Claim No: 1601008/ 2020
Claim No: 1601064/ 2020
Claim No: 1602672/2020

EMPLOYMENT TRIBUNALS

Claimant:
Mr G Davies

Respondents:

(1) Tithebarn Ltd
(2) Ms Apryl Biddle
(3) Mr Ian Armstrong

Heard at:	**Cardiff CVP**	**On: Monday 24th May 2021, Tuesday 25th May 2021, Wednesday 26th May 2021 and Friday 28th May 2021**
Before:	**Employment Judge A Frazer** **Tribunal Member Mrs B Currie** **Tribunal Member Mr C Stephenson**	

Representation:
Claimant:
Mr G Politt of Counsel

Respondent:
Ms K Barry of Counsel

JUDGMENT

The claimant's claims for harassment, discrimination arising from disability and unfair dismissal only insofar as they relate to comments made in the dismissal appeal

hearing are well-founded. The remainder of the Claimant's claims are not well founded and do stand dismissed.

REASONS

The Hearing

1. The final hearing in this matter took place over four days. At the outset both Counsel agreed a timetable with us and diligently adhered to this. We had before us a Draft List of Issues, a final bundle and a supplemental bundle. In addition we were provided with the grievance appeal notes dated 20th March 2020 and 18 pages of 'missing documents'. We heard evidence from Gary Davies and Cherry Davies for the Claimant and from Ian Armstrong, John Melling, Apryl Biddle and Laura Kaye for the Respondents. We heard closing submissions from both parties' Counsel and were also provided with written submissions. We reserved our decision.

2. The issues which fell for our determination are listed below and were presented to us in a List of Issues which was agreed by both Counsel on the first day. We shall deal with each of the issues as they appear on the List of Issues in our conclusions. We have taken the numbering as it appears on the List of Issues for ease of cross-reference.

3. It was agreed that the Claimant was a disabled person at all material times under s.6 of the Equality Act 2010 and that the Respondents had knowledge of his conditions, namely anxiety and depression.

The Issues

Direct disability discrimination

4. The Claimant relies upon the following as instances of less favourable treatment:

   a. During a telephone call with Apryl Biddle on 10 September 2018, the Claimant was spoken to in an aggressive and condescending manner and subjected to unlawful, insensitive and hurtful questions. He was also asked intrusive questions about his illness along the lines of "why are you better some days and not others". Ms Biddle also made comments to the effect of "you just need to get on with it" and "pull yourself together";

   b. Dismissal decision; and

   c. Failing to notify the Claimant of new vacancies and/or failing to offer roles to the Claimant prior to termination.

5. Did this treatment occur as alleged or at all?

6. The Claimant relies upon a hypothetical comparator. If so, was this less favourable treatment?

7. If so, was it because of disability?

Discrimination Arising from a Disability

8. The Claimant relies upon the following instances of unfavourable treatment:

a. The Claimant received a letter dated 5 September 2019 which contained threats of disciplinary action;

The Claimant avers the 'something' was his absence from work, lack of ability to engage with work/Respondent's manager in the manner the Respondent wished due to his conditions and illness

b. The Claimant was not awarded two days' additional holiday entitlement over the Christmas/New Year period during his sickness period;

The Claimant avers the 'something' was his absence from work, lack of ability to engage with work in the manner the Respondent wished due to his conditions and illness

c. The decision of Ms Kaye to cancel the appeal hearing on 3 March 2020 immediately after it commenced;

The Claimant avers the 'something' was the way he presented himself due to his conditions and illness and the occupational health reports prepared due to his disability related illness.

d. Requiring the Claimant to put all matters in writing from April 2020 onwards;

The Claimant avers the 'something' was that the Claimant found this level of formality difficult to comply with due to his condition

e. Refusing the Claimant's request for e-mail application for a new role in place of a formal application form and/or failing to consider alternate application process due to illness;

[and]

f. Requiring the Claimant to submit a formal application;

The Claimant avers the 'something' in relation to e and f was that the Claimant found this level of formality difficult to comply with due to his condition

g. Not accepting the Claimant's application presented late;

The Claimant presented his application late because he struggled to complete the form due to his condition

h. Failing to notify the Claimant of new vacancies and/or failing to offer roles to the Claimant prior to termination; and

The something arising: This follows on from e-g- had the claimant completed the form he would have been informed of the vacancies and/or offered roles. He didn't complete the form in time due to his disability.

i. Discriminatory comments about the Claimant's inability to complete the Application form. Words to the effect: "… this would not have been too difficult" and "it wasn't a taxing process" in the appeal hearing.

The Something Arising: the Claimant struggled to complete the forms due to his disability as noted above.

9. Did the conduct happen as alleged or at all?

10. Did the Respondent treat the Claimant unfavourably because of something arising in consequence of his disability?

Please see paragraph 6 above

11. Can the Respondent show that the treatment is a proportionate means of achieving a legitimate aim?

a. To effectively manage their employees with issues relating to misconduct, in particular, failing to file appropriate paperwork which may have repercussions with the HRMC and or regulatory bodies;

b. To follow their existing policy regarding Christmas holidays entitlement for individuals who did not work over that period;

c. To ensure that vulnerable employees have the right to fair hearing;

d. The requirement to keep evidential records of employees' correspondence, particularly those who are vulnerable;

e. The requirement to pursue a fair and thorough interview and selection process within the timescales provided.

Harassment

12. The Claimant relies upon the following as instances of harassment:

a. During a telephone call with Ian Armstrong on 30 January 2019, the Claimant was spoken to in an aggressive, highly critical and belittling manner, involving screaming and shouting from Mr Armstrong and subjected to interrogation style questioning for over 45 minutes. As a direct consequence to this particularly aggressive call the Claimant alleges that he suffered a heart attack;

b. During a telephone call with Apryl Biddle on 10 September 2018, the Claimant was spoken to in an aggressive and condescending manner and subjected to unlawful, insensitive and hurtful questions. He was also asked intrusive questions about his illness along the lines of “why are you better some days and not others”. Ms Biddle also made comments to the effect of “you just need to get on with it” and “pull yourself together”;

c. The Claimant received a letter dated 5 September 2019 which contained threats of disciplinary action related to his disability;

d. Failing to implement recommendations made in the Grievance Appeal Outcome;

e. Failing to notify the Claimant of new vacancies and/or failing to offer roles to the Claimant prior to termination; and

f. Discriminatory comments about the Claimant’s inability to complete the Application form. Words to the effect: "… this would not have been too difficult" and “it wasn’t a taxing process”.

13. Did the conduct happen as alleged or at all?

14. Was it unwanted?

15. Did it have the purpose or effect of violating the Claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for him, taking into account:

a. the perception of the Claimant;

b. the other circumstances of the case; and

c. whether it is reasonable for the conduct to have that effect.

16. Did the conduct relate to the Claimant's disability?

Victimisation

17. The Claimant relies on the following as protected acts:

    a. His allegations of discrimination and request for changes to his working arrangements in his welfare meeting on 25th October 2018;

    b. Grievances alleging discrimination and contraventions of the EqA raised by the Claimant against senior managers and Directors of the First Respondent on 19th September 2019 (via letter from his solicitor);

    c. Allegations of discrimination and contraventions of the EqA made by the Claimant verbally at the Grievance Meeting on 22 October 2019; and

    d. Letters from the Claimant's solicitor with allegations of further discrimination and contraventions of the EqA dated 13 December 2019, 20 December 2019, 5 February 2020, 12 March 2020 and 13 August 2020.

    e. Employment tribunal claims 1601008/2020 & 1601064/2020 Issued in April 2020 regarding disability discrimination.

18. The Claimant relies upon the following as instances of being subjected to a detriment following his lack of popularity for raising these protected acts:

a. As a direct consequence to a particularly aggressive call from Ian Armstrong on 30 January 2019 where the Claimant was interrogated and criticised for over 45 minutes, the Claimant suffered a heart attack;

    b. The Claimant received a letter dated 5 September 2019 which contained threats of disciplinary action;

    c. The Respondent initially refused to settle invoices relating to his Master's degree which prevented the completion of the course and refused to honour a pay rise conditional on the completion of the course;

    d. The Respondent has not paid the Claimant the correct or any specific bonus and/or commissions during his period of sickness absence and refused to provide "any breakdowns of small amounts from time to time.

    e. No provision of therapy despite the Respondent's promises to provide it;

    f. The Claimant was not awarded two day's additional holiday entitlement over the Christmas/New Year period during his sickness period;

    g. Refusing the Claimant's request for e-mail application for a new role in place of a formal application form and/or failing to consider alternate application process due to illness;

h. Requiring the Claimant to submit a formal application;

i. Not accepting the Claimant's application presented late;

j. Failing to notify the Claimant of new vacancies and/or failing to offer roles to the Claimant prior to termination; and

k. Discriminatory comments about the Claimant's inability to complete the Application form. Words to the effect: "… this would not have been too difficult" and "it wasn't a taxing process".

19. Did the conduct happen as alleged or at all?

20. Has the Respondent subjected the Claimant to a detriment because:

a. The Claimant does a protected act, or;

b. The Respondent believes that the Claimant has done, or may do protected act?

Failure to make reasonable adjustments

21. Did the Respondent operate the following provisions, criteria, or practices 'PCP(s)'):

a. Changing the customer base of the Sales Representatives;

b. Requiring employees to deal with a high amount of paperwork;

c. Failing to prevent employees from being contacted by clients during sickness absence

d. Failing to implement recommendations made in grievance appeal outcomes

e. The requirement for a formal job application as part of the redundancy process

f. The requirement for the job applications to be made by a set deadline.

22. Did these PCPs place the Claimant at a substantial disadvantage in comparison with persons who are not disabled?

The Claimant avers the substantial disadvantage suffered (as above) was:

a. Changing the customer base of the Sales Representatives;

Increase in stress / worsening of the Claimant's condition/symptoms which impacted on his ability to function day to day and work

b. Requiring employees to deal with a high amount of paperwork;

Increase in stress / worsening of the Claimant's condition/symptoms which impacted on his ability to function day to day and work

c. Failing to prevent employees from being contacted by clients during sickness absence

Increase in stress / worsening of the Claimant's condition/symptoms which impacted on his ability to recover and return to work

d. Failing to implement recommendations made in grievance appeal outcomes

Lack of finality of the Grievance process leading to increase in stress / worsening of the Claimant's condition / inability to have closure and therefore prohibit his recovery and return to work

e. The requirement for a formal job application as part of the redundancy process

Given the Claimant's condition he struggled to concentrate of the application process and complete the form

f. The requirement for the job applications to be made by a set deadline.

The pressure of a set deadline meant that the Claimant had added stress which exacerbated his disability symptoms and made it harder for him to complete the forms and meet the deadlines

23. Did the Respondent know, or could it reasonably be expected to know the PCPs outlined above were likely to place the Claimant at the substantial disadvantage alleged?

24. The Claimant alleges that the Respondent should have taken the following steps:

a. Adjustments and a phased return to work;

b. Revisions to the amount of paperwork he had to submit;

c. Counselling;

d. Considered "*any other help they could offer to minimise his anxiety and the effects the new work practices had on him*" as recommended;

e. To expedite the grievance process; and

f. Adjustments to the application process to avoid redundancies including accepting the Claimant's email application and/or the Claimant's late application form once the recruitment and selection process had concluded.

25. Would the above steps have avoided the disadvantage complained of?

26. Were the above steps reasonable?

27. Did the Respondent fail to take these steps?

Unfair Dismissal

28. Was there a potentially fair reason for the dismissal within the meaning given under s98 ERA 1996? The Respondent contends that it was redundancy or SOSR following a reorganisation. The Claimant contends that the redundancy process was used as means to unfairly remove him from the business.

29. If there was a potentially fair reason for the dismissal was the dismissal fair in all the circumstances? In particular?

    a. Did the Respondent properly consult with the Claimant about the redundancy?

    b. Did the Respondent follow a fair redundancy selection process?

    c. Did the Respondent look for alternatives to dismissal including allocating the Claimant alternative roles (before and during his notice period)?

    d. If the dismissal was unfair, what compensation should be awarded to the Claimant?

    e. Should compensation be reduced due to the Polkey Principle?

Breach of Contract / unlawful deductions from wages

30. Is the Claimant entitled to any payment for outstanding commission and/or bonus payments due as claimed?

Findings of Fact

31. Our findings of fact relevant to the issues in dispute are as follows. The Claimant was employed by the First Respondent as a sales representative from 23rd June 2014 to his dismissal on 21st September 2020. The First Respondent is a livestock supplement supplier and manufacturer. It is a small company with fewer than 100 employees and without any centralised HR department. The

First Respondent takes HR advice from a consultancy known as Amicus and was also advised by solicitors during the period of the Claimant's employment to which this claim relates. There were no written policies in existence relating to the management of long-term sickness absence.

