EMPLOYMENT TRIBUNALS

BETWEEN

Claimant		**Respondent**
Miss N Boyland	AND	Telebizz Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD AT Plymouth **ON** 12 and 13 August 2019

EMPLOYMENT JUDGE N J Roper **MEMBERS** Mr J Howard
Mrs P J Skillin

Representation

For the Claimant: In person
For the Respondent: Mr R Johns of Counsel

JUDGMENT

The unanimous judgment of the tribunal is that the claimant's claims are dismissed.

REASONS

1. In this case the claimant Miss Natalie Boyland claims that she was discriminated against because of a protected characteristic, namely her disability. The claim is for discrimination arising from disability, harassment related to her disability, and because of the respondent's alleged failure to make reasonable adjustments. It has already been determined that the claimant was a disabled person at all material times. The respondent denies that there was any discrimination.
2. We have heard from the claimant. We have heard from Miss Charlotte Siggins, Miss Natasha Bond and Mrs Michelle Hayes on behalf of the respondent.
3. There was a degree of conflict on the evidence. We have heard the witnesses give their evidence and have observed their demeanour in the witness box. We found the

following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.

4. The respondent is a small company which supports around 500 clients with a virtual receptionist service. The service includes diverting calls to professional receptionists to capture messages on their behalf, as well as an incident line through which some callers report serious incidents which might need an urgent response. The respondent provides the services 24 hours a day for 365 days a year. Its staff work within a 12 week fixed rotational pattern which supports the business from 7 am to 9 pm daily, with separate nightshift cover being provided by a different team. The call volume of telephone traffic is difficult to predict, but based on historical trends the respondent sets its staffing levels to seek to maximise the answering of all calls as efficiently and quickly as possible.
5. Any staff absences and unscheduled breaks increase the risk of the respondent failing to meet its service level requirements with its clients. For this reason the respondent has a number of policies and procedures which govern the attendance and absences of its staff. The respondent requires a high level of attendance, and all new staff are informed that three instances of absence and/or lateness could well result in their failing their initial probationary period. Any absences must be reported at least one hour before a weekday shift, two hours before a weekend shift, and nine hours before a nightshift, in order to allow the respondent reasonable time to secure adequate cover.
6. In addition, breaks during working time are closely controlled. The respondent schedules breaks to maximise staffing levels during predicted peaks and to avoid unnecessary abandonment of calls and/or long hold times for customers. Employees are entitled to 60 minutes of scheduled breaks, which are divided into a first break of 15 minutes, a longer break of 30 minutes, and a subsequent break of another 15 minutes. In addition, staff are entitled to no more than eight minutes of unscheduled comfort breaks. The respondent's employees are also required to comply with a strict mobile phone policy whereby use of a mobile phone within shifts is not permitted, and personal phones must be stored in a locker whilst on shift.
7. The claimant is Miss Natalie Boyland who was employed by the respondent as a virtual receptionist. She commenced employment on 26 June 2018. She failed to survive her probationary period and was dismissed on 6 August 2018. By judgment dated 5 July 2019 it was held that the claimant was a disabled person at all material times by reason of three impairments: first, depression and anxiety; secondly irritable bowel syndrome ("IBS"); and thirdly, an eye condition, being a combination of uveitis, Posner Schlossman syndrome, and dry eyes.
8. The claimant received confirmation that she had been successful in obtaining employment with the respondent, and this was subject to her initial probationary period. On 26 June 2018, on the first day of her employment, the claimant had a meeting with Miss Natasha Bond of the respondent's HR Department, from whom we have heard. The purpose of the meeting was to run through the various policies applied by the respondent and to discuss the claimant's medical history. There was a medical questionnaire. With the exception of one question confirming that she was taking medication, the claimant answered "No" to all questions concerning the existence of any medical conditions. She was twice asked whether she had any significant health problems, and twice answered "No". With regard to the medication, the claimant explained that she was taking citalopram for depression; omaprezole for acid reflux; and eyedrops for recurring eye conditions. The claimant was specifically asked if she had any medical conditions which would prevent her from safely working alone. The claimant confirmed that the citalopram was a very mild dose and it would have no effect on her ability to work. She confirmed that the eyedrops were "used for various eye conditions which could potentially cause problems, however I am taking the eyedrops as a preventative." Under the heading of "Notes and Further Action" Miss Bond noted: "It has been agreed with Natalie that if any eye conditions do arise, to make a team

leader know immediately and the severity of the situation will then be assessed - No additional support will be needed (ie screens/VDU)".

