



EMPLOYMENT TRIBUNALS

Claimant: Ms Eleanor Bradbury

Respondent: Chaseblue Loans Limited

Heard at: Cardiff **On: 19, 20, 21 and 22 January 2021**

Before: Employment Judge P Davies
Members: Mrs K Smith
Mrs L Bishop

Representation:
Claimant: Mr George Pollitt (Counsel)
Respondent: Mr James Bromige (Counsel)

JUDGMENT having been sent to the parties on 1 February 2021 and reasons having been requested by the [claimant/respondent] in accordance with Rule 62(3) of the Rules of Procedure 2013:

REASONS

1. By a claim received on 9 April 2020 the Claimant Ms Eleanor Bradbury complains of constructive unfair dismissal, discrimination arising from disability, failure to make reasonable adjustments, harassment, direct discrimination because of disability and wrongful dismissal.
2. The Response dated 7 May 2020 denies all the claims and it is said that disability is not admitted. On 10 June 2020 at a Preliminary Hearing for case management, orders were made which included “the Claimant to provide a disability impact statement”. That was provided and is on page 54 of the bundle. It is not necessary to repeat everything set out in that statement, but useful to summarise what is said in paragraph 41 which is this, the Claimant says that her anxiety and depression has had a substantial adverse effect on her ability to carry out day to day activities in

- the following ways since April 2019 and continues to the present, “(a) I suffer from panic attacks on a regular basis, often whilst out in public settings (b) I am unable to relax and constantly feel on edge (c) my sleep pattern has been seriously impacted and I am often unable to sleep due to worry about person A and my financial circumstances (d) I rarely wish to leave my house as this is the only place I feel safe (e) I have suffered from a significant loss of appetite and have lost a lot of weight as a result (f) I am easily startled and on edge (g) I avoid socialising with friends and family and avoid making social arrangements (h) I have regular breakdowns and uncontrollable crying episodes (i) I am constantly checking phone reception and cannot relax or stay in place where there is no reception for fear that person A or friends could try to contact me.”
3. The issue of disability remains an issue for the purposes of this hearing and is not conceded by the Respondents. The Tribunal has heard oral evidence from the Claimant herself; Mr Benjamin Gillespie, Managing Director; Mr Alun Hopkin, Office Manager; and Mr K Singh, Team Manager and Senior Mortgage Advisor all of those being the Respondents employees.
 4. At the outset of this hearing it was clarified on behalf of the Claimant that the claims of direct discrimination were withdrawn and it was indicated they would be dismissed in due course by the Tribunal. At the conclusion of the case the Claimant’s representative also said that an allegation of discrimination arising from disability regarding failure to agree on considering moving the Claimant from a sales role at a meeting on 13 January 2020 was also withdrawn and that will be dismissed.
 5. The Tribunal’s findings of fact are as follows: The Claimant commenced her employment on 14 November 2016 in the role of New Business Advisor. The Respondents provide financial services. They have been in existence since 2007 when there were about 2 to 3 employees. The Managing Director, Mr Benjamin Gillespie has built up the company to at one time 25 employees, but as a result of the pandemic that has now reduced to 14 employees. Mr Gillespie is also a shareholder in a parent company but the Respondents operate independently of other companies also mentioned in the notepaper produced by the Respondents.
 6. The Claimant qualified and became a Mortgage Advisor in 2017. She sat next to the Managing Director, Mr Gillespie until December 2019. The Claimant said that in 2017 that she had a discussion with Mr Gillespie about the fact that there were divorce proceedings and that she was depressed and was taking anti-depressants. She also said that she would have been observed taking the drugs at her desk. Mr Gillespie says there was no such conversation and that he was not informed about that in 2017. We prefer the evidence of the Claimant in relation to that matter

since the Claimant has not been shy in disclosing during the course of her employment to her employer matters which have caused her considerable anxiety, stress and which have impacted adversely upon her.

7. In September 2018 a family member of the Claimant, whom the Tribunal with the agreement of the parties' representatives have identified as person A, had a traumatic episode which affected the Claimant's health and wellbeing. The facts of which were known to the Respondents near that time or shortly afterwards in 2019.
8. The Claimant had a pay rise in February 2019 when her salary increased from £17,000 to £20,000. On 23 April 2019 person A was involved in what the parties have termed an incident, which is the matter that has just been referred to, a traumatic incident. The Claimant was off work and on 13 May provided a Fit Note which indicated she was off, or going to be off, for one week because of stress. The Claimant also took a week's holiday at that time.
9. There was a return to work meeting in accordance with policies that the Respondents operate. A bundle from page 235(a) to 235(k) was produced in this hearing being extracts of some of the policies. Return to work interviews are contained in paragraph 8.3.1. It is also convenient at this stage to refer to other extracts, namely 8.5 under the heading "disability – if you are suffering from a disability or illness or have in the past and it is likely to recur then you must notify the company immediately so the company can carry out a risk assessment and/or seek a medical opinion. If necessary, and it is practicable to do so, the company will make reasonable adjustments to your duties or working arrangements in order to allow you to return to work and/or minimise your level of sickness absence in the future."
10. In paragraph 14, 14.2 sub paragraph (3) under the heading of "disciplinary procedure" states, "we may at our discretion allow you to bring a companion who is not an employee, for example a member of your family, where this will help overcome disadvantage as a result of your disability. You will not be permitted to be accompanied by an external legal representative." Section 16 of the Employee Handbook where these policies are set out is headed "Equality and Diversity" and paragraph 16.3 under "positive action" says "although it is unlawful to discriminate positively in favour of certain groups, on positive action to enable greater representation of under-represented groups is permitted by law and encouraged by the company. The company recognises that in appropriate circumstances it has an obligation to make reasonable adjustments in respect of disabled employees and applicants to prevent such employees and applicants from being placed at a substantial disadvantage to non-disabled employees and applicants", and paragraph 16.8 under "disability