32. Prior to the merger with Minsups, the Claimant's area was a defined area in South and East Wales known as E221. The Claimant visited farms and gave advice on products. The Claimant was autonomous within his role. The Claimant had agreed an arrangement with Mr Melling and Mr Sample of the First Respondent that he could sell products outside his area to friends and family and that he could take group orders at a discount to customers.

33. The Claimant performed well and in 2015 was the top selling salesman in Wales and in the top six for the UK. He was top of the league for sales across the UK in 2016. In August 2016 he asked Mr John Melling, the then Managing Director, if he could undertake a course in Ruminant Nutrition. This was a three-year Diploma. Mr Melling and the Claimant agreed that this would enable him to advise farms more effectively. It was agreed that it would be funded by the company. The Claimant's sales continued to peak.

34. In March 2018 there was a merger between Tithebarn and Minsups. The new Managing Director was Apryl Biddle and the new Sales Director was Ian Armstrong. The merger brought about changes to working practices. Minsups and Tithebarn had previously been wholly owned by Probiotics International. Following the merger there was a restructure which resulted in redundancies.

35. Minsups reviewed the sales territories by geographical area. Prior to the merger each sales representative had an area but there was a practice whereby a representative could sell out of area at a discount without having to reimburse commission to the representative whose area it was. In addition, it was open to representatives to place friends, family and neighbours into a group and sell at a discount. It was the view of Apryl Biddle, the incumbent Managing Director, that these practices were affecting the company's profitability. There was also concern regarding the practice of employees holding large amounts of stock at their premises. This was not in keeping with the requirements of the Universal Feed Assurance Scheme ('UFAS') which prescribes certain requirements for the management and storage of feed. On the basis that there were challenges to the company's viability, the Respondent felt that it was necessary to set requirements in relation to sales representatives selling only within the allocated geographical areas, not discounting unless only in pre-agreed 'exceptional' circumstances and not retaining large quantities of stock on their premises. This was a company-wide policy driven by commercial and regulatory considerations.

36. The company conducted a review of stock levels at the end of April 2018 which identified a number of representatives who had large quantities of stock. Rheinallt Williams, Area Manager, was asked to make visits to check on the condition and quantity of the stock. Ms Biddle and the Claimant arranged that she and Mr Williams would go round to his property on 28th June 2018. To that end Ms Biddle booked a hotel nearby for the night of 27th June. On the morning of 27th June the Claimant contacted Ms Biddle to say that owing to the weather, his children's sports day had been moved to the morning of 28th June so he was unable to be available for the stock check. Ms Biddle suggested that he meet up with her beforehand to give her the keys so that she could carry it out in any event. The Claimant declined this on the basis that he had booked annual leave for the rest of the day.

37. On 9th July 2018 Ms Biddle sent a memo to all of the sales team to remind them that if they kept stock then it should be in small quantities and that the stock and records of such should be available to the management as and when requested. On that day Ms Biddle again spoke to the Claimant to arrange a visit and 24th July was identified and agreed as suitable in subsequent correspondence. Ms Biddle and Ms Cultfeather attended on 24th July and counted the stock. The meeting was conducted amicably and Ms Biddle expressed interest in the Claimant's expertise and how this might assist the company going forwards. The stock count was then forwarded by Ms Cultfeather to the Claimant on 27th July.

38. During July the Claimant had a phone conversation with another sales representative from the East of England, Richard McInnes, which led him to believe that he was permitted to sell outside of his area to groups and earn commission whereas the Claimant was not. The Claimant then became anxious as he felt that he was being treated differently and was signed off sick from 30th July 2018. His fit note said that he was off sick for a 'stress related problem'. The Claimant had been feeing under stress as a result of the changes put in place by Minsups and was concerned that this would impact his ability to earn commission and provide for his family. He also felt that he would stand to lose customers that he was loyal to and had provided a service for over the years and felt that he would let them down. He had spoken to Rheinallt Williams about his concerns. Three representatives resigned owing to their concerns about the new structure. The Claimant was also considering resigning. We accept that it was an unsettling time for everyone including the Claimant.

39. On 1st August 2018 Mr Armstrong issued a Memo to the sales team to remind them that all orders would be credited to the representative whose area the customer was in regardless of who had booked the orders. He stated that if there were exceptional circumstances they would have to be approved by

himself and the Area Manager and the arrangement would have to be beneficial to both representatives.

40. In September the Claimant spoke to Paul Brown and advised that he had spoken to his GP and that he had been advised that he was fine to drive and that if he felt well enough some work could be therapeutic. The Claimant was still in contact with customers and was going to see them on days when he felt well enough. We accept his wife's evidence that he did not want to let his customers down and that on the days when he felt up to it, chatting to his customers lifted his spirits.

41. On 10th September 2018 Ms Biddle telephoned the Claimant. In our finding this was a genuine attempt on her part to enquire as to the Claimant's welfare. The conversation started off amicably. However what was said and why is in dispute. Mr Davies' recollection of the conversation is that he said that he suffered from depression and found administrative tasks difficult to complete. He said that following a small mistake that he had made Ms Biddle told him '*don't be silly'* and '*pull yourself together*'.

42. Ms Biddle says that she recalls that they discussed how work could be therapeutic as that had been her experience when she had had a difficult time in her life. He had said that some days were better than others and she asked why that was. She said that he then became aggressive and put the phone down.

43. We prefer Ms Biddle's version of how the conversation went. The Claimant himself had said that he found some days better than others in the subsequent welfare meeting in October. There was no context given by the Claimant in the conversation about what the mistake was which had caused Ms Biddle to tell him not to be silly and to pull himself together. Ms Biddle denied that she would ever say something along these lines as she herself had had lived experience of mental illness in the family and as such we find that it would be something unusually insensitive for someone with that experience to have said.

44. Her evidence was that she had been upset by the way that the phone call had come to an end and we accept this. In our finding she had asked the Claimant why some days were better than others as he had said this in the context of explaining that on some days he could go out but on other days he couldn't. Ms Davies' evidence was that he went out on some days to see customers when he was feeling well enough. We conclude that Ms Biddle was not being condescending or aggressive but was making a genuine enquiry about why he was ok to go out on some days and not others. He was offended by this and reacted to it emotionally but we find that the enquiry was genuine and was made by Ms Biddle so that she could better understand what was going on for him.

45. On 17th September Ms Biddle sent a letter to the Claimant which was headed '*concern regarding capability'*. It had been brought to her attention by Rheinallt Williams that the Claimant was still not performing his paperwork duties. Mr Armstrong spoke to the Respondent's HR consultants and was advised to write a letter. It was decided that it was better coming from Ms Biddle. The concerns related to the Claimant's paperwork. In particular, it was brought to the Claimant's attention that the concerns were about failures to complete monthly company vehicle reports, failures to complete monthly expense forms, failures to complete daily or weekly activity forms and failures to supply weekly sales figures to the Area Manager. The letter was expressed not to form part of the Respondent's disciplinary procedure. However at the end of the letter it stated *'I must advise you however that should there be any further misconduct or any form of unsatisfactory performance then disciplinary action may be considered in accordance with the company disciplinary procedure, which could result in your dismissal.'*

46. The concerns regarding unsatisfactory submission of paperwork had been raised with the Claimant on previous occasions. We noted in particular that the paperwork issues were mentioned in his appraisals and in the letter sent to him by Jeremy Sample on 9th September 2015. There was nothing to suggest to us that the paperwork issues were because of the Claimant's condition, which was not symptomatic at the time that concerns were raised with him previously. We find that this was a consistently raised competency issue that endured throughout the Claimant's employment.

47. The First Respondent required the paperwork for mileage for HMRC and the weekly activity and sales forms for the purposes of accountability. The weekly sales reports were required on a Friday so that the managers could provide an average to the Area manager on a Friday evening so that they could have the weekend free. The evidence from Mr Armstrong in cross-examination was that in theory if it were agreed with the manager the Claimant could have submitted sheets on a Saturday or could have relayed his information to the staff in the office. However the office was often short staffed and very busy. We did not consider that this would be reasonable as the Claimant would still be required to apply his mind to and prepare the figures involved and set them out in order to read them to a member of staff.

48. On 25th September Mr Armstrong wrote to the Claimant to say that the Respondent's insurers had requested written confirmation from the Claimant's GP that he was fit to work and drive his company vehicle. Following this, he was to inform Apryl Biddle, Rheinallt Williams or Mr Armstrong before he started work and what time he returned home. On 28th September the Claimant submitted a letter from his GP which stated that '*an attempt at work would be*

beneficial to his mental health and general recovery and I'm informed that there are days when Mr Davies feels that he is able to carry out his duties'. The GP stated that he had no concerns about Mr Davies working or driving the company vehicle.

49. On 22nd October the Claimant was invited to a welfare meeting and given the right to accompaniment, albeit the meeting was informal. The meeting took place on Thursday 25th October. It was conducted by Mr Armstrong. Mr Jones took notes. The Claimant was accompanied by his wife. The Claimant said that he suffered from reactive depression brought about by bad news. He expressed his concerns about the changes to the geographical areas and the group orders and that they would result in a pay cut. He said that the way that he had been managed by Mr Williams and the decisions surrounding the merger had not helped his condition. He also complained that Ms Biddle's warning letter about his paperwork had not helped his condition. He brought up an issue surrounding a verbal warning in 2017 given to him by Mr Williams which had greatly upset him. At the end of the meeting there ensued a discussion regarding what treatment the Claimant was on for his depression. He said that he was receiving counselling once a fortnight. He enquired about whether BUPA offered counselling and Mr Armstrong said that he would look into it. He said it may be offered through occupational health. Mr Armstrong brought out a medical disclosure form and asked the Claimant to sign it so that his GP could provide any details which would help the company understand his condition better. The Claimant said that he wanted to take the form away so that he could fully understand the implications of signing it. Mr Armstrong informed the Claimant that without the form it could affect any decisions the company made going forwards as it might not be in receipt of all the information. The Claimant said that he was to let him know when it needed the return of the form. Mr Armstrong asked the Claimant what it could do to support him. He said that if counselling support were available he would take it. Mr Armstrong expressed to the Claimant that while he was signed off sick from work he should not return and that the company would deal with his customers. The Claimant agreed to pass on a list of customers where there were outstanding deliveries.

50. On 5th November Mr Armstrong wrote to the Claimant to inform him that an allegation of potential misconduct had been made against him. It was alleged that on 11th October a feed analysis certificate was sent to him in error and that he had used the information to contact the customer, who was the customer of another sales representative. The Claimant was informed that this was a potential breach of data protection and company procedure and that the First Respondent may need to speak to him about it. In our finding this was a potential misconduct issue and so it was right that the Claimant be spoken to about it. The First Respondent was obliged to deal with it and give the Claimant an opportunity to explain what had happened.

51. On 12th November the Claimant was signed to return to work on a phased return. The Claimant returned to work as and when he felt up to it, similar to how he had been working before. Mr Armstrong was required to chase the Claimant for his paperwork on occasions as he continued not to submit it on time.

52. On 6th December the finance department sent through to Mr Armstrong a list of customer complaints. There were complaints that stock was damaged or faulty or that customers had not been charged the correct amounts. There were some complaints that the Claimant was borrowing customer stock but not returning it on time. Mr Armstrong was concerned about the impact these complaints would have on the Respondent's reputation. He emailed the complaints to the Claimant on 13th December and asked for his feedback on each complaint. The Claimant responded saying that he was finding it all very stressful and requested the company gave him support. He asked whether BUPA could help with his health issues. He had also had a conversation with Mr Armstrong on the phone about BUPA on 12th December. Mr Armstrong's understanding was that the Claimant needed to fill in the medical disclosure forms first before anything could be sorted out. The Claimant had complained on 8th November that he did not have the forms and another set was sent to him in the post. The Claimant had confirmed to Mr Armstrong in a phone call subsequently that he had received them. Mr Armstrong agreed he would look into the procedure for a BUPA referral again by way of his email of 13th December.

