EMPLOYMENT TRIBUNALS

Claimant: Ms Hilary Melville

Respondent: Santander UK PLC

HELD AT: Liverpool **ON:** 24, 25, 26, 27 & 28 June, 5 & 9 August 2019 (in chambers)

BEFORE: Employment Judge Shotter

Members: Mr MC Smith
Mrs JE Williams

REPRESENTATION:

Claimant: In person
Respondent: Mr French, Counsel

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The respondent had ignored the claimant's grievance between 30 November 2017 to 17 January 2018 as a consequence the claimant was treated unfavourably during her absence from work arising from her disability of fibromyalgia, the claimant's claim for unlawful disability discrimination brought under section 15 of the Equality Act 2010 is well-founded and adjourned to a remedy hearing listed for 3-hours before the Employment Judge sitting with members at the Employment Tribunals **3rd Floor, Civil & Family Court Centre, 35 Vernon Street, Liverpool, L22BX on 28 November 2019** starting at 10 am or as soon as possible afterwards.

2. In respect of the remaining claims brought under section 15, the claimant was not unlawfully discriminated against under section 15 of the Equality Act 2010 and the claimant's remaining claims brought under section 15 of the Equality Act 2010 are not-well founded and are dismissed.

3. The claimant was not unlawfully discriminated against under sections 13 and 19 of the Equality Act 2010 and the claimant's claims of unlawful disability

discrimination brought under sections 13 and 19 of the Equality Act 2010 are not well-founded and dismissed.

4. The respondent was not in breach of its duty to make reasonable adjustments, the claimant was not unlawfully discriminated against under sections 20 to 21 of the Equality Act 2010 and the claimant's claims of unlawful disability discrimination brought under sections 20 to 21 of the Equality Act 2010 are not well-founded and dismissed.

5. The claimant's claim for unpaid accrued holiday is dismissed upon withdrawal by the claimant.

6. The respondent was not in breach of contract and the claimant's claim for breach of contract is not well-founded and is dismissed.

REASONS

Preamble

The claims

1. In a claim form received on 23 January 2018 following ACAS conciliation between 14 December 2017 and 14 January 2018, the claimant, who at the time was employed as a customer telerelations advisor from 4 September 2017 until her resignation during the probation period on 13 February 2018, brought claims of unfair dismissal, unlawful disability discrimination under sections 15 and 20 of the Equality Act 2010 ("EqA"), wrongful dismissal (notice pay) and holiday pay.

2. In a case management discussion held on 18 May 2018 the claimant explained the constructive unfair dismissal complaint was brought on the basis that the dismissal was due to the assertion of a statutory right, namely, the right to itemised pay statements and the right in respect to entitlement to paid holidays. She also alleged the respondent had breached her contract by (a) not providing her with the respondent's 'Working Safely' booklet and 'Personal Health & Safety Statement' on her first day of employment, and (b) not giving her four weeks' notice of hours she was required to work in December 2017 to February 2018, including failing to give notice of weekend rotas.

3. At the Preliminary Hearing Case Management, the claimant clarified she was claiming disability discrimination under sections 13, 15, 19, 20-22, 26 and 27 of the EqA and it was agreed the respondent would make a formal request for further and better particulars as the claimant's claims were unparticularised. The claimant's further information was provided in a 24-page document which the Tribunal does not intend to repeat, to which it was taken during the liability hearing and has taken into account during deliberations.

4. At a preliminary hearing held on the 26 September 2018 a number of the claimant's claims were struck out and a number dismissed on withdrawal. Various

claims set out in the claimant's further information provided were considered to have little reasonable prospects of success and a deposit order was made. For the purpose of this liability hearing only the one deposit of £25 was paid and that related to the allegation of harassment set out in the agreed issues below, namely, Charlotte Brown of the Respondent emailing the Claimant regarding references on 17 November 2017.

5. It became apparent at the outset of the liability hearing, taking into account the claimant's oral submissions, that a number of allegations listed within the claimant's further information had not been dealt with at the preliminary hearing, and remained outstanding. With the parties' agreement, the Tribunal took the claimant through the draft issues provided by Mr French, which were duly amended to include the claims she believed were outstanding. An agreement was thus reached on the list of issues which are set out below in their entirety and refer to all the claimant's outstanding claims.

6. During cross-examination the claimant withdrew her claim for unpaid accrued holiday pay, which was dismissed with her agreement.

Possible conflict of interest at the liability hearing

7. Catherine Ferguson, a witness for the respondent, recognised one of the members, Mr Smith, from approximately 1999 when they worked together, albeit in different parts of the country. Mr Smith did not recognise Catherine Ferguson until she confirmed her name had been Farmer before her marriage, whereupon it transpired Mr Smith had line-manged her from a distance for approximately 7 to 9 months and that was as much Mr Smith recalled.

8. A discussion took place between the Tribunal and the parties (with an emphasis on the claimant bearing in mind she is a litigant in person and Catherine Ferguson was a witness called on behalf of the respondent), as to whether a conflict of interest, or a perception of a conflict, arose as a result of Mr Smith and Catherine Ferguson having worked in the same company approximately nineteen/twenty-years previous. The Tribunal was assured by both that here had no contact in the intervening years and there was no suggestion Catherine Ferguson and Mark Smith had worked closely all those years ago.

9. It was explained by the Tribunal that if the claimant was concerned with the possibility of any conflict and she was uneasy with the historical working relationship, it would explore the possibility of reconvening a fresh Tribunal to hear the matter at a later date, as early as possible. In the alternative, Mr Smith indicated he would step down as a member of the panel, despite there being no conflict as far as he was concerned. The claimant was offered time to consider the position, and she confirmed there was no conflict, the possibility having been explored in open Tribunal, she did not want to adjourn and wished for the full panel to continue to hear her case. Mr French also confirmed there was no conflict. As all Mr Smith could recall was Catherine Farmer's name and given the fact that all present were of the view there was no conflict, the Tribunal having considered the position was also satisfied no conflict of interest or a perception of one existed and it was in accordance with the overriding objective to continue hearing the case before a full panel that included Mr Smith. Had

there been any doubt, the Tribunal made it clear that it would have adjourned the hearing.

Time limits

10. As the liability hearing progressed and the claimant gave evidence under cross-examination, it became apparent to the Tribunal that jurisdiction and time limits was a real issue as the claimant, on her own admission, was well enough to return to work by 6 December 2016. Following the Preliminary Hearing, the Judgement promulgated on 3 October 2018 at paragraph 3 dealt with time limit and concluded the basis that the claimant's claims were presented in time "measured from the last of a series of alleged acts of discrimination, and in any event (including that the allegations comprising the alleged series, or any of them; are held to be unfounded) the time for presentation would have been extended on the principles of justice and equity until the date of presentation." It was apparent to the Tribunal as the evidence unfolded that the claimant had been well-enough to issue proceedings before she did, and her delay in so doing gave rise to a possible injustice on the respondent's part as its witnesses were unable to recall much of what had transpired save for the information recorded in the contemporaneous documentation. This state of affairs gave rise to a number of conflicts in the evidence which the Tribunal resolved with some difficulty, as set out below, and it recognised that as the respondent had not lodged an application for a reconsideration or appeal the decision on time limits, it does not have the power to set aside the Judgment reached that the claims were received in time and/or the time limit would be extended.

The mental impairments relied upon

11. The Claimant relies upon the disabilities of fibromyalgia, vitiligo and (perceived) depression. The respondent concedes the claimant is disabled but denies the claimant's claims.

Agreed issues

12. The parties agreed the issues as follows:

Direct Discrimination (section 13 Equality Act 2010)

12.1 The Claimant relies on the following alleged treatment:

12.2 Samantha Woods and Mary Bourke of the Respondent expressing a negative attitude by body language and facial expressions during a Well Being Meeting which took place on 30 October 2017 ("Sickness Absence Well Being Meeting");

12.3 The discussions that took place during the Sickness Absence Well Being Meeting;

12.4 An assumption was made of perceived disability by depression;

12.5 Mary Bourke telling off the Claimant as if a disciplinary meeting and ignoring the Respondent's responsibilities for duty of care for by work on DSE with no risk assessment;

12.6 Not providing competent work colleagues with adequate Health & Safety training;

12.7 Threat of extended probation due to absence.

12.8 The Respondent considers that the correct comparator would be a colleague who did not suffer from the Claimant's alleged disability/ies who attended a first sickness absence wellbeing meeting. The claimant did not dispute this was the correct hypothetical comparator.

Issues

12.9 Did the Claimant suffer the alleged treatment set out above?

12.10 If so, was the treatment less favourable?

12.11 If so, was the less favourable treatment because of the Claimant's fibromyalgia, vitiligo and (perceived) depression.

Indirect Discrimination (section 19 Equality Act 2010)

13 The Claimant relies upon the disabilities of fibromyalgia, vitiligo and (perceived) depression. The Claimant relies on the following:

13.1 In relation to the Claimant's induction training, omitting a free-range dummy system and moving chairs;

13.2 In relation to the Claimant's induction training, the absence of an allocated line manager.

Issues

13.3 Do any of the above and alleged by the Claimant amount to a Provision, Criterion or Practice (PCP)?

13.4 Did the Respondent apply any of the above PCPs to Claimant?

13.5 Did the above listed PCPs, or any of them, put persons with whom the Claimant shares the same disabilities, at a disadvantage when compared with persons who do not share it?

13.6 Did the PCPs, or any of them put the Claimant at that particular disadvantage?

13.7 If so, can the Respondent show that the above listed PCPs were a proportionate mean of achieving a legitimate aim?

Discrimination arising from a disability (section 15(1) Equality Act 2010)

14. The Claimant relies upon the disability of fibromyalgia. The Claimant relies on the following:

14.1 The Claimant not signing the Personal Health & Safety Statement on her first day;

14.2 Holding induction training and tests over one 4-week block;

14.3 Sharing workstations during call listening by using a splitter device;

14.4 Not carrying out a risk assessment;

14.5 The content of the Sickness Absence Well Being outcome letter dated 31 October 2017 which the Claimant alleges is not detailed enough; or

14.6 The Claimant allegedly being denied payment of holiday pay during her sickness absence;

14.7 Ignoring the claimant's formal grievance dated 20.11.17, until the claimant made contact on 30.11.17 and then ignored again;

14.8 Not investigating the grievance;

14.9 Delay in inviting the claimant to a grievance meeting;

14.10 Putting the grievance on hold until such time that the Claimant was well enough to attend meetings.

<u>Issues</u>

14.11 Did the Claimant suffer the alleged treatment above?

14.12 In relation to each of the above matters, what is the "something" arising from the Claimant's disability?

14.13 In relation to the above, did the Respondent treat the Claimant unfavourably because of the "something"?

14.14 Can the Respondent show that the treatment was a proportionate means of achieving a legitimate aim?

Failure to make reasonable adjustments (section 21 Equality Act 2010)

15 The Claimant relies upon the disabilities of fibromyalgia and (perceived) depression. The Claimant relies on the following:

15.1 The working hours during induction training being 9am – 5pm;

15.2 Not being offered reduced hours or responsibilities as suggested by the Claimant's GP report dated 6 November 2017; or

15.3 Having the same managers conduct further wellbeing meetings.

Issues

15.1 Did the Respondent not know and could not be reasonably be expected to know that the Claimant had the disabilities?

15.2 Do any of the above and alleged by the Claimant amount to (I) a PCP; (ii) a physical feature of the Respondent's premises; or (iii) the Respondent's failure to provide an auxiliary aid?

15.3 If so, did the Respondent apply any of the above to Claimant?

15.4 If so, did any of the above and alleged placed the Claimant at a substantial disadvantage because of her disabilities?

15.5 If so, did the Respondent know or ought reasonably to have known that the Claimant was likely to be placed at a substantial disadvantage because of her disabilities?

15.6 If so, are the below adjustments reasonable steps which the Respondent should have undertaken to avoid the disadvantage suffered:

15.7 adjusting the start and end times of the induction training;

15.8 offering the Claimant reduced hours or responsibilities; or

15.9 appointing different managers for a second sickness absence wellbeing meeting.

Harassment (section 26 Equality Act 2010)

16 The Claimant relies upon the disabilities of fibromyalgia and (perceived) depression. The Claimant relies on the following:

16.1 The discussions and conduct of the Sickness Absence Well Being Meeting;

16.2 The content of the Sickness Absence Well Being outcome letter dated 31 October 2017; and

16.3 An assumption was made of perceived disability by depression;

16.4 Mary Bourke telling off the Claimant as if a disciplinary meeting and ignoring the Respondent's responsibilities for duty of care for by work on DSE with no risk assessment;

16.5 Not providing competent work colleagues with adequate H & S training;

16.6 Threat of extended probation due to absence;

16.7 Charlotte Brown of the Respondent emailing the Claimant regarding references on 17 November 2017.

Issues

16.8 Does any of the above constitute unwanted conduct related to the Claimant's disabilities?

16.9 If so, did the unwanted 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?

Victimisation (section 27 Equality Act 2010)

17 The Claimant relies upon the disabilities of fibromyalgia and depression.

17.1 Does the Claimant's grievance of 20 November 2017 amount to a protected act in accordance with section 27(2) of the Equality Act 2010 ("the Protected Act")?

17.3 If so, the Claimant relies on the following:

17.4 The delay in scheduling a grievance hearing; or

17.5 Samantha Woods arranging a second wellbeing meeting with the Claimant.

Issues

17.6 Does the above amount to a detriment?

17.7 If so, did the Respondent subject the Claimant to the above because of the Protected Act?

Breach of Contract

18 Does the Claimant's contract provide that she has the right to receive;

18.3 The Respondent's Working Safely booklet and Personal Health & Safety Statement on her first day of employment; or

18.4 Four weeks' notice of hours?

18.5 If so did the Claimant fail to resign in breach of her contract:

18.6 The Respondent's Working Safely booklet and Personal Health & Safety Statement on her first day of employment; or

18.7 Four weeks' notice of hours between December 2017 and February 2018?

18.8 If so, what loss did the Claimant suffer as a result of this breach?

Evidence

19 The Tribunal heard evidence from the claimant on her own behalf; on behalf of the respondent it heard evidence from John Cotter, team manager but at the time of the events in question he held the training position of peer group deliverer, Laura Asonitis, customer services team leader but during the relevant period she held the position of peer group deliverer, Samantha Harrison (nee Woods) fraud investigator who at the time held the position of team leader and was the claimant's line manager, Mary Bourke, customer services team leader and Catherine Ferguson, senior employment consultant.

