THE EMPLOYMENT TRIBUNALS

Claimant: **Mrs B Ord**

Respondent: **BEL Valves Limited**

Heard at: **Newcastle Hearing Centre**
On: **Monday 11th January 2021 to Friday 15th January 2021**

Before: **Employment Judge Johnson**

Members: **Mrs S Don**
Mr D Cattell

Representation:

Claimant: **In Person**
Respondent: **Mr R Ryan of Counsel**

RESERVED JUDGMENT

The unanimous judgment of the employment tribunal is as follows:-

1. The claimant's complaint of unfair constructive dismissal is well-founded and succeeds.

2. The claimant's complaint of breach of contract (failure to pay notice pay) is well-founded and succeeds.

3. The respondent is ordered to pay compensation to the claimant for unfair dismissal in the sum of £22,946.63.

4. The claimant's complaints of unlawful disability discrimination are not well-founded and are dismissed.

REASONS

1. The claimant conducted this 5-day hearing herself. The claimant gave evidence herself and called a former colleague, Ms SJ McLaughlan to give evidence on her

behalf. The claimant cross-examined the respondent's witnesses. The respondent was represented by Mr Ryan of Counsel, who called to give evidence Ms Clare Taylor (Customer Services Manager), Mr Andrew Walton (Head of HSE) and Ms Wendy Tatters (Director of HR). There was an agreed bundle of documents marked R1 and R2, comprising two A4 ring-binders containing a total of 672 pages of documents. A small number of additional documents were added during the hearing and were paginated accordingly. Mr Ryan most helpfully prepared written submission on behalf of the respondent, which was marked R3.

2. By a claim form presented on 29th November 20219, the claimant brought complaints of constructive unfair dismissal, breach of contract (failure to pay notice pay), unlawful disability discrimination and breach of the Working Time Regulations (failure to pay accrued holiday pay). All claims were defended by the respondent. At an earlier preliminary hearing the claimant withdrew her claim relating to unpaid holiday pay.

3. The claimant's employment with the respondent commenced on 1st June 2015 and ended when she resigned without notice on 27th September 2019. On 9th November 2018, the claimant had submitted a formal complaint alleging bullying by her line manager Mr Clive Lincoln. The claimant alleged that this grievance had not been reasonably and promptly dealt with by the respondent and that she was never provided with a formal outcome to that grievance. The claimant raised a further grievance about those matters on 30th May 2019. The outcome of that second grievance was unacceptable to the claimant, as was the outcome of her appeal. The claimant had commenced a period of sickness absence due to stress at work and depression on 1st March 2019 and she remained absent from work for that reason until she resigned on 27th September 2019.

4. The claimant alleged that she had become stressed and anxious due to overwork and that her treatment at the hands of Mr Lincoln had acerbated her stress and anxiety to the extent that she was formally diagnosed with, and given medication for, depression. The claimant alleged that her stress, anxiety and depression amounted to a mental impairment and a disability as defined in Section 6 of the Equality Act 2010. The claimant alleged that in September 2019 she was told that she was at risk of redundancy and was in a pool of one from which selection would be made. The claimant maintained that this was an act of discrimination, namely unfavourable treatment because of something (her absences) which arose as a consequence of her disability.

5. The respondent denied that the claimant's stress, anxiety and depression amounted to a disability at the relevant time. The respondent further maintained that, if the claimant did suffer from a disability at the relevant time, then the respondent did not know about it or could not reasonably have been expected to know about it. The respondent denied that it had failed to fairly and promptly dealt with the claimant's grievance, maintaining that Mr Clive Lincoln had been dismissed shortly after the grievance had been raised and that the claimant had returned to work in the knowledge that the subject of her grievance would no longer be present in the workplace and by so doing had accepted that the grievance was concluded.

6. The parties had agreed a list of issues (the questions which the employment tribunal would have to decide). Those issues were set out by Employment Judge Martin at an earlier private preliminary hearing on 11th February 2020. It was agreed at the beginning of this 5-day hearing, that those remained the issues (the questions which the tribunal would have to decide).

7. The claimant's complaints of bullying were made against her line manager, Mr Clive Lincoln. Mr Lincoln was not called by the respondent to give evidence to rebut those allegations. None of the 3 witnesses called by the respondent give any evidence to rebut those allegations. The claimant also made allegations against Ms Fiona Ward, who was the respondent's HR manager at the relevant time. Again, Ms Ward was not called by the respondent to rebut the allegations made by the claimant. The claimant's original grievance in November 2018 was handled by the respondent's HR advisor, Ms Bronwen Gilliland. Again, Ms Gilliland was not called by the respondent to give evidence to rebut allegations made by the claimant to the effect that the respondent had failed to properly investigate the claimant's original grievance. The tribunal's findings of fact, as set below, reflect the evidence of the claimant which was not challenged by the respondent, particularly with regard to the allegations of bullying and harassment by Mr Lincoln which formed the subject matter of the first grievance in November 2018. Where there was any conflict on the evidence between the claimant and the respondent, the tribunal made its findings of fact on a balance of probability.

Findings of fact

8. The claimant's employment with the respondent began on 1st June 2015. The claimant's role was of a Continuous Improvement Engineer. On 1st May 2016, the claimant was promoted to the position of Continuous Improvement Manager and on 1st June 2017 she was promoted to Continuous Improvement and Health, Safety and Environmental Manager. In September 2017 Mr Bruce Heppenstall became CEO of the respondent. On 2nd January 2018 the claimant had duel reporting lines, firstly to Bruce Heppenstall in respect of HSE matters and secondly to Mr Clive Lincoln for continuous improvement and quality matters.

9. A copy of the claimant's original contract of employment appears at page 72 – 83 in the bundle. It confirms a salary of £38,500 per annum for a 35-hour working week, with 25 days holiday plus the statutory bank holidays. At paragraph 12 on page 76 it states that the claimant is entitled to 3 months notice of dismissal, following completion of her probationary period. In Appendix 1 on page 82 the following entries appear:-

   2 GRIEVANCE

   There are recognised grievance procedures. If you have any grievance relating to your employment you can raise the matter in the first instance with your supervisor. Details of the steps subsequent upon such an application are set out in the grievance procedure.

   3 **Bullying and harassment**

If you have a complaint relating to harassment or bullying, details on how you should register your complaint are set out in the bullying and harassment policy.

10. The grievance procedure itself appears at pages 68 – 71 in the bundle. The relevant extracts are as follows:-

> The purpose of this procedure is to ensure that employees have an opportunity to raise formally with management any grievances relating to their job or complaints regarding the company or any of its employees. The company's aim is to ensure that any grievance or complaint is dealt with promptly and fairly by the appropriate level of the company's management. The procedure does not confer any contractual rights. It only applies to employees of the company.
>
> It is essential to the proper working of this procedure that any employee raising a grievance should continue to work normally whilst the procedure is being followed.
>
> Where the complaint is of harassment or bullying, the employees should make use of the bullying and harassment policy.
>
> It will usually be better for all those involved if grievances can be resolved informally. This procedure should only be used where it is not possible to resolve an issue informally in discussion with your immediate manager.
>
> Where a complaint or grievance relates to an employee's immediate manager, the grievance procedure can be commenced either at the stage above that in which that manager would be involved or by approaching the Human Resources Department.
>
> Stage 1
>
> If an employee wishes to raise a formal grievance they should in the first instance raise it in writing with their immediate manager. An employee must include a sufficient explanation of the basis of their grievance.
>
> Stage 2
>
> If the matter is not resolved at Stage 1 the employee may refer to it in writing within 5 working days to the next level of management (who may also involve a representative of the Human Resources Department). The employee should set out the grounds for the complaint and the reasons for dissatisfaction with the Stage 1 response. The employee will be invited to a meeting to consider the matter, normally within 5 working days of the request being made. Following the hearing, the human resources manager will normally respond to the grievance in writing within 5 working days of the meeting. They will also inform the employee in writing of the right to raise the grievance at Stage 3."

11. The respondent's bullying and harassment procedure appears at pages 63 – 67 in the bundle. Relevant extracts are as follows:-

> All employees have a duty not to bully or harass each other nor to help anyone else to do so. We will not tolerate bullying or harassment in our workplace or at work-related events outside the workplace, whatever the seniority of the perpetrator and whether the conduct is a one-off act or repeated course of conduct and whether done purposefully or not.
>
> If after investigation we decide that you have harassed or bullied another employee or contractor then you may be subject to disciplinary action.
>
> Allegations of bullying and harassment will be treated seriously. Investigations will be carried out promptly, sensitively and as far as possible confidentially.
>
> Examples of bullying and harassment include:-
>
> - Verbal abuse or offensive comments
> - Deliberate exclusion from conversations or work activities
> - Withholding information a person needs in order to do their job
>
> The list is not exhaustive or inclusive.
>
> Bullying does not include appropriate criticism of an employee's behaviour or proper performance management. It is important to recognise that conduct which one person may find acceptable, in other may find totally unacceptable. All employees must therefore treat their colleagues with respect and appropriate sensitivity.
>
> 4 Responsibility of employees, supervisors and managers
>
> It is the responsibility of all employees to comply with this policy and the particular responsibility of supervisors and managers to ensure it is carried out with a view to developing and maintaining a working environment at the company in which harassment and bullying are understood by all to be unacceptable. To this end a copy of this policy is available to all employees via our usual communication process and is available on the intranet. Employees are expected to familiarise themselves with it and abide by its provisions. The policy does not however confer contractual rights on individuals.
>
> 6 Procedure for resolution
>
> If you are being bullied or harassed by another employee there are 2 possible avenues for you, informal or formal.
>
> A Informal resolution
>
> B Formal resolution

In the event the informal resolution of the matter is unsuccessful or considered inappropriate in the circumstances, the employee may make a formal written complaint of harassment to a member of the Human Resources Department. Should he or she choose to do so the employee will be able to discuss his or her complaint at any stage of the procedure with a trained counsellor. Trained counsellors may be contacted through a member of the Human Resources Department or by speaking with the company nurse; any such discussions will be strictly confidential.