53. Mr Armstrong did not hear back from the Claimant regarding the customer orders so contacted him again to ask him about them on 8th January 2019. Around this time there were orders that needed to be fulfilled and the Respondent was aware that the Claimant had the stock at his home. On 14th January 2019 Mr Armstrong contacted the Claimant to discuss the collection of the stock from his home and to chase the responses to the customer complaints. It was agreed that the collection of stock could be carried out on 30th January. On 15th January 2019 Mr Armstrong chased the Claimant for the responses to the customer complaints. The company were invoicing the customers so needed to resolve the situation as a matter of urgency. The Claimant said that he had sent them but the company had not received them.

54. Mr Armstrong attempted to speak to the Claimant on 29th January but there was a bad line. Mr Armstrong emailed the Claimant that evening to check the stock was wrapped and ready to collect. The Claimant responded to say that he had not cross referenced it and wanted to do this first before the stock was collected. The following morning Mr Armstrong emailed him back to say that the Respondent would check the stock back at the factory. The Claimant responded to say that he wanted to check it for his own satisfaction. Mr

Armstrong responded saying that it ought to be clear which products were not sold and to have the stock ready for collection.

55. The First Respondent wanted the stock returned and we find that this requirement was pressing. The stock was liable to go out of date and lose value and if it was not being stored in accordance with UFAS guidelines, it could invalidate the Respondent's insurance. Some of the stock sold had subsequently proved to be out of date.

56. Owing to the conversation, Mr Armstrong followed the email chain up with a phone call to the Claimant to ask him to have the stock ready. The Claimant said that he did not have the stock shrink wrapped as he had run out of wrap, that it was not on pallets and that he wanted to know how much the company thought that he should have. Subsequent to this Mr Armstrong emailed the Claimant asking to confirm that he had the stock ready for collection and was expecting a call back at 12pm.

57. In our finding this was a difficult conversation. We find that Mr Armstrong was frustrated as the Claimant appeared to be putting off the collection of the stock and that this was reflected by a terse tone or manner. We did not find that Mr Armstrong was aggressive or that he shouted or screamed. We noted from a subsequent email sent by Mr Armstrong that there was an agreement between the Claimant and Mr Armstrong that there would be a call back at noon and we find that this was more likely than not owing to signal problems which had caused them to re-arrange the call. This would explain the email.

58. The call back was at noon and Mr Armstrong asked the Claimant a number of questions about the customer complaints as there was information that he required on them in order to respond to them fully. While the Claimant may have experienced this as an interrogation owing to being under stress, we do not find that from an objective perspective, it was conducted in a way which created an intimidating, hostile, degrading, humiliating or offensive environment for him. We also find that the questions asked by Mr Armstrong did not relate to the Claimant's disability. He was entirely concerned with the operational matters of retrieving the stock and obtaining the full information about the customer complaints. We do not accept that the tone adopted was anything to do with the Claimant having chased Mr Armstrong about the BUPA counselling referral or having made any accusations against the company in the welfare meeting. Mr Armstrong had previously asked the Claimant what support he had needed and had encouraged him to complete the disclosure forms so that he could make a referral. Moreover the welfare meeting had taken place three months prior. We find that the Claimant did express his annoyance about the counselling not having been expedited on the phone but we do not find that this caused Mr Armstrong to question the Claimant about the complaints. We found

the context of the phone call was significant in that the First Respondent was prepared to collect the stock and the Claimant was not willing to release it. This was in the context of him having been also chased by the Respondent on a number of occasions about his administration, the customer complaints and the stock.

59. On 1st February 2019 the Claimant suffered a heart attack. He was admitted to hospital and underwent revascularisation. The medical report from Dr Raybould states that he had a number of risk factors for the development of coronary artery disease and that he had been under stress at work. There was nothing before us in the form of medical evidence which was determinative of the conversation on 30th January itself being the cause of his heart attack. We would require medical evidence of causation in that regard. In any event, it was not for us to make any findings of personal injury as per the List of Issues.

60. The Claimant was signed off sick. Representatives had until the end of March to return or sell off any rep stock. On 12th and 14th February 2019 Mr Armstrong wrote to the Claimant to request that he have his rep stock ready for collection by the company. He requested that he have the stock ready for collection on 19th February and that someone would do the lifting or him. He need only provide access. Mr Armstrong advised him that he would soon receive a letter inviting him to a welfare meeting. The Claimant emailed Mr Melling to say that the collection of the stock was not that simple as he wanted to cross reference it himself. He stated that he felt harassed and that he was going to the hospital that day to get confirmation in writing that he should avoid stress. He said that he would not be able to get the letter by 19th and he did not want the company to have the unnecessary expense of the lorry. He said that he did not currently feel well enough to attend a welfare meeting. Mr Melling replied to assure the Claimant that he would not need to have any involvement with the uplift of the stock and that he could post his records on to the Respondent when he felt able. He wished the Claimant well and said that Mr Armstrong would be grateful to hear from him about his condition from the medical professionals. Mr Armstrong wrote to the Claimant to explain that while the company had until the end of March to deal with the stock the Claimant had been signed off sick for 56 days so he would be unable to sell or deliver it. He was also advised that the date had been brought forward to the end of February. He explained the need to have the stock back for checking as there was a risk some of it could be out of date. Mr Armstrong advised the Claimant that he would be referring him to occupational health for an up-to-date report on his health and to get advice on supporting him with his condition during his absence.

61. Ryan Ayres emailed the Claimant on 18th February to inform him of a time when the stock would be collected. The Claimant emailed by response to say that he had a meeting at the hospital the following day and would not be available. Mr

Ayres replied to say that he would collect on 20th and the Claimant emailed back to ask for it to be deferred to the following week. Ms Biddle wrote to say that they had arranged the lorry and did not want to cancel it a second time. She suggested that his wife could let them into the shed. The Claimant wrote back and said that he had never agreed to the lorry coming and that this week was not convenient as he had further procedures being carried out. He complained that he was being harassed. Ms Biddle wrote to him to apologise if he felt the situation was placing him under stress and requested that he provided a date the following week. She provided him with the assurance that the company would simply need the keys to the shed and they would organise the rest. She stipulated the Respondent would need the stock back by 28th February and would work around him. There was no response and so Ms Biddle wrote again to say that the First Respondent would arrange collection on 27th February. She suggested sending over extra staff to speed up the process. The stock was in fact collected and itemised by the Despatch Manager on 28th February. The stock that was returned was less than anticipated and some of it was damaged or out of date, which had been the concern of the Respondent in wanting it returned.

62. Paul Brown contacted the Claimant on 7th, 10th and 13th May 2019 to request his sick notes and informed him that as his last sick note expired on 3rd May he would not be able to pay him sick pay after this point unless he supplied a sick note. Mr Armstrong phoned the Claimant on 13th May to follow this up. Mr Armstrong followed this up with an email. He recorded that the Claimant had refused to put in a sick note unless the First Respondent paid for the fuel for him to visit the doctor's. Mr Armstrong advised him that if he did not supply a sick note he would not be entitled to statutory sick pay and any absence would fall to be unauthorised. The Claimant was invited to let Mr Armstrong know if there was any reason he was not supplying a sick note. This was not a threat in our finding but a reminder to the Claimant of the consequence of not providing a sick note. The Claimant responded to say that he had not refused to supply a sick note and that he had requested that he be paid for fuel to and from the doctor's as he was struggling financially. The Claimant raised the conversation on 30th January and said that Mr Armstrong had used the same threatening tone. He attached the sick note to the email. Mr Armstrong replied to say that he was not victimising the Claimant but was simply reminding him of the requirements of his employment. He reminded the Claimant that the company were there to help him if he required any assistance.

63. On 5th September 2019 Mr Armstrong wrote to the Claimant. The First Respondent's HR company, Alcumis, had attempted to contact him several times to arrange a welfare meeting. The Claimant had the day before submitted a sick note for 29th July that had already expired and had not submitted one for the current period of absence. The Claimant was advised to contact Mr

Armstrong immediately to confirm his absence status. He was informed that owing to the fact that there was no fit note provided, his absence was unauthorised. He was also informed that Mr Armstrong still wished to hold an absence meeting with him and requested that the Claimant contact him to arrange a meeting once he had sought advice. Mr Armstrong also indicated he wished to refer the Claimant to occupational health. Mr Armstrong warned the Claimant that if he did not hear from him by 5pm on Monday 9th September and if he did not receive a sick note he would have to proceed to a disciplinary. He expressed that he was keen to avoid this. He urged the Claimant to communicate with him. It is clear from the reading of this letter that Mr Armstrong's intention in expressing this was because the Claimant had not been in communication with the company and he wanted to bring this about so that the company could properly manage his long term sickness absence. The Claimant emailed Mr Armstrong on 12th September to say that further to his letter dated 5th September had made contact with a solicitor and had sought advice. He stated that his solicitor would make contact with him soon. The Claimant then provided his sick note from 29th August to 10th October on 11th September.

64. On 19th September 2019 the Claimant's solicitor wrote to the respondent raising complaint that the new Sales Manager micromanaged him and removed customers from him; that there was nothing done by the company to prevent customer contact during his sickness absence; that he was pressurised regarding stock takes; that no reasonable adjustments were made upon his return in December 2018; that he was spoken to in a heavy handed and highly critical manner about account irregularities and other minor issues; that he was spoken to in many phone calls in January 2019 by Mr Armstrong in an intrusive and heavy handed manner and that as a result of a 'particularly robust and aggressive call' on 30th January 2019 the Claimant suffered a heart attack. The solicitor outlined six claims that he had which he had been advised to pursue against the company. The letter made a subject access request and the writer of the letter requested that it be accepted as a formal grievance. Mr Melling on behalf of the First Respondent responded to the letter on 27th September 2019 and invited the Claimant to an initial meeting to discuss it on 15th October 2019. The Claimant was given the statutory right of accompaniment. There then ensued correspondence between the Claimant's and the Respondent's solicitors about the grievance.

65. There was a grievance meeting that took place on 22nd October 2019 which was chaired by Peter Melling. Mr Melling wrote to the Claimant to inform him that the resolution of the grievance was taking longer than anticipated because of the number of issues raised.

66. On 8th November 2019 Mr Melling invited the Claimant to a sickness absence meeting. The Claimant responded on 15th November 2019 saying that he was not fit enough to attend the meeting and raised additional matters in relation to his grievance. He said that his grievance needed to be resolved before he could return to work. Mr Melling wrote to the Claimant on 20th November to say further investigations would be carried out. On 21st November Mr Melling wrote to request that the Claimant provide consent for the company to obtain a report from his GP and for him to undergo a medical examination. The First Respondent set out clearly in this letter the purposes for which the report was sought.

67. Mr Melling gave his outcome to the grievance on 5th December 2019. He upheld the complaint that no provision was put in place during his sickness absence to prevent customers from contacting him and that an invoice relating to his studies was not paid. The remainder of his complaints were not upheld. He wrote to the Claimant again on 12th December 2019 to inform him about the proposed referral to occupational health and to request that he give his consent for that purpose. He acknowledged the Claimant's position that he did not feel well enough to attend a sickness absence meeting.

68. By letter from his solicitors dated 13th December 2019 the Claimant appealed against the grievance decision. He indicated that he did not have faith that John Melling would be sufficiently impartial as an appeal officer. It was suggested to the Claimant's representatives that the Finance Officer, Sue Ashley could be appointed as an appeal officer. The Claimant's solicitors then wrote on 19th December 2019 challenging the independence of the appeal officer and informing the First Respondent that the Claimant would not be in a position to formulate his Grounds until January 2020.

69. On 27th January 2020 the First Respondent received a report from occupational health. It diagnosed the Claimant as suffering from major depressive disorder and stated that the condition would need to be treated aggressively. He said, *'I understand that he may be able to access private healthcare through the company insurance and I feel that this would give the best chance of being able to access such treatment at an early stage (the sooner the better)'.* He recommended that the Claimant sought an opinion from a consultant psychiatrist through the health insurance and that he would benefit from cognitive behaviour therapy alongside medication adjustment. He recommended switching anti-depressants given that there was a 30% response rate in so doing. Then the psychiatrist could advise on combination anti-depressant treatment or augmenting with a low dose antipsychotic for example. It was the opinion of the physician that any return to work would require significant improvement which would be based primarily on medical intervention to allow an improvement both with medication adjustment and

psychotherapy. The physician's recommendation was that the Claimant remained unfit. However he said, *'my hope would be that over the next one to two months there will be a clinical improvement and that at that point Mr Davies would be likely to be able to engage more appropriately with the organisation to resolve the concerns that he has had'*.