20 The Tribunal did not find the claimant to be an entirely credible witness, and largely preferred the evidence given on behalf of the respondent where there was a conflict of evidence for the reasons set out below. In short, on cross-examination the claimant confirmed she had resigned because she had asserted her statutory right to an itemised payslip, holiday pay and on health and safety grounds and yet there was no reference to this in the ET1 or any contemporaneous documents. The Tribunal, having heard submissions from Mr French, accepted these claims were brought late to circumvent the 2-year qualifying period necessary to bring an unfair dismissal claim.

21 The claimant on cross-examination stated had she been given a line manager on her first day at work she would have discussed health issues, and her complaint in this case is that no manager was allocated, she was unable to bring up her

disabilities and the change in working hours required as a reasonable adjustment, and yet in her oral evidence she described how she had approached John Cotter and requested a disabled parking space on her first day at work, but was unable to discuss her disability with him. The Tribunal did not find this evidence to be credible. It is undisputed at the time John Cotter was the trainer, and it must follow that he was in managerial command of the employees being trained, including the claimant, as there was no other manager.

22 The claimant initially denied that she had signed a personal Health and Safety statement on 20 July 2017 and she took the Tribunal to other examples of her signature to demonstrate that she had not signed the document. When Mr French pointed the similarity of the signatures the claimant had taken the Tribunal to, the claimant stated that she was not saying she did not sign it, but had no idea whether it was forged or not. The Tribunal took the view that the claimant was a less than accurate historian and her evidence could not be relied upon; it was satisfied she had signed the Health and Safety Guidelines before commencing her employment confirming she had personal responsibility to take reasonable care of her own health and safety and bring anything that could affect it "immediately" to her manager. The document undermined the claimant's claims, and her allegation that the Health & Safety Statement was not provided to her at the time and she had not signed it was less than credible.

23 The Tribunal was referred to an agreed bundle of documents together with an agreed chronology, written witness statements, written and oral submissions and a number of additional documents produced by both parties. The claimant, taking into account the fact she was a litigant in person, was invited to make oral submissions on the basis that she would read the written submissions prepared by Mr French, and then be given the opportunity to consider his oral submissions during an adjournment before making her oral submissions in response. The claimant declined to make oral submissions, and when she confirmed that she was too tired to do so, as a reasonable adjustment the Tribunal offered to adjourn the next day and/or another date. The claimant indicated that she did not want to make submissions, her preference being for the Tribunal to deliberate and it was on this basis the Tribunal indicated that it would, in due course, send to the parties a reserved judgement with reasons as soon as it was able to do so.

24 The Tribunal has considered the respondent's submissions, which the Tribunal does not intend to repeat and has attempted to incorporate the points made by the parties within the body of this judgment with reasons, and has made the following findings of the relevant facts.

Facts

25 The respondent is in the business of financial services and employs approximately 26,000 employees in Great Britain, including a number of customer telerelations advisors who work in a call centre based in Bootle, Liverpool.

26 The respondent issued a number of policies and procedures to all employees, who have access to them on the intranet. Prospective employees also have access to the intranet, albeit a more limited one, until they are provided with a password soon after commencing their employment. The claimant has referred

the Tribunal to many policies, proformas and procedures, which have been taken into account. In short, these are as follows:

Pre-placement Medical Questionnaire

27 All new recruits are provided with by Resourcing (a specialist HR department) Pre-placement Medical Questionnaires and reference information form for completion and electronic signature. If it appears a pre-placement potential recruit has a disability the Pre-placement Medical Questionnaire is forwarded to a different specialist HR department dealing with 'Well-being'. The document provided health information will be treated in confidence, only seen by HR "where you have declared a significant disability..." The claimant was aware from this form that a person providing her with training should have been made aware of any disability set out.

Reference Information Form

28 Potential recruits are provided with a Reference Information Form for completion, two referees are necessary and employment history confirmed. Potential recruits were put on notice that if the information provided was false or withheld, the respondent "may withdraw a job offer or end my employment."

The respondent's policies and procedures

29 A number of policies and procedures relevant to employees were issued by the respondent. The Tribunal found there exists a running theme throughout the respondent's policies requiring the employment relationship to be supported by a mutual dialogue between employee and trainer/manager regarding a number of matters, including health and safety and disability.

Integrated Health, Safety and Wellbeing Policy & Working Safely Guidelines

30 A document titled 'Working Safely Guidelines' was available on the intranet. The Working Safely Guidelines set out the following:

30.1 "working safely is an important legal requirement…it's important that you cooperate with your manager." It clearly referred to an employee's own responsibility "to take reasonable care for their own health and safety." Reference was made to the respondent employing health and safety consultants who provide support for safe working. Concerns were to be dealt with via managers.

30.2 During training the Working Safely Guidelines provided that health and safety induction training would be given, a Working Safely booklet would be provided and employees required complete 3 eLearning courses, which was a legal requirement and include workstations safety. It is not disputed the claimant completed the online courses.

30.3 Under the heading "Risk Assessment and Control" employees were required as a matter of law to "work with your manager to identify and control workplace hazards."

30.4 Employees were required to "always tell your manager if you've a medical condition or become ill at work."

30.5 Under the heading "Work Equipment" employees are required to "always tell your manager if any of the work equipment you use has become defective."

30.6 Employees were required to complete a Personal Health & Safety Statement.

Absence Policy

31 The Absence Policy covers the policies and procedures dealing with sickness absence for employees who are not on probation. Contrary to the claimant's reliance on this Policy, the Tribunal found it does not apply when an employee was in a probation period, and thus is not relevant to the claimant's case as she was on probation during the relevant period.

The Sickness Absence Guidelines

32 The Sickness Absence Guidelines available on the intranet is a non-contractual document supporting the Sickness Absence Policy, and therefore it is not applicable to employees working in a probation period, a point lost on both parties, which became apparent to the Tribunal when it read the polices in some depth during deliberations in chambers. The Tribunal was not taken to any Sickness Absence Policy relevant to employees on probation and conclude that none exist.

Bullying and Harassment Policy January 2016

33 The Bullying and Harassment Policy set out a number of provisions as follows;

33.1 At paragraph 6.1 examples of bullying included "making threats about future career prospects or employment with Santander without foundation."

33.2 Paragraph 7 proved that the "exact approach to the investigation will depend on the nature of the specific grievance, including the complexity of the grievance, and the availability of witnesses."

33.3 Paragraph 8.1 provides employees "will be invited to a formal grievance meeting…with the aim to reach a resolution. This meeting will normally take place within 14 calendar days of the grievance being receiving in writing. However, more time may be required…such as the availability of those involved in the process.

Diversity & Inclusion Policy

34 The Diversity & Inclusion Policy set out a number of provisions that included the following:

34.1 In accordance with paragraph 4 employees had a responsibility to be "sensitive to the potential impact of their behaviour on colleagues." It also required employees to "work in partnership with mangers to create and sustain an inclusive working environment."

34.2 Under paragraph 7 headed "Training" it provided "If an employee has a disability Santander will make reasonable adjustments to accommodate individual requirements."

Grievance Policy 2017

35 The Grievance Policy applies to employees in probation, and reference was made to separate Guidelines. At paragraph 3 the requirement set out was to "to fully investigate formal grievances and manage this as sensitively and as quickly as possible."

Probation – A Manager's Guide

35.1 Managers were issued with a written guide dealing with probation. The Guide supported a Probation Policy that was not included in the bundle. The Tribunal was provided with one page out of 4. The Tribunal has not been provided with the full documents. It appears (a) a Probation Recovery Plans can be used early in the probation period, (b) it must be used if the period is extended and (c) it is aimed at assisting the employee to pass the probation period. There was nothing to suggest a Probation Recovery Plan by its very nature will result in a dismissal, and it was not disciplinary action. In respect of a long-term sickness, the Tribunal concluded that a Probation Recovery Plan could be issued very early on before the sickness absence became long-term. It is undisputed between the parties that a long-term sickness absence is an absence of 28-days or more. The following is relevant:

The initial 6-month probation period can be extended up the 3-months. A probation recovery plan should be put in place when extending probation on the basis that the respondent "want to do everything we can to help the new employee to complete their probation successfully." A Probation Recovery Plans can be used in "the first instance of a short-term sickness absence." The purpose of a Probation Recovery Plan is **"to document areas of concern at an early stage in order that you can support your team member to reach the required level to be successful in their role. You need to make it clear to them by setting out their responsibilities and targets"** [the Tribunal's emphasis]

The respondent requesting the claimant's references 1 June 2017 and knowledge of disability

36 On 1 June 2017 the respondent emailed the claimant requesting references, personal and statutory information including medical. The claimant completed the Pre-Placement Medical Questionnaire which she signed and dated. She confirmed the number of days absence she had in previous employment from back pain and work stress since the 5 December 2016. She confirmed she regarded herself to be disabled and referred to Fibromyalgia which she described, **"is easily managed"** [the Tribunal's emphasis].

37 The claimant confirmed her previous employed had adjusted her hours of work to avoid rush hour traffic; she had worked 8.00 to 16.00 instead of 9.00 to 17.00 the

"**the shift pattern hours offered with Santander avoid rush hour**" [the Tribunal's emphasis]. When completing this form, the claimant was unaware of the hours of work during training, although she knew her first training day would start at 9.00 and said nothing about this. The claimant also confirmed she had a mental health condition of depression or work-related stress. These were not described by the claimant as a disability but a medical condition she had suffered from in the past. The claimant gave oral evidence at the liability hearing that she had not suffered from depression for a period of some 14-years, since 2003 and that was "reactive to life episode, redundancy." The Tribunal notes that whilst disability has been conceded by the respondent, there was a real issue as to whether the claimant was disabled with depression under the Equality Act 2010 given the fact that up until December 2017 the claimant had not suffered from depression.

38 The claimant referred to a number of other medical conditions including Vitiligo-2013 – loss of skin pigmentation, white patches." The claimant did not clarify that this was ongoing in the form, and nor did she include it under the heading of disability. The information before the respondent was that the claimant was disabled by the Fibromyalgia only, and the reasonable adjustment was met by the respondent's shift pattern that she would be working after training was completed.

39 On the 5 June 2017 the Recruitment OCC Health sent an email to Lisa Crowley, HR, with medical recommendation for the claimant who had been passed as medically suitable and the information/recommendations were to be forwarded to the claimant's line manager. The email confirmed the claimant had: "four ongoing underlying medical conditions which are controlled…a history of a medical conditions which is now fully resolved. **Candidate and line manger MUST discuss the conditions, should support be required. Candidate to carry out a Workstation Safety 2016…to read a read managing stress/managing pressure booklet on LMS and time off…to attend medical appointments may be required in the future"** [the Tribunal's emphasis]. No reference was made to any reasonable adjustments being required during training, specifically the start and finish times of working hours to avoid rush hour traffic and nobody from the respondent picked this issue up with the effect that the claimant was expected to start and finish work the same time as everybody else during her training, and nor did the claimant mention it or her belief that she had a disability to any manager/trainer for a substantial period of time after she commenced her employment and there was nothing to put John cotter and Laura Asonitis on notice that the claimant (a) was disabled, and (b) required the reasonable adjustment or starting and finishing work outside peak traffic times.

40 The recommendation reflected the information provided by the claimant, which was that there was no issue with her disability and the hours of work met her need for travelling outside rush hour traffic. The Tribunal found once it became clear that the claimant's training was to take place between 9am and 5pm reasonable adjustments should have been considered by the respondent. Had a manager and/the trainer been provided with the information set out in the 5 June 2017 email, this would have put him or her on notice that the reasonable adjustment of travelling times were necessary. There was no opportunity to explore this as (a) the recommendation was not forwarded to any manager or trainer and there was

no explanation for this given on behalf of the respondent, and (b) the claimant did not raise with anybody during the training period that she was struggling and needed the hours of training to be flexible in order that peak traffic could be avoided. The respondent can be criticised for not providing the information to a manager or trainer because it would have put them on notice, and a discussed may have ensued as a result. Had one taken place there was no guarantee that the adjustment could have been put in place for the reasons set out further below.

Claimant's offer letter

41 The claimant's employment application was successful and she received a letter dated 16 June 2017 providing her with access to the respondent's intranet including the "information you need to get things off to the best possible start." A contract of employment and Employee Handbook were to be found on the intranet, and the job offer was "subject to receipt references that are satisfactory…If your references do not meet our requirements either now or in the future, we may withdraw this job offer." The training did not start until September and the respondent had just under 3-months to obtain the references. There was no indication in the letter that if both references were not provided the claimant would be dismissed once her employment has started.

42 In the offer letter the claimant was informed that she "must read the Working Safely Booklet." Details for IT access were given, the claimant was required to print off and sign the "Personal Health & Safety Statement…-you must do this on your first day with us and hand your signed statement to your line manager." The claimant signed the form on the 20 July 2017 and took it to the training induction day.

43 The claimant was required to register to attend her induction day and she was given the option of choosing a date and location suitable for her. Without the Tribunal having access to the information on the respondent's intranet, it is not clear the extent of the information given to the claimant about the induction and training in September 2017. The claimant did not inform the respondent that during her training period she required reasonable adjustments to be made to the start and work finishing times, and it is not credible the claimant was unaware of these before she started having confirmed in evidence that she was aware of a 9am start and did not complain about it.

Employment contract dated 16 June 2017

44 The Tribunal infers by the fact that the contract shows the employment was to commence on 4 September 2017 the claimant chose that date for her induction, and as a matter of fact she attended work at 9am on that date and continued to start work at 9am to commence training thereafter without complaint or any underperformance on her part.

45 The claimant's continued employment with the respondent was "subject to you satisfactory completing a probationary period of 6-months. This period may be extended at the Company's discretion for up to a maximum of three months in exceptional circumstances e.g. to allow completion of training and development.

46 Under the heading hours or work, “normal hours” were 35 per week after completion of training. During “any period of training your hours of work may be different…you will be entitled to 2-days off during any Monday to Sunday 7 period one of these days will be fixed the other will be at the discretion of the company subject to you being given 4-weeks’ notice.” The Tribunal finds there was no express contractual obligation that the claimant was entitled to 4-weeks’ notice of her shift, or hours worked training as she now maintains.

47 Reference was made to the Grievance and disciplinary procedure and to the People Policies.

48 On the 24 August 2017 the claimant emailed HR requesting joining instructions, the claimant was informed she was to attend at 9am during telephone discussions with HR, and she did not raise any issue concerning hours of work and the need to make any adjustments to those hours worked during training.