policy” says, “if you are disabled or become disabled in the course of your employment with the company you are encouraged to tell the company about your condition. This is to enable the company to support you as much as possible. You may also wish to advise your Line Manager or HR Manager of any reasonable adjustments to your working conditions or the duties of your job which you consider to be necessary or which would assist you in the performance of your duties. Your Line Manager or HR Manager may wish to consult with you and with your medical advisor about possible reasonable adjustments. Careful consideration will be given to any such proposals and they will be accommodated where possible and proportionate to the needs of your job. Nevertheless there may be circumstances where it will not be reasonable for the company to accommodate the suggested adjustments and will ensure the company provides you with information as to the basis of its decision not to make any adjustments.”

11. It is right to record that Mr Gillespie said that the Respondent company had not employed any disabled employees and therefore did not have a background or experience in relation to dealing specifically with employees who were or had become disabled within the meaning of their policy and the Equality Act 2010. Although there was an HR employee/representative at that time, Ms Danielle Husband, Ms Husband was not based in the Respondent’s office. Ms Husband had not make any provision for equality and diversity training as such, although Mr Gillespie made the point that the Respondents had access not only to the internal HR representative, but also external HR advice if it was necessary.
12. The return to work interview was recorded by Mr Hopkin. His handwritten notes are on page 251, and there is a typed version on page 252 of the bundle. In that document it is recorded that, as a result of the Claimant’s absence, what is referred to her “pipeline”, that is the cases that she was dealing with, had been cleared and passed on to others. There is reference to a split 50/50 which is about how remuneration would have been given in relation to cases because apart from the basic salary there was also a commission paid to employees such as the Claimant. It is noted that the Claimant has returned with no outstanding work which will allow her to stage her return and to deal with one thing at a time. Going forward they want the Claimant to focus on being on the phone, getting back in touch with her current brokers, look to rebuild her pipeline, but at a manageable pace. The Claimant confirmed she is getting help and she needs to ensure she is communicating with the company. It is recorded that the Claimant likes working here which should give her a positive to focus on. There is reference to no more unauthorised absence and overall attendance to improve.

13. Much evidence was given by the parties about documents which are headed "performance management documents" and targets, although specific evidence was not given about what targets there were, either by the Claimant or by the Respondents. But it is clear from the language which is used in emails as well as in return to work interviews that they had a dual function and purpose which was to record view and/or support in relation to the Claimant, but also at the same time focus on performance and meeting such targets. Work as a Mortgage Advisor is clearly competitive and highly focused in order to get business in. It is clear that this is a matter which is very much the concern of the company and the Managing Director, Mr Gillespie.
14. In the return to work interview this is also recorded. "The Claimant has stated she is better but not 100%. Will be a long journey and can't say what will happen from day to day. It's a need to work rather than being 100% ready to be back in work. We will monitor this and very important for the Claimant to communicate directly with Mr Gillespie and Mr Hopkin, Dani (that is Danielle Husband) also offered her help if the Claimant needed to talk" and it is recorded that person A is still crashing, which is a term about not being in a good place.
15. The Claimant is recorded as being on medication, anti-depressants and is having ad-hoc counselling over the phone when she needs it and in the paragraph headed "summary" the following appears, "the company will work with Eleanor to ensure she is confident to get on with her work productively. Weekly reviews will take place with Alun to avoid further absences. Eleanor needs to make sure she is communicating to the management consistently. With these reasonable adjustments in place we hope to create a working environment where Eleanor is confident and allows the Claimant something positive to focus on, but expect an improvement imminently. The business will support time needed for any appointments for counselling."
16. Therefore, the Respondents were aware at this time when the Claimant returned to work in May 2019 that she was on medication and in particular on anti-depressants and was also having counselling.
17. The focus of a number of questions during this hearing has been about the use of the words 'reasonable adjustments' in this "summary". To lawyers, 'reasonable adjustments' indicates reasonable adjustments in the context of the duty to provide reasonable adjustments in cases where individuals are disabled and under a substantial disadvantage. Mr Gillespie and others of the Respondent who gave evidence did not have an understanding of reasonable adjustments in that context and indeed Mr Gillespie understood it to mean the sort of adjustments that might affect

family commitments and time to go there from work and other things of a more general nature.