70. Following on from those comments the First Respondent's solicitor emailed the Claimant's solicitor on 6th February to enquire as to whether the Claimant would be fit enough to attend the appeal hearing which was scheduled for 13th February 2020. She sought confirmation as to whether the Claimant wanted to go ahead or whether he wanted to benefit from medical treatment as advised. The Claimant's solicitor responded on 10th February to say that his client had advised that he would not get better until the internal processes had been completed and that he wished to proceed subject to any reasonable adjustments and to the appeal officer having an awareness of his condition. On 10th February 2020 Ms Biddle informed the Claimant that following on from the occupational health report the company would refer him to BUPA and would fund CBT sessions up to the value of £1,400.

71. The HR company that the First Respondent had engaged to conduct the appeal, 'Grassroots' informed the Respondent that they no longer had capacity to take the appeal on. The First Respondent, on recommendation from its solicitor, instructed a barrister from 9 St John's Street Chambers to hear the appeal. She was instructed on or around 28th February 2020. We accept Ms Kaye's evidence and take from judicial notice that it is not unusual for barristers to receive instructions very shortly before a hearing and indeed it is the skill set of a barrister to assimilate evidence efficiently and effectively prior to a trial. Ms Kaye had regard to the occupational health report from Dr Thomas. Having read through her brief Ms Kaye had regard in particular to the recommendations in the occupational health report and decided that as a preliminary issue she would consider the matters relating to the Claimant's ill health, the medical evidence provided by occupational health, a discussion of any adjustments to be made followed by a clarification of the appeal points and next steps. Ms Kaye was concerned, having regard to the Claimant's diagnosis and the specific recommendations in the report, which provided for aggressive treatment, that the Claimant would be able to have a full and fair hearing.

72. The appeal hearing took place in a conference room in a hotel in Swansea on 3rd March 2020. The Claimant attended unaccompanied at 1030. Ms Kaye made enquiries of the Claimant's current position regarding treatment. He said that he had not seen a consultant psychiatrist but that his wife had been dealing with scheduling an appointment and no confirmation had been received. He said that he had not had any adjustments to his medication nor had he undergone CBT. Ms Kaye indicated that her preliminary view was that owing to

the occupational health report from Dr Thomas the Claimant needed to have the medical treatment before the appeal was progressed. We noted that this was in fact the First Respondent's initial query as it had contacted the Claimant's solicitors on 6th February following receipt of the report to ask whether in view of the report the Claimant was fit enough to attend the appeal hearing. The Claimant indicated that his GP had said he was fit to proceed. Ms Kaye asked the Claimant whether his wife might be able to provide him with information about the status of the appointment and adjourned to allow him to make some enquiries. The Claimant said that it was important for his mental health for the appeal hearing to go ahead. During the short adjournment the Claimant contacted his solicitor and his wife. His solicitor then contacted the Respondent's solicitor by email and phone and she rang Ms Kaye. The impression that had been given was that Ms Kaye had cancelled the hearing, which was not the case. She had come to a preliminary view and sought a brief postponement for the Claimant to speak to his wife. When the Claimant returned he stated that he did not feel that he could recover until the appeal was dealt with. Ms Kaye observed that by this time the Claimant's presentation had deteriorated. In evidence the Claimant accepted that he would not have been well enough to proceed at that point in time. Ms Kaye decided to go ahead and postpone the hearing. We accept that this upset the Claimant who had been preparing himself to go ahead that day.

73. On 13th March the Claimant's GP wrote a note for the First Respondent that he was fit to attend an appeal hearing. In an email to Mr Armstrong dated 13th March 2020 Dr Thomas of occupational health said that if the Claimant's GP had seen him and had felt that he had been well enough to have the appeal he would support this. His advice was cautious however and he said, *'early resolution is normally beneficial but there were concerns raised by his appearance and demeanour in the previous meeting. I would therefore support the meeting going ahead but if there are further significant concerns that require urgent [sic] then I would in that case recommend that he would need further assessment and treatment before participating.'*

74. It was proposed that the appeal meeting be convened on 2nd April remotely. By this time the country had been affected by the COVID19 pandemic. On 30th March the Claimant requested an adjournment of a week as he was feeling very unwell and anxious. In view of the occupational health physician's recommendation and the information received Ms Kaye wanted a report from a psychiatrist before re-listing the hearing. This was sensible in view of the cautious advice given by occupational health. She was provided with a psychiatric report on 15th April and agreed to hear the appeal on 22nd April. The psychiatric report confirmed that the Claimant was able to attend virtual meetings and that the resolution of the process would assist his recovery.

75. The reconvened appeal took place between 22nd and 24th April over Zoom. Following the meetings the Claimant wished to submit some anonymous witness statements and this was permitted by Ms Kaye and later, by the First Respondent. Ms Kaye's next steps were to interview Ms Biddle, Mr Armstrong, Mr Melling, Ms Rooney and Mr Brown. There was a delay in the Claimant providing his witness statements which Ms Kaye and the Claimant had agreed would be submitted by 1st May. Ms Kaye agreed to an extension of time for submission of witness statements. On 18th May the Claimant sent through documentary evidence running to 200 pages and witness statements. On 19th May the Claimant contacted Ms Kaye requesting a discussion to clarify certain points. Ms Kaye responded through her instructing solicitors to say that having considered the principles of fairness, the need to expedite the appeal, the Claimant's representations, the fact that clarification was limited to the contents of the documents log, the presence of solicitors on both sides and the cost implications, the most effective way to receive clarification was in writing. The Claimant was asked to provide that further clarification by 5pm on 22nd May 2020.

76. The Claimant's solicitors emailed the First Respondent's solicitors on 21st May to say *inter alia* that there were important issues that the Claimant had felt that Ms Kaye had misinterpreted and that he felt the need to explain to her.

77. Ms Kaye did not receive any clarification in writing by 22nd May owing to the dispute in this regard and so she extended the deadline to 27th May. The Claimant attempted to call her. He left a message with her clerks and asked her to call him back. On 27th May in response Ms Kaye set out that contact should be through solicitors. It was her view that it was not within the grievance process to hold a direct phone call with the Claimant and nor was it in the interests of fairness or transparency to have a telephone call directly with him. She reminded the Claimant of the 4pm deadline for his points in clarification. On 28th May the Claimant requested a face-to-face meeting as a reasonable adjustment. Ms Kaye agreed to this and offered a date of 1st June. This was held on Zoom. Following this Ms Kaye interviewed the First Respondent's witnesses on 4th and 5th June 2020. On 5th June Ms Kaye interviewed Mr Brown in relation to the points that the Claimant had raised in clarification.

78. Ms Kaye produced an outcome report running to 119 pages which was sent to the Claimant on 13th June. She upheld certain of the Claimant's points but found that there had been no discrimination. She made several recommendations including mediation. Ms Biddle wrote to the Claimant on 26th June. The Respondent stated that it would follow the recommendations made in relation to the grievance procedure, administration and occupational health. The Respondent agreed with the recommendations made that the Claimant should have a mediated discussion with Mr Armstrong and Ms Biddle and a discussion

with Mr Brown as to how the office staff could assist him with a successful return to work. The First Respondent requested that the Claimant provide a response from his GP in relation to his ability to participate in mediation and in relation to the recommendations surrounding his participation in team meetings and any agreed phased return to work. The Claimant was reminded to provide a response to the First Respondent's prior request for an update on his CBT. On 8th July the First Respondent wrote to the Claimant stating that it required an updated psychiatric report before being able to proceed with the mediation. The Claimant was reminded to provide a GP report on the points raised in the letter of 26th June.

79. In the meantime, prior to the lockdown Ms Biddle had been attending shareholders meetings to discuss the profitability of the Farm Sales department. The effects of the national lockdown forced the First Respondent's hand insofar as there was a decision that there would have to be redundancies or the company would face voluntary liquidation. We find that this was a pressing situation. On 27th March 30 out of 36 sales representatives were furloughed. On 27th March Ms Biddle wrote to the Claimant to inform him of the situation with the sales team and to invite him to make an application for voluntary redundancy. On 22nd May Ms Biddle warned the Claimant as to the need for the company to make potential redundancies. On 29th May she sent a memo to all staff relating to the election of employee representatives and invited people to put themselves forward. On 1st July the First Respondent wrote to all 33 of the sales representatives including the Claimant to inform them that they were at risk of redundancy.

80. The first consultation took place by telephone on 6th July. During that consultation the Claimant indicated that he wished to apply for a role in the new structure. The timescale that was given to the Claimant in the meeting of 6th July was that applications would be provided by 17th July; the interviews would take place in the two-week period ending 31st July and the letters would be sent out to the successful candidates on 3rd August. It was stated that the offers of alternative employment must be accepted by 7th August. Letters of redundancy to those not selected would be sent out by 10th August and there would be a 7-day notice to appeal thereafter. The Claimant was invited to state whether he needed any reasonable adjustments to the new role in his application form. During that meeting Ms Biddle also discussed the recommendations in the grievance outcome. The Claimant asked how mediation would take place in the new role and Ms Biddle said that she would find out and set this out in a letter. She asked if the Claimant had begun his CBT sessions yet and he said that he had not due to the pandemic. The Claimant asked Ms Biddle if she would be happy to undertake mediation and she said that she would but that Mr Armstrong's position as at risk of redundancy so he would not be required to

mediate if he was no longer employed by the company. The Claimant expressed that he would still like to have mediation with him.

81. There was a consultation with the elected representatives on 9th July. On 15th July Ms Biddle wrote to the sales representatives at risk that the First Respondent would be accepting applications for roles for sales representatives. The First Respondent wanted to select successful recruits first and then allocate roles based on the recruits' geographical areas. The deadline was 17th July. There was a requirement for all applicants to complete the application form. The application form was a short pro forma and contained 11 questions over 2 pages.

82. On 8th July Ms Biddle wrote to the Claimant to enquire about his response to the grievance outcome. She reminded him that the First Respondent had said that it would need an update on his health and the medical intervention he had received since obtaining the psychiatric report. She asked for him to provide the responses to the points in the letter dated 26th June regarding the recommendations for attendance at team meetings and a phased return to work. She asked for an update on CBT. She stated that if the Claimant did not want to see his GP about these matters he could be referred to occupational health. He was asked to respond within 7 days.

83. On 17th July at 1504 the Claimant emailed Ms Biddle and stated *'please accept this email as my application for one of the new farm relationship advisor roles with Tithebarn'*. At 1548 Ms Biddle responded to thank the Claimant for his email but stated that she was unable to accept the application unless it was on one of the prescribed application forms. She asked him to complete it and return it to her by email. At 1642 the Claimant's solicitor contacted Ms Biddle to say that the Claimant was very much unwell to the extent that he could not write the email that he had sent and that his wife had sent it at his request. He said that he trusted that the Claimant's email would be accepted as a reasonable adjustment. Ms Biddle wrote in response to say that as the company intended to commence interviews over six working days from 20th July she was happy to accept a reasonable adjustment by extending the deadline for submission to 5pm on Wednesday 22nd July and the interview could then be conducted by Zoom on 27th July. She suggested that it would be helpful if the Claimant's wife could complete it on his behalf. The Claimant's solicitor responded that he would take instructions but that he envisaged that the Claimant may not be well enough to conduct an interview at this time. He said that he would ask the Claimant to arrange an immediate appointment with his GP. There was no further communication.

84. The Respondent engaged managers to undertake the interviews and score the applicants. They were scored by way of a set of pre-determined questions. They were scored on 27th July. Keith Jones emailed the scored to Ms Biddle on 28th July. The scores were reviewed and challenged. Ms Biddle initially offered 13 applicants roles but then it became apparent that not all of the geographical areas were covered. The next five on the list were then offered roles. The offers were made to the successful applicants on 3rd August.

85. On 31st July the Claimant's solicitor emailed Ms Biddle attaching the Claimant's application form. There was also a GP note attached. The Claimant's solicitor said that he had been advised that he was currently not well enough to attend an interview. The Claimant was signed off from 28th July to 31st August with a 'stress related problem'. The application form that was submitted contained short responses to the questions. On 5th August Ms Biddle responded to the Claimant's solicitor to inform them that the application process had been completed and offer letters had been sent out. She went on to say that the Claimant's application was presented outside the extended deadline and after the decision had been made regarding the successful applicants. On 10th August the Claimant was sent a notice of termination of employment by reason of redundancy. The Claimant was informed of his entitlement to a statutory redundancy payment. The Claimant's solicitor wrote in response on 13th August *inter alia* appealing against the termination on behalf of his client, requesting documentation and raising a number of questions.

