EMPLOYMENT TRIBUNALS

BETWEEN

CLAIMANT	**V**	**RESPONDENT**
Ms V Vsevolozhsky		**Ernst and Young Services Ltd**

Heard at: London South Employment Tribunal **On:** 21, 22, 23, 24, 25 & 28 October 2019

Before: Employment Judge Hyams-Parish
Members: Mr M O'Connor and Mr P Adkin

Representation:
For the Claimant: In person
For the Respondent: Mr D Dyal (Counsel)

JUDGMENT

The claims brought pursuant to s.20 and s.21 Equality Act 2010, namely failing to make reasonable adjustments, are not well founded and are dismissed.

The claims brought pursuant to s.15 Equality Act 2010, namely unfavourable treatment arising in consequence of disability, are not well founded and are dismissed.

The claims for victimisation brought pursuant to s.27 Equality Act 2010 are not well founded and are dismissed.

The claim for wrongful dismissal is not well founded and is dismissed.

REASONS

Claim(s)

1. By a claim form presented to the Tribunal on 20 July 2018, the Claimant brings claims of disability discrimination, victimisation and wrongful dismissal against the Respondent.

2. It is admitted by the Respondent that the Claimant was at all material times disabled within the meaning of the Equality Act 2010 ("EQA"). The disability relied on by the Claimant is depression. It is further admitted by the Respondent that it knew of the Claimant's disability from October 2017. Save for these concessions, the claims are denied by the Respondent.

Legal issues

3. The claims and legal issues were clearly set out by the parties at the outset of the hearing. These have been used as the basis for the Tribunal's analysis and conclusions below. The legal issues are as follows:

Failing to make reasonable adjustments

a. Was the Claimant subject to the following provision, criterion or practice ("PCPs")? The PCPs relied on by the Claimant are as follows:

   i. Requiring the Claimant to work from the Respondent's Shoreditch office following her reinstatement on 3 April 2018;

   ii. Refusing to allow the Claimant to work reduced/flexible hours in the period following her return to work on 13 November 2017 and upon her reinstatement on 3 April 2018;

   iii. Requiring the Claimant to carry out technical work in the period following her return to work on 13 November 2017 and upon her reinstatement on 3 April 2018.

b. Did any of the above PCPs place the Claimant at a substantial disadvantage compared to persons who are not disabled? The alleged substantial disadvantage relied on is as follows:

   i. In the case of 3(a)(i) she found it difficult to get to the office, which was a distance from the tube station, because of muscle ache and because it was a "*dangerous area densely*

populated by Muslims" and the Claimant is an Israeli passport holder;

ii. In the case of 3(a)(ii) the physical conditions in the office were poor, with no place to eat and drink;

iii. In the case of 3(a)(iii) she was not qualified to do software engineering work and had never agreed to do it.

c. If so, did the Respondent fail to make adjustments which, in all the circumstances, it would have been reasonable to make? The specific adjustments which the Claimant says ought to have been made are as follows:

i. In the case of 3(b)(i) providing the Claimant flexibility in choosing office location, allowing the Claimant to work from home, and/or providing a space in which to work to avoid a noisy environment;

ii. In the case of 3(b)(ii) providing the Claimant with the ability to work reduced hours as recommended by occupational health and to provide flexible commuting hours to avoid rush hours;

iii. In the case of 3(b)(iii):

a. allocating the Claimant with work which was non-technical and/or providing support and assistance in completing such tasks;

b. not subjecting the Claimant to short deadlines;

c. Not requiring the Claimant to look at bright colours in corporate logos;

d. providing support and assistance in completing tasks requiring the Claimant to convert epics into technical solutions;

e. providing the Claimant with extra time to address learning difficulties or acquiring new information knowledge, skills in the area that was not known to the Claimant;

f. providing the Claimant with extra time to be prepared for public speeches; and

g. providing the Claimant with a senior personal coach for

career purposes and other mental health support.

Discrimination arising in consequence of disability

d. Was the Claimant dismissed because of "something" arising in consequence of the Claimant's disability? The "something" relied on by the Claimant was that she was prone to sickness absence as a result of her disability and in particular was absent due to sickness on the days of the disciplinary meetings in April 2018.

e. Did the Respondent know, or could it have reasonably been expected to know prior to October 2017, that the Claimant was disabled as alleged?

f. If the Tribunal finds in favour of the Claimant in respect of 3(d) above, was the unfavourable treatment a proportionate means of achieving a legitimate aim? The Respondent relies as its legitimate aim on its need to manage the Claimant's behaviour and conduct such that she properly fulfilled the role that had been assigned to her.

Victimisation

g. Did the Claimant do a protected act when she allegedly:

    i. had a discussion with Paul Brody in or around August 2017 when she told him that the hiring and promotion process was biased in favour of native English speakers;

    ii. spoke to Pippa Brettle in or around August 2017 when she complained that the Respondent marginalised her because it was a male dominated environment;

    iii. had two conversations with Ms Brettle and Mr Brody during which she stated that the Respondent had a male dominated environment;

    iv. sent an email to Ms Brettle and Mr Brody at 20:19 on 22 November 2017 in which she alleged she had been discriminated against on the grounds of age, gender, non-English speaking culture, being of immigrant's background in the UK, Jewish minority from the holocaust survivor background comparable to her colleagues;

    v. sent a letter to Ms Brettle dated 29 December 2017 in which she contends detailed cultural differences between her and the rest of the blockchain team and disclosed details regarding her health.

h. Did the Respondent subject the Claimant to the following detriments?

   i. Being dismissed on 14 December 2017;

   ii. From 3 April to 24 April 2018 being placed into a less favourable position in terms of role, location and reporting line;

   iii. Being summarily dismissed on 24 April 2018;

   iv. Treating the outcome of the Claimant's appeal against the dismissal on 24 April 2018 as being a fait accompli.

i. If so, did the Respondent subject the Claimant to such detriments because the Claimant did a protected act or because it believed that the Claimant had done or may do, a protected act?

Wrongful dismissal

j. Did the Respondent act in breach of the Claimant's contract of employment by dismissing her without notice on 24 April 2018? The Respondent relies on the following alleged behaviour by the Claimant between 3 April and 24 April 2018 which it says was a fundamental breach of contract and/or an act amounting to gross misconduct:

   i. failure to attend work at her designated office, despite repeated requests and reminders from Dr Hans Jessen;

   ii. refusal to undertake the duties of her role; and

   iii. refusal to acknowledge Dr Jessen as her new leader or engage with him in terms of her responsibilities and deliverables.

k. If the Tribunal finds the Claimant to have behaved as alleged above, was the Respondent entitled to treat the Claimant's behaviour as a fundamental breach of contract and/or an act amounting to gross misconduct given the Claimant alleges that:

   i. the terms of her employment from 3 April 2018 were diminished without justification;

   ii. the Claimant was unable to comply with her contractual obligations owing to ill health and accordingly did not act wilfully or negligently;

iii. Her behaviour did not amount to a fundamental breach of contract or gross misconduct in any event?

