



# EMPLOYMENT TRIBUNALS

**Claimant**

**Respondent**

Mrs C Strivens

v Dr C Clark and Dr H Wilson; t/a West  
Pottergate Medical Practice

**Heard at:** Norwich

**Heard On:** 4, 5, 6 & 7 March 2019  
**Chambers Meeting:** 26, 27 March 2019

**Before:** Employment Judge Postle

**Members:** Mr A Schooler and Mr C Davie

**Appearances**

**For the Claimant:** Mr Ashley, Counsel

**For the Respondent:** Mr Anderson, Counsel

## RESERVED JUDGMENT

1. The claimant was constructively unfairly dismissed.
2. The claimant's claim under the Equality Act 2010 for the protected characteristic of disability is not well founded.

## RESERVED REASONS

1. The claimant brings claims of unfair dismissal, claims under the Equality Act 2010 for the protected characteristic of disability, unlawful deduction of wages and a claim for breach of contract. The specific issues to be determined are the subject of an agreed list of issues which was set out in the notes of the Case Management Hearing which was held before Employment Judge Postle on 2 November 2018, (page 44 – 46)
2. The issue of the claimant's disability was conceded by the respondents on 20 February 2019. The disability in question being depression and anxiety.

3. In this Tribunal we have heard evidence from the claimant through a prepared witness statement. There was also a witness statement from a Mr D Pearson, a previous Practice Manager of the respondent who ultimately was not called as a witness for the claimant.
4. For the respondents, Dr C Clark, Senior Partner in the respondent's Practice and Mr B Sharpe, Practice Manager, all giving their evidence through prepared witness statements. Mr Sharpe is not employed by the respondent but was employed by Norwich Practices Health Centre who in turn provide their services to a number of medical practices in Norfolk, particularly providing the expertise of a Practice Manager who reports to the Partners. In effect, Mr Sharpe is supposed to provide general management to the Practice working alongside the staff and Partners. He would usually attend the practice every Friday and on other occasions as required.
5. The Tribunal also had the benefit of a bundle of documents consisting of 234 pages.
6. During the course of this hearing, particularly on 7 March 2019, Mr Ashley, Counsel for the claimant's, made an application that the respondent's response be struck out or alternatively that Judgment be entered forthwith on the question of Mr Sharpe's credibility, in particular paragraph 33 of his witness statement in relation to a document found in the bundle at page 161a, particularly as to when this document was actually seen or provided to the respondent.
7. The basis of Mr Ashley's application was that the conduct of the respondents over the last two days of the hearing and particularly Mr Sharpe's was so scandalous the Tribunal should stop the proceedings and give Judgment to the claimant.
8. In dealing with this application, the respondent's Counsel Mr Anderson was given an opportunity to recall Mr Sharpe to clarify the position and respond to Mr Ashley's application.
9. In dealing with the claimant's application the Tribunal posed the question to the application for a strike out or Judgment in default arising from the witness Mr Sharpe's evidence, not only in relation to paragraph 33 of his witness statement and document 161a, but the totality of his evidence, as to whether there was a substantial risk that a fair trial was no longer possible.
10. The Tribunal have concluded at this stage of the proceedings, at present there is little evidence of a substantial risk that a fair trial is no longer possible. If further evidence of impropriety emerges then a strike out might become appropriate. In deciding this we have considered the evidence of Mr Sharpe which is of course an issue of credibility? Is the

witness Mr Sharpe deliberately and wholly responsible for the mischief in paragraph 33 of his witness statement?