86. There was nothing before us which allowed us to conclude directly or draw an inference that the First Respondent had massaged the selection process so as not to allow the Claimant an opportunity to succeed in applying for the position of farm sales advisor. He had been advised of the process by way of consultation on 6th July. At the same time the First Respondent was progressing the recommendations in the grievance appeal outcome report by asking him to submit information about his ability to return to work from his GP and his CBT so he could participate in mediation. That would suggest that subject to his succeeding in the application for the role, the First Respondent was expecting the Claimant to return to work. The Claimant was given an extension of time until 22nd July. Neither he nor his solicitors wrote to seek a further extension yet he was aware of the timetable for selection as this had been given to him on 6th July in consultation. It had been suggested to him that he could get someone else namely his wife to fill in the application form on his behalf. The First Respondent required an application form in order to provide a level playing field for all employees and to score fairly from that information. It was obliged to do so in order to follow a fair redundancy process.

87. The Claimant was not slotted in for an interview because on 31st July his solicitor had made it clear that he was unfit and he was indeed signed off until

the end of August. There was no evidence before us that there would have been any further adjustments that the First Respondent could reasonably have made to the selection process on the information before them at that time. The Respondent felt some commercial pressure to complete the process expeditiously. While there was some slippage in the timetable to accommodate an adjustment to accept the application out of time on 31st July the First Respondent did not have it in mind to do so. We considered whether they ought to have adjusted to do this but we find that any such adjustment would not have been reasonable as the application form without more would have been an inadequate basis on which they would have been able to make any decision. The Claimant was unfit for interview and the application form was brief. It would be difficult for the First Respondent to have any prospect of determining his application without an interview and on the information provided by him.

88. We considered whether the First Respondent ought to have adjusted by going on what they knew of him from before but this, we find, would not have been sufficiently measurable. There was insufficient information before the First Respondent to enable them to take any step that would have been reasonable for them to take to remedy the disadvantage posed by the Claimant's inability to fully participate in the application process. The First Respondent had made adjustments to the process by extending the time for submission of the application form and by suggesting that the Claimant's wife could assist him. The Claimant also had a solicitor. We find that those steps were reasonable. There were no other suitable alternative vacancies which were available for the Claimant at that time.

89. John Melling, Director, conducted the Claimant's appeal hearing on 30th September via conference call. We have had regard to the notes of the appeal. The impression that we had was that some of the questions in the appeal came across as being put in a slightly combative manner. Mr Melling asked the Claimant, 'why was your application so late?' and 'your application was not a detailed document'. Under cross-examination Mr Melling accepted that he had remarked that the application was not a detailed document to complete. He also accepted that he had remarked that it was only 41 words. He gave the explanation in evidence that he had made these comments because he wanted the Claimant to explain what it was about his health which had prevented him from providing an adequate response. He said that he had not intended to offend the Claimant. We accept this and find that Mr Melling was frustrated as it was clear to him that the reason the Claimant had not got a position was that he had not submitted his application by the agreed deadline. There were no grounds of appeal from the Claimant. A number of questions about the process were raised by the Claimant's solicitor in the letter that requested an appeal however.

90. Mr Melling wrote to the Claimant with the outcome on 2nd October 2020. The reasons for his decision are set out in the letter. He was satisfied that there was a genuine redundancy process and that the process was reasonable. He concluded that as regards the application process, the Claimant had already been granted a reasonable adjustment as concerned the extension of time and that in the absence of communication until the 31st July the company had proceeded with the selection process. He could not find any evidence that the Claimant had been wilfully rejected from the process. Full reasons were given to the Claimant as regards the calculation of his redundancy payment and concerning the deadline by which he was to submit his expenses claim to the company, which had been extended to 19th October. As concerned mediation, Mr Melling informed the Claimant that this process had not started as the Claimant had not informed the company that he had had the requisite medical intervention before this could start. He confirmed to the Claimant that contrary to his understanding, Tony Miller had not been working in his area as a sales representative and that there had been no correspondence with customers in his area to advise them of a change of sales representative.

91. To the extent that there were some discrimination allegations that were presented outside of the requisite statutory time limit it was just and equitable to allow time for presentation on the basis that we were able to hear all the evidence from both parties and make determinations on the facts.

92. Ms Kaye was an agent of the First Respondent which was her principal for the purposes of s.109 notwithstanding her self-employed status. We find that parliament cannot have intended that independent contractors be exempt from the section as this would create an absurdity whereby employers could simply outsource their disciplinaries in order to avoid liability.

The Law

Burden of Proof – Discrimination

93. The task of proving a discrimination case under the Equality Act 2010 lies initially on the claimant. Under s.136 Equality Act:

> *'(2) If there are facts from which the court [or tribunal] 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.*
> *(3) But subsection (2) does not apply if A shows that A did not contravene the provision'.*

94. This is often taken to mean that a claimant must prove a '*prima facie'* case against a respondent and then burden shifts for the respondent to prove that they did not discriminate against the claimant.

95. There must be some facts that the Tribunal can draw inferences from to establish a prima facie case of discrimination. A prima facie case requires that 'a reasonable tribunal could properly conclude from all the evidence' that there has been discrimination (**Madarassy v Nomura International plc [2007] IRLR 246 (CA*)***).

96. In reasonable adjustments cases, the burden shifts once the employee has proved that there is a PCP that puts them at a substantial disadvantage compared to a non-disabled person.

Liability for employers and principals (discrimination) – s.109 Equality Act 2010

97. Section 109 deals with liability of employers and principals. Under s.109(2) anything done by an agent for a principal with the authority of the principal must be treated as also done by the principal. Under s.109(3) it does not matter whether that thing is done with the employer's or principal's knowledge or approval.

Time Limits – Discrimination

98. The time limit for a discrimination claim to be presented to a tribunal is normally at the end of 'the period of three months starting with the date of the act to which the complaint relates' (**section 123(1), Equality Act 2010**).

99. Acts occurring more than three months before the claim is brought may still form the basis of the claim if they are part of 'conduct extended over a period', and the claim is brought within three months of the end of that period (**section 123(3)).**

100. The appropriate test as to whether there are continuing act(s) is whether the employer is responsible for an 'an ongoing situation or a continuing state of affairs' in which the acts of discrimination occurred, as opposed to a series of unconnected or isolated incidents (**Hendricks v Metropolitan Police Commissioner [2002] EWCA Civ 1686, followed in Lyfar v Brighton and Sussex University Hospitals Trust [2006] EWCA Civ 1548**).

101. In deciding whether it is just and equitable to extend time to permit an out-of-time discrimination claim to proceed, the Tribunal is entitled to take into account anything that it deems to be relevant (**Hutchinson v Westward Television Ltd [1977] IRLR 69**).

102. The Tribunal's discretion is as wide as that of the civil courts under section 33 of the Limitation Act 1980 (**British Coal Corporation v Keeble [1997] IRLR 336 and DPP v Marshall [1998] IRLR 494**). Courts are required to consider factors relevant to the prejudice that each party would suffer if an extension were refused, including:

•The length of and reasons for the delay.
•The extent to which the cogency of the evidence is likely to be affected by the delay.
•The extent to which the party sued had co-operated with any requests for information.
•The promptness with which the claimant acted once they knew of the possibility of taking action.
•The steps taken by the claimant to obtain appropriate professional advice once they knew of the possibility of taking action.
(Section 33, LA 1980.)

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

Direct Discrimination (s.13 Equality Act 2010)

104. Under s.13 of the Equality Act 2010 a person discriminates against another if, because of a protected characteristic, A treats B less favourably than A treats or would treat others. A claimant must show that he or she has been treated less favourably than an actual or hypothetical comparator. The less favourable treatment must be because of the protected characteristic, i.e.disability. This requires the Tribunal to determine the reason for any less favourable treatment. Where reasons are not apparent the Tribunal can have regard to the reverse burden of proof provisions in s.136 Equality Act 2010.

Discrimination arising from disability (s.15 Equality Act 2010)

105. Under s.15(1) of the Equality Act 2010 (a) a person (A) treats a disabled person (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. The Claimant must establish that the treatment was unfavourable and that it it was caused by the 'something arising'. There must only be a loose connection between the disability and the unfavourable treatment (**Hall v Chief Constable of West Yorkshire Police UKEAT/0057/15**). In **Cockram v Air Products Plc UKEAT/0122/15** the EAT

emphasised the importance of the Tribunal considering all of the evidence on justification put forward by the employer and providing clear findings on the aim, why it was legitimate and whether the steps taken to implement the aim were appropriate and reasonably necessary.

Failure to make reasonable adjustments (s.21 Equality Act 2010)

106. The duty to make reasonable adjustments falls under s.20 Equality Act 2010. Under s.20(3) there is a requirement on an employer, where a provision, criterion or practice ('PCP') puts a disabled person at a substantial disadvantage in comparison to a relevant matter in comparison with persons who are not disabled, to take such steps as is reasonable to have to take to avoid the disadvantage. In **Environment Agency v Rowan [2008] IRLR 20** Langstaff J said that a tribunal considering a reasonable adjustment claim must identify: the PCP applied by the employer; the identity of non disabled comparators, where appropriate and the nature and extent of the substantial disadvantage suffered by the claimant in comparison to non-disabled comparators. The test of reasonableness is objective (**Smith v Churchill's Stairlifts plc [2006] IRLR 41).**

Harassment (s.26 Equality Act 2010)

107. Under s.26(1) a person (A) harasses another (B) if (a) A engages in unwanted conduct related to a relevant protected characteristic, and (b) the conduct has the purpose or effect of i) violating B's dignity or ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B. Under s.26(4) in deciding whether conduct as the effect referred to in subsection 1(b) each of the following must be taken into account – a) the perception of B; the other circumstances of the case and c) whether it is reasonable for the conduct to have that effect. In **Richmond Pharmacology v Dhaliwal [2009] IRLR 336** the question of reasonableness is a matter for the Tribunal to determine having regard to all of the relevant circumstances including the context of the conduct.

Victimisation s.27 Equality Act 2010

108. Under s.27 of the Equality Act 2010 a person (A) victimises another person (B) if A subjects B to a detriment because (a) B does a protected act, or (b) A believes that B has done, or may do, a protected act. Under s.27(2)(d) a protected act is 'making an allegation (whether or not express) that A or another person has contravened this Act.' The detriment must be 'because of' the protected act.

Unfair Dismissal (Redundancy)

109. Under s.98(2)(c) Employment Rights Act 1996 redundancy is a potentially fair reason for dismissal. Whether the dismissal was fair or unfair having regard to that reason depends on whether the employer acted reasonably in treating it as a sufficient reason for dismissal (s.98)4)). In **Polkey v A E Dayton Services Ltd [1987] IRLR 503** an employer will not normally act reasonably unless it warns and consults employees and their representatives about the proposed redundancy; adopts a fair basis on which to select for redundancy and considers suitable alternative employment. In **Langston v Cranfield University [1998] IRLR 172** it was held by the EAT that it was implicit in each unfair redundancy claim that the principles of unfair selection, lack of consultation and failure to seek alternative employment were considered. In **Williams v Compair Maxam Ltd [1992] ICR 156** the EAT emphasised that it was not for the tribunal the tribunal was to decide whether 'the dismissal lay within the range of conduct which a reasonable employer could have adopted'. If it is determined that the procedural defect would have made 'no difference' to the decision to dismiss then further to ***Polkey*** this does not render the dismissal fair but instead goes to whether or not any compensation is payable to the employee.

110. Under **s.188(1) Trade Union and Labour Relations (Consolidation) Act ('TULR(C)A')** where an employer is proposing to dismiss as redundant 20 or more employees at one establishment within a period of 90 days or less, the employer shall consult about the dismissals all persons who are appropriate representatives of the employees who may be affected by the proposed dismissals or may be affected by measures taken in connection with those dismissals.

<u>Submissions</u>

Respondents' Submissions

111. It was submitted on behalf of the Respondents that 'context was everything' in this case. Following the merger there was unhappiness not just for the Claimant but for other employees and resignations ensued. The Claimant went off sick and returned at the beginning of October 2018. The First Respondent allowed him to do as much or as little as he liked so was accommodating. While the Claimant was working there had to be some operational accountability that went with this. There were concerns over the failure to submit necessary paperwork. There had been concerns about his paperwork since the start of his employment and he had never mentioned that this was related to his depression. The Claimant never raised paperwork as an issue that related to his condition. He said that he had good days and bad days.