Jurisdiction

l. Are the claims based on events occurring prior to 1 March 2018 out of time pursuant to s.123(1)(a) EQA?

m. Do the above allegations form part of a continuing act of discrimination pursuant to s.123(3)(a) EQA when taken with the remaining allegations?

n. If any alleged acts or omissions to which the Claimant's claims relate and which took place prior to 1 March 2018 do not form part of a continuing act of discrimination, were the Claimant's claims in respect of these allegations presented within such other period as the Tribunal thinks just and equitable (S.123(1)(b) EQA)?

Practical and preliminary matters

4. The Tribunal heard evidence from the Claimant and the following three witnesses for the Respondent:

a. Mr Paul Brody (the Claimant's line manager up to the first dismissal)
b. Dr Hans Jessen (appeal officer for the first dismissal and the Claimant's line manager up to the second dismissal)
c. Chris Mazzei (appeal officer for the second dismissal)

5. The Tribunal was referred to documents in a hearing bundle extending to 684 pages.

6. The Tribunal gave the parties its decision at the conclusion of the hearing, with oral reasons. These written reasons have been prepared and sent to the parties at the request of the Claimant.

Background findings of fact

7. The following findings of fact were reached by the Tribunal on the balance of probabilities, having considered the evidence given by witnesses during the hearing and any documents referred to. Only findings of fact relevant to the issues necessary for the Tribunal to determine have been made. It has therefore not been necessary to determine each and every fact in dispute where it is not relevant to the issues between the parties.

8. The Respondent is a global professional services firm headquartered in London. It is considered to be one of what is commonly known as the "*big four*" accountancy firms comprised of the Respondent, PWC, Deloittes and

KPMG. It has a number of offices in London including One More London Place and Six More London Place (both near London Bridge); Second Home, which is a shared office space located in Shoreditch; Seren Place in Hackney; and Canary Wharf.

9. The Tribunal finds as fact that diversity (including cultural, racial and gender diversity) is extremely important to the Respondent, not surprising given that they operate in many different countries and employ people from all around the world. Their London base has a vast international mix of employees from different cultural and racial backgrounds.

10. In answer to a question on diversity training for employees, Dr Jessen said in his evidence that there were several mandatory training programmes on diversity that employees were required to undergo, and he referred to its importance not least because the company was regulated globally. Asked whether the Respondent had a zero tolerance to breaches of diversity and equal opportunity or discrimination policies, Dr Jessen referred to there being "*extreme zero tolerance*" and referred to a global ethics hotline for employees to raise complaints, if they wished to do so, in addition to the normal grievance procedures that were available.

11. The Claimant commenced employment with the Respondent on 30 May 2017 in the role of Solution Architect - Global Innovation Blockchain. The Claimant's role sat in the Respondent's Global Blockchain team and reported to Paul Brody, Global Innovation Leader, Block Chain Technology. Mr Brody is primarily based in the Respondent's Palo Alto office in California.

12. The Global Blockchain team is part of the Respondent's Global Innovation Technology team which was under the overall management of Mr Mazzei (Chief Data Analytics Officer) and more recently under Jeff Wong. The Global Blockchain Team sits in the Global Innovation Team alongside Artificial Intelligence run by Nigel Duffy and the Intelligent Automation Team run by Dr Jessen.

13. Mr Brody said in evidence that he created the blockchain team from scratch in July 2016 in order to create and develop products using blockchain which could then be used across the Respondent's consulting, audit and tax business lines globally, with the intention that in due course the Respondent would also have an advisory team who would work on building blockchain based solutions for the Respondent's clients. It was, in effect, a startup because the team was working from scratch to develop new technologies and products. The size of the team was relatively small at that stage and therefore management opportunities were limited. Mr Brody said what was important at that early stage was that everybody was prepared to roll up their sleeves and get involved with the "hands on" work necessary to make the team a success.

14. Other members of the team included Duncan Westland, Craig Farrell and Sam Davies. All were recruited at the same level as the Claimant (Assistant Director/Manager (Level 3)). However, given Mr Westland's additional experience and the fact that he had been one of the first to join the team, he had an informal leadership role in the team, particularly given that Mr Brody was not based in the UK. A more junior member of the team, Chaitanya Konda, was recruited in July 2017.

15. In July 2017, the Claimant was assigned to the Tesseract Project, an important project for the team as it provided an opportunity for the Respondent to show case and test an early version of a blockchain solution. This involved the Claimant working closely with an internal client, Eli Jacobson.

16. In August 2017, Mr Brody noted that the Claimant appeared to be working erratic hours and corresponding late at night. Mr Brody told the Claimant that she should not be doing this. The Tribunal also notes Dr Jessen's evidence that this sort of working was not encouraged by the Respondent, neither was it part of their culture. From discussions with the Claimant, Mr Brody concluded that all was not well with her and he offered her the opportunity to engage with the Respondent's occupational health (OH) team.

17. In late August 2017, the Claimant emailed Mr Brody raising a concern that Mr Jacobson had been informal with her during telephone calls between them on two occasions. When asked for more detail, she explained to Mr Brody that Mr Jacobson had made anti-Semitic remarks, which surprised Mr Brody, given that Mr Jacobson himself was Jewish. The Claimant also claimed that Mr Jacobson was incompetent to manage her. When Mr Brody investigated the allegations and spoke to Mr Jacobson, he (Mr Jacobson) was shocked by the accusations and denied them completely. According to the Claimant's own evidence he is alleged to have said "*Are you Jewish, I am Jewish too*". Mr Jacobson said that he was merely trying to be polite and friendly. In any event, as the Claimant had shown herself to be unwilling or unable to work with Mr Jacobson, she was removed from the project.

18. As part of the UK team's general research function, weekly demo days were held when the team would meet to share the work they were doing. The Claimant initially attended these meetings but never demonstrated a piece of code she had been working on. Indeed, rather than contributing by talking about what she was doing, the Claimant would often criticise colleagues or talk about strategic issues that were not relevant. By August or September 2017, the Claimant had stopped attending these meetings. The Claimant alleged as part of her case that she was excluded from meetings and isolated from the rest of the team. Mr Brody investigated these concerns raised by the Claimant and found them to be completely without merit. He

found that her colleagues had in fact been trying to be friendly with the Claimant and help her settle into the team. When Mr Brody fed this back to the Claimant, she confirmed she was happy that this had been properly addressed. This issue was not pursued by the Claimant in any detail in the cross examination of Mr Brody. The Tribunal could find no evidence to corroborate the Claimant's complaints of exclusion or marginalisation and preferred the evidence of the Respondent in this respect. The Tribunal therefore finds as fact that the claims of marginalisation and exclusion did not reflect reality and in fact it was the Claimant who excluded herself and chose not to engage with her team.

