

ANNEX – LIST OF ISSUES

Issues

1. Disability (s.6 Equality Act 2010)

- 1.1. Did the Claimant have a physical impairment at the material time, namely her skin condition.⁷
- 1.2. Did her skin condition amount to a 'severe disfigurement' within the meaning of Schedule I Para 3 so as to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities? (See para 3 of the Details of Claim which refers to B24-B25 of the Guidance on Disability relating to severe disfigurements)
- 1.3. Alternatively, disregarding measures taken to treat or correct the impairment, did the impairment have a substantial adverse effect on her ability to carry out normal day-to-day activities?
- 1.4. If so, was the effect long term? The effect of an impairment is long-term if it has lasted for at least 12 months or it is likely to last for at least 12 months. If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.

2. Harassment related to sex/disability (s.26 EqA 2010)

- 2.1. Did the Respondents engage in unwanted conduct as set out at paragraphs 51 and 52 of the Grounds of Complaint?

Namely, on 15 February:

- 2.1.1. requiring the Claimant to wear make-up;
- 2.1.2. by Ms Lowe taking the Claimant off the shop floor; and
- 2.1.3. by Ms Lowe's remarks to the Claimant.

And, on 19 February:

- 2.1.4. removing the Claimant from marketing duties,

2.2. Was the conduct related to sex and/or disability?

2.3. Did the conduct have the purpose or effect of violating her dignity or creating for her an intimidating, hostile, degrading, humiliating or offensive environment? In considering whether the conduct had that the Tribunal will take into account her perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.



NB: Although constructive dismissal cannot amount to an act of harassment, if the Tribunal finds that the Claimant was subjected to the harassment above, the Tribunal will need to go on to consider whether or not the Claimant's resignation flowed from the harassment and it is suggested this is done at the liability stage.

3. Direct sex discrimination (s. 13 EqA 2010)

3.1. Did the Respondents subject the Claimant to the following treatment falling within s.39 Equality Act, as set out at paragraph 40 of the Grounds of Complaint:

Namely, on 15 February:

3.1.1. requiring the Claimant to wear make-up;

3.1.2. taking the Claimant off the shop floor to discuss the matter of the Claimant not wearing make-up;

3.1.3. Ms Lowe's remarks to the Claimant.

And, on 19 February:

3.1.4. removing the Claimant from her marketing duties;

3.1.5. dismissing the Claimant (the Claimant relies on the events of 15 February' and/or the events of 19 February as constituting individually or cumulatively a breach of the implied term of trust and confidence, entitling her to resign without notice in response to a repudiatory breach).

3.2. If so, did the Respondents, because of sex, treat the Claimant less favourably than they treated or would have treated others? Insofar as it is necessary, the Claimant relies on the hypothetical comparator and the Tribunal will need to apply the burden of proof provisions set out in s 136 EqA 2010).

4. Discrimination arising from disability (s. 15 EqA 2010)

4.1. Can the Respondents show that they did not know, and could not reasonably have been expected to know, that the Claimant had a disability? If not:

4.2. Did the Respondents subject the Claimant to unfavourable treatment falling within s.39 Equality Act; as set out at paragraph 47 of the Grounds of Complaint:



Namely, on 15 February:

4.2. 1. taking the Claimant off the shop floor;

4.2.2. Ms Lowe's remarks to the Claimant;

And, on 19 February:

4.2.3. removing the Claimant from her marketing duties;

4.2.4. dismissing the Claimant (on the basis set out above at 3.1.5),

4.3. Can the Claimant prove that the Respondents treated her as set out above because of "something arising" in consequence of her disability, i.e., her appearance?

4.4. Was that treatment a proportionate means of achieving a legitimate aim? The Respondents assert there was a legitimate aim of maintaining the required standard of appearance.