He had a conversation a month earlier where he alleged Ms Biddle belittled him on the phone. It was more likely than not that he made this comment on both occasions. The questions that Ms Biddle put to him in this conversation were entirely innocuous. It was significantly out of time. The Claimant only raises a grievance about his conversation with Ms Biddle one year later, which would explain why his recollection of this conversation was not cogent. He was inconsistent whereas Ms Biddle was consistent. He misconstrued Ms Biddle's innocent question, which led to him becoming aggressive and this coloured his perception of the conversation. He did not raise this in his welfare meeting. This was 16 months- out of time and it was a discrete incident rather than a campaign so it would not be just and equitable to extend time. The Claimant was not dismissed because of his disability. He was dismissed for reason of redundancy. He was not scored because he did not submit his application within the deadline, which was extended for him. The First Respondent had sound reasons for not accepting the late application given that the selection process had been completed, all of the scores had been moderated and the offer letters were ready to be sent out. Because the Claimant did not provide his application on time he could not be scored and was not eligible for any vacancies or roles. Any failure to notify him of vacancies was not because of his disability but was because he had not submitted his application on time. For the victimisation claim there was no detriment and no evidence of any linkage to a protected act.

112. The First Respondent was entitled to raise with the Claimant the data protection issue, the customer complaints and the issues surrounding his paperwork. It was reasonable and necessary. During the second period of sickness absence there were delays in submission of sick notes. It was reasonable for the First Respondent to ensure that the absences were authorised. The letter of 5th September could not amount to 'unfavourable treatment'. It was a legitimate request for the Claimant to provide his sick notes which he was required to do to receive SSP. There is no threat of disciplinary action. The letter advises that it may be considered. The First Respondent says that it is keen to avoid disciplinary action. The letter was sent not because of something arising from disability but because of the Claimant's failure to provide his sick notes. There was no evidence which suggested that it was the Claimant's disability that had affected his ability to provide the sick notes on time. Under s.15(b) the requirement to provide sick notes was a proportionate means of achieving a legitimate aim as the paperwork was needed to pay the Claimant his SSP and the First Respondent was entitled to ensure that all absences were authorised. There was no evidence to suggest that this was victimisation on the basis that the Claimant had raised allegations of discrimination in a meeting eleven months' prior.

113. The Claimant claims that he was not paid two days' holiday over the Christmas/ New Year period. It is accepted that this would amount to unfavourable treatment but it is disputed that it arose in consequence of his disability. There was an administrative oversight by Mr Brown. The issue was remedied on 13th May 2020. For the purposes of the victimisation claim there was no detriment and there was no evidence linking this issue to any protected act.

114. The Claimant's grievance was fully investigated. The appeal was carried out by Ms Kaye. The First Respondent cannot be liable for her acts or omission as she was not an agent but was carrying on business on her own account – **Barclays Bank v Claimants [2020] UKSC 13**. Ms Kaye's preliminary view was that the medical evidence supported that he would benefit from treatment and that this was necessary so that he could have a fair hearing. This was her preliminary view. The Claimant became upset and could not have proceeded in any event. He accepted that under cross-examination. It is disputed that Ms Kaye's provisional view about postponement and/or the ultimate decision to postpone the hearing could possibly amount to unfavourable treatment given the contents of the medical report and the Claimant's presentation. Ms Kaye postponement was in furtherance of the legitimate aim of ensuring that a vulnerable employee had the right to a fair hearing.

115. It is disputed that Ms Kaye's request to put matters in writing during the appeal process amounted to unfavourable treatment. The Claimant did not signify at a time that during the appeal process he had any difficulty with putting matters in writing and he submitted 200 pages. The First Respondent could not reasonably know that this would cause him difficulty. There was no evidence that the requirement to put matters in writing arose in consequence of the Claimant's disability. Ms Kaye needed to keep a record of all discussions with all witnesses. Once the Claimant requested a reasonable adjustment Ms Kaye met with the Claimant on Zoom on 1st June.

116. The First Respondent's refusal to accept the Claimant's email application and requiring him to submit a formal application did not amount to unfavourable treatment. The First Respondent had provided a five day extension and had not received a request for any further extension. There was no explanation as to why he could not have completed the form before 22nd July. There was no evidence to suggest that the completion of the form was something arising in consequence of his disability. The requirement to complete a form in time was part of a fair, transparent and thorough selection process. It was proper for the Respondent to have offered vacancies to those it scored and there were no spare roles to offer the Claimant after the process had been completed. This did not relate to the Claimant's disability. There is no link between these issues and any protected act.

117. Mr Melling's comments in the appeal hearing in relation to the application not being a detailed document were not unfavourable and they did not relate to something arising from the Claimant's disability. The appeal related to the Respondent's decision not to allow the out of time application and so it was vital that Mr Melling got to the bottom of why it was so late. The comments did not relate to the Claimant's disability. There was no evidence of any link between this issue and any protected act.

118. The call between the Claimant and Mr Armstrong was not harassment. Mr Armstrong was looking to arrange the return of the rep stock which the Claimant was reluctant to allow. The Claimant had not provided details on the customer complaints. There was no aggression, screaming or shouting or interrogation. There was no evidence that this was related to the Claimant's disability. There was no evidence to suggest that this was because the Claimant had raised allegations of discrimination in a welfare meeting that took place three months' prior.

119. In terms of failing to implement the recommendations in the grievance appeal outcome, the Claimant was to speak to his GP about mediation and a phased return but failed to engage with the company. There was an understanding that the CBT would need to be carried out before the mediation but the Claimant did not fully complete it until after the dismissal. This did not relate to the Claimant's disability.

120. In terms of the payment of the course, there was confusion over the course that the Claimant had enrolled in and what the Respondent had promised to pay for. The confusion and dispute over the course and invoices was a discrete matter which did not relate in any way to any protected act. The Claimant has not identified which protected act gave rise to the initial refusal to settle invoices. All invoices have been paid and there is no detriment to the Claimant and no link to any protected act.

121. The Claimant has not established that he is owed any commission or bonus. The First Respondent contends that he has been paid the correct amounts. His breach of contract claim/ claim for unpaid wages must fail. There has been no establishment of a link between the non-payment and a protected act for the purposes of his victimisation claim.

122. In terms of the provision of therapy, the First Respondent agreed to look into counselling following the welfare meeting in 2018. The Claimant was unwilling to sign the consent forms. The Claimant was offered CBT but he did not respond to the First Respondent at that point in time. He took it up in

October 2020 after his dismissal. He was not subjected to a detriment and this was not linked to any protected act.

123. It was accepted that changing the customer base was a PCP. It did not place the Claimant at a substantial disadvantage in comparison with other persons who were not disabled. It affected everyone. In any event the Claimant had the potential for more customers and more sales from the new arrangements. The First Respondent could not have reasonably been expected to know that the PCP impacted the Claimant's condition. There was nothing that could reasonably have been done as the only way that sales could have been carried out in other areas was in exceptional circumstances and by way of reciprocal agreement.

124. There was no PCP of requiring employees to deal with a high amount of paperwork. He never suggested that his condition was responsible for his failure to complete the paperwork. When he returned to work he was only required to do the minimum amount of paperwork and this did not put him at a substantial disadvantage. Alternatively adjustments were made in that he was ultimately only required to do the minimum of paperwork.

125. There was no PCP in relation to the First Respondent's failure to prevent employees from being contacted by clients during sickness absence. The Claimant said that he wanted to have contact with clients. There was no evidence of an increase in stress by virtue of him having been contacted by clients during his sickness absence. His upset was that he was not able to deal with his chosen customers because of the change in company policy. Following on from the October 2018 meeting the First Respondent implemented what he sought regarding his customers.

126. The dismissal was for a potentially fair reason, namely redundancy. Everyone in the sales team was put at risk and was required to complete an application form. Interviews were held. Scores were collated, moderated and subjected to challenge. The roles were offered to those on the score list. The Claimant was properly consulted. He was given a reasonable adjustment of five days to complete the application form. No further extension was sought. The Claimant's solicitor thanked the First Respondent for the adjustment. It was unreasonable to suggest that on receipt of the Claimant's application form when the process had been completed, the First Respondent ought to have paused the process, arranged an interview and scored the Claimant when the offer letters were ready to go out. To have slotted the Claimant in at a later stage would have been unfair on some of the other employees who were at risk and had been scored. There was no cogent explanation for why the Claimant did not submit his application form by 22nd July. The decision to dismiss was reasonable in accordance with s.98(4) Employment Rights Act 1996.

Claimant's Submissions

127. As concerned the conversation with Ms Biddle, Ms Biddle accepted that she spoke to the Claimant about work and that she asked why the Claimant had some good days and not others. It was not plausible that the Claimant was rude to Ms Biddle and upset her as she claimed. If this were the case she would have taken action. Ms Biddle contended that she did not pursue this because of the Claimant's ill health but this is inconsistent with the Respondent later sending him a letter warning him about misconduct. Whilst as a discrete allegation it is accepted that this would be out of time, it was part of an ongoing campaign against the Claimant which culminated in his dismissal. Alternatively, it would be just and equitable to extend time. The First Respondent has been able to respond to the claim. The First Respondent would suffer no prejudice whereas the Claimant would suffer the prejudice of not having the claim heard.

128. Changing the customer base of the sales representatives was a PCP which put the Claimant at a substantial disadvantage as this increased the Claimant's stress and worsened his symptoms which impacted on his ability to function in day to day work. Requiring employees to deal with a high amount of paperwork was a PCP and it put the Claimant at a substantial disadvantage by increasing his stress and worsening his symptoms. Failing to prevent employees from being contacted by clients during sickness absence was a PCP and it increased the Claimant's stress and worsened his symptoms.

129. The First Respondent was aware that the Claimant suffered from depression and that he found the changes stressful. No questions were asked about his health until he was signed off in August/ September 2018. The Claimant said that he found admin tasks difficult but was not provided with any support. Prior to the merger the Claimant had been able to submit paperwork on a Saturday. When he returned to work no additional support was given to him in terms of paperwork and he was chased if it was not submitted on a Friday even though established practices showed that it could be submitted on a Saturday. The First Respondent could have explored the adjustment of the Claimant calling staff in the office to record the mileage and sales. When the Claimant failed to hand in paperwork he was threatened with letters referring to dismissal even though he was signed off. A further adjustment could have been to allow the Claimant to sell to his friends and family outside of his area as these people were unlikely to buy from anyone else apart from the Claimant. The Claimant could have shared his commission with representatives in that area. The First Respondent also could have adjusted by allowing the Claimant to carry on group sales as the policy was not applied consistently in any event. Part of the grievance outcome was that the First Respondent could have done more to prevent the Claimant from being contacted when being off work due to

sickness. The First Respondent ought to have adjusted by arranging counselling for the Claimant as this would have helped him manage the stress of the changes in working practices as a result of the merger and it would have helped with the stress of the paperwork.

130. The Claimant made a protected act in his welfare meeting on 25th October 2018. Mr Armstrong disliked the Claimant because he made a number of allegations against the company in this meeting and because he kept raising requests about BUPA/ counselling. There was evidence in the bundle that Mr Armstrong was happy to see the Claimant go. The forms had not been sent to the Claimant. The phone call dated 30th January amounted to harassment. While this is not a remedy hearing the medical evidence supports a link between workplace stress and the Claimant's heart attack. The evidence of the call back arrangement corroborates the Claimant's account that this was a heated call that ended abruptly. This would be out of time as a stand alone claim but formed part of an ongoing campaign against the Claimant which culminated in his dismissal. Alternatively for the same reasons as advanced in relation to Ms Biddle's call, it would be just and equitable to extend time.

131. The Claimant also relies on the letter dated 5th September 2019 as amounting to harassment. This contained threats of disciplinary action which were related to his disability. It was also unfavourable treatment for something arising in consequence of his disability and victimisation. The letter was heavy handed. The Claimant had been in touch on 4th September. It was disproportionate to send the letter and the Tribunal is invited to draw inferences as to why a letter was sent when a phone call could have been made. The letter was received on the weekend but expected a reply the following Monday. The letter arises from the Claimant's sickness absence and/or his lack of ability to engage with work in the manner that the Respondent wished him to owing to his condition.

132. The decision of Ms Kaye to cancel the appeal hearing on 3rd March immediately after it commenced was unfavourable treatment. The 'something' was the way that he presented himself owing to his illness and the occupational health report prepared owing to his illness. The Claimant attended the hearing and advised that he had seen his GP within the last week who had advised him to proceed with the hearing. Ms Kaye rejected that position. Even when the GP letter arrived later Ms Kaye refused to accept it which showed that she had become entrenched. The occupational health specialist deferred to the GP but she still required a psychiatric report. There was no reason for Ms Kaye to not accept the updated position as relayed by the Claimant that had been given to him from his GP. Alternatively if Ms Kaye was entitled to rely on the occupational health report to cancel the hearing the First Respondent ought to have made this clear to the Claimant in advance of the hearing. The Claimant's

solicitor had made it clear that the Claimant had wanted to proceed. Ms Kaye was acting as an agent of the First Respondent. It cannot be right that the First Respondent would escape liability simply because she is self-employed. Otherwise employers could avoid the legislation by hiring third party contractors.