18. After this meeting ,there were about two one to one meetings. One is recorded on 31 May at page 255 of the bundle and it says that “there be no more unauthorised absence and overall attendance to improve” and again uses the same template in relation to the” summary”. The reference to unauthorised absence and overall attendance was said by Mr Gillespie to be about the pre-April 2019 position where the Claimant had been absent on 15 occasions over a period of a couple of years, and on the face of it that was not excessive, but was something that was flagged up by the Respondents. In respect of overall attendance, that was in relation to concerns about some lateness of coming to work.
19. The Claimant had asked for some adjustment in relation to flexible time to be given, that was something which Mr Gillespie did not consider to be proportionate at that time and better for the Claimant to undertake the work with the normal hours of work. On 11 June an email was sent by Mr Hopkin which is on page 261 of the bundle. In that email to Ms Danielle Husband, it is said that “the Claimant is going well. We had one to one on Friday and had another good chat. She has been great since coming back” and then “they have penned in another catch up this Friday”. There does not appear to have been any further catch ups. Mr Hopkin said the reason for that is that the Claimant indicated that there was little point in them and that they ceased because of the Claimant’s position. We accept the evidence of Mr Hopkin about that but there were informal discussions with Mr Hopkin at that time and they continued in the future. A risk assessment was carried out about health and welfare generally, but not specifically in relation to the Claimant on 26 July 2019.
20. The communications between the Claimant and Mr Hopkin were not simply verbal. There were emails from time to time and an example is on page 269 when there is reference to an email from the Claimant about going to group counselling with person A and would like to go if possible. There is no evidence that when the Claimant asked to go and leave the office at that time that there were any impediments or any refusals by the Respondents. Mr Gillespie said that the Claimant’s performance in May/June was not too good, but that it improved considerably in about the August and September time and that that was something which resulted in the Claimant in September being named “employee of the month”.
21. The Claimant said that during this time, as per her impact statement, that she was having panic attacks that she was feeling under stress, particularly if she had been contacted about matters. She had been allowed to have a mobile phone in case she was contacted about matters involving person A, which she was from time to time. Having a mobile

phone was something, an adjustment, which the Respondents made to take account of the Claimant's circumstances since mobile phones were not allowed on the desks of other employees.

22. The fact that the Claimant was having difficulties from time to time, is mentioned in emails that had been sent by other employees of the Respondent, for example there is an email on 21 June 2019 from a Team Leader, Mr Farquhar to Mr Hopkin saying about the Claimant being upset and Mr Hopkin replies "I know mate, ongoing from yesterday. Thanks for looking out." That supports the evidence of the Claimant that she was tearful, having panic attacks and generally being in a very upset condition from time to time at work.
23. On 23 September 2019 the Claimant sent an email to Mr Gillespie copied to Mr Hopkin on 23 September saying, "Hi Ben, I'm not being fair on person A by not being there to support the person and on the other hand I'm not being fair on you as I currently can't concentrate on my cases. It's kind of a no win situation and person A has to come first." Mr Gillespie replies, "what are you thinking? Are you proposing leaving and being there for person A 24/7 for the foreseeable?" and the Claimant replies, "I don't know, is the honest answer" and then she is asked by Mr Gillespie "what do you want to do?" to which the Claimant replies "play it day by day at the moment if I'm allowed. It's tough. Need to work. Really concerned about person A." Mr Gillespie replies, "we will support you, you know that, you're a valued member of staff and the Chaseblue family."
24. On 14 November 2019 the Claimant asked to leave work early due to a problem with her dog and needing to go to the vets. That appeared to be the subject of some concern on the part of the Claimant because of what others might be thinking, but she made it plain in an email that she was going to leave because she had to.
25. Later that month on 27 November the Claimant emailed Mr Gillespie saying, "after the month end can we chat about the travelling and traffic as it's getting worse. Could I have a flexible start and then half hour lunch? I'll try to get here for 9 but if I don't it will stop me stressing out when the traffic is at a standstill." It was agreed that the Claimant could come in at 9.30am and the Claimant says she worked her lunchtime, there is some dispute about whether she was required or not, but we accept the evidence of the Claimant that she made up that time. The reference to the traffic is something which also appears in other emails about the difficulties of coming along the motorway and having delays coming into work late and this is something that caused the Claimant some additional stress in relation to the performance.

26. The Claimant was off with flu on 16, 17 and 18 November before the exchange of emails about the change of time, and then the following month in December 2019 it was decided by the Respondents that they would restructure and reorganise the mortgage advisors into teams. Mr K Singh was to be the Team Leader for the Claimant. Mr Singh sent an email on 18 December 2019, which is on page 368 of the bundle, saying that “we’re going to sit down on a one to one basis to find out aspects of the job you particularly like, parts of the job you feel are holding you back and any training needs/issues you would like to discuss”.
27. We accept the evidence of Mr Singh that there was a one to one discussion with the Claimant before the Christmas of 2019 about the new structure and the teams and where the Claimant would be sitting. The Claimant says that she was not consulted about this change ,but it is not necessary for employers to consult with employees about matters in which they wish to restructure the teams, although it is good practice to keep employees informed and to find out if they have any particular concerns, which is what Mr Singh was going, and did do in the meeting with the Claimant.
28. There were concerns that the Claimant had about person A over the Christmastime. In early January that the Claimant was informed that person A had decided to give up a course which the Claimant understood that person A had been undertaking during that previous year. This was a matter of some upset and concern for the Claimant when she was informed about that. The Claimant also had concerns about the operation of the team she was in, not because she disliked any individual within the team, but because some members of the team, who she described as “youngish” were engaging in a lot of banter which she found made it difficult to concentrate .By looking at the diagram in the investigation report later about how tables were set up and where people were sitting, it appears that mortgage advisors were sitting quite close to each other.
29. The Claimant says she discussed her concerns about the banter with Mr Singh on 8 January 2020. Mr Singh said that that was not discussed and the first he knew about it was at a meeting that was held on 13 January. We accept the evidence of the Claimant that on 8 January she did discuss that matter and it was something which she had raised with Mr Singh. There were emails then about a team meal in January on, it would appear, 10 January and these emails were from the Claimant and Mr Singh in which the Claimant had indicated that she did not wish to go to the meal because she was not in the right frame of mind to go. Mr Singh encouraged the Claimant to come, but ultimately the Claimant did not attend. An email was sent by Mr Gillespie, who was informed about the fact the Claimant was not going to the meal, in which Mr Gillespie says to the Claimant “just wanted to say Ells, you know how well thought of you