4 September 2017 commencement of the claimant’s employment – induction day

49 On the 4 September 2017 the claimant commenced employment with the Respondent and she attended induction training at 9.00am.

50 John Cotter, the peer group deliverer, was responsible for induction, and he led the training on the first 3-days. The claimant is a graduate, held a number of management positions in the past, had grown-up children and was experienced in the workplace, so much so that at times she was critical of the training content provided by the respondent the basis that it was not as she would have carried out given her experience.

51 John Cotter seemed very keen to do the right thing; he had worked for the respondent for 8 years and worked as a peer group deliverer since 1 January 2016. He was responsible for a group of approximately 10-13 people from diverse backgrounds with different work experience. John Cotter’s role was essentially dealing with induction, ice breaking and team building and he tried to make it fun. On one occasion the claimant complained to him that an exercise was a “waste of time” which indicates to the Tribunal that she felt he was approachable and was confident enough to criticise the respondent’s training methods.

52 John Cotter on a number of occasions sat away from the group in order that individuals could speak with him confidentiality if they wanted. He made himself accessible and informed the group of this. The claimant did not take advantage of his accessibility and the Tribunal inferred the reason lay with the fact that the start and finishing times during training were not an issue for the claimant, who had the confidence and experience to raise issues that concerned her and yet she was silent on this point.

53 The claimant gave oral evidence that on first meeting John Cotter she informed him she was disabled and required the disabled parking facility. This is disputed by John Cotter, who had not been provided with a document completed by HR in respect of the claimant’s disability (when he should have done and in this regard

the respondent can be criticised). HR possessed the information concerning working hours sought by the claimant. It failed to link that information with the fact that during training the claimant's training working hours were different, and a reasonable adjustment may be necessary. John Cotter was unaware of this, and as far as he was concerned the claimant trained without any difficulty and no adjustments were necessary and so the Tribunal also found.

54 Turning to the claimant's allegation she had told John Cotter when she arrived for her induction training that she was "disabled", the Tribunal on the balance of probabilities did not find in favour of the claimant's less than credible evidence, preferring the evidence on John Cotter on this point. The claimant's oral evidence was that she did not inform him the disability as fibromyalgia, this made no sense given the likelihood of John Cotter's response, which would have been to explore the claimant's disability and then report to higher level management. In her oral evidence on cross-examination the claimant contradicted her evidence, she made it clear that as John Cotter was not her line manager she would not have discussed her disability with him. In short, the claimant's evidence was that she was not given the opportunity to talk about her disability because she had not been assigned a manager. The Tribunal found her contradictory evidence pointed to a lack credibility and coherency in the evidence. It also found the claimant having held the position of manager in previous employments, she was assertive and experienced, more than capable of approaching John Cotter, who like it or not, despite his youth held a supervisory position during training and he represented the organisation. The Tribunal took the view the claimant had the general workplace and managerial experience to appreciate any complaints and issues arising during induction and training could have been referred to John Cotter, who in turn would have escalated the matter to higher management. Furthermore, from the information provided to the claimant on the intranet, she could and did make use of the HR hotline, but not in respect of her disability and start/finishing times. The Tribunal concluded that there was no issue for the claimant at the outset of her induction and training and this fact accounts for the claimant actions during the relevant period.

55 On the fourth day of training Laura Asonitis took over from John Cotter, and he played no further part in the claimant's training. It is undisputed the first week of training was light in content and designed to be fun. In weeks two and three there was significant technical content balanced against knowledge check-based games and team building which was important for the respondent, but criticised by the claimant who found some of it a waste of her time and she made her position clear.

56 The final fourth week covered mostly revision with some technical content. From the claimant's managerial experience, she believed the training could be have carried out differently and better. She complained before this Tribunal about the induction training "omitting a free-range dummy system and moving chair" which she elaborated to mean that the chairs she sat on were defective and exacerbated her medical conditions. She was unhappy sharing a workstation when listening into calls using a "splitter" device as a training method. It was undisputed the splitter device ran to 1.5 meters and enabled the user to sit, stand and behave as normal whilst listening in to a call conducted by a trained colleague. The claimant

attempted to paint a picture of being constrained by the splitter, and the Tribunal found this was not credible evidence given the length of the lead, and the undisputed fact that wheelchair users successfully used the splitter.

57 The claimant raised no complaints during the training, and the forms she completed referred to as "Knowledge Checks" were a vehicle by which she could have raised any issue had she not wanted to raise them with the trainer. The knowledge checks were forwarded to managers. The Tribunal found the claimant had exaggerated her evidence for the purpose of this litigation, she made no complaints at the time either orally or in writing concerning her disability, start and finishing times and working environment.

58 The Tribunal has considered the Knowledge Checks in detail; in half of the tests the claimant undertook she scored 100%. Only in one test did she fail to achieve the minimum acceptable score of 80% on 26 September 2017. However, 7 minutes later she re-took the test and scored 100%. The claimant's evidence that she was struggling as a result of her disability was not credible and unsupported by the contemporaneous evidence which showed otherwise. The claimant was performing well. The claimant raised no complaints and passed all the tests to progress to the next stage of training which involved floor walkers. In short, there was nothing to put Laura Asonitis on notice that the claimant was disabled, struggling with the training and reasonable adjustments were necessary in order that she could carry out her role. The Tribunal found Laura Asonitis did not known the claimant was disabled and could not reasonably be expected to know of her disability and as a consequence, the claimant's claim that she failed to make reasonable adjustments failed as set out below.

59 The feedback given by the claimant on the forms throws light on her state of mind at the time. For example, on the 26 September 2017 she was critical having been asked to undergo a test which she had passed the previous week, she requested more live training rather than simulations and she rated on a scale of 1 to 10 various aspects of the training either at 8 or 9. She was invited to share feedback on each aspect of the training and apart from her observation that there should be more live training, there was none. The Tribunal inferred from this that the claimant during the relevant period, was happy with all aspects of the training including the start and finishing times, and her retrospective complaint came later after she moved onto the second stage of training with the floorwalkers.

60 The Tribunal was provided with a feedback from a group which Mr French said was the claimant's group. The claimant disputed this, and Catherine Ferguson was unable to say one way or another whose feedback it was. The Tribunal accepted the claimant had a valid objection, and it did not accept the feedback to be that of the claimant's group, preferring the claimant's evidence on this issue on the balance of probabilities. The claimant confirmed she gave no feedback, and it is apparent from the document placed before the Tribunal, whichever group it was, that feedback could be extensive and comprehensive. Had the claimant for example, experienced a problem with broken chairs and chose for some unaccountable reason not to inform the trainers of this, she had the option of giving confidential feedback. She did not. There was no satisfactory evidence that chairs were broken as alleged, and the Tribunal preferred the evidence given on

behalf of the respondent's witnesses that to the best of their knowledge, chairs were not broken and any broken furniture should have been reported to them. The Tribunal found the claimant had exaggerated her evidence in this regard with a view to bolstering up her claim.

61 On the 20 September 2017 the claimant signed a "Personal Health and Safety Statement."

62 On 27 September 2017 the claimant pre-booked 4 holidays, 25 October, 20, 21 and 22 November 2017 under the respondent's system referred to as "WFM." When an employee goes off sick the WFM defaults to sickness absence, and holidays continue to accrue during the absence period. In order for the claimant to have been paid for the holidays, it was necessary to raise a request with her manager, who would in turn change the WFM detail and forwarded the information to HR payroll.

Completion of induction: 4 October 2017 and date of Laura Asonitis knowledge of the claimant's disability

63 The claimant completed the first 4-weeks of induction training on 2 October 2017, and she commenced the second part of her training with floorwalkers. On the afternoon of 3 October Laura Asonitis witnessed the claimant looking upset and following a discussion, for the very first time, was informed the claimant suffered from fibromyalgia and sitting down made her feel more uncomfortable. On request the claimant confirmed her medical condition in writing, and this was forwarded by Laura Asonitis to a senior manager whose name cannot be recalled. Nothing happened with that piece of paper. It is undisputed the claimant indicated that there was nothing Laura Asonitis could do to help, and she went back to work until 5pm. The next day the claimant was absent and she did not return to work from that date on until her resignation. It is the Tribunal's view that thereon in the issue of reasonable adjustments became irrelevant for the reasons set out below given the fact that the claimant was not well-enough to return to work with or without adjustments until after her resignation.

Claimant's sickness absence

64 On 4 October 2017 Claimant commenced sickness absence.

Claimant's request for accrued holidays allegedly made to Sam Woods

65 The claimant alleges she requested payment of her accrued holidays during sickness absence. There was no satisfactory evidence before the Tribunal the claimant had made an application for payment of holidays she had booked to take during her sickness absence in the expectation that she would be paid in full for the 3-days she had booked on 20 to 22 November 2017 "in the November salary". In her written statement the claimant confirmed she had raised this with Sam Woods (known by the parties as "Sam Woods") in the second week of November" which was denied by Sam Woods. The claimant confirmed she "realised this later in November 2017." Given the conflicts that existed throughout the claimant's evidence, and the total lack of any contemporaneous documentation supporting

the claimant's claim for payment of 3-days holiday during her sickness absence, on the balance of probabilities, the Tribunal preferred Samantha Woods evidence that she could not recall the claimant making such a request. If the Tribunal is wrong on this point, in the alternative, it would have gone on to find when considering the motivation of Sam Woods that she had forgotten the request, and there was no causal link between it, her failure to contact payroll and the claimant's disability. In short, there was no reason for Sam Woods to ignore the claimant's request and on the balance of probabilities, the Tribunal found that she had not ignored it because the claimant had not made the request.

First MED3

66 A MED3 was provided by the claimant's GP to the respondent for 21 days 9 October 2017 which referred to "unwell, fatigue and pain." The claimant was not well enough to work and no adjustments were suggested. There was no reference to the claimant's disabilities, and no information set out that put the claimant's managers on notice that the claimant was suffering from any other disabilities in addition to the fibromyalgia condition reported by the claimant to Samantha Woods just before she went off sick.

16 October 2017- letter to claimant confirming sickness absence entitlements

67 On the 16 October 2017 the claimant was invited to the first Sickness Absence Well Being Meeting and in a separate letter written by Mary Bourke it was confirmed sickness absence entitlement including notification that annual leave accrued during sickness absence and "employees may request holiday during periods of sickness absence via their manager." The Sickness Absence Well Being invite letter confirmed Samantha Woods would be present at the meeting. The claimant was informed "the main things I'd like us to talk about include your current diagnosis and treatment…getting your permission to request new…medical information…discuss any support I can put in place or actions I can take to help you return to work, including reasonable adjustments."

68 The meeting was originally set for the 24 October, but adjourned on the 24 and re-scheduled for 30 October at the claimant's request. Notes of the telephone conversation with the claimant were taken, and it was recorded the claimant had indicated she had "fainted…and has a head injury…a deep cut in her head," no stiches and had been signed off for another two weeks.

69 In a telephone conversation held on the 27 October the claimant confirmed she would be attending on 30 October and that she was in receipt of statutory sick pay ("SSP").

30 October 2017 First Sickness Absence Well Being Meeting

70 The 30 October 2017 meeting was conducted by Mary Bourke. Samantha Woods took the meeting notes. When discussing her condition of fibromyalgia, the claimant provided a copy of a consultant's report dated 24 February 2016 that confirmed the medial position.

71 The claimant has a different recollection of the meeting compared to Mary Bourke and Samantha Woods as what transpired during that meeting. The only notes taken were those made by Samantha Woods, handwritten and relatively brief. It was the practice of Samantha Woods to type the handwritten notes up some 1 to 2 days after the meeting and those typed notes were in the bundle. The claimant made great play of the difference between the typed and written notes, for example, the list of attendees was inserted on the typed notes, as was parts of the sentence "you have a responsibility to yourself to make us aware that you need a set chair or anything that you need to support you." The typed notes added the words "for us" after the word "need." The "please" was added in the typed notes to "can you read over this consent form and if you are happy we will contact your GP to see if we can support you further."

72 The Tribunal's view, unlike that of the claimant, is that these differences are inconsequential and bring into question the objectivity with which the claimant viewed the meeting, and it concluded her perception did not reflect the reality of what actually had taken place. In arriving at this finding, the Tribunal considered the handwritten and typed notes coupled with the less than credible evidence the claimant has given on a number of other matters. It did not accept Mary Bourke and Samantha Woods "expressed a negative attitude by body language and facial expressions." The claimant did not make notes at the time, and nor did she complain about the alleged negative attitude until much later on. Specifically, the claimant raised a formal grievance and made no mention of this. The Tribunal took the view had the meeting taken place as described by the claimant, she would have raised a grievance, especially given her evidence before the Tribunal to the effect that she was very upset about it at the time. In short, the Tribunal did not find the claimant's evidence to be credible and it was exaggerated in order to bolster up her claim.

73 The meeting notes reflect the claimant confirming she had suffered from a "head injury," she described her fibromyalgia and the medical prescribed. It was clear she was complaining about "the first 4 to 5 weeks here "sat around a lot, different chair everyday [there no mention of any broken chairs and so the Tribunal found] …popping pills." She related how the strong painkillers caused her to faint, and she had been put on anti-depressants and the dosage had been lowered. The claimant alleged Mary Bourke had jumped to a negative conclusion about the claimant's state of mental health; the Tribunal found no satisfactory evidence of this and there was no perceived disability relating to the claimant's depression.

74 There was no satisfactory evidence that the claimant was "told off" by Mary Bourke when she referred to the claimant having a "responsibility to yourself to make us aware that you need a set chair or anything that you need to support you." Mary Bourke was merely reiterating what was in the respondent's policies and procedures. It is undisputed the claimant, for the first time referred to using a "different chair every day" in relation to her disability and she had a duty to have mentioned it earlier. It is significant that there was no reference in the 30 October 2017 meeting to the chairs being broken, in contrast the claimant's oral evidence before this Tribunal when she asserted a number of chairs were broken. In her written evidence the claimant confirmed she did not "need a special chair" she required a "safe chair" however, this was not said at the meeting of 30 October.

The claimant's evidence was perpetually changing and this again raised a question mark over her credibility and the reliability of her evidence.

75 The claimant complained that Mary Burke had threatened her with an extended probation due to absence. The alleged threat was not reflected in the notes, which made no mention of probation or any extension. The claimant did not complain of this at or after the meeting, despite her evidence before the Tribunal that she felt upset and concerned that she would be dismissed. The alleged threat went unmentioned and undocumented until the Further and Better Particulars filed by the claimant which referred to an allegation that "Mary Bourke said it was my responsibility to ask for support for my disability of fibromyalgia and said likely to have extended probation, due to sickness absence, so a threat." The Tribunal found the claimant's claim was less than reliable, had no factual basis and was intended to further bolster and strengthen her claims.