9. Miss Bond and the claimant both signed the minutes of that meeting to confirm that it was an accurate record. This was a consistent practice adopted by the respondent, and minutes of other meetings referred to below were signed by those attending, including the claimant, as being an accurate and contemporaneous record. The claimant now asserts that some aspects of the minutes of these meetings were incorrect and/or missing, which is denied by the respondent. We have heard from Miss Bond and also Miss Charlotte Siggins, who attended these meetings, and we have seen the contemporaneous signed minutes, and for these reasons we prefer the respondent's evidence that these minutes are an accurate and contemporaneous record of the relevant discussions.
10. In addition, the respondent has kept recordings and produced transcripts of telephone conversations which the claimant made when telephoning in to report her various absences.
11. As at the commencement of her employment on 26 June 2018 therefore, despite having a detailed conversation about her health and being invited to disclose any difficulties or any support which might be required, the claimant had effectively only disclosed potential difficulties with her eye condition. She agreed that if any future problems were to arise she would notify her team leader, but otherwise no additional support would be needed. The claimant asserted that the prescription of citalopram for depression was very mild and would have no effect on her work. There was no mention of any difficulties with regard to IBS, the symptoms for which were in remission at that time. We find therefore that as at 26 June 2018 the respondent was aware of the potential eye condition, but not aware of any disability or substantial disadvantage with regard to either anxiety or depression, or IBS.
12. The claimant was in breach of the respondent's breaks policy almost immediately. On 28 June 2018 she was called to a meeting by Mrs Robertson, a supervisor, the purpose of which was to discuss the respondent's comfort break policy. The claimant had taken 17 minutes of comfort breaks on 27 June 2018, rather than the eight minutes allowed, and at the time of the meeting on 28 June 2018 had already taken four comfort breaks totalling just under seven minutes. Mrs Robertson explained that the comfort breaks were for toilet breaks in the event that the claimant was unable to wait until her scheduled breaks, but should not be used to get drinks or check her phone unless previously agreed with her manager. Mrs Robertson made it clear that if there were instances when the claimant was feeling unwell or would need to take more than eight minutes then she would need to inform her manager and the respondent would be able to accommodate it. The claimant explained that she had required extra time on 27 June 2018 to put in her eye drops but would try to ensure compliance. The respondent agreed to show the claimant how to monitor her comfort and scheduled breaks and the minutes noted that the claimant was "Happy with the current procedure".
13. There was then an "informal catch up" meeting at the end of the first week of employment on 3 July 2018. When asked how she was finding the workplace environment and the team the claimant responded: "Everybody I have met has been brilliant", and when asked if she was comfortable with the general workplace rules the claimant replied: "Yes all okay". There was also a Training and Coaching Review at the end of the third week on 13 July 2018 at which the claimant confirmed that no further support was needed and no more training was required.
14. Unfortunately, the claimant continued to exceed the time allowed for various breaks. This resulted in a meeting between the claimant and Miss Siggins on 17 July 2018. The minutes recall that the claimant had taken excessive comfort breaks and noted that on 27 June the claimant had taken 17.5 minutes; on 28 June 11.2 minutes; on 29 June 8.5 minutes; on 3 July 9.6 minutes; on 4 July 10.95 minutes; on 11 July 9.85 minutes; on 14 July 13 minutes; and on 17 July 12 minutes; and it was also noted that on 17 July 2018 the claimant had left her desk without making anyone aware in order to call the hospital about her eyes. It was noted that the claimant disclosed her eye

condition and that medicinal eyedrops were to be taken, but that she had assured the respondent that it would not affect her work. It was also noted that the claimant was offered support but this was declined. The minutes record that the claimant explained that she had to take one set of eyedrops three times a day; another set of eyedrops twice a day; and moistening eyedrops for her dry eyes to be used as and when. There was no known cause for her eye condition but that she did not need any extra support by way of screen or glasses. The minutes conclude by way of "Notes/Further Action", and record that it was discussed that the claimant might be re-seated at the back of the call centre when she was fully trained so that she could administer any eyedrops while still logged in at her desk and that once moved into the normal scheduled rotations then arranging hospital appointments would become easier. Miss Siggins also agreed to consider an adjustment whereby the 60 minutes of compulsory breaks could be broken into four separate 15 minute breaks.

15. The claimant asserts that Miss Siggins made it clear to her at this meeting that if her different health conditions prevented her from complying fully with the respondent's procedures then she should consider whether she was suitable for employment with the respondent and should consider her position. She said it was made clear to her that she would not be able to retain her employment and/or survive her probationary period if any of her medical conditions prevented her from complying fully with the respondent's procedures. That is denied by Miss Siggins, and also denied by Miss Bond who was also present and who took the minutes, and there is no mention of this in the contemporaneous minutes. The weight of evidence is against the claimant on this point, and we prefer the respondent's version of events that no such intimation or threat was ever made to the claimant.
16. The claimant was then absent from work on 18 and 19 July 2018. The claimant asserts that when she telephoned the respondent on 19 July 2018 to discuss her absence that on at least four occasions she was told she should consider not coming back to work because the respondent was not able to do anything to support her, and that she reported that she was suffering from severe anxiety and depression. She complains that no support for her anxiety was offered. However, we find that this is not supported by the relevant transcript. It is true that the claimant mentioned her anxiety and depression, but stated that this was not work-related. In addition, there were no discussions or requests from the claimant about what support was needed, and we note that the claimant was invited to raise any such concerns at the individual meetings which she also attended. In addition, although Miss Bond had raised with the claimant matters about safeguarding her health, we do not find that the claimant was pressurised in any way to resign her employment. The claimant did of course have the opportunity to raise any concerns and discuss what support she needed at the repeated one-to-one meetings with her supervisors.
17. At a return to work interview on 20 July 2018 the claimant confirmed to Miss Siggins that the reason for the absence was: "Eye appointment, led to steroid drops being administered; Anxiety." It was noted that the claimant had not called in one hour before her shift but that the absence was not pre-planned and she had to visit her doctor. She confirmed that the outcome of this doctor's visit was that: "steroid eyedrops that had to be taken hourly, cataract progressively worse, likely to have surgery this year." The claimant confirmed that she had not got a sick note but had been advised that she was fit to work, albeit that she had to continue with the eyedrops until 25 July 2018 when another appointment was due. She confirmed that it was a recurring problem and unpredictable. When asked if there was anything that the respondent could do to help, the notes confirm that the claimant agreed to have four separate 15 minute breaks to break up the day and that when her eyes got bad she was to be permitted to wear sunglasses. Although the claimant mentioned her anxiety, there were no further discussions about this condition, and despite the request to discuss how the respondent might provide assistance and/or adjustments, the matter was not raised in any further detail by the claimant. The claimant signed to acknowledge the accuracy of those minutes, and also signed a further copy of the respondent's absence policy.

18. On 23 July 2018 the claimant then took 14.33 minutes of comfort breaks, and attended a further meeting with Miss Siggins on 24 July 2018 to discuss this. The claimant did not dispute the fact, but advised that it was not to do with her eye drops, "But because she had a short bladder and needed the toilet. In previous call centres I've had 18 minutes so it is getting used to that. I don't feel confident putting in my drops in the call centre but the four separate 15 minute breaks will help." Miss Siggins confirmed that Miss Bond would finalise the arrangements for the four separate 15 minute breaks with the relevant manager later that afternoon. Miss Bond then made the necessary arrangements with her line manager later that day.
19. The claimant asserts that the respondent was aware of the substantial disadvantage caused to her by reason of her IBS as a result of this meeting. She asserts that informing the respondent that she had "a short bladder" effectively informed them of a significant symptom of IBS. We do not accept that, and we prefer the respondent's version that notification on one occasion that the claimant felt that she had a short bladder did not put the respondent on notice that the claimant was suffering from IBS and/or was suffering any substantial disadvantage because of it.
20. The claimant then left work on the afternoon of 24 July 2018, and returned on 27 July 2018 having had 2.5 days of absence. This included attending a hospital appointment in connection with her eye condition on the morning of 25 July 2018. When the claimant reported her absence by telephone on 25 July 2018, she explained to Mrs Hayes the difficulty she was having with her eyes, but also mentioned her depression and anxiety and that she wished to go and see her doctor again for further advice. The general gist of the discussions concerning her anxiety and depression was that issues were not work-related and that the claimant was managing the situation.
21. The claimant attended a return to work interview with Miss Siggins on 27 July 2018 and the reason for absence was recorded as: "IBS/Heatstroke/Anxiety/Eyes". It was noted that the claimant did not call in one hour before the start of her shift as required, that the absence was not pre-planned and that she did visit her doctor. The outcome was noted as "Referred me to counselling for anxiety. Upped the dose of relief of over-the-counter tablets; got an assessment on 14 August with Plymouth options, and Dad was paying for hypnotherapy." She confirmed that she did not obtain a sick note and although she was always going to have "the problem" she was well enough to be in work. She confirmed that she now had the four separate 15 minute breaks and that that was expected to help.
22. Miss Siggins then took this information to the HR department to update the claimant's personnel file, and realised the continuing extent of the claimant's repeated failures to follow the respondent's procedures. This resulted in a further meeting between Miss Siggins and the claimant later that afternoon on 27 July 2018. Again, Miss Siggins and the claimant signed contemporaneous minutes of that meeting. The minutes recall that it was a discussion resulting from the claimant's failure to follow company procedure and her poor timekeeping. It was recorded on 19 July 2018 that the claimant had failed to call in one hour before her shift because she was due to start at 9 am but reported sickness at 8:17 am. On 23 July she had taken 14.33 minutes for comfort breaks. The claimant explained that she had needed to use the toilet more than usual and asked respondent whether she was expected "to wee yourself". The claimant added that she needed the toilet because of her poor stomach which had made her feel unwell. On 26 July 2018 the claimant failed to call in one hour before her shift to report her sickness, to which the claimant replied that she called as soon as she had woken up. Miss Siggins reported that during their meeting on 24 July 2018 regarding comfort breaks which were taken on 23 July 2018, she found the claimant to have been abrupt and she told the claimant that she needed to ensure that she was showing "positive behaviours" in the workplace. The claimant was asked to ensure that she would do this. The claimant replied that "I already knew I was going to be spoken to, I was frustrated as I didn't know the alternative. I am sorry for that." Under Notes/Further Action it was noted: "Should your timekeeping and excessive comfort breaks continue to create a cause for concern we may extend or fail your probation."

23. There was then a four-week HR review on 3 August 2018 with Miss Bond. The minutes record: "Multiple discussions have taken place with Natalie regarding her high breaks and comfort breaks. The company have listened and tried to accommodate where possible Natalie's request and have now implemented a different break structure, consisting of 4 x 15 minute breaks to help administer the medicinal eyedrops." In response to this the notes record that the claimant confirmed: "Breaks seem to be working for administering of eyedrops" and when asked if she had any feedback or issues she would like to raise the claimant replied: "No, happy at work, just battling personal issues."
24. Later that afternoon on 3 August 2018 the claimant left part way through her shift because of "a panic attack/feeling sick." She returned on 4 August 2018 but took 15 minutes of comfort breaks rather than eight minutes. On 5 August 2018 she took 18.85 minutes of comfort breaks and exceeded her scheduled breaks by three minutes. On 6 August 2018 the claimant arrived 30 minutes late for her shift, but did not follow any process of notifying her non-attendance or her lateness as required.
25. This resulted in a meeting with Miss Siggins on 6 August 2018. The claimant confirmed that she had failed to attend at the commencement of her shift at 9.30 am, and did not realise that she was not starting that shift at 10 am. She had not telephoned in to confirm that she would be late and when asked: "Is there anything we could do to help?", the claimant replied: "No, my fault, should have checked." When asked to explain why she had exceeded her comfort breaks and scheduled breaks on 4 and 5 August 2018, the claimant suggested that she had had stomach problems which continued through the weekend and that she was having a bad day.
26. As a result of these repeated breaches of the respondent's procedures, Miss Siggins concluded that the claimant had not survived her probationary period, and decided to terminate the claimant's employment for that reason. Miss Siggins checked with her line manager and informed the claimant that her employment was terminated on 6 August 2018. The minutes record: "Natalie has been spoken to on many occasions (listed above) regarding her timekeeping and ability to follow company procedure. As a result of today's lateness and failure to call the staff we have taken the decision to fail Natalie's probation due to her poor timekeeping and failure to follow the procedure on several occasions". The notes also record that the claimant agreed: "I can understand that due to the needs of the business I failed to accommodate and I have been let go because of it."
27. Miss Bond confirmed the claimant's dismissal by subsequent letter dated 16 August 2018. That letter records: "… After carefully monitoring your performance and conduct during your probationary period I am writing to inform you that your progress has not been satisfactory … It has been necessary for your team leader Charlotte Siggins to speak to you on 27 July 2018 and 6 August 2018 regarding your failure to follow procedures to report your absence/lateness. On 6 August 2018 you were classed as absent without leave. In light of this the company does not believe that you will be able to meet the standards required in your job role and have therefore taken the decision to terminate your employment with immediate effect."
28. The claimant then commenced the Early Conciliation process with ACAS on 12 August 2018. The EC Certificate was issued on 4 September 2018, and the claimant issued these proceedings on 29 September 2018 alleging unfair dismissal and disability discrimination. The claim for unfair dismissal was dismissed because the claimant had insufficient continuity of service to qualify for that right.
29. Having established the above facts, we now apply the law.
30. This is a claim alleging discrimination because of the claimant's disability under the provisions of the Equality Act 2010 ("the EqA"). The claimant complains that the respondent has contravened a provision of part 5 (work) of the EqA. The claimant alleges discrimination arising from a disability, failure by the respondent to comply with its duty to make adjustments, and harassment.
31. As for the claim for discrimination arising from disability, under section 15 (1) of the EqA a person (A) discriminates against a disabled person (B) if A treats B unfavourably

because of something arising in consequence of B's disability, and A cannot show that the treatment is a proportionate means of achieving a legitimate aim. Under section 15(2), this does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

32. The provisions relating to the duty to make reasonable adjustments are to be found in sections 20 and 21 of the EqA. The duty comprises of three requirements, of which the first is relevant in this case, namely that where a provision criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, there is a requirement to take such steps as it is reasonable to have to take to avoid that disadvantage. A failure to comply with this requirement is a failure to comply with a duty to make reasonable adjustments. A discriminates against a disabled person if A fails to comply with that duty in relation to that person. However, under paragraph 20(1)(b) of Schedule 8 of the EqA A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know – (a) in the case of an applicant or potential applicant, that an interested disabled person is or may be an applicant for the work in question; (b) … that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement.
33. The definition of harassment is found in section 26 of the EqA. A person (A) harasses another (B) if A engages in unwanted conduct related to a relevant protected characteristic, and the conduct has the purpose or effect of violating B's dignity, or creating an intimidating, hostile, degrading, and humiliating or offensive environment for B.
34. The provisions relating to the burden of proof are to be found in section 136 of the EqA, which provides in section 136(2) that if there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred. However by virtue of section 136(3) this does not apply if A shows that A did not contravene the provision. A reference to the court includes a reference to an employment tribunal.
35. We have considered the cases of Environment Agency v Rowan [2008] IRLR 20 EAT; Archibald v Fife Council [2004] IRLR 651 HL; Griffiths v Secretary of State for Work and Pensions [2015] EWCA Civ 1265; General Dynamics Information Technology Ltd v Carranza [2015] ICR 169 EAT; Pnaiser v NHS England [2016] IRLR 170 EAT; Basildon & Thurrock NHS Foundation Trust v Weerasinghe UKEAT/0397/14; City of York Council v Grosset [2018] IRLR 746 CA. We take these cases as guidance, and not in substitution for the provisions of the relevant statutes.
36. We have also considered section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992, and in particular section 207A(2), (referred to as "s. 207A(2)") and the ACAS Code of Practice 1 on Disciplinary and Grievance Procedures 2009 ("the ACAS Code").
37. The claimant's claims were clarified by Employment Judge Fowell at a case management order on 6 March 2018, and we deal with each of these in turn.
38. The claim for harassment relies on three allegations as follows: first, requiring the claimant to attend meetings in connection with excessive time away from her work; secondly, in the conduct of these meetings, including going over previous absences; and thirdly, telling the claimant to ensure that she was not abrupt to her colleagues in the future. We deal with each of these in turn.
39. In general terms we find that the respondent's requirement for the claimant to attend these meetings was caused by the claimant's repeated failures on two fronts: first, taking breaks in excess of the permitted time; and secondly, failing to report absences in good time as required by the relevant policy. In addition, we find that the meetings were supportive and the respondent made genuine enquiries as to the support which it might offer to assist the claimant to comply with the relevant requirements. Whereas the claimant's eye condition was clearly discussed, and support was put in place to accommodate her wishes, the other two disabilities of anxiety and depression and IBS

were not matters of concern which were raised by the claimant at these meetings, and the respondent was effectively unaware of them.

40. The first claim of harassment is that the claimant was required to attend meetings in connection with excessive time away from her work. It is true that the claimant was required to attend repeated meetings, but as noted above these were triggered by the claimant's failure to comply with the relevant procedures. We accept that the discussions concerning the claimant's eye condition at these meetings were related to the claimant's disability, but we cannot find that this conduct had the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, and humiliating or offensive environment for her.
41. The second claim of harassment is that the respondent repeatedly went over previous absences during these meetings. We accept that this was true, but again, this is in the context of drawing to her attention her excessive time away from her work in a breach of the various policies. This was caused by the claimant's failure to comply with the relevant procedures. The claimant was a new employee within her probationary period, and it is entirely normal practice for an employer to review non-compliance of its policies and to draw such non-compliance the attention of its employees. Again, whereas we accept that the discussions concerning previous absences caused by the claimant's eye condition at these meetings were related to her disability, we cannot find that this conduct had the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, and humiliating or offensive environment for her.
42. The third claim of harassment is that the claimant was told that she should not be abrupt to her colleagues. We find that this was a normal and reasonable management instruction, and was not in any way related to the claimant's disability. We cannot find that this was conduct which was related to the claimant's disability and had the purpose or effect of violating the claimant's dignity, or creating an intimidating, hostile, degrading, and humiliating or offensive environment for her.
43. We therefore dismiss the claimant's harassment claims.
44. The claim of discrimination arising from the claimant's disability relies on the act of dismissal. The proper approach to section 15 claims was considered by Simler P in the case of Pnaiser v NHS England at paragraph 31: (a) Having identified the unfavourable treatment by A, the ET must determine what caused it, i.e. what the "something" was. The focus is on the reason in the mind of A; it involves an examination of the conscious or unconscious thought processes of A. It does not have to be the sole or main cause of the unfavourable treatment but it must have a significant influence on it. (b) The ET must then consider whether it was something "arising in consequence of B's disability". The question is one of objective fact to be robustly assessed by the ET in each case. Furthermore: (c) It does not matter in precisely what order the two questions are addressed but, it is clear, each of the two questions must be addressed, (d) the expression "arising in consequence of" could describe a range of causal links … the causal link between the something that causes unfavourable treatment and the disability may include more than one link, and (e) the more links in the chain there are between the disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact.
45. Adopting this analysis, we must decide what caused the treatment complained (that is to say the claimant's dismissal). In our unanimous judgment the claimant's dismissal was caused by her repeated failure to comply with the respondent's rules and procedures relating to the time taken for both scheduled breaks and comfort breaks, and her repeated failure to notify her absences within the timescales required by the respondent's absence policy. We have seen no evidence, medical or otherwise, and we cannot find, that the claimant's repeated failure to follow these procedures was "something" that has arisen in consequence of any of the claimant's three disabilities. Put another way, there was no causal link between any of the claimant's three disabilities, and her repeated failure to comply fully with the requirements of the relevant policies.

46. Accordingly, we dismiss the claimant's claim that her dismissal was something arising in consequence of her disability.
47. Finally, we turn to the claimant's claim in respect of an alleged failure by the respondent to make reasonable adjustments. As previously clarified, this claim relies on the provision criterion or practice (PCP) that employees including the claimant were only allowed four breaks a day and/or that those breaks were limited to eight minutes in total. In fact, there was no such PCP, and arguably the claimant's claim fails for that reason at this stage. However, this appears to be an error in recording the correct PCP, which more accurately is that the respondent's employees (including the claimant) were allowed compulsory breaks of an hour (consisting of 15 minutes, 30 minutes and then 15 minutes) together with further comfort breaks limited to an additional eight minutes. We find that there was a PCP to this effect.
48. The next question to address is the extent if any to which this PCP caused a substantial disadvantage to the claimant in comparison with persons who are not disabled, for instance because she required longer or more frequent breaks. We find that there was such a substantial disadvantage with regard to the claimant's eye condition, because she needed more frequent breaks in order to apply her medication. We also accept in principle that someone with IBS would be more likely to need repeated comfort breaks, although on the facts of this case we are not satisfied that the claimant personally was ever put to any substantial disadvantage in that regard. In addition, we have not heard any evidence as to why the PCP in question caused a substantial disadvantage to the claimant by reason of her anxiety and depression as compared to others without that disability.
49. When the claimant's request to have more time to apply medication by way of rearranging the compulsory breaks was considered, the respondent implemented an adjustment to assist her. The standard breaks were of 15, 30, and then a further 15 minutes during the day. As a result of the claimant's eye condition her request was accommodated to change this to four separate breaks of 15 minutes. The claimant confirmed that this adjustment had assisted her and she was satisfied with it. There was no longer any substantial disadvantage to the claimant by way of the continued application of the original PCP. We find that the statutory duty to make adjustments was engaged, but we also find that the respondent had made a reasonable adjustment in this respect.
50. We do not find that the statutory duty to make adjustments was engaged for either of the other two conditions. At the very commencement of her employment on 28 June 2018, Mrs Robinson made it clear to the claimant if she needed further time over and above the allocated breaks then all she needed to do was to draw this to the attention of her manager in advance, and the request would be accommodated. Even if she had to leave immediately, the matter should then be drawn to the manager's attention and any concerns or issues could be addressed. Despite the offer at every meeting to discuss the reasons for her non-compliance with the relevant procedures, and to consider if any support or adjustments were needed, at no stage did the claimant inform the respondent of any substantial disadvantage caused by either impairment, nor did she request any adjustments to accommodate her IBS or her anxiety and depression. Although the claimant has suggested that she was effectively too frightened to raise these matters for fear of losing her job, we reject that allegation. There was no evidence to support that allegation, indeed the contrary is true, given the supportive and constructive nature of the meetings between the claimant and her line managers.
51. With regard to her IBS, we are not satisfied that the claimant was ever put to any substantial disadvantage by the original PCP, and in any event the respondent did not know, and it cannot be said that it ought reasonably to have known, that the claimant was ever put to any substantial disadvantage by way of this PCP.
52. Similarly, with regard to the anxiety and depression, we are not satisfied that the claimant was put to any substantial disadvantage by the original PCP, and in any event the respondent did not know, and cannot be said that it ought reasonably to have

known, that the claimant was ever placed in any substantial disadvantage by way of this PCP. We therefore dismiss the claimant's claims relating to reasonable adjustments.

53. Accordingly therefore all of the claimant's claims are all dismissed.
54. For the purposes of Rule 62(5) of the Employment Tribunals Rules of Procedure 2013, the issues which the tribunal determined are at paragraph 1; the findings of fact made in relation to those issues are at paragraphs 4 to 28; a concise identification of the relevant law is at paragraphs 30 to 36; how that law has been applied to those findings in order to decide the issues is at paragraphs 37 to 53.

_____
Employment Judge N J Roper
Dated 13 August 2019