The complainant must provide the following details – the name of the alleged perpetrator or bully, the nature of the harassment or bullying, the dates and times the harassment or bullying occurred, the names of any witnesses and any action taken by the complainant informally.

Where the complainant and the alleged perpetrator work in proximity to each other, it may be necessary to;

- Transfer one of you
- Transfer both of you
- Send one of you home on full pay
- Send both of you home on full pay

Any complaint will be investigated promptly, usually within 5 working days, impartially and so far as practicable confidentially. As part of this process a meeting will be held with the complainant to consider his or her allegation and to enable him or her to put their case.

Where the evidence gathered investigation indicates that a disciplinary offence is being committed, the company's disciplinary procedure will be instigated and a disciplinary hearing under that procedure will be arranged to deal with the alleged disciplinary offence. In accordance with that procedure, the alleged perpetrator or bully will be provided with relevant evidence of the allegations against him or her except in exceptional circumstances and will be given a full opportunity to respond.

Where the investigation indicates that no disciplinary offence has been committed, the complainant and the alleged perpetrator will be informed in writing. Depending on the circumstances, the company may consider the option of transferring the employees involved if appropriate.

Where a complainant is dissatisfied with the outcome of an investigation into his or her complaint, he or she will be informed of the right of appeal to a senior manager. On receipt of an appeal, which should be submitted within 5 working days, a meeting will be convened to reconsider the employee's complaint which will be dealt with in accordance with the appeals procedure.

12. Ms Stevie-Jane McLaughlan began work for the respondent in September 2017, as a service technician. In March 2018 she was interviewed for, and offered the position of, Continuous Improvement Engineer, which role she began on 11th June 2018.

13. Ms McLaughlan's unchallenged evidence to the tribunal was that upon being promoted she immediately felt "unliked" by Clive Lincoln, who was the Continuous Improvement and Quality Director. Ms McLaughlan described Mr Lincoln as "visibly irritated with me and dismissive of my comments or questions". Ms McLaughlan described how Mr Lincoln was "obnoxious" towards her and that he "found fault in everything I did." Mr Lincoln criticised Ms McLaughlan's time-keeping, even though the incidents of time-keeping were minor and related to Ms McLaughlan's childcare responsibilities as a single parent. Mr Lincoln criticised the way Ms McLaughlan dressed.

14. The claimant took the view that Mr Lincoln was being unfair upon Ms McLaughlan. Mr Lincoln took exception to what he perceived to be the claimant taking sides with Ms McLaughlan.

15. The claimant noticed a deterioration in the relationship between Mr Lincoln and Mr Heppenstall. Mr Lincoln became openly critical of the CEO, Mr Heppenstall, making comments in circumstances which the claimant considered to be inappropriate. When the claimant made her position clear to Mr Lincoln, he again took exception to the claimant's stance.

16. The claimant described how Mr Lincoln began to distance himself from her. The claimant described how Mr Lincoln's attitude and manner towards her started to deteriorate in early 2018. She described how Mr Lincoln became "distant, argumentative and distrustful of me and my loyalties to him" and how he accused her of "colluding with Bruce Heppenstall against him". The claimant described how Mr Lincoln became increasingly verbally aggressive, flippant, distrustful and paranoid and that by June 2018 he had virtually stopped speaking to the claimant. This was even though he sat less than 5 feet away from her. The claimant described how Mr Lincoln regularly undermined her authority with her direct reports. She described how Mr Lincoln would completely ignore her. If she entered the room he would stop talking and wait until she left the room before resuming his conversation. The claimant described how Mr Lincoln went on to accuse her of not managing direct reports properly and how he would find fault of almost everything she or Ms McLaughlan did.

17. By late July 2018 the claimant was becoming increasingly exasperated at Mr Lincoln's behaviour and openly asked him what was wrong. Mr Lincoln insisted that nothing was wrong and the claimant told him that she did not believe him. The claimant asked Mr Lincoln what was his problem with Mr McLaughlan and he said that he found her "cocky" which he didn't like and that in his opinion she was "taking advantage of having a young child".

18. At this time, the claimant had undertaken an increasingly heavy workload. She began to notice that she was forgetting things and making mistakes which would not ordinarily have happened. The claimant found the lack of support from Mr Lincoln and his bullying attitude towards her, to be particularly difficult to cope with.

19. In August 2018 the claimant was asked to attend a meeting following the respondent's failure to maintain its ISO4001 environmental certificate. Mr Lincoln took exception to the claimant attending that meeting, when he had not been invited. When the claimant returned to the office following the meeting and attempted to discuss the matter with Mr Lincoln, he insisted that he was not involved and was too busy to help. He said to the claimant "Go sort it yourself" and flatly refused to help in any way. The claimant became extremely distressed and went to the ladies` toilet to try and compose herself. She described how Mr Lincoln became "visually very angry at me". The claimant went on to describe how she had then become very stressed and was struggling to concentrate and was exhausted to the extent that her overall performance was beginning to suffer.

20. At the beginning of his cross examination of the claimant, Mr Ryan on behalf of the respondent formally conceded that the claimant was a loyal, hard-working, productive and respected member of staff at the respondent for over 4 years. It was accepted that Mrs Ord loved her job and was very good at it. Furthermore, Mr Ryan said he would not challenge the symptoms of stress, anxiety and depression which were described by the claimant, nor would he challenge the medical diagnosis of work-related stress, anxiety and depression. In his cross-examination of the claimant, Mr Ryan did not challenge her description of Mr Lincoln's behaviour and conduct towards the claimant and Ms McLaughlan.

21. Based upon the evidence of the claimant and Ms McLaughlan, the tribunal found that Mr Lincoln had behaved towards the claimant in the manner described by her and that this behaviour towards the claimant did amount to "bullying".

22. The claimant had an excellent attendance record with the respondent and had never previously been diagnosed with stress, anxiety or depression. However, in September 2018, the claimant realised that her workload at the respondent and in particular the impact of Mr Lincoln's behaviour towards her were adversely affecting her mental wellbeing. On 24th September 2018 the claimant attended her GP surgery, where she broke down in tears whilst explaining the bullying behaviour by Mr Lincoln. The claimant described how she was suffering from physical symptoms of chest pain and how she had cried at work in front of colleagues for the first time. The claimant was diagnosed with work-related stress and was prescribed betablockers to help with her physical symptoms. On 25th September, the claimant sent an e-mail to Fiona Ward (HR Manager) to report the diagnosis of work-related stress and the prescription of betablockers. No response was received from Fiona Ward. On 1st October 2018 in her one-to one meeting with Mr Lincoln, the claimant reported her diagnosis of work-related stress and the medication. Mr Lincoln's response was, "Well I'm stressed as well."

23. On 12th October 2018, the claimant forwarded to Mr Heppenstall a copy of the e-mail she had sent to Fiona Ward on 25th September confirming her diagnosis of work-related stress. Mr Heppenstall replied saying that "he could tell something was up" but did not follow the matter up with the claimant. On 12th October, the claimant informed Fiona Ward that she had forwarded the e-mail to Mr Heppenstall and repeated that her relationship with Mr Lincoln was not improving. On 31st October the claimant asked Fiona Ward if she would support the claimant

in her relationship with Mr Lincoln. The claimant's unchallenged evidence was that Ms Ward agreed saying that she would "Get us together for a face-to-face meeting to have it out." That did not happen. The claimant reminded Ms Ward about it on 5th November, to which Ms Ward replied that she had "not found anything out."

24. On 6th November the claimant had a meeting with Mr Lincoln about a particular project. The claimant described Mr Lincoln's attitude as "Again nasty in his tone to me as well as aggressive and dismissive when I tried to talk." During my explanation he turned on me and very nastily shouted "Just shut up" and then said "You're really peeing me off."

25. On 9th November 2018 Mr Chris Keith (Operations Manager) called in to see the claimant and asked, "How are things with you and Clive". The claimant told Mr Keith that she was very unhappy and highly stressed and struggling to cope. She then broke down in tears. The claimant identified that her struggles were caused by the bullying by Mr Lincoln, on top of an increasing workload.

26. On 9th November the claimant wrote formally to Mr Bruce Heppenstall, complaining about the bullying behaviour by Mr Lincoln. It was accepted by the respondent that this letter amounted to a formal grievance under the respondent's grievance procedure and should be dealt with under its bullying and harassment procedure.

27. On 12th November, Ms Bronwen Gilliland (HR Advisor) phoned the claimant to acknowledge receipt of her grievance and sent a formal letter of acknowledgement with a copy of the bullying and harassment policy. On 13th November Ms Gilliland e-mailed the claimant to arrange a grievance hearing on 15th November. On 14th November Ms Fiona Ward spoke to the claimant and told her that she "could not have anything to do with the complaint", as she had already spoken to the claimant and Mr Lincoln about some of the issues and in her opinion that amounted to a "conflict of interests".

28. The claimant attended the first formal grievance meeting with Ms Gilliland. The claimant was accompanied by a work colleague, Mr Steve Dixon. Copies of the notes of the meeting appear at page 192 in the bundle. These notes were never shown to the claimant until 30th May 2019. The claimant set out in detail her complaints about Mr Lincoln. On the last of the 9 pages of notes, Ms Gilliland states:-

> "Once we start an investigation – and it will be as discreet as we can, how do you feel you will be able to work in the office? With Clive – given you have told us about going to the doctor and your stress issues?"
>
> The claimant replied, "I can work with him. Be professional. It will be working with his wife that will be the issue."

Ms Gilliland's closing remarks were as follows:-

"Next step is looking at everything that has been discussed today and investigating further where needed. We will endeavour to investigate as quickly as possible, but I am sure you understand we have people's diaries and holiday etc to take into consideration."

29. Ms Gilliland then prepared a list of those persons who would need to be interviewed as a result of the claimant's complaints. There were 7 names, which are set out in an e-mail from Ms Gilliland dated 20th November 2018. Those to be interviewed were:- Fiona Ward, David Gallagher, Chris Keith, Paul Humphries, Eileen Edwards and Geoff Garner.