76 In the ET1 claim form the claimant alleged that the notes prepared by Samantha Woods of the 30 October meeting were not provided until the 12 January 2018. The Tribunal did not find this was the case. The claimant's 20 November 2017 grievance letter quotes directly from these notes, therefore she must have received them sometime prior to 20 November 201, which also speaks to the claimant's credibility. It is notable the claimant at this liability hearing refers to the notes of the meeting of 30 October 2017 being incomplete. She gave the example of Samantha Woods leaving the room, but makes no mention of her subsequent and rather more significant claim, that she felt intimidated by a threat of a potential probation extension. The Tribunal concluded, taking into account all of the evidence before it, the claimant was not threatened with an extension of her probation, and even if Mary Bourke had mentioned the possibility (as she concede under cross-examination that she did not recall saying this but could have) it was in accordance with the respondent's policies and the claimant, had she viewed the matter objectively, should have realised that any extension was advantageous because it gave her the opportunity to successfully complete her probation.

77 In short, the Tribunal found Mary Burke was wholly concerned with the claimant's medical condition and the next stage was for a medical report to be obtained. The claimant signed a form to her GP authorising a report. The claimant was aware that the matter would proceed no further until her GP report had been obtained by the respondent following the claimant authorising its release.

78 The claimant alleged the wellbeing meeting amounted to harassment, and on the balance of probabilities the Tribunal preferred the evidence of Mary Burke and Samantha Woods that it did not, and with reference to the meeting being a "tick box exercise" to obtain the claimant's authority for a GP medical report, it accepted Mary Bourke's evidence that if that had been her intention she could have mailed the authorisation for to the claimant to sign and return without need of a meeting.

<u>31 October 2017: Date of Letter detailing outcome of First Sickness Absence Well Being Meeting</u>

79 The outcome of the 31 October 2017 meeting was set out in a letter of the same date which "confirmed our discussion and the actions we agree going forward."

80 Mary Bourke wrote; “You stated that while you were training you sat around a lot, using different chairs and this did not help your condition so you went to your doctor who prescribed anti-depressants.” She set out the dosage, including the reduction and referred to the claimant, whilst absent “fainted and cut your head...to support your return to work you have given consent for a medical report from your doctor. Reference was made to the support the claimant could access through the respondent and a “hope that this covers all of the main points we discussed…” The claimant did not write back and indicate a number of matters had not been covered, not least, the alleged intimidation, reference to an extended probation and the meeting appearing to more of a disciplinary hearing than a formal absence meeting.

81 On the balance of probabilities, the Tribunal found the claimant was not, in the letter dated 31 October 2017, subjected to insulting words that violated her dignity as she now claims. The Tribunal, when considering the motivation of Mary Bourke when she wrote the letter, accepted the wording “sat around” reflected a phrase used by the claimant during the welfare meeting, which Mary Bourke merely repeated. It is notable the 31 October 2017 outcome letter made no mention of any extension to the claimant’s probation period and nor did the claimant write in response correcting the details of the discussion held on 31 October and agreed actions going forward. The contemporaneous documentation supports Mary Bourke’s version of events bringing the claimant’s evidence into question.

82 In a letter dated 31 October 2017 Samantha Woods wrote to the Claimant's GP requesting further medical evidence regarding Claimant's medical conditions that included advice being sought on adjustments. She attached the claimant’s form of authority that provided the claimant would be sent the GP report first in order that she could then authorise its release to the respondent. The claimant was aware that once the medical report was released as authorised by her, it would then be provided the respondent who would, in turn, further consider her absence, medical condition and reasonable adjustments in a second meeting to be held.

Medical Report 6 November 2017

83 The claimant’s GP provided a medical report to the claimant, who authorised its release. The claimant retained a copy but did not inform the respondent of this.

84 The report confirmed the claimant had a “background history of fibromyalgia” and an immune deficiency, on the 30 March “she felt under pressure at work and was having conflict with her manager…low in mood and stressed.” This background history was unconnected to the respondent. The GP confirmed the claimant on 9 October 2017 “had a exacerbation of her fibromyalgia which made her feel unable to attend work…her last attendance in the surgery was the 23 October when she presented having had an episode of fainting resulting in a head injury…” With reference to the fibromyalgia the GP confirmed it was a chronic long-term condition and “it may be that a reduction in hours or responsibilities would reduce the perception of stress…” The GP did not suggest the claimant working hours should be outside peak traffic travelling times.

Second sickness absence wellbeing meeting invite 9 November 2017

85 On 9 November 2017 the respondent Invited the claimant to a second sickness absence wellbeing meeting, which was cancelled on 20 November 2017 due to the GP report not being made available to the respondent, despite the claimant having it in her possession. During this period the claimant did not raise with the respondent her GP's recommendation that "it may be that a reduction in hours or responsibilities would reduce the perception of stress…"

86 A letter confirming the 20 November date was sent to the claimant dated 9 November 2017 to her usual address, and the Tribunal finds on the balance of probabilities it was sent and received by the claimant during the ordinary postal service. There is no history of any other letter sent to the claimant's address being misplaced by the post office, and the Tribunal preferred the evidence of Samantha woods that it was sent to the less than credible evidence of the claimant to the effect that the respondent was in breach of its policies an procedures by not sending her written confirmation. It is undisputed the claimant was aware of the 20 November 2017 date from an oral discussion with Samantha Woods, she was expected to attend that meeting which would have gone ahead had the claimant proffered the information that she held a copy of the missing GP report, and it is inconceivable that she did not bearing in mind the allegations she now brings that the respondent failed to make reasonable adjustments as suggested by the GP, and the reason the claimant put forward for t=her none attendance was the respondent's failure to send her w written invite confirming the oral agreement reached. In short, the claimant gave unconvincing evidence and was a less than credible witness on this point.

The missing reference

87 On 10 November 2017 World Trades Publishing Ltd, the claimant's previous employer, sent the claimant's reference to Charlotte Brown HR of the respondent.

88 On the 17 November 2017 claimant was contacted by Charlotte Brown via her work and home email address regarding her references, and the fact that they had not received it. The letter was apologetic in tone, reference was made to a recent audit being carried out for all employees who had jointed that business since 2017, the emphasis being on "we did not fully complete your refencing…we apologise…" There was no suggestion of any criticism of the claimant or her dismissal as a result of the lack of reference, and the claimant's suggestion that there was is not credible and belied by the contemporaneous documentation.

89 During this period in an exchange of party-to-party emails an issue was explored concerning the date the claimant had given for termination of her employment with World Trades Centre but nothing hangs on this; the Tribunal found that the communications were those expected to occur between employer and employee when references and start/finishing dates with a previous employer appeared not has have been confirmed.

90 On 20 November 2017 Charlotte Brown was informed claimant was on long-term sick leave, as a consequence she wrote to the claimant by email on the same

date confirming: "We at the HR department are here to help, we understand that there has been a delay in our referencing…**nothing that we request is unusual**…. **Because you are away from work and on sick leave we will not contact you again until you return to work**. We will continue to chase your previous employer in the meantime" [the Tribunal's emphasis]. The Tribunal found there was no suggestion of any dismissal, and on a common-sense interpretation of the words used, the reverse as the respondent expected the claimant to return to work.

20 November 2017 cancellation of wellbeing meeting

91 A discussion took place between the claimant and Sam Woods on 20 November 2017 concerning the wellbeing meeting that resulted in it being cancelled that day. The reason for the cancellation was that the GP's report had not been received by the respondent. Sam Woods kept a note of the fact the meeting had been cancelled and why, the claimant did not dispute this and when asked during the hearing why she had not offered to provide the respondent with a copy of the GP report, which she had in her possession, the claimant's explanation was "we both agreed helpful to have the GP report…I had it. But couldn't go ahead as I hadn't received the letter and there needed to be 7-days' notice and this was in breach of policy." The claimant also explained she did not want to have the meeting because of her grievance.

92 As indicated above, the Tribunal found the claimant's evidence made little sense and lacked cogency and credibility. She was aware and had been so from the 9 November that a second welfare meeting was to take place on the 20 November. The respondent sent the claimant a letter of invite, however she denied receiving the letter even though the address details had not changed, evidence which the Tribunal did not find credible given the claimant's less than historically accurate evidence. The claimant remained absent from work. Her criticism of the respondent included a failure to make reasonable adjustments to her working hours so she could start work later and finish earlier. The GP report was the means by which she could explore this with the respondent. The claimant was aware the respondent was waiting on the GP report with a view to discussing her medical condition and reasonable adjustments with her. It made no sense that she would hide the fact the GP report was in her possession and adjourn a wellbeing meeting on the basis that the report was not with the respondent. The Tribunal concludes, on the evidence before it, the claimant did not want the welfare meeting to take place. She was not seeking a return to work but to remain at home on full pay pending the grievance whilst the wellbeing meeting was put on hold, despite the possibility that the respondent would have made reasonable adjustments upon her return to work.

20 November 2017 Claimant grievance letter

93 On 20 November 2017 Claimant submitted a grievance letter that included for the very first time the only refence to chairs being broken; "**many chairs were actually broken and not fit for purpose**…"

94 The claimant relies on the grievance letter as the basis for the only protected act in her victimisation complaint. The following is relevant to assess whether the grievance letter was a protected act or not;

94.1 In the first paragraph the claimant to her being asked to provide evidence relating to the date she had left previous employment and "I feel that I am being treated less favourably, chasing past employment evidence from me during my sickness absence seems unfair."

94.2 The claimant in respect of "various chairs and workstations during more than 4-weeks in various training rooms" claimed "I suffered a disadvantage connected to my protected characteristic due to the inadequately equipped and multiple changes of classroom plus attaching to various colleagues' desks again on poor quality chairs, whilst of 2nd floor call listening, being hunched over *trying* to see/share another's computer screen **caused my existing underlying fibromyalgia condition to flare up** [the Tribunal's emphasis], my employer was not 'helping to look after your health and giving you a safe place to work. A substantial *adverse effect* is that I feel trivialised in the letter dated 31.10.17."

95 The claimant also complained that she had not been provided a personal copy of the "working Safely Pack and the last meeting "achieved little, just seemed a tick box exercise to get my authority for the GP medical report, which I freely gave…I believe my employer has failed in their duty of care towards me." The Tribunal concluded that the claimant's grievance was ambiguous and did not clearly set out that it was about disability discrimination under the Equality Act 2010, and the alleged behaviour of Samantha Woods and Mary Bourke at the first and only wellbeing meeting, and appears to be more of a complaint about policy, procedure, health and safety in the first four weeks of her induction/training and process, which she alleged exacerbated the fibromyalgia condition. It was not until the 30 November 2017 email sent 12.08 the claimant made it clear her formal grievance letter involved health and safety negligence, indirect discrimination and harassment.

96 On 30 November 2017 respondent acknowledge the claimant's grievance letter, the claimant having made contact chasing the whereabouts of her grievance in emails sent 12.08 and 13.03. In the 12.08 email the claimant requested progress to be made and "**financial consideration for being placed on full pay during the investigations."** In the 13.03 email she wrote "Following your confirmation of receipt…I have yet to hear anything back…a full 10 calendars days later…" Referring the responded to her claim of indirect discrimination and harassment she wrote: "I do not know what time scale is considered reasonable but this delay against seems to demonstrate a lack of concern for my well-being. **Since my sick note expires at the beginning of next week I would request that I be put back on full pay for December but I can remain at home whilst the investigation into my complaint takes place**…" [Tribunal's emphasis]. There were two working days before the claimant indicated she would be returning to work, and she did not so.

97 The claimant was informed by Farah Jahangir of HR "I am currently in the process of sourcing an independent manager to investigate your concerns and will write

to you again due course with the arrangements for a formal grievance meeting." Support was offered. The claimant was not informed of any time-limits in which the grievance would be dealt with. Farah Jahangir provided her telephone number and email address inviting the claimant to contact her.

98 In her witness statement Catherine Fergusson recorded how the claimant advised HR that she was not well enough to attend meetings and the grievance process was to be put on hold until she was well enough to attend. Catherine Fergusson was unable to recall the name of the HR representative who informed her of this, and there was no reference to such a conversation taking place in the trial bundle. The documents before the Tribunal appear to point to the claimant asking for an update and for the grievance to take precedence as set out below. Catherine Fergusson was under the impression that it had been agreed with the claimant her well-being and absence from work would be discussed when she was well enough to either return to work or start the grievance process, which Catherine Fergusson conceded, could have been actioned earlier that it was.

99 The respondent at some point obtained a copy the GP report around December 2017, however the claimant remained certified unfit for work with no adjustments. The Tribunal found the adjustments suggested by the GP in the medical report were only relevant when the claimant was well enough to return to work, she remained certified unfit and a second sickness absence was required under the respondent's policy to discuss the continuing absence, her medical condition and adjustments to be put in place when she returned to work.

5 December 2017 Statement of Fitness for Work

100 On 5 December 2017 the GP signed off the claimant will fibromyalgia for a period of 4-weeks with no reasonable adjustments. The claimant's Statement of Fitness to Work had not changed, she was not well-enough to work or on the face of it, attend a grievance hearing. However, the possibility of the claimant attending a grievance meeting was not explored by the respondent either with the claimant or her GP. During this period the claimant fully expected a grievance hearing to be convened in accordance with the respondent's Grievance Procedure and so the Tribunal found, preferring the claimant's evidence on this point given the total lack of contemporaneous documentation supporting the respondent's position that an unknown and unnamed HR employee had allegedly reached an agreement with the claimant to put her grievance on hold, which the claimant disputes. Catherine Fergusson in her oral evidence indicated the claimant was contacted to put the grievance at hold, the claimant confirmed she was not well-enough to attend meetings, and she had been informed of this by HR. The Tribunal took the view that it did not necessary follow an agreement with the claimant to put her grievance on hold had been reached with an unnamed HR employee, by the fact Catherine Fergusson had been informed of such agreement. The contemporaneous supporting documentation suggests no such agreement, and had there been the Tribunal would have expected to see it reflected in the party-to-party communications. It is clear from the contemporaneous documentation the claimant was under the impression her grievance was continuing pending her return to work. The 12 January was an agreed date for her return.

ACAS conciliation between 14 December 2017 and 14 January 2018

101 ACAS conciliation took place between 14 December 2017 and 14 January 2018.

102 A discussion took place between Samantha Woods and the claimant on the 2 January 2018. The claimant indicated she had a chest infection and cold and had been signed off for another two-weeks. In direct contrast to what the claimant was telling Samantha Woods, the claimant's GP made no reference to chest infection or cold in the Statement of Fitness for Work that confirmed the claimant was to be absent to 16 January 2018 with fibromyalgia and no adjustments.

Invite to second sickness absence meeting 5 January 2018

103 On January 2018 the claimant was invited to further sickness absence wellbeing meeting by Samantha Woods with a view to discussing "support options for her pending her return on the 16 January…". The meeting was confirmed in a letter dated 5 January sent to the claimant at her usual address and on this occasion, she confirmed she received it. The letter indicated Mary Bourke and Samantha Woods would "talk about your current diagnosis and treatment…any support I can put in place, actions I can take to help you return to work, including any reasonable adjustments."

104 On the 10 January 2017 the claimant contacted Farah Jahangir stating she would not attend the wellbeing meeting unless other managers conducted it. The claimant did not attend the proposed second sickness absence and the GP's report could not therefore be discussed.

105 On the 12 January 2017 Samantha Woods was informed by Farah Jahangir the claimant did not did not want to attend the wellbeing meeting because she wanted the grievance to take precedence. At the liability hearing the claimant explained she informed the respondent she did not want to have the wellbeing meeting with Samantha Woods and Mary Bourke because a grievance had been raised against them and that was a confidential matter. This was a reference to the formal grievance referred to above and email sent 10 January by the claimant to Farah Jahangir in which the claimant complained about being asked to attend another wellbeing meeting "as the meeting 30.10.17 was less than helpful, just a tick box exercise to obtain medical report consent…the notes of the meeting taken by Sam and in the letter written by Mary dated 31.10.17 making me feel my condition was trivialised and the wording offensive…I do not want to risk being subject to further harassment…"

106 It is notable this email was sent after the claimant had agreed to attend the second welfare meeting on 20 November 2016 with no complaint being raised against Samantha Woods and Mary Bourke; the issue at that time was the GP report not being available to discuss at the meeting even though the claimant secretly held a copy. The complaints came later after the claimant had entered into early conciliation and 7-days before her resignation, and the Tribunal infers that this was to make out a case against the respondent. In cross-examination the claimant gave the reason for non-attendance of the second wellbeing meeting the respondent's failure to follow their procedure and the lack of a GP report, with no

reference to the alleged allegations against Mary Bourke and Samantha Woods including alleged harassment.

107 By the 10 January Lee Johnson had agreed to look into the claimant's grievance, but took no steps in respect of it. The claimant was not informed.

108 In an email sent 11 January 2019 the claimant chased up her grievance stating, "the time lag is now unacceptable even allowing for the holiday season…" Reference was made to the 12 January 2017 absence and wellbeing meeting the claimant being of the view "the grievance needs sorting first." As indicated earlier, the claimant's communications reinforce her evidence that she had not agreed to put the grievance on hold, and she had been waiting since 30 November 2017 for it to have been dealt with, and it had not.

109 On the 12 January Sam Woods provided the claimant with the notes of the 30 October 2016 wellbeing meeting.

The claimant's resignation

110 In a communication dated 16 January 2018 the claimant resigned giving the reasons as follows: "in the light of my recent experiences, which has left me with a complete breakdown of trust and confidence in the company. My contract requires one month's notice."

111 On the 16 January 2018 a Statement of Fitness for Work was issued and was not received by the respondent until 23 January 2018. The Statement of Fitness for Work suggested for the first time the claimant may be fit considering a phased return to work and workplace adaptations. In a telephone conversation the claimant informed Samantha Woods on the 17 January 2018 she was not returning to work and resigning. The claimant confirmed she would not come back to work her 4-weeks' notice, and she was asked to email the respondent with her resignation, which she did on 23 January 2018. The Tribunal found given the claimant's refusal to work her notice and attend a fitness for work meeting there was no opportunity for the respondent to explore putting in place any reasonable adjustments during the notice period. The 16 January 2018 Statement of fitness for Work was the first opportunity the respondent had to consider whether reasonable adjustments could be put in place, before that date the claimant had been absent and too unwell to work in any capacity with or without adjustments as confirmed by her GP.

112 On 17 January 2018 Claimant informed Samantha Woods that she has sent in her resignation by post, received by the respondent on 25 January 2018.

23 January 2018 claim lodged with the Employment Tribunal

113 On 23 January 2018 the claimant's ET claim was received.

114 The claimant wrote to the Employment Tribunal by email sent on 7 February 2018 "I have provided reasons why my unfair dismissal complaint might be considered, despite not having 2 years qualifying service…**as the reason for the alleged**

breach could remove this requirement, as automatically unfair due to my trying to assert relevant statutory rights to holiday pay, plus no access to payslips and no statement of hours of work in advance either written or verbal" [the Tribunal's emphasis]." Reference was made to the claimant's contract of employment as follows: "No verbal or written statement of days of work, shifts or break patterns – indeed in extra breaks could be allowed as a reasonable adjustment…if I were to return to work in December 2017 or January 2018…My employer knew I refused to return to work after sickness, when had a fit note dated 16 January 2018 attached due to health and safety concerns, issues raised months before, but no reasonable adjustments offered" and the fact that the claimant had worked with the respondent in earlier 2003 was referred to.

115 The Tribunal concluded, relying on the information provided by the claimant to the Tribunal, that she had resigned as a result of asserting a number of statutory rights.

116 On the 13 February 2018 the claimant's employment with the respondent terminated on notice, and this was the effective date of termination.

Law

Direct discrimination

117 S.13(1) EqA provides that direct discrimination occurs where "a person (A) discriminates against another (B) if, because of a protected characteristic [race] A treats B less favourably than A treats or would treat others.

118 An actual or hypothetical comparator is required who does not share the claimant's protected characteristic and is in not materially different circumstances from him. Para 3.23 of the EHRC Employment Code makes it clear that the circumstances of the claimant and comparator need not be identical in every way, what matter is that the circumstances "which are relevant to the [claimant's treatment] are the same or nearly the same for the [claimant] and the comparator."

119 Section 13 EQA requires not just consideration of the comparison (the less favourable treatment) but the reason for that treatment and whether it was because of the relevant proscribed ground. These two questions can be considered separately and in stages; or they can have intertwined: the less favourable treatment issue cannot be resolved without deciding the reason why issue. As was observed by Lord Nicholls in Shamoon v Chief Constable Royal Ulster Constabulary [2003] UKHL 11 at paragraph 11: "…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 on the proscribed ground which is the foundation of the application? That will call for an examination of all the facts of the case. Or was it for some other reason? … If the former, there will … usually be no difficulty in deciding whether the treatment, afforded to the claimant on the proscribed ground, was less favourable then was or would have been afforded to others."

120 A Tribunal should not assume a finding of unlawful discrimination from a finding that an employer acted unreasonably; there may be other explanations (if only

simply human error): Bahl v Law Society [2004] IRLR 799 CA. More is required than simply a finding of less favourable treatment and a difference in the relevant protected characteristic. Where there is a comparator, the 'something more' might be established in circumstances where there is no explanation for the unreasonable treatment of the complainant as compared to that comparator; see per Sedley LJ in Anya v University of Oxford [2001] ICR 847 CA, and the discussion of those dicta in Bahl , per Maurice Kay LJ, observing (paragraph 101) that the inference of discrimination would not then arise from the unreasonable treatment but from the absence of explanation.

Disability discrimination arising from disability

121 Section 15(1) of the EqA provides-

(1) A person (A) discriminates against a disabled person (B) if –

(a) A treats B less favourably 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.

122 Paragraph 5.6 of the Equality and Human Rights Commission: Equality Act 2010 Code of Practice provides that when considering discrimination arising from disability there is no need to compare a disabled person's treatment with that of another person. It is only necessary to demonstrate that the unfavourable treatment is because of something arising in consequence of the disability.

123 In order for the claimant to succeed in her claims under s.15, the following must be made out:

1.1 there must be unfavourable treatment;

1.2 there must be something that arises in consequence of claimant's disability;

1.3 the unfavourable treatment must be because of (i.e. caused by) the something that arises in consequence of the disability;

1.4 the alleged discriminator cannot show that the unfavourable treatment is a proportionate means of achieving a legitimate aim

124 Unfavourable treatment is not the same as detriment. The test is whether a reasonable worker would consider that the treatment is unfavourable. An unjustified sense of grievance will not suffice, and this is particularly relevant to some of the claims made by Ms Melville. Useful guidance on the proper approach to a claim under s.15 was provided by Mrs Justice Simler in Pnaiser v NHS England and anor [2016] IRLR, EAT:

a) “A tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises.

b) The tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a s.15 case. The “something” that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.

c) Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A's motive in acting as he or she did is simply irrelevant: see Nagarajan v London Regional Transport [1999] IRLR 572. A discriminatory motive is emphatically not (and never has been) a core consideration before any prima facie case of discrimination arises…”

d) The tribunal must determine whether the reason/cause (or, if more than one), a reason or cause, is 'something arising in consequence of B's disability'. That expression 'arising in consequence of' could describe a range of causal links. Having regard to the legislative history of s.15 of the Act (described comprehensively by Elisabeth Laing J in Hall), the statutory purpose which appears from the wording of s.15, namely to provide protection in cases where the consequence or effects of a disability lead to unfavourable treatment, and the availability of a justification defence, the causal link between the something that causes unfavourable treatment and the disability may include more than one link. In other words, more than one relevant consequence of the disability may require consideration, and it will be a question of fact assessed robustly in each case whether something can properly be said to arise in consequence of disability.

e) This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.

125 With regard to the objective justification test, when assessing proportionality, the Tribunal must reach its own judgment, that must in turn be based on a fair and detailed analysis of the working practices and business considerations involved,

having particular regard to the business needs of the employer: Hensman v Ministry of Defence UKEAT/0067/14/DM.

Disability discrimination – failure to make reasonable adjustments

126 The duty to make reasonable adjustments is set out in S 20 of the Equality Act 2010 ("EqA"). Section 20(3) sets out the first requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage. Section 21(1) provides that a failure to comply with the first, second or third requirement is a failure to comply with the duty to make reasonable adjustments. Schedule 8 of the EqA 2010 applies where there is a duty to make reasonable adjustments in the context of 'work' and the Statutory Code of Practice on Employment is to be read alongside the EqA. The Code states that a PCP should be construed widely so as to include, for example, informal policies, rules, practices, arrangements, criteria, conditions and so on.

127 In the well-known case Secretary of State for Work and Pensions (Job Centre Plus) v Higgins [2013] UKEAT/0579/12 the EAT held at paragraphs 29 and 31 of the HHJ David Richardson's judgment that the Tribunal should identify (1) the employer's PCP at issue, (2) the identity of the persons who are not disabled in comparison with whom comparison is made, (3) the nature and extent of the substantial disadvantage suffered by the employee, and (4) identify the step or steps which it is reasonable for the employer to have to take and assess the extent to what extent the adjustment would be effective to avoid the disadvantage.

Harassment

128 The EHRC Employment Code provides that unwanted conduct can be subtle, and include 'a wide range of behaviour, including spoken or written words or facial expressions' para 7.7. Where there is disagreement between the parties, it is important that an Employment Tribunal makes clear findings as to what conduct actually took place.

129 Section 26 EqA covers three forms of prohibited behaviour. In Ms Melville's case the Tribunal is concerned with conduct that violates a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment — S.26(1) It states that a person (A) harasses another (B) if:

•A engages in unwanted conduct related to a relevant protected characteristic — S.26(1)(a), and

•the conduct has the purpose or effect of (i) violating B's dignity; or (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B — S.26(1)(b).

130 The word 'unwanted' is essentially the same as 'unwelcome' or 'uninvited' confirmed by the EHRC Employment Code at para 7.8. Unwanted conduct means conduct that is unwanted by the employee assessed subjectively.

131 S.26(4) states that, in determining whether conduct has the proscribed effect, a tribunal must take into account the perception of the claimant, the other circumstances of the case and whether it is reasonable for the conduct to have that effect. There can be cases where the claimant when alleging the acts violated his or her dignity, is oversensitive and it does not necessarily follow that an act of harassment had objectively taken place despite a subjective view that it had.

Victimisation

132 Section 26 EqA provides (1) A person (A) victimises another person (B) if A subjects B to a detriment because—

(a) B does a protected act, or
(b) A believes that B has done, or may do, a protected act.
(2) Each of the following is a protected act—
(a) bringing proceedings under this Act;
(b) giving evidence or information in connection with proceedings under this Act;
(c) doing any other thing for the purposes of or in connection with this Act;
(d) making an allegation (whether or not express) that A or another person has contravened this Act.

133 Baroness Hale in Derbyshire and ors v St Helens Metropolitan Borough Council and ors [2007] ICR 841, HL, and Lord Nicholls in Chief Constable of West Yorkshire Police v Khan [2001] ICR 1065, HL, endorsed a three-stage test for establishing victimisation under the pre-EqA discrimination legislation as follows:

130.1 did the employer discriminate against the claimant in any of the circumstances covered by discrimination legislation?

130.2 in doing so, did the employer treat him or her less favourably than others in those circumstances?

130.3 was the reason for the less favourable treatment the fact that the claimant had done a protected act; or that the employer knew that he or she intended to do a protected act, or suspected that he or she had done, or intended to do, a protected act?

Burden of proof

134 Section 136 of the EqA provides: (1) this section applies to any proceedings relating to the contravention of this Act. (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provisions concerned, the court must hold that the contravention occurred. (3) Subsection (2) does not apply if A shows that A did not contravene the provisions. (4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or rule."

135 In determining whether the respondent discriminated the guidelines set out in Barton v Investec Henderson Crossthwaite Securities Limited [2003] IRLR 332 and Igen Limited and others v Wong [2005] IRLR 258 apply. The claimant must satisfy

the Tribunal that there are primary facts from which inferences of unlawful discrimination can arise and that the Tribunal must find unlawful discrimination unless the employer can prove that he did not commit the act of discrimination. The burden of proof involves the two-stage process identified in Igen. With reference to the respondent's explanation, the Tribunal must disregard any exculpatory explanation by the respondents and can take into account evidence of an unsatisfactory explanation by the respondent, to support the claimant's case. Once the claimant has proved primary facts from which inferences of unlawful discrimination can be drawn the burden shifts to the respondent to provide an explanation untainted by sex [or in the present case disability], failing which the claim succeeds.

Conclusion – applying the law to the facts

136 Turning first to the burden of proof, in relation to Ms Melville, the Tribunal found on the balance of probabilities that with the exception of the section 15 complaint relating to the respondent ignoring the claimant's grievance, the claimant had not proved primary facts from which inferences of unlawful discrimination could be inferred and the burden of proof had not shifted to the respondent.

137 Turning to the delay in dealing with the claimant's formal grievance, as set out below, the Tribunal found that the claimant had adduced primary facts from which inferences of unlawful discrimination could be inferred, the burden of proof had shifted to the respondent and a satisfactory explanation untainted by disability discrimination had not been provided by the respondent.

Direct Discrimination (section 13 Equality Act 2010)

138 In respect of this claim the Claimant relies upon the disabilities of fibromyalgia, vitiligo and (perceived) depression. With reference to the alleged less favourable treatment on the balance of probabilities the Tribunal found:

138.1 Samantha Woods and Mary Bourke of the Respondent had not expressed a negative attitude by body language and facial expressions during a wellbeing meeting which took place on 30 October 2017. Having considered all of the evidence, the Tribunal found on the balance of probabilities that this did not happened as described by the claimant. As submitted by Mr French, the claimant did not cross-examine Samantha Woods or Mary Bourke as to body language. The claimant asked Mary Bourke was "I tearful and emotional" to which Mary Bourke answered "no" and the Tribunal accepted that response taking into account the less than credible evidence given by the claimant in relation to other evidence. The burden of proof has not shifted to the respondent, the claimant having failed to adduce any facts from which the Tribunal could infer disability discrimination.

138.2 With reference to the allegation that there was "quizzical eye contact…when anti-depressants [were] mentioned" between Samantha Woods and Mary Bourke, this was cross-examined on by the claimant and both denied the allegation. Mr French submitted no reference was made to this allegation in the claimant's grievance, which is correct. On the balance of probabilities, the Tribunal preferred

the evidence given by Samantha Woods and Mary Bourke compared to the claimant's recollection of events many months down the line. In the alternative, if the alleged incident had happened (which the Tribunal found it had not), the Tribunal found the claimant had attached disproportionate amount of importance to it, as there were no consequences and the claimant did not see fit to mention it in the immediate aftermath.

139 Turning to the discussions that took place during the Sickness Absence Well Being Meeting, and allegations relating to it the Tribunal found the following:

139.1 With reference to the claimant's assertion that an assumption was made of perceived disability by depression the Tribunal found Samantha Woods and Mary Bourke had not made such an assumption on the balance of probabilities. The assumption could only have been made when the claimant informed them she was taking anti-depressant medication. The information given by the claimant should be viewed in context. In her written statement the claimant confirmed she had informed Samantha Woods and Mary Bourke that the medication had been prescribed to help her sleep. The notes taken by Samantha Woods of the meeting record the claimant had been prescribed anti-depressant for the pain and to help her sleep. There was no reference to the anti-depressants being prescribed for any condition of depression. It is undisputable neither Samantha Woods and Mary Bourke were aware of the claimant's medical condition relating to depression experienced many years before she took up her employment with the respondent. Samantha Woods and Mary Bourke's concern was with obtaining medical evidence in order that they could understand the claimant's medical condition and they did not consider themselves to be in a position capable of assessing the claimant's health or disabilities without medical evidence. Part of the reason for the meeting was to obtain the claimant's authorisation and obtain advice from the claimant's GP, with a view to a further wellbeing meeting taking place to discuss the medical position and adjustments.

139.2 In the alternative, the Tribunal would have gone on to find had Samantha Woods and Mary Bourke assumed the claimant was disabled by the mental impairment of depression (which the Tribunal found they had not on the balance of probabilities) no detriment was caused to the claimant as a result. Mr French submitted the wording of the outcome letter sent by Mary Bourke shows her understanding that the claimant was in discomfort sitting in chairs, merely relating what the claimant had said in the meeting, and there is no mention of the mental impairment of depression. The reference in the letter clearly refers to the consultant report's produced at the meeting, namely chronic widespread pain and fibromyalgia. Giving the letter, its ordinary common sense meaning it cannot be interpreted to refer to any perceived assumption of depression, and further, had this been their assumption the advice of occupational health would have been sought on this condition also, and it was not.

139.3 With reference to the allegation Mary Bourke telling off the Claimant as if a disciplinary meeting and ignoring the Respondent's responsibilities for duty of care for by work on DSE with no risk assessment, the Tribunal did not accept the claimant had been told off and a reasonable person, viewing matters objectively, would not have taken a manager reminding an employee of their duty of care for

their own health and safety at work was a telling off. The claimant's contractual documents pointed to this obligation of the claimant, and it is common sense that adults in the work place are responsible not exclusively for their own health and safety, but also for the health and safety of others, i.e. if an employee came across a broken chair there was a reasonable expectation that this would be reported to avoid any injuries in the future. It is notable the claimant did not report any broken chairs to HR, and/or a manager/trainer at the time. The legitimate point made by Mary Bourke to the claimant was that in the absence of the claimant notifying her of the requirement of a specific chair, she could not reasonably have known of the requirement. This comment in its broadest sense also applies to the fact that claimant did not mention the difficulties she was having with her health until the day before she went off sick, and the Tribunal questions how any of the respondent's employees are expected to assist her if she fails to mention the difficulties she was experiencing.

139.4 With reference to the allegation that the respondent had not providing "competent work colleagues" with adequate Health & Safety training, this allegation is not well-founded. The claimant has failed to adduce any evidence in support of it, nor did she cross-examining the witnesses on this point and there are no facts sufficient to reverse the burden of proof. Having taken into account all of the evidence before it, the Tribunal found the explanations provided by Samantha Woods and Mary Bourke in respect of the claimant's allegations were untainted by disability discrimination of any kind.

139.5 With reference to the allegation of a threat of extended probation due to absence, the Tribunal did not accept the claimant was threatened as maintained by her. In the alternative, it notes the aim of a probation period is to assess an employee over a set period, and if they had not worked for the set period then it would need to be extended for assessment of capabilities to take place. The claimant had worked just over a month of a 6-month probation period. The hypothetical comparator would be a colleague who did not suffer from the Claimant's alleged disability/ies who attended a first sickness absence wellbeing meeting and went off sick just over one month into a probation period. The Tribunal took the view that a hypothetical comparator would not have been treated any differently to the claimant, who it found had not been treated less favourably. On the evidence before it, the Tribunal also finds in the alternative, if a probation period was not extended the likely outcome would be dismissal following an unsatisfactory probation. The Tribunal concluded that an extension of a probation period was aimed at increasing the likelihood of an employee completing his or her period of her probation successfully, and could not objectively been have taken as a threat. In conclusion, the Claimant did not suffer the alleged treatment relied upon, and had she done so in the alternative, the treatment was not less favourable and the claims are dismissed.

Indirect Discrimination (section 19 Equality Act 2010)

140 The Claimant relies upon the disabilities of fibromyalgia, vitiligo and (perceived) depression. Turning to the individual allegations the Tribunal found on the balance of probabilities the following:

140.1 In relation to the Claimant's induction training that entailed omitting a free-range dummy system and moving chairs, the respondent accepts it applied the practice ("PCP") of omitting a dummy system to the claimant, and a practice of moving chairs. The Tribunal found during her training the claimant moved from desk to desk with the result that she moved from chair-to-chair and the Tribunal was satisfied this was an applied practice.

140.2 In relation to the Claimant's induction training and the absence of an allocated line manager, it is not disputed by the respondent that this could amount to a practice that the respondent had applied the practice the claimant, insofar as her line manager "Emma" elected not to return from maternity leave when anticipated by the respondent. However, the Tribunal does not accept the PCP's put the claimant to any disadvantage. The Tribunal accepted Mr French's submission that a 'peer group deliverer' could have fulfilled the functions required by the claimant of a line manager. On the 29 September Laura Asonitis dealt properly with the claimant when she was in a distressed state. In her witness statement the claimant maintained a line manager or HR should have been available to review how she was managing her disabilities, and they were not. The Tribunal did not agree. The claimant had access to HR, and to higher level managers through the training providers or via HR. Even had the claimant been allocated a manager, he or she would not have been present during the training period and the claimant was silent on this issue during her initial training. Mr French submitted the claimant appears to be "fixed" upon the reference to a manager in the Policy extract relied upon as precluding raising an issue with any other staff member, be it peer group deliverer, business manager or HR consultant. The Tribunal agreed, and it took the view that an employee with the considerable experience the claimant had in the workplace, including managerial, would have known precisely who she could consult with, and chose not to do so. Therefore, every person within the respondent who dealt directly with the claimant lacked the requisite knowledge of her disability, and nor could that knowledge be imputed. The Tribunal accepted Mr French's submission that the claimant in her oral evidence confirmed she had elected not to discuss her disability with a trainer and accepted she could have spoken to Laura Asonitis at any time, and did not.

Comparative disadvantage: the dummy system

140.3 In the claimant's witness statement her complaint is "we did simulations on the dummy system rather than live" which made little sense to the Tribunal given her allegation that the PCP was omitting a free-range dummy system. In oral evidence the claimant stated that it was not a good method of training, and gave no evidence on how she was disadvantaged by it, or anyone sharing her disadvantage. The Tribunal notes the claimant passed with flying colours all her system training modules and it is difficult to understand what disadvantage she was caused.

140.4 In the alternative, had the claimant been caused a comparative disadvantage (which the Tribunal found she had not) the Tribunal would have gone on to find, relying on the undisputed and credible evidence of Samantha Woods and Mary Bourke, the use of power point presentations followed by listening in to calls on a live system, met the training needs of all employees, including disabled

employees i.e. an example of an employee in a wheelchair was given. Given the fact that the training system worked across the board, it had been risk assessed and involved at various intervals, hundreds of probationary employees, it was a proportionate means of achieving a legitimate aim given the substantial numbers of employees trained in this method to take calls, from all walks of life and disabilities.

140.5 Turning to the allegation of "moving chairs" the Tribunal notes Mr French interpreted the claimant's allegation to mean the practice of failing to eradicate broken chairs. The Tribunal took the view Mr French misunderstood the claimant's claim in this respect as her claim was essentially concerned with her physically moving around during training and sitting on different chairs as a result, a number of which were broken. The Tribunal did not accept the claimant's evidence that the chairs she sat on were broken; it did however accept the claimant moved from chair to chair during training and she raised no complaint about this until the meeting of 30 October 2017, the first time the claimant raised the issue of chairs. At that meeting she is reported to have complained about "using different chairs and this did not help your condition." In her witness statement the claimant confirmed she had "no need of a special chair" and the respondent had "broken adjustable chairs" in contrast to what she had said at the 30 October meeting. In oral evidence the claimant gave evidence that there were many chairs causing injury and she could not use "named" chairs that had been issued and set for another employee, with the result that the claimant "had to accept random chairs." The claimant's evidence was contradictory, it changed when suited and she was not entirely credible on the chair issue. The Tribunal took the view based on the evidence before it, the respondent was unaware of the existence of broken chairs, the claimant said nothing to enlighten it and no broken chairs been brought to the respondent's attention by any other employee.

140.6 For the avoidance of doubt the Tribunal does not accept the PCP relied upon by the claimant was solely the "practice of failing to eradicate broken chairs" as submitted by Mr French, and had that that been the PCP relied upon by the claimant the Tribunal would have concluded there was no satisfactory evidence to this effect. The real issue was moving from chair to chair and whether the PCP of "moving chairs" i.e. using any chair available within the office, put persons with whom the Claimant shares the same disabilities, at a disadvantage when compared with persons who do not share it. On the balance of probabilities, the Tribunal found it could disadvantage a disabled worker depending on their disability, but there was no satisfactory evidence apart from the claimant's say so that it disadvantaged workers sharing the same disabilities as her.

140.7 It is notable at the 30 October meeting the claimant referred to fibromyalgia, sitting on different chairs every day, increased pain "popping pills" and going to her doctor who gave her stronger painkillers, for the first time and too late for the respondent to take any steps as she did not return to work after this date and had not mentioned the problems she was experiencing previously. In short, the Tribunal accepts on the balance of probabilities that the respondent did not possess the requisite knowledge and did not see the need to identify a suitable chair for the claimant when she moved from desk to desk in training. The evidence before the Tribunal was other employees had chairs specifically allocated to them;

the claimant complained about at this liability hearing because she was unable to sit on them and change their settings. The claimant could also have been allocated a set chair had she asked for it, but she did not, and there was no information before the respondent to put it on notice that this was a requirement for the claimant.

140.8 It is incomprehensible to the Tribunal that the claimant did not raise the issue with the respondent in the knowledge that other employees had suitable chairs allocated. The Tribunal found there was a PCP of moving chairs, and had the claimant made a request for her own chair (which she did not), such a request would have facilitated. The evidence of this lies with the fact that other employees had their own allocated chairs. For the avoidance of doubt there was no mention in any of the pre-employment documentation completed by the claimant of the ned for a chair to be allocated to the claimant, who had indicated clearly her disability of fibromyalgia was under control, nor was there a reference in any or medical reports to the effect that she required a reasonable adjustment of her own chair. The adjustment sought by the claimant at the time was travelling outside rush hour traffic and there was nothing to the put the respondent on notice the claimant was disadvantaged and required her own chair.

140.9 In conclusion, the Tribunal found none of the PCPs relied upon by the claimant put the Claimant at a disadvantage. In the alternative, if it is wrong on this point it would have gone on to find the respondent has discharged the burden of showing that the above listed PCPs were a proportionate mean of achieving a legitimate aim. As submitted by Mr French, the respondent's training methods had been proven to be effective without the need for a dummy system, the induction and training method that required trainees to move during their training and sit on different chairs were equally effective, chairs had been set for other employees and the claimant, had she made the request, could have had the chairs set for her but she did not as the claimant took the view a "special chair" was not necessary for her.

Discrimination arising from a disability (section 15(1) Equality Act 2010)

141 Under this head the Claimant relies on the disability of fibromyalgia, which the Tribunal found, John Cotter had no knowledge of and Laura Asonitis did not possess knowledge until 3 October 2017. The claimant went off an a sickness absence on the 4 October 2017 from which she did not return. In her witness statement the claimant referred to "badly" failing a test on that date, because "she was in so much pain, really tired and could not concentrate" omitting the undisputed fact that she had re-taken the test 7 minutes after failing it. The claimant also omitted the relevant fact that on her re-take she achieved 100% and the claimant's selective reliance on evidence raised real issues with credibility for the Tribunal, who found the claimant had not suffered the detriments alleged. With reference to the following;

141.1 The Claimant did not sign the Personal Health & Safety Statement on her first day; however, there was no detriment caused to her. The Statement was signed later by her and that was the end of the matter.