133. The Claimant was finding the writing down of everything stressful. From April 2020 during the appeal process Ms Kaye asked the Claimant to put matters in writing. The 'something' was that the Claimant found this level of formality difficult to comply with because of his illness. The First Respondent and Ms Kaye were aware that the Claimant struggled with paperwork owing to the nature of his grievance. A reasonable adjustment would have been to speak to the Claimant rather than requiring all matters to be recorded in writing. While it is accepted that Ms Kaye permitted this it was only after a series of requests were made.

134. The Claimant does not deny that there was a genuine redundancy process. That does not mean that his dismissal was fair or non-discriminatory. Genuine redundancy situations can be used as a guise to remove employees that the employer does not want to employ. The Claimant had been off work for some time and had made a number of complaints against the respondents. If the tribunal finds that the Claimant was dismissed because of the protected acts or because he was disabled then it follows that the dismissal would be unfair further to s.98. If the tribunal find that the First Respondent has discriminated against the Claimant because it has failed to make reasonable adjustments or because it has discriminated against the Claimant in regards to the redundancy process the Claimant will submit that the dismissal was unfair as no reasonable employer would follow a discriminatory redundancy process.

135. It was clear from the documents that the Claimant intended to apply for a role in the redundancy process. The Respondents were aware that he was not well and was struggling to complete the application form. The Claimant asked for his email to be considered as an application. This was refused even though it would have been possible for the questions to have been considered as part of an interview process. Had they accepted this email then further adjustments could have been explored with the Claimant about his ability to carry out an interview. The Respondent's duty to adjust does not end because they extended the deadline to 22nd July. The Second Respondent did not contact the Claimant to see why he had not presented an application. The Claimant submits that this was because the Respondents had no interest in assisting him to retain his employment due to his disability and the protected acts that he had made against the Respondent.

136. When the Claimant sent his application on 31st July, no job offers had been sent out at that point. The job offers were sent out on 3rd August but the Respondent could have moved the date back. Employees may have appealed against the scoring. It would simply have been a question of communicating a short delay to other members of staff or re-jigging the geographical areas. There were two roles rejected on 7th August and at that point the Claimant could have been invited to an interview. There was no adequate explanation for the failure to invite to interview from Ms Biddle other than that she had not applied her mind to it. Alternatively the First Respondent could have scored the Claimant based on their knowledge of him. According to Mr Melling's evidence if an appeal was upheld then the areas could have been re-jigged. The Claimant could have been interviewed before his appeal hearing. The Respondents had no intention of overturning the appeal at the appeal stage and/or failed to undertake a late scoring process which was a failure to make reasonable adjustments/ a breach of s.15 Equality Act 2010. The appeal was a box ticking exercise. His view was that the roles were filled and that the Claimant had not applied in time which was unreasonable. He had not spoken to those in the recruitment process. Mr Melling made discriminatory comments in the appeal, namely 'this would not have been too difficult' and 'this was not a taxking process'. Mr Melling accepted that he had said that there were only 42 words on the form, which accords with the Claimant's evidence. This amounted to harassment. He failed to grasp that the Claimant was unable to complete the application form owing to his illness. Mr Melling's lack of understanding meant that the appeal was not upheld which was unreasonable. The process was a box ticking exercise.

137. The First Respondent failed to make reasonable adjustments and did not act in a proportionate way when the Claimant's disability prevented him from submitting the application form on 17th or by 22nd July. There were acts of harassment, direct discrimination and victimisation. The Claimant denies that a fair dismissal would have taken place as he was one of the top salesmen. If a fair process had taken place he would have been likely to get one of the jobs.

138. The Respondent delayed payment to the Claimant in respect of his Masters course. The amount the Claimant was requesting was in line with the agreement reached with John Melling. When the course was completed the Respondent ought to have paid it. The Claimant has discharged the burden of proof and the First Respondent has failed to explain why the invoices were not paid. The inference is that it was because the Claimant raised allegations of discrimination in October 2018.

139. It was unfavourable treatment for the Claimant not to have been awarded two days' additional holiday pay for the Christmas/ New Year period during his sickness period. This was not paid to the Claimant until May 2020

after he submitted his first claim. The Claimant repeated his requests for this payment. The First Respondent's failure to pay him as unreasonable and disproportionate. The Claimant alleges that this was because of the complaints and the claims that he had made.

140. The Claimant is entitled to outstanding commission. The First Respondent has not explained why these sums were not paid to the Claimant when they fell due.

Conclusions

Direct Disability Discrimination

Conversation with Apryl Biddle

141. As stated in our findings of fact, we preferred the version of the conversation given by Ms Biddle. We find that the reason for the question 'why are some days better than others' was to gain an understanding as to why the Claimant was able to do work on some days and not others. The appropriate comparator would be someone who did not have the Claimant's disability. Following **Aylott v Stockton on Tees Borough Council [2010] EWCA Civ 910** we find that for the purposes of gaining an understanding of the reasons why someone could only work some days and not others, Ms Biddle would have asked the same question of a non-disabled employee or of an employee without the Claimant's disability. Therefore there is no less favourable treatment as compared to a hypothetical comparator. We do not uphold this allegation.

Dismissal Decision

142. The reason for the Claimant's dismissal was because he had not submitted his application for a farm sales advisor post within the extended deadline of 22nd July. The First Respondent would have applied this reason to a non-disabled employee or an employee without the Claimant's disability and therefore there is no less favourable treatment.

143. The Claimant was notified of a suitable alternative vacancy in the form of a farm sales advisor role. He was invited to apply for this role. There were no other suitable vacancies that the First Respondent had and did not offer him in our finding. We do not uphold this allegation.

Discrimination arising from disability

Letter dated 5th September 2019

144. We do not find that the letter amounted to unfavourable treatment given the particular context. The reason that Mr Armstrong had written the letter in the first place was because of the Claimant's prior non-engagement. Alcumis had tried to contact him to arrange a welfare meeting to no avail. He had submitted an expired sick note and there was no sick note for the current period of absence. It was a last-ditch attempt by Mr Armstrong to facilitate engagement. To put this in a letter was reasonable. Mr Armstrong did not say that disciplinary action would definitely follow and he made it clear that he was keen to avoid it, which indicated that it was a means of getting the Claimant to communicate with him. The requirement to provide fit notes was a proportionate means of achieving a legitimate aim as the First Respondent required the paperwork in order to process his statutory sick pay and to ensure that his absence was authorised. We do not uphold this allegation.

Two Days' Holiday unpaid during the Christmas break

145. The evidence that we heard and accepted was that this was an administrative error by Paul Brown. This was later remedied. This was unfavourable treatment at the relevant time in that the Claimant was not paid what was owing to him. However on the basis that this was an oversight which was later remedied we did not find that it was something that arose from his disability. We do not uphold this allegation.

The decision by Ms Kaye to cancel the appeal hearing immediately after it commenced on 3rd March 2020

146. We accept that the preliminary and ultimate decisions to postpone were unfavourable treatment for the Claimant. We find that having prepared himself for the hearing this adjustment in expectation of what was going to happen would have had an impact on him emotionally, as indeed it did. The 'something arising' was the occupational health report upon which Ms Kaye relied to make the decision to postpone. There was nothing explicit in the occupational report about his ability to engage in the appeal hearing save that it was mentioned by the advisor that *'my hope would be that over the next one to two months there will be a clinical improvement and that at that point Mr Davies would be likely to be able to engage more appropriately with the organisation to resolve the concerns that he has had'*. The advisor had said that the Claimant remained unfit for work and would need aggressive treatment. What was not clear at that point in time was whether there had been such an improvement. We can see on the one hand that the Claimant was presenting himself and saying that his GP had endorsed his attendance at the hearing. However on the other hand the occupational health report detailed that the Claimant would need aggressive treatment before being fit. The medical picture as to the Claimant's ability to participate fully in the hearing was not one hundred per cent clear. We

can understand why Ms Kaye would have wanted some specific medical evidence in front of her as to whether she could proceed. In the event when occupational health later reported on the Claimant's fitness to engage in the process, the advice was cautious which prompted Ms Kaye to obtain a psychiatrist's report. The appeal hearing was delayed for some six weeks. Affording vulnerable employees a fair hearing is a legitimate aim. Delaying a hearing for six weeks in order to obtain medical evidence to ensure that an employee can fully and fairly participate in a hearing is a proportionate means of achieving that aim, particularly where the medical picture was not clear and in circumstances where the Claimant's presentation towards the end of that hearing deteriorated. The delay was not a long one and appropriate medical evidence was obtained. There was no prejudice to the Claimant. The requirement to obtain a psychiatric report from a specialist was appropriate where the Claimant had a serious condition which required aggressive treatment and input from a psychiatrist before he could return to work. We do not uphold this allegation.

Requiring the claimant to put all matters in writing from April 2020 onwards

147. The Claimant had three Zoom meeting with Ms Kaye. The Claimant wanted to have a direct conversation with Ms Kaye as he thought that she may have misinterpreted something. Ms Kaye's request to put any additional matters in writing to the Claimant was a reasonable request in our finding and did not amount to unfavourable treatment. The Claimant had a solicitor who had been involved on his behalf. He had submitted a 200 page document log. It would not have been apparent to Ms Kaye that the request would have disadvantaged him at the time. Ms Kaye wanted to be fair to everyone participating in the appeal process and did not want to have a conversation with the Claimant directly as she wanted to be transparent.

148. Ms Kaye's decision not to have a conversation was that she wanted to be transparent and have everything recorded in the interests of fairness. Requesting the Claimant put things in writing served this legitimate aim and was a proportionate means of achieving it in the circumstances. She later held a Zoom meeting with the Claimant on 1st June after he requested a reasonable adjustment so she ultimately accommodated his request. This allegation is not upheld.

Refusing the Claimant's request for email application for a new role in place of a formal application form and/or failing to consider an alternative application process due to illness / Requiring the Claimant to submit a new application

149. The requirement to complete an application form in the circumstances was not unfavourable treatment as the Claimant had been given a five-day

extension to complete the form. The First Respondent encouraged him to request assistance from his wife. The request for the Claimant to submit an application form was to ensure that all candidates submitted the same information so that they could be scored according to the same criteria. The requirement for all employees to complete a formal application form was a proportionate means of achieving a fair interview and selection process within the timescales provided. This allegation is not upheld.

Not accepting the Claimant's application late

150. We did not find that this amounted to unfavourable treatment. The Claimant had been given an extension of time to complete the form and no extension beyond that was requested. He did not provide any explanation for not submitting it within the timescale. He had the opportunity to seek assistance from his wife and solicitor. This allegation is not upheld.

Failing to notify the Claimant of any new vacancies and/or failing to offer roles to the Claimant prior to termination

151. There was no unfavourable treatment. The Claimant did not meet the extended deadline for presentation of his application and was unfit for interview. He was unable to participate in the process for selection. The First Respondent offered roles to those who had been scored and if they did not accept the role, it would be offered to the next person on the list. There were no roles that were available to be offered to the Claimant. This allegation is not upheld.

Discriminatory comments about the Claimant's inability to complete the application form. Words to the effect 'this would not have been too difficult' and 'it wasn't a taxing process' in the appeal hearing.

152. We find that this was unfavourable treatment and was because of something arising in consequence of the Claimant's disability. Given our findings in relation to harassment on this we cannot find that the treatment was justified. This allegation is upheld.

Harassment

Conversation on 30th January 2019 with Ian Armstrong

153. For the reasons we have given above in our findings of fact we do not find that the conversation violated the Claimant's dignity or ii) created an intimidating, hostile, degrading, humiliating or offensive environment for him. The Claimant felt offended but from an objective perspective, Mr Armstrong wished to resolve the issue of the return of stock and customer complaints. The

conversation was not related to the Claimant's disability but was related to the Respondents' wish to have the stock returned and to address the outstanding customer complaints. Mr Armstrong was frustrated but as per our findings we did not find that there was shouting, screaming or interrogation. We do not uphold this allegation.