- are in Chaseblue and we massively value you. If work events and nights out aren't your thing that's fine. You don't ever have to go to any. Also if you need to talk about any issues work or otherwise you know I'm always here." The Claimant did not attend that meal on the Friday.
30. On the Monday Mr Singh had a management meeting with Mr Gillespie and expressed his concerns that he found the Claimant difficult to manage. In his evidence Mr Singh said it was because he would point out things that needed to be done, contacts made and they were not being done by the Claimant at that time and the way that Mr Singh described it, we find, was that it was like treading on eggshells. Mr Singh said he could not remember using that phrase, but Mr Gillespie did remember Mr Singh saying that to him because it was Mr Gillespie that mentioned it at the meeting on 13 January.
 31. There was a meeting with the Claimant on 13 January. It was an informal meeting, not a formal meeting. The Claimant did not know that there was going to be a meeting. The Claimant was told by Mr Gillespie that the meeting was to discuss Mr Singh's concern that he was "treading on eggshells" around her. They wanted to discuss such concerns and a way forward. This caused the Claimant surprise. The Claimant says that she felt upset. In her oral evidence, the Claimant said that it was not that she was offended by the term "treading on eggshells", but she thought that people were talking about her being disruptive, in her mind that, but that disruptive was not the word that was used by Mr Gillespie.
 32. The Claimant said that she explained that she was finding the sales role extremely stressful and a number of factors had caused it. Difficult to work with the team because of constant banter, the sales role was itself placing pressure on her, she was struggling to deal with and targets had not been reduced that it was impossible for her to meet expectations and no support since Mr Hopkin stopped having one to one. She said she would prefer to move to an alternative role which would take some of the stressors off and reference made to an administration role.
 33. The Claimant said during the meeting when she mentioned moving to administration role. The Claimant was hoping to move then back afterwards to sales. However, when she asked about an administration role she got an abrupt reply from Mr Gillespie saying "no" and the Claimant said "what do I do now? Leave?" We find that the Claimant felt very stressed because she had been told there were no jobs, no options were given and when went to leave the room was asked by Mr Gillespie "is this what you really want?" to which she said "no" and she left work on that day.
 34. Mr Singh thought the meeting was 15 to 20 minutes. The Claimant thought it was more like 5 minutes. The Claimant wrote a letter following that

- meeting on 14 January in which she refers to it being a 5 minute meeting. We accept the evidence of the Claimant that all these things were discussed within about 5 minutes. It was not a long meeting. It was clearly a very stressful meeting for the Claimant. It was obvious in her responses and the discussion about how stressed the Claimant was at that time. The Claimant did not respond to any attempted contacts by Ms Danielle Husband and did not attend work the following day. The first correspondence in the following day is from the Respondents, from Ms Danielle Husband who said in a letter of 14 January "Reference: resignation. Following a meeting on 13 January 2020 with Ben Gillespie and K Singh whereby you gave us your verbal resignation I am writing to confirm we have tried to contact you since with no avail. As per your employee contract the company requires you to give written notice to confirm your resignation, due to this you are currently in breach of your contract. If we do not hear from you by Wednesday 15 January 2020 I am writing to confirm we will presume that you have given your formal notice." And that caused the Claimant considerable upset because she had not resigned on 13 January.
35. In the oral evidence of both Mr Singh and Mr Gillespie they confirmed that on 13 January that they did not interpret what had happened as being the Claimant actually resigning. They thought the Claimant would cool down and then come back to work. It is therefore inconsistent with what has been written on 14 January by the Respondents as to what Mr Gillespie and Mr Singh, who were present at the meeting with the Claimant, actually believed had happened.
36. The Claimant wrote a letter of 14 January (page 383) to Mr Gillespie headed ' Grievance Procedure and Constructive Dismissal '. The letter sets out matters which had been discussed at the meeting and says, "I have taken the liberty to discuss the last 12 months employment with a solicitor. They have asked me to request a copy of my personnel file" and then there is a request for documents from the personnel file. It is also of note that in that letter the Claimant said, "I totally appreciate, and I am very grateful, that in the last 12 months I have received your support."
37. When Mr Gillespie read this letter he was clearly concerned about the reference to discussing it with a solicitor.
38. The Respondents wrote a letter on 14 January referring to the Claimant's letter and saying, "we can confirm that during the informal meeting on 13 January 2020 you were not dismissed and that you left in the heat of the moment. During this time you had given us your verbal resignation and we have since tried to contact you to have more clarity on the matter, but not been able to get hold of you" and then it refers to a subject access request.