141.2 The respondent did hold induction training and tests over one 4-week block which the claimant passed, no detriment was caused to her, and she progressed successfully to the next level of training.

141.3 As set out above, there was no satisfactory evidence the claimant was caused a detriment when sharing workstations during call listening by using a splitter device; the claimant who was selective in her evidence, failed to mention to the Tribunal the length of the work slitter which was long enough to enable her to sit, move around and stand, and it accommodated the needs for wheelchair users.

141.4 With reference to the allegation that the respondent had not carried out a out a risk assessment, the Tribunal accepted Mr French's submission that the respondent had, what they considered to be a safe system of work in place for the training period and would need prompting that the safe system of work was inappropriate for an individual. Hundreds of people were processed through the respondent's training system, and it had instituted a safe system of work and asked prospective applicant trainees in advance whether they needed adjustments. The claimant did not require any adjustments apart from shift hours avoiding rush hour traffic. She informed the respondent prior to commencement in her Pre-Placement Medical Questionnaire form her condition was under control. Bearing in mind the claimant's silence, the Tribunal found there were no steps for the respondent to take which necessitated an individual risk assessment being carried out during training. The training had already been risk assessed for all the employees taking part in induction and the floor training that followed. In conclusion, there was no satisfactory evidence before the Tribunal that the claimant had been caused a detriment by not being individually risk assessed.

141.5 Turning to the content of the Sickness Absence Well Being outcome letter dated 31 October 2017 which the Claimant alleges is not detailed enough, the Tribunal took the view this allegation raises a real issue concerning the claimant's credibility and the genuineness of her claim. The claimant's complaint was that the 31 October 2017 letter described her head injury as "just cut your head." The meeting notes reflect the claimant confirming she had suffered from a "head injury" and the letter went on to set out the words used by the claimant at the meeting "…You advised that it depends on your head injury."

141.6 The claimant, for the purposes of strengthening her claim, changed and took the words out of context. Had she considered the reference to her "head injury" in the 31 October 2017 letter and viewed that information objectively, she should have realised there was no difference and Mary Burke was merely reiterating what the claimant had told her in the first place. The Tribunal found claimant was overblowing her claim on this as she had on many other occasions, and the Tribunal can only infer from all the information before it, that this was for the purposes of litigation and bolstering up her case.

141.7 Turning to the allegation relating to holiday pay, the Claimant asserted she was denied payment of holiday pay during her sickness absence. As indicated above, Samantha Woods in her written and oral evidence confirmed she could not recall any annual leave being booked or discussed. She confirmed to the Tribunal if people are going to be absent for a long-time they are "taken out of annual leave

until we have a return date." Mr French when cross-examining the claimant put to her that Ms Woods overlooked the claimant informing her that she wished to be paid during her sick leave, and that it why the message had not been passed onto HR/payroll. Taking into account all of the evidence before it, the Tribunal on the balance of probabilities, preferred Samantha Woods' evidence that she could not recall the claimant asking for payment of 3-days holiday. If the Tribunal are wrong on this point, in the alternative, it would have gone on to find that there was a misunderstanding between the claimant and Samantha Woods following a telephone conversation which was mainly concerned a wellbeing meeting arranged for 20 November, the non-receipt of GP report by the respondent and non-payment of GP invoice (the claimant had received this report but made no mention of this fact), booked holidays, why the claimant was too unwell to attend work and Samantha Woods' confirmation that holidays could be agreed on sick leave. There exist numerous emails in the bundle written by the claimant, but there is no email following up the holiday payment request with Samantha Woods. The Tribunal finds on the balance of probabilities that it is more likely than not there was a confusion as to the claimant's intentions on the part of Samantha Woods that resulted in action not being taken and HR not being informed, and there was no causal connection with the claimant's disability. There is no logical reason for Samantha Woods not to contact HR with a view to the claimant being paid 3-days holiday that she is unable to take during her sick-leave absence. Had there been an act of disability related discrimination given the fact the claimant was absent because of her disability; the Tribunal accepts the claimant may have suffered a detriment by the non-payment of her salary during a period when she was in receipt of SSP as this would have increased her pay by 3-days, but this would need to be balanced against the fact accrued holiday pay was paid and received on termination and the claimant was still paid SSP during the relevant period.

The claimant's formal grievance and delay

141.8 With reference to the allegation that the respondent had ignored the claimant's formal grievance dated 20.11.17 until the claimant made contact on 30.11.17 and then ignored again, the Tribunal found that was indeed the case. Mr French submitted the claimant's grievance was not ignored on the basis that it had been forwarded to HR, an acknowledgment was sent to the claimant 10-days after it had been submitted and then it was put on hold until he claimant was well enough to attend meetings and therein lies the issue as far as the Tribunal is concerned. Mr French is correct to state that the respondent acknowledged the grievance within 10 days. It then set in place an investigator but did not notify the claimant of this until she made contact on the 30 November 2017. On the 29 November Farah Jahangir was appointment to support the claimant's grievance, which undermined the claimant's argument that it was only as a result of her getting in touch with the responded were steps taken to advance the grievance.

141.9 The Tribunal found a decision was taken unilaterally by an unknown person in HR on an unknown date to put the claimant's grievance on hold on some date after 29 November 2017 due to the fact she was signed off sick without adjustments. It is conceivable that some confusion could have been caused when HR chasing the outstanding reference was concerned when the claimant made it clear that "I feel that I am being treated unfavourably chasing past employment

evidence from me during sickness absence seems unfair" and an assumption was made that the same applied to the grievance. Charlotte Brown on 20 November at 9.20 confirmed as the claimant was off and on sick leave the respondent would not contact her again until she returned to work, and would continue to chase the previous employer. The claimant had this communication prior to submitting her grievance, and the Tribunal took the view that chasing the claimant for a reference and dealing with her grievance during a sickness absence were completely different matters. On the balance of probabilities, the Tribunal accepted the claimant's evidence that at no stage during the relevant period did she indicate to the respondent that she was not well-enough to deal with a grievance raised formally during her sickness absence, and nor did the respondent ask her the question or obtain any expert medical advice on the possibility that the claimant was not well enough to deal with or attend any grievance meetings.

141.10 Catherine Fergusson stated in oral evidence on cross-examination that she had been informed by HR the claimant had agreed to put the grievance on hold during her sickness absence. There is no contemporaneous written communication sent by the claimant in the bundle that confirmed the grievance would not go ahead until she was well enough to attend work, in contrast to the copious numbers of emails and other correspondence sent and received by the parties. The Tribunal took the view someone in the respondent's HR department had unilaterally decided to defer dealing with the claimant's grievance whilst she was off sick, the delay was not a result of a mutual conversation and neither was the claimant informed of this decision when she should have been. It is clear from the claimant's correspondence she expected her grievance was being dealt with, she refused to attend the wellbeing meeting until her grievance had taken place and by the 10 January 2018 Lee Johnson had agreed to look into it, but he took no steps either to progress the grievance. It is notable that the respondent is a large organisation with specialist HR professionals and there is no reason why the claimant's grievance could not have been expeditiously dealt with in accordance with the respondent's Grievance Policy, whether or not the claimant pressed for its resolution.

141.11 It is notable in respect of the grievance the claimant's last communication in 2017 was 30 November 2017 and she does not after that date, for a period of 5-weeks, inquire until 10 January 2018. The contemporaneous documents show the grievance was not put on hold, and that the respondent delayed investigating it. Farah Jahangir was the responsible for sourcing the grievance manager, and yet Samantha Woods notified Farah Jahangir of the manager's name. The burden of proof shifted to the respondent, and there was no satisfactory explanation untainted by disability discrimination why the claimant's grievance of 20 November was not investigated despite the communication on 30 November. There was no satisfactory explanation why it took until 10 January for the respondent to instruct an appropriate investigator, Lee Johnson, who had to agree to act as grievance investigator. There was an unacceptable delay of 8-weeks, albeit inclusive of the Christmas period in contravention of the respondent's own grievance Policy that required a grievance to be investigated followed by an invite to a grievance meeting as "sensitively and as quickly as possible." The respondent was neither sensitive nor quick when it dealt with the claimant's grievance, which remained outstanding up the her resignation and into her notice period which she

refused to work. The fact that Samantha Woods continued to seek HR guidance in December 2017 and January 2018 as submitted by Mr French was unknown by the claimant at the time. There was no reasonable explanation why Lee Johnson took no steps to investigate the grievance once he accepted the instruction.

141.12 The Tribunal found, on the balance of probabilities, that as the subject matter of the claimant's grievance related referred to her protected characteristics and Samantha Woods' responsibility, together with HR, was to progress it. It is clear that in relation to progressing the grievance the respondent's HR function was incompetent and fragmented and this may go towards explaining the delay. On balance, the Tribunal is satisfied that had the claimant been at work and submitted her formal grievance whilst she was working, it is unlikely there would have been the same level of delay. The claimant was absence off ill with her disability and had she not been it is more likely than not her grievance would have been dealt with earlier and thus the delay was related to her disability given the fact the grievance was put on hold until such time that the respondent concluded the claimant was well enough to deal with it.

141.13 In short, the Respondent did know and could reasonably be expected to know that the Claimant had a disability when it received the formal grievance on 20 November and took the decision to delay the grievance until the claimant was feeling better. The "something" arising from the Claimant's disability was her absence from work supported by MED3's. Farah Jahangir was responsible for dealing with the claimant's grievance, she did not give any written or oral evidence dislodging the adverse inference and no explanation was given untainted by discrimination. The Respondent has not shown that the treatment relating to the grievance was a proportionate means of achieving a legitimate aim. Had the respondent, who was supported by HR expertise right across the board, investigated and resolve the claimant's grievance there would have been a different email chain, not least, evidence of having had a discussion with the claimant concerning it.

141.14 In conclusion, the respondent had ignored the claimant's grievance between 30 November 2017 to 17 January 2018 as far as the information put before the claimant was concerned, and therefore the claimant was treated unfavourably during her absence from work arising from her disability of fibromyalgia, the claimant's claim for unlawful disability discrimination brought under section 15 of the Equality Act 2010 is well-founded.

Failure to make reasonable adjustments (section 21 Equality Act 2010)

142 In relation to this complaint, the Claimant relies upon the disabilities of fibromyalgia and (perceived) depression. Section 20(3) sets out the first requirement, where a provision, criterion or practice of the respondent puts the claimant at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled. As set out in Higgins cited above, the Tribunal should identify (1) the employer's PCP at issue, (2) the identity of the persons who are not disabled in comparison with whom comparison is made, (3) the nature and

extent of the substantial disadvantage suffered by the employee, and (4) identify the step or steps which it is reasonable for the employer to have to take and assess the extent to what extent the adjustment would be effective to avoid the disadvantage.

143 The respondent accepts the working hours during induction training being 9am to 5pm; not being offered reduced hours or responsibilities as suggested by the Claimant's GP report dated 6 November 2017; and having the same managers conduct further wellbeing meetings could amount to a PCP. It is accepted the working hours during induction training applied to the claimant, but not the being offered reduced hours or responsibilities as suggested by the Claimant's GP report dated 6 November 2017; and having the same managers conduct further wellbeing meetings. The following is relevant:

143.1 The Tribunal accepts Mr French's submission that had the second sickness-absence meeting taken place hours and adjustments would have been discussed. As can be seen from the Tribunal's findings above, the claimant was aware at the first wellbeing meeting adjustments were to be discussed at the second, and they would take effect when she returned to work. The claimant never returned, and the adjustments suggested by her would not have facilitated the claimant working given the fact that she was not well-enough to work with or without adjustments as set out by her GP in the MED3's.

143.2 The Tribunal also accepted Mr French's submission that the respondent acceded immediately to the claimant's request first made on 10 November 2018 to appoint two new managers to take the next wellbeing meeting. Notwithstanding this fact, the claimant still refused to attend the wellbeing meeting on the basis that she wanted her grievance to be dealt with first, and therefore there were no reasonable adjustments for the respondent to make as the claimant had no intention of attending a second wellbeing meeting in any event.

143.3 With reference to the question of knowledge, as indicated above, John Cotter and Laura Asonitis had no knowledge of the claimant's disability or any requirement that reasonable adjustments in her working hours were necessary during the induction period. Mr French submitted there was no evidence the claimant had been placed at a disadvantage; the Tribunal agreed. She performed well in the 4-week induction and there was nothing to put John Cotter and Laura Asonitis on notice and nor should they reasonable have known the claimant was likely to be placed at a substantial disadvantage because of her fibromyalgia and/or perceived depression. In short, up until 30 October 2017 reasonable adjustments were not an issue and it was only until after claimant went off on the 4 October that it became an issue for her. Fitness for work certificates were presented indicating that no reasonable adjustments could be carried out and as the claimant did not return the responded was not in breach of its duty in this respect. By the time the claimant was well enough to return to work with adjustments following her resignation, she refused to work her notice and reasonable adjustments became irrelevant as the claimant was not in the workplace.

143.4 Had the Tribunal found that the claimant had been placed at a substantial disadvantage because of her disabilities, which it did not, and had it found the

trainers possessed the requisite knowledge of the disabilities relied upon by the claimant (which they did not) the Tribunal would have proceeded to find the adjustments were not reasonable steps to avoid the disadvantage relied upon by the claimant. Mr French submitted, based on the evidence of John Cotter and Laura Asonitis, that adjusting the start times of induction training was not reasonable, especially since the claimant contended in her oral evidence that to achieve this 25% of the course would need to be discarded, and the entire group's hours should be changed. As set out by the Tribunal in its findings of facts above, the induction was specifically designed to meet the respondent's training needs, it consisted of a combination of team building games and a more formal learning structure. It would not have been practicable for the claimant to have missed out on a substantial proportion, despite the negative view she took of some of the training that was not in accordance with what she would have carried out as a manager.

143.5 The Tribunal found it was not a reasonable adjustment to have offered the Claimant reduced hours or responsibilities given the fact that the claimant performed well during training when she had no responsibilities, save for being required to meet the induction criteria, which she did, and by 4 October 2017 this became an irrelevance as the claimant was no longer capable of working and did not return.

143.6 The reasonable adjustment of appointing different managers for a second sickness absence wellbeing meeting was made but not taken up by the claimant.

143.7 In conclusion, the claimant's claims that the respondent failed in its duty to make reasonable adjustments was not well-founded and is dismissed.