30. No mention is made of the claimant's allegations being put to Mr Lincoln or of Mr Lincoln himself being interviewed. None of the respondent's witnesses before the tribunal were able to confirm that Mr Lincoln was ever informed about the claimant's grievance. None of those witnesses were able to confirm that any of the 7 named persons were ever interviewed about the claimant's grievance. In the absence of such evidence, the tribunal found that Mr Lincoln was never informed about the claimant's grievance, or interviewed about it. The tribunal found that none of the 7 named persons were ever interviewed about the claimant's grievance. No satisfactory explanation was given by any of the respondent's witnesses as to why Mr Lincoln was not interviewed or why none of the other 7 people were interviewed. The respondent's witnesses attempted to argue that holidays, absences and other work-related reasons meant that these interviews could not take place. When asked what those work-related reasons were, the respondent produced on the third day of the hearing a chart showing which of those witnesses had been on holiday and which had been on work-related travel. The tribunal did not hear from Ms Gilliland, who was supposed to be conducting the investigation. Whilst there were some dates when some of those witnesses were unavailable, the tribunal was not satisfied that this amounted to a meaningful or credible explanation as to why the investigation was never commenced, let alone completed. The only part of the respondent's process which took place, was the initial interview with the claimant herself.

31. Despite that finding above, on 29th November 2018 Ms Gilliland sent an e-mail to the claimant stating; "I confirm that the subsequent investigation is still in process." In fact, nothing was done. On 11th December the claimant sent a message to Fiona Ward stating:-

> "I am now badly struggling with my stress due to working with/under Clive and as such I will not be coming in today and will be looking for an appointment with my GP at the earliest opportunity to get some help and support and would appreciate it if you could inform Clive as to my absence as I really just do not want to have contact with him but no this is not process – sorry. I've just about reached crisis point upon discovering today yet another situation where I seem to have been deliberately excluded. I would like you to please pass on my apologies to Bruce, Dave, Paul and Chris as I feel as I am letting them down which is something that makes me very unhappy but I have to consider my own well-being and get myself well enough to make a rational and logical decision about my future at BEL Valves."

32. On 21st December Ms Gilliland wrote to the claimant, stating:-

> "I am aware that we have not been able to conclude our investigations at this time and Fiona Ward has informed me you are currently on sickness absence since 11th December. I would like to meet with you and discuss the contents of your e-mail of 11th December and I am writing to inform you that I will be in touch on our return to work following the Christmas shutdown to arrange this meeting."

That message was not acknowledged by Fiona Ward until 19th December when she replied, "I just want to let you know that I have forwarded your e-mail to group. I believe that Bronwen will be in touch with you shortly."

33. The claimant began a period of sickness absence, diagnosed as work-related stress, on 5th December 2018 and did not in fact return to work until 11th January 2019. During that period of time, the claimant heard nothing from the respondent about her unresolved grievance.

34. Unbeknown to the claimant, Mr Lincoln's employment with the respondent ended with immediate effect on 2nd January 2019, for what the respondent described as "redundancy reasons". The claimant subsequently learned that Mr Lincoln had been "marched off the premises" on 2nd January 2019.

35. On 20th December, the claimant had by e-mail asked Fiona Ward if the respondent could "possibly arrange counselling for me – my doctors have indicated a very long wait period for this service through them so if that is available via BEL I would like to pursue the offer please." The tribunal notes that at page 65 of the bundle in the respondent's bullying and harassment procedure, mention is made of employees being encouraged to seek the assistance of trained counsellors through a member of the human resources department. Ms Ward replied on 2nd January stating, "I have asked Bron (Ms Gilliland) to look into it for me, she has said it is unlikely but we will see what we can do."

36. The next the claimant heard from the respondent was a telephone call from Fiona Ward on 7th January 2019. No mention was made of the availability of counselling nor was any mention made of the claimant's outstanding grievance. Ms Ward simply asked the claimant whether she was prepared to "meet off site for a chat." The claimant agreed and on 8th January met with Ms Ward at Costa Coffee in North Shields. Ms Ward informed the claimant that "The business really needs you back". Ms Ward stated that "Clive is not currently in the business" and went on to tell the claimant that "Off the record, Clive Lincoln will not be returning to BEL Valves, but it is not all sorted yet." Ms Ward asked the claimant whether she would be willing to return to work the following day (Wednesday) or the day after that (Thursday). The claimant declined to attend on either of those two days, but agreed to attend her workplace on Friday 11th January, as Friday is a short day with a 1.30 pm finish. The claimant said that she would go into the office and go through her e-mails. Ms Ward agreed and said she would "see how things went" with the claimant. The claimant asked Ms Ward to let her office know that she would be calling in on Friday, but Ms Ward did not do so. When the claimant

attended her office on Friday 11th January 2019, "everyone was surprised to see me as they were not expecting me". The claimant met briefly with Mr Heppenstall and was told there was "A lot to go through and change, but he would wait until I was settled back in." Fiona Ward and Chris Keith both called in to see the claimant. The claimant received an e-mail from Fiona Ward, saying that Mr Heppenstall had asked her (Ms Ward) to carry out the claimant's return to work interview. During the claimant's visit on 13th January, nothing was said to her about her outstanding grievance against Mr Lincoln. Mr Lincoln was not mentioned at all.

37. The claimant attended work on 14th January and remained at work until 28th February 2019. During that period of time, there was no gradual or phased reintroduction to her workplace. The claimant's evidence was that her workload, if anything, was increased, including the transfer to her of some of the duties which had been previously carried out by Mr Lincoln.

38. On 15th January the claimant had a return to work interview with Fiona Ward. A copy of the "return to work form" completed by Ms Ward appears at page 235 in the bundle. It comprises one side of A4 paper with a number of yes/no questions and 4 other boxes containing 7 lines of handwriting. The claimant's evidence to the tribunal was that this form was not completed by Ms Ward in the claimant's presence, but was signed in blank by the claimant at the end of the meeting and thereafter completed by Ms Ward. The claimant accepted that this was not an unusual practice and that she had herself on occasions completed similar forms after they had been signed by one of her subordinates. The claimant challenged whether she had told Ms Ward that there was nothing the respondent could do at present to assist her. The claimant denied that she had agreed to the only steps to be taken by the company related to "the dynamics within the team – however they have been addressed at present." There is no mention on the form of any discussion having taken place about the claimant's outstanding grievance against Mr Lincoln. The claimant's evidence to the tribunal was that during this 30-minute interview she had informed Ms Ward "about all the things that had been done wrong in the handling of my complaint". The claimant's evidence was that Ms Ward assured her that she would "feed back what I had said and that Group HR were in the process of writing to me about my complaint." The tribunal accepted the claimant's evidence that she had raised her outstanding complaint about Mr Lincoln, during this meeting. The tribunal accepted that the claimant was told that HR would be writing to the claimant about that complaint. In fac,t the respondent did not write to the claimant at any stage about her complaint against Mr Lincoln.

39. On 23rd January the claimant was asked to go to the office of Mr Heppenstall, where she was told that Mr Lincoln had been made redundant and that her new line manager with immediate effect would be the operations manager, Mr Chris Keith. The claimant was told that she would have to move to the operations office the following day. Mr Heppenstall sent out an e-mail confirming the reorganisation of the quality department and attaching an organisation sheet including some of the extra duties to be undertaken by the claimant, which had previously been undertaken by Mr Lincoln.

40. The claimant meanwhile organised some counselling herself and paid the counselling fees from her own funds. On 8th February 2019 the claimant sent to Fiona Ward notes from the counselling session which the claimant had attended the previous day on 7th February. Those notes appear at page 246 in the bundle. The claimant copied her letter and notes to her line manager Mr Chris Keith. There was no acknowledgement from Ms Ward but an acknowledgement from Mr Keith stating, "Your domain expertise and professionalism will be your comfort blanket here at work. You do a great job and will have 100% autonomy and I am totally comfortable for you to work at the rate you see fit (take five when you require, book a meeting room on site if you require quality quiet time or even shout time out to me if you require a walk and talk). You have my full support."

41. On 8th February Mr Andrew Walton (Head of HSE) e-mailed Mr Heppenstall apologising for omitting to include the claimant in a number of HSE-related e-mails. The claimant was aware that she had not been included in the e-mail exchange and had suffered a negative reaction to that, as it appeared to her that she was again being excluded from relevant material. The claimant was both annoyed and upset and on 21st February sent a lengthy and detailed e-mail to Fiona Ward. The letter was marked "P&C", which the claimant says refers to "private and confidential". A copy appears at pages 246-7 in the bundle. Relevant extracts include the following:-

> "This is warts and all of how I feel and I know you will not agree or like it (it's not nice) but you certainly don't have to accept any of it, it's not a blame game. It feels like my whole situation (stress/bullying me) has been swept under the carpet/ignored and just because my "stressor" has gone (and not because of anything that he caused/did to me) everything must be back to normal? This belittles the effects that this has had on me, on my health, mental health and a personal life; not to mention the upset, anxiety and insomnia I have and still do suffer from – for me it hasn't gone anywhere. I came back to work early at request of the business "needing my help" and how I was missed – now it feels that it was just a case of get her back to work and off the sick and since I have been back it's been; don't want to overload you but just pick this up, just look at this, do new projects, get involved with, give an update on this – doing more than I was before.
>
> My complaints; no communication regarding investigation of my complaint – last letter I had (on Xmas eve when I could not contact anyone at group) was "we will have a meeting to discuss" – nothing since. Feels to me that as my stressor has gone, there has been no consideration or thought that I might need answers/explanation/closure, seems that BEL's problem has gone away now (and maybe I should to?). Makes me feel my complaint didn't matter (or the effects it has on me) was it just lip-service? Was it required to cover legal? Do they think I was lying or faking or making it up? Do they think I've just had a free five weeks leave on them for the hell of it? Feel really disappointed in the whole handling of it as I know they don't care. Feels like me (me and my problem) are preferably forgotten and everything must be ok now – but no-one has actually checked or has asked me to find out if this is the case – I've only been back to work six

> weeks now, very quickly forgotten it seems. Was offered counselling to then be told "we don't do that" – no help – strictly DIY. All I had wanted was to feel that (as a person and employee who has suffered because of work stress/bullying) that there was some acknowledgement about it, that it did/does matter, that I felt supported and cared for but sadly I haven't and don't. I'm back at my doctors 4th March as I think I may now be depressed (or slipping into it – my hubby tells me so). After everything I have been through I think I underestimated the effects this last eight months have had over me and still are having on me."

