



EMPLOYMENT TRIBUNALS

Claimant: Miss Susan Morley

Respondent: EE Limited

Heard at: Teesside Justice Centre, Middlesbrough

On: 11-14 December 2017

Before: Employment Judge A.M.S. Green, Mr S Hunter and Mr G Gallagher

Representation:

Claimant: In person

Respondent: Mr Sangha, of Counsel

JUDGMENT having been sent to the parties on 8 January 2018 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Documentation and the hearing

1. The parties filed and served an agreed hearing bundle comprising of two lever arch files indexed and paginated and containing 1121 pages. The Claimant was not represented and appeared in person and was assisted by her friend, Ms Beverley Wilson. The Respondent was represented by Mr Paul Sangha, of Counsel. The Claimant, Melissa Curtis, Tracey Smith, Darren Coverdale and Marc Ripley adopted their witness statements and gave oral evidence. They answered the questions that they were asked. The Claimant and Mr Sangha produced written submissions and they adopted them at the hearing. We took account of the fact that the Claimant was not represented and that that she suffered from anxiety, stress and depression and made appropriate adjustments. The Claimant was offered regular breaks and was reminded that if she was finding it difficult, she should not hesitate in asking for a break. I also carefully explained the procedure for the hearing and gave appropriate

her guidance on cross-examination and making closing submissions. Once Mr Sangha had finished making his oral submissions, the Tribunal allowed the Claimant a reasonable adjournment to enable her to respond to his oral submissions.

The Claims

2. The Claimant presented a claim form on 26 June 2017 complaining that she had been unfairly dismissed, unlawfully discriminated against because of her disability and the Respondent had failed to pay her accrued holiday pay. Regarding the unlawful discrimination claims, she claimed that she had suffered indirect disability discrimination and the Respondent failed to discharge its duty to make reasonable adjustments. The Respondent defended the claims. The Respondent accepts that the Claimant is disabled. The Claimant's disability is anxiety, stress and depression.
3. The Respondent claims that it dismissed the Claimant on 8 February 2017 because of her conduct. The Claimant alleges that the real reason for her dismissal was her disability or that is something which was a consequence of her disability.
4. The Claimant withdrew her holiday pay claim during the hearing. She conceded that she had been paid her accrued holiday pay.

Background and Key players

5. The Claimant was employed by the Respondent as a Customer Service Representative within the Collections Team. Her role was to conduct telephone calls with customers who owed the Respondent money in respect of their telephone accounts. There were two departments in the Collections Team: the inbound and the outbound. The inbound team dealt with calls that were initiated by customers whereas the outbound team instigated calls to customers. The claimant worked in the outbound team. All members of the Collections Team were required to meet financial target of £25,000 recoveries from customers per month. She started working in this role on 18 August 2008. She had previously worked for the Respondent and had briefly left them to work for another employer before returning to them. She was dismissed on 8 February 2017. She appealed the decision. The decision was upheld on 11 April 2017.
6. The key players are:
 - a. The Claimant.
 - b. Darren Coverdale (Team Leader of June 2001-2016; September 2017 to date). Mr Coverdale chaired the Claimant's grievance hearing on 1 September 2016.
 - c. Melissa Curtis (Team Leader from 2008 until 2017). Ms Curtis commenced employment with the Respondent on 5 April 2004 and was the Claimant's Team Leader at the material times forming the subject matter of her claim. She is now employed as a Credit Referral Team Leader and has been in that position since February 2017.

- d. Tracey Smith (Operations Manager from 12 June 1995 to 4 September 2017). She chaired the Claimant's disciplinary hearing on 8 February 2017.
- e. Marc Ripley (Senior Operations Manager for Collections, November 2016 to date). He has been employed by the Respondent since October 1997. He chaired the Appellant's appeal hearing on 11 April 2017.

The Issues

7. These are the issues which the Tribunal must determine:

Unfair dismissal

- a. What was the reason for the dismissal? The Respondent asserts that the reason related to the Claimant's conduct which is potentially fair under Employment Rights Act 1996, section 98 (2) (the "1996 Act"). The Respondent must prove that it had a genuine belief in the misconduct and this was the reason for the dismissal.
- b. Did the Respondent hold that belief in the Claimant's misconduct on reasonable grounds? The burden of proof is neutral here, but it helps to know the Claimant's challenges to the fairness of the dismissal in advance and they are identified as follows:
 - i. The Respondent failed to give due regard to her disability during the entire disciplinary process.
 - ii. The Respondent failed to deal with the Claimant's formal grievance whilst the disciplinary process continued.
 - iii. Any breach of conduct which she may have committed was because of her medical condition.
- c. Was the decision to dismiss a fair sanction, that is, was it within the reasonable range of responses for a reasonable employer?
- d. If the dismissal was unfair, did the Claimant contribute to the dismissal by her culpable conduct? This requires the Respondent to prove, on a balance of probabilities, that the Claimant committed the alleged misconduct.
- e. Does the Respondent prove that it had adopted a fair procedure and that the Claimant would have been fairly dismissed in any event? And/or to what extent and when?

Indirect discrimination (Equality Act 2010, s 19)

- f. Did the Respondent apply to the Claimant a provision, criterion or practice ("PCP")?
- g. Did the Respondent apply, or would it apply the PCP to persons with whom the Claimant does not share the Claimant's disability?
- h. Did the PCP put, or would it put persons with whom the Claimant shares the characteristic at a particular disadvantage when compared with persons with whom the Claimant does not share it?
- i. If the PCP puts or would put the Claimant at that disadvantage, can the Respondent show the PCP to be a proportionate means of achieving a legitimate end?

Failure to make reasonable adjustments (Equality Act 2010, ss 20 & 21)

- j. Did the Respondent apply a PCP generally, namely in its disciplinary policy and procedure?
- k. Did the application of the PCP put the Claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled?
- l. Did the Respondent take such steps as were reasonable to avoid the disadvantage? The burden of proof does not lie on the Claimant; however, it is helpful to know the adjustments asserted as reasonably required.
- m. Did the Respondent not know, or could the Respondent not be reasonably expected to know that the Claimant had a disability or was likely to be placed at the disadvantage set out above?