19. It was around August or September 2017 that the Claimant alleges that she had a conversation with Mr Brody about there being a bias in the Respondent's recruitment policy that resulted in a preference for native English speakers and there was a male dominated environment within the Respondent. Mr Brody did not recall the Claimant ever raising issues about a preference for native English speakers but he did recall a conversation with the Claimant where she suggested that there was a male dominated environment within the Respondent and the tech sector more generally. Mr Brody acknowledged that the tech sector had historically been male dominated but that things were changing, and the tech sector was taking steps to achieve greater gender equality. Mr Brody was not questioned about this issue by the Claimant. The Tribunal accepts Mr Brody's account of the conversation. It is not satisfied that there was any conversation about a preference for native English speakers.

20. Around this time, the Claimant also made allegations that Sam Davies had not been engaging with her on work matters and had bullied and discriminated against her. When questioned about the allegations, Mr Brody said that the Claimant was unable to give any examples. Similar allegations were made against Craig Farrell. Both complaints were investigated by Mr Brody, but he could find no evidence of inappropriate behaviour by either Mr Davies or Mr Farrell. In fact, the Tribunal concludes that the Claimant was prone to turning innocent comments into something more sinister and discriminatory. The complaints against Mr Jacobson and Ms Konda (see more below) are two such examples.

21. Alongside the Claimant raising these issues, it was becoming apparent to the Respondent that there were significant concerns about the Claimant's performance and her behaviour. The Claimant's colleagues found her to be disruptive and unwilling to work as part of a team. It was also clear that the Claimant's technical work deliverables were below the expected standard. Mr Brody also observed that the Claimant's behaviour appeared erratic and was concerned for her health. Mr Brody approached the Claimant around this time to share his concerns and proposed that she be referred to OH.

22. Having seen no improvement in the Claimant's performance, Mr Brody met

with the Claimant on 4 October 2017 and set out his various concerns regarding her performance and lack of engagement with the team. Amongst the concerns raised, he reminded the Claimant that she had not delivered any work since she started, and she needed to be ready and willing to get involved in the work that the team was doing. She was told that it was a "*make or break*" time for her and that if she was not able to improve her performance, the Respondent may not be able to continue to employ her.

23. Mr Brody emailed the Claimant on 6 October 2017 summarising their conversation. In his email, Mr Brody noted that he expected the Claimant to be able to make the appropriate changes and improvement in performance and he wanted to help her achieve this. However, he also noted that failure to improve to the required standard could bring her employment with the Respondent to an end. He noted that they had previously discussed a referral to OH in order for the Respondent to have a clear understanding of the Claimant's health and well-being and whether she required any additional support in the workplace, but she declined this.

24. The Claimant sent a number of emails to Mr Brody on 8 October 2017 and in one of those she said that her health was not good, and she wanted to be referred to OH. She also continued to complain about the behaviour of Mr Davies towards her. There followed a flurry of messages, including WhatsApp messages in which she made further allegations of bullying and discrimination. The Tribunal accepts that Mr Brody considered, and took seriously, the allegations of the Claimant but that he could find no evidence that the allegations had any substance.

25. The Claimant was assessed by OH on 13 October 2017 and a report was received following this appointment on 20 October 2017. It stated that the Claimant had been suffering acute psychological symptoms in the week prior to the appointment and was not fit to attend work.

26. The Respondent continued to support the Claimant during her absence with another OH telephone assessment taking place on 26 October 2017. The Respondent received the report following this appointment on 31 October 2017. The report stated that the Claimant's health had significantly improved and envisaged the Claimant returning to work in roughly 2 weeks time on a phased basis. The report also said that the Claimant's concentration "*hasn't yet fully recovered and initially she would feel more supported if she could avoid too much technical work*". Mr Brody's initial response to this was that he didn't see how this could be possible given that the Claimant's role was inherently technical.

27. Prior to the Claimant's expected return to work on 13 November 2017, Mr Brody held a conference call with the Claimant and Ms Brettle on 10 November 2017. On that call, Ms Brettle and Mr Brody acknowledged that the OH report had suggested that the Claimant should avoid too much

technical work until her symptoms had further settled down. Mr Brody discussed this with the Claimant noting that the role was a technical role and commented that there would be little, if anything, that the Claimant could do that was not technical. Furthermore, Mr Brody commented that the Claimant had not yet proved herself capable of the most basic technical work associated with her role and therefore that it would not be possible or appropriate to give her any other work until she had done so.

28. It was agreed that the Claimant would return to work on 13 November 2017 on a 50% basis, working two days in the office and the remainder working at home and there would be some technical work that she would be able to do, based on these amended hours. She did in fact return to work on this date.

29. Prior to the Claimant's return to work, Mr Brody emailed Mr Westland informing him of the Claimant's return on a phased basis. He also said that they needed to consider the Claimant's workload and ensure that she was not put under pressure. Mr Westland suggested that the Claimant become involved in the zero-knowledge proof (ZKP) work that they were doing. Mr Brody and Mr Westland considered that as ZKP was essentially a mathematical concept and the Claimant was a mathematician, that the work would be well within her capabilities. Mr Brody concluded that the suggestion was a good one because it played to the Claimant's strength. However, the Claimant refused to work on the ZKP work as she considered it to be technical.

30. On 16 November 2017, the Claimant complained to Mr Brody that Chaitanya Konda, on the last day before the Claimant went on sick leave, had asked questions of the Claimant relating to her personal and financial position and her performance at work. Mr Brody followed up the Claimant's email by speaking to Ms Konda. He was satisfied that Ms Konda had merely been trying to comfort the Claimant when she was clearly in distress and her remarks had been taken out of context.

31. Mr Brody emailed the Claimant on 19 November 2017 noting that the Claimant had refused ZKP work and advised that if she considered she was not able to do technical work on a part-time basis then he recommended that she attend a doctor again and receive a sign off from work for a further period until she was able to do so. In response, the Claimant sent a number of emails to Mr Brody which stated that she refused to report into a peer. She also re-raised the allegations she had previously made regarding the behaviour of members of her team. Mr Brody responded to the Claimant making it clear that he had instructed Mr Westland to provide her with work due to him not being in the London office at that time. He also noted that she agreed that she was not able to do technical work on reduced hours and noted that given her role was a technical one, if she was not well enough to do such work, then she would not be able to attend work.

32. In response, the Claimant suggested that she wished to discuss with Mr Brody her career development more generally in order to help place herself in the most appropriate position given her skills, experience and level of seniority. She also requested that Mr Brody liaise with the Respondent's HR team in the US, suggesting she was happy to relocate to the US. The Claimant had regularly asked Mr Brody for more managerial responsibilities and a promotion under relocation since joining the Respondent some five months earlier and appeared unable to understand and accept that she would need to demonstrate success in her existing role before being able to be considered for any additional duties or responsibilities.

