Case Numbers: 3201628/2018 &
3201987/2018

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EMPLOYMENT TRIBUNALS

Claimant: **Ms M Dworak**

Respondent: **RyanAir Ltd**

Heard at: **East London Hearing Centre**

On: **2 to 4 July 2019 & 5 July 2019 (in chambers)**

Before: **Employment Judge G Tobin**
Members: **Mrs A Berry**
Mr P Quinn

Representation
Claimant: Mrs M Inkin (Lay Representative)
Respondent: Ms L Bell (Counsel)

RESERVED JUDGMENT

The unanimous Judgment of the Employment Tribunal is that:-

(1) The claimant was a disabled person within the meaning of section 6 Equality Act 2010 from 2 October 2017 until the termination of her employment on 9 August 2018.

(2) The claimant was discriminated against by the respondent in breach of sections 20 and 21 Equality Act 2010.

(3) The claimant was constructively dismissed by the respondent, both in breach of section 94 of the Employment Rights Act 1996 and also as a consequence of the respondent's ongoing discriminatory treatment.

REASONS

A summary of the relevant law

Disability

1 Section 4 of the Equality Act 2010 ("EqA") provides for special protection against discrimination if a person has a certain "protected" characteristic. Disability is listed as one of those protected characteristics.

2 According to section 6 EqA:

> (1) A person (P) has a disability if –
>
> (a) P has a physical or mental impairment, and
>
> (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.
>
> (2) A reference to a disabled person is a reference to a person who has a disability.
>
> (4) In relation to the protected characteristic of disability –
>
> (a) a reference to a person who has a particular protected characteristic is a reference to a person who has a particular disability;
>
> (b) a reference to persons who share a protected characteristic is a reference to persons who have the same disability."

3 A person has a disability therefore if she has:

- a physical or mental impairment which has
- a substantial and
- long-term adverse effect on her abilities to carry out normal day-to-day activities.

4 The Tribunal must assess whether the claimant had a disability *at the time of the alleged discriminatory act(s)* rather than at the hearing and this must be on the basis of the evidence available at that time: *Cruickshank v VAW Motorcast Ltd [2002] IRLR 24 EAT*.

5 In this case there was no dispute in respect of the claimant's impairment nor on the adverse effect on her normal day-to-day activities. The respondent disputed the long-term nature of the claimant's condition, specifically, whether, at the relevant time, it was perceived that the claimant's condition was long-term.

6 Under schedule 1, paragraph 2 of the EqA the effect of an impairment is long-term if it has lasted for at least 12 months, if it is likely to last for at least 12 months or if it is likely to last for the rest of the life of the person affected (if that is less than 12 months). In *SCA Packaging Ltd v Boyle [2009] UKHL 37* the House of Lords held that the word "likely" should be interpreted as meaning "could well happen" rather than "more likely than not". So, a lower standard of proof is required. The long-term question should be answered as at the date of the alleged discriminatory acts and not with the benefit of hindsight: *Richmond Adult Community College v McDougall* [2008] ICR 431.

7 The EqA states that if an impairment has a substantial adverse effect on a person's ability to carry out normal day-to-day activities but that effect ceases, the substantial effect is treated as continuing if it is likely to recur. Conditions with effects that recur only sporadically or for short periods can still qualify as impairments for the purposes of the act in respect of the meaning of "long-term": schedule 1 paragraph 2(2)

EqA.

Reasonable adjustments

8 An employer will discriminate against a disabled person if he fails (without justification) to make reasonable adjustments in circumstances where there is a duty to do so. Ss 20 and 21 EqA provides as follows:

> **20 Duty to make adjustments**
>
> (1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.
>
> (2) The duty comprises the following three requirements.
>
> (3) The first requirement is a 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.
>
> (4) The second requirement is a requirement, where a physical feature 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.
>
> (5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put 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 provide the auxiliary aid.
>
> (6) Where the first or third requirement relates to the provision of information, the steps which it is reasonable for A to have to take include steps for ensuring that in the circumstances concerned the information is provided in an accessible format.
>
> (7) A person (A) who is subject to a duty to make reasonable adjustments is not (subject to express provision to the contrary) entitled to require a disabled person, in relation to whom A is required to comply with the duty, to pay to any extent A's costs of complying with the duty.
>
> (8) A reference in section 21 or 22 or an applicable Schedule to the first, second or third requirement is to be construed in accordance with this section.
>
> (9) In relation to the second requirement, a reference in this section or an applicable Schedule to avoiding a substantial disadvantage includes a reference to –
>
> (a) removing the physical feature in question,
>
> (b) altering it, or
>
> (c) providing a reasonable means of avoiding it.
>
> (10) A reference in this section, section 21 or 22 or an applicable Schedule (apart from paragraphs 2 to 4 of Schedule 4) to a physical feature is a reference to –
>
> (a) a feature arising from the design or construction of a building,
>
> (b) a feature of an approach to, exit from or access to a building,
>
> (c) a fixture or fitting, or furniture, furnishings, materials, equipment or other chattels, in or on premises, or
>
> (d) any other physical element or quality.
>
> (11) A reference in this section, section 21 or 22 or an applicable Schedule to an auxiliary aid includes a reference to an auxiliary service.

(12) A reference in this section or an applicable Schedule to chattels is to be read, in relation to Scotland, as a reference to moveable property.

(13) The applicable Schedule is, in relation to the Part of this Act specified in the first column of the Table, the Schedule specified in the second column.

21 Failure to comply with duty

(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.

(3) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.

9 Under ss 20 and 21 EqA an employer can be liable for failing to take positive steps to help overcome the disadvantages resulting from a person's disability. An employer is under a duty to make reasonable adjustments where a disabled person is placed under a substantial disadvantage in comparison with non-disabled people.

10 The Court of Appeal in *Cave v Goodwin and another [2001] EWCA Civ 391* stressed that the duty does not arise where the disabled person is not placed at a substantial disadvantage. The acts define substantial as more than minor or trivial: s212 EqA.

11 There has been conflicting case law on whether an employer's failure to make an assessment of a disabled employee is, of itself, a failure to make a reasonable adjustment, see for example *Mid-Staffordshire General Hospitals NHS Trust v Cambridge [2003] IRLR 566*. However, in *Tarbuck v Sainsbury's Supermarket Limited [2006] IRLR 664* the Employment Appeal Tribunal ("EAT") said it was not. That approach was confirmed again by the EAT in *Spence v Intype Libra Limited UKEAT/ 0617/06* where S sought to argue on appeal that *Tarbuck* had been wrongly decided or could be distinguished on the facts. If any doubt remained, in *Scottish and Southern Energy plc v MacKay UKEAT/0075/06* the EAT was emphatic that the *Tarbuck* line ought to be followed.

12 The first requirement – s20(3) EqA – covers changing the way things are done (such as changing a practice). The second requirement – s20(4) EqA – covers making changes to the built environment (such as providing access to a building) and the third – s20(5) EqA – covers providing auxiliary aids and services (e.g. special computer software). In this instance, the claimant's case focused on s20(3) EqA.

13 S21 EqA makes clear that a failure to comply with any one of the reasonable adjustments requirement amounts to discrimination against a disabled person to whom that duty is owed. The EAT held in *Environment Agency v Rowan* UK EAT/0060/07 that the Tribunal must identify:

(a) the provision, criterion or practice ("PCP"), or the physical feature, or the auxiliary aid not supplied;

(b) the identity of non-disabled comparators (where appropriate); and

(c) the nature and extent of the substantial disadvantage suffered by the claimant.

14 This approach was endorsed by the Court of Appeal in *Newham Sixth Form College v Sanders [2014] EWCA Civ 734*.

Knowledge of disability

15 The duty in s20 EqA is not to make adjustments to facilitate the employment of disabled people generally. The duty arises only in relation to particular identifiable individuals. Sch 8, Pt 3, para 20 EqA states that an employer is not subject to a duty to make reasonable adjustments if the employer does not know, and could not reasonably be expected to know, that a person has (or has had) a disability and is likely to be placed at a substantial disadvantage. In *DWP v Allan UKEAT/0242/09* the EAT held that, to ascertain whether this exemption applies, two questions arise:

(1) Did the employer know both that the employee was disabled and that her disability was liable to affect her in the manner set out in s20 EqA? If the answer is no, then the second question is:

(2) Ought the employer to have known both that the employee was disabled and that her disability was liable to affect her in the manner set out in s20 EqA? If the answer to this question is also no, then there is no duty to make reasonable adjustments.

16 The Equality & Human Rights Commission published a Code of Practice on Employment, which came into force on 6 April 2011. This Code of Practice provides guidance to interpreting the EqA and ought to be followed. The Code of Practice states that:

> an employer must do all [it] can reasonably be expected to do to find out if a worker has a disability … [and this is] an objective assessment.

Constructive dismissal

17 S95(1) of the Employment Rights Act 1996 ("ERA") provides that an employee is dismissed by her employer for the purposes of claiming unfair dismissal if:

> (c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.

18 An employee may only terminate her contract of employment without notice if the employee has committed a fundamental breach of contract. According to Lord Denning MR:

> If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed. *Western Excavating (ECC) Ltd v Sharp [1978] ICR 221.*

19 In *Courtaulds Northern Textile Ltd v Andrew [1979] IRLR 84 the EAT* held that a term is to be implied into all contracts of employment stating that employers will not, without reasonable or proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee.