42. Fiona Ward did not immediately acknowledge receipt of that message, but simply copied it to Bronwen Gilliland on 22nd February. On 27th February Ms Ward contacted the claimant to try and arrange a meeting. The claimant was reluctant to attend a meeting stating, "I've said what I've said. I don't regret it but also don't feel a follow-up would not be of benefit to me at this current time." Ms Ward replied, "There are a number of issues which need to be addressed so it is important that we hold this meeting to discuss." The claimant replied, "OK I will listen – please resend invites."

43. The meeting took place on 28th February, between the claimant, Fiona Ward and Chris Keith. The purpose was to discuss the claimant's e-mail of 21st February. The only record of the meeting is a very brief typed note prepared by Fiona Ward which appears at page 263 in the bundle. The note states:-

> "Meeting with Bev. Bev did not want the meeting to go ahead. Had refused the meeting request and as the meeting started had commented that her counsellor had advised her to write the e-mail. She commented that she believed the counselling wasn't working for her and she was going to stop it. She understood that the e-mail seemed irrational but she was still logical. I said that I understood that. Had received the e-mail on Friday and there was a lot in it. Had taken the weekend to reflect on her feedback and thank her for it. She'd raised a number of issues and wanted to talk about it. Bev stated again that wasn't the point of the e-mail. It started with the investigation that Bronwen was going to write to her about the investigation."

44. In her evidence to the tribunal, the claimant took great exception to Ms Ward sending the e-mail to Bronwen Gilliland without the claimant's permission. The claimant also took great exception to Ms Ward reading out the e-mail in front of Mr Keith at the meeting. The claimant's evidence to the tribunal was that she kept saying during the meeting "I don't want to discuss the e-mail". The claimant's evidence to the tribunal was that Fiona Ward kept asking her if she intended to resign, to which the claimant said "No". The claimant again confirmed that Ms Ward had told her that the respondent was in the process of writing to her, regarding her complaint. The claimant's evidence was that she recalled becoming stressed, upset and angry and telling Ms Ward and Mr Keith "They had broken me but they didn't want to do anything to fix me." The claimant's undisputed evidence to the tribunal was that she left the meeting alone and distraught and very upse,t whilst Ms Ward and Mr Keith remained in the meeting room. The claimant was so

distressed and upset that she sent an e-mail to Mr Keith telling him that she had gone home.

45. The following day on 1st March, the claimant sent an e-mail to Mr Keith telling him that she had an appointment to see her doctor later that day and that the previous day she had "left in haste to escape as I just couldn't gain control over upset – I'm utterly distraught and devastated at being pushed to breaking point."

46. The claimant had an appoint with her GP on 4th March and was signed off as unfit for work for 4 weeks suffering from "stress at work/depression". The clamant was prescribed anti-depressants.

47. Ms Ward then asked that the claimant attend an Occupational Health examination which took place on 6th March 2019 at the respondent's premises. The report by Doctor McCaldin appears at pages 280-282 in the bundle. The relevant extracts state as follows:-

> "From the information available to me, BO is absent from work due to symptoms of anxiety and low mood. These follow a period of stress at work related to the breakdown of her relationship with her previous line manager and a grievance concerning his behaviour. Condition is work related. In my opinion BO is not fit for work at present. BO may possibly be well enough to return to work in six – eight weeks time, depending upon her response to medication in counselling. BO is unfit for work in any capacity at the present time. In my opinion BO's symptoms are short-lived and are unlikely to cause long-term impairment of her ability to undertake normal daily activities. Please arrange a further OH review with me in four weeks time. BO has asked that contact from the HR – the company is kept to a minimum for the time being and this should be by e-mail."

48. The second Occupational Health referral took place on 3rd April 2019. A copy of that report appears at page 292 – 293. The relevant extracts from Doctor McCaldin's report are as follows:-

> "From BO's account she is tolerating the anti-depressant medication provided by her GP. BO continues to experience high levels of anxiety and emotional stress and her sleep pattern, appetite, memory and concentration remain disturbed. BO's doctor has prescribed additional medication to help BO with the physical symptoms of anxiety and she has begun counselling with a private therapist near to her home. She currently has a fit note from her GP for a further six weeks dated until 12th May 2019. There have been some minor improvements in her mood since we first met in March 2019, but she remains unwell and has only recently begun talking therapy. In my opinion she remains unfit for work. In my opinion a further period of at least two – three months sickness absence is likely to be needed before BO will be well enough to return to her usual role. It would be helpful to me to review BO's progress in a further one – two months."

49. By letter dated 7th May 2019, (page 299) the claimant asked for her payslips for December, March and April to be sent to her. Fiona Ward replied the following day stating, "I'm chasing them up for you and will send them out asap."

50. On 13th May 2019 the claimant again attended her GP, where she was assessed as not being fit for work due to "stress at work and depression" and told that she would remain unfit for two months.

51. The following day, the claimant composed and sent to the respondent a "without prejudice" letter suggesting that she and the respondent agree her employment should be terminated in return for a financial payment in the sum of £39,885.00. That sum was calculated as one month's pay in lieu of notice, six months settlement payment for failure to follow process and procedures, three months settlement payment for injury to feelings plus accrued holiday pay and wages. The letter records that the claimant had raised a formal grievance on 9th November 2018 "which has never been heard nor has a decision been made or an appeal of it." The claimant goes on to state that the grievance referred to "bullying, harassment and unreasonable behaviour by Clive Lincoln which in turn led me to me to suffer work-related stress, anxiety and depression". The letter stated that the offer would remain open until Friday 24th May, but would be withdrawn if no agreement was reached. The letter was not acknowledged until the respondent replied via Fiona Ward on 29th May, stating that the respondent "does not wish to enter into a without prejudice discussion with regard to you exiting the business."

52. On 18th May, Ms Ward had written to the claimant informing her of a new organisation within the respondent but stating that, "Your role has not been affected".

53. On 30th May, the claimant raised a second official grievance, a copy of which appears at pages 331 – 337 in the bundles. The letter states in clear terms that the claimant wished to lodge a formal grievance against the respondent in accordance with its grievance policy. The claimant refers to the following matters:-

    - I was subjected to bullying/harassment by Clive Lincoln over a number of months that caused me to suffer from stress and anxiety for which I've been prescribed betablockers to reduce the physical symptoms. Although it has been indicated that the company was undergoing an investigation of my complaint, today no resolution or conclusions have been forthcoming – you have therefore breached the grievance policy and breached the ACAS code of practice on disciplinary grievance procedures.

    - I'm also including as part of this grievance the subsequent breach of duty of care by BEL Valves both during the bullying/harassment incidents and to my return to work on 11th January 2019 until 28th February 2019 where there were no discussions, plans or adjustments to manage, safeguard or monitor my return to work or mental health which, in turn, has caused a further deterioration in my mental health resulting in a diagnosis of depression.

- The complaint investigation against Clive Lincoln has not only been unnecessarily prolonged causing an additional impact on my health due to ongoing uncertainty, but still remains officially unresolved even though Clive Lincoln is no longer in the business.

- This is why I have now chosen to formalise my grievance as I have serious concerns as to how the company will dealt with the wider issues I have raised.

- Whether the work is causing the health issue or aggravating it, employers have a legal responsibility to help their employees. Work-related mental health issues must be assessed to measure the levels of risk and where a risk is identified steps must be taken to remove it or reduce it as far as reasonably practicable.

- After four years of reliable and loyal employment I feel I have been treated very badly where the company has made no attempts to ascertain any needs to safeguard my mental health and this has led to a further deterioration of my mental health to depression as a direct result.

- The ongoing negative emotional, social and physical impact of these past eleven months has been quite catastrophic and devastating not only to myself but also to my immediate family.

- My self-worth has been drastically eroded believing that I'm not good enough or worth caring for by the company I've been loyal to for the last four years.

- I believe that this grievance sets out very serious issues for the company to investigate fully.

The claimant goes on to set out a timeline of the events which occurred between June 2018 and May 2019.

54. The claimant's grievance letter was acknowledged by Mr Sam Briggs on 17th June (page 339). Mr Briggs stated, "I'm writing to confirm that I will arrange a grievance hearing in the near future to discuss your grievance in more detail."

55. The grievance meeting took place on 28th June 2019. Notes appear at page 341 – 349 in the bundle. The claimant was given the opportunity to examine and amend the minutes and has agreed that they are an accurate record of what was said. It is clear from the minutes that the claimant required an outcome to her earlier grievance dated 9th November 2018 about the behaviour of Clive Lincoln. At page 342 the claimant clearly states:-

> "No communication other than saying it was ongoing in an e-mail at the end of November and then a letter to me that I received on Christmas Eve. In the letter it says I went on the sick (11th of December) and they wanted a meeting after Christmas. Here we are and I still haven't heard anything.

> I came back as I was asked to help the business but they just loaded me up with work and then you are basically on your way. I feel betrayed as a loyal employee, felt the company didn't care, as if what's your problem. I was told off the record that Clive was never informed of my complaint, never had to answer to anything. It is me that is me that has been on trial but it`s been done to me."

56. Ms Taylor asks the claimant at page 343 whether she had been officially told on 23rd January 2019 that Mr Lincoln had left. When asked by Ms Taylor what her mindset was, knowing Mr Lincoln would not be returning, the claimant replied, "Pleased to know I was not gonna get bullied. It's a double-edged sword – it was strenuously pointed out that Clive was made redundant, not for what he did to me, he didn't have to answer for this, he was in the wrong not me. I felt cheated and then they say you can pick up this work because Clive is not here, he gets a pay off and I pick up his work, does that seem fair?"

57. Ms Taylor failed to grasp the main thrust of the client's complaint, namely that there had been no investigation into her allegations against Mr Lincoln, no findings made about whether those allegations were substantiated and no formal outcome given to her about that grievance. Ms Taylor acknowleged that the claimant's original complaint had been addressed under the respondent's bullying and harassment procedure. Ms Taylor met with Bronwen Gilliland and was told that the reason that the investigation couldn't be completed into the claimant's original complaint against Mr Lincoln was because he was no longer with the business following his dismissal on grounds of redundancy. At paragraph 14 of her statement, Ms Taylor acknowledged the first part of the claimant's complaint was about the handling of the first grievance and the respondent's failure to respond to it. Ms Taylor goes onto record "the fact that the redundancy made it difficult for the respondent to communicate with the claimant about her grievance". At paragraph 25 Ms Taylor says, "With regards to the complaint against Clive, I was unable to progress this any further than the previous investigation because he had left the respondent's employment on 2nd January 2019". Ms Taylor did not explain why Mr Lincoln's departure meant there could be no investigation into the claimant's allegations against him. Whilst it may not have been possible to interview Mr Lincoln himself, the tribunal found that there was no reasonable explanation as to why the other persons listed by the respondent were not interviewed. No explanation was given as to why the claimant was not asked about whether she wished her grievance to continue, following Mr Lincoln's departure. At paragraph 26 of her statement, Ms Taylor states, "There was evidence that an investigation was commenced". That was not correct. The only person spoken to was the claimant herself. Ms Taylor goes on to say in her statement, "I was satisfied that the claimant's complaint was being treated seriously and was being investigated". The tribunal found that no such investigation took place.

58. At paragraph 27 of her statement, Ms Taylor makes the following somewhat extraordinary comment:-

> "There was no smoking gun that showed Clive had behaved inappropriately towards the claimant or that he had bullied or harassed her

> which would have warranted the respondent taking formal disciplinary against him. There certainly was no conduct towards the claimant that would have resulted in his dismissal in my view. Therefore, I believe it was reasonable for the respondent to discontinue the investigation under the bullying and harassment procedure and I don't consider there was a failure to address the allegations against Clive – an investigation was started and Clive's departure from the respondent meant that the claimant did not have to work with him again."

The tribunal found that this comment displayed the unreasonable approach taken by the respondent to what was a formal grievance raising a serious allegation of bullying and harassment against a senior manager. Ms Taylor's misunderstanding of the requirement to conduct a reasonable investigation is shown at paragraph 28 when she states, "Personally, I couldn't understand why the claimant agreed to return to work if she didn't think the matter had been closed. The claimant definitely knew if she returned to work that Clive was no longer employed and so she wouldn't have to work with him again and there is no evidence that the claimant was still expecting a response to her complaint at that time."

59. At paragraph 20 of her witness statement, Ms Taylor states, "After the claimant had covered everything she wanted to, Sam asked whether once we had investigated her grievance, the claimant would be open to talking about how we could support her to return to work". It was put to Ms Taylor that the claimant's meeting with Fiona Ward on 8th January 2019 was designed to secure the claimant's return to work as soon as possible, rather than to inform her as to the present position with the first grievance. It was further put to Ms Taylor that the approach of herself and Mr Briggs at that grievance meeting, suggested that securing the claimant's return to work was more important than actually dealing with her grievance. Whilst Ms Taylor insisted that this was not the case, the tribunal found that throughout the first and second grievance processes, the respondent's requirement for the claimant to return to work was given priority over the obligation to conduct a reasonable investigation into those grievances.

60. The claimant also complained about the respondent's failure to support her upon her return to work in January 2019. The claimant complained that, after being begged to return to work by Fiona Ward, the claimant agreed to do so expecting a phased return to work and a gentle reintroduction to her duties. Instead of that, the claimant was thrown straight back into a full-time role and in addition had to pick up some of the work that had previously been carried out by Mr Lincoln. No stress risk assessment was carried out, despite the respondent being aware that the reason for the claimant's absence was work-related stress, anxiety and depression. No steps were taken by the respondent to monitor the claimant's workload or her mental well-being. There was no referral to Occupational Health until seven weeks after her return, when the claimant was again certified as unfit for work for the same reasons.

61. Ms Taylor's outcome letter dated 11th July 2019 appears at pages 355 – 360 in the bundle. Ms Taylor records at page 358 the following:-

> "Group HR wrote to you on 21st December 2018 to explain they had been unable to conclude the investigation. Group HR was made aware that you met with Fiona Ward on the 8th of January 2019 and that you had agreed to return to work. Given Clive had left the business and you had agreed to return to work, Group HR understood that Fiona had explained the position in relation to the investigation, thought your complaint had been resolved and that it had been agreed with you that the process under the bullying and harassment process was being discontinued. Nevertheless, I do accept that you did not receive formal communication from the company concluding the process under the bullying and harassment policy. For the avoidance of doubt, I can confirm that your complaint was being investigated in accordance with that policy, but when Clive left the business this meant the investigation could not be completed. Group HR thought this had been explained to you by Fiona and that your complaint had been resolved to your satisfaction. The position should have been confirmed to you by the company in writing and for this reason this part of your grievance is upheld."

62. In the paragraph headed "Outcome" on page 360, Ms Taylor states:-

> "Your grievance is partially upheld as you were not provided with a formal written outcome to your bullying and harassment complaint. Nevertheless, as Clive's employment with the company ended, the investigation could not be concluded and you were not placed back in an environment where you had to work with him again."

Ms Taylor rejected that part of the claimant's grievance which related to the alleged failure to provide any support to the claimant upon her return to work.

63. The claimant was advised of her right to appeal and did so by letter dated 22nd July 2019. The claimant complained about a breach of the ACAS Code of Practice on disciplinary and grievance procedures, in that the respondent had failed to carry out any investigation into her grievance against Clive Lincoln due to the fact of Mr Lincoln's departure from the company meant the investigation could not be concluded. The claimant specifically asked for details of the investigation and asked for evidence to support suggestions. The claimant also appealed against Ms Taylor's rejection of her complaint that the respondent had failed to provide her with any adequate support upon her return to work and in so doing, had further acerbated her work related stress, anxiety and depression.

64. The appeal was heard by Mr Andrew Walton, Head of HSE. Minutes of the appeal hearing appear at page 377 – 390 in the bundle. Mr Walton was of the opinion that the claimant's initial grievance against Mr Lincoln had been taken seriously. He nevertheless accepted that the claimant had protested throughout the process about the initial grievance. Mr Walton accepted that there had been no formal investigation report prepared in respect of that grievance. The minutes of the meeting at page 379 show that the claimant wanted to know that her grievance had been investigated and had been taken seriously. At paragraph 7 of his statement Mr Walton states, "The key things from the claimant's appeal appear to be that the respondent had failed to respond to the claimant's original

complaint and the claimant believed the respondent had failed in its duty of care to her and breached the Management of Health and Safety at Work Regulations 1999, by not supporting her mental health."

65. At paragraph 10 of his statement, Mr Walton records that he spoke to Bronwen Gilliland and asked her whether the claimant's original complaint had started to be investigated. Mr Walton says that Bronwen confirmed that it had, but save for the meeting with the claimant, there were no notes of the discussions with the other witnesses. Mr Walton also records that Bronwen said that it seemed at that point that there was insufficient evidence for it to likely result in any formal disciplinary action against Clive Lincoln. Mr Walton recorded that Bronwen thought that Fiona Ward would explain to the claimant that her original complaint couldn't be concluded because Clive was no longer employed in the business and so she wouldn't have to work with him again.

66. Mr Walton accepted that the allegations made by the claimant were serious and ought to have been investigated. Mr Walton accepted that the claimant had protested throughout that she wanted the investigation to continue and be concluded. Mr Walton accepted that there were no notes of any interviews with anyone and no formal investigation reports. Mr Walton identified difficulties that may have been encountered by the respondent in interviewing the list of witnesses, due to difficulties with holidays and other work commitments. However, Mr Walton could not say that it was impossible for the investigation to be concluded for any of those reasons.

67. Mr Walton was aware that the claimant had made a proposal that she and the respondent enter into a settlement agreement whereby she would be paid a lump sum by way of compensation in return for her resignation. Mr Walton took the view that, in terms of the outcome of her grievance and the appeal, what the claimant wanted was a financial settlement and that she did not wish to return to work.

68. Mr Walton's outcome letter appears at page 399 – 404 in the bundle. In terms of the failure to provide an outcome of the first grievance, Mr Walton acknowledges what he calls a "breakdown in communication", on the basis that the respondent believed the claimant knew that her complaint against Mr Lincoln was being discontinued. That ground of appeal was not upheld. In terms of the investigation itself, Mr Walton records the claimant's letter of 9th November and the meeting on 15th November with Bronwen Gilliland and Steve Dixon. Mr Walton records as follows:-

> "Bronwen Gilliland and Steve Dixon subsequently reviewed the correspondence and documentary evidence you had signposted. Based upon these preliminary investigations, it did not appear that there would be sufficient evidence for any formal action to be taken against Clive Lincoln. As such the decision was made for the redundancy process to proceed with Clive Lincoln and for the investigation into your complaint to be paused whilst that process was ongoing."

No mention is made as to who made that decision or how they arrived at that decision. No explanation was provided as to why, if the investigation was "paused", it was never concluded. Mr Walton concluded that, "I consider that the company did have your best interests in mind and it was genuinely considered that Clive Lincoln's departure in the business meant your concerns would be addressed as you would no longer have to work with him." However, no-one asked the claimant if that would be acceptable to her and none of the respondents officers who dealt with the claimant's grievances and appeals took that into account. Mr Walton then goes on to record at page 402 "There is no evidence that the original outcome was in any way erroneous."

69. Mr Walton then goes on to dismiss the claimant's complaints that the respondent has failed to properly address her mental well-being and had failed to provide her with the appropriate level of support to the extent that it was in breach of its duty of care towards her.