39. On 14 January 2020 at about 11.30am Mr Gillespie unfriended the Claimant from his friends on Facebook. The Claimant says that that was a clear indication to her that the Respondents no longer wanted the Claimant.
40. A doctor's note was produced by the Claimant for 15 to 30 January 2020 and it refers to acute stress reaction.
41. There were further email exchanges between the parties about documents and the sick note.
42. On 30 January there were Facebook entries from other employees saying that the Respondents were seeking a part-time administrator. Mr Gillespie said that the previous administrator had left after given notice at the end of November 2019, but because of pressures regarding profitability, some connected with a change in compliance laws, that he did not intend on behalf of the company to recruit an administrator. It was part of a cost saving strategy, which also included not paying sick pay and restructuring the commission basis and payments. But certainly by 30 January it was the intention of the Respondents to recruit an Administrator.
43. No contact was made by the Respondents to the Claimant about that fact that they were looking for an administrator, which is perhaps surprising because the Claimant had indicated at the meeting on 13 January a clear request to move from sales to an administration role.
44. The Claimant then wrote a further letter, being a formal grievance, on 31 January. It is headed "Official Grievance" and is on page 396 of the bundle. It repeats to a certain extent what was set out in the previous letter and towards the end says "in simple terms my complaint is, failure in your duty of care towards myself with regards to my mental wellbeing through a very stressful and traumatic ongoing event in my personal life for which you all are fully aware. I strongly feel that Mr Gillespie has treated this matter with personal undertones and acted in an unprofessional manner. When my mental health improves sufficiently for me to be able to return to work I feel this, and the other reasons stated in my complaint, will not make this a likely outcome. I look forward to your reply."
45. As far as Mr Gillespie was concerned this was what might be termed a definite end of the road for the Claimant because of the personal attack upon himself, upon the reference to failure of duty of care and what he believed to be legal claims that were likely to be forthcoming. That might explain why it was that in the investigation carried out by Danielle Husband, and which the Claimant says was actually sent to her, there was enclosed with statements a summary, conclusions and recommendations,

- on page 430 which refers to “now a risk assessment should be carried out” referring to the generic risk assessment on 26 July 2019. It notes that clear support had been given to the Claimant with lateness, general leave and the avoidance of applied pressure and then Mr Singh had said to the Claimant she would have support for broker visits and she would not be forced to do them, but may need again to evaluate the Claimant’s concerns regarding concerns and recognise any training needs or reasonable adjustments.
46. Towards the end of the investigation report on page 431 Ms Husband, who has signed this document on 6 February 2020, says, “it is conclusive that BD and AH were aware of the Claimant’s personal stresses during the incident with person A in 2019 thereafter they were only aware of personal issues not work-related issues. Apart from outbursts if there is change being implemented or traffic getting to work. We have since 6 February 2020 had a position for admin. Claimant to consider applying for this role.”
47. There was no specific letter written to the Claimant giving details of the administrative role. Whilst initially it appears in Mr Gillespie’s mind that it should be part-time to save money, and a part-time employee was employed in February but lasted a couple of days, when the vacancy was sent out again via Facebook to company employees, there was a degree of flexibility about whether it was a full time or part-time. The previous administrative role had been full time.
48. It is to be noted that in the statements which were attached to the investigation report, when Mr Gillespie was interviewed and asked a number of questions he referred to the fact that post the incident the Claimant had always been up and down,” never what I would call stressed before. It’s always been stress around personal issues, always shuts it off, doesn’t like talking about it and the Claimant would say I will come to you if I need anything.” That part of the statement is consistent with the Claimant’s own evidence about the impact about the day to day effects of the stress, namely, that she would have panic attacks, that she was jumpy, and that she would burst into tears and need time out. This behaviour manifested itself during the time that the Claimant was working in 2019 and 2020.
49. There was a further sick note on 10 February 2020 for 28 days. There was to have been a grievance meeting on 11 February 2020, but it did not take place and has never taken place. Part of the reason for that is set out in an email from Danielle Husband. There had been a reference to ACAS. In that email of 11 February Ms Danielle Husband says “we placed the grievance hearing on hold and await contact from ACAS. Please find the sickness absence policy attached which will now be followed, however we

will await contact from ACAS in the next 5 days before proceeding with stage 1 of the long term sickness absence policy.”

50. The Claimant was off work and never returned to work. There was exchange of letters between solicitors consulted by the Claimant who wrote to the Respondents on 28 February 2020 and they set out a sequence of events and possible causes of claims to be made. The letter concludes “my client is on sickness absence and although she remains an employee at present she does so under protest.” The Respondents replied taking issue with a number of matters on 16 March 2020.
51. The Claimant resigned on 20 March 2020. The resignation letter is on page 469M of the bundle and in that letter there is reference to the reasons for the resignation being fully detailed in the letter of grievance dated 31 January 2020 and the earlier letter of 14 January 2020 “in addition I cite Danielle Husband’s failure to make adjustments and originally refusing to allow my friend Colin Cottle to attend the scheduled grievance meeting on 12 February 2020”. A number of bullet points refer to what is said to be the repudiatory breach of contract either cumulatively or each individual act.