20 Brown-Wilkinson J in *Woods v WM Car Services (Peterborough) Ltd [1981] ICR 666 (EAT)* described how a breach of this implied term might arise:

> To constitute a breach of this implied term it is not necessary to show that the employer intended any repudiation of the contract: the tribunal's function is to look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it.

21 *Western Excavating* established that a *serious* breach is required. In *Hilton v Shiner [2001] IRLR 727* the EAT confirmed that the employer's conduct must be without reasonable and proper cause. According to *Morrow v Safeway Stores [2002] IRLR 9* if a breach of mutual trust and confidence has been found, then this implied term is so fundamental to the workings of the contract that its breach automatically constitutes a repudiation – a Tribunal cannot conclude that there was such a breach but, on the facts, hold that it was not serious. In *Greenhof v Barnsley Metropolitan Borough Council [2006] IRLR 98*, the EAT determined that a serious failure to make a reasonable adjustment would almost inevitably amount to a breach of the implied term of trust and confidence, so entitling the employee to resign and claim constructive dismissal.

22 An employee must accept or rely upon the repudiate of contract and leave work within a reasonable period following the breach to avoid being taken as having affirmed the contract and waved the breach. In *Bunning v GT Bunning & Sons Ltd [2005) EWCA Civ 293*, the employer had breached the claimant's contract when it failed to carry out adequate risk assessments when B said she was pregnant. However, the court of appeal held that she waved the breach when she accepted an alternative job with the employer.

23 How long is too long is a question of fact for the Tribunal. In *Munchkins Restaurant Ltd & Another v Karmazyn & Others UKEAT/0359/09* the waitresses in question put up with the employers conduct the several years. The Tribunal took into account: the claimants were migrant workers with no certainty of continued employment, save at the restaurant; they were constrained by financial, and in some cases, parental pressure; they had the fear that they might not obtain other work; they had the comfort of one manager acting as a cushion until she left; and that therefore, the claimants managed to find a balance between conduct which was unwelcome and unlawful and the advantages which their job gave them.

24 Mere delay by itself (unaccompanied by any express or implied affirmation of contract; does not constitute affirmation of the contract, but if it is prolonged it may be evidence of an implied affirmation. In *Fereday V South Staffordshire NHS Primary Care Trust UKEAT/0513/10* the claimant invoked a grievance procedure and then resigned 6 weeks after the grievance decision. The EAT determined that this was too long

because the claimant was expecting or requiring the respondent to perform its part of the contract of employment by paying the claimant her sick pay (which it did). In *Wess v Science Museum Group UK EAT/0120/14*, the EAT said that delay alone might be neutral, but where terms had an immediate impact, affirmation was more likely to be found. The crucial question is, whether in all the circumstances, the employee's conduct had demonstrated an intention to continue the contract: see *Chindove v Morrisons Supermarkets plc UKEAT/0201/13 and UKEAT/0043/14* and *Adjei-Frempong v Howard Frank Limited EAT/0044/15*.

The witnesses

25 The claimant gave evidence and confirmed her statement. The claimant was asked various questions by the respondent's counsel and by the Tribunal. The claimant is Polish, and her English was not, in the Tribunal's opinion, fluent. Employment Tribunal hearings are stressful events to witnesses and, in particular, to the parties of a claim. The Employment Judge mooted whether the claimant needed a translator during the hearing and the claimant and her representative both confirmed that she understood the proceedings and preferred to proceed without the aid of a translator. Consequently, it took some time for the claimant to proceed through her evidence. It also took some assistance from the Tribunal to clarify certain aspects of the claimant's evidence. The Tribunal found the claimant to be a credible witness. Although at times she did not give straightforward answers to straightforward questions, the Tribunal ascribed this to a language difficulty, and we were able to solicit the appropriate evidence. We did not find the claimant to be evasive.

26 Ms Bell emphasised that the claimant had not disclosed the full aspects of her medical position to her employer. She indicated that this undermined the credibility of the claimant's evidence. In particular, Ms Bell contended that the claimant had disclosed medical evidence, reports etc, from Polish medical practitioners which portrayed her medical condition in a more favourable light, whereas she held back reports, etc from her British NHS practitioners which cast her medical condition in a less favourable manner. The Tribunal regarded this point as overstated by the respondent and, in any event, did not see this as undermining the claimant's evidence. The claimant was confronted with what she initially saw to be a life-threatening condition. She had a brain tumour. This came as a surprise to her in July 2017. Under further investigation her Polish practitioners ascribed this as a benign tumour which could be removed and potentially lead to a full recovery. The claimant grasped at this prognosis. This is the medical evidence that she disclosed to her employers. The NHS practitioners who subsequently saw and reviewed the claimant assessed her condition as more chronic than acute, in that her condition may not have warranted invasive surgery and could be treated otherwise. This would have the effect of lengthening her potential disability; prolonging some ongoing symptoms and disrupting her life. It was entirely understandable to the Tribunal that the claimant clung to the more positive assessment of her Polish medical practitioners.

27 We were also aware that the claimant was concerned about her ongoing employment. Accordingly, she may also have been motivated by fear of losing her job. Again, it is entirely credible and consistent that she relayed information to her employer that cast her medical condition in a more positive light. In any event, it was an ongoing complaint of the claimant that her employer had not asked her for the full evidence in

respect of her medical condition. The claimant's position was that if the employer had asked her for her full medical records then she would have disclosed this. Indeed, she did when she was asked to do so. First in a redacted version and then, when the respondent was not satisfied with the redacted version, in a complete and unredacted version within 5 days. Given that various respondent's officials failed to make anything but rudimentary enquiries from the claimant as to her medical condition, we resoundingly reject the assertion that the claimant cast her illness in a misleading light.

28 In respect of the respondent's witnesses we heard from Ms Eimear Joyce, HR Officer; Ms Joanne Mullally, Deputy Cabin Services Manager at Stansted, Luton and Southend bases and Mr Thomas McLoughlin, European Base Manager. Whilst we do not believe that Ms Joyce and Mr McLoughlin attempted to deliberately mislead the Tribunal, we did, however, have concerns in respect of their evidence. The credibility of the respondent's witnesses – Ms Joyce and Mr McLoughlin specifically – was undermined by their insistence at the hearing that Mr McLoughlin recognised the claimant as being a disabled person following her grievance hearing account of her illness. The Response to the first claim is very clear at 1.16: "Mr McLoughlin concluded that there was no evidence to support the claimant's allegations". The claimant had specifically raised the point in her grievance that she was a disabled person and also that the respondent had failed in their obligations under the EqA. The grievance outcome letter did not address this point. So, the Respondent's position at 11 April 2018 was that the claimant did not have a disability. Furthermore, in respect of the second claim, the Response of 13 November 2018 does not concede that the claimant was a disabled person and it makes no contention that the respondent accepted disability sometime around February or March 2018.

29 It was not clear when Ms Joyce became directly involved in the claimant's case but her first contact with the claimant was end of September 2018. She was not involved from 2 January 2018 although she became involved with the claimant's case again after 1 April 2018. She did not state at any time in her resumed dealings with the claimant that she was recognised as a disabled person. Mr McLoughlin did not state at any stage prior to preparing for the hearing that the claimant was disabled. The contention of both that the respondent recognised that the claimant was disabled at the grievance hearing of 13 March 2018 is misleading and undermined the credibility of both of these witnesses.

The Tribunal's findings of fact

30 We (i.e. the Tribunal) made findings in respect of the following facts. We did not resolve all of the disputes between the claimant and the respondent, merely those matters which we regarded as appropriate to determining the issues of this case. In determining the following facts, we placed particular reliance upon contemporaneous or near contemporaneous correspondence, emails and documents. We approached the witness statements with care because this evidence was prepared some months after the events in question and for the purposes of the hearing. Where we have made findings of fact and where we consider that this is appropriate, we have also set out the basis for making such findings.

31 The claimant commenced work with the respondent in 2004 as an agency worker. On 1 July 2006 the claimant became an employee with the respondent at

Stansted Airport. She was employed as a member of the cabin crew. With effect from 1 April 2013 the claimant was promoted to a Customer Services Supervisor which is a senior flight attendant.

32 From around 2015 the claimant began to experience severe headaches. She said, and we accept, that she also started to experience what she described as short-term absence episodes with disturbed consciousness. The claimant said that she did not faint but that she was unable to talk and struggled for a few minutes to form coherent thoughts and to speak in sentences. The claimant said that these episodes got progressively worse and she started to experience attacks for up to 5-days at a time more than 3-times a day. The claimant did not report these episodes to the respondent at the time.

33 By the summer of 2017 the claimant had become sufficiently worried to visit a medical specialist in Poland. For entirely understandable reasons (due to language communication, the thoroughness of Polish medical practitioners, waiting times and costs) the claimant preferred to see a Polish specialist. She returned to her family home in Poland on 4 July 2017. Upon arrival she experienced another seizure and was taken by her brother straight to the accident and emergency department of the local hospital. The doctor referred her to the neurology department and the medical authorities were sufficiently concerned that she was admitted to hospital for a week.

34 On 6 July 2017 the claimant was provided with a short-term sick note. She was still on holiday at this time. As it was clear that she would not be able to return to work on 11 July 2017, the claimant posted a sickness certificate to her colleague Mr Krzysztof Rakowski to pass it on to the respondent.

