventh detriment related to Ms McAleese's alleged harassment of the claimant up until 11 October 2016, which overlaps with other aspects of these claims. The Tribunal adopts the conclusions made above about the first, second and third detriments.

225. The eighth and final alleged detriment was the assessment of the claimant's work, amounting to bullying and harassment. The only example of this was the disputed score of 65 given by Ms Mcaleese in relation to one call in mid-August, which the claimant disputed as too low. This was not a detriment and not done in response to a disclosure about which Ms Mcaleese knew nothing.

226. For these reasons, the claims to have suffered detriments as a result of making a protected disclosure all fail.

Unfair dismissal:

227. The final question for the Tribunal was whether the claimant was entitled to resign and treat herself as unfairly dismissed. In order to succeed, she would have to show that the respondent's conduct amounted to a breach of the implied term of trust and confidence, and that she resigned in response to such a breach.

228. It was far from clear which particular events the claimant relied on in support of her decision to resign. While she impliedly relied on everything that happened after her return from sick leave on 29 April 2016, she presented inconsistent explanations in which the time line was very confused. One example of this is the reliance on "libel records" not seen until after the employment ended.

229. Another inconsistency is which period of alleged bullying and harassment the claimant had in mind. Her resignation letter referred to bullying at the hands of management in Collection and Recoveries, to which she attributed her sickness absence which began on 20 November 2015. Yet in her evidence to the Tribunal the claimant said this period of sickness was a PTSD reaction because she was reliving the trauma from 2011. Referring to the causes of this previous absence, her resignation letter stated that she was:

> "dealing with PTSD and anxiety due to these Regulatory excessive changes/bullying & ill treatment at hands of C&R management & on telling Operation Manager Rebecca Coulton 8th February 2016 of the Personal Injury case, I received hostility from my return to the office".

230. These events were stated to be causes of the sick leave from November 2015 and they all pre-dated the period relied on in support of her unfair dismissal claim, which began on 29 April 2016.

231. A further example of inconsistency in the claimant's evidence was apparent from the narrative she presented. Her witness statement included reference to breaches of the implied duty of trust and confidence including: unjustified warnings or criticism; failure to investigate properly an employee's complaint; and reprimanding an employee in front of others. Like the disability impact statement, it was clear to the Tribunal that the claimant had copied some of this content from a checklist of typical reasons why a person might consider themselves constructively dismissed, without filtering it to represent the facts of her case. The claimant was not given any warnings, no complaint was made and not investigated, and no reprimand was given in from of others.

232. Although the bonus issue from July 2015 was not directly one of the reasons for the claimant's decision to resign, it was apparent to the Tribunal that this was in her mind throughout the latter part of her employment. Her upset about this was probably a contributing factor in the claimant's sick leave from late 2015, and it was apparent from her evidence during this hearing that the bonus was a significant trigger for her ongoing dissatisfaction with the respondent's actions generally. The claimant continued to nurse this sense of grievance and could not let it go.

233. The resignation letter referred to other reasons for the decision. One was the disability discrimination and bullying and harassment which the claimant said had been orchestrated by Mr Ellyard and Ms Mcaleese, with Mr Mairs also being described as one of the "main bullies". She referred to regulatory changes, and to being "frogmarched" on 15 August, as well as the allegedly harassing comments. The letter referred to line managers seeking details about her grievance even though the claimant never submitted this to the respondent. It also mentioned the "daily harassment" by Ms Mcaleese. The Tribunal has found that none of these events took place at all or in the manner alleged.

234. The letter also referred to the whistle-blowing disclosure and alleged that this had escalated management's behaviour, as had her personal injury case. It is significant that on several occasions the claimant made a direct connection between a personal injury claim and the hostility she received on returning to work in April 2016. She said in her evidence that the reason for Ms McAleese's comments was "the PI case still ongoing at the time". While there was no evidence of such a claim being made or discussed with anyone other than her union, on the claimant's own case the reason for her treatment was not disability or whistle-blowing but knowledge of a personal injury claim. If this issue were considered as an independent allegation going to trust and confidence in the employment relationship, the Tribunal heard no evidence to support the claimant's assertion that she was treated with hostility because of a personal injury claim. No breach of the duty of trust and confidence arose from that issue.

235. The allegation of entrapment and collusion between management and the union was a further reason for resigning, and the claimant was upset about the suggestion that she had put in an offer to leave her job. At this hearing the claimant remained indignant about this, even in the face of the email evidence that she did in fact identify a settlement figure. Complaining about this "entrapment figure", and the conversation between Ms McAleese and a union representative which the claimant said she had overheard, she alleged that Ms McAleese's behaviour "escalated after that". This may have reinforced her mistaken belief that there was collusion between management and the union. The claimant's own statement again undermined any notion that the reason for her treatment was because of disability or whistle-blowing. In the context of the unfair dismissal claim, the Tribunal concludes that no breach of the duty of trust and confidence arose from this allegation either. There was no collusion between management and the union. The fact that the claimant felt able to pursue that allegation in the face of a quite contradictory email from her union is illustrative of her tendency to perceive events in a hostile light when such an interpretation is not warranted.

236. Another complaint mentioned in the resignation letter was that the claimant's work had been "sabotaged" by Mr Ellyard (an allegation unsupported by any evidence), and the fact that Ms Mcaleese had marked her work unnecessarily harshly. The latter was another exaggeration of the disagreement about the scoring of a single call. The claimant saw this as part of management's deliberate attempts to force her out of the role. This bore no relation to the reality of what was happening. It is true that by October 2016 the claimant's managers were finding her increasingly difficult to manage, especially in the face of threats to raise a grievance about decisions she did not like, but they had no agenda to force her out of the company.

237. During the summing up of her case, the claimant was asked by the Tribunal to point to the key reasons for her decision to resign. She was initially unable to articulate a response. She then said the key point dated from 15 August when the respondent "set a precedent" (without explaining what that meant), then the fact that the respondent ignored an independent medical report dated 6 September (which had not featured in the evidence heard), then the "entrapment" issue, and finally escalating bullying and harassment. When asked what was the last straw, the claimant was unable to identify anything concrete.

238. The Tribunal does not accept that the claimant was bullied or harassed by her line management or by any other colleagues in 2016. On the contrary, the respondent's managers were extremely supportive and patient, and facilitated a long phased return to work. On her return to work the claimant undertook more training than any other person would normally undertake, including someone returning from maternity leave. She was an experienced member of staff who performed well both before and after her sick leave, and her training needs were managed to enable her to succeed. The respondent did everything it could reasonably have been expected to do by way of providing support. It was not until she submitted her resignation that the claimant complained of bullying and harassment and discrimination. Most of the issues aired during this hearing were not raised at the time. Even Mr Cockcroft, her union representative, confirmed to the Tribunal that management had done all that they could. The claimant was never going to be satisfied.

239. The Tribunal came to the view that by the time of her resignation the claimant had painted herself into a corner: there was no grievance, no personal injury claim, the whistleblowing disclosure had gone nowhere, and the relationship with her union had broken down. She was left with few options but to resign, but the respondent's conduct did not entitle her to do this and treat herself as constructively dismissed. The respondent did not commit any breach of the claimant's contract nor conduct itself in a manner calculated or likely to destroy trust and confidence.

Employment Judge Langridge

Date 7 December 2018

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON

20th December 2018

FOR THE TRIBUNAL OFFICE