Submissions

52. The law regarding the claims which remain to be determined by the Tribunal were said by Counsel on behalf of the Claimant to be agreed with that of Counsel for the Respondents. Both Counsel set out extremely helpful and detailed written submissions as well as making oral submissions to the Tribunal at the conclusion of the case. It is not the intention of the Tribunal to refer to all these matters which are well set out in the documents. On behalf of the Respondents reference was made to the definition of disability in the Equality Act 2010 and to the guidance on the definition of disability issues by the Secretary of State which Tribunals will have regard to where there is an issue in relation to whether the party is disabled or not. It was submitted that it is necessary to look behind labels that may be used and that the burden was on the Claimant to show disability and that there is no formal diagnosis in this case. Considerable reference was made to medical GP notes which showed attendance at the GP for, amongst other things, low mood.
53. It was submitted that there was no evidence of any substantial effect upon the Claimant and the most that could be said was some distraction or there might be a deterioration in January, but it did not come close at all in the totality of all the evidence for the Tribunal to be satisfied that the Claimant was a disabled person. Further regarding knowledge, because there was no discussion regarding diagnosis and that she was doing well as noted from the May period. There was no reason for the Respondents

to instruct Occupational Health. It is essential to look at what was in the employers mind regarding the issue about whether it was necessary or not. It was unfair to criticise the Respondents and that in many respects the Claimant was being hypercritical about the events in the chronology. In short there was no knowledge on the part of the Respondents regarding whether the Claimant was in fact disabled.

54. As to adjustments the PCP's relied upon were not PCP's which had been shown on the evidence either regarding targets or full-time hours and as far as being given any administrative role, if the Claimant was suffering from a lack of concentration then it would not be appropriate because the Claimant would still be under substantial disadvantage in any administrative role.
55. The meeting on 13 January was about welfare and the other matters which are relied upon of any PCP's are just not made out.
56. Regarding constructive dismissal the Respondents went through the various matters relied upon and that in particular regarding the administration role. The Claimant only knew what was said on 13 January when there was no such administrative role, and it cannot have been a reason for resignation because she was unaware of what the position was at that time.
57. The Claimant submitted that there had been raised a grievance and that it was reasonable for the conclusion that the Respondents had behaved in a way such as to calculate or to destroy the trust and confidence that the Claimant had in the Respondents. The fact that the Claimant had a disability is well set out in the history of the medical notes produced and also as to what happened at the time. The Tribunal should conclude that from May 2019 in view of what was recorded in the return to work interview, the Respondents ought to have concluded that the Claimant was disabled and had knowledge about that fact throughout the rest of the employment. Reasonable adjustments should have been made as detailed and there was failure to make those adjustments.

The Law

58. As already referred to the law is set out in the written submissions and does not need repeating in full. The Tribunal reminds itself firstly in a constructive unfair dismissal claim that the Section 95 of the Employment Rights Act sets out the circumstances in which an employee is dismissed and in particular sub section (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 employers conduct". A number of well know reported authorities have

been cited to assist the Tribunal as to what exactly that means and as to what should be the approach of the Tribunal. The test of whether a dismissal is fair or unfair is set out in section 98 of the Employment Rights Act, namely, "in determining for the purposes of this part whether dismissal of an employee is fair or unfair is for the employer to show the reason' and a reason within sub section 2. The test is in sub section 4 "where the employer has fulfilled the grounds of sub section 1 the determination of the question whether dismissal is fair or unfair having regard to the reasons shown by the employer (a) depends on whether in the circumstances, including the size and administrative resources of the employers undertaking, the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee and shall be determined in accordance with equity and the substantial merits of the case".

59. The statutory provisions of the discrimination law which is relied upon in this case are also well set out in the written submissions. The duty to make reasonable adjustments is set out in Section 20 of the Equality Act 2010 and the knowledge point regarding the duty is referred to in Schedule 8 part 3 paragraph 20 "lack of knowledge of disability (a) is not subject to a duty to make reasonable adjustments if A does not know and could not reasonably be expected to know (a) in the case of an applicant or potential applicant that interested disabled person is or maybe an applicant for the work in question and (b) in any case referred to in part 2 of the Schedule that interested disabled person has a disability and is likely to be placed at a disadvantage referred to in the first, second or third requirement."
60. Section 15 refers to discrimination arising from disability. "A person A discriminates against a disabled person B if A treats B unfavourably because of something arising in consequence of B's disability and A cannot show that treatment is a proportionate means of achieving a legitimate aim. Sub section 1 does not apply if A shows that A did not know and could not reasonably have been expected to know that B had a disability."
61. The statutory provisions regarding harassment and the definition of harassment is in Section 26 of the Act, and again that is set out in the written submissions and need not be repeated.

Conclusions

62. Dealing firstly with the claim of constructive unfair dismissal, the way that is put by the Claimant in the submissions is that there was an ongoing failure to implement actions and make reasonable adjustments to support the Claimant's mental health difficulties identified during the one to one

meetings on 28 and 31 May 2019 specifically the failure to obtain Occupational Health advice, the failure to hold the planned weekly meetings, the failure to reduce targets and hours as cited. That duty to make reasonable adjustments would arise if the Respondents knew or should have known in accordance with the statutory test that the Claimant was disabled. The Claimant did not specifically provide a medical report from her GP at any time or give authority to the Respondents to contact her GP or give any information about past matters save as we have found that in 2017 she did mention to Mr Gillespie about the fact that she was depressed and while she may have taken some drugs at her desk it does not necessarily follow that Mr Gillespie would have understood these to be anti-depressants at that time.