5. Harassment related to age (s. 26 EqA 2010)

5.1. Did the Respondents engage in unwanted conduct as set out at paragraph 5 of the Grounds of Complaint?

Namely:

5.1.1. Rachel Lowe's email of 27 February 2018; and

5.1.2. Rachel Lowe and Simon Parker writing to the Claimant's father and step-mother on 9 April 2018?

5.2. Was the conduct related to age?

5.3. Did the conduct have the purpose or effect of violating her dignity or creating for her an intimidating, hostile, degrading, humiliating or offensive environment? In considering whether the conduct had that effect, the Tribunal will take into account her perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect,

6. Direct age discrimination (s. 13 EqA 2010)

6.1. Did the Respondents subject the Claimant to the following treatment falling within s. 39 Equality Act} as set out at paragraph 45 of the Grounds of Complaint:



Namely:

- 6.1.1. Rachel Lowe's email of 27 February 2018; and
- 6.1.2. Rachel Lowe and Simon Parker writing to the Claimant's father and step-mother on 9 April 2018?
- 6.2. If so, did the Respondents, because of age, treat the Claimant less favourably than they treated or would have treated others? Insofar as it is necessary, the Claimant relies on the hypothetical comparator and the Tribunal will need to apply the burden of proof provisions set out in section 136 Equality Act 2010).
- 6.3. Was the treatment a proportionate means of achieving a legitimate aim? The Respondents rely on the 'need to protect themselves from vexatious litigation and untruthful allegations'.

7. Victimisation (s.27 EqA 2010)

- 7.1. Did the Claimant carry out a protected act?

The Claimant relies upon the following:

- 7.1.1. her complaint to Mr Parker on 17 February 2018;
- 7.1.2. her resignation email on 19 February 2018;
- 7.1.3. her notification of early conciliation on 24 February 2018; and
- 7.1.4. her letter of 24 February 2018.
- 7.2. If there was a protected act, did the Respondents subject the Claimant to a detriment because she had done a protected act or they believed she may do a protected act.?

The Claimant relies on the following alleged acts of detriment as set out in paragraph 44 of the Grounds of Complaint:

- 7.2.1. the removal of the Claimant's marketing duties by way of Ms Lowe's phone call on 19 February 2018;
- 7.2.2. Ms Lowe's email in response to the Claimant's resignation on 20 February 2018 (NIB: In the Details of Complaint this was listed as an email on 19 February, however it is noted it was in fact sent on 20 February at 1,23pm - an amendment is not considered to be necessary, but leave will be requested insofar as it is);



7.2.3. The Respondents' refusal to pay the Claimant's wages until December 2018;

7.2.4. Ms Lowe's email of 27 February 2018;

7.2.5. Ms Lowe and Mr Parker's letter of 9 April 2018;

7.2.6. her dismissal (constructively, on the basis set out above at 3.1.5).

8, Failure to provide pay slips (s.8 Employment Rights Act 1996)

8.1. Did the First Respondent provide the Claimant with an itemised pay slip in respect of January or February?

8.2. If not, what particular ought to have been included or referred to in such statements?

The Claimant avers that:

8.2.1. the January pay statement should have shown that she worked 56 hours and was entitled to €448 pay; and

8.2.2. the February pay statement should have shown that she worked 104 hours and was entitled to €832 pay.

9. Statement of written particulars of employment (s. 1 ERA 1996)

9.1. Did the Respondent provide the Claimant with a written statement of particulars of employment?

10. Remedies

10.1. If the Claimant succeeds in whole or part, the Tribunal will be concerned with issues of remedy, including but not limited to:

10.1.1. a declaration;

10.1.2. compensation for loss of earnings (including mitigation and whether the Claimant would have been dismissed at some point in any event and when);

10.1.3. an injury to feelings award;

10.1.4. a monetary award under s. 12(4) ERA 1996 in relation to itemised pay slips;



10.1.5. an award under s.38 Employment Act 2002 in respect of any failure to provide a statement of employment particulars;

10.1.6. aggravated damages (the Claimant will rely on the manner of the Respondents discrimination, their subsequent conduct in post-resignation correspondence and the manner in which they have conducted litigation);

10.1.7. interest.

