EMPLOYMENT TRIBUNALS

Claimant:	Mrs N Pritchard
First Respondent:	Kebir House Veterinary Practice Ltd
Second Respondent	Ms H Vayro

HELD AT:	North East region, by video	**ON:**	4-7 May 2021

BEFORE:	Employment Judge Aspden Ms S Don Mr A Lie

REPRESENTATION:

Claimant:	Mr W Hartley
Respondents:	Mr Cameron, consultant

JUDGMENT having been sent to the parties and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Claims and issues

1. By a claim form received at the Tribunal on 13 February 2020 Mrs Pritchard brought claims against the first and second respondents. There were several case management hearings in these proceedings, with Orders being made with a view to clarifying the precise legal and factual bases of the claims being made by Mrs Pritchard. It was established, ahead of this hearing, that Mrs Pritchard is bringing the following complaints:
   1.1. complaints that the first respondent discriminated against her contrary to section 39 of the Equality Act 2010 by failing to comply with a duty to make reasonable adjustments;

1.2. complaints that the second respondent, and therefore the first respondent, subjected her to disability related harassment contrary to section 40 of the Equality Act 2010;
1.3. a complaint that the first respondent unfairly (constructively) dismissed her.

2. At the outset of this hearing Mr Hartley confirmed that these are the claims being pursued by Mrs Pritchard and the parties agreed that the basis of those claims is as set out in the paragraphs that follow. When discussing the claims Mr Hartley asked whether he should have raised section 15 of the Equality Act 2010 and a claim of wrongful dismissal. Those were not matters previously raised by Mrs Pritchard. Following a discussion, Mr Hartley confirmed that Mrs Pritchard did not wish to apply for permission to amend her claim to add any complaints that she had been subjected to discrimination within section 15 of the Equality Act 2010 or a complaint of wrongful dismissal.

Complaints of failure to make reasonable adjustments

3. Mrs Pritchard alleges that she is a disabled person by virtue of mental health impairments described as 'anxiety, work related stress and depression.'

4. Mrs Pritchard's case is that the respondent failed to make reasonable adjustments and thereby discriminated against her in the following respects:
   4.1. by requiring her to attend face to face meetings (in particular in January 2017, March 2018 and June, July, October, November and December 2019);
   4.2. by failing to appoint an independent investigator to investigate her grievances set out in her letters of 6 Nov and 23 Nov 2019.

5. The issues for the Tribunal to decide in determining those complaints are as follows:
   5.1. Was Mrs Pritchard a disabled person within the meaning of the Equality Act 2010 at the material times (ie during 2017 to 2019)? This requires us to consider the following:
      5.1.1. Did Mrs Pritchard have a mental impairment as alleged at the material times?
      5.1.2. If so, did the impairment have an adverse effect on Mrs Pritchard's ability to carry out normal day to day activities that was substantial (ie more than minor or trivial)?
      5.1.3. Was that effect long term? That entails considering whether, at the material times, the effect(s) of the impairment on Mrs Pritchard's ability to carry out normal day to day activities had lasted for a period of at least 12 months or was likely to do so (in the sense that it could well happen).
   5.2. Has the respondent shown that, at the material time(s), it did not know and could not reasonably be expected to know, that Mrs Pritchard had a disability?
   5.3. Did the respondent apply a provision, criterion or practice:
      5.3.1. in requiring Mrs Pritchard to attend face to face meetings; and/or
      5.3.2. in not appointing an independent investigator to investigate Mrs Pritchard's grievances set out in her letters of 6 and 23 November 2019?

5.4. If so, did that provision, criterion or practice put Mrs Pritchard at a substantial disadvantage (ie one that was that was more than minor or trivial), in comparison with persons who are not disabled?
5.5. Has the respondent shown that, at the material times, it did not know and could not reasonably have been expected to know that Mrs Pritchard was likely to be placed at that disadvantage by the provision, criterion or practice?
5.6. Did the respondent take such steps as it was reasonable to have to take to avoid the disadvantage caused by the provision, criterion or practice? In other words, were there any reasonable steps the respondents could have taken to avoid that disadvantage which it did not take?