63. We will return to the question of disability shortly in this Judgment. The second aspect was of moving the Claimant to a new team in December 2019 along with the failure to consult or assess the risk in moving her. We do not think that this was any unreasonable or breach of contract. There had been discussion about the move. The Claimant had understood where she would be sitting, there was no unreasonableness on the part of the Respondents in what they did in December 2019.
64. Being accused at the meeting on 13 January by Mr Gillespie of making Mr Singh feel as though he was treading on eggshells, ignoring her mental health condition. As the Claimant said she was not offended by that, and that term “treading on eggshells” is how Mr Singh felt and was not itself something which was anything than a vernacular way of expressing the fact that Mr Singh found it difficult to discuss matters. It may be unfortunate that the Claimant thought that that would indicate that others considered her to be disruptive, but making that remark we do not think was in any way unreasonable or offensive or in any way upsetting in the way that the Claimant gave in her evidence.
65. The next matter relied upon was Mr Gillespie failing to consider the Claimant’s suggestion that the meeting on 13 January 2020 to move from a sales role to allow her mental health to improve and failing to offer any response to the Claimant’s questions “what should I do then?” There was further evidence which had already been recited about what happened at that meeting and what happened afterwards. In coming to our conclusion about whether there was a breach of contract regarding the failure to consider the Claimant for an administrative role is something that we do consider was a breach of contract of trust and confidence because the Respondents knew what the Claimant’s position was about wanting an administrator’s role and failed to raise the issue or discuss with the Claimant that role which became, in Mr Gillespie’s decision, within a short period of time whilst the Claimant was still an employee and engaged in raising a grievance which specifically mentioned that matter.

66. The Claimant did know that such a role existed because she became aware, and we find that she did become aware of the Facebook entries, and of course she received the investigation report which specifically referred to that role.
67. The next matter is of Danielle Husband's letter of 14 January 2020 in which she asked the Claimant to confirm that she had resigned despite the Claimant never verbally resigning. We find this was also a breach of contract of trust and confidence. It was absolutely clear, and in Mr Gillespie's mind and Mr Singh's, that when the Claimant left because of what she had said and because of what they had assumed that she would simply have a cooling off period and then come back to work, she did not verbally resign at all. It is put in a positive manner by Danielle Husband on behalf of the Respondents which did not correspond with what actually did happen on that day. The Claimant was entitled to regard that as calculated to destroy trust and confidence that she had in the Respondents.
68. The last matter, the failure of Danielle Husband's letter of 7 February to comply with the Claimant's request to be accompanied, we do not consider that that was unreasonable on the part of the Respondents to have first of all pointed out that there should be an employee. The Respondents had no information about who Mr Cockle was or his role. Within a matter of a short period of time there was an exchange of emails to confirm that it was a reasonable adjustment. Before the meeting the Respondents allowed the Claimant to have actually brought Mr Cockle if the meeting was to take place. So if the Respondents had initially mistakenly taken a view, they had corrected that position.
69. The conclusion of the Tribunal is that the Respondents did breach the contract of employment in the ways indicated and therefore Section 95(c) is satisfied. The statutory test has to be looked at but an issue has arisen regarding whether there was affirmation of the contract during this period of time. The Respondents have raised that at the time and during the course of these proceedings. We have been referred to reported authorities regarding the flexibility to be allowed particularly when an employee is on sick leave and stressed, at a time when there are decisions to be made. The period of time between the meeting of 13 January, the letter of 14 January from the Respondents and the actual resignation on 20 March is not an excessive period of time, particularly since there was ongoing dialogue regarding documents to be sent and discussion to be held, either with ACAS or with others. The Claimant was stressed at that time and was seeking advice. We do not consider that anything undertaken or not undertaken shows there was affirmation of the contract. The mere receipt of statutory sick pay, and it is noted that it is statutory sick pay not sick pay from the company, is not in itself a reason

to say that there has been affirmation of this contract. The position is that applying the statutory test under Section 98(4) whether it was fair or unfair in all the circumstances the unanimous judgment of the Tribunal is that the Claimant was unfairly dismissed.

70. We will now deal with the issues regarding disability. Reference has already been made to the impact statement and to the summary. We also have regard to the medical notes, and in particular what is set out at the relative beginning of treatment that the Claimant received for what can be loosely termed as depression from 2006. In September 2006 the problem was identified by the Claimant's GP as endogenous depression recurrent. It is not necessary to repeat all the occasions, which are very numerous, from that time but the Claimant has had to have recourse to the GP to be prescribed anti-depressants and undertaken counselling. We accept that the Claimant has been receiving a number of different drugs for depression and that some drugs had side effects. The Claimant had tried to wean herself off, as she says. The medical history shows that the Claimant has suffered with depressive episodes on a recurrent basis for a considerable number of years and that what happened in 2019 was part of this pattern of recurrent depression.
71. We reject the submissions of the Respondent that there is no evidence that shows that and it cannot be the case since there is no medical report. Medical reports are of assistance, but the definition of disability for the Equality Act 2010 is a legal definition, not a medical definition. We have to apply the definition of disability and we accept the evidence of the Claimant that she has a long term disability within the meaning of the Equality Act 2010, and that reference in the medical notes to endogenous depression recurrent is consistent with the evidence of the Claimant and with what occurred during 2019.
72. The question of knowledge that the Respondents had, or ought to have had, in relation to disability needs to be looked at about what they knew at particular times. What happened during that period of time in 2019? Although the return to work interview in May 2019 referred to a long road and not being 100% which may have triggered the Respondents in being informed about that, saying perhaps we had better get a medical report about this if it is a long road, is itself not enough in the view of the Tribunal to establish knowledge at that time of disability, even though there was reference to anti-depressants being prescribed. However, what occurred from that time with panic attacks, tearfulness, jumpiness, difficulty to concentrate, the distractions referred to, the need for colleagues to have discussions with the Claimant, the concerns that some colleagues had which prompted an email about the Claimant being upset and that upset going over two days, and what occurred in September 2019 already indicated above, leads to the conclusion that by September 2019 the

Respondents ought to have realised that the Claimant by then had a disability. It may not have been 12 months from the first knowledge in 2019, but this pattern of behaviour was carrying on. There was a failure to really engage with their own policies of referring to Occupational Health or asking the Claimant to provide a medical report. Because the Respondents did not do , does not means that they could not have known that there was a disability.