The oral evidence

The Claimant

- 8. The Claimant accepted that her role with dealing with outbound calls was to cold call customers who owed money to the Respondent and she accepted that it was possible that customers could be embarrassed or argumentative when they were called. She said that it was a challenging role.
- 9. She had worked for several different line managers before Melissa Curtis. Melissa Curtis became her line manager in April 2015. Ms Curtis was aware of her anxiety and depression before joining the Claimant's team. She could not recall whether Ms Curtis had asked her about the trigger points for her stress. At the time when she joined Ms Curtis's team she had been seeing her GP over several years for treatment of her anxiety and depression.
- 10. She was taken to her Occupational Health reports and her sickness absence record to August 2016 which showed that she had been off sick for 94 days between July and November 2012. She was taken to an occupational health report [1019] which indicated that the current situation set out in paragraph 2 was that there were workplace difficulties and that the Claimant had problems with Mr Nicholson (a previous line manager). The Claimant accepted this and

that her problems with Mr Nicholson were not purely in the workplace but also outside the workplace. The Claimant also said that her medication was changed, and her mood improved, and she had been looking to coming back because she thought that issues have been resolved in-house in 2012 to which this occupational health report referred.

11. The Appellant accepted that she had filled in a Stress Risk Assessment (“SRA”) online at work and there had been a meeting in March 2015 which was an informal investigatory meeting. She recalled that there was an informal conversation with Ms Curtis which was recorded in a document dated 11 May 2015 and she accepted that her line manager had been dealing informally with her.
12. She confirmed that there was a meeting with Ms Curtis on 24 August 2015 to deal with underperformance issues. This was recorded in a set of minutes which set out the Claimant’s replies and she had been moved to stage 1 improvement. She had been notified of her right of appeal and it was put to her that this was performance management conducted by Ms Curtis in line with the Respondent’s Improvement Policy Performance. The Claimant agreed with Mr Sangha.
13. She was then asked about complaints that had been made against her in December 2015 which triggered another informal meeting in January 2016 [250]. The Claimant remembered this. The problem on this occasion was that it was alleged that she had been rude to a customer and had failed to escalate their complaint when asked to do so by the customer. The Claimant acknowledged that she had not passed on the customer straight away to a manager and she also acknowledged that she had listened to a recording of the telephone conversation. She also acknowledged that she had signed the interview record which included a reference to Ms Curtis informing her that formal action would be taken if the problem happened again.
14. Four months later there was another meeting on 9 May 2016 which was also informal and related to another telephone call with a customer. The Claimant remembered the meeting and the call that formed the subject matter of it. On this occasion, it was recorded in the note that the Claimant had not explained the customer’s bill to him after he had raised an issue with charges. It was also recorded in the note that the Claimant and said that she was just calling the customer for payment, but she was pulled up for failing to explain the bill to him and Ms Curtis had raised this with her. The Claimant eventually acknowledged that she had signed the record of the conversation. She acknowledged that several things had been identified that she needed to improve, including being patient with customers.
15. She was then taken to a document called “Time Utilisation” [259] and it was put to her that these recorded one-to-one sessions that she had with Ms Curtis between June and September 2016. The Claimant did not agree that this had happened and said that they were simply a record of standard coaching sessions for the team and there were not one-to-one sessions.
16. The Claimant was asked about an investigatory meeting between herself and Ms Curtis on 29 July 2016 [271]. She did not recall this meeting. She was then taken to a transcript of a telephone call between herself and a customer on 16 June 2016 which was the subject matter of the investigatory meeting in

July 2016. The Claimant recalled the conversation with the customer on 16 June 2016. She also confirmed listening to the recording of the conversation.

17. She acknowledged that she had been given a copy of the Respondent's code of conduct at every formal meeting that she attended.
18. She was then taken to the minutes of another investigatory meeting that took place on 10 August 2016 also with Ms Curtis. This meeting related to a call that took place on 29 July 2016. The Claimant remembered that meeting. It was put to her that she had been required to listen to the telephone call and had been asked to comment on the good and bad parts of it. It seemed that she had been asked to refer the customer to her manager but at the time no one was available to help. The Claimant agreed with this and said that it was a common problem.
19. She acknowledged that there was an escalation procedure [1068] which was in place for employees to be able to distinguish between when a customer was dissatisfied as opposed to complaining. Call operatives could also refer to "Albert" the Respondent's system for addressing complaints and when to escalate them. The Claimant admitted that she had not read the policy in detail although she understood that if a customer wanted to speak to someone in management, the employee taking the call would have to refer the customer to the manager.
20. She was taken to a letter from the Respondent written in October 2014 [230] and in particular to the bottom paragraph which related to a complaint by a customer who had claimed that she had been rude and nasty and had hung up prematurely. The Claimant had been given a final written warning for this. The Claimant remembered this although she did not accept that this related to similar previous issues that have given rise to her dismissal. She did not accept that there were similarities. She said that it was not about the same allegation. She had been dismissed about a promise to pay problem. She accepted that she had not appealed the decision. She was then asked about another incident on 1 November 2016 [567] which had triggered another disciplinary hearing. She had attended a meeting with Ruth Laidler [587] during which she had been asked about her illness and her triggers. She was asked to specify what those triggers were to which she simply replied that it was set out in the first couple of lines in the minute. It was put to her that adjustments had been made to her workplace and that she seemed to be complaining about how the Respondent was dealing with her anxiety and depression. She agreed with Mr Sangha.
21. The Claimant said that she had lost confidence in the way that she had done her job over the previous five years. Some of her colleagues knew that she lacked confidence and helped her, and she had other coping mechanisms. She was taken to paragraph 24 of her witness statement where she referred to her coping strategy and she confirmed that this involved taking time out.
22. She was asked whether she had any counselling which was offered by the Respondent. She confirmed that she had attended counselling in December 2016 after it was requested.
23. There had been a disciplinary hearing in December 2016 to which she had received a warning which was to stay on her file for nine months. Ms Laidler

chaired the hearing. Her companion, Joanne Shaftoe, was recorded as saying that it was a fair decision. The Claimant agreed with that conclusion.