Conversation with Apryl Biddle on 10th September 2018

154. We do not find that the conversation created an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. The Claimant took offence and put the phone down when Ms Biddle asked him why he was better some days and not others. Ms Biddle was genuinely trying to find out why he could work some days and not others and we do not find that this was intrusive but was reasonable as he had provided this information to her. While the Claimant felt subjectively offended, it cannot be said that on the objective test, this would amount to harassment. This allegation is not upheld.

Letter dated 5th September 2019

155. For the reasons given we do not find that the letter created an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant. The letter was sent as a means of facilitating the Claimant's engagement with the First Respondent to send in his sick notes. The Claimant was offended but given the context in which it was sent and the statement that Mr Armstrong was keen to avoid any disciplinary action this did not amount to harassment on an objective basis. This was not related to the Claimant's disability but to his failure to send in sick notes. This allegation is not upheld.

Failure to implement recommendations in the grievance appeal outcome

156. The First Respondent sought the Claimant's engagement to participate in mediation by asking him whether he had completed CBT. His response was that he had not done so because of COVID. The First Respondent had also sought a response from his GP about his return to work but this had not been forthcoming. The First Respondent attempted to pursue the recommendations but did not get feedback from the Claimant. This allegation is not upheld. This was not in any event related to his disability.

Discriminatory Comments in the appeal hearing

157. For the reasons given in our findings of fact we did find that this amounted to harassment. It would have been apparent to the appeal officer that it was likely that the Claimant's cognitive ability would have been impaired and that therefore he may have had difficulty completing an application form.

Comments such as 'this would not have been too difficult' or 'it wasn't a taxing process' did create an offensive environment for the Claimant and in the circumstances it would have been reasonable for him to be offended. The comments may have rung true for someone who was not disabled but for someone who had a cognitive impairment were likely to have come across as demeaning. They were related to the Claimant's disability as they were directed at what he could not do. We uphold this allegation.

Victimisation

The Phone Call between the Claimant and Ian Armstrong of 30th January 2019

158. Mr Armstrong spoke to the Claimant on the phone because he wanted to know what was going on with the return of the stock and wanted to have answers to the customer complaints. He was frustrated about not being able to get the stock back. It was not because he had made any protected act.

159. In any event, we did not find that he had made a protected act at the welfare meeting in October 2018.

Letter of 5th September 2019

160. Mr Armstrong wrote this letter to the Claimant because he had failed to send in his sick notes. This allegation is not upheld.

The Respondent refused to settle invoices relating to the Claimant's Masters degree which prevented completion of the course and refused to honour a pay rise upon completion.

161. The Claimant indicated that he was signing up for a diploma in Ruminant Nutrition. It transpired to the First Respondent that the course that he had actually signed up for was different to the one that they understood that he had signed up for. Mr Armstrong subsequently agreed to fund four and not the whole eight modules. The First Respondent's belief was that it had paid what the Claimant was entitled to be paid for. It was the Claimant's decision to sign up for a different course and he did not inform the First Respondent of this. The Claimant believed that he was entitled to be paid for the whole course. Ultimately the dispute was resolved in his favour and the First Respondent paid the course fees notwithstanding that the course was different to the one it understood that he had signed up to. The reason for non-payment was the First Respondent's understanding of what was due to be paid owing to what had been agreed with the Claimant initially. There was some delay in payment because the invoices sat in Mr Armstrong's intray and because of the grievance process. The First Respondent did not pay any pay rise because the Claimant

had not completed the course that they had understood that he had signed up for. We do not find that the First Respondent's actions were because the Claimant had made a protected act. It was because of a difference in understanding as to what course they had agreed to fund the Claimant for. This allegation is not upheld.

The Respondent's failure to pay the Claimant any specific bonus and/or commission during his sickness absence and its refusal to provide any breakdowns of small amounts from time to time

162. This is not proved. We had no evidence before us that there was any shortfall and how this had been arrived at. There was no detriment. This allegation is not upheld.

No provision of therapy despite the Respondent's promises to provide it

163. Mr Armstrong had agreed with the Claimant that he would look into counselling for the Claimant through BUPA. This was agreed with the Claimant at the welfare meeting in 2018. We find that the Claimant did not send his medical disclosure forms in so that there could be a referral through occupational health as he did not want certain information being disclosed to the Respondent. This was ultimately done much later in 2020 and following the grievance the First Respondent offered to pay for his CBT in June/ July 2020. Ms Biddle made enquiries of the Claimant as to whether he had accessed the CBT but he did not respond to her. Ultimately he accessed it post dismissal in October and November 2020. The Claimant was not subjected to any detriment as the First Respondent offered him counselling. Any delay was caused by the referral to occupational health which was superseded by the grievance process.

164. There is no evidence in terms of the chain of events that suggest that any delay in offering him counselling was caused by the Claimant making a protected act. It was owing to the delay in having the matter referred to occupational health and the resolution of the grievance. The First Respondent had supported a referral to counselling from the outset but needed the Claimant to provide the disclosure forms so that there could be a referral to occupational health. There was a delay in the Claimant providing these. This allegation is not upheld.

The Failure to pay the Claimant holiday pay

165. The evidence before us was that this was caused by an administrative error and was rectified. It was not because the Claimant made a protected act. This allegation is not upheld.

Refusing the Claimant's request for email application for a new role in place of a formal application form and/or failing to consider any alternative application process due to illness

166. The First Respondent did not accept the Claimant's application form because it had not been submitted within the deadline. The First Respondent did not apply its mind to any alternative application process. We do not find that these amounted to detriments as the First Respondent had extended the deadline for submission of the form having requested that all applications be provided on the form to ensure parity of scoring. We did not find that the initial refusal of a request to accept an email application in the circumstances was a detriment when the Claimant had been given an extension of time to complete the form and had not sought a further extension of time. The First Respondent was completing a scoring process so required the information from each candidate to be in response to the same questions. We do not find that the First Respondent's actions were because the Claimant had made a protected act. This allegation is not upheld.

Requiring the Claimant to submit a formal application

167. The First Respondent did this to ensure that the Claimant and all candidates were scored fairly in a measurable and transparent manner. It was not because he made a protected act. This allegation is not upheld.

Not accepting the Claimant's claim presented late

168. For the reasons given in our findings of fact, there is no detriment. The reason the application form was rejected was because it was submitted outside of the agreed extended time limit. It was not because he had made a protected act. This allegation is not upheld.

Failing to notify the Claimant of new vacancies and/or failing to offer roles to the Claimant prior to termination

169. The First Respondent did not offer any of the farm sales advisor roles to the Claimant because his application had not been submitted within the agreed extended time limit and any roles would have been offered to candidates on the scoring list in order of scores. There were no other available vacancies to offer the Claimant. This was not done because the Claimant had made a protected act. This allegation is not upheld.

Discriminatory comments about the Claimant's ability to complete the application form. Words to the effect 'this would not have been too difficult' and 'it wasn't a taxing process'

170. We found that this was a detriment but did not find that this was because the Claimant had made a protected act. This allegation is not upheld.

Failure to make reasonable adjustments

Changing the customer base of the sales representatives

171. We find that this was a PCP. The First Respondent changed the policy on group ordering and selling to friends and family and made it a requirement for representatives to sell in their own geographical areas. We find that this did not put the Claimant at a substantial disadvantage in comparison with other non-disabled employees. The policy affected all sales representatives and the changes were unsettling for everyone. The First Respondent's evidence was that the Claimant had potential for more customers and sales owing to the nature of his geographical area but this was never in fact put into practice. There was potential for there to be some sort of reciprocal arrangement between representatives in different areas but this would have had to have been agreed by Mr Armstrong. The Claimant had not agreed that he would be prepared to swop his customers. An arrangement of this nature never came to fruition. We do not find that the First Respondent was under a duty to make adjustments. This allegation is not upheld.

Requiring employees to deal with a high amount of paperwork

172. In our finding the Claimant had always struggled with paperwork since 2015 but it was never made clear to the First Respondent that this was because of his disability. There was no evidence that it was because of his disability. He had always disliked paperwork and the First Respondent had communicated with him about it on previous occasions. This was when he was not symptomatic. He was required to submit paperwork upon his return to work in 2018. He did not do this. There was no evidence before us that this was a high amount. The Claimant was required to submit his expenses forms and his sales reports. We do not find that this amounted to a PCP. If it did, we do not find that it put him at a substantial disadvantage in comparison with persons who were not disabled. The First Respondent was not under a duty to make reasonable adjustments. This allegation is not upheld.

Failing to prevent employees from being contacted by clients during sickness absence

173. We did not find that this was a PCP. There was no evidence that this was practice that was likely to be repeated. The Claimant wanted contact with his customers and there was evidence to the effect that this did him good. When the Claimant returned to work in 2018 the issue was how customers would know when he was and was not working. There was some discussion about this. We do not find that there was any evidence that – if this were a PCP – it put him at a substantial disadvantage in comparison with other non-disabled persons in that it worsened his condition or affected him adversely. This allegation is not upheld.

Failing to implement recommendations made in grievance appeal outcomes

174. We did not find that this amounted to a PCP. The First Respondent set out its position in relation to the outcome in its letter of 26th June. It agreed to mediation and offered CBT. The First Respondent contacted the Claimant about mediation and about whether he had seen his GP about the proposals for a return to work. These were not put in place as events overtook and the Claimant was made redundant. The Claimant undertook the CBT after his dismissal owing to the fact that he was unable to do it previously because of COVID. This allegation is not upheld.

The requirement for a formal job application as part of the redundancy process

175. This was a PCP. This put the Claimant at a substantial disadvantage in comparison to non-disabled employees because of impairment to his concentration. The First Respondent was under a duty to make reasonable adjustments and did so by allowing him an extension of time to complete the application and suggested that he obtain assistance from his wife. This allegation is not upheld.

The requirement for the job applications to be made by a set deadline

176. This was a PCP. There was initially only two days given for representatives to complete the form. We find that this would have put the Claimant under a substantial disadvantage because of his impaired concentration but that the First Respondent extended the deadline for him. It therefore discharged its duty to make reasonable adjustments for him. We considered whether the Respondent could have adjusted by accepting his application on 31st July. By that time the Claimant had not requested an extension to the deadline, had not provided an explanation for the late submission and had also indicated that he was not fit for interview and signed off until the end of August. We find that in the circumstances it would have been difficult for the First Respondent to assess him on the information that he had provided. It was suggested that the First Respondent could have taken into

account his past history when scoring but there was no evidence that this was sufficiently measurable and therefore reasonable. We do not find that allowing his application into the process on 31st July would have been a reasonable adjustment as it would not have had any real prospect of being measurably scored. This allegation is not upheld.

Unfair Dismissal

177. We find that the First Respondent had a potentially fair reason for the dismissal namely redundancy. The Claimant, along with other sales representatives were warned. There was a collective consultation and the Claimant was consulted individually on 6th July. The Respondent engaged in a selection process for the new roles of farm sales advisors and all representatives were invited to apply. There was a scoring process based on measurable criteria which was subject to a two-stage assessment. One manager scored and the scores were reviewed by another manager. The only roles available were the farm sales advisor positions and the Claimant was invited to submit an application along with the other representatives.

178. The Claimant emailed the First Respondent to indicate his willingness to apply for a role. The First Respondent requested that he complete an application form. It was agreed through his solicitor that there should be an extended deadline for completion of the form in his case. He did not complete the form by the extended deadline. There was no further communication. He then provided a completed application form after the interviews had been completed with no explanation as to why he did not meet the deadline. At that time he was signed off sick until the end of August and it was indicated that he was unable to participate in an interview. We found that the Respondent acted reasonably in dismissing him in all of the circumstances. The Claimant was given the right to an appeal. We did find that the discrete comments that were made to the Claimant by the appeal officer amounted to harassment but the rationale for upholding the dismissal by Mr Melling was open to a reasonable employer in that situation.

179. Given that the appeal hearing was tainted by comments which we found to have amounted to harassment we find that this does render the dismissal unfair but to this limited extent. This is because no reasonable employer would make such comments to a disabled employee in an appeal hearing. However we found that Mr Melling's reasons for not upholding the appeal were cogent and rationale. Therefore we find that the First Respondent, acting reasonably, would have fairly dismissed the Claimant in any event. We do not consider that the Claimant is entitled to any compensation for unfair dismissal further to ***Polkey*** and s123 Employment Rights Act 1996. He is however entitled to an

injury to feelings award in respect of the comments that were made to him at the appeal hearing.

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Employment Judge Frazer
Dated: 19th July 2021

JUDGMENT AND REASONS SENT TO THE PARTIES ON 05 AUGUST 2021

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FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS