**Case Number: 3307196/2018**

# EMPLOYMENT TRIBUNALS

| **Claimant** | | **Respondent** |
|---|---|---|
| **Ann Barry-Edwards** | **v** | **NHS Barnet CCG** |
| **Heard at**: Watford | | **On**: 31 September, 1, 2 3 and 4 October 2019 |

**Before:** Employment Judge Bartlett
Ms Baggs and Mr Miller

**Appearances**

**For the Claimant:** Miss Banton
**For the Respondent:** Mr Adjei

# JUDGMENT

1. The claimant's claim that the respondent failed to make reasonable adjustments under sections 20 and 21 of the Equality Act 2010 is out of time.

2. The claimant's claim that she suffered discrimination arising from disability under section 15 of the Equality Act 2010 is out of time.

3. The claimant's claim that she was constructively unfairly dismissed fails.

# REASONS

## Background

1. The claimant is a qualified nurse who commenced employment in 1978 at the Whittington Hospital. Through a series of TUPE transfers she started working for the respondent in 1999 until her employment ended when she gave notice to terminate her employment on 29 September 2017. In her latest role she worked as a community matron in Continuing Healthcare.

2. In 2013 the claimant was diagnosed with bilateral sensorial hearing loss and began wearing a hearing aid. Her hearing has deteriorated and she wears a hearing aid in each ear.

3. It was accepted that the claimant was disabled within the meaning of the Equality Act 2010 and that her disability is one of hearing loss. The claimant has had additional health problems including a problem with her right hip which resulted in a successful hip replacement in July 2017. Only the claimant's hearing losses is relied on as her disability.

4. The events giving rise to this claim can be summarised as follows:

   4.1 In August 2015 the claimant and her team moved to an open plan office. This was a shared office space and only some of it was allocated to the respondent.
   4.2 Prior to the move the location of the claimant's desk had been discussed and it was agreed that she would be placed at the back of the room with her back to the wall. This was to limit background noise;
   4.3 Unbeknownst to the claimant or her manager, the claimant could not be placed in this location and was not placed there. This is because the bank of desks closest to the wall, was occupied by an employee of a different organisation and this employee was disabled: she needed a wheelchair and a carer. Further, the bank of desks at this end of the room did not have their backs to the wall. Instead the claimant was placed at the other end of the room with her back away from the room. However, her back was to a bank of cabinets, filing cabinets and an area where the printer was. This meant that the claimant's work area was noisy which disturbed her. The claimant and her team had no prior warning that this would happen and they only found out when entering the building on the Monday after the weekend move;
   4.4 the claimant remained at this desk for approximately 7 months;
   4.5 in October 2015 the claimant had obtained an assessment through the Access to Work scheme which recommended that:
      4.5.1 a survey was undertaken to assess fitting acoustic panels to absorb the sound and make the claimant's work environment quieter; and
      4.5.2 the claimant's colleagues attended a deaf awareness training course.
   4.6 the respondent was aware of the results of the Access to Work report but it is undisputed that the that its recommendations were never implemented;
   4.7 around March 2016, when a move to a new building was discussed, the claimant raised the problem that she had (with the noise and location of her desk) and within days an office obtained for the claimant. This was an individual office for only the claimant's use which opened onto the open plan office. It had previously been used for a different organisation and was not accessible to the respondent. The claimant was asked if she wanted to move to that room. The claimant agreed and did not raise any concerns at the time at the time;
   4.8 it was intended that the claimant's move to her own office would be for a short period of substantially less than 4 months. However, there were numerous delays to the respondent moving to the new location and the move did not happen until January 2017;
   4.9 the claimant went on sick leave on 17 December 2016 and she did not return to work until 25 September 2017.

5. At the hearing the tribunal heard witness evidence from the claimant, Pam Caton (PC), Debbie Smith (DS), Patricia Smith (PS), Valerie Lamprell–Shore (VLS) and Gillian Harding (GH) for the claimant. For the respondent the tribunal heard witness evidence from Nicky Perkins (NP), Kashmir Chopra (KC) and Alan Brackpool (AB).