70. In his conclusion, Mr Walton records as follows:-

> "The findings in the original grievance outcome letter explain that due to CL leaving the business, it was not possible to conclude the investigation into your complaint under the bullying and harassment policy. The company did commence a formal investigation into your complaint but based on these preliminary investigations, it did not appear that there would be sufficient evidence for any formal action to be taken against CL. As such, the decision was made for the redundancy process to proceed with CL and for the investigation into your complaints to be paused whilst that process was ongoing."

71. The tribunal found that the respondent failed to carry out any meaningful or reasonable investigation into the claimant's genuine complaints against Mr Clive Lincoln. The tribunal found that no reasonable employer would have come to the conclusion that, because Mr Lincoln had left the company, then there would be no need to progress an investigation into the claimant's complaints against him. No evidence was given to the tribunal upon which any reasonable investigating officer could conclude that there was no prospect of any disciplinary action being taken against Mr Lincoln, based upon nothing more than the claimant's letter and one interview with her. The tribunal accepted the claimant's evidence that the respondent was more interested in securing her return to work, than taking her grievance seriously and investigating it in a reasonable manner. The tribunal found that the respondent had not taken the grievance seriously, had not carried out a reasonable investigation and had unreasonably concluded that, because the claimant had returned to work, that meant that she no longer required the grievance to be properly dealt with.

72. The second part of the claimant's grievance related to an allegation that the respondent had failed to provide her with any, or adequate, support during the period of time when she was being bullied by Mr Lincoln and during the period of time following her turn to work on 11th January 2019 until her last day of work on 1st March 2019. The claimant specifically referred to those matters in her second grievance letter, stating as follows:-

> "I was subjected to bullying/harassment by Clive Lincoln over a number of months that caused me to suffer from stress and anxiety for which I have been prescribed beta-blockers to reduce the physical symptoms. I have tried to continue in my role during this period but the stress and anxiety was overwhelming, manifesting itself with painful physical symptoms that ultimately led to my first period of sickness of five weeks from 11th December 2018 for work related stress and anxiety. I also include as part of this grievance for subsequent breach of duty of care by BEL Valves both during the bullying/harassment incidents and to my return to work on 11th January 2019 until 28th February 2019, where there were no discussions, plans or adjustments to manage, safeguard or monitor my return to work or mental health, which in turn has caused a further deterioration of my mental health resulting in a diagnosis of depression where I was prescribed anti-depressants and was the point of my second period of sickness from the 1st of March 2019 to date. Sick notes from my own GP/doctor and reports from the company occupational health doctor confirm work related stress, anxiety and depression. My condition is potentially long-term and was caused by the treatment experienced in the workplace, initially by Clive Lincoln and subsequently by BEL Valves as an organisation due to its lack of duty of care regarding my mental health. Under the Management of Health and Safety at Work Regulations 1999, an employer must assess the nature and scale of the health risks at work (including stress). After 4 years of reliable and loyal employment, I feel I've been treated very badly, where the company has made no attempt to ascertain any needs (as its duty under law when it is made aware) to safeguard my mental health and this led to a further deterioration of my mental state to depression as a direct result. It is a clear breach of the company's responsibility and the company's anti-bullying policy and potentially my right with reference to the Equality Act 2010."

73. During her evidence and during her submissions, the claimant made specific reference to the terms of the Health and Safety at Work Act 1974. The claimant accepted that the Employment Tribunal does not have jurisdiction to enforce the provisions of the Health and Safety at Work Act 1974. However, the claimant maintained that her treatment at the hands of the respondent amounted to a breach of its duties under Section 2 (1) and 2 (2) (e), namely its duty to ensure the health, safety and welfare of all employees and the provision and maintenance of a working environment that is so far as reasonably practicable, safe without risks to health and adequate as regards facilities and arrangements for their welfare at work. The claimant's case,, in simple terms is that the respondent's failure to comply with its obligations under the Health and Safety at Work Act, amounts to a breach of the implied term of trust and confidence. In other words, the respondent's alleged failure amounts to behaviour likely to destroy or seriously damage the relationship of trust and confidence which must exist between employer and employee.

74. The claimant complained that the volume of work she was expected to perform prior to her first sickness absence, was such that no employee in her position could be expected to accommodate it. More importantly, upon her return to work

following the dismissal of Mr Lincoln, the claimant was expected to undertake even more work, because she had to absorb some of that which had previously been performed by Mr Lincoln himself. The claimant's evidence was that she made her feelings known to the respondent via her grievance and in discussions with Fiona Ward. The claimant further relied upon the Occupational Health reports which were eventually obtained by the respondent and which clearly showed that the reason for the claimant's absence was stress and anxiety related to her work and her treatment by the respondent. The tribunal was not satisfied from the claimant's evidence that the level of work she was expected to perform prior to her first sickness absence was such that it could fairly and reasonably amount to a breach of the implied term of trust and confidence. There was no detailed description of the volume of work or nature of that work, nor any description of how that level of work compared to any other person employed at the same level as the claimant. Similarly, following her return to work in January 2019, there was insufficient evidence provided by the claimant to satisfy the tribunal that any increased workload was such that she could not reasonably be expected to put up with it. The tribunal found that the principal reason for the deterioration in the claimant's mental well-being, was her treatment at the hands of Mr Lincoln and the respondent's failure to deal with her grievance about those matters in a reasonable manner.

75. The claimant's claim contains allegations of unlawful disability discrimination. The claimant alleges that, at the relevant time, she suffered from a mental impairment which amounts to a disability as defined in Section 6 of the Equality Act 2010. The claimant accepts that she did not suffer from a mental health condition prior to Mr Lincoln's conduct towards the end of 2018. The claimant's first diagnosis of work related stress, anxiety and depression was made on 11th December 2018. The sole act of discrimination which forms the subject matter of the claimant's complaints of unlawful disability discrimination is her being notified by the respondent that she had been placed at risk of redundancy and was to be placed in a pool of one from which selection for redundancy would be made. That occurred on 12th September 2019. The question for the employment tribunal is therefore whether as at that date the claimant's mental health impairment amounted to a disability as defined in Section 6 of the Equality Act 2010. By then, the claimant's mental impairment had lasted for 9 months. The impairment continues to date and has undoubtedly lasted for more than 12 months. The tribunal must consider whether, in September 2019, "it would well happen" that the claimant's impairment would last for more than 12 months. The tribunal must also consider whether the respondent knew, or could reasonably have been expected to know, that the claimant was suffering from a mental impairment which amounted to a disability.

76. The tribunal was satisfied that the deterioration in the claimant's mental well-being was a direct result of her treatment at the hands of Mr Lincoln and the respondent's failure to reasonably deal with her grievance about that treatment. The claimant's mental impairment was therefore a reaction to adverse lifetime events, which ordinarily may well have resolved had the respondent reasonably dealt with her grievance in a reasonable period of time. Because the respondent failed to deal with that grievance in any reasonable manner, the claimant's mental well-being continued to deteriorate.

77. The claimant's evidence was that the letter informing her that she was at risk of redundancy and was in a pool of one from which selection would be made, was tantamount to informing her that she was to be dismissed for reasons of redundancy. The claimant alleged that the decision to place her in a pool of one from which selection would be made, was because of her absence for over 6 months, which absence was a consequence of her disability. The tribunal was satisfied that being told that she was being placed in a pool of one from which selection for redundancy would be made, did amount to "unfavourable" treatment. The tribunal was further satisfied that the claimant's absences were a consequence of the mental impairment.

78. The issue which the tribunal had to decide was whether the claimant had been placed into a pool of one from which selection would be made, because of her absences. On this point, the tribunal accepted the evidence of Ms Wendy Tatters, who described in meaningful terms, the procedure which the respondent had followed throughout this particular redundancy process. Each member of the respondent's senior management team had been asked to examine the operation of their department, to see that it was possible to reduce the number of employees working in each department. The requirement to reduce the number of employees was because of the significant impact on the respondent's business caused by a decline in the oil and gas market. There had been a particular reduction in the number of large offshore projects, which meant that the respondent was struggling to find new contracts, and those which were secured had very poor profit margins, or in some cases were running at a loss.

79. The tribunal accepted that the requirements of the respondent's business for employees to carry out work of a particular kind had ceased or diminished or was expected to cease or diminish. In particular, the respondent was entitled to examine whether it could reduce the number of people carrying out the kind of work performed by the claimant. The tribunal did not accept the claimant's evidence to the effect that those employees identified by the respondent as capable of carrying out the kind of work performed by the claimant, were in fact insufficiently qualified and experienced to perform that work. The assessment of the volume of work and level at which that work is to be performed is one to be carried out by the respondent. Whilst the claimant may well have been able to continue with the kind of work she had been performing, the tribunal found that the respondent's requirements for the number of employees to carry out that kind of work had ceased or diminished or were expected to cease or diminish.

80. The claimant was not actually dismissed for reasons of redundancy. She was informed that she was at risk of redundancy and was in a pool of one in respect of the kind of work she performed, from which selection would be made. The respondent would then have to comply with its obligations to undertake a formal consultation process, seek volunteers, undertake a selection process by way of criteria which was fair and reasonable in all the circumstances and which was fairly and reasonably applied to those affected. The respondent would then be obliged to consider whether there was any alternative employment within its organisation which the claimant could perform.

81. The tribunal found that the process followed by the respondent up to the stage by which the claimant was notified that she was at risk of redundancy, was not influenced by her absences.

82. Throughout these proceedings, the respondent has denied that it has committed a fundamental breach of the claimant's contract of employment. The respondent has maintained that its conduct of the claimant's original grievance was fair and reasonable in all the circumstances. The respondent maintains that it was reasonable for it to conclude, following the claimant's return to work in January 2019, that she was satisfied that her original grievance was concluded as a result of Mr Lincoln's dismissal on grounds of redundancy.

83. The respondent further maintains that, if there was a fundamental breach of her contract of employment, the claimant did not resign in response to that fundamental breach. The respondent's position is that the claimant resigned because the respondent refused to agree to her proposal that she be paid a lump sum settlement in return for the mutual termination of her contract of employment. The respondent further maintains that the claimant had, through the passage of time, accepted any breach of contract which may have taken place and had by her conduct, accepted that breach and thereby affirmed the contract.

84. Mr Ryan for the respondent put to the claimant in cross-examination, various items of correspondence which appear in the bundle, in which the claimant appears to indicate that it was her intention to retire in any event towards the end of 2019. At pages 239 – 242, there is an exchange of correspondence between the claimant and her former colleague, Stevie McLaughlan. The correspondence takes place between 29th January 2019 and 1st February 2019. In her letter of 29th January, the claimant states:-

> "So, shuffles are afoot again here, now that it has been officially said that he (Clive Lincoln) is not coming back. On the other hand, I have decided that I will defo retire in the autumn if I'm still here – I am looking elsewhere and if I find something I may do it for a couple of years but I do know that I don't want to be here. I've tried my best and its never quite good enough, always need/want more when others seem to get away with blue murder, so had my fill and I'm tired of it."

Ms McLaughlan replies in her letter of 29th January:-

> "I think your mind had been made up for a while about retiring, but don't give up looking. You hold your team at heart and any business would be lucky to have you. You just need to make sure it is the right one for you."

The claimant replies later that day:-

> "Sorry up to my neck – picking up a lot of stuff from elsewhere now that he's gone!"

On 31st January the claimant says to Ms McLaughlan:-

> Don't know what it is but I do know I don't like feeling like this, it's not me. I really think it's down to needing to move on from here in some way but whether I can wait until autumn I'm just not too sure, let's hope it's just the winter (SAD) and hormones – lol!

85. The other exchange of correspondence is between the claimant and a relative, Glynis Halliday. The letters appear at pages 649 – 653 in the bundle. On 23rd January 2019 the claimant says to Ms Halliday:-

> "Well your little brother was another year older yesterday – great card by the way. He did laugh. Just a quiet tea but got him a cake so he was happy, he's now counting the days to retirement! Think it is 225 ish – end of August – think I may join him to."

Following Ms Halliday's reply on 24th February, the claimant replies on the 25th stating as follows:-

> "Things at work are OK but I am still feeling the effects of it all – very sensitive and paranoid all the time – think it is time for me to go – we have agreed to retire together so worse case will be August but I'd like to get out sooner as its really making me unhappy and I'm getting so support at all – they just don't care! But never mind."

86. Mr Ryan also put to the claimant documents which appear at page 443 and 426 in the bundle, which show that the claimant registered with a recruitment agency in early 2018 and had in fact attended an interview for a new job on 10th April 2018. It was also put to the claimant that following her resignation, she had described herself on a Linkdin post as "Early retiree at home".

87. It was put to the claimant by Mr Ryan that these documents show that it had always been her intention to retire by autumn 2019 and that her eventual resignation was nothing to do with any alleged fundamental breach of her contract of employment. The claimant readily accepted that she and her husband were considering retirement and that they did indeed hope to retire at the same time. They had discussed the possibility of retiring towards the end of 2019, particularly because the claimant was so unhappy at the way she was being treated by the respondent. The claimant insisted that no decision had been made about her retirement, as they had not yet decided whether or not they could afford to retire. The claimant's evidence was that her consideration of early retirement had been brought about because of the way she had been treated by the respondent.

88. The tribunal accepted the claimant's evidence in this regard. The tribunal found that the claimant had not made any final decision that she would retire by the end of 2019. The fact that the claimant had registered with an employment agency and attended an interview for another role, showed that it was her intention to continue working. The claimant was only aged 55 as at the date of her resignation. The tribunal found it likely that the claimant's search for alternative work was triggered by her treatment at the hands of the respondent.

The law

89. The claims brought by the claimant are of unfair constructive dismissal which is governed by the provisions on the Employment Rights Act 1996 and of unlawful disability discrimination which is governed by the provisions of the Equality Act 2010. The relevant statutory provisions are as follows:-

Employment Rights Act 1996

Section 95 Circumstances in which an employee is dismissed

(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) ..., only if)--

(a) the contract under which he is employed is terminated by the employer (whether with or without notice),
(b) he is employed under a limited-term contract and that contract terminates by virtue of the limiting event without being renewed under the same contract, or
(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.

(2) An employee shall be taken to be dismissed by his employer for the purposes of this Part if--

(a) the employer gives notice to the employee to terminate his contract of employment, and
(b) at a time within the period of that notice the employee gives notice to the employer to terminate the contract of employment on a date earlier than the date on which the employer's notice is due to expire;

and the reason for the dismissal is to be taken to be the reason for which the employer's notice is given.

Section 98 General

(1) In determining for the purposes of this Part whether the dismissal of an employee is fair or unfair, it is for the employer to show--

(a) the reason (or, if more than one, the principal reason) for the dismissal, and
(b) that it is either a reason falling within subsection (2) or some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which the employee held.

(2) A reason falls within this subsection if it--

(a) relates to the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do,
(b) relates to the conduct of the employee,
(c) is that the employee was redundant, or
(d) is that the employee could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under an enactment.

(3) In subsection (2)(a)--

(a) "capability", in relation to an employee, means his capability assessed by reference to skill, aptitude, health or any other physical or mental quality, and
(b) "qualifications", in relation to an employee, means any degree, diploma or other academic, technical or professional qualification relevant to the position which he held.

(4) Where the employer has fulfilled the requirements of subsection (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)--

(a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and
(b) shall be determined in accordance with equity and the substantial merits of the case.

Equality Act 2010

Section 6 Disability

(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.

(3) 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.

(4) This Act (except Part 12 and section 190) applies in relation to a person who has had a disability as it applies in relation to a person who has the disability; accordingly (except in that Part and that section)--

(a) a reference (however expressed) to a person who has a disability includes a reference to a person who has had the disability, and

(b) a reference (however expressed) to a person who does not have a disability includes a reference to a person who has not had the disability.

Section 15 Discrimination arising from disability

(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.

(2) 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.

Section 136 Burden of proof

(1) This section applies to any proceedings relating to a contravention of this Act.

(2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.

1. Impairment

Regulations may make provision for a condition of a prescribed description to be, or not to be, an impairment.

2. Long-term effects

(1) The effect of an impairment is long-term if--

(a) it has lasted for at least 12 months,

(b) it is likely to last for at least 12 months, or

(c) it is likely to last for the rest of the life of the person affected.

(2) 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.

(3) For the purposes of sub-paragraph (2), the likelihood of an effect recurring is to be disregarded in such circumstances as may be prescribed.

(4) Regulations may prescribe circumstances in which, despite sub-paragraph (1), an effect is to be treated as being, or as not being, long-term.

5. Effect of medical treatment

(1) An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if--

(a) measures are being taken to treat or correct it, and

(b) but for that, it would be likely to have that effect.

(2) "Measures" includes, in particular, medical treatment and the use of a prosthesis or other aid.

(3) Sub-paragraph (1) does not apply--

(a) in relation to the impairment of a person's sight, to the extent that the impairment is, in the person's case, correctable by spectacles or contact lenses or in such other ways as may be prescribed;

(b) in relation to such other impairments as may be prescribed, in such circumstances as are prescribed.

6. Certain medical conditions

(1) Cancer, HIV infection and multiple sclerosis are each a disability.

(2) HIV infection is infection by a virus capable of causing the Acquired Immune Deficiency Syndrome.

8. Progressive conditions

(1) This paragraph applies to a person (P) if--

(a) P has a progressive condition,

(b) as a result of that condition P has an impairment which has (or had) an effect on P's ability to carry out normal day-to-day activities, but

(c) the effect is not (or was not) a substantial adverse effect.

(2) P is to be taken to have an impairment which has a substantial adverse effect if the condition is likely to result in P having such an impairment.

(3) Regulations may make provision for a condition of a prescribed description to be treated as being, or as not being, progressive.

9. Past disabilities

(1) A question as to whether a person had a disability at a particular time ("the relevant time") is to be determined, for the purposes of section 6, as if the provisions of, or made under, this Act were in force when the act complained of was done had been in force at the relevant time.

(2) The relevant time may be a time before the coming into force of the provision of this Act to which the question relates.

*U**nfair constructive dismissal***

90. There are four elements of an unfair constructive dismissal claim:-

(i) a breach of contract by the employer;
(ii) that breach is fundamental, or is a breach which indicates that the employer altogether abandons and refuses to perform its side of the contract;
(iii) the employee has resigned in response to the breach;
(iv) before doing so, the employee has not acted so as to affirm the contract notwithstanding the breach.

91. Lord Denning said in **Western Excavating (ECC) Limited v Sharp [1978 ICR221]:-**

> “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 tends to be bound by one of 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.”

92. It is now well accepted that there is implied into every contract of employment a term of mutual trust and confidence between employer and employee. In **Woods v WM Car Sales Peterborough Limited [1981 ICR-670]** it was said:-

> "It is clearly established that there is implied in every contract of employment a term that the employer will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. 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 to 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. The conduct of the party has to be looked at as a whole and its cumulative impact assessed."

93. In **Lewis v Motorworld Garage Limited [1986 ICR-CA]** the Court of Appeal said:-

> "A breach of this implied obligation of trust and confidence may consist of a series of actions on the part of the employer which cumulatively amount to a breach of the term, though each individual incident may not do so. In particular in such a case the last action of the employer which leads to the employee leaving, need not itself be a breach of contract – the question is, does the cumulative series of acts taken together amount to a breach of the implied term? This is the "last straw" situation."

As to the last straw, in **London Borough of Waltham Forest v Omilaju [**2005 I**RLR35**] the Court of Appeal said:-

> "With regard to the last straw, its essential quality is that when taken in conjunction with the earlier act on which the employee relies, it amounts to a breach of the implied term of trust and confidence. It must contribute something to that breach, although what it adds may be relatively insignificant so long as it not utterly trivial. An entirely innocuous act on the part of the employer may not be a final straw, even if the employee genuinely but mistakenly misinterprets the act as hurtful and destructive of his trust and confidence in the employer. The test of whether the employee's trust and confidence has been undermined is objective."

94. The House of Lords said in **Malik v BCCI [1997 ICR610]**

> "Conduct must of course impinge on the relationship in the sense that, looked at objectively, it is likely to destroy, or seriously damage the agree of trust and confidence the employee is reasonably entitled to have in its employer. Proof of a subjective loss of confidence in the employer is not an essential element of the breach."