Complaint of unfair dismissal

6. Mrs Pritchard's case is that the respondent did the following things which, individually or cumulatively, were a fundamental breach of her contract of employment and in response to which she resigned.

6.1. In January 2017, the respondent:
6.1.1. Called Mrs Pritchard to a meeting on 17 Jan 2017 attended by both Directors (who were also the senior working vets at the practice) and the Practice Manager, without prior notice and without being told what was to be discussed.
6.1.2. In bad faith, made vague and unsubstantiated allegations that Mrs Pritchard's standards were slipping and that she was not as conscientious as she once was, without producing any evidence or clearly identifying the problems.
6.1.3. Failed to fairly and fully investigate the allegations made in that meeting.

6.2. In March 2018, the respondent:
6.2.1. Called Mrs Pritchard to a meeting on 15 March 2018 with the Practice Manager (Lynne Hoggart) without prior notice and without being told what was to be discussed.
6.2.2. Refused Mrs Pritchard's request to be accompanied by Dawn Christoffersen and instead appointed a vet chosen by the Practice Manager to accompany Mrs Pritchard.
6.2.3. Made vague and unsubstantiated accusations that Mrs Pritchard had been absent for considerable periods of time during work hours, without providing any details or evidence and without clearly identifying the problems.
6.2.4. Failed to provide further information about the allegations made at that meeting when asked.

6.3. In June 2019, the respondent:
6.3.1. Called Mrs Pritchard to a meeting on 18 June 2019 with the Director (Ms Vayro) to discuss a flexible work request and, without notice, asked questions about a recent occasion which implied, without justification, that Mrs Pritchard had:- (1) been unwilling to follow instructions; (2) not performed her duties during an operation on an animal, specifically that she had not monitored the heart-rate.

6.3.2. Provided no evidence, witness statements or further details regarding the alleged failings.
6.3.3. During the meeting, asked Mrs Pritchard, in front of a colleague, “You understand why we do it, don’t you..?” [ie monitor the heart rate] which Mrs Pritchard found deeply insulting and regarded as an attempt to demean her.
6.3.4. Failed to check documents before the meeting which would have proved Mrs Pritchard had monitored the heart rate and avoided the need for a meeting.

6.4. In July 2019, the respondent:
6.4.1. Instigated a face-to-face meeting on 1 July 2019, without notice, only four hours after Mrs Pritchard had handed in a letter explaining fully that she did not want to attend such meetings because she “always found them very stressful. They have very often left me feeling bullied and intimidated. I have learned to my cost that body-language, tone of voice and emotional attitude are not represented in the minutes of a meeting”.
6.4.2. Notwithstanding that Mrs Pritchard made it clear that she would not be attending a meeting on 3rd July for that reason, on 3rd July requested that Mrs Pritchard attend another meeting in person on 4th July, again stating that “if you do not attend without good reason” etc.

6.5. Between October and December 2019, the respondent:
6.5.1. Summoned Mrs Pritchard to a meeting on 30 October 2019 with the Director (Ms Vayro), without notice, at which Mrs Pritchard was unaccompanied.
6.5.2. At that meeting, made a complaint that Mrs Pritchard had refused to comply with a reasonable request by the Practice Manager (Mrs Hoggart) and had left work early.
6.5.3. Subsequently began a disciplinary process against Mrs Pritchard in respect of those matters, which continued until 19 Dec 2019.
6.5.4. Failed to conduct the disciplinary process fairly and in an unbiased way, in that the respondent failed to take a statement from a vet nurse, Dawn Christoffersen, who the Claimant had been talking to at the time and Ms Vayro proposed to conduct the disciplinary hearing herself.
6.5.5. Required Mrs Pritchard to attend a disciplinary meeting on 7 November in person and threatened her with further disciplinary action if she did not do so.
6.5.6. When Ms Vayro wrote to Mrs Pritchard on 19 Dec 2019 to inform her that no formal disciplinary action would be taken, she went on to admonish her over the same events as if her ‘guilt’ had been proved, warning her that “Should there be a repeat of this conduct or indeed any misconduct in general you may be subject to formal disciplinary action”.

6.6. The respondent failed to deal adequately with Mrs Pritchard’s grievance letters of 6 and 23 November 2019, specifically by unreasonable delay and failure to appoint an independent individual to investigate the grievances.

6.7. The respondent failed to comply with a duty to make reasonable adjustments as described above.

7. The issues for the Tribunal to decide in determining those complaints are as follows:
   7.1. Was Mrs Pritchard (constructively) dismissed? This entails considering the following issues:
      7.1.1. Did the respondent do what is alleged?
      7.1.2. If so, in doing so did the respondent commit a fundamental/repudiatory breach of Mrs Pritchard's contract of employment?
      7.1.3. If so, did Mrs Pritchard resign, at least in part, in response to the fundamental/repudiatory breaches of contract without first having affirmed the contract (waived the breaches)?
   7.2. If Mrs Pritchard was dismissed, have the respondents show a potentially fair reason of capability, misconduct and/or some other substantial reason for any such breaches of contract?
   7.3. If so, did they act reasonably in all circumstances?

Complaints of disability related harassment

8. Mrs Pritchard alleges that the things set out above which she says were a fundamental breach of her contract of employment also constituted disability related harassment contrary to the Equality Act 2010.

9. In determining those complaints the issues for us to decide are as follows:

   9.1. Did the respondent do what is alleged?
   9.2. If so, did the respondents thereby engage in unwanted conduct related to disability?
   9.3. If so, did that conduct have the purpose or effect of violating Mrs Pritchard's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for Mrs Pritchard taking into account her perception, the other circumstances of the case and whether it was reasonable for the conduct to have that effect?

Time issues

10. If any of the claims of harassment or discrimination by failing to make reasonable adjustments is made out it is also necessary to consider whether the claims were filed outside the statutory time limit.

<u>Legal Framework</u>

Equality Act 2010

11. It is unlawful for an employer to harass an employee: Equality Act 2010 section 40. It is also unlawful for an employer to discriminate against an employee by dismissing him or her or by subjecting him or her to any other detriment: section 39(2) of the Equality Act 2010.

Disability

12. Section 6 of the Equality Act 2010 says: 'A person (P) has a disability if -(a) P has a physical or mental impairment, and (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.' Substantial means 'more than minor or trivial': Equality Act s212(1). The effect of an impairment is long-term if it has lasted for at least 12 months or is likely to last for at least 12 months or for the rest of the life of the person affected. If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur: Equality Act Schedule 1, paragraph 2. An impairment is to be treated as having a substantial adverse effect on the ability of the person concerned to carry out normal day-to-day activities if -(a) measures are being taken to treat or correct it, and (b) but for that, it would be likely to have that effect: Schedule 1, paragraph 5.

13. 'Likely' in this sense means 'could well happen': SCA Packaging v Boyle [2009] ICR 1056. This has to be assessed in the light of the information available at the relevant time, not with the benefit of hindsight: Richmond Adult Community College v McDougall [2008] EWCA Civ 4, [2008] ICR. 431.

14. The Secretary of State has issued statutory guidance on matters to be taken into account in decisions under section 6(1). The current version dates from 2011. It says, amongst other things:

    14.1. The definition requires that the effects which a person may experience must arise from a physical or mental impairment. The term mental or physical impairment should be given its ordinary meaning. It is not necessary for the cause of the impairment to be established, nor does the impairment have to be the result of an illness.

    14.2. A disability can arise from a wide range of impairments which can be:

        14.2.1. impairments with fluctuating or recurring effects such as rheumatoid arthritis, myalgic encephalitis (ME), chronic fatigue syndrome (CFS), fibromyalgia, depression and epilepsy;
        14.2.2. mental health conditions with symptoms such as anxiety, low mood, panic attacks, phobias, or unshared perceptions; eating disorders; bipolar affective disorders; obsessive compulsive disorders; personality disorders; post traumatic stress disorder, and some self-harming behaviour;
        14.2.3. mental illnesses, such as depression and schizophrenia;…'

    14.3. The requirement that an adverse effect on normal day-to-day activities should be a substantial one reflects the general understanding of disability as a limitation going beyond the normal differences in ability which may exist among people.
    14.4. 'The Act provides that, where an impairment is subject to treatment

or correction, the impairment is to be treated as having a substantial adverse effect if, but for the treatment or correction, the impairment is likely to have that effect. …This provision applies even if the measures result in the effects being completely under control or not at all apparent. Where treatment is continuing it may be having the effect of masking or ameliorating a disability so that it does not have a substantial adverse effect. If the final outcome of such treatment cannot be determined, or if it is known that removal of the medical treatment would result in either a relapse or a worsened condition, it would be reasonable to disregard the medical treatment in accordance with paragraph 5 of Schedule 1….Account should be taken of where the effect of the continuing medical treatment is to create a permanent improvement rather than a temporary improvement. It is necessary to consider whether, as a consequence of the treatment, the impairment would cease to have a substantial adverse effect. For example, a person who develops pneumonia may be admitted to hospital for treatment including a course of antibiotics. This cures the impairment and no substantial effects remain.'

14.5. 'In assessing the likelihood of an effect lasting for 12 months, account should be taken of the circumstances at the time the alleged discrimination took place. Anything which occurs after that time will not be relevant in assessing this likelihood. Account should also be taken of both the typical length of such an effect on an individual, and any relevant factors specific to this individual (for example, general state of health or age).'

15. In Goodwin v Patent Office [1999] IRLR 4, the EAT gave the following guidance as to the correct way to approach the definition of 'disability'-

(1) The tribunal must look carefully at what the parties say in the ET1 and ET3, with standard directions or a directions hearing being often advisable; advance notice should be given of expert opinion. The tribunal may wish to adopt a particularly inquisitorial approach, especially as some disabled applicants may be unable or unwilling to accept that they suffer from any disability (though note that even here the tribunal should not go beyond the terms of the claim as formulated by the claimant: Rugamer v Sony Music Entertainment UK Ltd [2001] IRLR 644, EAT).

(2) A purposive approach to construction should be adopted, drawing where appropriate on the guidance on the definition of disability.

(3) The tribunal should follow the scheme of [what is now s 6], looking at (i) impairment, (ii) adverse effect, (iii) substantiality and (iv) long-term effect, but without losing sight of the whole picture.

16. The Employment Appeal Tribunal gave valuable guidance as to how the definition of disability applies in the case of conditions described as 'depression' in J v DLA Piper UK LLP [2010] ICR 1052. Underhill J said, at para 42:

'The first point concerns the legitimacy in principle of the kind of distinction made by the tribunal, as summarised at para 33(3) above, between two states of affairs which can produce broadly similar symptoms: those

symptoms can be described in various ways, but we will be sufficiently understood if we refer to them as symptoms of low mood and anxiety. The first state of affairs is a mental illness—or, if you prefer, a mental condition—which is conveniently referred to as 'clinical depression' and is unquestionably an impairment within the meaning of the Act. The second is not characterised as a mental condition at all but simply as a reaction to adverse circumstances (such as problems at work) or—if the jargon may be forgiven—'adverse life events'. We dare say that the value or validity of that distinction could be questioned at the level of deep theory; and even if it is accepted in principle the borderline between the two states of affairs is bound often to be very blurred in practice. But we are equally clear that it reflects a distinction which is routinely made by clinicians…and which should in principle be recognised for the purposes of the Act. We accept that it may be a difficult distinction to apply in a particular case; and the difficulty can be exacerbated by the looseness with which some medical professionals, and most lay people, use such terms as 'depression' ('clinical' or otherwise), 'anxiety' and 'stress'. Fortunately, however, we would not expect those difficulties often to cause a real problem in the context of a claim under the Act. This is because of the long-term effect requirement. If, as we recommend at para 40(2) above, a tribunal starts by considering the adverse effect issue and finds that the claimant's ability to carry out normal day-to-day activities has been substantially impaired by symptoms characteristic of depression for 12 months or more, it would in most cases be likely to conclude that he or she was indeed suffering 'clinical depression' rather than simply a reaction to adverse circumstances: it is a common sense observation that such reactions are not normally long-lived.'

17. This passage was approved and applied in the more recent case of Herry v Dudley Metropolitan Council [2017] ICR 610, where the EAT added the following comment:

    'Although reactions to adverse circumstances are indeed not normally long-lived, experience shows that there is a class of case where a reaction to circumstances perceived as adverse can become entrenched; where the person concerned will not give way or compromise over an issue at work, and refuses to return to work, yet in other respects suffers no or little apparent adverse effect on normal day-to-day activities. A doctor may be more likely to refer to the presentation of such an entrenched position as stress than as anxiety or depression. An employment tribunal is not bound to find that there is a mental impairment in such a case. Unhappiness with a decision or a colleague, a tendency to nurse grievances, or a refusal to compromise (if these or similar findings are made by an employment tribunal) are not of themselves mental impairments: they may simply reflect a person's character or personality. Any medical evidence in support of a diagnosis of mental impairment must of course be considered by an employment tribunal with great care; so must any evidence of adverse effect over and above an unwillingness to return to work until an issue is resolved to the employee's satisfaction; but in the end the question whether there is a mental impairment is one for the employment tribunal to assess.'

Failure to make reasonable adjustments

18. Under section 39(5) of the Equality Act 2010 a duty to make reasonable adjustments applies to an employer. A failure to comply with that duty constitutes discrimination: Equality Act 2010 s21.

19. Section 20 of the Equality Act 2010 provides that the duty to make reasonable adjustments comprises three requirements, set out in s 20(3), (4) and (5). This case is concerned with the first of those requirements, which provides that where a provision, criterion or practice of an employer's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, the employer must take such steps as it is reasonable to have to take to avoid the disadvantage. Section 21(1) provides that a failure to comply with this requirement is a failure to comply with the duty to make reasonable adjustments.

20. In considering whether the duty to make reasonable adjustments arose, a Tribunal must consider the following (Environment Agency v Rowan [2008] IRLR 20):
    20.1. whether there was a provision, criterion or practice ('PCP') applied by or on behalf of an employer;
    20.2. the identity of the non-disabled comparators (where appropriate); and
    20.3. the nature and extent of the substantial disadvantage in relation to a relevant matter suffered by the employee.

21. The concept of a 'provision, criterion or practice' is a broad one, which is not to be construed narrowly or technically. Nevertheless, as the Court of Appeal said in Ishola v Transport for London [2020] EWCA Civ 112, [2020] IRLR 368:
    '[t]o test whether the PCP is discriminatory or not it must be capable of being applied to others because the comparison of disadvantage caused by it has to be made by reference to a comparator to whom the alleged PCP would also apply. However widely and purposively the concept of a PCP is to be interpreted, it does not apply to every act of unfair treatment of a particular employee. That is not the mischief that the concept of indirect discrimination and the duty to make reasonable adjustments are intended to address. If an employer unfairly treats an employee by an act or decision and neither direct discrimination nor disability related discrimination is made out because the act or decision was not done/made by reason of disability or other relevant ground, it is artificial and wrong to seek to convert them by a process of abstraction into the application of a discriminatory PCP. In context, and having regard to the function and purpose of the PCP in the 2010 Act, all three words carry the connotation of a state of affairs indicating how similar cases are generally treated or how a similar case would be treated if it occurred again. 'Practice' connotes some form of continuum in the sense that it is the way in which things generally are or will be done. That does not mean it is necessary for the PCP or 'practice' to have been applied to anyone else in fact. Something may be a practice or done 'in practice' if it carries with it an indication that it

will or would be done again in future if a hypothetical similar case arises.'

22. A duty to make reasonable adjustments does not arise unless the PCP in question places the disabled person concerned not simply at some disadvantage viewed generally, but at a disadvantage which is substantial (ie more than minor or trivial) and which is not to be viewed generally but to be viewed in comparison with persons who are not disabled: Royal Bank of Scotland v Ashton [2011] ICR 632, EAT.

23. Simler P in Sheikholeslami v Edinburgh University [2018] IRLR 1090 held:
    'The purpose of the comparison exercise with people who are not disabled is to test whether the PCP has the effect of producing the relevant disadvantage as between those who are and those who are not disabled, and whether what causes the disadvantage is the PCP. …'

24. The Equality Act 2010 provides that a substantial disadvantage is one which is more than minor or trivial: see s 212(1). The EHRC Code of Practice states that ' The fact that both groups [ie disabled and non-disabled persons] are treated equally and that both may suffer a disadvantage in consequence does not eliminate the claim. Both groups might be disadvantaged but the PCP may bite harder on the disabled or a group of disabled people than it does on those without disability. Whether there is a substantial disadvantage as a result of the application of a PCP in a particular case is a question of fact assessed on an objective basis and measured by comparison with what the position would be if the disabled person in question did not have a disability.'

25. An employer is not subject to a duty to make reasonable adjustments if it does not know, and could not reasonably be expected to know that the employee has a disability. Knowledge of disability means more than just knowledge that an individual has an impairment: it also requires knowledge (actual or constructive) that the impairment(s) had adverse effects on the employee's ability to carry out day to day activities and that those effects are long term and more than minor or trivial.

26. Nor is an employer subject to a duty to make reasonable adjustments if the employer does not know and could not reasonably be expected to know that the employee is likely to (ie could well) be placed at a substantial disadvantage by the PCP relied on.

27. The predecessor to the Equality Act 2010, the Disability Discrimination Act 1995, contained guidance as to the kind of considerations which are relevant in deciding whether it is reasonable for someone to have to take a particular step to comply with the duty to make adjustments. Although those provisions are not repeated in the Equality Act 2010, the EAT has held that the same approach applies to the 2010 Act: Carranza v General Dynamics Information Technology Ltd [2015] IRLR 43, [2015] ICR 169. This is also apparent from Chapter 6 of the Code of Practice on Employment (2011), issued by the Equality and Human Rights Commission, which repeats, and expands upon, the provisions of the 1995 Act. The 1995 Act provided, as does the Code of

Practice, that in determining whether it is reasonable for an employer to have to take a particular step in order to comply with a duty to make reasonable adjustments, regard shall be had, in particular, to—

27.1. whether taking any particular steps would be effective in preventing the substantial disadvantage;
27.2. the practicability of the step;
27.3. the financial and other costs of making the adjustment and the extent of any disruption caused;
27.4. the extent of the employer's financial and other resources;
27.5. the availability to the employer of financial or other assistance to help make an adjustment; and
27.6. the type and size of the employer.

Harassment

28. It is unlawful for an employer to harass an employee: Equality Act 2010 section 40.

29. Under section 26(1) of the Equality Act 2010, unlawful harassment occurs where the following conditions are satisfied: (a) an employer engages in unwanted conduct related to a protected characteristic; and (b) the conduct has the purpose or effect of violating the employee's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the employee.

30. For these purposes, disability is a protected characteristic. For a claim of harassment against an employer to be made out under section 26(1), the employer must have engaged in unwanted conduct related to the relevant protected characteristic, disability in this case.

31. Section 26(4) of the Equality Act 2010 provides that, in deciding whether conduct has the effect of violating the employee's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the employee, each of the following must be taken into account—
(a) the perception of the employee;
(b) the other circumstances of the case; and
(c) whether it is reasonable for the conduct to have that effect.

32. Where a claimant contends that the employer's conduct has had the effect of creating the proscribed environment, they must actually have felt or perceived that their dignity was violated or an intimidating, hostile, degrading, humiliating or offensive environment was created for them: Richmond Pharmacology v Dhaliwal [2009] ICR 724, EAT. Even if the employee did, subjectively, feel or perceive that the employer's conduct had that effect, a claim of harassment will not be made out if it is not reasonable for the conduct to have the effect of violating the employee's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the employee: Ahmed v Cardinal Hume Academies (29 March 2019, unreported).

33. Whilst a one-off incident may amount to harassment, a Tribunal must bear in mind when applying the test that an 'environment' is a state of affairs. It may be created by an incident, but the effects are of longer duration: Weeks v Newham College of Further Education UKEAT/0630/11, [2012] EqLR 788, EAT. The fact that a Claimant is slightly upset or mildly offended by the conduct may not be enough to bring about a violation of dignity or an offensive environment and the Court of Appeal has warned tribunals against cheapening the significance of the words of the Act as they are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment: Land Registry v Grant [2011] ICR 1390, CA. As noted by the EAT in Richmond Pharmacology v Dhaliwal, 'while it is very important that employers, and tribunals, are sensitive to the hurt that can be caused by racially offensive comments or conduct (or indeed comments or conduct on other grounds covered by the… legislation…) it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase.'