## Issues

6. The claimant's claim falls under three categories:

   6.1 constructive dismissal;
   6.2 failure to make reasonable adjustments, 20 and 21 EqA 2010;
   6.3 discrimination arising out of disability, 15 EqA 2010.

7. The detail of these claims is set out in a list of issues dated 13 June 2019 which runs to 4 pages which cross refers to further and better particulars. At the start of the hearing I confirmed with both parties that this set out the issues that would be considered in the hearing and they agreed that it was.

## Time limits

*Reasonable adjustments under sections 20 and 21 of the EqA 2010*

8. The tribunal finds that the claimant's claims that the respondent failed to make reasonable adjustments under sections 20 and 21 of the EqA 2010 are out of time.

9. The PCP on which the claimant relies was applied, even on the claimant's own case, between August 2015 and March 2016 only. Miss Banton's submissions for the claimant were that time would have started to run by March 2016 and we accept this. The claimant's employment tribunal claim was lodged on 14 May 2018. Therefore, the claim is almost 2 years out of time. Further, the tribunal finds that it cannot be part of a continuing series of acts because:
   9.1 by January 2017 the respondent had moved to a new building and the DWP's recommendations which had assessed the previous building, were in relation to desk location and acoustic survey obsolete;
   9.2 as set out below, the claimant's oral evidence was that she was comfortable with the location of her desk for her return in September 2017 and the tribunal accepted this evidence.

10. The claimant's submissions were that the tribunal should find that it is just and equitable under section 123(1) EqA to extend time for the following reasons:
   10.1 the allegations are serious and made out on the evidence;
   10.2 there is no prejudice to the respondent because it is able to defend them;
   10.3 the claimant avoided confrontation and tried to and prided herself on being able to resolve difficulties;
   10.4 the claimant did not bring a grievance whilst employed as she feared reprisals;

10.5 the claimant was off sick from December 2016 to September 2017; and

10.6 she would not have brought an ET claim at the time.

11. The tribunal does not consider it is just and equitable to extend time for the following reasons:

11.1 the claim is out of time by almost 2 years which is a substantial period;

11.2 the claimant's concerns about bringing a grievance and desire to resolve difficulties informally are factors which affect all employees and mean they must make difficult decisions;

11.3 the claimant was off sick from December 2016 to September 2017. However this was not for a mental health illness or for another condition which would have materially impeded her ability to make decisions about whether or not to bring a claim;

11.4 the tribunal recognises that there is limited prejudice to the respondent because, by the time of the hearing, it had prepared the claim to address these issues and it was able to provide witness evidence on the matters;

11.5 however, when weighing all of the factors together the tribunal finds that the time delay is so significant and the claimant has failed to provide persuasive reasons for the delay.

*Discrimination arising from disability section 15 of the EqA 2010*

12. The tribunal finds that the claimant's claims that she suffered discrimination arising from disability are out of time. The last act on which the claimant relied occurred on 19 September 2017. This was almost eight months before the claimant's employment tribunal claim was lodged.

13. The tribunal considered the claimant's submissions that the tribunal should find that it is just and equitable under section 123(1) EqA to extend time for the reasons set out above.

14. Even bearing in mind that there is arguably less delay in relation to these claims there is still a significant delay without good reason. During that period of delay the claimant was undergoing a grievance procedure and she was involved with her trade union in relation to that. For the reasons set out above the tribunal considers that even bearing in mind the limited prejudice to the respondent it is not just and equitable to extend time.

15. Further and for completeness, the unfavourable treatment that the claimant relied on before 19 September 2017 arose in September 2015 and March 2016 until December 2016. The tribunal finds that this cannot represent a continuing course of conduct because there is such a significant time gap between each period.

**Submissions**

16. Mr Adjei spoke to his written opening statement.

17. Ms Banton relied on a written closing submission which she supplemented with oral submissions.

## Findings of fact

18. In this first section we have addressed the matters raised in the list of issues under the heading discrimination arising from disability despite our findings that these claims out of time because it largely replicates the list of events relied on in relation to constructive unfair dismissal as well as providing some useful background. We find the following:

*"shit or get off the pot" in September 2015*

18.1 NP did make the comment "shit or get off the pot" in September 2015. For the following reasons:

18.1.1 NP accepted that she swore frequently in the work place;

18.1.2 the timing of the comment was one month after they had moved to building 4, when the claimant had not been given the seat she had needed, and it was accepted by all parties that it was not straight forward to change the arrangements;

18.1.3 The tribunal recognises that NP vehemently denies making this comment. However after weighing all of the evidence the tribunal finds that it was made.

*"We'll have to do something about you"*

18.2 The difficulty with this comment is that the list of issues sets out that the date it was made was September 2016. However the claimant's witness statement makes it clear that she considers it was made around September 2015. The respondent's evidence addressed it as if it was September 2016 and they cannot be prejudiced by the error.

18.3 NP accepted that she may have said something similar but in 2016 around the move to the new building and her evidence was that it was not made in an intimidatory manner. The tribunal accepts NP's evidence. However as set out above it does not directly deal with the point. The tribunal finds that NP had no ill will towards the claimant. The tribunal finds that this comment is the sort of everyday work place comment that is made which notes that something must be done. The tribunal finds that the comment was made but was not said in an intimidatingly manner.

*Move to the claimant's own office between March 2016 and December 2016*

18.4 It is undisputed that the claimant worked in an individual office when the rest of the team worked in the open plan area;

18.5 The claimant agreed to the move and she believed that this was a reasonable solution to the effect of noise on her at the time;

18.6 everybody thought it was a short term solution but it ended up lasting for 9 months;

18.7 it lasted for so long because of complex multifactional delays in moving to the new building which were entirely unrelated to the claimant;

18.8 the claimant felt isolated in the office but she did not anticipate that she would feel that way at the time of her move and neither did the respondent;

18.9 the respondent did not intend to isolate the claimant by the move;

18.10 the respondent became aware of the claimant's feelings of isolation around September 2016 when the claimant informed NP.

*Between March 2016 and December 2016 the claimant was subject to excessive scrutiny and intimidation by NP and AB*

18.11 It was undisputed that AB asked a colleague why the claimant was in the side office. The tribunal finds that this was for reasonable management purposes: we accept AB's evidence that he had not been informed about the claimant's move to her own office in advance and he had legitimate professional interest in why a member of the team, of which he was a senior manager, had moved to an office. Further, AB's comment did not go beyond a simple inquiry and did not demonstrate excessive scrutiny/intimidation/monitoring or bullying;

18.12 The scrutiny, monitoring and intimidation alleged by the claimant amounted to reasonable work place behaviour which did not cross the threshold into something more. What the claimant identified were very limited actions or comments by NP or AB: they were not frequent and the nature of them was not inherently intimidatory or beyond reasonable work place behavior. Further, the tribunal finds that it is reasonable for AB as a senior manager to make some enquiries about his staff, their visitors (which included third parties such as patients' family members and solicitors) and work.

18.13 The claimant's evidence was that she was informed by other staff about monitoring and comments. The claimant's witnesses, except for VLS, could not identify having heard any comments themselves directly from NP or AB. GH's evidence was that a manager had gone into the claimant's room when she was in there with her to ask what they were doing. All DS could identify was one occasion when NP bent down to look into the claimant's office. VLS could only identify occasional comments. The tribunal finds that this is insufficient to establish excessive monitoring or intimidation of the claimant because it was applied to everybody in the team and it was not that frequent or oppressive in nature;

18.14 The tribunal accepts that some of the claimant's colleagues gossiped about AB and NP looking into her office and that this caused the claimant distress but the tribunal does not accept that the gossip had any substantial foundation;

18.15 The tribunal finds that AB would, because of his height at 6 foot 3 inches and the location of his desk, when looking around the office have looked into in the claimant's office at times and that he would have look at other colleagues at times. The open plan office was a reasonably closely packed working environment and it was almost impossible for him not to do so;

18.16 It was not disputed that NP had bent down to look under the frosting into the claimant's office. NP is relatively short and she would only have

had to bend slightly to do so. The claimant's witnesses who gave evidence on this topic could only identify one occasion when this happened and we find that it only happened once. Therefore it was not repeated and there are legitimate reasons why an individual might do this on one occasion;

18.17 There was no question at any time by any individual that there was any concern whatsoever about the claimant's work or her work ethic: to the contrary she was highly praised;

18.18 GH's evidence was that that NP micromanaged everyone which the tribunal accepts and indicates that there was no behaviour directed specifically at the claimant;

18.19 Therefore even taking the claimant's evidence at its highest (thereby accepting that the alleged comments were made by AB and NP and they looked into her office on occasion) in the wider context such comments and behavior cannot cross the threshold to become excessive monitoring or intimidation;

*The claimant was distressed and in tears on 15 December 2016*

18.20 It is not disputed this happened;

18.21 The tribunal prefers KC's account:

18.21.1 The claimant and two of her witnesses, GH and VLS, gave evidence about this event. Their accounts varied between each other as to who was there and what was said;

18.21.2 The claimant's oral evidence was different to that in her witness statement: in oral evidence she stated that she called KC into her office, told her she could not cope because of bullying/intimidation and KC told her that she would investigate. This is not supported by the claimant's own witness statement or that of her two witnesses. This undermines the credibility of the claimant's recall of events and that of her witnesses particularly GH who even the claimant does not identify as being present at that time;

18.21.3 We found KC's explanation that she was in a hurry to leave to pick up her children was a credible explanation as to why she went into the claimant's office briefly and then sent a colleague into assist so that she could depart. KC provided a detailed explanation about the events in the grievance document which was consistent with her oral evidence and witness statement. We find that the claimant only told KC that she could not cope, not that she could not cope because of bullying and intimidation.

18.21.4 In the circumstances we do not find it consistent or credible that KC would have said HR would have undertaken an investigation or something similar. Many people become upset at work, and for a whole manner of reasons, an outcome that there would be an investigation would be unusual and careful thought would have to be given before an investigation was implemented. It would be common for the claimant's consent to an investigation to be sought after the initial incident of distress. There was no evidence that this occurred which we find indicates that at no time was it discussed that an investigation would be implemented;

18.21.5 The claimant was struggling with hip pain at that time and it is reasonable that KC could have considered the claimant's distress related to that rather than work related matters.

18.22 Therefore the tribunal finds that KC was only aware that the claimant was distressed but not the reason for that distress. KC did not say that she would investigate or something similar. No investigation took place and there was no outcome to share with the claimant.

*Cancellation of 19 September 2017 meeting*

18.23 It is clear from the written email from KC to the claimant that the 19 September 2017 meeting was postponed not cancelled;

18.24 It was not disputed that on 19 September 2017 the claimant's TU representative PC met with KC;

18.25 We find that this was reasonable conduct by KC as there were good reasons to postpone:

18.25.1 The claimant's line manager was on holiday and needed to be involved;

18.25.2 KC sought advice from her own line manager;

18.25.3 The claimant's email of 18 September 2017 potentially raised concerns about KC herself and in those circumstances it was reasonable, if not good practice, for KC not to attend that meeting alone.

*19 September 2017 meeting between Ms Chopra and Ms Caton*

18.26 KC asked a question about the need for deaf awareness training. PC's statement does not set out that KC made a statement that the training was not needed instead that it was a question. KC denied making that comment at all. However the tribunal considers that as KC called the meeting to try to determine the parameters of the claimant's concerns it is likely that discussions strayed into some of the substance of the concerns raised by the claimant in her email of 18 September 2017 and in this context the comment was made;

18.27 KC made a comment about the claimant's use of a hearing loop but we do not accept that she made a comment about the claimant not using a "personal listener". We accept that these two items are the same thing but note that KC may not have been aware of this. PC's witness statement uses the term loop and not personal listener. We do not find that this was an accusation from KC towards the claimant;

*Giving the claimant no assurance that bullying and intimidatory behavior by AB and NP would not continue on her return to work and that the discrimination she had suffered would not cease*

18.28 It is not disputed that the claimant did not get an assurance that bullying or intimidatory behavior would not continue and we find that this was not required as such behavior did not occur. There was no explicit assurance that discrimination would cease.

19. This section sets out our findings on the issues raised in the Constructive Unfair Dismissal particulars:

*Between August 2015 until March 2016 the Claimant was required to work in the open plan office next to the noisy cabinets and printers*

19.1 The claimant was required to work in the open plan office. She had a fixed desk with her back to a noisy area which was filled with metal filing cabinets which were accessed frequently by team members and a printer. This was a disruptive environment for the claimant;

19.2 it was not disputed that this was a hot desk environment and other desks were available to the claimant. The claimant was asked if she had tried another desk and she said that she had not because none in the office was suitable. We accept this evidence;

*Comments in 2015 by NP detailed above*

19.3 NP's comments in 2015 were said;

*Failure to implement the 2015 DWP recommendations*

19.4 It is not disputed that the 2015 DWP recommendations were not carried out. NP should have been more proactive and tenacious in taking actions to ensure that they were. We accept that NP escalated the recommendation for the acoustic survey to directors and because of a turnover of directors the recommendations were not considered. However we also note that NP did not escalate to AB and this is just one step that was open to her when the process stalled. The tribunal also accepts that the failure to implement these recommendations had a significantly detrimental effect on the claimant: the noise she encountered was very disruptive and distressing to her;

*Excessive scrutiny/monitoring/intimidation by AB and NP*

19.5 Excessive scrutiny/monitoring or bullying did not happen though the claimant genuinely believed that she was subject to this behaviour;

*Placing the claimant in her own office in March 2016 made her feel isolated and she struggled to effectively communicate*

19.6 The claimant felt isolated in her own office separated from the team but it was not the respondent's intention to isolate her;

19.7 We do not accept that she struggled to communicate effectively in the side office. Colleagues could and did freely enter her office, she was involved in office lunches, colleagues included her in the tea run and the claimant was able to freely speak to colleagues and her team in the open plan office;

19.8 Further, these issues were resolved by January 2017 (when the claimant was off sick) or alternatively by the time of the claimant's return to work in September 2017. This is because the entire team had moved

offices and the claimant had been involved with and confirmed that she was comfortable with the location of her desk in the new building;

*7 June 2017 return to work meeting*

19.9 The historical difficulties the claimant had had because of a failure to adopt DWP recommendations were discussed;

19.10 It is not disputed the NP said that she would work closely with HR;

19.11 We do not accept that NP told the claimant that HR would engage or contact her prior to her intended return to work;

19.12 We do not find that the claimant raised the issues of bullying/intimidation in the June 2017 meeting because:

19.12.1 The letter from NP following the meeting does not record any mention of these issues though it does record other issues such as the failure to implement the DWP recommendations;

19.12.2 The claimant did not respond to this letter to state that they discussed bullying/intimidation or that she expected or wanted to know what steps would be taken to investigate it. The claimant's given reason for not taking any further action was because she chose to focus on her hip operation and we did not find this reason compelling in light of the documentary evidence;

19.12.3 The claimant's oral evidence was that she was comfortable with her location in the new office and that she did not have concerns about bullying/intimidation continuing when she returned because she would not be in a side office which she believed had created the problems. We accepted this evidence and record that the claimant's oral evidence was inconsistent with this claim.

*On 18 September 2017 KC cancelled a meeting scheduled with the claimant on 19 September 2019. The alleged purpose of the meeting was for the claimant to hear the outcome of a HR investigation into complaints the claimant had made on 15 December 2016 against AB and NP*

19.13 As set out above we find that the meeting was postponed and that there were reasonable objective reasons on KC's part for doing so;

19.14 We do not accept that it had been communicated to the claimant that the purpose of the meeting was to hear the outcome of a HR investigation. KC's evidence was that there was no investigation. NP's evidence was that there was no investigation. The tribunal does not consider that an individual would promise something that they knew did not exist in these circumstances;

19.15 The claimant's evidence was clear that she did not want to raise a formal grievance while she was employed because she feared reprisals. It is not reasonable for the claimant to have thought that there was an investigation into bullying/intimidation allegations (which had to be informal because it was not a grievance) given that she had not been consulted about the parameters of an investigation and it was not clarified with her what her complaints were or what the investigation would be;

19.16 We accept that there was no assurance that the monitoring/intimidation/bullying would be dealt with but we have found there was no bullying.

*The 19 September 2017 meeting was intended to discuss her needs arising from her disability and ensure she did not suffer any further discrimination.*

19.17 We find that around 19 September 2017 the claimant was not seeking implementation of the 2015 DWP recommendations because the team had moved which meant that the recommendations (except the training recommendation) related to a different location and had become obsolete in large part;

19.18 The tribunal accepts that the claimant was comfortable with the location of her desk in September 2017. Her evidence was not that her satisfaction was conditional on the DWP recommendations being implemented and we find that it was not;

19.19 NP's notes of the return to work meeting with the claimant which took place on 12 September 2017 recorded that the claimant would assess her position and if it was not conducive a new DWP assessment would be required. We accept this evidence and consider that this was a reasonable way forward and the claimant did not object to it;

*19 September 2017 KC meeting with PC*

19.20 See findings above;

19.21 C was aware in advance that KC would meet with PC. C's email to KC set out that PC was authorized to act for her. The claimant's email was clear on this point even though the tribunal accepts that the claimant had only meant her authorization to extend to access to her records this was not how the authorization would be read on a normal reading;

*Comments made by KC in the 19 September 2017 meeting with PC*

19.22 See findings above.

**The law**

*Constructive dismissal*

20. Unfair Constructive Dismissal pursuant to section 95(1)(c) of the Employment Rights Act 1996;

20.1 Did the Respondent commit an act or series of act which cumulatively amounted to a breach of the implied term of trust and confidence?

20.1.1 If there was a series of cumulative acts, what was the last straw?
20.1.2 Did the Claimant resign in response to that breach?
20.1.3 Did the Claimant delay too long before resigning?

20.2 Was there a fair reason for the dismissal?

21. The Court of Appeal provided helpful guidance on the last straw doctrine in *Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978, [2018] IRLR 833* when it approved the comments made by Dyson LJ in *Omilaju v Waltham Forest London Borough Council [2005] EWCA Civ 1493*:

> *19. The quality that the final straw must have is that it should be an act in a series whose cumulative effect is to amount to a breach of the implied term. I do not use the phrase "an act in a series" in a precise or technical sense. The act does not have to be of the same character as the earlier acts. Its essential quality is that, when taken in conjunction with the earlier acts on which the employee relies, it amounts to a breach of the implied term of trust and confidence. It must contribute something to that breach, although what it adds may be relatively insignificant.*
>
> *20. I see no need to characterise the final straw as "unreasonable" or "blameworthy" conduct. It may be true that an act which is the last in a series of acts which, taken together, amounts to a breach of the implied term of trust and confidence will usually be unreasonable and, perhaps, even blameworthy. But, viewed in isolation, the final straw may not always be unreasonable, still less blameworthy. Nor do I see any reason why it should be. The only question is whether the final straw is the last in a series of acts or incidents which cumulatively amount to a repudiation of the contract by the employer. The last straw must contribute, however slightly, to the breach of the implied term of trust and confidence. Some unreasonable behaviour may be so unrelated to the obligation of trust and confidence that it lacks the essential quality to which I have referred.*

**Decision and conclusions**

*Constructive Dismissal*

22. We accept that in 2015 and 2016, when the claimant was located in the open plan office, the effects of the noisy environment had a severe detrimental effect on her because of her hearing loss and the need to wear hearing aids.