Harassment (section 26 Equality Act 2010)

144 The Claimant relies upon the disabilities of fibromyalgia and (perceived) depression in respect of her harassment claim. As indicated by Mr French, it is conceivable that except for the references allegation, the remaining conduct could theoretically be related to the claimant's fibromyalgia disability and in relation to the assumption of perceived disability by depression, the perceived depression.

145 The EHRC Employment Code provides that unwanted conduct can be subtle, and include 'a wide range of behaviour, including spoken or written words or facial expressions'- para 7.7. Where there is disagreement between the parties, it is important that an Employment Tribunal makes clear findings as to what conduct actually took place. In the claimant's case the Tribunal did not find any of the conduct she alleged violated her dignity or created an intimidating, hostile, degrading, humiliating or offensive environment under S.26(1) of the EqA, took place. In arriving at this decision, the Tribunal took into account the EHRC Employment Code at para 7.8. and the claimant's subjectively concluding it was not reasonable for the conduct to have the effect alleged by the claimant, who was at best, oversensitive but more likely than not, had exaggerated her claims.

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146 Taking each harassment allegation individually the Tribunal did not find the events as described the claimant took place for the following reasons:

146.1 The discussions held and alleged conduct at the Sickness Absence Well Being Meeting was not as described by the claimant, whose dignity was not violated and nor was an intimidating, hostile, degrading, humiliating or offensive environment created. No assumption was made of perceived disability by depression. Mr French submitted that in all the circumstances of the case it was plain Mary Bourke was managing a sickness absence and had convened the sickness absence wellbeing meeting to achieve this; there was no intention of harassing the claimant and the Tribunal agreed with this assessment having taken all of the relevant evidence into account. It was objectively not reasonable for the claimant to perceive the conduct had the effect set out under section 26, and on the balance of probabilities the Tribunal found she had exaggerated her evidence to this effect. It is notable, as pointed out by Mr French during submissions, that the claimant raised some formal grievance 10 days after the sickness absence meeting and yet she does not describe the treatment she allegedly received in terms equivalent to a violation of dignity or an intimidating, hostile and so on, environment.

146.2 The allegation that section 26 EqA was met by the Respondent's ignoring its responsibilities and duty of care for work on DSE with no risk assessment made little sense within the factual matrix given the claimant's admission that she did not see fit to raise broken chairs with the respondent. The Tribunal did not accept the chairs were broken as alleged, but had this been the case that employees were expected to sit on broken chairs, this was a serious health and safety issue. The claimant has adduced no satisfactory evidence sufficient to satisfy the Tribunal that (a) the respondent had failed in its duty of care as alleged, and (b) her dignity was violated and/or an intimidating, hostile, degrading, humiliating or offensive environment was created. As indicated above, the respondent had risk assessed the course for the hundreds of employees on probation who undertook it, and at no stage did the claimant indicate to anyone (a) she was disabled and (b) required a risk assessment to be carried out. Had she done so the Tribunal is in no doubt that the respondent would have taken such matters seriously and proactively responded to the claimant's needs, for example, a suitable chair would have been provided to her as one had to other employees.

146.3 With reference to the threat of an extended probation due to absence the Tribunal found the claimant was not threatened as alleged. In the alternative, it was not reasonable for the claimant to view this as a threat. It was a fact the claimant had only undertaken just over 4-weeks of a 6-month probation period. The employment contract provided the claimant's continued employment was subject to her "satisfactorily" completing a probation period of six months. The 6-months could be extended by a further 3-months at the respondent's discretion "in exceptional circumstances e.g. to allow completion and training." It was unrealistic for the claimant to expect the respondent to shorten or do away with completely the probation period as a result of her sickness absence, with training still outstanding. A reasonable employee would have understood they were contractually obliged to complete and satisfactory fulfil the probation period, and any extension in the event of a sickness absence would be of benefit rather than a detriment on the basis that it would provide an opportunity for the probation to be completed and employment continue.

146.4 Finally, turning to the allegation concerning Charlotte Brown emailing the Claimant regarding references on 17 November 2017, Mr French submitted this allegation was wholly unrelated to any of the claimant's disabilities and the Tribunal agreed with this assessment concluding there was no evidence of any causal connection between the two events. In the alternative, the Tribunal found the claimant could not reasonably have reached a view that her dignity was violated and/or an intimidating, hostile, degrading, humiliating or offensive environment was created when the HR department could not find her reference and therefore approached her in an apologetic tone in the 17 November 2017 email as set out above. If the claimant had any doubts, 3 days later on 20 November 2017 Charlotte Brown of informed the claimant they would not contact her again about the issue until she returned to work. The claimant's interpretation of this correspondence to the effect that she feared dismissal, had no basis. On a straightforward common-sense interpretation of the words used in both the 17 and 20 November 2017 communications it cannot be the case that the claimant was threatened with dismissal, and her linking the reference request with the offer letter dated 16 June 2017 indicating the job offer may be withdrawn if references "did not meet our requirements" was opportunistic reflecting the claimant's attempt to bolster up her claim. In no sense was Charlotte Brown threatening to withdraw the job offer by dismissing the claimant from her employment that had commenced on 4 September 2017. Charlotte Brown was merely chasing up the claimant and her previous employer for a reference. It is plain from a common-sense reading of the email communications there was no intention of harassing the claimant and it was unreasonable for the claimant to allege that the conduct had that effect on her.

147 In conclusion, the Tribunal found claimant's claims of harassment brought under section 26 EqA were not well-founded and are dismissed.

Victimisation (section 27 Equality Act 2010)

148 With reference to this complaint the Claimant relies upon the disabilities of fibromyalgia and depression. The Tribunal accepts Mr French's submission that there is no protected act, and the claimant's grievance does not incontrovertibly make an express claim of breach of the EqA. The Tribunal did not agree that no such claim can be implied as submitted by Mr French, it did accept the respondent interpreted the email to read the claimant was alleging a failure to follow company policy and breach of duty of care in relation to health and safety. It was not clear until the follow up email of 30 November 2017 the claimant was referring to discrimination, despite her use of the words highlighted by the Tribunal in context: **"I suffered a disadvantage connected to my protected characteristic** due to the inadequately equipped and multiple changes of classroom plus attaching to various colleagues' desks again on poor quality chairs…being hunched over…caused my existing underlying fibromyalgia condition to flare up**,** my employer was not 'helping to look after your health and giving you a safe place to work. **A substantial adverse effect** is that I feel trivialised in the letter dated 31.10.17."

149 The Tribunal concluded that the claimant's grievance was ambiguous and did not clearly set out that it was about disability discrimination under the Equality Act 2010 and appears to be more of a complaint about policy, procedure and health

and safety in the first four weeks of her induction/training which she alleged exacerbated the fibromyalgia condition. However, by the 30 November 2017 email sent 12.08 the claimant made it clear the formal grievance letter involved health and safety negligence, indirect discrimination and harassment, and the Tribunal took the view that if linking the two communications together the formal grievance was a protected act, or in the alternative it can be inferred by the words "disadvantage," "protected characteristic" and "substantial adverse effect" that the claimant was mirroring the language set out in the Equality Act 2010, even though she did not make it clear disability discrimination was being alleged, the Tribunal would have proceeded to find the respondent had not discriminated against the claimant in any of the circumstances covered by the EqA, it had not treated her less favourably than others in those circumstances, and in the case of the delayed grievance, the reason for the less favourable treatment was not causally linked to the fact that the claimant had done a protected act; or that the respondent knew that she intended to do a protected act, or suspected she had done, or intended to do, a protected act.

150 With reference to the first individual complaint relating to the delay in scheduling the grievance hearing the Tribunal accepted the claimant suffered a detriment by the respondent's delay having reasonably expected a grievance hearing investigation would have been convened. However, the Tribunal found on the balance of probabilities there was no causal connection between the detriment and the protected act. As set out in its findings of fact above, the sole reason for the claimant's grievance hearing delay was the respondent's belief and possible misunderstanding that the claimant was not well enough to deal with the grievance and attend meetings. It was on this basis that the Tribunal found in the claimant's favour in respect of the section 15 EqA complaint, and there was no causal connection whatsoever with her allegations of indirect discrimination and harassment.

151 With reference to the second individual complaint the Tribunal found there was no satisfactory evidence that the respondent had subjected the claimant to the alleged detriments relied upon. It does not accept the claimant was subjected to the detriment alleged in relation to the second wellbeing meeting arranged by Samantha Woods. On the 9 November 2017 the claimant was invited to a second sickness absence meeting, and she raised no complaints concerning Samantha Woods at the time. The second sickness absence meeting was adjourned on the 20 November 2017 (the day it was to take place) because the claimant's GP report had not been received by the respondent, Samantha Woods was unaware the claimant had a copy which she could have produced in order that the meeting could go ahead. The Tribunal inferred the claimant did not want a second sickness absence meeting to take place; she did not want to discuss what reasonable adjustments the respondent could carry out and did not want to return to complete her probation period. The claimant fully understood that the next meeting was to deal with her GP's recommendations, her medical conditions and return to work and yet, she chose to delay and then not attend any further wellbeing meetings.

152 There was no causal connection between the second wellbeing meeting being arranged and the claimant's grievance. The Tribunal did not find Samantha Woods' motivation was to disadvantage the claimant because she had raised the grievance, she was keen to rearrange the second welfare meeting and there was

no evidence of any discriminatory motive or intention causally linking Samantha Woods arranging a second wellbeing meeting with the claimant and the protected act. In short, in relation to both alleged detriments relied upon by the claimant, the Tribunal accepted Mr French's submission considering the factual matrix that there was no cogent evidence or a discriminatory motive or intention, and the claimant's claims would have wholly failed on causation had she established a protected act existed and she had been subjected to the alleged detriments.

153 In conclusion, the claimant's claims of victimisation brought under section 27 of the EqA are not well-founded and dismissed.

Breach of Contract

154 The claimant relies on two alleged breaches of contract as follows:

154.1 With reference to issue relating to the alleged breach of contract, namely, does the Claimant's contract provide that she has the right to receive the Respondent's Working Safely booklet and Personal Health & Safety Statement on her first day of employment, the Tribunal found that the contract provided no such right. The claimant was instructed she "must read the Working Safely Booklet" which she was required to print off and sign the "Personal Health & Safety Statement…you must do this on your first day with us and hand your signed statement to your line manager." The claimant signed the form on the 20 July 2017 and took it to the training induction day.

154.2 The Tribunal agreed with Mr French's submission that an offer letter requiring the claimant to carry out the act or reading, printing and signing is different from her having the contractual right to receive them, and therefore the respondent was not in breach of contract the claimant having failed to identify, at the liability hearing, a contractual right. Under cross-examination the claimant conceded that there was "probably not" a contractual entitlement for her to receive respondent's Working Safely booklet and Personal Health & Safety Statement on her first day of employment, however, she relied on the ACAS "Guidelines" and took the view the Personal Health & Safety Statement should have been discussed with her manager, and as she was not allocated a manager she could not discuss her health issues. The claimant confirmed that she did receive the respondent's Working Safely booklet within 2 to 3 days of her commencing employment although there was an issue as to whether the respondent was obliged to provide her with a copy and whether it had provided intranet access which the claimant could have logged into and print out a copy. As set out above, the Tribunal did not find in favour of the claimant on this issue, preferring evidence given on behalf of the respondent that she had accessed the documents on the internet. It is uncontroversial the claimant had viewed and signed them at some stage.

154.3 Turning to the alleged breach of contract relating to four weeks' notice of hours, the Tribunal found the claimant's contract provided no such right. As et out above, the claimant's contractual "normal hours" of work were 35 per week after completion of training. The relevant term in the contract provided during "any period of training your hours of work may be different…you will be entitled to 2-days off during any Monday to Sunday 7 period one of these days will be fixed the other will be at the discretion of the company subject to you being given 4-weeks'

notice." The Tribunal finds there was no express contractual obligation that the claimant was entitled to 4-weeks' notice of her shift, or hours worked training as she now maintains, preferring Mr French's submissions that the claimant was only entitled to 4-weeks' notice of her discretionary day off as a matter of contract. Despite the claimant's arguments to the contrary, she did not have a wider contractual right to 4-weeks' notice of her rota/hours of work, her pleaded complaint is too wide and there is no breach of contract. Mr French submitted in oral submissions that the claimant has not filtered her claims in any way, and has been unable to identify the legal basis of a number of them. The Tribunal agrees, and notes that the claimant's inability to do so has resulted in it spending a great deal of time trying to understand and work through a myriad of complex and inter-related claims, a number of which have had no legal or factual basis whatsoever.

155 In conclusion, the claimant's claim for unpaid accrued holiday is dismissed upon withdrawal by the claimant; the claimant's claims of unlawful disability discrimination brought under sections 13,19 and 20-21 of the Equality Act 2010 are not well-founded and are dismissed; the respondent had ignored the claimant's grievance between 30 November 2017 to 17 January 2018, the claimant was treated unfavourably during her absence from work arising from her disability of fibromyalgia and the claimant's claim for unlawful disability discrimination is well-founded; finally, the respondent was not in breach of contract and the claimant's claim for breach of contract is not well-founded and is dismissed.

156 To assist the parties, prepare for a remedy hearing dealing with the one remaining complaint brought under section 15 of the EqA found in the claimant's favour, case management orders have been made as set out below leading to the remedy hearing listed above. The claimant, who remains a litigant in person, may wish to consider the extent of her injury to feelings claim bearing in mind the factual matrix set out above and the limited time in which the grievance was not dealt with pending her resignation and refusal to return to work the contractual notice period. The claimant may wish to obtain legal advice.

CASE MANAGEMENT ORDERS

1. The claimant must provide to the respondent and to the Tribunal by **23 September 2019** a revised "Schedule of Loss" – setting out how much in compensation the Tribunal will be asked to award the claimant in relation to the claimant's successful complaint. She must explain how the amount has been calculated. Further information about remedies can be found in Guidance Note 6 attached to the Presidential Guidance on General Case Management.

2. The attention of the parties is drawn to the Presidential Guidance **Employment Tribunal awards for injury to feelings and psychiatric injury following *De Souza v Vinci Construction (UK) Ltd* [2017] EWCA Civ 879** and guidelines 'General Case Management' atwww.judiciary.gov.uk/publications/employment-rules-and-legislation-practice-directions/

3. The respondent will send to the claimant a detailed and cogent counter-schedule of loss no later than **21 October 2019**.

_____
Employment Judge Shotter

3.9.2019

JUDGMENT AND REASONS SENT TO THE PARTIES ON

13 September 2019

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FOR THE SECRETARY OF THE TRIBUNALS