24. The Claimant was extensively cross examined about her SRA and she acknowledged that this was the result of a discussion between herself and Ms Curtis on 14 October 2016 [610]. The sources of stress which were referred to in the SRA were cross referred to manuscript notes of the meeting [552 & 553]. It was recorded that she had said that she had insufficient training for her job, but she had said “no” to that and she acknowledged under cross examination that Albert would guide her through steps to assist with customer requirements. It was put to her that she knew what to do and where to get help from. She was asked about work relationships in the SRA and it was recorded that she did not have relationship concerns and that she felt happy with the team. She replied that she hadn’t had written down these responses and she didn’t have any problems with team colleagues. It was recorded in the SRA that she said she had suffered harassment and bullying at work but then it was also said that this had been dealt with [561]. She clarified by saying that she was not allowed to discuss the grievance as it was being investigated at the time and whilst the grievance was being investigated she had not suffered any bullying harassment.
25. She was then asked about her grievance. She said that she had sent the grievance from her private email address because it was a private matter. It was put to her that the grievance related to a meeting that she had with Ms Curtis [338] and referred to incidents at work. All the matters did not relate to how she handled customers. They related to problems in the office that she had with Melissa Curtis. She was then questioned extensively about when she received the grievance outcome. She had criticised the Respondent for not notifying her of the outcome before she was subsequently subjected to disciplinary action. There was a copy of the grievance outcome and it was sent to her private email address [546]. She did not think that it was reasonable for the company to reply to her in this way and she had expected to receive a formal response [i.e. by recorded delivery] and a catch-up meeting with Mr Coverdale. She only became aware of the grievance outcome during her disciplinary hearing on 15 November 2016. She had found out during the lunch break. She had not been able to access the email earlier because her broadband account had been suspended by Virgin, her broadband provider.
26. She did not appeal the grievance outcome because she felt inundated by her suspension on 21 November. She was not in a fit mental state and did not get around to appealing the grievance outcome.
27. It was put to her that the disciplinary hearing that ultimately led to her dismissal on 8 February 2017 related to a promise to pay issue with a customer during another call that had been identified by the Respondent. The Claimant had refused to grant a promise to pay status to the customer and was accused of belittling the customer. The customer had wanted to speak to a manager and had asked six times before his request was granted by the Claimant. She was asked why it had taken her so long and she replied that she had eventually agreed that the customer could speak to someone else, but she was trying to do all that she could. It was common for customers to behave in this manner. Her colleague, Angelina, had taken the call and she accepted that she might possibly have referred the call to her earlier. This

was why she had requested further coaching on it. There was an investigatory meeting with Ms Curtis arising from the call and she had listened to the recording with her. During the discussion with Ms Curtis about the call she was suspended. Her response to the suspension was read out [608]. The response contained a lot of bad language, but the Claimant denied saying this. She recalled simply saying that she offered to hand her pass in to Ms Curtis. She just wanted to go home, and she remembered very little else. She had a tough week and was unhappy with the outcome of the grievance and then she was pulled in within days for another investigation. She thought that this was preplanned, and the company had intended to suspend her. Being suspended had really upset her and she had got up and just wanted to go home. It was put to her that in fact she went back into the meeting room. She replied that she thought that she been forced to go back in by Ms Curtis. She was again asked why she thought she had said nothing wrong to Ms Curtis and had used bad language to which he replied that Security had not been called. She denied verbally abusing her manager and if there had been an issue, the security guard would have been called as they were only a matter of a few feet away. It was put to her that Ms Curtis had been very surprised by her conduct despite regarding herself as being thick-skinned. It was further put to her that she had been “in” Ms Curtis’s face. The Claimant denied this.

28. The Claimant was then questioned about her appeal against the disciplinary decision and, in particular, her claim that Tracey Smith had not been impartial. She believed that someone other than her should have chaired the disciplinary hearing and she felt that a person from a different department should have chaired the disciplinary hearing. She also felt that management were closing ranks and were trying to manage her out of the business. She acknowledged that Darren Coverdale had handled her grievance and that he was not in her department, but she then went on to say that he was under the same management. It was put to her that he worked on the opposite side of the floor to her and he approached the grievance as an outsider and he did not work with her directly. She replied that he was still in the collection side of the business. She acknowledged that she had not raised this issue with Darren Coverdale during the grievance, but she might have done had she decided to appeal it. She acknowledged that she did not appeal the grievance decision.

29. She was then asked to specify what reasonable adjustments she felt needed to be made as this formed another aspect of her appeal. She said that she should have been allowed time out and flexible understanding that she needed more support from others. If she had been allowed time out this would have enabled her to put her coping strategy into place. Instead, she felt that she had to request permission every time if she wanted to have a flexi-break and she had to ask her supervisor first. It was put to her that she already had an SRA and various recommendations had been made. None of the recommendations related to customer calls. The SRA did not identify her disability as having any bearing on calls that she had with customers. In response to this she said that she had always found it difficult dealing with aggressive and abusive customers and this heightened her condition where she needed to put in her coping strategy.

30. Mr Sangha put it to her that the appeal outcome letter dealt with the failure to make reasonable adjustments. An adjustment passport had been

recommended by Darren Coverdale and whilst she might not have had the passport, support had been provided. The passport identified her disability and what adjustments needed to be made. She acknowledged that this was the case, but she had never filled one out and hoped that it would have been done, so that it would have clearly documented the adjustments required for future situations. It was put to her that the grievance outcome referred to previous occupational health reports which recommended flexible breaks, and these been implemented. In response to this she said that these had only been scheduled after her grievance and she had to raise the grievance to achieve that outcome. Even then, she had to request flexible breaks from her manager. Her manager was not necessarily around if she needed to trigger her coping mechanism. She felt that this made her feel unimportant. She had been working a 40-hour week and did not feel positive.

31. She had to be reminded by Mr Sangha that the Respondent had to deal with complaints regarding her behaviour with calls with customers and it was put to her that the real issue was her conduct and not her disability. She had been rude to customers. She replied that this was taking matters out of context because if she felt stressed and unsupported, this caused problems and each customer was different. She also had a complex over the tone of her voice and because of this, she felt that the disciplinary policy had been used against her and ignored the fact of her disability. She also took issue with the fact that she had not been allowed to be accompanied at the investigatory meetings. It was put to her by Mr Sangha that the disciplinary policy did not provide the right to a companion and she acknowledged that fact. She was also taken to the minutes of the investigatory meeting [602] where it was recorded that Melissa Curtis had notified her that the policy did not confer a right of representation and it was recorded that she had not raised any issue about that. There was nothing to suggest that she wanted someone there because of her disability. In response to this, the Claimant said that she wanted someone present if Melissa Curtis was attending the meeting regardless of whether it was formal or informal. If someone had been present it would have made feel better. It was put to her that these investigatory meetings had all dealt with similar issues and she had been asked to listen to recordings of her telephone conversations with customers and there was no reason why she did not ask for representation. In response to this she said that even if it was the policy there was no flexibility shown to someone like her.
32. She was taken to paragraph 39 of her witness statement where she alleged that the investigatory meeting on 21 November 2016 had been unfairly conducted. In her statement she went on to say that Melissa Curtis was aware of her condition and that she had become so stressed by Ms Curtis's behaviour that this warranted calling a doctor. The minutes of the meeting showed that it started at 3 PM and was adjourned at 4:09 PM and it was reconvened at 5:35 PM, at which stage, the Claimant was suspended. It was put to her that Ms Curtis had not allowed her to become stressed. The problem was her reaction to being told that she was being suspended and would be invited to a disciplinary hearing. At this juncture, the Claimant challenged the accuracy of the minutes of the meeting.
33. I asked the Claimant to clarify when she received the minutes of the meeting. She could not accurately recall but she thought it had been about three weeks after the suspension. She told me that she had read part of the minutes but then she got upset when it came to the allegations. I asked the Claimant

whether she had challenged the Respondent about the accuracy of the minutes and she replied that she had not. She also acknowledged that she had received a copy of the minutes with the other documents enclosed in the letter inviting her to the final disciplinary hearing.

34. Mr Sangha then asked about her concerns with the fact that Mr Ripley had chaired the appeal. In paragraph 41 of her witness statement she suggested that there had been a conflict-of-interest. On being cross examined on this she said that the problem was the fact that they were all within the same area whereas Ruth Laidler had been totally separate. She thought that she was truly impartial.
35. Mr Gallagher asked the Claimant about the operation of the Collections Department. He wanted to know whether outbound calls were pre-arranged. She replied that campaigns were run on a dialing system and the work was spread amongst five teams. She wasn't sure whether there were the same number of teams dealing with inbound calls. She was asked whether there were any jobs that did not involve calling customers to which she replied that there were none. All the work in the collections department, whether it was inbound or outbound calls, involved dealing with customers who had problems with their bills. The Claimant had wanted to move departments, but she did not think that the Respondent had properly considered her request.
36. Mr Hunter asked whether she had applied for any jobs outside Collections. She said that she had done so in the past. She had noticed an opportunity for the Business Service on night shift in 2016 but had not made a formal application because she had not hit her internal targets.
37. I asked the Claimant whether she had complained about Tracey Smith's alleged lack of impartiality during the disciplinary hearing. The Claimant said that she had.
38. On further cross examination she was asked to confirm what she meant about when she said that her request to move departments had been ignored when it had been explained to her that the issue was her performance standards. She accepted that she had been told to work on a personal development plan.
39. Mr Sangha then took her to the minutes of the final disciplinary hearing [878] where it was noted that Tracey Smith had asked her if she was okay to continue with the hearing and that the Claimant was recorded as saying "yes". She then went on to say that this was not a true account, but she had said "yes". It was put to her that there was nowhere in the minutes where she was recorded as challenging Tracey Smith's impartiality. The Claimant was unable to show where it was recorded that she had taken issue with Tracey Smith chairing the disciplinary hearing.

Melissa Curtis

40. On cross examination, Ms Curtis said that numerous adjustments had been made to the Appellant's desk and working area including her computer, a foot rest, an occupational health chair and an occupational health mouse and gel cushion to go with the mouse and a gel cushion for the keyboard. She had been given monitor raisers. These were all part of the set-up to help the

Claimant have a comfortable working environment at work. A specific lady had been asked to come out to do the desk assessment to ensure that the workplace was comfortable for the Claimant's back and neck. The Claimant had injured herself when she had fallen down the stairs at Ms Curtis' house at a social event. She acknowledged that she was aware that the Claimant suffered from anxiety, stress and depression, but the Claimant had never highlighted any triggers that she needed to be aware of.

41. It was put to her that given she knew about her condition should the Claimant have had to remind her of those conditions. In response, Ms Curtis said that regarding her stress, anxiety and depression the Claimant had never pointed out what made her feel stressed or anxious and had not given any examples of triggers. If she had any issues she needed to highlight them. It was put to her that as her line manager, it was something for her to ensure that this was completed. In response to this, Ms Curtis said that it was the responsibility of an employee to highlight what the problem was to management.
42. On the question of supporting team members with personal development plans regarding a request to internally relocate, Ms Curtis said that the employee would approach with their request and they would either have a one-to-one meeting or coaching. In the Claimant's case she recalled that she had applied for a business job and she had given her a template for her to complete her personal development plan. The template showed her how things had to be set out and Paul Hutchinson had helped with this at the end of the shift. Ms Curtis would then schedule time to discuss the plan. It was up to the Claimant to complete her own plan. Ms Curtis felt that she had done enough to help the Claimant. They had gone over the plan together.
43. There was then a discussion about how long Ms Curtis had known the Claimant. Ms Curtis thought it had been about eight years, but the Claimant seemed to think it was longer.
44. On being asked whether she treated all members of the team in the same way she replied that she treated people differently according to their personal circumstances.
45. There was a discussion about when the SRA was completed and whether it would normally have been scheduled in IEX. She denied saying that the Claimant should be managed out of her job. She denied asking the Claimant who she would manage on a minimum wage. She denied asking the Claimant how she would manage her dogs if she did not have a job.
46. I asked Ms Curtis to clarify the extent of her social life with the Claimant as I understood that she had visited Ms Curtis' house. She replied that the team had come round and she would socialise occasionally with the Claimant at the Christmas party or on team nights out. She would also take the Claimant to work and give her a lift home. She thought this was about a couple of times per week as the Claimant lives near to Ms Curtis. This had stopped in November 2016 shortly before the investigatory meeting.
47. On re-examination she was asked how she took account of the Claimant's stress and anxiety and the notion that she treated different people differently. She said there was a different scenario as far as the Claimant was concerned. The performance management process for her was different and

had not been started as quickly as it might have been with other people. Her sickness had not been managed as part of the policy to consider the assorted reasons why the Claimant had been off sick. She also had to consider the fact that on numerous occasions there had been customer complaints and normally, in such a situation, this would have been escalated sooner into a formal action. However, in the case of the Claimant this was not escalated as quickly to take account of her health. The Claimant had also been given flexi-breaks.

Darren Coverdale

48. Under cross-examination, he was asked what the standard process was for the outcome of a grievance to be issued. He said that after conducting and reviewing the evidence he wanted to complete the outcome with the help of the HR Department and the outcome would then be sent out by email, in the post or given to the employee by hand. In the Claimant's case, he had offered to send it to her via email. He thought that it had been emailed to her on 13 October 2016.
49. He was asked why he had not arranged a catch-up meeting with the Claimant on IEX. He replied that during the grievance hearing he had asked the Claimant if she was happy to have the grievance outcome sent to her in writing and she said that she was. It was put to him that he had left Collections in December how was he going to ensure that the next steps highlighted in the grievance outcome letter would be implemented. He accepted that he had taken ownership of the next steps and had discussed them with Tracey Smith on a handover. He had explained his findings of the grievance hearing with her, but he did not believe that he would be personally responsible for their implementation. He did not think it was necessary to have a catch-up meeting with the Claimant.
50. He did not know that the Claimant had only received the outcome letter on 15 November 2016. As he had heard nothing back from her, he had no reason to believe that she had not received it. He was unaware that the recommendation for the adjustment passport had not been implemented.
51. He was asked why he had disregarded the various people that she had named whom he should speak to regarding her grievance as they gave similar accounts. He denied this. He said that all the people that he spoke to had given accounts of what had happened regarding the Claimant's allegations of being bullied. Some of the witnesses gave a vague account and could not, for example, say when something had happened. Most of the witnesses were simply recounting hearsay and had not personally witnessed any incidents of bullying. They were simply going on what the Claimant told them. He had spoken to five or six witnesses. He was looking for evidence of what had happened in the context. Nobody had given him a recent account of any concerns. He was concerned that they had only told him what they had heard but not seen. He could not give an example where someone had seen bullying or harassment in the workplace and he needed to understand what had happened. He had interviewed the witnesses and then decided on the weight that he should give to their evidence.
52. Mr Gallagher asked Mr Coverdale whether he knew if the Claimant had appealed. He was unaware that there was an appeal. He had given

recommendations to Tracey Smith and he thought that there would be a “clear the air meeting” as this was one of the recommended outcomes of the grievance hearing.

53. I asked Mr Coverdale to give the Tribunal information about the physical layout of the office space where the Claimant worked. He drew a picture which was circulated to the Tribunal, the Claimant and the Respondent’s representative. There had been a refurbishment at the end of 2016 and the office space had become more open plan as a result. He described two areas on opposite sides of the building where the Collections Department call centre operated. There were banks of desks accommodating approximately 250 people. 70 or 80% of the total would be speaking on the telephone using noise cancelling headsets. He said that having worked for 17 or 18 years in such an environment, the noise cancelling headsets significantly reduced background noise in the call centre. He did not think the headcount had changed significantly after the refurbishment.

Tracey Smith

54. She confirmed that she had received the grievance outcome and understood the next steps that were required including the clear-the-air meeting. There was some discussion about when she first spoke to the Claimant about implementing the outcomes. She believed that she had actioned the outcomes as quickly as she could. She was aware of two previous occupational health reports from 2016 and 2014. Both were very similar. She was asked about whether she had helped the Claimant sufficiently regarding her request to be moved out of the Collections Department. She said that when they had a clear-the-air meeting with Melissa Curtis she recalled that the Claimant was unhappy that things changed because the disciplinary action started. She remembered that Melissa Curtis had put a lot in place in terms of coaching and that the Claimant had said that she was unhappy in her role. She thought that if the Claimant had continued in her employment she could have applied for other positions. The other areas were all customer facing.

55. There was discussion about the level of resilience that was needed in any of the customer facing roles. She felt that there was always an element of resilience needed whether it was for inbound calls or outbound calls. In all areas of customer facing work, including customer service, there would be complaints that had to be dealt with.

56. She was asked whether she could recall any period in the previous five years where the Claimant had requested a move to a less stressful area. She replied that if she had raised such an issue it would have been with her line manager. She recalled personally hearing the Claimant raising a move request during the clear the air meeting. She felt that given the occupational health reports over the previous five years, she had been adequately supported as a member of staff.

57. Mr Gallagher asked Ms Smith whether as operations manager she was aware of staff targets and if someone wanted to seek alternative employment did they have to meet those targets? She responded that meeting targets was part of the consideration, but an employee could still apply in any event. Different metrics were used to assess overall performance. If there were

internal vacancies available, even if performance was not up to scratch, an employee could still apply. The Claimant's performance had been up and down. She would sometimes meet targets but there were issues about the sanctions that had been imposed because of the customer complaints. She confirmed to Mr Gallagher that individual employees in the Collections Department were required to recover £25,000 per month. She estimated that if one looked at all the agents, between 75% and 80% of them would hit their target. The 20% who did not hit their targets needed to improve and there was a process of helping them with remedial action. They would have the opportunity to have a performing "buddy" to help them improve and all of them would be given time to improve before formal performance management was introduced. There was never a time when the Claimant met all the five-performance metrics that the Respondent utilised. The main issue was customer complaints and the Claimant's behaviour that she had displayed. This was a conduct issue and Ms Smith would not look at redeployment whilst conduct was an issue. There was no role available which did not involve contact with customers.

58. On further cross-examination she was asked whether, given the environment of Collections and targets, would this be the same in another part of the company. She replied that it depended on the area of the business but in Collections, money was more important. In other areas, customer service was more important. She was asked that if one took the money out of the equation, would the customer type to be the same. She replied that even if one did that, there would still be complaints from customers which would be different but at the same level. The employee would still have to be able to manage calls dealing with complaints.

Marc Ripley

59. Under cross-examination he believed that the way in which he had handled the Claimant's appeal was fair. He had reviewed two of her occupational health reports. He was not aware of any other ones in existence and dealt with the ones that have been sent to him in the appeal pack. He said that he had known Tracey Smith from the time that he joined Collections in 2016.

Submissions

The Respondent

60. Mr Sangha adopted his written submissions. We have considered these in reaching our decision. He then addressed the Tribunal on the Claimant's claim for disability discrimination. He took the Tribunal to page 71 of the hearing bundle and the last two lines concerning the Claimant's allegations regarding lack of reasonable adjustments and the suggestion that to do so would be unfair to other employees. He submitted that in her evidence, Ms Smith had denied saying this and clarified the matter by stating that it was a reference from the disciplinary hearing [897-898] where Ms Smith had said that employees would have to be managed equally. The comment had to be read in that context. The Claimant was referring to the investigatory meeting with Ms Curtis and her suggestion that someone should have accompanied her to help to handle her emotional issues. Ms Smith was simply stating that the meeting with Ms Curtis was conducted in accordance with the Respondent's policy after a customer had complained about the Claimant. Ms

Smith was not saying that she could not make adjustments.

61. We were then taken to page 72 of the hearing bundle where it was alleged that the Respondent's management were unaware of the Claimant's disability. We were asked to consider this in the context of paragraphs 52-56 of Mr Sangha's written submissions. What the Claimant was alleging was that the disciplinary and grievance procedure should have been applied differently to her. The Claimant had to establish that she was put at a substantial disadvantage in respect of her reasonable adjustments claim or a significant disadvantage in respect of her indirect discrimination claim. On the evidence, it was clear that she had not been placed at a disadvantage. She had been given the opportunity to explain her position. This had not been prohibited. Further down the line, when she attended the formal hearing, she had exercised her right to be accompanied.
62. Turning to the question of reasonable adjustments to the workplace, the relevant ones related to her mental condition. She suffered from stress and this had been recognised in the SRA where flexi-breaks had been recommended. This was a reasonable adjustment [559]. In her evidence, the Claimant had acknowledged that she had been given flexi-breaks. There had been discussion about how she would take those breaks and she understood how they worked. The Claimant had acknowledged this in writing by signing the SRA [563].
63. Mr Sangha then took the Tribunal to the last occupational health reports [1033]. These were the most helpful because they were the most recent. They were also helpful because of the witnesses that the Tribunal had heard who referred to those reports. The reports were also relevant to the Claimant's claim for unfair dismissal [1035] and, in particular, the reply to question five which referred to the Claimant's symptoms, her medication and the fact that she appeared to have good coping strategies. One of the support mechanisms was also reduced targets for the Claimant. The Claimant had a good coping strategy and was taking her medication. The reports did not refer to her difficulties with customers when she was conducting calls and any adverse impact relating thereto.
64. We were then addressed on the unfair dismissal claim. The written submissions deal with the question of conduct but had failed to address one of the grounds of disciplinary action which was the Claimant's contacting others at work to discuss her suspension. However, this was not a material omission.

The Claimant

65. The Claimant adopted her written submissions. We have considered her written submissions in reaching our decision. She further submitted that regarding the offer of flexi-breaks, these had only been noted and offered after she had raised her grievance in September 2016. However, if she wanted to take a flexi-break, she had to first obtain her supervisor's permission. They could not just be taken. She did not recall having a detailed discussion with her line manager about that.

Applicable Law

Unfair dismissal

66. The circumstances under which an employee is dismissed are set out in section 95 of the 1996 Act as follows:

(1) for the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2)...., only if) –

(a) the contract under which he is employed is terminated by the employer (whether with or without notice),

...

67. The fairness of a dismissal is set out in section 98 of 1996 Act as follows:

(1) in determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show –

(a) the reason (or, if more than one, the principal reason) for the dismissal,

(2) A reason falls within this subsection if it –

...

(b) relates to the conduct of the employee,

...

(4) Where the employer has fulfilled the requirement of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason) shown by the employer –

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee,

(b) shall be determined in accordance with equity and the substantial merits of the case.

68. The employer must show that misconduct was the reason for the dismissal. According to the Employment Appeal Tribunal in **British Home Stores Limited v Burchell 1980 ICR 303**, a threefold test applies. The employer must show that:

- a. It believed that the employee was guilty of misconduct;
 - b. it had in mind reasonable grounds upon which to sustain that belief;
- and

- c. at the stage at which that belief was formed on those grounds, it had carried out as much investigation into the matter as was reasonable in the circumstances.

This means that the employer need not have conclusive direct proof of the employee's misconduct; only a genuine and reasonable belief, reasonably tested.

69. An employer is expected to have regard to the principles for handling disciplinary and grievance procedures in the workplace set out in the ACAS Code on Disciplinary and Grievance Procedures (the "Code"). The Code is relevant to liability and will be considered when determining the reasonableness of the dismissal. If a dismissal is unfair, the Tribunal can increase an award of compensation by up to 25% from unreasonable failure to follow the Code if it considers it just and equitable to do so.

The duty to make reasonable adjustments

70. The Equality Act 2010 sections 20 and 21 (the "2010 Act") imposes a duty on employers to make reasonable adjustments to help disabled employees and former in certain circumstances. The duty can arise where a disabled person is placed at a substantial disadvantage by:

- a. An employer's PCP
- b. A physical feature of the employer's premises.
- c. An employer's failure to provide an auxiliary aid.

71. However, an employer will not be obliged to make reasonable adjustments unless it knows or ought reasonably to know that the individual in question is disabled and likely to be placed at a substantial disadvantage because of their disability.

72. The Equality and Human Rights Commission Employment Statutory Code of Practice (the "EHRC Code"), which the Tribunal must consider, if it appears relevant, contains a non-exhaustive list of potential adjustments that employers might be required to make.

73. It is for the Tribunal to objectively determine whether a particular adjustment would have been reasonable to make in the circumstances. It will consider matters such as whether the adjustment would have ameliorated the disabled person's disadvantage, the cost of the adjustment in the light of the employer's financial resources, and the disruption that the adjustment would have had on the employer's activities.

Indirect disability discrimination

74. The 2010 Act, section 19 provides that indirect disability discrimination occurs where:

- a. A applies to B a PCP.
- b. B has a disability.

- c. A applies (or would apply) that PCP to persons who do not have B's disability.
- d. The PCP puts (or would put) those with B's disability at a particular disadvantage when compared to other persons.
- e. The PCP puts (or would put) B at that disadvantage
- f. A cannot justify the PCP by showing it to be a proportionate means of achieving a legitimate aim.

Findings of fact - applying the law to the facts to decide the issues

Unfair dismissal

75. What was the reason for the dismissal?

Having considered all the evidence and the submissions, the Tribunal has no hesitation in finding that the reason for the Claimant's dismissal was her conduct. The conduct issues arose from the way the Claimant handled telephone calls with customers in the Collections Department. There was a consistent history of problems with customer complaints that had been dealt with by the Respondent in accordance with its disciplinary policy. The Claimant unfortunately had a history of conduct issues with the Respondent relating to the way in which she handled calls with customers and had been subject to formal disciplinary action prior to being dismissed. These previous incidents were subject to disciplinary action in 2014 and late in 2016 when the Claimant had been issued with warnings. She had a live warning on her file. Despite the Claimant's assertion under cross examination that those earlier conduct issues were not factually like the one which triggered her dismissal in February 2017, having considered the evidence, as a whole, the Tribunal disagrees. The Claimant had been disciplined previously for her rudeness and her aggressive behaviour towards customers and there was a pattern of behaviour which was repeated which led to her dismissal.

76. Did the Respondent hold that belief in the Claimant's misconduct on reasonable grounds?

The Respondent had reasonable grounds in believing that the Claimant had committed an act of misconduct. Her dismissal stemmed from a complaint made by a customer on 19 November 2016 which was properly and fairly investigated by Melissa Curtis. The process started with Ms Curtis discussing the customer's complaint with the Claimant on 21 November 2016. The telephone call with the customer had been recorded and both the Claimant and Ms Curtis listened to that call during the investigatory meeting.

77. Having concluded her investigations, Ms Curtis believed that further disciplinary action was warranted, and the Claimant was invited to attend a disciplinary hearing by letter dated 20 January 2017 [730]. She was made aware of the specific allegations which she had to answer arising from the telephone call with the customer and was provided with all the documents

relating to the investigation, the Respondent's policies and the Claimant's occupational Health reports. The Claimant attended the disciplinary hearing on 8 February 2017 during which she was given sufficient opportunity to reply to each of the allegations that were made against her. We also thought it significant that under cross-examination, the Claimant acknowledged that she was sent a summons to attend a disciplinary hearing and she had signed for it. In that letter she had been advised of her right to be accompanied and she acknowledged that she received all the documents that were enclosed in the letter. She acknowledged that Tracey Smith had chaired the meeting. She knew what she had been accused of. She acknowledged that she was given the opportunity to say everything that she wanted to say regarding the four allegations that had been made against her and she eventually acknowledged to Mr Sangha that Melissa Curtis had simply suspended the Claimant on 21 November 2016 and she could not have dealt with the matter in any other way.

78. Having considered the evidence, the Tribunal does not accept that the Claimant's claim that the Respondent failed to give due regard to her disability during the entire disciplinary process. In 2016, the Claimant was subject to disciplinary action and attended a hearing with Ruth Laidler. The minutes of that disciplinary hearing are exhibited in the bundle [587-598]. During the hearing, the Claimant's disability was discussed and, in particular, the triggers for her illness including situations which she felt were outside her control and not being prepared. She also referred to working in a noisy environment which she thought had got worse since the office had been refurbished and finally, lack of sleep was also a trigger. We also note that Ms Curtis, the Claimant's line manager, understood and identified the Claimant's disability as being of no specific trigger. This was repeated by Ms Curtis under cross examination. During her oral evidence, Ms Curtis confirmed that she had departed from the performance management guidance on timescale to make due allowance for the Claimant's disability. Furthermore, her sickness absence had not been managed as per the appropriate policy to take account of the fact that there were distinct reasons why the Claimant was off sick. Leeway was also given concerning escalation to further formal action. Ms Curtis was also aware of the flexi-breaks offered to the Claimant. Under cross examination, Ms Smith also confirmed that she had considered the two Occupational Health reports as part of the disciplinary hearing process. It is also noteworthy that the latest report identified that the Claimant had a good coping strategy in place.

79. Having had the benefit of hearing Mr Coverdale's evidence, we considered him to be a credible and reliable witness and we found his testimony helpful concerning the physical layout of the Respondent's office space and the Claimant's working environment and how he dealt with the Claimant's grievance. Mr Coverdale had 17 or 18 years work experience in this area and we accept his evidence that whilst the office space was increased by becoming more open plan after the refurbishment, we do not believe that this led to any increase in ambient noise as the Claimant maintained. It was particularly noteworthy that Mr Coverdale explained the use of noise cancelling headphones and how this greatly reduced background noise in an environment where many employees were speaking to customers on the telephone. Finally, under cross examination it was clear that Mr Ripley was also aware of the Claimant's disability and gave it appropriate consideration during the appeal process. He had also considered the Occupational Health

reports.

80. The Claimant alleged that the Respondent failed to deal with her formal grievance whilst the disciplinary process continued. Having considered the evidence, the Tribunal disagrees. The grievance was completed by Mr Coverdale before disciplinary action was taken against the Claimant. He carefully considered the allegations of bullying and harassment and quite properly recognised the problems of hearsay that he faced in establishing whether any such behaviour had occurred. Mr Coverdale communicated with the Claimant using her preferred means of communication (i.e. to her private email address). Furthermore, we do not think that it was incumbent on Mr Coverdale to have arranged a catch-up meeting with the Claimant. Having communicated the outcome of the grievance with the Claimant, using her preferred means of communication, and having heard nothing from her it was reasonable for him to conclude that he had completed the process. He then communicated the outcome of the decision together with his recommendations to Ms Smith and to all intents and purposes, he had satisfactorily completed the process. The Tribunal notes that the Claimant did not, in any event, appeal the outcome of the grievance.
81. The Claimant has suggested that any breach of conduct which she may have committed was because of her medical condition. The Tribunal disagrees. The Respondent had ample evidence before it and knew about the Claimant's medical condition. This was to be found in documents such as the Occupational Health reports and the SRA. Ms Smith chaired the Claimant's disciplinary hearing. She had reviewed the Occupational Health reports and she had reasonable grounds for believing that there were no issues with the Claimant's health to warrant further adjustments being made. When the Claimant was invited to attend a disciplinary hearing by letter dated 20 January 2017 she was specifically asked whether there were any adjustments that Ms Smith needed to make for the Claimant to attend the meeting. The letter invited the Claimant to notify Ms Smith by 27 January 2017 regarding such adjustments. There was no dispute between the parties that the letter was received by the Claimant and there was no evidence to show that the Claimant had identified any reasonable adjustments that needed to be made. The Claimant suggested under cross examination that Ms Smith had a conflict of interest and challenged her at the disciplinary hearing. In effect, the Claimant implicitly invited the Tribunal to infer that the disciplinary hearing was tainted with unfairness because of that alleged conflict of interest. We note that there is no record in the minutes of the hearing showing the Claimant made such a challenge. The minutes of the meeting record Ms Smith asking the Claimant from the outset if she was okay to continue to which she replied "yes" [878]. This contradicts what the Claimant said in her oral evidence at the Tribunal.
82. The Occupational Health report dated 18 August 2016 [1035] states in response to question 5 that the Claimant had a history of psychological symptoms and there were many times when they became exacerbated which could lead to impaired performance. However, it was also acknowledged that the Claimant appeared to have good coping strategies in place to support herself. The Claimant was also aware that she needed to keep the business updated should her symptoms become exacerbated so that the Respondent could put support for her into place within her role. We also note that the Claimant was given flexi-breaks to help her to cope. Consequently, the

Tribunal is not satisfied that the Claimant has established a causal connection between her conduct and her medical condition.

83. Was the decision to dismiss a fair sanction, that is, was it within the reasonable range of responses for a reasonable employer?

Under all the circumstances, the Tribunal considers that the decision to dismiss the Claimant was a fair sanction. She had a live final written warning on her file and her conduct towards the customer which led to her dismissal clearly amounted to a failure to follow the Respondent's Code of Conduct. Telephone contact between the Respondent's employees and its customers was a fundamentally important part of the business. The Claimant did not handle some calls with customers well. She could be rude and aggressive and either did not escalate calls when asked to by the customer or delayed doing so. Her dismissal was within a reasonable range of responses for a reasonable employer.

Indirect discrimination (Equality Act 2010, s 19)

84. Did the Respondent apply to the Claimant a provision, criterion or practice ("PCP")?

The Respondent applied a PCP namely the disciplinary procedure which led to the Claimant's dismissal. Her allegation is that she should have been allowed to have a companion at the investigatory meetings because of her disability.

85. Did the Respondent apply, or would it apply the PCP to persons with whom the Claimant does not share the Claimant's disability?

The Claimant has not established that the Respondent applied the PCP to persons with whom the Claimant does not share her disability. Neither the claimant nor any other employee was entitled to be accompanied by a companion at investigatory meetings. The right to be accompanied only arose at disciplinary hearings and appeals. That fact was made clear to the Claimant by Ms Curtis.

86. Did the PCP put, or would it put persons with whom the Claimant shares the characteristic at a particular disadvantage when compared with persons with whom the Claimant does not share it?

The Claimant has not established that she was put at a substantial disadvantage in respect of her indirect discrimination claim. On the evidence, it was clear to the Tribunal that she had not been placed at a disadvantage. She had been given the opportunity to explain her position. During the meeting on 21 November 2016, she was told that it was an informal meeting and that she had no right to representation and it could be adjourned at any time for her to take a break [602]. Requesting a companion had not been prohibited; it was simply not an option at that stage. Further down the line, when she attended the formal hearing, she had exercised her right to be accompanied. Furthermore, at previous investigatory meetings she had not been accompanied and no issue had been taken about that fact. It is difficult to see what difference a companion would have made at these meetings

which largely comprised the Claimant listening to recordings of telephone calls with the customer making the complaint and being asked to comment on them.

87. If the PCP puts or would put the Claimant at that disadvantage, can the Respondent show the PCP to be a proportionate means of achieving a legitimate end?

As we do not believe that the PCP placed the Claimant at a disadvantage this question does not require answering.

Failure to make reasonable adjustments (Equality Act 2010, ss 20 & 21)

88. Did the Respondent apply a PCP generally, namely in its disciplinary policy and procedure?

The Respondent applied a PCP namely the disciplinary procedure which led to the Claimant's dismissal. Her allegation is that she should have been allowed to have a companion at the investigatory meetings because of her disability.

89. Did the application of the PCP put the Claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled?

The Claimant has not established that she was put at a substantial disadvantage in respect of her reasonable adjustments claim. On the evidence, it was clear to the Tribunal that she had not been placed at a disadvantage. She had been given the opportunity to explain her position. Requesting a companion had not been prohibited. It was simply not an option. Further down the line, when she attended the formal hearing, she had exercised her right to be accompanied. Furthermore, at previous investigatory meetings she had not been accompanied and no issue had been taken about that fact. It is difficult to see what difference a companion would have made at these meetings which largely comprised the Claimant listening to recordings of telephone calls with the customer making the complaint and being asked to comment on them.

90. Did the Respondent take such steps as were reasonable to avoid the disadvantage? The burden of proof does not lie on the Claimant; however, it is helpful to know the adjustments asserted as reasonably required.

The Claimant suffered from stress and this was recognised in the SRA where flexi-breaks were recommended. The SRA followed from a meeting between the Claimant and Ms Curtis which his recorded in handwritten notes dated 14 October 2016 [552-563]. It is recorded that "Sue to pro actively request time out. When unsure or need assistance". She is recorded as saying that she did

not think that she had enough support from a line manager. However, she is then recorded as saying “when originally filled this we were going through disciplinary/informal investigations so that’s why didn’t feel that I had manager support. I know that I wasn’t proactive in asking for support before. Happy now that got manager support; I feel that its now not only internal support. I am now satisfied. I know if your not available I can ask other team leader for help and support when needed [558]. When asked if she was getting enough support from her colleagues, she is recorded as saying “yes, I’m happy and I can ask them” [559]. She also states that she knows that she can have flexi-breaks and it is recorded “Sue fully understands now how flexible breaks work” [559]. She was asked if she had concerns about her working relationships with her team to which she is recorded as saying “No, feel happy and comfortable with the team and how we work together, not afraid of saying if getting on each other’s nerves” [561]. When she was asked about bullying or harassment at work she is recorded as saying “at the time I filled it in yes because we were going through the grievance but if I was to fill in another on in now I would say no as it has now been dealt with within the process” [561]. She was clear about her roles and responsibilities and she knew how to access support at work [563]. Clearly these notes show a detailed conversation about the Claimant’s role, and issues that she thought she had and how matters had improved. It also shows the offer of flexi-breaks which was a reasonable adjustment [559]. In her evidence, the Claimant acknowledged that she had been given flexi-breaks. There had also been discussion with Ms Curtis about how she would take those breaks and she understood how they worked. The Claimant had acknowledged this in writing by signing the SRA [563]. The Claimant had also been invited to identify any adjustments that needed to be made in advance of the disciplinary hearing. She did not identify anything to Ms Smith. Indeed. from the outset of the disciplinary hearing she signified that she was okay to continue.

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

The Respondent knew that the Claimant was disabled, and it made reasonable adjustments.

Employment Judge Green

10 January 2018