33. In further emails to Mr Brody, the Claimant suggested that others in the team feared her level of seniority and talent, which created tension and a lack of collaboration from their side. The Claimant also suggested ways in which the Respondent should be expanding its blockchain business globally.

34. Due to the Claimant's refusal to receive instructions from the Respondent or carry out work following a return to work on 13 November 2017, a meeting was held between the Claimant and Ms Brettle on 22 November 2017. In this discussion, Ms Brettle discussed with the Claimant her unwillingness to do the work that was allocated to her. The Claimant again suggested that she should be getting much more senior work, including management responsibilities. It was at this meeting that the Claimant suggested that she should manage an offshore team in India, despite this only being mooted by the Respondent as a proposal in development at that stage. Ms Brettle referred to the performance concerns that had been raised with the Claimant prior to her sickness absence and noted that, whilst the performance improvement plan had been placed on hold during a phased return to work, these performance issues would need to be addressed in due course and it would be inappropriate to discuss career development with the Claimant prior to the existing performance concerns being addressed. Ms Brettle sent an email to the Claimant on 27 November 2017 summarising their discussion.

35. The Claimant attended a further OH telephone assessment on 24 November 2017 and the Respondent received the report following this assessment on 29 November 2017. The report stated that the Claimant had a positive mood with a reasonable level of concentration and that she described herself as participating in normal day-to-day activities to a greater extent. It confirmed that she was fit to continue to work but recommended an extended phased plan if this was feasible to accommodate.

36. On 28 November 2017 Mr Brody emailed the Claimant again instructing her to take on the ZKP work she had discussed with Mr Westland. The Claimant replied saying that it was not appropriate work to do at her level, commenting that it was more appropriate for a graduate position.

37. Due to her refusal to do the work allocated to her, the Claimant was invited to a meeting on 12 December 2017 to discuss the Respondent's concerns with regard to her capability to do her role as well as the ongoing issues regarding the type of work she was prepared to undertake, and how that work was supervised and delegated, and her working relationship with the rest of the team.

38. There was a further meeting on 14 December 2017 at which Mr Brody told the Claimant she was not committed to the type of work she should be performing and further there had been a complete breakdown in her ability to interact positively and constructively with her colleagues. Mr Brody noted that this was having a detrimental impact on the team in terms of the work it can undertake and also the members expressing a desire to move into other teams. Mr Brody therefore confirmed that his decision was to terminate the Claimant's employment with immediate effect and make a payment in lieu of a contractual notice period of three months. Accordingly, the Claimant's last day of employment was 14 December 2017. In the meeting, Mr Brody confirmed that the Claimant had a right of appeal. A letter was sent to the Claimant dated 19 December 2017 confirming the outcome of the meeting.

39. The Claimant submitted an appeal against her dismissal on 29 December 2017. In the appeal letter the Claimant raised the issues regarding the behaviour of other members of the team that she had raised with Mr Brody previously and that her performance was primarily affected by behaviour of her colleagues and the stress experienced as a result.

40. The Claimant's appeal was heard by Dr Jessen on 18 January 2018. Following that meeting Dr Jessen carried out a thorough investigation into the Claimant's appeal and provided his outcome to the Claimant by letter dated 15 March 2018. Dr Jessen concluded that there were legitimate performance issues raised with the Claimant which correctly resulted in her being placed on a performance improvement plan. Dr Jessen also found that there was clear evidence of the Claimant's reluctance to carry out tasks allocated to her but noted that he considered the Claimant's reluctance to perform the tasks allocated to her appeared to be linked to her confusion with regards to her role description. Dr Jessen noted the role description with which the Claimant had been provided outlined many tasks which she may be required to undertake as part of her role, including some managerial responsibilities, such as leading offshore teams. Dr Jessen noted that the Respondent's business required staff to be flexible and work on things that they may sometimes feel were beneath them, but noted that the Claimant genuinely appeared confused about the role, having stated that she would not have applied for the role if the job description had been clear that she would be expected to do hands-on coding rather than managerial work.

41. Dr Jessen did not find any evidence that the Claimant had been singled out amongst her peers when she was being asked to carry out hands-on programming, nor did he find any evidence that the Claimant had been treated differently from other members of the team in work allocation or in day-to-day work interactions. Addressing the Claimant's allegation of a lack of diversity within the team, Dr Jessen rejected this, noting that two out of the five members of the London blockchain team were female, which he understood was well above average for a tech team in his experience.

42. With regards the allegation raised by the Claimant concerning how she had been treated by certain members of the team, Dr Jessen noted that these had been investigated by Mr Brody at the time and the Claimant had confirmed that she was satisfied with the outcome. Regarding the issue of how members of the team felt about the Claimant and the level of conflict between them, Dr Jessen considered that the severity of this conflict was not as significant as initially thought and on balance he considered the action to dismiss was premature.

43. Dr Jessen accordingly took the decision that the Claimant's dismissal would be overturned and that the Claimant should be reinstated. However, because of the difficulties the Claimant had with her colleagues, Dr Jessen recommended that the Claimant be reinstated into a different role in the Innovation Team which he oversaw. Dr Jessen identified the role of Global Innovation Automation Industry Specialist/Product Manager and confirmed that the reinstatement would be at the same grade and salary as her previous role. Dr Jessen was questioned about equivalence of the Claimant's old and new roles in his evidence and he referred to an external bench marking process which confirmed, and accordingly this Tribunal accepts, that the two roles are in fact equivalent in grade.

44. Dr Jessen and Ms Brettle met with the Claimant on 20 March 2018 to provide the outcome of the appeal and provide details of the alternative role. The Claimant was pleased with the outcome of the appeal and excited that she would continue to be employed by the Respondent. There was discussion about the role, what it was and what it involved, and importantly the Tribunal finds that it was made clear to the Claimant that the role would be based in the Respondent's Shoreditch office (known as Second Home) which is where Dr Jessen's team was based. Dr Jessen felt it important that the Claimant be based with other colleagues in the team albeit he was open to flexibility and did not require the Claimant to work from the office all of the time.

45. The Claimant emailed Ms Brettle the following day questioning the suitability of the role that had been discussed on 20 March 2018. The Claimant indicated the role which she saw was appropriate for her which was far more senior to her previous role. Ms Brettle responded on 22 March 2018 stating that the role the Claimant had outlined was not currently available within the

Respondent and was also more aligned to a partner level role i.e. some four job levels above the role the Claimant had held previously. Ms Brettle explained that the role that Dr Jessen had proposed was the only one available and was equivalent to the role she had previously held in Mr Brody's team. She also confirmed to the Claimant that the Respondent had put this role through an external benchmarking process and that it had been graded at the same level of pay banding as the previous role. On this basis Ms Brettle asked the Claimant to confirm whether she wished to be reinstated into the role as outlined during the meeting on 20 March 2018. Ms Brettle informed the Claimant that she could choose to reject this role and not be reinstated if that is what she wanted. The Claimant responded the same day confirming that she wanted the role.

46. The Claimant started the new role on 3 April 2018 and attended the Respondent's offices at One More London Place to collect her IT induction pack and pick up a pass for the Shoreditch office where she was going to be based. However, the Claimant did not attend the Shoreditch office later that day or the following one and instead decided unilaterally to base herself at the Respondent's One More London Place office where she worked previously.

47. On 5 April 2018, Annette Pearson emailed the Claimant, noting that she had caught up with Dr Jessen who had asked if the Claimant could do some market research for the team. She set out details of the task which Dr Jessen had requested should be completed by Friday that week. Having received no response from the Claimant, Ms Pearson emailed the Claimant again on 6 April 2018 to ask if she had any questions and received a response from the Claimant saying that her line manager was Mr Brody and asking Ms Pearson to discuss all allocated tasks with him.

48. Having not heard from the Claimant following her induction on 3 April 2018, Dr Jessen emailed the Claimant on 6 April 2018 noting that he had been informed by Ms Pearson that the Claimant had not attended the Respondent's office in Shoreditch at all that week and instead had chosen to work from the One More London Place office. Dr Jessen noted that they had made it clear that her office location would be Second Home in Shoreditch as this was where the team was based.

49. A number of emails were exchanged during that day between the Claimant and Dr Jessen in which it was clear that the Claimant had no intention of carrying out the role which she had accepted in Dr Jessen's team and that she wished to report to Mr Brody and furthermore that she wanted a more senior role within the Respondent, including a possible relocation to the US.

50. As further evidence of the Claimant's complete lack of engagement with her new role, on 10 April 2018 the Claimant emailed Mr Brody and another member of the Global Blockchain team regarding matters affecting the

blockchain team's business. She sent a further email of a similar type later in the day.

51. In response, Dr Jessen emailed the Claimant again confirming that she no longer worked in Mr Brody's team and asking her to concentrate on the tasks that had been allocated to her. In response, the Claimant sent Dr Jessen an email which stated as follows:

> ***Please stop contacting me with respect to this. I am still reporting into Paul Brody as per contract signed with EY and I have never been told otherwise. I am not willing to accept this type of communication and unprofessional behaviour related to wrongly handled disciplinary procedure and investigation outcome that has not been an evidence – based….***

52. On 10 April 2018, Rachel Bateman, Senior Human Resources Manager, emailed the Claimant inviting her to a meeting the following day on 11 April 2018. The purpose of the proposed meeting was to discuss her reinstatement to the new role as the Respondent was concerned that the previous written and verbal correspondence between her and Dr Jessen and Ms Brettle had not been understood.

53. Having not heard from the Claimant, Ms Bateman emailed her again on 11 April 2018 at 10.55 asking if she intended to attend the meeting, noting that a representative from the Respondent's HR team in the US would also be attending the meeting. The Claimant responded to the email at 11.02 stating "*It is illegal – I refuse to do this. I have never accepted the role – it has not been explained to me. I stay with previous role. You cannot do it"*. In a further email at 11.03 to Ms Bateman, the Claimant said that she would only attend if Mr Brody was present.

54. The Claimant did not attend the meeting and so Ms Bateman emailed her at 17.04 on 11 April 2018 to summarise the information that she had intended to share with the Claimant at that meeting. In order to address the Claimant's suggestion that the role was not comparable to her previous role, Ms Bateman attached the job descriptions for both roles and a copy of the benchmarking process. Ms Bateman commented that if the Claimant continued to ignore the reasonable instructions from Dr Jessen, the Respondent would have no option but to deal with this under its disciplinary policy. Ms Bateman made it clear that the Respondent was seeking to support the Claimant and give her a fresh start in a new role.

55. Ms Bateman emailed the Claimant on 13 April 2018 commenting that she had not heard from the Claimant following her email on 11 April 2018 and asking the Claimant whether she wished to continue to be employed in the role.

56. Having received no response to the 13 April 2018 email, Ms Bateman

emailed the Claimant on 16 April 2018 confirming that the Respondent would be managing the situation under its disciplinary policy. She attached a letter inviting the Claimant to a disciplinary meeting to be held on 17 April 2018. The letter stated that there were concerns relating to her conduct which were:

a. failure to return to work at a designated office despite frequent repeated requests and reminders;

b. refusal to undertake duties of the role she had been reinstated to do; and

c. refusal to acknowledge Dr Jessen as a new leader and engage with him in terms of responsibilities and deliverables.

57. The Respondent received no response from the Claimant; however, it subsequently became aware that the Claimant had emailed Mr Brody on 16 April 2018 stating that she was not well and was going to her GP.

58. Having failed to attend the meeting scheduled for 17 April 2018, the Respondent sent the Claimant another invitation to a meeting to take place on 20 April 2018. Again, the Claimant failed to attend this meeting, without providing any response to the Respondent. Ms Bateman telephoned the Claimant after the meeting and was told by the Claimant that she was off sick and that she had told Mr Brody. Ms Bateman told the Claimant that she should have told Dr Jessen as her line manager.

59. Having made several attempts to discuss the Claimant's behaviour following a return to work on 3 April 2018 which was met with a complete refusal to engage by the Claimant, the Respondent sent the Claimant a letter on 24 April 2018 notifying her that she was being dismissed summarily for gross misconduct.

60. The Claimant emailed Dr Jessen and Ms Bateman on 28 April 2018 stating that she had been signed off by her GP on 18 April 2018 and had informed Mr Brody of this. She said that she had not felt well over the previous two weeks and requested a further meeting stating that she felt better now. The Claimant then attended the Shoreditch office for the first time on 30 April 2017 and met with Dr Jessen who informed her that she was no longer employed by the Respondent.

61. The Claimant appealed against her dismissal by letter dated 30 April 2018 in which she set out her concerns regarding the change to her role. Amongst other things the Claimant suggested that the scope of the role she envisaged herself doing was far larger than both previous job specifications. Finally, she asked that Mr Brody and Dr Jessen be included in the discussion to review her situation.

62. The Respondent appointed Mr Mazzei to hear the Claimant's appeal against her dismissal. The Claimant was invited to an appeal meeting which was held on 9 May 2018. Following that meeting the Respondent wrote to the Claimant on 30 May 2018 setting out its findings in respect of the Claimant's appeal.

63. Mr Mazzei summarised the outcome of his investigation and confirmed his conclusion that despite repeated attempts to engage the Claimant in the process and provide her with the clarity she required, the Claimant had failed to listen or respond appropriately, engage with a new team or follow instructions from leaders. He said the reasons behind the dismissal were valid and in line with the Respondent's disciplinary policy.

Legal principles relevant to the claims

Failing to make reasonable adjustments

64. A claim for failure to make reasonable adjustments is to be considered in two parts. First the Tribunal must be satisfied that there is a duty to make reasonable adjustments; then the Tribunal must consider whether that duty has been breached.

65. Section 20 of EQA deals with when a duty arises, and states as follows:

> ***(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.***
>
> ***……***
>
> ***(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.***

66. Section 21 of the EQA states as follows:

> ***(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.***

67. The duty to make adjustments therefore arises where a provision, criterion, or practice, any physical feature of work premises or the absence of an auxiliary aid puts a disabled person at a substantial disadvantage compared with persons who are not disabled.

68. The EQA says that a substantial disadvantage is one which is more than minor or trivial. Whether such a disadvantage exists in a particular case is a question of fact, applying the evidence adduced during a case, and is assessed on an objective basis.

69. In determining a claim of failing to make reasonable adjustments, the Tribunal must therefore ask itself three questions:

    a. What was the PCP?

    b. Did that PCP put the Claimant at a substantial disadvantage compared to persons who are not disabled?

    c. Did the Respondent take such steps that it was reasonable to take to avoid that disadvantage?

70. The key points here are that the disadvantage must be substantial, the effect of the adjustment must be to avoid that disadvantage and any adjustment must be reasonable for the Respondent to make.

71. The burden is on the Claimant to prove facts from which this Tribunal could, in the absence of hearing from the Respondent, conclude that the Respondent has failed in that duty. Therefore, the Claimant has to prove that a PCP was applied to her and it placed her at a substantial disadvantage compared to persons who are not disabled. The Claimant must also provide evidence, at least in very broad terms, of an apparently reasonable adjustment that could have been made.

72. It is a defence available to an employer to say "*I did not know, and I could not reasonably have been expected to know*" of the substantial disadvantage complained of by the Claimant.

Discrimination arising from disability

73. Section 15 EQA provides as follows:

> ***(1) A person (A) discriminates against a disabled person (B) if (a) A treats B unfavourably because of something arising in consequence of B's disability, and (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.***
>
> ***Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.***

74. Section 15 EQA therefore requires an investigation into two distinct causative issues: (i) did the Respondent treat the Claimant unfavourably because of an (identified) "something"? and (ii) did that "something" arise in

consequence of the Claimant's disability? The first issue involves an examination of the state of mind of the relevant person within the Respondent ("A"), to establish whether the unfavourable treatment which is in issue occurred by reason of A's attitude to the relevant "something". The second issue is an objective matter: whether there is a causative link between the Claimant's disability and the relevant "something".

75. As case law makes plain, the causal connection required for the purposes of s.15 EQA between the "something" and the underlying disability, allows for a broader approach than might normally be the case. The connection may involve several links; just because the disability is not the immediate cause of the "something" does not mean to say that the requirement is not met.

76. If section 15(1)(a) is resolved in the Claimant's favour, then the Tribunal must go on to consider whether the Respondent has proved that the unfavourable treatment is a proportionate means of achieving a legitimate aim.

77. In terms of the burden of proof, it is for the Claimant to prove that she has been treated unfavourably by the Respondent. It is also for the Claimant to show that "something" arose as a consequence of his or her disability and that there are facts from which it could be inferred that this "something" was the reason for the unfavourable treatment.

Victimisation

78. Section 27 of EQA provides as follows:

> ***(1) A person (A) victimises another person (B) if A subjects B to a detriment because—***
>
> ***(a) B does a protected act, or***
>
> ***(b) A believes that B has done, or may do, a protected act.***
>
> ***(2) Each of the following is a protected act—***
>
> ***(a) bringing proceedings under this Act;***
>
> ***(b) giving evidence or information in connection with proceedings under this Act;***
>
> ***(c) doing any other thing for the purposes of or in connection with this Act;***
>
> ***(d) making an allegation (whether or not express) that A or another person has contravened this Act.***

> ***(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.***

79. The questions which the Tribunal must ask itself when considering a complaint of victimisation are as follows:

    a. Did the Claimant do a protected act?
    b. Did the Respondent subject the Claimant to a detriment?
    c. If so, did the Respondent subject the Claimant to that detriment because she did a protected act, or because the Respondent believed that she had done, or may do, a protected act?

80. In this case, the Tribunal must determine the reason why the Respondent dismissed the Claimant; what motivated the Respondent to act as it did? Was it because of the complaint alleged to be a protected act – or was it something different? Even if the reason for the dismissal is related to the protected act, it may still be quite separable from the complaint alleged to be a protected act. It is however important to bear in mind that it is not necessary for the protected act to be the primary cause of the detriment, so long as it is a significant influence in the mind of the decision maker. A significant influence is an influence which is more than trivial.

81. Whilst the same burden of proof applies in such cases, namely that the Claimant must prove sufficient facts from which the Tribunal could conclude, in the absence of hearing from the Respondent, that the Claimant has suffered an act of discrimination, it is also perfectly acceptable to go straight to the "reason why" because that is the central question that the Tribunal needs to answer.

Wrongful dismissal

82. The Respondent dismissed the Claimant for gross misconduct claiming that it was entitled to do so due to the Claimant's repudiatory breach of contract. In such cases, the employee's behaviour must amount to a wilful repudiation of the express or implied terms of the contract of employment. It must be an act which fundamentally undermines the employment contract (i.e. it must be repudiatory conduct by the employee going to the root of the contract).

Jurisdiction

83. Section 123 of EQA deals with time limits for bringing discrimination claims in the Employment Tribunal and says as follows:

> ***(1) [Subject to [sections 140A and 140B] on a complaint within section 120 may not be brought after the end of—***

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the employment tribunal thinks just and equitable.

……

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

84. An "act" under the EQA includes an "omission" (section 212(2) EQA). Section 212(3) EQA goes on to say that reference to an omission includes a reference to:

    a. A "deliberate omission" to do something.

    b. A refusal to do it.

    c. A failure to do it

85. Where a claim arises out of an omission:

    a. The employer's failure to do something is to be treated as occurring when the employer decided not to do it (section 123(3)(b) EQA).

    b. In the absence of evidence to the contrary, the employer is to be taken as deciding not to do something when it does an act inconsistent with doing it (or, if there is no inconsistent act, at the expiry of the period in which the employer might reasonably have been expected to do it) (section 123(4) EQA).

86. Where an employer fails to make reasonable adjustments for a disabled employee simply because it fails to consider doing so, time runs at the end of the period in which the employer might reasonably have been expected to comply with its duty.

87. Even if a claim is brought out of time, the Tribunal can extend time by such period as it thinks just and equitable (section 123(1)(b), EQA).

88. The EAT in **British Coal Corporation v Keeble [1997] IRLR 336** held that the Tribunal's discretion in these circumstances is as wide as that of the civil courts under s.33 of the Limitation Act 1980. This requires courts to consider

factors relevant to the prejudice that each party would suffer if an extension were refused. These include:

a. The length of, and reasons for, the delay;

b. The extent to which the cogency of the evidence is likely to be affected by the delay;

c. The extent to which the party sued had co-operated with any requests for information;

d. The promptness with which the Claimant acted once they knew of the possibility of taking action;

e. The steps taken by the Claimant to obtain appropriate professional advice once they knew of the possibility of taking action.

89. While this may serve as a useful checklist, there is no legal obligation on the Tribunal to go through the list, providing that no significant factor is left out (**London Borough of Southwark v Afolabi [2003] IRLR 220 (CA)**). The emphasis should be on whether the delay has affected the ability of the Tribunal to conduct a fair hearing.

Submissions by the parties

90. Both parties made closing submissions. Counsel for the Respondent had prepared written submissions and used these as the basis for his oral submissions. The Tribunal considered very carefully these submissions, including the case law referred to, before reaching its decision.

Assessment of witnesses

91. The Tribunal found the Respondent's witnesses to be genuine, honest credible and fair. They were internally consistent and also consistent with each other despite them not all being in the Tribunal at the same time to listen to each other's evidence. The Tribunal finds that they rated the Claimant highly, which is why they recruited her, and that they really wanted her to succeed. Whilst the Tribunal could see from the evidence that there came a point where both Mr Brody and Dr Jessen became frustrated with the Claimant, something which they did not attempt to hide in their evidence to the Tribunal, the Tribunal did not get the impression at all that they held feelings of ill will or animosity towards her. Indeed, the Tribunal concludes that they were disappointed that it ended the way it did.

92. Listening to the Claimant, the Tribunal was struck by her preoccupation with hierarchy and where people were ranked in terms of seniority. The Tribunal finds that this affected her relationships with colleagues and heavily

influenced how she interacted with them. The Tribunal noted how the Claimant resisted attempts to give her work, even when it was an attempt to help her, because of her perception as to their seniority and whether they were ranked above or beneath her. Such views also affected how she viewed the jobs that she was given by the Respondent and the theme that came across many times was that the Claimant was, in her own view, much better than the role given to her. This was at odds with a culture, made clear when Dr Jessen gave his evidence, that seniority was not important, and people should never fear or be worried about doing things below their grade or being given tasks by someone less senior than them.

93. It was evident to the Tribunal that the Claimant is an intelligent woman. Despite this, the Tribunal found that the Claimant's evidence lacked clarity and her presentation of her case lacked the structure to be able to easily comprehend the points she was making. In an attempt to assist the Claimant, as it was conscious that she is a litigant in person, the Tribunal invited her to focus on the issues, and on a number of occasions directed her to the topics she needed to question witnesses on. The Tribunal does not consider much, if any, of that advice was taken on board and the Claimant insisted on focusing her questioning on issues that the Tribunal informed her they considered peripheral or irrelevant, instead of being directed at the questions that this Tribunal needed to answer.

Analysis, conclusions and associated findings of fact

Reasonable adjustments

Allowing the Claimant flexibility to choose which office she worked at, allowing her to work from home, and providing a space to work to avoid a noisy environment

94. The PCP relied on by the Claimant is the requirement to work in the Shoreditch office, which the Tribunal accepts the Claimant was required to do.

95. The Tribunal then asked itself whether working from the Shoreditch office placed the Claimant at a substantial disadvantage compared to persons who are not disabled. The substantial disadvantage relied on by the Claimant was that she found it difficult to get to the office due to muscle ache and because it was a distance to travel from the tube station to the office. The Claimant further suggests that the area was a dangerous area for her to work in because it was populated by Muslims, and the Claimant is an Israeli passport holder.

96. The Tribunal was provided with very little evidence to enable it to conclude there was any disadvantage, let alone substantial disadvantage. No evidence was provided by the Claimant specifically relating to why she

would suffer from muscle ache travelling to Shoreditch whereas it appears there was no such difficulty travelling to One More London Place. Dr Jessen gave evidence that the office was situated near tube stations. He also said that in his opinion the area was a safe area. Again, there was no evidence before the Tribunal to support the Claimant's suggestion that the Shoreditch area was densely populated by Muslims, let alone that it was dangerous because of this. Finally, there was no evidence before the Tribunal which enabled it to conclude that any substantial disadvantage was related to or caused by her disability.

97. The Tribunal finds that the Respondent did not know of the substantial disadvantage because the Claimant did not raise such issues at the time. Neither could it reasonably have been expected to know.

98. The Tribunal therefore concludes there was no duty to make a reasonable adjustment. Even if there was, it is clear from Dr Jessen's evidence that the Respondent was open to all employees, including the Claimant, working flexibly, which means that she could work from other offices on occasions, work from home on a regular basis and work flexible hours. There was no evidence that the office in Shoreditch was noisy or any noisier than other offices. Dr Jessen gave evidence, and the Tribunal accepts, that the Shoreditch office is a quiet office to work in.

Allowing the Claimant to work reduced hours

99. The PCP relied on by the Claimant is refusing to allow her to work reduced or flexible hours in the period following her return to work on 13 November 2017 and upon her reinstatement on 3 April 2018.

100. The Claimant states that this PCP placed her at a substantial disadvantage because the physical condition of the office was poor with no place to eat or drink.

101. The Tribunal is not satisfied that the PCP placed the Claimant at a substantial disadvantage compared to persons who are not disabled. The Tribunal finds as fact that the Shoreditch office was not in poor condition and that there was a cafeteria at the office enabling the Claimant to obtain food and drink if she needed.

102. As there was no substantial disadvantage, the Tribunal concludes there was no duty to make a reasonable adjustment.

103. Even if there was a duty, it is clear that the Claimant was allowed to return to work in November 2017 on reduced hours. As far as returning to work in April 2018 is concerned, this is not something that the Claimant requested. The Respondent had not been resistant to reduced hours previously and there is no evidence to suggest that their approach would have been any

different in April 2018.

Allocating the Claimant work that was non-technical

104. The PCP relied on by the Claimant is the requirement to do technical work in the periods following her return in November 2017 and following her reinstatement in April 2018.

105. The Claimant states that this placed her at a substantial disadvantage because she was not qualified to do software engineering and had never agreed to do it.

106. The Tribunal is not satisfied, due to the fact that the Claimant failed to provide evidence on the issue, that the PCP placed her at a substantial disadvantage compared to persons who are not disabled. For this reason, there is no duty to make reasonable adjustments.

107. The Tribunal notes that the only evidence in support of this request is an OH report which stated that she should avoid "too much" technical work. The Tribunal concluded that this is not the same as saying she should do "no technical work".