73. If we are wrong about that, what happened in January 2020 and the evidence of Mr Hopkin about the behaviour of the Claimant, as well as the Claimant's own evidence about what happened on 13 January, the distress and the letters written by the Claimant, then at that time the Respondents ought to have known that the Claimant had a disability and taken proper steps to have investigated and considered that.
74. In the light of that finding by the Tribunal we now consider the particular claims which are made Firstly, the claim for discrimination arising from disability. There is one allegation of pulling the Claimant into the meeting on 13 January 2020 and accusing her of making colleagues walk on eggshells. That does not in fact reflect what actually happened and the findings of the Tribunal. We do not consider that there was discrimination inviting the Claimant to that meeting. We do not consider that it was inappropriate for the remark to have been made. There is not shown in accordance with the words in Section 15 unfavourable treatment because of something which arose as a consequence of the Claimant's disability.
75. In relation to the failure to make reasonable adjustments the following PCP's are relied upon (a) the requirement to work full time hours and hit full time targets (b) the requirement to remain in a sales role when suffering from ill health and (c) the requirement for staff to socialise and engage in a personal capacity with colleagues. It is said that these placed the Claimant at a substantial disadvantage in comparison with employees without a disability because she was placed under additional pressure to hit targets while already suffering greatly with her mental health, she was unable to fully concentrate on her sales role and comply with sales expectations, was unable to socialise or act in a jovial manner with colleagues resulting in her being accused of making colleagues tread on eggshells at the meeting on 13 January 2020. It is said the reasonable adjustments would have been to reduce the Claimant's sales target and allow her to work more flexibly, this failure continued from May 2019 until the Claimant's resignation on 20 March 2020 and to move the Claimant to a non-sales role as requested at the meeting on 13 January 2020 and place leniency on the Claimant's failure to engage with colleagues and not penalise her for her decision not to attend the team meal on 10 January.
76. We do not find that there was a requirement to work full time hours and hit full time targets because of the vagueness of the evidence regarding

those matters, and the fact that there was a reduction in the time coming into the office to 9.30 in 2019. This allegation also has to be seen in relation to our findings regarding disability.

77. We also consider that there has not been shown a requirement for staff to socialise and engage in a personal capacity with colleagues. Mr Gillespie made it perfectly plain in his email that that was not a requirement on the part of the Respondents and although the Claimant felt that the meeting of 13 January was triggered by her not going on 10 January it was not that itself, it was the behaviour, not in a critical way, but the difficulties that Mr Singh had identified.
78. In relation to the requirement to remain in a sales role when suffering from ill health, that was a PCP that Mr Gillespie made it plain there was nothing on 13 January, but thereafter when he could have on behalf of the Respondents engaged with the Claimant to discuss an administration role, he did not do so. That put her at a substantial disadvantage because of the pressures that she felt, as expressed in the various letters. There could have been a reasonable adjustment in February 2020 for the Claimant to be offered an administrative role and that was not considered by the Respondents. It was a clear and obvious adjustment that was reasonable in the circumstances. Mr Gillespie's view that the Claimant had effectively taken herself off as a result of taking legal advice, and because she had indicated that claims may be made that was the end of the matter is something which was not reasonable by any employer and not reasonable by the Respondents. Unfortunately Mr Gillespie, who was not trained in equality matters, had assumed that that was something which made it impossible to discuss with the Claimant a role in the company, and to say that the Respondents did not think that the Claimant would accept that role is not reasonable. The Claimant, as she said in her own evidence, would have accepted a job with a salary rather than to go on Universal Credit. The salary was some £17,000 for the full time job as administrator, albeit as a part-time when it was first advertised was much less than that, about half that. In any event, it is not reasonable as far as an employer is concerned, dealing with an employee who is disabled or ought to have known to be disabled to have shut their mind as the Respondents did in that case to the discussion and possibility of redeploying the Claimant, as indeed Danielle Husband had indicated in the investigation report in February. It is indeed very unfortunate that nothing was discussed by the Respondents and considered by the Respondents at that time and it may well have been that these proceedings would not have been necessary and that matters could have been resolved on a basis which both the Claimant and the Respondents would have found acceptable.

79. In relation to the remaining claim of harassment, we do not consider that the actions which are relied upon, namely, the words said of "treading on eggshells" were untoward conduct. Whilst the Claimant may have been upset because she thought that that meant that she was being disruptive, it is necessary to look objectively as well as subjectively at the whole context and circumstances in which that remark was made. We do not think it falls within the definition of harassment on the facts that we have found.
80. The claim of wrongful dismissal is a claim that the Tribunal finds proven in this case. It is connected with the constructive unfair dismissal in the way that Counsel for the Respondents helpfully indicated to the Tribunal is sometimes the case. These findings and this Judgment is the unanimous Judgment of the Tribunal.

Employment Judge P Davies
Dated: 7th April 2021

REASONS SENT TO THE PARTIES ON

8 April 2021

S Griffiths
FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS