EMPLOYMENT TRIBUNALS

Claimant: Miss G Briggs

Respondent: North West of England and Isle of Man Reserve Forces and Cadets Association

Heard at: Manchester **On:** 6, 7 and 8 June 2018
1 February 2019
(in Chambers)

Before: Employment Judge Horne
Mr G Skilling
Mrs B J McCaughey

REPRESENTATION:

Claimant: Mr M Mensah, Counsel
Respondent: Mr M Hatfield, Solicitor

RESERVED JUDGMENT

The judgment of the Tribunal is that:

1. The respondent is liable for harassment of the claimant by making untrue comments about the claimant's disability which were included in the investigation report.

2. The respondent is not liable for direct discrimination or discrimination arising from disability in respect of those comments, solely on the ground that the comments amounted to harassment and therefore did not constitute a detriment within the meaning of the Equality Act 2010.

3. Had the tribunal found that the comments did not amount to harassment, the tribunal would have found:

   3.1. that the respondent was liable for direct discrimination of the claimant by making those comments;

   3.2. alternatively, that the respondent was liable for discrimination arising from disability.

4. The respondent is liable for harassment of the claimant by including those comments in the investigation report and reading them out loud on 12 July 2017.

5. The Tribunal has no jurisdiction to consider the following complaints of harassment on the ground that they were presented after the expiry of the statutory time limit and it is not just and equitable for the time limit to be extended. The complaints are:

   5.1. Allegation 1

   5.2. Allegation 2

   5.3. Allegation 3 (so far as it relates to any harassment allegedly occurring prior to early April 2017) and

   5.4. Allegation 4.

6. In all other alleged respects, the respondent did not harass the claimant.

7. The claim for damages for breach of contract is dismissed on the grounds that:

   7.1. The claimant was not constructively dismissed; and

   7.2. In any event, the claimant has not suffered any recoverable loss.

CASE MANAGEMENT ORDER

1. There will be a hearing to determine the claimant's remedy.

2. The time allocation for the hearing will be one day.

3. Within 14 days of the date when this Judgment is sent to the parties, the parties must inform the Tribunal in writing of any dates to avoid when listing the remedy hearing together with any proposed Case Management Orders.

REASONS

Delay

1. There has been a regrettable delay in sending this Reserved Judgment to the parties. There was insufficient time on the final day of the hearing for the Tribunal to deliberate and reach a judgment. Accordingly the case was re-listed for a day's hearing in the absence of the parties which was due to take place on 25 October 2018. Unfortunately, owing to an administrative error, one of the members of the Tribunal was not available on that day and our deliberations had

to be postponed. The earliest date on which the Tribunal could reconvene was 1 February 2019. The Tribunal apologises for any unnecessary anxiety that this delay may have caused.

Complaints and Issues

2. By a claim form presented on 17 September 2017, the claimant raised the following complaints:

   2.1. Harassment related to disability, contrary to sections 26 and 40 of the Equality Act 2010 ("EqA");

   2.2. Discrimination because of disability, contrary to sections 13 and 39 of EqA;

   2.3. Discrimination arising from disability, contrary to sections 15 and 39 EqA; and

   2.4. A claim for damages for breach of contract.

3. In addition, the claimant also raised a complaint of unlawful dismissal, but that complaint was struck out in a judgment sent to the parties on 17 January 2018.

4. A preliminary hearing took place on 20 November 2017 before Employment Judge Slater. There was a detailed discussion of the complaints and issues. Following the hearing, Employment Judge Slater prepared a helpful Case Management Order containing a table of allegations of discrimination and harassment. The Order also listed the issues which the Tribunal would have to determine. The table and the List of Issues appear as a Schedule to this Judgment.

Evidence

5. We considered documents in an agreed bundle which we marked "CR1". In keeping with the warning which we gave the parties at the start of the hearing, we did not read the entire bundle, but concentrated on those pages to which the parties drew out attention, either in the witness statements or orally during the course of the hearing.

6. Before the oral evidence commenced, the respondent handed two further documents to the Tribunal. These were floor plans of the office where the claimant worked. There was no objection to us looking at them. Part-way through the hearing the respondent produced a further collection of documents. These documents tended to show that a witness, Ms Sutherland, was absent on annual leave on a date when the claimant alleged she had harassed her at work. Again, there was no objection.

7. The claimant gave oral evidence on her own behalf. The respondent called Mrs Cornock, Miss Sutherland, Mr Cornmell, Mrs Peers and Mr Barnes as witnesses. All of them confirmed the truth of their written witness statements and answered questions.

Facts

8. The respondent runs cadet recruitment and training facilities at various sites in the North West of England. One of its larger sites is at Holcombe Moor, Bury, Lancashire. It has some 1,200 cadets and 250 adult leaders. It also has a team of paid employees. One of these is the respondent's Cadet Executive Officer (perhaps confusingly known as the "CEO"). There is also an administrative team comprising differing roles including Cadet Administrative Assistant ("CAA") and Administrative Officer (otherwise known as "Team Administrator").

9. The roles within the respondent organisation had defined pay grades. The CAA role was at the same grade as Administration Officer, but received more pay. This was because CAAs were paid a premium to reflect a requirement that they be prepared to work at weekends.

10. In early 2016 the CEO, Major Tom Cornmell, made a business case that the Holcombe Moor sire was under-resourced in comparison to other Association sites. There had been an uplift in recruiting activity led by the Ministry of Defence. At the same time, one of the Administrative Officer, Ms T, had a poor attendance record and temporary cover had to be obtained to replace her. Following the business case, it was agreed that Major Cornmell could recruit an agency worker to cover the role. Major Cornmell interviewed the claimant on 9 May 2016 and she commenced work the following day.

11. The claimant is a skilled administrator. She also has a hearing impairment. As a result, she found it difficult to hear people over the telephone.

12. On her first day as an agency worker, the claimant met Mrs Sue Cornock, an Administrative Officer, and Miss Helen Sutherland, a Facilities Assistant. Mrs Cornock and Miss Sutherland quickly warmed to the claimant and they got on well.

13. At some point during the claimant's first day, she answered the telephone politely and professionally. During the course of the conversation, the caller said something which the claimant could not quite understand. Mrs Cornock and Miss Sutherland heard her response. She simply said, “what?”. Mrs Cornock and Miss Sutherland found this funny. Although there is a dispute as to precisely what was said at that time, it is clear to us that the claimant was not remotely offended.

14. Both the claimant and Miss Sutherland were smokers. Soon after starting as an agency worker, she and Miss Sutherland started to take their smoke breaks together.

15. In a letter dated 20 May 2016, Major Cornmell commented that the claimant had a very pleasing personality and that she had settled into the team with ease. He was impressed with her standard of work and proactive approach. In his opinion, the claimant was an asset to the team.

16. In June 2016 the respondent was able to provide funding for Team Administrator to be employed on a fixed term contract. The claimant applied for the role. As part of her application she submitted a health declaration form in which she declared that her hearing in each ear was good for all purposes including telephoning. The claimant was successful in her application and was offered the role. Mrs Cornock and Miss Sutherland were delighted when they heard the news.

17. By email on 21 July 2016, the claimant accepted the role.

18. In due course, the claimant was issued with a statement of terms and conditions of employment. At paragraph 3, the statement provided:

> “Your employment shall continue, subject to the remaining terms of this contract, until it terminates on 31 March 2020 without the need for notice.”

19. At paragraph 5, the statement continued:

> "(a) You are employed as a Team Administrator and your principal duties are summarised in the job description supplied by the Association.
>
> (b) You may also be called upon to perform such additional duties appropriate to your grade as the Association shall from time to time reasonably require.
>
> (c) Your job description may be subject to change as a consequence of the introduction of new technology…"

20. At paragraph 15, the statement of terms provided, so far as was relevant:

> "In the event of termination of employment by the Association you will…be entitled to receive the following minimum period of notice in writing…where you have less than two years' continuous – two weeks."

21. Part of the pack that the claimant received when applying for the role was a written job description. The document set out a list of main objectives and detailed tasks. Neither the claimant nor Major Cornmell believed that the list would accurately reflect the claimant's day-to-day work. It was their common understanding that, in broad terms, the claimant would cover the responsibilities set out in the role description for Ms T's role, with some additional responsibilities given to her by Major Cornmell. Amongst the responsibilities of Ms T that the claimant was expected to cover was taking minutes of meetings. The only objectives and tasks in the claimant's own role description that it was intended that the claimant would actually do were "provide support where capacity exists…to the CEO" and "assist the CEO…in administrative duties which would encompass the span of requirements in support of the growth of the wider [cadet force]. This would include support to recruiting and the associated administration requirements covering a broad spectrum of tasks".

22. The claimant started in her directly employed role on 25 July 2016. On her third day as an employee, she attended a staff meeting and encountered difficulty in typing up the minutes. When she raised her difficulty with Major Cornmell, he agreed to transcribe the recording himself.

23. By late July 2016, the claimant and Miss Sutherland were close friends. On 29 and 30 July 2016 they exchanged messages on Facebook. Their messages were peppered with emojis indicating smiles and laughter, abbreviations (including "LOL" and the cruder equivalent, "PMSL") to show laughter, casual insults and good-natured swearing. The insults were meant and received as a joke. In the course of this conversation they goaded each other about who would sit where in the new office plan. The chain included a message from Miss Sutherland to the claimant suggesting that the claimant ought to swap desks with her, adding "how else will you be able to hear what [Ms T] is saying to you, LOL". The claimant replied, "Sooooo not cool" and added an emoji with its tongue sticking out. The next line of her message read, "I like talking to [Ms T] heheh".

24. It is clear to us from this exchange that Miss Sutherland was not mocking the claimant's hearing impairment and nor did the claimant understand it in that way. The thing that the claimant thought was "so not cool" was the suggestion of eavesdropping on Ms T.

25. Allegation 1 includes an allegation that, in July to September 2016, Miss Sutherland would call the claimant's telephone internally and say "What?" down the telephone and nothing else. We were unable to make a finding about whether

this had happened or not. Our efforts were hampered by the passage of time and also by the fact that this particular allegation was not put to Miss Sutherland during the course of her oral evidence.

26. On 11 August 2016, the claimant was awarded a grant of funding from Access to Work. The grant covered the purchase of a specialist microphone and transmitter that would enable the claimant to use the telephone more easily. The equipment looked like an ordinary pen. The claimant's new pen microphone became a talking point. Jokingly, Miss Sutherland asked the claimant what would happen if she spoke into the pen microphone. The claimant replied that it would hurt her ears.

27. Part of the claimant's case under Allegation 2 is that Miss Sutherland, from time to time between July/August 2016 and July 2017, played with the pen microphone by breathing into it and making ghost noises. Miss Sutherland denied that allegation in her evidence, and Mrs Cornock told us that she had never witnessed such behaviour. There was very little independent evidence to point one way or the other. For reasons we explain later, it is unlikely that any such behaviour happened after January 2017 and very unlikely that it happened after early April 2017. It is possible that something of this kind occurred during the autumn of 2016, but we were unable to make a positive finding. In part, our difficulty in finding the facts was due to the passage of time between the early part of the claimant's employment and the presentation of her claim. Of one fact we were satisfied: whatever was going on in August to October 2016 was not intended to violate the claimant's dignity or create any offensive or otherwise unpleasant environment for her. Nor did the claimant think that her dignity had been violated or that such an environment existed.

28. One day during the summer of 2016, a visitor from the Lancashire Cadet Force arrived at the office. He was warmly greeted by Miss Sutherland, who showed him round the office. It is part of the claimant's case (Allegation 4) that during the course of this visit, Miss Sutherland pointed out the claimant and said to the visitor, "You don't need to speak to her, she's deaf". Miss Sutherland denies saying those words. Nobody else witnessed them. If pushed to make a finding, we would lean towards preferring Miss Sutherland's version. This is because the claimant did not complain about it to Major Cornmell, despite raising with him other difficulties with working relationships. We acknowledge, however, that the claimant's account was capable of belief and we found it difficult to make a positive finding one way or the other. The difficulty was at least in part caused by the delay between the happening of this incident and the presentation of the claim.

29. Approximately one month after the claimant started as an employee, she went on a trip to Liverpool with Miss Sutherland and a third person to whom we shall refer as "Ms G". They all shared a car. During the journey, Miss Sutherland and Ms G had a friendly conversation and the claimant felt left out. This is another occasion on which it is alleged by the claimant that Miss Sutherland said that there was no need to talk to the claimant because she was deaf. The allegation is denied by Miss Sutherland. Ms G was not called as a witness. Again, we found it very difficult to find the facts. Not only will the passage of time have caused memories to fade, but our task was hampered by the fact that the allegation was not put to Miss Sutherland in cross-examination. Accordingly, we did not feel able to make a positive finding one way or the other.

30. August 2016 was the month of the respondent's Annual Cadet Camp. The claimant attended the event and helped out successfully, so did Mrs Cornock. Following this camp, a decision was made that there was no longer a requirement for two administrators to attend the camps. As a result, the August 2016 camp was the last one in which the claimant participated.

31. The claimant satisfactorily passed her probationary period. Major Cornmell wrote to the claimant on 31 August 2016, 3 October 2016 and 25 October 2016 to confirm her good progress. His letters reflected Major Cornmell's view that the claimant was an asset to the organisation.

32. On 16 November 2016, the claimant approached Major Cornmell and told him that she had concerns about her working relationship with Mrs Cornock. She complained that Mrs Cornock was behaving in a "passive aggressive" manner towards her. The claimant asked Major Cornmell to speak to with Mrs Cornock, which he did. He suggested a three-way meeting which was held the same day. Mrs Cornock was initially very upset. She said that she wanted the issue to "go formal" and left the office. Shortly afterwards, however, Mrs Cornock changed her mind and said that she would rather have the matter resolved straightaway. A further meeting was held that afternoon. It became clear that the issues between the claimant and Mrs Cornock were not really with each other at all. Rather, both of them were frustrated and angry about the fact that Ms T was absent from work so much. The claimant did not like picking up work from Ms T, which was "in a mess". For her part, Mrs Cornock was resentful of the fact that others, including Major Cornmell, were having to cover Ms T's workload. As it appears to Major Cornmell, the claimant and Mrs Cornock did not have a problem with each other but both had a "common enemy". The meeting was successful in clearing the air. Both the claimant and Mrs Cornock confirmed that they were happy with the outcome and with each other.

33. At no point that day did the claimant complain about Miss Sutherland. The claimant did mention Miss Sutherland's behaviour to Major Cornmell at some point between August 2016 and July 2017. Nobody could tell us when that occasion was, even to place it either side of the 16 November 2016 meeting. The claimant told Major Cornmell that Ms Sutherland had been "taking the mickey out of her disability" and "messing around with her pen". Other than the fact that this conversation happened, it is very difficult for us to make further findings. In general terms, Major Cornmell's impression was that the claimant wanted it to be unofficial, she was laughing and he "did not think it was a drama". We think it is likely that, whatever the claimant said, she wanted Major Cornmell to keep it informal. Mr Cornmell did not take any notes or prepare any report, as he had done when the claimant raised issues with Mrs Cornock in November 2016.

34. We find it significant that the claimant did not follow up on this issue with Major Cornmell or raise any complaint on 16 November 2016. By the end of 16 November 2016, the claimant knew that if she complained to Major Cornmell about a colleague and asked for action to be taken, Major Cornmell would not only take the matter seriously but would work hard to try and achieve an outcome that was satisfactory to her.

35. In January 2017, Miss Sutherland successfully applied for the role of CAA. Although we cannot tell whether or not the CAA role was at a higher grade to her

previous role of Facilities Assistant, it is clear to us that Miss Sutherland saw the move as a promotion.

36. The evidence is relatively consistent that it was around this time that the relationship between the claimant and Miss Sutherland started to deteriorate. Shortly after taking on the new role, Miss Sutherland asked the claimant to communicate with her by email rather than on paper. The claimant formed the impression that Miss Sutherland was ignoring her. At some point in February 2017, the claimant and Miss Sutherland stopped having their smoke breaks together. The claimant's relationship with Mrs Cornock remained relatively friendly.

37. On 3 March 2017, the claimant raised a concern with Major Cornmell about a cleaner, Ms R. She had fallen out with Ms R outside work over money allegedly owing to her son. The claimant told Major Cornmell that all the cleaners were refusing to clean her desk and were making toast for her colleagues but not for her. On 6 March 2017, Major Cornmell chaired a meeting attended by the claimant, Ms R and Ms R's supervisor. At the meeting, Major Cornmell brokered an agreement covering details such as carpet cleaning and the making of toast. Everyone present was content with the outcome.

38. This is another example of Major Cornmell intervening successfully to resolve issues raised by the claimant about a colleague.

39. On 14 March 2017, the claimant had to take time off work at short notice because of problems with her car. Mrs Peers, Human Resource Manager, agreed with the claimant that she could work back the time. A week later, the claimant was permitted to amend her working hours again, this time so that she could make a series of telephone calls in connection with an attachment of earnings order.

40. On 30 March 2017, Mrs Cornock emailed the claimant on a routine matter relating to "Part One" forms. She signed her email with a friendly smiling emoji.

41. There is little evidence to tell us what happened at work during the first few weeks of April 2017. It is clear, however, that by 24 April 2017, the claimant's working relationship had deteriorated not just with Miss Sutherland but also with Mrs Cornock. The claimant noticed that, when she put an incoming telephone call through to Mrs Cornock, she would say little or nothing to the claimant and just wait for the call to be put through. There was nothing said or done by Mrs Cornock to suggest that her silent manner had anything to do with the claimant's hearing impairment.

42. At this point we address some further conflicts of evidence:

    42.1. Under the heading of Allegation 8, the claimant says that, from January 2017, there were occasions on which she tried asking Mrs Cornock a question, only to receive a reply along the lines of "What are you asking me for?" or "You should know the answer to that, you have been here long enough". Her evidence to us was that two colleagues had witnessed this happening. In our view, it is unlikely that Mrs Cornock behaved in this way before April 2017. Her "emoji" e-mail of 30 March 2017 suggested a relatively friendly manner. We did not find it easy to establish whether or not Mrs Cornock refused to answer questions from April 2017 onwards, but even assuming that it happened, there is nothing to suggest that Mrs Cornock's refusal was connected to the claimant's difficulty in hearing. Her alleged accompanying remarks make clear that, if Mrs Cornock did refuse to answer

the claimant's questions, it was because of the ongoing dispute over role responsibilities.

42.2. Allegation 5 requires us to determine whether or not, at any stage, Mrs Cornock stood behind the claimant, whispering passive aggressive comments. This is alleged to have started in January 2017. In our view, whilst it is entirely possible that Mrs Cornock on occasion made comments that could be described as "passive aggressive", at no stage did she stand behind the claimant and whisper them. The only evidence that we have that this occurred if the claimant's generalised assertion in her witness statement. There are no specific examples of when and where it happened or what the comment was. Significantly in our view, the claimant's email of 25 May 2017 complained of "passive aggressive comments within my earshot". There was no suggestion in that email that Mrs Cornock had done anything to make those comments more difficult to hear.

43. By April 2017 it had become clear that Ms T was never going to return to work. It was therefore decided that the allocation of her responsibilities would have to be placed on a more formal footing and that this would be a good opportunity to update staff job descriptions to reflect the reality of what they were expected to do.

44. Mrs Peers of Human Resources visited the office on 24 April 2017 to talk about new the job descriptions. Instead, the conversation was dominated by the claimant and Mrs Cornock raising relatively petty disputes about each other. These included a dispute about the taking of outgoing mail to the post box. The claimant passed the post office on her way home from work and was expected to drop off the mail in her own time. Mrs Cornock on the other hand had to take a detour and was given work time in which to do so. The rather petty disagreement over the post was symptomatic of a more deep-seated problem. The claimant believed that her colleagues were treating her as a "lackey", giving her the tasks which they found too boring

45. After discussing the working relationship, the conversation turned to the job descriptions. Mrs Peers told the claimant that Ms T would no longer be returning to work following her maternity leave. Mrs Peers did not show the claimant the proposed new job descriptions at the meeting, but did say that there would be some minor amendments.

46. On 25 April 2017 Major Cornmell formed the impression that the claimant and Mrs Cornock were not speaking at all and that the claimant had a "face like a wet week".

47. In due course the claimant was provided with a copy of her written job description. It contained some duties that had not appeared in the previous version. This is not surprising. The claimant's July 2016 role description was never intended by either the claimant or Major Cornmell to reflect the true nature of her day-to-day work. The changes brought about by the new role description were:

47.1. The new role description removed what had previously been a nominal responsibility to "support the training safety adviser in agreed training admin areas". This had little practical effect on the claimant.

47.2. The new role description gave a specific responsibility of "uploading adult qualifications via Westminster [the computer system] and monitoring governance protocols".

47.3. There was a new specific responsibility for processing and sharing information relating to cadets who were in receipt of free school meals. This responsibility was previously contained within the cadet administrative assistant job description. The reason for transferring this particular duty to the claimant was that Major Cornmell believed that the claimant was not fully occupied. In fact, the cadet administrative assistants had not been doing this role but rather it had been done by Major Cornmell himself.

48. The claimant was very unhappy to be told that her role description would change. On 27 April 2017, she emailed Mrs Peers to express her "devastation and humiliation". Again, her main bone of contention was that she was being given work that nobody else wanted to do. In passing, her email also referred to the behaviour of "certain members of staff" over "the last couple of months".

49. On receipt of this email, Mrs Peers arranged for the claimant to be given additional leave with a view to the claimant returning to work after the Bank Holiday. In the meantine, Mrs Cornock emailed Mrs Peers to complain about the claimant.

50. In an effort to deal with the situation, Mrs Peers arranged to visit the claimant along with the Deputy Chief Executive, Colonel Alex Barnes. They scheduled a visit for 15 May 2017. Unfortunately, they were unable to meet with the claimant on this date. On 13 May 2017, the claimant informed Major Cornmell that she had been given a short-notice appointment for a toe nail removal procedure for which she had been waiting for some time. The appointment clashed with the panned visit. On her return to work on 16 May 2016, the claimant indicated that she still wished to meet with Colonel Barnes and Mrs Peers, so a further meeting was arranged for 25 May 2017. As it turned out, the claimant could not attend that meeting either.

51. We now have to resolve a dispute of evidence about an incident that is alleged to have occurred on 23 May 2017. It is the claimant's evidence that on this date Miss Sutherland picked up her pen microphone, breathed into it and made ghost noises. The claimant told us that an adult volunteer, Mr S, was present at the time. According to the claimant, she walked outside, clearly upset, and both Mr S and Miss Sutherland followed her. They had a smoke break together. The claimant told us that during this smoke break she told Miss Sutherland that her behaviour was unacceptable, humiliating and degrading, to which Miss Sutherland allegedly replied that she thought it was fun. This version is completely denied by Miss Sutherland. Of one thing we are sure: if this incident happened at all, it cannot have happened on 23 May 2017. Miss Sutherland was clearly on annual leave at that time. Moreover, we think it is probable that it did not happen at any time after early April 2017. This is because, in the claimant's email sent two days later, to which we will return in more detail, the claimant described the last confrontation as having taken place "around six weeks ago". We bear in mind that, on the claimant's account, the horseplay with her pen microphone happened just before the confrontation. If the last confrontation did not happen during the preceding 6 weeks, nor did the alleged misbehaviour that provoked it. We also think it is inherently unlikely that Miss Sutherland would

have resorted to practical jokes of this kind during the time when relations between the claimant and her colleagues was so sour. As to whether or not any such incidents occurred at an earlier point in time, our task in finding the facts is much more difficult. It is also hard to know what if any effect if had on the claimant. We do know that during a subsequent grievance investigation Mr S denied that the incident had taken place in his presence, but he was not called as a witness and his evidence has not been tested in cross examination.

52. On 25 May 2017, the claimant's son appeared in court and was given a custodial sentence. The claimant, who had been expected a community sentence, was deeply shocked. As we have already recorded, the claimant was due to attend a meeting with Mrs Peers and Colonel Barnes, but understandably did not do so. The reason she gave was that she was attending a funeral.

53. Later that day, the claimant emailed Mrs Peers to complain that she was being bullied by her colleagues. It was clear from the email that the colleagues about whom she was complaining were Mrs Cornock and Miss Sutherland. As examples of their behaviour she listed:

"

(1) Refusing to take phone calls that are put through by me.

(2) Complete silence when I place a call through to this colleague.

(3) Emails regarding normal things like part one orders are now having read receipts attached to them.

(4) Refusal to acknowledge my presence or speak to me when I speak to them.

(5) Being refused help regarding a subject I ask about, by being told words to the effect of "what are you telling me for?".

(6) Passive aggressive comments within my earshot.

(7) The mail issue with Sue Cornock is still ongoing. Now she takes the mail but does it at 11.30 in the morning leaving the afternoon mail to be taken by me the next day.

(8) Turning around and silently leaving a room when they walk in if I'm there.

(9) Accusing me of spreading malicious rumours about certain people.

(10) One of the colleagues believes that my hearing disability is there specifically for their own amusement. This issue has since been sorted out about five confrontations between myself and the colleague, consisting of the colleague humiliating me in various different ways, from laughing at my attempts to answer the phone before I got my special equipment, to then using my special equipment to amuse herself. The final confrontation was only around six weeks ago."

(11) [Refusing to accept Part One orders in paper form and insisting that he communicate with them only by email]

(12) [One of the colleagues telling her that she was just the "admin support" and that she was there solely to help the cadet administrative assistants do their job.]

(13) [Inviting into the office the cleaner with whom the claimant had had the earlier personal disagreement.]

(14) Making me feel like I always have to defend myself. … I have no idea what I have done to attract such hostility and disgraceful behaviour. All I can think of is that it is because I refuse to do as these two people say, and they seem to believe that they have a right to order me around."

54. Her email also took issue with the new job description. In particular she was concerned about the responsibility for uploading adult certificates onto the Westminster computer system. It appeared from her email that her issue was not so much that it did not form part of her job, but rather that her attempts to carry it out had led her into a further disagreement with Mrs Cornock.

55. Major Cornmell and Mrs Peers responded appropriately to the claimant once they had discovered the news of her son and received her email of 25 May 2017. The following day, Major Cornmell arranged for the claimant to go home to visit her son and approved two weeks of leave. Mrs Peers expressed sympathy to the claimant in an email and invited her to elaborate on her complaint at the forthcoming meeting on 7 June 2017.

56. On 12 June 2017, the claimant's mother sadly died. This was the latest serious personal setback for the claimant. Nevertheless, the claimant felt able to return to work on 14 June 2017.

57. During the morning of 14 June 2017, Miss Sutherland emailed the claimant and another colleague on the subject of an event known as the "New Adults Day". In the email, Miss Sutherland asked the claimant to send a letter of invitation to one of the attendees. The email indicated where the relevant address details could be found. The following day, the claimant replied. Her email read:

> "We have been through this a number of times now. I am not your secretary and I do not take direction from you. If you wish this person to be added to the … list, then please find the details for yourself, forward them to me and I will be happy to add them to the list."

58. Later on 15 June 2017, Mrs Peers emailed the claimant to offer her condolences for the claimant's recent bereavement. She also indicated that she would arrange a convenient date for the forthcoming meeting.

59. On 16 June 2017, the claimant was in the post room sorting the post. She had already prepared and distributed the Part One orders into pigeon holes. She was preparing to put them in envelopes and send out to the detachment commanders. Part One orders were amongst the documents that Miss Sutherland had already asked the claimant electronically and not on paper. As the claimant was in the post room, Miss Sutherland walked in, went to her pigeon hole, took out the Part One orders, tore them in two and shoved them into the claimant's own pigeon

hole. She did this without acknowledging the claimant's presence or speaking to her. Then she started walking out of the room. There is a dispute about what precisely happened next. It is common ground, however, that at this point the claimant swore at Miss Sutherland. Miss Sutherland asked the claimant, "what did you say?" to which the claimant replied, "you heard me". It is alleged by the claimant that, at that point, Miss Sutherland deliberately spoke without moving her lips so that the claimant would be unable to lip read what she said. We find that this did not happen. None of the contemporaneous witness statements refer to it and the claimant did not herself mention it in her subsequent grievance interview.

60. As an aside, we have to consider, in general terms, whether Miss Sutherland spoke to the claimant without moving her lips between July 2016 and July 2017. We can be confident that Miss Sutherland did not behave in this way at any time after early April 2017. Had she done so, we would have expected the claimant to have mentioned it in her grievance interview and in her email of 25 May 2017. It would be the more recent behaviour that stuck in her mind. The claimant was, on her own version of events, quite assertive with Miss Sutherland by this time. We would have expected deliberate lip-reading avoidance to provoke a confrontation of some kind. On the claimant's account, there had been no confrontation for about 6 weeks prior to 25 May 2017. As for whether this behaviour occurred prior to April 2017, the facts are much more murky. Other than the specific example that we have rejected, the evidence consists of little other than a generalised accusation and denial.

61. At the time of this incident, Major Cornmell was on leave but happened to be visiting the office. Miss Sutherland came over to him to say that there had been a swearing conversation between the claimant and her. Major Cornmell decided to deal with the issue there and then. He asked both the claimant and Miss Sutherland for a written explanation. The claimant told Major Cornmell that she was not going to apologise. Major Cornmell replied that he was not asking for an apology and that he would sort it out once he had received each party's written explanation. The claimant told Major Cornmell that she would resign and emailed a resignation letter to Mrs Peers later that day.

62. The claimant's resignation email highlighted a number of reasons for resigning. She accused Miss Sutherland of "treating me like garbage for over six months or more". She thought that she was being made to apologise for the incident in the post room and resented having to do so.

63. On receipt of the claimant's resignation email, Mrs Peers agreed with the claimant that her last day of work would be 14 July 2017.

64. On 19 June 2017, various colleagues who had overheard the argument between the claimant and Miss Sutherland in the post room made statements about what they had seen and heard. None of them referred to Miss Sutherland speaking without moving her lips.

65. On 19 June 2017, the claimant e-mailed Mrs Peers to complain about the delay in investigating her complaint. The following day, the claimant met with Mrs Peers and Colonel Barnes, the Deputy Chief Executive. During the meeting the claimant described the alleged harassment by Miss Sutherland and Mrs Cornock in broadly the same way as she now describes it in her witness statement. She told

Colonel Barnes that Miss Sutherland's alleged horseplay with her pen microphone had been witnessed by Mr S. She also described in some detail the incident in the post room four days previously. She did not make any mention of Miss Sutherland having spoken without moving her lips on this occasion, or any other occasion. Much of the claimant's unhappiness as recounted in this meeting was about the nature of the duties that the claimant was being expected to perform. Essentially, she resented having to provide administrative support to CAAs. She mentioned her disagreement with Mrs Cornock about taking out the outgoing mail and a disagreement about being responsible for processing enrolment forms. At the conclusion of the meeting, the claimant confirmed that she still intended to leave her employment.

66. Over the next few days, the claimant corresponded with Mrs Peers about whether or not she would be required to work during her notice period. At that time she was on sick leave. The claimant enquired whether or not Mrs Cornock and Miss Sutherland would be suspended pending investigation of the grievance. Mrs Peers was clear that suspension of these two colleagues was inappropriate at that stage. None of these matters influenced the claimant's decision to resign, which had already been clearly communicated to Mrs Peers and Colonel Barnes.

67. Following the meeting with the claimant, Colonel Barnes decided to carry out further investigations. In a letter dated 22 June 2017, Miss Sutherland, Mrs Cornock and Major Cornmell were required to attend investigation meetings on Monday 26 June 2017.

68. Mrs Cornock essentially denied the detailed allegations of harassment and gave her own version of the disagreement over the outgoing mail. Miss Sutherland also denied harassment. She was asked about the claimant's complaint that Miss Sutherland would mock her for saying "what?" when answering the phone. Miss Sutherland replied that this was a "standing joke", and that she had told the claimant that she could not say "what?" over the telephone. Colonel Barnes asked Miss Sutherland if the claimant had found this offensive.

69. Miss Sutherland replied by saying "no". When asked about the alleged abuse of the claimant's pen microphone, Miss Sutherland said that she had joked with the claimant about making noises into it but that the claimant had told her never to do that as it would hurt her ears. Colonel Barnes asked Miss Sutherland whether she had kept telling the claimant that her behaviour was "character building and not bullying". Miss Sutherland replied that she used this phrase "all the time" although she did not specify whether she meant she used that phrase all the time at work or all the time at home. According to Miss Sutherland, the claimant had never accused her of behaving in a bullying manner towards her. She gave a number of examples of the sorts of casual insults that they would exchange in a good humoured way.

70. Major Cornmell in his interview gave an overview of the deterioration in the working relationship between the claimant and her colleagues, culminating in the incident in the post room. He mentioned that "on another occasion" the claimant had complained to him about Miss Sutherland but wanted it to be unofficial. He told Colonel Barnes that the claimant had come into his office and said that Miss Sutherland was "taking the mickey about her disability and messing around with her pen". He gave his perspective on the disagreement over the claimant's specific duties, including the enrolment forms and the outgoing mail.

71. From the interviews conducted up to that point, it was clear to Colonel Barnes that further investigation was necessary. Various witnesses had been mentioned in the course of the interviews. Accordingly, on 3 July 2017, Colonel Barnes interviewed six further witnesses and re-interviewed Major Cornmell.

72. One of the six witnesses was Mr S. He said that the claimant had told him about Miss Sutherland making noises into the claimant's pen microphone, but that he had never seen this happen. This appeared to contradict what the claimant had told Colonel Barnes that Mr S had actually witnessed it.

73. Colonel Barnes also interviewed a witness to whom we refer as "Mr R". Colonel Barnes asked him whether he had noticed anybody "take the mickey out of". Mr R's reply was noted as "no more than him, he is just as deaf".

74. Another witness was a man to whom we shall refer as "Witness X". Along with other witnesses, Witness X described the claimant as "increasingly not responding to people". Unlike anybody else, however, Witness X added that the claimant might have been using her disability not to communicate when she wanted to. None of the other witnesses had suggested that the claimant had been selective in her hearing or had been taking advantage of her disability in any other way. We would add that we heard no evidence of the claimant behaving in this manner either.

75. Having carried out his investigation, Colonel Barnes then set about preparing his report. He carefully assimilated the various accounts given by each witness under the heading of each allegation of bullying and harassment. In relation to the detailed allegations, each account was properly attributed to the witness who had given it. His overall conclusion was that he had not been able to substantiate the claimant's allegations. Whilst he did not expressly reject the claimant's version of events, he was "unable to confirm that here was bullying and harassment in the workplace, either by [Miss Sutherland] or [Mrs Cornock]". This was because, amongst the people he had interviewed were individuals specifically identified by the claimant as people who witnessed and would be able to "corroborate" her claim, and yet none had done so.

76. Having stated his conclusion, Colonel Barnes' report went on to make some general observations about the claimant in the following terms. The bold type has been added by us:

> "**Staff** at [the respondent] believed [the claimant] was never excluded, but suggested 'she may sometimes have not heard [correctly]' and that [the claimant] increasingly did not respond to people… 'no-one more than anyone else'. **They** also said '**the disability may have been used not to communicate when she wanted to**'. There was often 'banter' within the staff, which may have been misinterpreted. All staff agreed that they had never seen or heard anything that could have been interpreted as bulling and harassment towards [the claimant]."

77. Colonel Barnes' report did not attribute the quoted comments about the claimant to any individual. His use of the words "staff" and "they" suggested that the views expressed in those comments were shared by a number of colleagues. In fact, we know that they were all drawn from the interview with Witness X. There was nothing in the report to explain why Colonel Barnes regarded it as relevant to his

investigation to observe that the claimant might have been deliberately using her disability in order to avoid communication with colleagues.

78. On 10 July 2017 Miss Sutherland went on sick leave. She had requested paid special leave because of her difficulty in coping with the grievance investigation, but her request had been refused.

79. On 12 July 2017, Colonel Barnes met with the claimant to inform her of the outcome of his investigation. The claimant was accompanied by Major Pagent, a trade union representative. Colonel Barnes was supported by Mrs Peers.

80. The meeting consisted of Colonel Barnes reading out his written report. The claimant was naturally very disappointed with the result. She and Major Pagent believed that her complaints had been dealt with dismissively, as expressed in a cruder phrase which is not necessary for us to repeat. The claimant felt extremely angry and humiliated. One aspect of the report that she found particularly upsetting was the "character assassination" and especially the accusation that she had used her disability for her own purposes. Her feelings were intensified by the fact that she heard what was being said about her for the first time as the report was being read out loud at a meeting. She had not had any advance copy of the report to soften the blow.

81. The claimant's employment came to an end on 14 July 2017 when her notice expired. She was paid for her notice period in full.

82. On 26 July 2017, the claimant began early conciliation with ACAS. She obtained a certificate on 26 August 20917 and presented her claim on 17 September 2017. She did not appeal against the grievance outcome.

Relevant Law

Harassment

83. Section 26 of EqA relevantly provides:

> (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 … 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.

84. Subsection (5) names disability among the relevant protected characteristics.

85. In deciding whether conduct had the proscribed effect, tribunals should consider the context, including whether or not the perpetrator intended to cause offence. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. While it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct related to other protected characteristics), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase: *Richmond Pharmacology Ltd v. Dhaliwal* [2009] IRLR 336.

Direct discrimination

86. Section 13(1) of EqA provides:

> (1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats, or would treat, others.

87. Section 23(1) of EqA provides:

> (1) On a comparison of cases for the purposes of section 13…there must be no material difference between the circumstances relating to each case.

88. Employment tribunals may sometimes be able to avoid arid and confusing disputes about the identification of the appropriate comparator by concentrating primarily on why the claimant was treated as she was. Was it because of the protected characteristic? That will call for an examination of all the facts of the case. Or was it for some other reason? If it was the latter, the claim fails. These words are taken from paragraph 11 of the opinion of Lord Nicholls in *Shamoon v. Chief Constable of the Royal Ulster Constabulary* [2003] UKHL 11, updated to reflect the language of EqA.

89. Less favourable treatment is "because" of the protected characteristic if either it is inherently discriminatory (the classic example being the facts of *James v. Eastleigh Borough Council,* where free swimming was offered for women over the age of 60) or if the characteristic significantly influenced the mental processes of the decision-maker. It does not have to be the sole or principal reason. Nor does it have to have been consciously in the decision-maker's mind: *Nagarajan v London Regional Transport* [1999] IRLR 572*.*

90. Tribunals dealing with complaints of direct discrimination must be careful to identify the person or persons ("the decision-makers") who decided upon the less favourable treatment. If another person influenced the decision by supplying information to the decision-makers with improper motivation, the decision itself will not be held to be discriminatory if the decision-makers were innocent. If the claimant wishes to allege that that other person supplied the information for a discriminatory reason, the claimant must make a separate allegation against the person who provided the information: *CLFIS (UK) Ltd v. Reynolds* [2015] EWCA Civ 439.

Discrimination arising from disability

91. Section 15(1) of EqA provides:

> (1) A person (A) discriminates against a disabled person (B) if-

> (a) A treats B unfavourably because of something arising in consequence of B's disability, and
>
> (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

92. Langstaff P in *Basildon & Thurrock NHS Foundation Trust v Weerasinghe* UKEAT/0397/14 (19 May 2015, unreported) explained (with emphasis added):

> "The current statute requires two steps. There are two links in the chain, both of which are causal, though the causative relationship is differently expressed in respect of each of them. The Tribunal has first to focus upon the words "because of something", and therefore has to identify "something" – and second upon the fact that that "something" must be "something arising in consequence of B's disability", which constitutes a second causative (consequential) link. These are two separate stages."

93. Treatment is unfavourable if the claimant could reasonably understand it to put her to a disadvantage.

94. As with direct discrimination, the focus must be on the conscious or subconscious motivation of the person or persons who decided on the unfavourable treatment: *IPC Media Ltd v Millar [2013] IRLR 707.*

95. These principles have been affirmed in *Pnaiser v. NHS England* [2016] IRLR 174.

Prohibition of discrimination in work cases

96. Section 39(2) of EqA prohibits an employer from discriminating against an employee as to her terms of employment, in the way the employer affords access, or by not affording access, to promotion, transfer or training or receiving any other benefit, facility or service, or by dismissing her. By section 39(2)(d) it is also unlawful for an employer to discriminate against an employee by subjecting her to any other detriment, but section 212 excludes harassment from the definition of "detriment".

Time limits

97. Section 123 of EqA provides, so far as is relevant:

> (1) proceedings on a complaint [of discrimination or harassment in the field of work] may not be brought after the end of—
>
> (a) the period of 3 months starting with the date of the act to which the complaint relates, or
>
> (b) such other period as the employment tribunal thinks just and equitable.
>
> …
>
> (3) For the purposes of this section—
>
> (a) conduct extending over a period is to be treated as done at the end of the period;
>
> (b) failure to do something is to be treated as occurring when the person in question decided on it.

> (4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
>
> (a) when P does an act inconsistent with doing it, or
>
> (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

98. In *Commissioner of Police of the Metropolis v Hendricks* [2002] EWCA Civ 1686; [2003] ICR 530, a police officer alleged racial and sexual discrimination Mummery LJ, with whom May LJ and Judge LJ agreed, gave guidance on the correct approach to "an act of extending over a period".

> 48. [the claimant] is, in my view, entitled to pursue her claim beyond this preliminary stage on the basis that the burden is on her to prove, either by direct evidence or by inference from primary facts, that the numerous alleged incidents of discrimination are linked to one another and that they are evidence of a continuing discriminatory state of affairs covered by the concept of an 'act extending over a period'…
>
> 52. ... The question is whether that is 'an act extending over a period' as distinct from a succession of unconnected or isolated specific acts, for which time would be given to run from the date when each specific act was committed"

99. A one-off act with continuing consequences is not the same as an act extending over a period: *Sougrin v Haringey Health Authority* [1992] IRLR 416, [1992] ICR 650*, CA.*

100. The "just and equitable" extension of time involves the exercise of discretion by the tribunal. It is for the claimant to persuade the tribunal to exercise its discretion in his favour: *Robertson v. Bexley Community Centre* [2003] EWCA Civ 576. There is, however, no rule of law as to how generously or sparingly that discretion should be exercised: *Chief Constable of Lincolnshire Police v. Caston* [2009] EWCA Civ 1298. The discretion to extend time is "broad and unfettered": *Abertawe Bro Morgannwg University v. Morgan* [2018] EWCA Civ 640.

101. Tribunals considering an extension of the time limit may find it helpful to refer to the factors set out in section 33 of the Limitation Act 1980 (extension of the limitation period in personal injury cases): *British Coal Corpn v. Keeble* [1997] IRLR 336. These factors include:

101.1. the length of and reasons for the delay;

101.2. the effect of the delay on the cogency of the evidence;

101.3. the steps which the claimant took to obtain legal advice;

101.4. how promptly the claimant acted once he knew of the facts giving rise to the claim; and

101.5. the extent to which the respondent has complied with requests for further information.

Burden of proof

102. Section 136 of EqA applies to any proceedings relating to a contravention of EqA. By section 136(2) and (3), if there are facts from which the tribunal could

decide, in the absence of any other explanation, that a person contravened the provision concerned, the tribunal must hold that the contravention occurred, unless A shows that A did not contravene the provision.

103. In *Igen v. Wong* [2005] EWCA Civ 142, the Court of Appeal issued guidance to tribunals as to the approach to be followed to the burden of proof provisions in legislation preceding EqA. They warned that the guidance was no substitute for the statutory language:

> (1) … it is for the claimant who complains of … discrimination to prove on the balance of probabilities facts from which the tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination ... These are referred to below as "such facts".
>
> (2) If the claimant does not prove such facts he or she will fail.
>
> (3) It is important to bear in mind in deciding whether the claimant has proved such facts that it is unusual to find direct evidence of … discrimination. Few employers would be prepared to admit such discrimination, even to themselves. In some cases the discrimination will not be an intention but merely based on the assumption that "he or she would not have fitted in".
>
> (4) In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.
>
> (5) It is important to note the word "could" in s. 63A(2). At this stage the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.
>
> (6) In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts.
>
> (7) These inferences can include, in appropriate cases, any inferences that it is just and equitable to draw …from an evasive or equivocal reply to a [statutory questionnaire].
>
> (8) Likewise, the tribunal must decide whether any provision of any relevant code of practice is relevant and if so, take it into account in determining, such facts…This means that inferences may also be drawn from any failure to comply with any relevant code of practice.
>
> (9) Where the claimant has proved facts from which conclusions could be drawn that the respondent has treated the claimant less favourably on the ground of sex, then the burden of proof moves to the respondent.
>
> (10) It is then for the respondent to prove that he did not commit, or as the case may be, is not to be treated as having committed, that act.

> (11) To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of sex, since "no discrimination whatsoever" is compatible with the Burden of Proof Directive.
>
> (12) That requires a tribunal to assess not merely whether the respondent has proved an explanation for the facts from which such inferences can be drawn, but further that it is adequate to discharge the burden of proof on the balance of probabilities that sex was not a ground for the treatment in question.
>
> (13) Since the facts necessary to prove an explanation would normally be in the possession of the respondent, a tribunal would normally expect cogent evidence to discharge that burden of proof. In particular, the tribunal will need to examine carefully explanations for failure to deal with the questionnaire procedure and/or code of practice.

104. The initial burden of proof is on the claimant: *Ayodele v. Citylink Ltd* [2017] EWCA Civ 1913, *Royal Mail Group Ltd v. Efobi* [2019] EWCA Civ 18.

105. It is good practice to follow the two-stage approach to the burden of proof, in accordance with the guidance in *Igen v. Wong,* but a tribunal will not fall into error if, in an appropriate case, it proceeds directly to the second stage. Tribunals proceeding in this manner must be careful not to overlook the possibility of subconscious motivation: *Geller v. Yeshrun Hebrew Congregation* [2016] UKEAT 0190/15.

106. We are reminded by the Supreme Court in *Hewage v. Grampian Health Board* [2012] UKSC 37 not to make too much 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.

Constructive dismissal

107. Section 95 of the Employment Rights Act 1996 (“ERA”) relevantly provides:

> 95 Circumstances in which an employee is dismissed
>
> (1) For the purposes of this Part an employee is dismissed by his employer if (and… 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. …

108. An employee seeking to establish that he has been constructively dismissed must prove:

108.1. that the employer fundamentally breached the contract of employment; and

108.2. that he resigned in response to the breach.

(*Western Excavating (ECC) Ltd v. Sharp* [1978] IRLR 27).

109. An employee may lose the right to treat himself as constructively dismissed if he affirms the contract before resigning.

110. It is an implied term of the contract of employment that the employer will not, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between employer and employee: *Malik v. BCCI plc* [1997] IRLR 462, as clarified in *Baldwin v Brighton & Hove CC* [2007] IRLR 232*.*

111. The serious nature of the conduct required before a repudiatory breach of contract can exist has been addressed by the EAT (Langstaff J) in *Pearce-v-Receptek* [2013] ALL ER (D) 364.

> 12.…It has always to be borne in mind that such a breach [of the implied term] is necessarily repudiatory, and it ought to be borne in mind that for conduct to be repudiatory, it has to be truly serious. The modern test in respect of constructive dismissal or repudiatory conduct is that stated by the Court of Appeal, not in an employment context, in the case of *Eminence Property Developments Limited v Heaney* [2010] EWCA Civ 1168:
>
> > "So far as concerns of repudiatory conduct, the legal test is simply stated ... It is whether, looking at all the circumstances objectively, that is, from the perspective of a reasonable person in a position of the innocent party, the contract breaker has clearly shown an intention to abandon and altogether refuse to perform the contract."
>
> 13. That has been followed since in Cooper v Oates [2010] EWCA Civ 1346, but is not just a test of commercial application. In the employment case of *Tullet Prebon Plc v BGC Brokers LP* [2011] EWCA Civ 131, Aikens LJ took the same approach and adopted the expression, "Abandon and altogether refuse to perform the contract". In evaluating whether the implied term of trust and confidence has been broken, a court will wish to have regard to the fact that, since it is repudiatory, it must in essence be such a breach as to indicate an intention to abandon and altogether refuse to perform the contract.

112. A fundamental breach of contract cannot be “cured”, but if an employer takes corrective action the employer may prevent conduct from developing into a breach of the implied term of trust and confidence: *Assamoi-v-Spirit Pub Co Ltd* [2012] ALL ER (D) 17.

113. It is not uncommon for an employee to resign in response to a “final straw”. In *Omilaju v. Waltham Forest London Borough Council [2005] EWCA Civ 1493,* [2005] IRLR 35*, CA* the Court of Appeal held that where the alleged breach of the implied term of trust and confidence constituted a series of acts the essential ingredient of the final act was that it was an act in a series the cumulative effect of which was to amount to the breach. It followed that although the final act may not be blameworthy or unreasonable it had to contribute something to the breach even if relatively insignificant. As a result, if the final act was totally innocuous, in the sense that it did not contribute or add anything to the earlier series of acts, it was not necessary to examine the earlier history.

Damages for wrongful dismissal

114. The starting point for calculating damages for a wrongful constructive dismissal is the amount of money the employee would have earned during his or her notice period or until the expiry of a fixed term: *Robinson v. Harman* [1848] 1 Exch 850. It is not possible to recover damages for the manner of dismissal, or for loss of sustained by the difficulty caused by the dismissal in securing fresh employment: *Addis v. Gramaphone Co Ltd* [1909] AC 488, HL.

Conclusions

115. We address each individual allegation of harassment in turn

Allegation 1

116. It is alleged that Miss Sutherland made fun of and laughed at the claimant following a telephone call in which the claimant had had difficulty hearing the caller. Despite the passage of time, we were able to find that there had been a "standing joke" of some kind in relation to the claimant saying "What?" over the telephone on her first day as an agency worker. We do not know exactly what form this standing joke took. Whatever the conduct was, it was related to the claimant's disability. There was clearly a connection between the claimant's use of the word "What?" and her difficulty in hearing the person at the other end of the telephone

117. It was very difficult for us to find whether or not the conduct was unwanted. Despite the passage of time, however, we were able to find that whatever standing joke there was in July to September 2016, it was not intended to violate the claimant's dignity or to create the relevant adverse environment for her. We were also able to find that it did not have this effect on the claimant. It is quite clear that at this time the claimant enjoyed trading casual insults with Miss Sutherland. "Banter" is an over-used word in discrimination cases and can often be used to mask harassment. This case, however, is one of those cases which genuinely did involve jokes which the claimant found unobjectionable at the time.

118. A more specific component of Allegation 1 relates to Miss Sutherland allegedly ringing the claimant on the internal phone and simply saying "what?". We were unable to make a precise finding as to whether this had happened or not. This was due to the passage of time and the fact that it had not been put to Miss Sutherland in cross examination.

119. Our overall conclusion, in relation to allegation 1, is that the tribunal does not have the power to consider the allegation. For reasons which we will later explain, we reached the view that, if Miss Sutherland's conduct formed part of an act extending over a period, that period must have ended by early April 2017. The claimant did not commence early conciliation until 26 July 2017, more than three months after the end of that extended period. In our view it is not just and equitable to extend the time limit. This is partly due to the impact of the delay on the cogency of the evidence relating to what conduct precisely occurred. It is also because an extension of time would not benefit the claimant. Our positive finding in relation to the generality of Allegation 1 is that Miss Sutherland's conduct did not have the purpose or effect described in section 26 of EqA.

Allegation 2

120. As with Allegation 1, our ability to find the facts was beset with difficulties. The alleged conduct consisted of Miss Sutherland performing practical jokes with the claimant's pen microphone. It is alleged to have occurred from July 2016 until

July 2017. In our view it is highly unlikely that any such conduct happened after early April 2017 (see paragraph 51 above).

121. We have asked ourselves whether or not the alleged conduct was capable of forming part of an act extending over a period lasting beyond early April 2017. Was it part of the same ongoing state of affairs as the comments made by Witness X in the course of the grievance investigation, or Colonel Barnes' adoption of them in his grievance report? In our view, the alleged abuse of the pen microphone and the two later events were entirely separate. Witness X's comments were in a completely different context, namely a grievance investigation, whereas the alleged behaviour of Miss Sutherland was whilst they were working alongside each other. Carrying out practical jokes is conduct of a different nature to passing an opinion about somebody's disability. There is nothing to suggest that Witness X was involved in any of the alleged harassment by Miss Sutherland. Likewise, we do not believe that there is a sufficient connection between Miss Sutherland's alleged conduct and the inclusion of Witness X's remarks in the grievance outcome report. Not only were the alleged perpetrators different, but so was the context and the nature of the conduct.

122. We have considered whether it would be just and equitable to extend the time limit in respect of Allegation 2. In our view it would not. We have one person's word against another as to whether the conduct occurred at all. Just as importantly, the evidence is very vague as to when any such conduct happened. Timing is very important here. Playing about with the claimant's equipment was likely in August 2016 to have been viewed by the claimant as good-natured horseplay. We take this view because of the apparent enjoyment by the claimant and Miss Sutherland of trading casual insults as part of their daily banter. Had the conduct continued into 2017, when the relationship began to become more strained, it is much more likely that the claimant would have taken offence. We looked to independent evidence to see if we could pinpoint any of these practical jokes in time. Major Cornmell could not recall anything about when the claimant had mentioned to him that Miss Sutherland had been playing with her pen. He could not in his oral evidence even place it either side of the "clear the air meeting" with Mrs Cornnock. We thought that the delay in bringing the claim had contributed significantly to our difficulties in finding the facts.

123. In case we are wrong about our conclusion on the time limit, we would add that we were able to find positively as a fact that, by 16 November 2016, Miss Sutherland had not done anything in relation to the claimant's disability that had either had the effect of violating her dignity or had created the environment described in section 26 of EqA. We consider that, had the claimant genuinely perceived that it had that effect before that date, she would have mentioned it to Major Cornmell on or around the time of her complaint to him about Mrs Cornock. We would, therefore, in any event have dismissed Allegation 2 on its merits so far as it related to the period up to that date. We have consciously avoided expressing what our factual findings would have been about alleged harassment between November 2016 and early April 2017.

<u>Allegation 3</u>

124. This allegation consists of Miss Sutherland allegedly speaking without moving her lips so that the claimant could not hear what she was saying. It also involves responding to the claimant's complaints by saying that it was "not bullying but

character building". The conduct is alleged to have taken place over 12 months up to July 2017.

125. The allegation requires some unpacking. Of these two types of behaviour, only one is alleged to have taken place on a specific date: that is the post room incident on 16 June 2017. We found as a fact (see paragraph 59) that Miss Sutherland did not speak without moving her lips on that occasion.

126. We also considered the general allegation that this conduct happened during the 12-months to July 2017. As we recorded at paragraph 60, we were able to find that it is unlikely to have happened after early April 2017, and found it difficult to make any findings about whether it occurred before April 2017.

127. As for the "character building" remarks, we were able to find that Miss Sutherland did make them from time to time towards the claimant, but we were left with important gaps in the evidence about the context in which she made them. Was it during the summer of 2016 in which the claimant and Miss Sutherland freely engaged in banter? Was it in response to a complaint about anything that Miss Sutherland did in relation to the claimant's disability? We had very little to go on other than generalised assertions. In our view the passage of time contributed significantly to the poor quality of the evidence in relation to these matters.

128. For the same reasons as in Allegation 2, we did not think that any continuing state of affairs lasted beyond early April 2017.

129. Because of the difficulties we encountered in finding the facts, we did not think it was just and equitable to extend the time limit. The Tribunal therefore has no jurisdiction to consider allegation 3.

Allegation 4

130. We identified two incidents which might potentially have come under the heading of Allegation 4. The first relates to the visitor from Lancashire. The second concerns the trip to Liverpool with Ms G. In our view, these incidents cannot be viewed as part of a continuing state of affairs that lasted beyond early April 2017. There is insufficient connection between Miss Sutherland's conduct and that of Witness X or Colonel Barnes in July 2016. As we have found, Miss Sutherland did nothing to harass the claimant from early April 2017 onwards.

131. It is not just and equitable in our view to extend the time limit. Again, the most significant factor in this regard is the difficulty that the delay has caused in our ability to find the facts. See in particular paragraphs 28 and 29.

Allegation 5

132. We have found that the conduct alleged in allegation 5 did not occur (see paragraph 42.2). Whilst there may have been some passive aggressive comments of some kind, there is no suggestion that the comments by themselves were in any way related to the claimant's disability. What links the alleged comments to the claimant's disability is the manner in which the comments were allegedly made. We found that Mrs Cornock did not stand behind the claimant or whisper the comments or do anything else to make her comments more difficult for the claimant to hear.

Allegation 6

133. Broadly speaking, between January and June 2017, Miss Sutherland and Mrs Cornock started ignoring the claimant. They asked her to correspond by email and asked for Part One orders and other documents to be generated electronically rather than on paper. None of this had anything to do with the claimant's disability. The claimant may have perceived an offensive environment, but her perception was based not on any connection with her disability but on her fundamental objection to being treated as a secretary to Miss Sutherland and Mrs Cornock. The fact that she was being ignored was a symptom of the general breakdown in the working relationship. The conduct was therefore unrelated to the protected characteristic.

Allegation 7

134. As the working relationship between the claimant and Mrs Cornock deteriorated around April 2017, Mrs Cornock did say less to the claimant when taking calls from her. This had nothing to do with the claimant's disability. The claimant and Mrs Cornock were hardly speaking to each other.

Allegation 8

135. We have found (see paragraph 42.1) that if the alleged unwanted conduct occurred, it only started from April 2017 onwards and was entirely unrelated to the claimant's disability.

Allegation 9 - harassment

136. Witness X made a comment to Colonel Barnes whilst being interviewed. The comment was related to the claimant's disability. The comment was unwanted by the claimant. We find that the comment was incorrect. The claimant was not using her disability selectively in order to avoid communication with colleagues. She might have been avoiding them, but there is no evidence that she was pretending not to hear. When the claimant found out about the comments, they created a humiliating and offensive environment for her. We have to decide whether, in making the comments, Witness X was "subjecting" the claimant to conduct. We also have to decide whether it was reasonable for the claimant to perceive the comments as creating that environment for her.

137. In our view, Witness X subjected the claimant to his conduct even though it was not specifically targeted at her. Witness X must have known that what he or she said in the interview might be reproduced in a grievance investigation report, even if the comments were not specifically attributed to their source.

138. We also consider that it was reasonable for the claimant to perceive Witness X's remarks as creating an offensive and humiliating environment for her. In deciding what is reasonable, it is of course important to have regard to the context. It was obvious to the claimant that the objectionable remarks about her disability had been given in the course of a grievance investigation. She ought to have known of the importance, when investigating grievances, of encouraging colleagues to speak frankly about their observations of the people involved. Even in that setting, however, we think that Witness X's comment was likely to cause offence. Here are our reasons:

138.1. Without wishing to over-generalise, we recognise that it is an important part of many disabled people's dignity and self-esteem that they can overcome their barriers that disability can cause in the workplace and participate in working life. Suggesting that such a person has used their

disability to their own advantage in order to get what they want can be a direct attack on that sense of self-worth.

138.2. It is, of course, possible that such an allegation, however hurtful, might be true. But if Witness X believed it to be true, one would expect some basis for making the accusation. Witness X did not underpin the opinion with any observation of the claimant's behaviour or provide any other basis for suggesting that the claimant was taking advantage of her own disability.

138.3. Witness X's remark had every appearance of being gratuitous. What Witness X was being asked about was whether or not the claimant was being ignored by her colleagues. All Witness X needed to say was that he or she believed the claimant was ignoring others for whatever reason. It was unnecessary to add that the claimant was using her disability in order to do so.

139. We accordingly find that Witness X harassed the claimant and that the respondent is liable for the harassment.

Allegation 9 – direct discrimination

140. We also find that Witness X directly discriminated against the claimant in making this remark. The words themselves are strongly suggestive of the fact that Witness X would not have made the remark about somebody who did not have a hearing impairment. There are facts from which we could conclude that his remark was made because of stereotypical assumptions about deafness rather than actual observation of the claimant's behaviour. In particular, we could reach this conclusion because of the lack of any evidence from the oral witnesses or in the bundle to suggest that the claimant was actually using her disability for her own purposes. Witness X was not called as a witness. None of the witnesses actually called by the respondent have offered any explanation as to why Witness X would make this remark. We therefore consider that the respondent has failed to prove that Witness X's remark was not because of the claimant's disability.

141. Strictly speaking, there is no breach of EqA here. This is because the direct discrimination did not contravene section 39. We found that the less favourable treatment amounted to harassment. By section 212 of EqA, the treatment is therefore excluded from the definition of "detriment". The harassment did not appear to contravene section 39(2) in any other way. On this technicality alone, we would dismiss the complaint of direct discrimination.

Allegation 9 – discrimination arising

142. In case we are wrong about direct discrimination, we have gone on to consider whether there was discrimination arising from disability. For the purpose of this analysis, we have imagined a scenario in which we ought to have found that Witness X's remark was based on actual observation of the claimant's behaviour, whatever that was. We have further assumed that such observed behaviour could have led Witness X to conclude that the claimant was using her disability to avoid communicating with others. In those circumstances it is very difficult to imagine that the claimant's behaviour did not arise in consequence of her disability. Whilst the List of Issues includes the question of whether the unfavourable treatment was a proportionate means of achieving a legitimate aim, the respondent's witness statements and written submissions do not identify the aim that Witness X's comment would achieve or explain how it was legitimate.

The respondent therefore discriminated against the claimant arising from disability.

143. As with direct discrimination, the tribunal's judgment, technically, is that there was no contravention of EqA because the treatment amounted to harassment and was therefore excluded from the definition of detriment.

Allegation 10

144. We understand this allegation to relate to the combined effect of Colonel Barnes including Witness X's comment in his outcome report and then reading it out loud during the course of a meeting.

145. Colonel Barnes' conduct in including Witness X's remark in the report was unwanted. Whilst the claimant had impliedly consented to Colonel Barnes quoting comments about her which she may not wish to hear, she had not said or done anything to suggest that she would welcome opinions that she was taking advantage of her disability, especially where such opinions were necessary to resolve the allegations in her grievance. It would also be obvious to all concerned that the claimant would not want a single isolated opinion about her disability to be portrayed in the report as being representative of the staff in general.

146. We have found (paragraph 80) that listening to Witness X's comment being read out during the grievance outcome meeting actually did create a humiliating and offensive environment for the claimant. She had to hear what was being said about her in the presence of senior managers, including Mrs Peers. In our view it was reasonable for the claimant to perceive Colonel Barnes' conduct in that way. It is particularly unfortunate in our view that Witness X's opinion was quoted in a way that appeared to make it representative of the claimant's colleagues in general. It may well be that Colonel Barnes used words such as "staff" and "they" as gender-neutral nouns and pronouns in an effort to preserve the anonymity of Witness X, but that was not how it would have appeared to the claimant. As we have already observed, the comment was inherently likely to insult a disabled person, it appeared to be gratuitous and it was unsupported by any evidence.

147. Colonel Barnes therefore harassed the claimant and the respondent is liable for it.

Breach of contract

148. The claimant made up her mind to resign immediately following the incident in the post room on 16 June 2017. This incident was capable of being a last straw. Although, in our view, Major Cornmell acted entirely appropriately in calling for a written explanation from the claimant and Miss Sutherland, the incident as a whole was capable of adding to a cumulative breakdown in trust and confidence because of the initial conduct of Miss Sutherland in tearing up the Part One orders.

149. It is unclear whether or not the claimant is alleging that the respondent breached any express term of her contract with regard to role responsibilities. If that is indeed the claimant's case, we reject it. The written role description, to the extent that either party intended to be bound by it, was sufficiently wide as to enable the claimant to be given additional responsibilities for such matters as part one orders, enrolment forms and processing outgoing mail.

150. We have looked at the conduct of those individuals who can be said to have stood in the position of "employer" in relation to the claimant. In our view, these individuals were Major Cornmell, Mrs Peers and Colonel Barnes. Anything done by these individuals after 16 June 2017 had no effect on the claimant's decision to resign. Prior to that date, our view is that they acted appropriately. Mrs Peers had reasonable and proper cause to provide the claimant with a new role description which gave the claimant additional responsibilities. Ms T was no longer returning to work for the organisation and cover for her responsibilities and others had to be formally put in place. Major Cornmell handled the claimant's complaint about Mrs Cornock in November 2016 sensitively, professionally and effectively. His interventions in relation to the cleaner and the claimant's personal difficulties were also appropriate. It is unfortunate that he did not act more decisively when the claimant mentioned to him that Miss Sutherland had been playing with her equipment. In our view, Major Cornmell's lack of action at this time (whenever it was) did not significantly damage the relationship of trust and confidence. The claimant made it clear that she was raising the matter informally. In our view, Mrs Peers and Colonel Barnes made reasonable efforts to make progress with the claimant's written complaints of 27 April and 25 May 2017. Their efforts to arrange a meeting were largely frustrated by events outside their control, such as the claimant's toenail operation and her inability, for whatever reason, to attend a meeting on 25 May 2017.

151. Looking at the entirety of the respondent's conduct in its capacity as employer, we cannot say that it was calculated or likely to destroy or seriously damage the relationship of trust and confidence. Major Cornmell, Mrs Peers and Colonel Barnes were not demonstrating an intention to abandon and refuse to perform the contract; it should have been clear to the claimant that they were trying to make the contract workable.

152. In case we are wrong in our conclusion about constructive dismissal, we have considered what the claimant's damages would be for breach of contract. The measure of damages is limited to restoring the claimant to the position she would have been in had the respondent lawfully terminated the contract. The claimant was fully paid for her contractual notice period. She can only therefore recover damages if the respondent's entitlement to terminate the contract by notice was overridden by a term of the contract specifying that the contract would be of longer duration.

153. During the course of the hearing, we asked counsel for the claimant how the claimant put her case in this regard. The claimant conceded that paragraph 3 of the statement of terms (which provided for the fixed-term) was expressly subject to paragraph 15 which provided for termination by notice. The claimant, however, sought to argue that clause 15 would not apply in the case of constructive dismissal. This argument was based on the phrase in paragraph 15(a), "In the event of termination of employment by the association".

154. In our view this argument cannot be right. If it were correct, every employee who had been constructively dismissed would be entitled to damages exceeding payment for their contractual notice period, simply on the ground that it was the employee and not the employer who terminated the contract. That is not the law as we understand it. It is clear from paragraphs 3 and 15, read together, that the parties intended that the employer would have the right to terminate the contract prior to the expiry of the fixed term, by giving the period of notice required in

paragraph 15. That period was two weeks. The claimant was actually paid for four weeks from the point at which she resigned. She has therefore suffered no recoverable loss even if she was wrongfully constructively dismissed.

Remedy

155. If the parties cannot agree on the claimant's remedy for discrimination and harassment, there will have to be another hearing to determine it. It may help them to prepare for the hearing, or to resolve their differences by agreement, if we re-state some of our key findings and record some provisional further ones. Remedy is likely to be assessed on the basis that:

155.1. Had it not been for Witness X's remark and its inclusion in the grievance outcome report, the claimant would still have resigned.

155.2. The claimant would have been bitterly disappointed with the outcome of the grievance regardless of whether it had included Witness X's comment or not.

155.3. It is inevitable that, regardless of whether Witness X's comment had been included in the grievance outcome, the claimant would have continued to harbour significant resentment over the breakdown in the working relationship with Miss Sutherland and Mrs Cornock and over what she perceived to be an unjustified change to her role.

155.4. Our provisional view, subject to any argument which the parties may wish to make, was that the claimant experienced additional upset feelings when she heard Witness X's comment being read out and that this experience formed some part of the claimant's continuing sense of humiliation at the time she presented her claim.

156. We must stress that we have not finally made up our minds on these points and we are open to any argument that the parties may wish to advance.

Acknowledgements

157. Finally it is only right that we should acknowledge the assistance we received from both parties' representatives and, in particular, their helpful written submissions.

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Employment Judge Horne
7 March 2019

RESERVED JUDGMENT AND REASONS
SENT TO THE PARTIES ON

19 March 2019

FOR THE TRIBUNAL OFFICE

SCHEDULE

Complaints

Unfair dismissal (unless struck out following the warning letter sent to the claimant)

Breach of contract

Disability discrimination

No.	Date	Description	Perpetrator(s)	Type of disability discrimination
1	July – August/Sept 2016	Making fun of and laughing at C when she saw C having difficulty hearing on the telephone prior to C getting special equipment. Ringing C and saying "What!" down the phone and nothing else.	Helen Sutherland	Harassment
2	July/August 2016 to Jul 2017	Playing with C's special equipment – picking up the pen which connected to the phone, when C was not in the office, breathing into it or making ghost noises.	Helen Sutherland	Harassment
3	July 2016 to July 2017	Not moving her lips when speaking to C so C couldn't hear and saying, when	Helen Sutherland	Harassment

		C complained, that it was not bullying but character building.		
4	July-August 2016	Telling visitors not to speak to C, saying C would not be able to hear them anyway because C was deaf.	Helen Sutherland	Harassment
5	January to July 2017	Standing behind C, whispering passive aggressive comments.	Sue Cornock	Harassment
6	January to July 2017	Refusing to work with the claimant; ignoring C; demanding any correspondence from C be by email, including telephone messages, part one orders and meeting minutes.	Helen Sutherland and Sue Cornock	Harassment
7	January to July 2017	Refusing to take calls that C put through or refusing to speak to C when she placed a call through.	Sue Cornock	Harassment
8	January to July 2017	Refusing to answer C's questions.	Sue Cornock	Harassment
9	June/July 2017	Making untrue comments about C's disability which were included in the investigation report	Unidentified staff members	Direct discrimination/discrimination arising from disability/harassment
10	12 July 2017	Reading out the investigation report including comments about C's disability	Colonel Barnes	Harassment

...

Legal Issues

Unfair dismissal

1. Did the claimant qualify for the right not to be unfairly dismissed?

    1.1. Did she have two years' service as at the effective date of termination; or

    1.2. Is the complaint of unfair dismissal of a type to which the two year qualifying period does not apply?

2. If the claimant qualified for the right:

    2.1. Was the claimant constructively dismissed?

    2.2. If so, was the constructive dismissal fair?

    2.3. If the claimant was constructively unfairly dismissed, what should be the remedy?

Breach of contract

3. Was the claimant constructively dismissed?

4. Did the claimant resign because of an act or omission (or series of acts or omissions) by the respondent?

5. If so, did the respondent's conduct amount to a fundamental breach of contract? If the contractual term relied on is mutual trust and confidence, did the respondent, without reasonable or proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between the parties?

6. Did the claimant affirm any breach by conduct/delay?

7. If the claimant was constructively dismissed, what damages should be awarded for the breach?

8. Was the claimant's employment terminable on notice under the contract? If so, what was the entitlement to notice? Is there any reason that damages should exceed damages for the notice period?

Disability discrimination

Time limits

9. Does the tribunal have jurisdiction to consider the complaints, having regard to the relevant time limit? This will include considering whether the act is part of a continuing act of discrimination and, if the complaint is out of time, whether it is just and equitable in all the circumstances to consider it out of time.

Harassment

10. Did the respondent engage in unwanted conduct?

11. Was this related to the protected characteristic of disability?

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

Direct discrimination

13. Did the respondent subject the claimant to a detriment or constructively dismiss her?

14. Did the respondent treat the claimant less favourably than it treated or would have treated others in the same material circumstances by subjecting her to a detriment or constructively dismissing her?

15. If so, was this less favourable treatment because of the protected characteristic of disability?

Discrimination arising from disability

16. Did the respondent subject the claimant to a detriment or constructively dismiss her?

17. Was the claimant treated unfavourably by being subjected to a detriment or constructively dismissed because of something arising in consequence of her disability?

18. If so, can the respondent show that the treatment was a proportionate means of achieving a legitimate aim?

[The respondent accepts that they knew that the claimant had the disability].

Remedy for discrimination

19. If the claimant succeeds in any or all of her complaints, what should be the remedy?