108. There is also an obvious problem in defining "technical". A wide definition encompasses everything that the Claimant and her team colleagues did because as Mr Brody said in evidence, the job is inherently technical. However, a narrower definition accepted by the Claimant was any work that did not involve coding. The Tribunal finds that when the Claimant returned to work in November 2017 and on 3 April 2018, she was certainly given work that was not coding. The Tribunal therefore concludes that, despite its finding that there was no duty to make reasonable adjustments, that in any event the Respondent did make a reasonable adjustment if one adopts the narrower definition of 'technical'. If one takes a wider definition of 'technical' the adjustment would mean that the Claimant could not do the job at all and the Tribunal finds that it would not be a reasonable adjustment in those circumstances.

109. The Tribunal finds that when the Respondent attempted to give the Claimant easier, non-technical, work to do, on both occasions the Claimant refused to do them as she considered them to be beneath her.

110. Despite the Tribunal's finding that the Respondent was not under a duty to make reasonable adjustments, it did go on to consider the remaining adjustments briefly.

Not subjecting the Claimant to short deadlines

111. If one takes the word "short" to mean unrealistic, the Tribunal does not find

that such deadlines were imposed. There is also no evidence showing how this adjustment would avoid the disadvantage.

Not requiring the Claimant to look at bright colours in corporate logos

112. The Claimant said in evidence that she did not require this adjustment whilst working for the Respondent. There was no evidence as to how such an adjustment would have assisted the Claimant or mitigated any disadvantage.

Providing support and assistance in completing tasks requiring the Claimant to convert epics into technical solutions

113. The Tribunal finds that there was no evidence to suggest that the Claimant was required to convert epics into technical solutions. Mr Brody was very clear that she was not, and the Tribunal accepts his evidence on this point.

Providing the Claimant with extra time to address learning difficulties or acquiring new information knowledge, skills in the area that was not known to the Claimant;

114. This adjustment was not requested. However, the Tribunal finds that the Claimant was given more than enough time to address any learning difficulties or acquire new information. It was the Respondent's evidence, which the Tribunal accepts, that the Claimant did not produce anything in the whole time that she was there, so it is not entirely clear, from the Respondent's perspective, what she was doing.

Providing the Claimant with extra time to be prepared for public speeches

115. The Tribunal accepts that the Claimant was not required to give public speeches.

Providing the Claimant with a senior personal coach for career purposes and other mental health support.

116. Whether provided by a senior personal coach or not, the Tribunal finds that the Respondent gave lots of support, including mental health support, to the Claimant.

Discrimination arising in consequence of disability

117. The Tribunal was in no doubt that the reasons for the dismissal were those set out in the dismissal letter. It was not because the Claimant was prone to sickness absence. Whilst it did dismiss the Claimant when she was off sick, the Tribunal is satisfied that this played no part in the decision to dismiss and had she not been sick and attended work as normal, the Tribunal finds

that she would still have been dismissed. The Tribunal finds that what illustrated the fundamental problem was highlighted again when the Claimant was sick in that she continued to communicate with Mr Brody, thereby wilfully disobeying clear instructions that she had been given.

118. Even if the Claimant had been dismissed because of the "something" arising in consequence of disability, the Tribunal finds that dismissal was a proportionate means of achieving a legitimate aim. The Respondent was left with little choice in the end but to terminate the Claimant's employment.

Victimisation

119. The Tribunal finds that the Claimant and Mr Brody had a discussion about male dominance generally in the tech sector. Apart from this, the Tribunal was not satisfied that any of the conversations referred to in the first three protected acts actually occurred. There are insufficient details provided by the Claimant that such conversations took place and she did not even question the witnesses, particularly Mr Brody, about them during the hearing. In the Tribunal's view, the Claimant did not adduce sufficient evidence of these conversations to shift the burden of proof.

120. The Tribunal accepts that the email sent to Mr Brody on 22 November 2017 at 20.19 and the letter sent to Ms Brettle on 29 December 2017 are protected acts.

121. Turning now to address each alleged act of victimisation:

Being dismissed on 14 December 2017

122. Only one of the two protected acts were before 14 December 2017; this was the email dated 22 November 2017. The other email was sent on 29 December 2017 and therefore cannot have influenced the decision to dismiss.

123. The Tribunal finds that the dismissal in December 2017 was not in any way influenced by the email of 22 November 2017.

Being placed in a less favourable position in terms of role, location and reporting line

124. The Tribunal does not accept that the Claimant was less favourably treated as alleged. The Tribunal notes that the Claimant accepted the role and therefore it is hard to see how this can be an act of victimisation.

Being summarily dismissed on 24 April 2018

125. The Tribunal finds that the dismissal in April 2018 was not in any way

connected to the protected acts. If the Respondent was unhappy in any way and was inclined to victimise the Claimant, the Tribunal considers that the Respondent would not have reinstated her. The reasons for the dismissal are clearly set out in the dismissal letter and the Tribunal accepts these were the reasons for the dismissal.

Treating the outcome of the appeal as a fait accompli

126. The Tribunal accepts that Mr Mazzei considered the appeal with an open mind and with the care and attention one would expect. Mr Mazzei was not even challenged by the Claimant on this point and there is therefore no evidence to contradict the above finding. For the avoidance of doubt, the Tribunal finds that the appeal was not a fait accomplis and had nothing to do with any of the above two protected acts.

Wrongful dismissal

127. The Tribunal finds that the Claimant refused to perform the essential terms of her contract. Her actions were wilful and deliberate. Faced with that refusal, there was little that the Respondent could do but to accept what the Tribunal concluded to be a repudiatory breach of contract by the Claimant. The Tribunal therefore concluded that the Respondent was entitled to dismiss the Claimant summarily and therefore that the Claimant was not wrongfully dismissed.

Jurisdiction

128. Given the Tribunal's above findings, the time point is somewhat academic, but for completeness, the Tribunal did consider it.

129. The time limit point relates to complaints of failing to make reasonable adjustments following her return to work in November 2017 and her dismissal in December 2017, which the Claimant alleges is an act of victimisation.

130. The Tribunal did not find those allegations to be part of a continuing act ending when she was dismissed for a second time. The Tribunal considers the break in time and the fact that different people managed the Claimant and were dealing with her complaints in these two periods to be important factors which persuaded this Tribunal that there is no continuing act.

131. The Tribunal then considered whether it would be just and equitable to extend time. The Tribunal considered the reasons given by the Claimant for the delay and the fact that in or around April 2018 she says she was not well. However, the Tribunal notes that the Claimant engaged in correspondence with the Respondent after the second dismissal and lodged an appeal. The Tribunal considered the balance of prejudice and concluded

that there were still a number of claims that could be brought and would be in time if the Tribunal refused to extend time to allow these specific claims to be brought. In considering the balance of prejudice, the Tribunal was also in a position to consider the merits of the claims. The Tribunal considered this to be one of those cases where it would not be just and equitable to extend time.

132. For the above reasons, the Tribunal finds that all of the claims are not well founded and are dismissed.

……
Employment Judge Hyams-Parish
02 January 2020