35 On 10 July 2017 the claimant informed the respondent that she would be absent until 17 July 2017. The claimant reported her sickness absence on 10 July 2017 while she was on annual leave as she was due to return to work the following day.

36 On 13 July 2017 the claimant was diagnosed with suffering from benign neoplasm of the brain, which was a non-cancerous brain tumour.

37 The respondent's officials made various attempts to contact the claimant whilst she was in hospital. The claimant said, and we accept, that this was in respect of an outstanding incident report relating to a passenger being scalded by coffee on a recent flight. The claimant was not directly involved in that incident and she said another member of staff had been tasked with completing the appropriate report form. Nevertheless, the claimant felt that she was being hassled in respect of this report while she was sick (and also initially on holiday) and relayed this to her employers.

38 On 13 July 2017 the claimant had a telephone conversation with a work colleague Ms Karzyna Falkowska (described as either a Deputy Base Supervisor or a Flying Supervisor). The claimant was certain that she spoke to Ms Falkowska because she knew Ms Falkowska and the conversation that they had was in Polish (this being both the claimant's and Ms Falkowska's first language). The respondent adduced a file note which identified Ms Holly Dexter, a Base Supervisor, as speaking to the claimant and the note was signed by Ms Dexter. We have not had the benefit of hearing from Ms Dexter and we accept the evidence of the claimant that it was not Ms Dexter that

she spoke to. In any event, the claimant accepted that the note of the meeting reflected a reasonably accurate account of the telephone conversation. In particular, the note identifies that the claimant was unable to submit the coffee-scalding report as she was undergoing medical treatments and scans. The note went on to say:

> Margita advised that she had scans which had identified a tumour on her brain which she was waiting to receive an update on what the next stage of treatment were and what the exact diagnosis was …
>
> I advised Margita I would inform the safety officer of the information she had provided as the safety officer were awaiting details in the safety office required.

39 The claimant said that Ms Falkowska did not ask questions about her medical condition as though she was not interested in it. There is no evidence that Ms Falkowska informed the safety officer about the claimant's medical condition, or that the safety officer became involved in the claimant's case. From the documents available to us we trace no involvement from the respondent's safety officer. It therefore seems more likely than not that the respondent's safety officer was only concerned with the coffee-scalding incident and not the claimant's illness.

40 The Code of Practice mentioned in paragraph 16 above confers a positive obligation upon the respondent to make reasonable enquiries from the claimant with a view to ascertaining whether she has a disability and whether a duty to make adjustments had been triggered. Although Ms Falkowska was the claimant's work colleague and may well have been at a similar level of seniority, Ms Falkowska was a supervisor and had telephoned the claimant in a supervisory capacity to chase-up an outstanding report. Ms Falkowska made no enquiries other than recording the claimant's report that she had a brain tumour and the claimant was awaiting further information. Ms Falkowska made no enquiries about any antecedents, about what had caused the hospital admission or about the claimant's current health. Ms Falkowska's apparent lack of concern or empathy is surprising; however, of more relevance is her remarkable lack of curiosity. There is no evidence that Ms Falkowska (or Ms Dexter who made the file note) suggested HR make further enquiries. We find that had Ms Falkowska (or Ms Dexter or HR) made appropriate enquiries at that stage then the respondent would have come to the conclusion that the claimant was a disabled person, pursuant to s6 EqA.

41 The claimant submitted a succession of sick notes throughout July and August 2017. On 28 September 2017 Ms Joyce (HR Officer) telephoned the claimant. At this point the claimant was on a certified sick leave anticipated to last until the 6 October 2017, which was almost 3-months of sickness absence. Ms Joyce described this telephone call to be the "first welfare" call.

42 The claimant described this telephone conversation as being brief lasting around 5 minutes. The claimant advised Ms Joyce that she had recently been diagnosed with a neurological issue whereby she had a benign tumour to her left temple lobe. As with Ms Falkowska, there was no significant engagement from Ms Joyce during this telephone conference although she recorded accurately what the claimant said to her. Significantly, there were no discussions on how long the claimant's condition might have gone on for or on the possible recovery time for the claimant's surgery.

43 On 2 October 2017 the claimant's brother emailed Ms Joyce to advise her that the claimant had been taken back into hospital in Poland again. The claimant's brother also provided Ms Joyce with the claimant's original hospital discharge summery, dated 13 July 2017, which gave a diagnosis of "benign neoplasm of brain supratentorial-Tumour in the left temporal lobe, structure of canunas malformation". It also gave a diagnosis of "other epilepsy". The hospital discharge summary gave very detailed medical information. The claimant's brother also provided a copy of the claimant's consultation of 28 September 2017 with Dr Pawel Tabakow (neurologist and chief of the Department of Neurosurgery at Wroclaw Medical University). In the consultation note it clearly identified:

> There is a history of recurrent temporal seizures for several years, confirmed in an EEG study … The surgery has to be completed in a relatively short period – within the next two to three months, because of recurrent seizures …

Ms Joyce referred to these documents in her statement and confirmed in her evidence that she had read these medical records. It is at this point that the Tribunal determine that the respondent had actual knowledge (i.e. beyond the previous constructive knowledge of Ms Falkowska) that the claimant was a disabled person within the meaning of s6 EqA.

44 On 25 October 2017 a further telephone conversation took place between Ms Joyce and the claimant. Ms Joyce described this as the second welfare call. At this stage the claimant was off sick for almost 4-months. The claimant advised Ms Joyce that she wanted to have her surgery in Poland where she would have the support of her family during recovery. The claimant also advised Ms Joyce that her tumour was not life-threatening therefore she was no longer on the fast-track list for surgery. The claimant said that because of this she could be waiting for up to 6 further weeks for surgery.

45 The claimant asked Ms Joyce if she could have a phased return to work to undertake ground duties whilst she waited for her surgery and she asked if it was possible to return to work even before her current doctor's certificate ended. Ms Joyce informed the claimant that as she was medically certified unfit for work (which we take to mean flight attendant work) that the company would not bring her back to work when she was certified unfit to do so.

46 On 27 October 2017 Ms Joyce emailed Ms Joanne Mullally (Deputy Cabin Services Manager) in respect of arranging a welfare meeting. Ms Joyce noted that the claimant:

> … has a benign brain tumour and is awaiting surgery, however, she is no longer on the fast track as it is not life threatening therefore she could be waiting for some time. Could we arrange a welfare meeting with her as she has requested ground duties (I know this is not an option and explained this to her)?

47 Ms Joyce schedule a face-to-face welfare meeting for 1 November 2017. Ms Joyce did not attend this meeting, a HR colleague, Ms Sharon McAleer, attended on Ms Joyce's behalf. The claimant attended the meeting with her colleague Mr Rakowski. The claimant informed the respondent's representatives that she had been suffering with headaches for over 2-years and that these headaches occurred on the same area of her head. This information was consistent with the report/summary of Dr Tabowski of 28 September 2017, which Ms Joyce said she had previously read.

48 The claimant again asked if she could return to work, completing ground duties only. The claimant brought to this meeting a statement of fitness to work from her (British) General Practitioner. This statement was dated 31 October 2017 and referred to the claimant's medical condition as an intercranial tumour. The note said that the claimant may be fit for work taking into account the following advice:

- a phased return to work;
- altered hours; and
- amended duties.

The fitness to work certificate was dated to last for 2-months up to 31 December 2017. It was at least at this point that the respondent had a duty to make reasonable adjustments, specifically to consider the claimant's request and facilitate such return to work which would be reasonable in the circumstances.

49 Notwithstanding the very clear certificate from the claimant's doctor stating that the claimant was fit to return to work, Ms Mullally advised the claimant to focus on her health and recovery and that Ms McAleer "would look into her request once her doctor has advised she was fit to return to work". It was at this point the Tribunal determine that the claimant was fit to return to work on modified duties.

50 On 14 November 2017 the claimant wrote to Ms Joyce:

> I would like to ask you to look into my case in connection with my question (for possibility of any ground/amended duties for me) which I have introduced on my welfare meeting on 1 November at STN Airport. That meeting has finished with words of HR officer Sharon: Margita we and Joanne will look for any job for you", what I really appreciate.
> But it has been two weeks already and nobody has contacted me yet with either positive or negative information. Your silence is causing stress and a bit anxiety in the time already not easy and without problems for me.

51 On 15 November 2017 Ms Joyce responded to the claimant's email by letter. Her letter recognised that the claimant had advised at the meeting on 1 November 2017 that she had been suffering with headaches for approximately 2-years which were caused by a leaking vein in her brain.

52 Ms Joyce also stated:

> I am aware that during the meeting on [1] Nov, you requested to return to work to operate only ground duties. As I am sure you are aware, the position of a Base Supervisor STN is currently advertised, which we are happy for you to apply for, however please be advised that this role will require you to be able to fly as well as operate Base Supervisor ground duties. Unfortunately, there are no further ground duties positions available in Stansted base at this time.

53 It is clear to the Tribunal at this stage that the claimant knew of at least 1 designated position that was available which she could undertake, with appropriate modification.

54 On 11 December 2017 the claimant wrote again to Ms Joyce:

> I am delighted to advise you I have been diagnosed as fit for work for all and any ground duties – flying is excluded at this present time … My current sickness certificate expires on 31.12.2017. I would then present myself for work with a certificate confirming above details."

There is no response to this letter in the bundle of evidence provided. Ms Mullally and Ms Eimear corresponded between themselves about responding to this email. Ms Joyce forwarded this email for Ms McAleer to deal with. There is no evidence that Ms McAleer did anything further and we accept the claimant's evidence that there was no response from her employer.

55 Such was the claimant's concern that her employers had done nothing to engage with facilitating her return to work on modified duties that the claimant took matters into her own hands. The claimant wrote again to Ms Joyce on 29 December 2017 saying:

> My sickness certificate expires on 31 December 2017. I will then present myself for work on 3 January 2018 after my days off.
> I am fit for any type of work that currently excludes flying, the neurosurgeon has endorsed this and advise this would even help my recovery.

56 On 2 January 2018, the claimant wrote to the respondent again emphasising her desire to return to work. Around this time Ms McAleer replaced Ms Joyce in dealing with the claimant's case. This was an opportunity for a separate HR practitioner to review the claimant's case afresh and reassess the respondent's approach. There is no evidence that such a review or reassessment of the respondence stance was undertaken so this opportunity was missed. Ms McAleer continued in a similar vein as Ms Joyce.

57 The day that the claimant was due to return to work, i.e. 3 January 2018, she received a telephone call from Ms McAleer. Ms McAleer advised the claimant that there were no ground duties available at Stansted Airport for the claimant *because she was a Customer Services Supervisor*. The claimant said that Ms McAleer informed her that she was free to check the respondent's career section on the website as there were no other ground-based positions available [without modification]. Ms McAleer also informed the claimant that her occupational sick benefit would stop within 4-days and that the claimant's statutory sick pay would stop within 3-weeks. Ms McAleer also informed the claimant that she was free to apply for Employment Support Allowance. This was confirmed by letter sent by email. Ms McAleer did not mention to the claimant that she may qualify for the respondent's Disability Benefits Plan, so this avenue of possible comfort and financial income/security for the claimant was also ignored by the respondent.

58 On 5 January 2018 the claimant wrote to Ms McAleer. She said that despite being advised that there are no ground duties that she could be considered for, she discovered that there was a position of cash office support operative on the FR website. The claimant said this role could amount to suitable alternative employment and that she would have expected the company to consider/allocate this position to enable her to return to work. The claimant complained she felt there was no intention to allow her to return to work, which she said was very distressing and grossly unfair. The claimant said that she had met with the requirements of her contract and attended a welfare meeting at which she was advised the company would do all they could to accommodate he return.

59 The claimant reiterated that she was fit for ground duties and would like to be

allocated to the aforementioned vacancy. The claimant also sent further information which consisted of a letter from her consultant neurosurgeon, Mr Robert Morris dated 7 December 2017 and also a statement of fitness for work which again identified a phased return to work, altered hours and amended duties.

60 The claimant reported for work on 6 January 2018 at 7am and undertook administrative tasks for 2½ hours until Ms Dexter telephoned her and instructed her to stop working. Ms Dexter advised her that there were no administrative duties undertaken during the weekend. The claimant was later instructed to go home, at 12:30pm. This was the day that the claimant's contractual sick pay ceased.

61 The claimant returned the next day which was a Sunday. On that occasion she was not given any work to do and at 10am Ms Lorena Gil Gomez, a colleague, also told the claimant to go home as there was no work for her.

62 On 8 January 2018 the claimant turned up for work again. The claimant waited 2-hours for Ms Mullally to speak with her. Ms Mullally eventually told the claimant that she would not be able to provide an update relating to the claimant's request to pursue groundwork. Ms Mullally then sent the claimant home saying that there was no work available for her to undertake.

63 On 11 January 2018 Ms McAleer wrote a surprisingly intemperate letter to the claimant regarding her fitness to work on ground duties. Ms McAleer noted that the claimant had complied with her contract of employment, submitted appropriate medical certificates, attended a meeting at the company's request and that she had provided further medical information.

64 Ms McAleer showed her irritation:

> … despite my letter of 2 Jan 2018 which clearly stated that there are currently no ground duties available in London, Stansted, in your most recent correspondence you bizarrely [sic] stated that as the company "have all relevant information confirming my fitness to return to ground duties I will be in work 6 January 18" and you subsequently attended work on 6, 7 and 8 Jan. It is unreasonable for you to expect that the company could create a ground based job for you where one simply does not exist."

Ms McAleer went on to say:

> Following my advice to check the career section of the company's website for ground based position, in your email of 5 January you stated that you would "expect the company to consider/allocate" the position for cash office support operative to you. Margita, should you wish to apply for the position of Cash Office Support Operative you will need to go through the official channel by applying for this job as outlined on the Careers section of the intranet. The company simply cannot "allocate" this position to you without considering your suitability for the role by going through this channel.

65 Ms McAleer's letter of 11 January 2018 contrasted with the evidence of Ms Joyce at the hearing as she said had the respondent known that the claimant was disabled then she would have been offered the Cash Office Operative Support Assistant's role with effect from 1 November 2017, shortly after when the position first became available. This was the temporary role, which then was made permanent from December 2017, with a second role available from January 2018.

66 It would appear as a result of Ms McAleer's brusque letter, the claimant lodged a grievance the following day to Mr Eddie Wilson who was the Head of People for the

respondent. This letter appears to have been ignored by Mr Wilson and a response was forthcoming in a similar dismissive vain from Ms McAleer. The respondent rejected the claimant's grievance and she was told to resubmit this on a form that she could only access on a computer in the workplace.

67 The claimant's statutory sick pay ceased on 23 January 2018. Prior to this the claimant had been in receipt of contractual sick pay until 6 January 2018 although the claimant had lost payment of her flight allowances. Notwithstanding Ms Bell description of the claimant's contractual sick pay as being "enhanced", in fact, the claimant's contractual sick pay amounted to a little over 50% of her normal salary. So as well as the substantial loss of income during her sick period (and also during the period for which the claimant said she was available for ground work) the claimant was now in a position that she had not income at all save as for her statutory sick pay which ended on 23 January 2018. The claimant re-submitted her grievance on 10 February 2018.

68 The claimant's grievance, amongst other things, complained about: the respondent's breach of the EqA in depth; that her employer had not recognised that she was protected by the legislation and that she met the criteria (in respect of being a disabled person); and that the respondent had failed to carry out a risk assessment or make reasonable adjustments and consider other roles for which she was able to perform.

69 The grievance hearing occurred over 1-month after the claimant submitted her grievance. This delay is surprising, the basis of the grievance was that the claimant was willing and able to undertake alternative work and that she was without pay. So far as the Tribunal could ascertain the respondent's officers had undertaken no investigations of the claimant's complaint nor had they taken any demonstrable steps to investigate alternative work available prior to hearing the grievance. The grievance was heard by Mr Thomas McLoughlin, supported by another HR official, Ms Ciara Moffat.

70 It was part of the claimant's case that she had been treated differently than comparable employees and Mr McLoughlin was quite insistent upon the claimant identifying employees that the claimant said her treatment differed from. The claimant identified a number of potential comparators at the meeting and after. The claimant contended that the respondent had a policy of making disabled individuals apply for ground-based roles instead of complying with its obligations in respect of reasonable adjustments and offering such employees available roles without submitting to an external competitive process. The claimant identified Warren Harper and Sophie Raven at the meeting and then David Taylor, Birute Liamzinaite; Dario Carotrozzolo, Helio de Mata Do Nascimento and Mariuze Skwarek.

71 In his response to the claimant's grievance Mr McLoughlin addressed Mr Harper's case only. He did not deal with any of the other comparators despite this was a significant aspect of the claimant's grievance. Having identified this shortcoming, Ms Joyce addresses these comparators in her statement. Ms Joyce did not adduce any corroborative documentation, nor did she explain where her information came from.

72 That the respondent chose not to address these points in the response to the

claimant's grievance and because of its failure to adduce corroborative evidence, we do not accept Ms Joyce's assertions disputing any irregularity involving these comparators. It is not good enough to ignore significant parts of an individual's grievance and then attempt to paper over cracks by mere assertions in witness statements that are not corroborated with any contemporaneous or other corroborative evidence. Nor which makes any attempt to clarify where this evidence comes from.

73 The grievance outcome from Mr McLoughlin was sent to the claimant on 11 April 2018 which was just over 3 months after the claimant submitted her original grievance. Mr McLoughlin ignored the claimant's grievance in respect of her most crucial complaints:-

67.1 The company's breach of the EqA in failing to recognise the claimant had a disability and was thereby protected by the legislation.

67.2 That the company had failed to carry out risk assessments and make reasonable adjustments and to consider what other role she was able to perform.

74 In the grievance outcome letter, Mr Mcloughlin indicated the availability of a Flight Operations Assistant role. There were 2 vacancies for this role. Mr McLoughlin referred in his witness statement and his oral evidence at the hearing to his acceptance, at that time, that the claimant was likely to be a disabled person and he "offered" her the role of Flight Operations Assistant as a reasonable adjustment. This is not an honest account. At no stage throughout the claimant's employment did Mr McLoughlin or the respondent accept that the claimant was disabled under the EqA.

75 The claimant appealed against the grievance outcome on 16 April 2018. The respondent chose not to address this grievance because Mr McLoughlin contended that the claimant did not provide grounds of appeal at that time.

76 A job description was provided to the claimant in respect of the Flight Operations Assistant role. The job description provided for work on a 4-days on:4-days off rota with a pattern of 12-hour shifts. The claimant responded to Mr McLoughlin on 20 April 2018 expressing her "huge interest in the job". The claimant said that she had some reservations about suitability due to the hours requested for the shift, which may have an impact on and may affect her condition. The claimant informed Mr McLoughlin that she had some further medical consultations and examinations on 23 April 2018, 27 April 2018 and 4 May 2018.

77 Mr McLoughlin's response to this letter was initially to extend the application deadline until 25 April 2018 and thereafter to 1 May 2018. In evidence Mr McLoughlin said that the respondent needed to fulfil the Flight Operations Assistant roles urgently because 2 vacancies had arisen. When he was pressed on why the respondent could not fill 1 vacancy and defer filling the other vacancy for 1 or 2 weeks, Mr McLoughlin could not provide any satisfactory explanation as to the purported urgency. There was nothing in the job description for the Flight Operations Assistant to indicate that this role needed to be fulfilled urgently. The respondent was not able to provide any job advertising or any other corroborative documents to suggest why this role was needed to be filled in such a short time span. Mr McLoughlin accepted at the hearing, in

hindsight, that he should have given the claimant a longer deadline or spoken to her on the telephone.

78 By letter dated 26 April 2018 Mr McLoughlin provided the claimant with a list of vacancies for Dublin or Stansted. This amounted to 51 vacancies. It is quite clear that no thought had been given towards the claimant's circumstances as all but one of these vacancies were based outside the UK and many of the roles required specialist qualification, which the claimant did not have; for example, Finance Graduate HR Manager – Germany, Trainee Accountant Airport Economics Manager – Regulatory Affairs, Junior Litigation Lawyer, Qualified Tax Analyst.

79 On 9 May 2018, the claimant sent Mr McLoughlin a translated medical advice from Dr Piotre Czapinski, Neurologist, at the Epilepsy and Migraine Treatment Centre which stated that the claimant should refrain from performing tasks that start early in the morning and require use of computer for 12 hours a day as well as avoid irregular shift times and stressful computer job duties that involve visual concentration for long periods of time.

80 The claimant instructed legal representatives from 14 May 2018.

81 On 17 May 2018 Mr McLoughlin acknowledges receipt of the claimant's further medical information and he referred her to the respondent's company doctor who was based in Dublin. In his letter, Mr McLoughlin deduced that the Flight Operations Assistant role would not suit the claimant on the basis of the adjustments contended. There was no evidence that Mr McLoughlin thought about making reasonable adjustments to the Flight Operations Assistant role, although he said in evidence he should have amended the hours or the job, but we note that he did not contact the claimant to suggest or discuss this. We determine that at the relevant time he made no effort to think about possible reasonable adjustments under s20 EqA.

82 Mr McLoughlin's response to the claimant's concerns about fulfilling the requirements of the Flight Operational Assistant role was met merely with a referral to the respondent's company doctor, Dr Iwona Zalenska (Occupational Health Physician) in Dublin.

83 Dr Zalenska produced a report on 18 June 2018. The report (again) confirmed the claimant's medical history:

> Ms Dworak has been suffering from severe headaches for the past few years but since 2015 they became unbearable … She noticed also that she was having "some moments of mental absence" a few times a month and these moments became more frequent but without any particular pattern…"

84 Dr Zalenska reported as follows:

> In my opinion, Ms Dworak is fit for ground work only but the type of work she is able to do safely is limited due to the epilepsy attacks, as these attacks are still happening and are not predictable, she is not fit for a job that requires a lot of concentration and responsibility. Jobs including the following tasks that may be suitable could be data entry, customer service, handling online enquiries or office based clerical work which can include the use of a computer.
>
> Ms Dworak would benefit from regular, day time working hours and shorter shifts (7 to 8 hours) rather than 12 hour shifts, these longer shifts would not be advised.

85 The report of the respondent's occupational health physician was entirely consistent with the reports produced by the claimant in respect of her illness and the duration of her pre-diagnosed condition.

86 Mr McLoughlin wrote to the claimant on 27 June 2018 and, surprisingly, he did not send a copy of the occupational health practitioner's report to the claimant, which, in evidence, he accepted was an error. Mr McLoughlin noted the work that Dr Zalenska said that the claimant could do and said that there was no position based in London Stansted for work of that nature. He said that the only suitable positions currently available were in the Respondent's Dublin office. Mr McLoughlin did not assess making possible adjustments to other positions, he merely canvassed a number of jobs which he thought that the claimant could do, and he identified 2 jobs that might be suitable which were based in Dublin.

87 At the hearing Mrs Inkin went through a number of jobs that had been based in Dublin and asked both Mr McLoughlin and Ms Joyce why such work could not be undertaken at Stansted Airport. It was plain to the Tribunal that these witnesses, and anyone else from the respondent, had not thought about relocating any of these positions to Stanstead. We do not accept the explanations of unsuitability proffered by Ms Joyce and Mr Mcloughlin, which rested on teamwork and managerial responsibility. In a technologically sophisticated industry and with an employer that should be adept to modern working practices, the Tribunal cannot see any reason why such tasks that Dr Zalenska identified could not be accommodated at London Stansted Airport. The cold response of the Respondent was effectively *not to put themselves out*.

88 Mr McLoughlin's letter of 27 June 2018 was the first recognition of some sort of need to make reasonable adjustments, although Mr McLoughlin appeared to regard the obligation as nugatory.

> If a position in Dublin is not an option for you, we will continue to monitor the office based positions which become available in our London Stansted offices and should a position arise which may be reasonably adjusted to correspond to the medical advice received, we will have no hesitation in offering you this position.

89 Neither Mr McLoughlin nor Ms Joyce were able to point to any emails, correspondence or meeting notes where the issue of making reasonable adjustments for the claimant was considered. Mr McLoughlin said that he spoke to a colleague, Mike Duffy, Head of Talent/Recruitment, although this was not recorded, and no positive activity arose from this.

90 The claimant could not fulfil any of the 2 jobs in Dublin that had been recommended to her and the Flight Operation Assistant roles had been filled by that stage. Mr McLoughlin was not clear in his evidence to the Tribunal when the Flight Operations Assistant roles were filled because that was not dealt with in his statement and in his oral evidence. He said the 2 roles had become vacant and needed to be filled by 1 May 2018, so we are unsure whether 2 roles were filled or whether 1 role was filled at an interim measure. In any event, the claimant was not offered an amended role as Flight Operative Assistant nor was this explored with her.

91 There was no further communication of any nature from the respondent to the claimant following Mr McLoughlin's letter of 27 June 2018.

92 The claimant then explored job options outside the respondent. This resulted in 4 job applications. The claimant was interviewed for a job with the Manchester Airports Group ("MAG") based at Stanstead Airport and she was offered a job. MAG wrote to the respondent for a reference on 11 July 2018. Ms Joyce provided a standard reference that same day. This was another opportunity for the respondent to clarify what considerations they were making in respect of reasonable adjustments for the claimant, yet it was a further opportunity that was missed.

93 The claimant issued an Employment Tribunal claim on 25 July 2018. No acknowledgement or response to proceedings of disability discrimination were raised with the claimant directly. The claimant resigned on 9 August 2018. The letter stated as follows:

> I made this decision due to your intentional and continuous failure to provide me with work and various discriminatory practices which left me without no choice but to resign from my position.
>
> In doing so I rely on s95(1)(c) of the Employment Rights Act 1996 which permits me to resign in circumstances in which the employer demonstrates an unwillingness to continue with the contract.

94 Mr McLoughlin responded to the claimant's resignation on 14 August 2018 responding to the claimant's allegations. Significantly Mr McLoughlin did not accept that the claimant was a disabled person in this letter (nor in the 2 Responses to proceedings).

95 The claimant commenced work with MAG and signed her contract of employment on 6 August 2018.

The Tribunal's determination

<u>The claimant's disability</u>

96 Disability was conceded by Ms Bell at the outset of the hearing. The list of issues described the claimant's physical impairment as a benign neoplasm of the brain. This was the brain tumour.

97 The first key issue was when the respondent knew, or could have reasonably expected to know, that the claimant was a disabled person within the meaning of the EqA. The respondent contended that it did not know that the claimant's impairment was likely to last for 12 months until the grievance hearing on 13 March 2018. This argument had not been raised by the respondent until the hearing. It is absent from all contemporaneous documentation. It is also absent from the respondent's pleaded cases in both Responses dated 29 August 2018 and 13 November 2018. The case was listed for an initial telephone preliminary hearing on 22 October 2018 in which the respondent did not concede disability; similarly at the case management hearing of 7 January 2019 the respondent did not accept that the claimant was disabled, although the *long-lasting* provision was identified (which was accepted at the time of the Tribunal hearing). The respondent relies upon this after the event justification or defence to excuse its behaviour in dealing with the claimant. The contention that the respondent had no knowledge, or could not be expected to know, that the claimant's brain tumour was likely to last more than 12 months bears no relation to the facts of this case. It is

nonsensical. The respondent's contentions about the lack of knowledge of the claimant's disability is wholly without merit.

98 The claimant returned to Poland on holiday in early July 2017. Upon arrival she experienced another in a long line of seizures, and she was taken by her family to hospital. She was admitted for a week. This condition was initially treated as a life-threatening condition. The first significant exchange the claimant had with the respondent was her telephone conversation with Ms Falkowska on 13 July 2017, which was 9 days after her admission to hospital. During the course of this conversation the claimant identified that she had a tumour on her brain and that further investigations were ongoing. This information clearly conveyed a serious physical impediment. A sensible respondent would have made a reasonable enquiry (pursuant to the Code of Practice) and treated its employee as having a disability from this stage onward. The claimant had significant impairment which had a substantial adverse effect on the claimant's ability to carry out normal day-to-day activity. The claimant said at the hearing that she had been having headaches since 2015 and that these had increased in frequency and severity prior to her holidays, yet neither Ms Falkowska nor anyone else asked the blindly obvious question "*did this come out of the blue?*" or even "*how long has this been going on?*". It is plain to the Tribunal that a brain tumour, such as the claimant had, must have had a long-term adverse effect. It would be ludicrous to think otherwise, even on the information that could have be ascertained either at or just after 13 July 2017. Had Ms Falkowska (or someone from HR) asked the obvious question then she (or he) would have learned that this was a progressive and/or recurring condition since 2015. In any event, because of the severity of the claimant's condition in July 2017 and a likelihood that she would need remedial surgery or treatment that this was a condition likely to last longer that a further 12-months in any event (which it did).

99 Had Ms Falkowska – or any other of the respondent's supervisors or managers – asked reasonable and/or obvious questions as to the claimant's illness, then they too could not have failed to come to the conclusion that, as early as 13 July 2017, that the claimant was *likely* (as defined in *SCA Packaging Ltd v Boyle*) to have a long-term condition which was *likely* to last for at least 12-months.

100 Irrespective of Ms Falkowska's failings, we are astonished that Ms Joyce did not enquire further into the consequences of the claimant's impairment in the "first welfare" telephone conversation of 28 September 2017. This is a crucial, perhaps the most fundamental, part of her evidence. If this human resources officer (and subsequent the human resources manager) was in any doubt that the claimant was a disabled person then she ought to have asked the blindingly obvious question also. The fact that Ms Joyce now relies on having a genuine perception that the claimant's brain tumour did not amount to a long-lasting condition makes us doubt her sincerity and the rest of her evidence.

101 Irrespective of the arguments about *constructive knowledge*, on 2 October 2017 the claimant's brother sent various medical information to Ms Joyce which she confirmed that she read and filed. Had Ms Joyce thought about these documents then it would be clear that there could be no doubt at that stage that the claimant fulfilled the full definition of a disabled person under the meaning of the EqA.

102 Even by the welfare meeting of 1 November 2017, the claimant reported to Ms Mullally and Ms McAleer that she had been suffering with headaches for over 2-years, so the nature and causation of the tumour was beyond any possible doubt as having a long-term adverse effect. By this stage, 1 Deputy Base Supervisor or Flying Supervisor had constructive knowledge of the claimant's disability and 2 HR Officers and a Deputy Cabin Services Manager had actual knowledge of the claimant's disability.

<u>The failure to make reasonable adjustments</u>

103 Once the respondent knew, or ought to have known, that the claimant was disabled (pursuant to s6 EqA), then it will unlawfully discriminate against the disabled person if it fails (without justification) to make reasonable adjustments (pursuant to s20 EqA). We find that the respondent ought to have known that the claimant was disabled relatively early in the history of this claim; however, the claimant's condition was not clarified for some weeks.

104 The parties identified the following practices, criteria and/or provisions ("PCPs"):

100.1 The respondent required claimant to perform her contractual role to include flying [i.e. the claimant was not permitted to return to work in a modified capacity].
100.2 The respondent paid discretionary sick pay only until 6 January 2018.
100.3 The respondent paid sick pay only until 23 January 2018

105 The parties accepted that the claimant suffered from the following respective disadvantages because the aforementioned PCPs:

101.1 The claimant was unable to perform her contractual role.
101.2 The claimant was not paid discretionary sick pay after 6 January 2018.
101.3 The claimant was not paid statutory sick pay after 23 January 2018.

106 The s20 EqA duty arises when the PCP places the disabled person at a substantial disadvantage when compared with the non-disabled. As stated above, *substantial* means *more than minor or trivial*. The respondent's insistence on the claimant fulfilling all aspects of her contractual role (and its consequent refusal to modify any role to provide for ground duties only) left the claimant unable to return to work with her subsequent reliance upon sick pay until this was exhausted. The failure to permit/facilitate the claimant's return to work was a substantial disadvantage. The consequence of this disadvantage was that the claimant suffered a significant financial shortfall until her sick pay ran out and thereafter, she was effectively left destitute.

107 The House of Lords in *Archbald v Fife Council [2004] IRLR 651* identified how a non-disabled comparator should be identified. This should be those employees who were not disabled, who could fulfil the function of their job and were therefore not at risk of the detriment complained of. In *Smith v Churchills Stairlift plc [2006] IRLR 41* the Court of Appeal concluded that the comparator should be readily identified by the disadvantage caused by the relevant arrangements and the EAT made clear in *Fareham College v Walters UKEAT/0396/08* that many cases of facts will speak for themselves and the identity of non-disabled characters will be obvious from the PCP

found to be in play. The claimant's identification of her comparators arose from a fundamental misunderstanding of the comparator exercise. At her grievance hearing and after the claimant sought to identify non-disabled employees were treated less favourably by referring to employees that she believed were disabled |(and had been subjected to detriments). This might establish, at most, a consistency in discriminatory treatment against disabled people, but her correct comparators were non-disabled people not disabled people who had been treated equally badly. Because of our reservations with the veracity of Ms Joyce's evidence we were unwilling to attempt to identify an actual comparator, so therefore we focus on a hypothetical comparators – specifically, as in the case of *Walters*, a comparator group who would be those able to return to work because they could attend work with unmodified duties (which had been identified by the parties in the list of issues). This approach accords with the Court of Appeals decision in *Smith v Churchills Stairlifts*.

108 The claimant was on certified sick leave absence since July 2017. Her latest sick note lasted until 17 November 2017. The claimant asked to return to work on 25 October 2017 for non-flying duties. Ms Joyce dismissed this request out-of-hand without any investigations. Indeed, she wrote to Ms Mullally on 27 October 2017 saying that the claimant had requested ground duty which she did not consider as an option. The claimant brought a note from her GP, dated 31 October 2017, to her welfare meeting on 1 November 2017. This stated that the claimant was fit to return to work, subject to work-related adjustments.

109 We determine that it was on or from 1 November 2017 that the respondent ought to have referred the claimant for an occupational health report if there was any doubt about the amended duties that the claimant could undertake. It was at this point that the respondent should have entered a dialogue with the claimant about a phased return to work, specifically what altered hours or amended duties she was looking for and how this could be accommodated. If there was any dispute or doubt about such a phased return to work, then it was incumbent upon the respondent to refer the matter to its occupational health practitioner. Yet the respondent chose not to consider any possible adjustments.

110 The List of Issues has identified a number of roles that the claimant contends she could have undertaken with reasonable adjustments. We have addressed these identified roles on a chronological basis.

111 The claimant identified a role as a Temporary Cash Office Support Operative, which was available from 1 November 2017 to December 2017. This role was undertaken by Mr Skwarek. There was no evidence provided as to whether there was any special reason why Mr Skwarek was given this role, although we note that Mr Skwarek was subsequently identified as one of the possible comparators in the claimant's grievance. Ms Joyce's evidence did not really address his circumstances other than confirming when he commenced the role, which Ms Joyce stated was 23 September 2017, and stating that he was not a disabled person who had requested to work on ground-based duties only. Mr Skwarek was a member of cabin crew and there was no evidence proffered as to why his temporary assignment could not be curtailed and that role reassigned to the claimant following the meeting of 1 November 2017. The claimant's representative describes this as "bumping". Bumping usually denotes moving an established permanent employee into another role to accommodate another

(in this instance disabled) employee. Mr Skwarek was neither established nor permanent in this temporary role so his assignment could have easily been ended, in favour of a disabled colleague.

112 We were not provided with any rotas or job description. Other than Ms Joyce's mere assertion that the role work on a 12-hour shift pattern, there was no clear evidence as to why this role required these working hours and an irregular working pattern. As an after-the-event justification, this is threadbare. The title of the role signifies that this role is fairly basic and well within the skills of an experienced and long-standing Customer Services Supervisor (more senior than Mr Skwarek). At this time, 1 operational supervisor and 1 operational manager plus 2 human resources officers knew that the claimant was a disabled person, so Ms Joyce (or Ms McAleer or Ms Mullally or Ms Falkowska) ought to have at least considered this role to facilitate the claimant's return to work.

113 Notwithstanding that the claimant could not fulfil a 12-hour role it was incumbent upon the respondent to modify the duration of her duties. 12-hours is a long shift. It may be standard for this employer to utilise 12-hour shifts for non-disabled employees, but such long shifts should not impede a disabled employee returning to work. If there was any doubt in the employer's mind about what adjustments ought to have been made, then Ms Joyce should have obtained an occupational health report at that stage. The claimant's evidence was that, at this time, she could fulfil a working pattern of 7- to 8-hours per day (as subsequently reported by Dr Zalenska).

114 Ms Joyce evidence was contradictory. She contended that the claimant could not fulfil the cash office support role fully because she could not drive around the secured airport in a company vehicle. Ms Joyce contended in her supplemental witness statement that even if the claimant had a driving licence, she might not be granted a "airside" driving licence on account of her brain tumour. The respondent did not undertake any investigations in this regard and Ms Joyce's point is speculative. Even if the respondent had asked the claimant about her ability to drive, and even if her condition prevented her from driving around the airport, a reasonable adjustment would be to get another member of staff to fulfil this aspect of the role. Ms Joyce was not able to say how much time was taken with this aspect of the role or how many Cash Office Support Operatives were based at Stansted Airport and the claimant's evidence, which we accept, was that the pilots used to bring cash to the cash office in any event. The Tribunal rejects Ms Joyce's contention that somehow it would be disproportionate to waste Mr Skwarek's initial (and uncompleted) training were the respondent to make such adjustments to facilitate the return to work of a disabled employee.

115 In any event, all of the above objections and post-event justifications fall away by Ms Joyce's admission in her second statement and at the hearing. She said that had the respondent known that the claimant was disabled, the claimant should have been offered the Cash Office Operative Support Assistant role. It follows from what we say above that when the Cash Office Support Operative's role was made permanent from December 2017 and a second permanent role from January 2018 that the claimant was able to fulfil these roles.

116 As an alternative, the claimant contended that she could have returned to work

to undertake administrative type duties similar to pregnant employees. These roles were of an administrative assistant and HR support role nature, effectively, data input, Stansted crew contact, employee matters, documents/information incompatibility. In her evidence Ms Joyce said that there were usually around 8 or so pregnant members of staff who could not accommodate flying so therefore they were restricted to ground duties. Ms Joyce contended that there was not enough work for these employees to undertake, which was her principal objection to facilitating the claimant's early return to work in a similar capacity. We do not accept Ms Joyce's evidence on this. First, Ms Joyce's evidence was generally undermined by her refusal to accept the claimant was a disabled person, in circumstances where it was obvious that she was. Second, the claimant eventually returned to work on Saturday 6 January 2018 and she was able to find administrative work to do and undertook such work until she was stopped from doing such work by Ms Dexter. So, we determine, had the respondent considered administrative duties – which we contend at this stage was a reasonable adjustment – such duties were available to the claimant and could have been undertaken.

117 We can understand the respondent's desire to move the claimant over to an established role, if this was genuine. We accept that this was reasonable in the circumstances should an established role become available. However, the claimant ought to have been able to have been accommodated in the administrative assistant roles from 1 November 2017 at the least.

118 So far as any HR roles are concerned, the respondent had a practice of recruiting qualified HR practitioners. Surprisingly, the respondent offered no in-house training to its HR practitioners, which goes some way to explain the ignorance of Ms Joyce, Ms McAleer and Ms Blair to the respondent's obligations under the EqA. Ms Joyce said that HR practitioners underwent on-the-job training, but we could establish no training of significance. There were no e-learning modules and no internal or external HR education or courses undertaken. The "on-the-job training" that Ms Joyce identified was merely some degree of support and initial supervision that might amount to informal shadowing or mentoring, but nothing further. Although the claimant was a graduate, she did not have any relevant HR qualifications and in an environment that offers no further training we would not expect the claimant to be able to undertake a HR function.

119 Ms Joyce objected to the claimant returning from sickness absence because the claimant was still on a certified sick leave. Such an objection would ordinarily be accepted by us but not in this circumstance. When this was raised by Ms Joyce, the claimant obtained a fit note from her GP, which provided for a return to work on ground (i.e. non-flying) duties. It is axiomatic in this instance that the claimant's hypothetical comparator would have been able to return to non-flying duties, therefore the reasonable adjustment would be to relax this contractual requirement.

120 To suggest to a disabled employee that they would have to check the website for vacancies is an indication of the employer washing their hand of any responsibility. It sets the tone and indicates that the respondent cannot be bothered to undertake even that most basic of reasonable adjustments. Furthermore, to recruit an existing employee through an open, standard recruitment process was not making any adjustments whatsoever because this puts an individual with a disability in the same position as an external non-disable candidate. It does not even afford a long-standing

employee with 13-year experience and an exemplary record (as the claimant contended in oral evidence) any priority whatsoever. To subject someone to open competition for a role which may require reasonable adjustments to be considered is to fundamentally disadvantage a disabled candidate, who was currently off sick. We can find no logic for not making this adjustment. It would require more time, effort and costs to run a full recruitment selection process than to allocate a disabled employee to such a vacancy. The only reason we could see to justify placing the claimant in open competition was to circumvent the need to make reasonable adjustments for this disabled employee. The Tribunal determines that it was obvious in the circumstances that the respondent should not have insisted that the claimant apply for any available role through open competition. This is to completely disregard its obligations under the EqA.

121 The role at interline STN dealing with staff travel was undertaken by Ms Tracey Bannon in Dublin. The claimant contended that that job could have been relocated to London Stansted Airport and with Ms Bannon "bumped" out of this role. In her second witness statement Ms Joyce conceded that the STN role could have been relocated to London Stansted Airport. Ms Joyce contended that Ms Bannon have been undertaking this role since 2016. Whilst we had concerns about Ms Joyce's evidence, the claimant did not present any evidence to dispute that this job was permanent and undertaken by a long-standing employee. Consequently, the Tribunal does not accept that it is a reasonable adjustment to bump Ms Bannon, who was likely to be occupying a defined and settled role, from her job into another job to make way for the claimant in such circumstances.

122 The possibility of the claimant undertaking the Base Supervisor role arose from 15 November 2017. In evidence, Ms Joyce said that Stansted Airport had 4 Base Supervisors and 6 to 8 Deputy Base Supervisors working on a shift pattern. The normal shift allocation was 12 hours so even allowing for annual leave and sickness the claimant would always be working with another Base Supervisor or Deputy Base Supervisor.

123 It was not the respondent's case that the Base Supervisor's role was a promotion that the claimant was not able to fulfil either through experience or ability. Ms Joyce said in her second witness statement that Base Supervisors primarily perform all the duties of a Customer Services Operative (crew member) but also have additional administrative duties. The claimant's job description was a Customer Services Supervisor. She had worked for the respondent for 13 years. She was a senior member of cabin crew and was engaged in a supervisory capacity. On the evidence available, the claimant looked to be a good fit for such a role and the respondent raised no objections that the claimant could not undertake the additional administrative duties.

124 If there was any training that needed to be undertaken for the Base Supervisor role then we determine that this could and should have been accommodated by the respondent. In respect of this being a possible promotion, whilst we do not feel that the claimant's disability in itself ought to have earned her a promotion, we are satisfied that the claimant could have undertaken these duties (save as to flying). Ms Joyce confirmed at the time that the claimant could apply for this job on one hand but declined to make the relevant modifications to exclude flying duties on the other.

There was no explanation proffered by the respondent's witnesses why it needed a competitive open process to fill this role, other than that was the standard recruitment method, so therefore there is no viable reason why the respondent should not have accommodated the claimant's transfer into this position as a reasonable adjustment.

125 Ms Joyce emphasised the need for Base Supervisors to undertake flying duties to supplement cabin staff who have not been able to attend their duties. The respondent did not provide figures in respect of cabin crew absenteeism or other shortfall. We were not satisfied that the respondent suffers from unusually high rates of staff absenteeism because having heard the oral evidence of the claimant and Ms Joyce we note that staff absences was a high consideration for the respondent and that this was normally handled robustly. Furthermore, staff are required to live in reasonable proximity to the airport and we accept the claimant's evidence that most absences, where they occur, can be accommodated through mobilising on-call staff in the locality or, should that fail, then Deputy Base Supervisors.

126 Ms Joyce accepted that the Deputy Base Supervisors and then Base Supervisors were the last line for flight-staff cover. We were not provided with the evidence on how frequently Deputy Base Supervisors and/or Base Supervisors were utilised for flight duties which undermined the respondent's objections in this regard. Consequently, we do not regard the claimant's non-flying status as a sufficient impediment to offering the claimant a Base Supervisor Role as a reasonable adjustment to her disability.

127 In respect of the Flight Operations Assistant role, there were 2 jobs that had become available by April 2018 according to Mr McLoughlin. 1 of the 2 Flight Operations Assistant roles was raised with the claimant following her grievance. Mr McLoughlin did not offer the claimant the role itself because he specifically referred to her being a potentially "good candidate" and he offered to arrange for the claimant to meet with the relevant line manager to discuss this further. Mr McLoughlin set 2 dates for the claimant to register her interest in these potential roles. The second time limit was set for the day after the claimant's second (of 3) medical appointment. Mr McLoughlin set these dates because he said the respondent needed to recruit for these roles although he could not satisfy us as to why the respondent could not fulfil 1 role and defer the second role while the claimant spoke to her medical practitioners and considered the role in detail. In any event, Mr McLaughlin pressed on regardless and the claimant missed the opportunity for these vacancies. We determine that, as with the other respondent officials, Mr McLaughlin was determined to avoid making any concessions on modifying available roles. A further reasonable adjustment in these circumstances would also be to allow the claimant sufficient time to consider her medical position and the adjustments that may be required and her suitability for this role. The Tribunal determines that this role could be undertaken with shorter shifts and short regular breaks away from the computer.