95. It has for some time been trite law (as was accepted by Mr Ryan for the respondent) that an employer's failure to fairly and reasonably deal with an employee's genuine grievance, will amount to a breach of the implied term of trust and confidence and will amount to a fundamental breach of the contract of employment. (See **Blackburn v Aldi Stores Ltd – UKEAT/0185/12/JOJ** and **GAB ROBINS (UK) LTD v Triggs – UKEAT/0111/07/RN).**

96. The tribunal found that the claimant had raised a genuine grievance about the conduct of Mr Clive Lincoln. That grievance contained serious allegations of bullying and harassment. The respondent recognised that the grievance would be dealt with under its bullying and harassment policy. The respondent failed to carry out any or any reasonable investigation into the claimant's allegations. Mr Lincoln was never even informed about those allegations. None of those persons identified and listed as those who should be interviewed, were ever interviewed. The claimant received a number of assurances that the investigation was in progress and would be completed. That was untrue. The respondent's explanation for failing to interview any of the named persons, was wholly unsatisfactory. Similarly, the respondent's decision to suspend the investigation whilst Mr Lincoln was at risk of redundancy, was unreasonable. The decision not to progress the investigation following Mr Lincoln's dismissal was also unreasonable. The tribunal found that there were no reasonable grounds for the respondent to conclude that, because she had returned to work, the claimant had accepted that the investigation was concluded and that she no longer required an outcome to her grievance.

97. The tribunal found that the respondent's conduct of the claimant's second grievance was similarly flawed and unreasonable in all the circumstances of the case. No reasonable employer would have concluded that, because she had returned to work, the claimant had accepted that she no longer required a formal outcome to her first grievance. Key witnesses from the respondent, who may have been able to provide a meaningful explanation into these defects, were not called to give evidence. Those include Mr Heppenstall (the Chief Executive), Bronwen Gilliland (who conducted the investigation into the first grievance) and Fiona Ward (the HR manager). Those persons were likely to have had knowledge of the way the claimant was treated by Mr Lincoln and also of the background surrounding the decision to suspend the investigation to the claimant's first grievance.

98. In the absence of any evidence to contradict what was alleged by the claimant, the tribunal found it likely that the claimant's complaints as set out in her first grievance, were accurate and correct. The tribunal found that the nature of the treatment described by the claimant would itself amount to a breach of the implied term of trust and confidence and thus a fundamental breach of the claimant's contract of employment.

99. It must be accepted that the claimant's treatment at the hands of Mr Lincoln ended when the claimant went on sick leave on 12th December 2018, as Mr Lincoln had been dismissed by the time the claimant returned to work on 11th January 2019. However, the tribunal accepted that the impact of Mr Lincoln's treatment on the claimant continued until the claimant eventually resigned on 27th

September 2019. The impact of Mr Lincoln's treatment was exacerbated by the impact of the respondent's failure to fairly and reasonably deal with either of the claimant's grievances.

100. The tribunal found that the claimant was suffering from stress, anxiety and depression throughout the period from 12th December 2018 until she resigned on 27th September 2019. The claimant had no previous history of mental illness and the tribunal found that the deterioration in the claimant's mental well-being was caused by her treatment at the hands of Mr Lincoln and by the respondent's failure to fairly and reasonably deal with her grievances.

101. The tribunal accepted the evidence of Ms Tatters concerning the redundancy consultation process which began in September 2019. The tribunal accepted that the requirements of the respondent for employees to carry out work of the kind performed by the claimant had diminished or was expected to diminish. It was not unreasonable for the respondent to inform the claimant that she was at risk of redundancy and that because of the nature of her role, she would be in a pool of one. Informing the claimant in those terms at that time did not of itself amount to a fundamental breach of her contract of employment.

102. The tribunal rejected the respondent's submission that, by waiting until 27th September 2019, the claimant had accepted any earlier breach of contract and had thereby affirmed the contract of employment. The tribunal found that the claimant genuinely believed that being told she was being placed in a pool of one from which selection of redundancy would be made, was because of her lengthy absence with work related stress, anxiety and depression. The claimant decided to resign just over 3 weeks from the date when she received the outcome of her appeal against the decision in her second grievance. Being told that she was at risk of redundancy did contribute towards the claimant's decision and, whilst not of the same character as the earlier breaches, it could not reasonably be described as ultimately trivial. The respondent was aware that the claimant was on long-term sickness absence with work related stress, anxiety and depression. Telling her in blunt terms that she was in a pool of one from which selection for redundancy would be made, could not reasonably be described as an innocuous act.

103. For those reasons, the claimant's complaint of unfair constructive dismissal is well-founded and succeeds.

Unlawful disability discrimination

104. The claimant alleges that her stress, anxiety and depression amounts to a mental impairment which constitutes a disability as defined in Section 6 of the Equality Act 2010. The respondent does not accept that the claimant is and was at all material times suffering from a disability. The claimant's position is that her mental health and well-being deteriorated so that she was first absent for one month from December 2018 to January 2019 and thereafter from 1st March 2019 until the date of her resignation in September 2019. Th claimant's description of her symptoms and the impact of those symptoms on her ability to carry out normal day to day activities has not been challenged by the respondent. The evidence

from her medical notes and records shows that the claimant was being treated for depression throughout that period. The evidence from the respondent's own occupational health experts clearly showed that the claimant remained unfit for work because of her stress, anxiety and depression. It is of course unnecessary for a person to establish a medically diagnosed cause for any particular impairment. What is important is to consider the effect of the impairment, not the cause. A substantial adverse effect is something which is more than minor or trivial. Whilst an impairment may not directly prevent someone from carrying out one or more normal day to day activities, it may still have a substantial adverse effect on how they carry out those activities.

105. A long-term effect of an impairment is one which has lasted for at least 12 months or where the total period for which it lasts is likely to be at least 12 months. In respect of the latter, the test is "whether it could well happen" that the effect would last at least 12 months or recur. That question should be asked at the time at which the relevant decisions were being taken. In the claimant's case, that must mean, at the time the claimant was told she was at risk of redundancy and was in a pool of one from which selection would be made, there was a mental impairment which had lasted for 12 months or whether it could by then well happen that it would last for more than 12 months. The tribunal was satisfied that, by September 2019, it could well have happened that the adverse effects of the claimant's condition would last for more than 12 months. In coming to that decision, the tribunal acknowledges that it must not consider that point with the benefit of the information available as at the date of this hearing. The position must be considered in terms of what was available as at September 2019. The tribunal found that, as at September 2019, the claimant suffered from a mental impairment which had a substantial adverse effect on her ability to carry out normal day to day activities. The tribunal was satisfied that as at September 2019 it could well happen that those adverse effects would last for more than 12 months. The tribunal accordingly found that the claimant was at the material time suffering from a disability as defined in Section 6 of the Equality Act 2010.

106. The tribunal was satisfied that the respondent knew or could reasonably have been expected to know that as at September 2019 the claimant was disabled. The respondent had sufficient information from its own occupational health experts, the claimant's GP and the claimant's own evidence.

107. The claim brought by the claimant engages Section 15 of the Equality Act 2010. The claimant's allegation is that being placed in a pool of one from which selection would be made for redundancy was unfavourable treatment. The tribunal found that being told that you were in a pool of one from which selection would be made for redundancy, does amount to unfavourable treatment. The claimant went on to allege that the reason she was placed in a pool of one from which selection would be made, was because of her absences, which absences were a consequence of her disability. The tribunal found that the claimant's absences were a consequence of her disability. However, the tribunal was not satisfied that the respondent's decision to place the claimant in a pool of one from which selection would be made, was influenced in any way by her absences. Accordingly, the decision was not because of something which arose in consequence of her disability. The claimant had not proved facts from which the tribunal could

conclude, in the absence of an explanation from the respondent, that the decision was because of her disability. The claimant's case as put to the tribunal was simply that she had been on long-term sickness absence at a time when the respondent decided to implement compulsory redundancies. The claimant considered that duties which she had been performing would still have to be performed within the respondent's organisation. Indeed, the claimant's case as put to the respondent's witnesses was that someone else would have to undertake those duties. This displayed a fundamental misunderstanding by the claimant of the principals involved in a fair redundancy selection process. The definition of redundancy is set out in Section 139 of the Employment Rights Act 1996. It does not engage the volume of work which has to be performed, nor the quality of such work, or indeed the level of seniority required to perform that work. Section 139 engages the number of employees required to undertake that work. The tribunal accepted the respondent's evidence that there had already been a substantial reduction in the number of its employees, but that the necessary level of savings had not been achieved. Therefore, a further redundancy selection process began in September 2019, which ultimately led to over 60 employees being dismissed as redundant.

108. The respondent's decision to place the claimant in a pool of one from which selection would be made was not something which arose in consequence of her disability. Accordingly, the claimant's complaint of unlawful disability discrimination is not well-founded and is dismissed.

109. The tribunal was satisfied that the claimant would have been dismissed as redundant as part of the redundancy process which began in September 2019. The tribunal found it likely that the respondent would have had to undertake a formal consultation process, as more than 20 employees were to be made redundant at the same time and at the same establishment. (S188 (1) Trade Union and Labour Relations (Consolidation) Act 1992. That would have taken until 321 December 2019. The claimant was contractually entitled to 3 months notice of dismissal, so that she would have been fairly dismissed by 31st March 2020.

110. REMEDY

The claimant is entitled to a basic award based upon her age and length of service in the sum of £3150 (4 x 1.5 x £525). She is entitled to compensation for loss of her statutory rights (the right not to be unfairly dismissed) in the sum of £500. She is entitled to loss of earnings from the date of dismissal (27 September 2029) until 31st March 2020 in the sum of £19,296.63 (27 weeks at £714.69). That includes the award of notice pay in the sum of £9,292.97. The total award of compensation is therefore £22,946.63.

Authorised by EMPLOYMENT JUDGE JOHNSON

JUDGMENT SIGNED BY EMPLOYMENT JUDGE ON 9 March 2021

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