11. The Tribunal have considered whether the case stands and falls upon paragraph 33 and document 161a, clearly it does not.
12. We have also considered whether Mr Sharpe's conduct / evidence puts the fairness of the proceedings in jeopardy to such an extent that any judgment the Tribunal might make in favour of the respondent would have to be regarded as unsafe or amounts to such an abuse of the process / the proceedings as to render further proceedings as unsatisfactory and to prevent the Tribunal from doing justice as it is so required and the Tribunal unanimously concluded at present it does not.
13. The Tribunal have also unanimously concluded, for the above reasons, that a strike out of the respondent's response is not proportionate.
14. The respondent is a partnership trading as West Pottergate Medical Practice. It would appear to have approximately 19 members of staff, including three Doctors, a Nurse Practitioner and support staff. The Partners at the relevant time were Dr Catherine Clark and Dr Hugh Wilson.
15. The claimant joined the practice in January 2005 as a receptionist.
16. In July 2009, the claimant was referred to Occupational Health by the respondents due to her sickness absence levels. There was advice at the time that the claimant may qualify as a disabled person under the terms of the then Disability Discrimination Act 1995, (page 212). On 1 April 2013 the claimant was promoted to the role of Office Supervisor and increased her hours from 30 to 37.5 per week, (page 140). The claimant attended a Supervisory Management course in Stowmarket shortly after her promotion which dealt with training and delegation. There appears to be no specific job description for this role.
17. Dr Clark joins the practice in or about 2014 and became a Partner upon joining, becoming Senior partner on 1 April 2017 when Dr Roberts retired.
18. Mr Pearson, the previous Practice Manager, retired in 2015 and it appears from that time, the respondents engaged the services of Mr Sharpe through Norwich Practices Health Centre.
19. In or about December 2016, the claimant was asked by Mr Sharpe to arrange telephone cover during the lunch hour as a result of Miss Ball no longer wishing to cover the lunch phone cover. There is no formal agreement, but it would appear that the claimant took over the role of the lunch cover and with the accrued hours in return took Friday afternoon off in lieu. This appeared to be an informal arrangement and was not concluded by an amendment to her contract. It is clear Mr Sharpe must have acquiesced to this arrangement as the claimant taking off Friday

afternoon was not questioned between the period December until the following June 2017.

20. Dr Clark had been away from the practice since March 2017 due to family sickness and upon her return in June she appeared to notice the claimant taking Friday's off and raised this with the claimant. The claimant informed Dr Clark that the change of hours and Friday afternoons was at the request of Mr Sharpe to ensure lunchtime phone cover when Miss Ball ceased to cover the lunchtime period. Apparently at this stage Dr Clark said nothing further and appeared ignorant to the arrangement.

21. In the meantime, on 3 May 2017, the claimant has what appears to be the only appraisal conducted by Mr Sharpe, (pages 148 – 159), the written up version is not signed by the claimant. At this appraisal the claimant raised a number of issues. In particular: lack of communication from management, the problems over the bookings of locums due to the delay obtaining the GP's permission, the claimant acknowledged on occasions she could be snappy, but explained this was due to being under pressure. When the claimant was questioned about stress in the work place at the appraisal, the claimant responded,

*“The only stress I get and that I get upset about is being told I am in a bad mood when in fact I am not and then finding out other staff members have been asked if I am in a better mood when in fact I wasn't in a bad mood.”*

22. It would appear nothing further occurs in relation to the claimant's employment or issues over the hours and taking Friday afternoons off. Then out of the blue, on 31 July 2017, the claimant received an email from Mr Sharpe (page 160a),

*“Dear Cath*

*Following my return with the Partners today I have been asked to review your working pattern. We have been asked to look at how we allocate lunch time cover to enable you to return to a full working day on a Friday.*

*Please have a think on how we can rota the lunch time cover throughout the week as we need to do this asap.*

*Kind regards  
Barry Sharpe”*

23. The claimant responds on the same day, 31 July (page 160b),

*“Hi Barry*

*I am not happy with this as it has worked ok for ages now and served the purpose when it was convenient for the office. I will give it consideration but if that is the case then I will most probably ask to cut my hours. I am not so tired when having that Friday afternoon off.*

*I am quite hurt that this has had to come in an email and not one of the Partners or yourself had the decency to speak to me about it.*

*Regards  
Cath Strivens”*

24. The implication from the email from Mr Sharpe on behalf of the Partners was that it was not a change in the terms and conditions of the claimant's employment, but simply asking the claimant to return to her original contracted hours.
25. The claimant's email in response is simply forwarded by Mr Sharpe to Dr Clark on the same day (page 160b). The claimant receives no response to her email, nor does Mr Sharpe come and speak to the claimant.
26. There then appears to have been a discussion between the claimant and Dr Clark on 31 July on an informal basis about the claimant taking Friday afternoons off. Dr Clark informed the claimant that this was inconvenient for the practice as Friday afternoons were apparently very busy. Dr Clark said in joking, *“We'd all like Friday afternoons off”*. The claimant informed Dr Clark that her hours had been agreed with Mr Sharpe some months previously, notwithstanding there had been no formal change to her contracted hours which originally included working Friday afternoons. Dr Clark required the claimant to work Friday afternoons as she was the office supervisor and that, as far as she was concerned, was in accordance with her contract. The claimant was not asked by Dr Clark to resign from her position at this informal meeting.
27. It would appear, on 7 August, the claimant did indeed return to work her contracted hours. There then appears subsequently a meeting between the claimant and Mr Sharpe, (there are no minutes), on 1 September during which Mr Sharpe informs the claimant the Partners had concerns about her performance and when questioned by the claimant, Mr Sharpe did not elaborate. The claimant emailed Mr Sharpe on 7 September (page 161a),

*“Hi Barry*

*After our chat on Friday 1 September 2017 regarding myself and my work and my question as to why I had to have another review, you said that the Doctors and yourself thought I was doing my job as Office Supervisor inadequately.*

*Would you be able to put in writing to me what it is that I am doing inadequately please so I can try and rectify this as nothing was mentioned to me as to what I was doing wrong.*

*Could I also have a copy of my appraisal that was done earlier in the year please as when this was done the only thing you required me to do was to provide you with a description of what I actually did in my role of Office Supervisor which I have provided to you.*

*I hope this is ok but for my own peace of mind I just need some clarification.*

*Thanks  
Cath Strivens”*

28. Previously, there had been no specific issues raised by Mr Sharpe, or the Partners, regarding the claimant's performance other than what was noted at the claimant's appraisal about being snappy on occasions.
29. Quite extraordinarily, Mr Sharpe does not respond to the claimant's email explaining how her performance was inadequate or any shortcomings, or what was required of the claimant to improve her performance.
30. Shortly after the meeting referred to above, Mr Sharpe again spoke to the claimant and questioned whether the Office Supervisors role was in effect making her stressed. The claimant questioned how he had reached this view, whereupon Mr Sharpe is said to have shrugged his shoulders and then enquired if the claimant wanted to give up the role. The claimant then asked what would happen if she did give up the role of Office Supervisor and whether there would be another position. Mr Sharpe advised the claimant that he did not think there was another position and that the claimant should give some thought as to what she wanted to do.
31. A few days later, the claimant was again questioned by Mr Sharpe as to whether she had made a decision. The claimant confirmed she wanted to retain her role as Office Supervisor as she felt her performance was not unsatisfactory. It was either at this meeting, or shortly thereafter, (there has been some difficulty for the Tribunal in this case as there is a complete lack of contemporaneous documented meetings between the claimant and Mr Sharpe), Mr Sharpe informed the claimant she was to be placed on a month's trial in her capacity as Office Supervisor despite the fact she had performed this role without question since 2013. Mr Sharpe then advised the claimant she would have to speak to Dr Clark two weeks into the trial period in order to receive feedback. There had still been no information in writing or verbally from either Mr Sharpe or the Partners as to what was lacking or inadequate in the claimant's performance.
32. The claimant was given no guidelines, or performance indicators that she would need to achieve in this trial period. The claimant was further informed that at the end of the trial period, the respondents would make a decision as to her ability to perform the role of Office Supervisor and whether she would in effect remain in that position. When the claimant questioned Mr Sharpe as to how she could improve, or what level of attainment she needed to achieve, the response was *“you should know”*.

Furthermore, it was not entirely clear at this stage, who ultimately would remove the claimant from her position if she did not achieve what appeared to be the unknown. In fact, Mr Sharpe at this meeting, informed the claimant when she enquired what would happen if she failed in the trial, the response was “*shouldn't fail*”.

33. On 13 October, as instructed, the claimant approached Dr Clark for feedback about her performance. Dr Clark accepts there had been an issue over the failure to book GP Locum rotas prior to the claimant going on leave and raised this with the claimant. However, apart from that issue, which was important, there were no other issues relating to the claimant's ability to perform in the role of Office Supervisor from Dr Clark's point of view.
34. On or about 16 October, there was a further meeting between the claimant and Mr Sharpe to discuss the claimant's role. Mr Sharpe again enquired whether the claimant wished to give up the role of Office Supervisor. The claimant was concerned as to what would be available in the Practice if she gave up the role. Mr Sharpe suggested to the claimant that she needed to consider her position over the weekend, or words to that effect.
35. There was a further meeting on 23 October, how that meeting came about is unclear. What is clear is the claimant agreed she would resign from her role as Office Supervisor and would take a position as receptionist. It would appear at this meeting hours were discussed and those hours were subject to further discussions thereafter. The claimant did not want to work on Mondays. A trial period was also discussed at this meeting and the staff were then informed by the claimant she was now standing down from her position as Office Supervisor. It would appear that the claimant was agreeable as there is a number of emails following this meeting which do not suggest that the claimant felt aggrieved or unhappy with the new arrangements.
36. In particular, the claimant to Mr Sharpe on 3 November at 1451 hours,

*“Hi Barry*

*Can you please confirm with me that my new hours will still be starting week commencing 6 November 2017?*

*Tuesday 12 – 5*

*Wednesday 12 – 5*

*Thursday 9 – 6*

*Friday 9 – 6.30*

*Total hours 26.5”*

37. Mr Sharpe responds on the same day at 1533 hours,

*“Hi Cath*

*I have just checked with Catherine and she pointed out that you agreed to Thursday 8 – 5, is this ok?*

*Barry”*

38. The claimant responds on the same day at 1536 hours,  
*“Yeah that is fine with me xx”*
39. On 3 November at 1553 hours, Mr Sharpe emailed the claimant,  
*“Are you on the mend?”*
40. The reason for this is the claimant had been off sick on 30 October with a chest infection and in fact did not return until 14 November.
41. The claimant responds on 3 November 1559 hours,  
*“I am getting there, still struggling with my breathing on occasions and still very tired, if no better GP said I got to go back, took my last lot of steroids today”.*
42. In the meantime, on 31 October, the claimant was sent (page 163), confirmation of her new role confirming continuity of employment from 2005 was protected, the hours and the fact that the change was on a two month trial basis. The trial basis was for the claimant’s benefit having supervised staff, she was now returning to a less responsible role and could potentially be supervised by staff she had previously supervised and she may find this difficult.
43. During the claimant’s absence on sick leave, 30 October to 14 November, as a result in the change in the claimant’s role, the Practice was restructured. Previously in August, an employee of the respondent’s Practice went on maternity leave. In order to cover that role and to ensure adequate staffing levels, Dr Clark’s daughter, Sophie Cameron, was offered a temporary position as a receptionist to cover the maternity leave period. Previously Dr Clark’s daughter had been doing some administrative tasks for the respondents in her spare time.
44. The hours that Miss Cameron was now offered were the hours that the claimant was already working and they could not have been offered to the claimant on top of the hours the claimant was already working. The claimant had in any event expressed a wish not to work full time and that she did not wish to work on Mondays.
45. On the claimant’s return to work from sick leave, Mr Sharpe and the claimant spoke about her new holiday entitlement as her hours had now been reduced. There clearly was a misunderstanding as the claimant



believed that the reduced entitlement had been backdated to the first of April rather than taking effect from the first day in her new role.

46. On 16 November, the claimant worked half an hour into her shift before leaving. The claimant then remained on sick leave until 5 December when she resigned by an undated letter, clearly prepared by her legal advisors setting out various complaints. The resignation was accepted by Dr Clark (page 174). The respondent replied inviting the claimant to a meeting (grievance) and questioned whether this was really what the claimant wanted, i.e. to resign (pages 176 – 177).
47. The claimant's response was by email of 11 December (page 177a), declining to meet with the respondent or their advisors and putting them on notice her solicitors would be contacting the respondent shortly as the claimant felt her mental wellbeing was affected.

### The Law

48. Section 95(1)(c) of the Employment Rights Act 1996 states that there is a dismissal when the employee terminates the contract, with or without notice, in circumstances such that he or she is entitled to terminate it without notice by reason of the employer's conduct, this form of dismissal is commonly referred to as a constructive dismissal.
49. In the leading case in this area, Western Excavating (ECC) Ltd v Sharp (178) ICR 221, CA, the Court of Appeal ruled that for an employer's conduct to give rise to a constructive dismissal it must involve a repudiatory breach of contract. As Lord Denning MR put it:

*"If the employer is guilty of conduct which is a significant breach going to the root of the contract or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct, he is constructively dismissed."*

50. Therefore, in order to claim constructive dismissal, the employee must establish that:
  - There was a fundamental breach of contract on the part of the employer;
  - That the employer's breach caused the employee to resign;
  - The employee did not delay too long before resigning, thus affirming the contract and losing the right to claim constructive dismissal.
51. The Tribunal reminds itself that it is for a claimant to establish the respondent has behaved in such a way as to amount to a breach of the implied term of trust and confidence and that is a high hurdle. It is an employer behaving without reasonable and proper cause in a manner

likely to destroy or seriously damage the mutual relationship of trust and confidence which should exist between employer and an employee.

Discrimination

Direct Discrimination Section 13

52. That defines direct discrimination in the following terms:

*“A person (A) discriminates against another (B) if, because of a protected characteristic [in this case of course disability] A treats B less favourably than A treats or would treat others”.*

53. The simple question is, has the claimant been treated less favourably on the grounds of her disability?

54. The Tribunal will therefore consider if there are facts from which the Tribunal could decide in the absence of any explanation, that A contravened the provision, the Tribunal must hold that the contravention occurred, unless A shows that A did not contravene the provision. That is in effect the burden of proof required under Section 136 of the Equal Act 2010.

55. In this case, the claimant appears to rely upon a hypothetical comparator.

56. The factual matters that the claimant relies upon are as set out in 1.2 and 1.5 of the Case Management Hearing on 2 November 2018 referred to previously in this Judgment.

57. For the avoidance of doubt the claimant alleges dismissal on 6 December 2017 was the last act of discrimination.

Harassment Section 26

58. Did the respondent engage in unwanted conduct? (Again, the claimant relies upon the same matters in relation to her claim for constructive dismissal).

59. Was the conduct related to the claimant's disability?

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

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

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

### **Conclusions**

63. One of the major problems the Tribunal faced in this case is although there were a number of meetings in the last 12 months between the claimant, Mr Sharpe and on occasions Dr Clark, although they were not always all together (the three of them), what struck the Tribunal was personal files appeared to be incomplete, there was a total lack of recorded minutes of any meetings, or indeed any contemporaneous accounts or notes of those meetings, particularly between the claimant and Mr Sharpe.
64. In relation to the respondent's knowledge of the claimant's disability (anxiety and depression), it was accepted by Dr Clark in cross examination that she was aware the claimant had a depressive condition, although she did not take any further steps to enquire.
65. In the case of Mr Sharpe, again in cross examination, although he had discussions with the previous practice Manager Mr Pearson who had given him a synopsis about each member of staff, apparently Mr Pearson made few comments about the claimant. Mr Sharpe did not recall being told by Mr Pearson the claimant suffered depression.
66. The personnel file, on inspection, would have recorded a previous Occupational Health report and GP's report in July 2009 (page 212 – 213), confirming the claimant was likely to fulfil the criteria for being a disabled person under the terms of the previous legislation, i.e. the Disability Discrimination Act 1995 and the letter from the GP confirming the claimant suffered with depression. What Mr Sharpe did confirm, in cross examination, was that he was aware of medication the claimant was prescribed and recognised what that medication was prescribed for.
67. The Tribunal concluded on the issue of the respondent / Mr Sharpe's knowledge on the claimant's disability, they would have had at the very least constructive knowledge that the claimant was suffering from depression and anxiety and was therefore likely to fall within the category of a disabled person and thus satisfy the definition under the Equality Act 2010.
68. Dealing first with the claimant's claim for constructive dismissal and the matters relied upon by the claimant in supporting her claim.
69. The Tribunal were not persuaded that Dr Clark simply questioning the claimant about her working hours in June 2017 amounted to, or could form part of a claim for constructive dismissal. The fact of the matter was that the claimant had, with the approval of Mr Sharpe around December 2016, agreed to cover lunch time phones after Miss Ball relinquished that duty,

and with the hours that the claimant accrued, took Friday afternoons off. This was an informal arrangement, not formally amounting to an amended contractual term.

70. Dr Clark, apparently, was not aware of this arrangement and when seeing the claimant taking Friday afternoons off, not surprisingly questioned why. This was particularly important to Dr Clark as Friday afternoon was one of the busiest times of the week, clearly prior to the weekend. The claimant was the Office Supervisor and should be available at that time to deal with enquiries from patients and staff. There had been no formal agreement to this change in the claimant's terms and conditions, it clearly suited the claimant and the Tribunal repeats there had been no amendment to the claimant's contract at the time. Dr Clark was merely requesting the claimant, as a senior member of staff, to return her contractual hours and work Friday afternoons. That clearly was not a unilateral change in the claimant's terms and conditions of employment. That alone would not amount to a fundamental breach.
71. However, after the claimant's return to her normal contractual hours, i.e. working on Friday afternoons, there is a suggestion by Mr Sharpe at a meeting on 1 September that following his meeting with the Partners, that the claimant was not performing in her role as Office Supervisor. When the claimant enquired of Mr Sharpe at that meeting what her shortcomings were, he was unable to provide an answer. The claimant quite reasonably, by email of 7 September (page 161a), to Mr Sharpe requesting he put in writing "*What it is that I am doing inadequately?*" This was of concern to the claimant given the fact that at the meeting on 1 September when she had enquired of Mr Sharpe about her lack of performance, he was unable to give any detail. In the same email, the claimant requested a copy of her appraisal carried out in May by Mr Sharpe. Clearly, if an employee is said not to be performing in their role, the employer is under a duty to explain the shortcomings and what was required in order to improve and set out a period of time in which to improve their shortcomings.
72. The suggestion the claimant was not performing was clearly a shock to the claimant, given the fact that she had been in the role of Office Supervisor since April 2013 and apart from issues over being snappy on occasions, there had been no performance issues previously raised by either the Partners or Mr Sharpe with the claimant.
73. Quite inexplicably, the claimant's email (referred to above), goes unanswered, Mr Sharpe provides no response whatsoever. Nor did Mr Sharpe provide the completed appraisal conducted in May. It is not an excuse to say the respondents are a small organisation in dealing with this matter, given the fact that Mr Sharpe was providing his services to the Practice through Norwich Practices Limited who seemingly hold themselves out as specialists in the provision of HR. It is to be noted, when they were eventually engaged in December 2017, following the

claimant's resignation, they clearly demonstrated professional competence in such matters by another employee of that organisation.

74. The fact of the matter was, the claimant was left not knowing what her shortcomings were, or how she could improve and whether there was some form of timescale in which to improve.
75. Following this, between mid-September and throughout most of October, the claimant appears to have been asked on a number of occasions whether the position of Office Supervisor was too much for her and whether she wanted to step down. It culminated quite extraordinarily in the claimant being placed on a month's trial in the position of Office Supervisor by Mr Sharpe, but without any clear plan as to what she was required to achieve in the trial period in order to succeed, there were no realistic targets set and there was no formal, or informal plan given to the claimant. Indeed, the Tribunal were surprised that this was ever put to the claimant, namely that she was not performing or providing an adequate service, given there was simply no evidence before the Tribunal, either at the time or previously, that the claimant was not performing the role of Office Supervisor adequately. The only issue that had ever been, apparently, a problem was over the booking of the locums for the Practice by the claimant or on occasions being snappy.
76. These factors: not performing in the role, the request for detail of how the claimant lacked in her performance, the complete lack of response to the claimant's email for information from Mr Sharpe about her lack of performance, the fact this was raised completely out of the blue, and there had been no previous performance issues, that the trial period had no identifiable performance indicators and indeed, when the claimant sought feedback from Dr Clark, as she was instructed to do so during the trial period, other than some problem over a booking of a locum, there appeared to be no other issues from Dr Clark's point of view. The Tribunal concluded that taking all these matters together, amounted to a fundamental breach of the contract, i.e. the implied terms of trust and confidence. The claimant could no longer rely on being treated fairly and that resulted in the claimant stepping down from her role and after a period of sick leave, clearly felt enough was enough and took the decision to resign by letter of 5 December.
77. In relation to the claim for direct discrimination and harassment, the Tribunal have asked themselves whether it can be truly identified the way the claimant was treated, was because of the claimant's protected characteristic of disability.
78. Given what occurred and how it occurred, particularly Mr Sharpe's behaviour towards the claimant, a non-disabled person would clearly have been treated in exactly the same way as the treatment afforded to the claimant. The treatment the claimant received was not because of or in any way linked to her depression or anxiety. Therefore, the claimant's claim for direct discrimination is not well founded. The Tribunal are also

satisfied that the claimant's treatment by Mr Sharpe or Dr Clark, was not harassment because of the claimant's disability or in any way linked to the claimant's disability.

**Credibility**

- 79. The Tribunal concluded, in the case of Mr Sharpe, that he was not a dishonest witness, rather that he was a Manager who demonstrated a lack of insight into potentially complex employment issues. His record keeping of meetings / interactions with staff and his decision making process, was extremely poor. There also appeared to be a complete lack of clear communication by him with the Partners of the respondents as to what was actually going on in the Practice and with the staff.
- 80. Dr Clark, the Tribunal found to be an honest witness, a genuine person who was prepared to concede her own shortcomings in the dealings with the claimant.
- 81. As to remedy, the claimant will need to provide evidence of her common law duty to mitigate her loss. If the claimant is advancing an argument she was unfit to work in the period following her resignation up to the time she found alternative employment, clearly medical evidence will need to be adduced. The remedy hearing has already been listed at the Norwich Employment Tribunal on 2 October 2019.

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Employment Judge Postle  
Date: .....27/6/19.....  
Sent to the parties on: .....  
.....  
For the Tribunal Office