128 Mr McLoughlin referred the claimant to Dr Zalenska who suggested shorter shifts and regular breaks away from the computer. We studied the job descriptions for these roles, and we cannot determine why a 12-hour shift was necessary to fulfil these functions. Other than the respondent relying upon the convenience of always allocating these a 12-hour shift pattern, it would be a reasonable adjustment to provide for a shorter working pattern for this role. As regards regular breaks away from the

computer, this is an obvious requirement for non-disabled employees. The fact that the claimant may require longer than normal breaks away from the computer we determine could and should have been accommodated relatively easily. Such adjustments were entirely reasonable in the circumstances although by this time, because of the respondent's refusal to allow a short pause, the vacancy was no longer available.

129 The pilot roster analyst role and the customer care agent role were 2 roles that the respondent identified as suitable for the claimant to undertake with modifications suggested by the respondent's occupational health practitioner. The impediment to agreement on this role was whether these roles could be undertaken at Stansted Airport in the UK rather than continue to be Dublin-based. The respondent was under an obligation to consider and then make reasonable adjustments. Both Mr McLoughlin and Ms Joyce contended that both of these roles were team-based roles that could only be done in a team environment in Dublin. Other than the physical location of working as a member of team with the ensuing face-to-face monitoring and supervision, these roles could have been undertaken in Stansted.

130 We determine that, with some effort, these roles could have been accommodate at Stansted airport. The respondent had the appropriate technology, they worked from the same computer programme for these roles and the system could be accessed from Stansted Airport. Mr Mcloughlin said that the supervision did not necessarily entail sitting around the same table. So if the claimant could have undertaken this role in another office or another building in Dublin, we cannot see any discernible reason as to why she could not undertake this role at Stansted Airport. The respondent operated a sophisticated business on a multinational level. It may not have been convenient to managers and HR to move these roles to Stansted Airport but neither Ms Joyce nor Mr McLoughlin could explain why the collaborative and team-based nature of the role precluded such relocation.

131 The claimant clarified her position in respect of sick pay during the course of the hearing. The claimant contended that, as an alternative to accepting the claimant's return to work with reasonable adjustment then the respondent should have continued to pay her i.e. through some form of medical suspension, extension of sick pay or alternatively disability benefit plan.

132 So far as the disability benefit plan, the respondent completely ignored this provision in respect of the claimant's contract of employment. The claimant was clearly a disabled person within the meaning of the EqA. She could not fulfil the role that she was required to undertake. She had some residual employment capacity, but this was not properly engaged with by the respondent. So this left the claimant with little income, save as to state disability benefits from 6 January 2018 and no income (except employment support allowance) after the 23 January 2018. The argument in respect of possible medical suspension is a largely counter-factual argument about what ought to have happened, rather than what did, in fact, happen. The Tribunal will only deal with this through the prism of whether the respondent had to continue paying the claimant her reduced contractual sick pay as a reasonable adjustment.

133 The claimant quoted the case of *Nottingham County Council v Meikle [2004] IRLR 703 CA*. That case is exceptional and distinguished from the facts of this case. M had a visual impairment which required the employer to make adjustments. NCC had

not made the reasonable adjustments to accommodate this impairment and it was only because of this failure to make those specific adjustments that M was off work. The Court of Appeal held that paying sick pay beyond what the employer would normally pay was a reasonable adjustment in those circumstances. In this instance, causation is not so direct, and the causal chain is more elongated. The claimant was off sick because of her brain tumour and the brain tumour precluded her returning to flight duties, which was a fundamental part of her job. The obligation to make reasonable adjustments was similar and the respondent's default was comparable to the *Meikle case*. However, the adjustments required in this case were more far ranging and involved considering alternative employment and adapting such roles to the claimant circumstances. More recently in *O'Hanlon v The Commissioners for HM Revenue & Customs [2006] IRLR 840* the EAT said "it will be a very rare case indeed where… merely giving higher sick pay than would be payable to a non-disabled person who in general does not suffer the same disability-related absences, would be considered necessary as a reasonable adjustment". In coming to this conclusion, the EAT commented that the purpose of disability discrimination legislation was to enable disabled persons to play a full part in the world of work and not to "treat them as objects of charity". The Court of Appeal upheld the EAT's decision and a similar conclusion was reached in *Royal Bank of Scotland v Ashton EAT/0542/09 & EAT/0306/10*. So, where there is a shortfall in pay, the appellant courts place more emphasis on the employer facilitating the employee is returned to work rather than accepting this as a trigger for continual sick pay.

134 The respondent could not reasonably be obliged to continue to pay the claimant statutory sick pay in circumstances where she no longer qualified under the statutory sick scheme. This is not an appropriate reasonable adjustment; the respondent's obligations arise from administering a statutory provision for which the claimant exhausted her entitlement to.

Constructive dismissal

135 The claimant did not resign because of her illness, nor did she resign for any other reason than the respondent's intentional and continuous failure to provide her with work. The failure to provide the claimant with any of the work set out above amounted to disability discrimination. This unlawful discrimination amounted to a breach of trust and confidence which gave rise to the claimant's resignation as in the *Greenhof case*. The respondent put the claimant in this position.

136 The respondent's breaches were clearly set out in the claimant's resignation letter which said that she resigned because of the respondent's intentional and continuous failure to provide her with work and its various discriminatory practices. The respondent had constructive knowledge that the claimant was a disabled person from 13 July 2017 and actual knowledge of the claimant's disability from as early as 2 October 2017. Even by the welfare meeting of 1 November 2017 it was abundantly clear that the claimant was a disabled person pursuant to the EqA. The respondent should have recognised and acted upon the claimant's disability. From 25 October 2017 the claimant had requested to return to work in some modified capacity and the obligation to consider a return to work arose from 1 November 2017 when the claimant presented an appropriate fit note to her employer and repeated her request to return to work. At this point the obligation to make reasonable adjustment became clear and

irrefutable.

137 The claimant resigned on 9 August 2018. We accept that she had been left destitute from mid-January 2018 when her sick pay had ceased. She was relying upon the financial support of her family and friends in order to pay her bills. We accept that this financial insecurity was hugely stressful in itself, but also made more worrying by the nature of the claimant's illness. The contract was not affirmed by the respondent paying sick pay as in the *Fereday case*.

138 The claimant initially raised a grievance on 12 January 2018, which was rejected by the respondent 3 months later, on 11 April 2014. The claimant appealed promptly yet her appeal was returned by Mr McLoughlin instead of being passed on to a more senior colleague for proper scrutiny and determination. The claimant started looking for other jobs in late May 2018 because she said she had no choice but to consider work elsewhere. We are satisfied that, had the respondent offered the claimant suitable work then she would not have been forced to give up her employment of 13 years.

139 The claimant sought to obtain other employment because she could no longer undertake flight duties, which the respondent insisted upon in breach of its statutory obligations under the EqA. The claimant said in evidence, which we accept, that up until the point that she commenced employment with MAG she was still hoping to continue with her career with the respondent. So, the claimant sought work and accepted a job as a security officer because of the position the respondent had put her in. The claimant did not accept a lesser paid job (both in actual terms and in pro rata wages) for any other reason other than trying to provide for some form of income.

140 The claimant was not in work and did not hear from the respondent from 27 June 2018 until she accepted her new job and started with MAG on 6 August 2018. This was approximately 6 weeks from her last contact with her employer. The claimant knew that she needed to pass her training course with her new employer before she became a permanent member of staff. She deferred notifying the respondent of her acceptance of the breach of contract until the latest possible moment so as to keep alive the possibility (however remote) that the respondent might comply with its statutory and contractual obligations; this whilst safeguarding some employment and financial security for the future. This was the inevitable conundrum that the respondent forced upon the claimant.

141 Under the circumstances we do not accept that the claimant affirmed the fundamental breach of contract. The claimant had pursued a grievance and had raised a grievance appeal. Ms Joyce knew approximately 4 weeks before her resignation that the claimant was applying for another job and the claimant issued her first disability discrimination claim around 2 weeks before her resignation. This gave the respondent ample opportunity to contact the claimant and revisit their search for alternative work, but it chose not to.

142 In summary, the claimant resigned in response to the respondent's breach of contract and for no other reason. The further alternative employment was not a reason for the claimant's resignation, it was the trigger. The claimant did not affirm the contract as she was not in a position to comply with any contractual obligation on her part. The claimant's grievance, her job reference and her Employment Tribunal proceedings

attempted to force her employer's hands into revising its discriminatory approach, but it also demonstrated the claimant's continued acceptance of, and frustration with, the respondent's on-going breach of contract. The economic reality was that the claimant could not treat herself is constructively dismissed until she had secured another, albeit less favourable, job, which we determine, was understandable and reasonable in the circumstances. In the interim, as per *Chindove* and *Adjei-Frempong* the claimant did nothing to demonstrate that she intended to be bound by the contract and thereby waived the breach.

143 Under the circumstances the claimant was entitled to treat herself as dismissed.

144 The case will now be listed for a remedy hearing. The Employment Judge will issue case management orders in due course.

Employment Judge Tobin
Dated: 14 October 2019