23. Moving the claimant to an office of her own moved her away from the noise but created other problems for her namely her feelings of isolation and her genuine belief that she was subject to excessive scrutiny and monitoring. During the period from March 2016 until September 2016 the respondent was not aware of the claimant's feelings of isolation and the impact it had on her.

24. The respondent failed to implement the 2015 DWP assessment without good reason. They could and should have done much more. The impact of these failures on the claimant was severe and for a prolonged period of time. Ultimately these failures led her to questioning the respondent's understanding of her disability and its commitment to enabling her to participate in the workforce.

25. The claimant took extended sick leave from December 2016 until 25 September 2017. This means that there is a substantial gap between these events in 2015/2016 and the events surrounding her return.

26. However, by early 2017 the respondent had moved offices and had liaised with the claimant about the location of her desk. The claimant had communicated to the respondent that she was satisfied with its location.

27. As we found that no HR investigation was promised to the claimant the claim that the failure to communicate its outcome her cannot be part of a chain of events resulting in a final straw. It did not happen and we do not consider that the claimant could reasonable have believed it was promised.

28. On the findings of fact we have found there were no actions or omissions, save for the failure to progress the training of colleagues, by the respondent which could arguably form part of the claimant's constructive dismissal claim between December 2016 and September 2017.

29. The events relied on by the claimant in September 2017 were:

    29.1 The alleged cancellation of the meeting scheduled for 19 September 2017 by KC; and

    29.2 The comments PC reported to her that KC had said in the meeting on 19 September 2017.

30. As set out above the 19 September 2017 meeting was not cancelled: it was postponed and the reasons for postponement were reasonable. The claimant's resignation letter dated 29 September 2017 only mentions the rescheduling of the meeting it makes no mention of KC's comments. The Tribunal finds that postponing and rescheduling the meeting is a trivial act such that it cannot be a breach of the term of trust and confidence. It is trivial because a new meeting with NP and KC had been arranged for 11 October 2019 (and another meeting had been scheduled for the claimant to meet the director). The rearranged meeting was to address the claimant's concerns set out in a letter dated 14 September 2017. Re-arranging the meeting indicated that the respondent was seeking to address her concerns. Resigning before having that meeting was premature because at that time she did not know what the respondent's actions would be and whether or not they would be a genuine and meaningful resolution. At the date of her resignation the claimant knew of the rescheduled date.

31. This means that the only event left which could possibly be relied on as the last straw is KC's comments as reported to the claimant by PC. These were comments reported to the claimant by PC from a meeting at which she was not present and therefore she could not be certain of the tone or context. Further, the claimant's resignation letter makes no mention of these comments and we find that at the time of her resignation they were not in her mind and therefore the claimant did not resign in response to them.

32. The Tribunal recognizes that it is established law that the final straw does not need to be an unreasonable or significant event. Case law also establishes that a final straw can, in effect, revive preceding events.

33. In addition the tribunal considered the significant time gap between the 2015/2016 events and 29 September 2017. We find that this time gap (and the claimant's failure to take any action about the issues earlier) establishes that the events in September 2017 were not part of a series of acts which cumulatively establish that the respondent breached the implied term of trust and confidence.

34. We find that all these factors indicate that when assessed objectively the respondent had not breached the implied term of trust and confidence on 29 September 2017. Therefore the claimant's constructive dismissal claim must fail.

*Failure to make reasonable adjustments*

35. The failure to make reasonable adjustments claim is out of time.

*Discrimination arising from disability*

36. The discrimination arising from disability claim is out of time.

_____
Employment Judge Bartlett

Date: …9 October 2019……..

Sent to the parties on: .....

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For the Tribunal Office