Burden of proof

34. The burden of proof in relation to allegations of discrimination and harassment is dealt with in section 136 of the 2010 Act, which sets out a two-stage process.

35. Firstly, the Tribunal must consider whether there are facts from which the Tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an unlawful act of discrimination against the claimant. If the Tribunal could not reach such a conclusion on the facts as found, the claim must fail.

36. Where the Tribunal could conclude that the respondent has committed an unlawful act of discrimination against the claimant, it is then for the respondent to prove that it did not commit or, as the case may be, is not to be treated as having committed, that act.

37. The Court of Appeal in Igen Ltd v Wong [2005] EWCA Civ 142, [2005] IRLR 258 made the following points in relation to the application of the burden of proof:
    37.1. 'It is important to bear in mind in deciding whether the claimant has proved facts from which the Tribunal could conclude that there has been discrimination that it is unusual to find direct evidence of … discrimination: few employers would be prepared to admit such discrimination, even to themselves and in some cases the discrimination will not be an intention but merely based on the assumption that 'he or she would not have fitted in.'
    37.2. In deciding whether the claimant has proved such facts, it is important to remember that the outcome at this stage of the analysis by the tribunal will therefore usually depend on what inferences it is proper to draw from the primary facts found by the tribunal.
    37.3. It is important to note the word 'could' in the legislation. At this stage

the tribunal does not have to reach a definitive determination that such facts would lead it to the conclusion that there was an act of unlawful discrimination. At this stage a tribunal is looking at the primary facts before it to see what inferences of secondary fact could be drawn from them.

37.4. In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts.

38. Where the claimant has proved facts from which the Tribunal could conclude that the respondent has treated the claimant less favourably because of disability, it is then for the respondent to prove that it did not commit that act or, as the case may be, is not to be treated as having committed that act. To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that the treatment was in no sense whatsoever on the grounds of the protected characteristic.

Unfair dismissal

39. Section 94 of the Employment Rights Act 1996 confers on employees the right not to be unfairly dismissed.

Dismissal

40. A claim of unfair dismissal cannot succeed unless there has been a dismissal as defined by section 95 of the Employment Rights Act 1996. It is for the claimant to prove, on the balance of probabilities (ie that it is more likely than not), that she has been dismissed within the meaning of that provision.

41. In this case, Mrs Pritchard claims she was dismissed within the meaning of section 95(1)(c), which provides that termination of a contract of employment by the employee constitutes a dismissal if she was entitled to so terminate because of the employer's conduct. In colloquial terms, Mrs Pritchard says she was constructively dismissed.

42. For a claimant to establish that there has been a constructive dismissal, she must prove that:
(a) there was a breach of contract by the employer;
(b) the breach was 'fundamental' or 'repudiatory' i.e. sufficiently serious to justify the employee resigning;
(c) she resigned in response to the breach and not for some other unconnected reason; and
(d) she had not already affirmed the contract before electing to leave.

Repudiatory breach of contract

43. Its established law that every contract of employment contains an implied term that the employer shall not, without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or serious damage the relationship of confidence and trust between employer and employee: Woods

v W M Car Services (Peterborough) Ltd [1981] ICR 666, EAT; Lewis v Motorworld Garages Ltd [1986] ICR 157, CA; Mahmud v Bank of Credit and Commerce International SA (often cited as Malik v BCCI) [1997] ICR 606, HL. One aspect of the duty of trust and confidence is a duty on employers 'reasonably and promptly [to] afford a reasonable opportunity to their employees to obtain redress of any grievance they may have': W A Goold (Pearmak) Ltd v McConnell [1995] IRLR 516.

44. The test is not whether the employer's actions fell outside the range of reasonable actions open to a reasonable employer: Buckland v Bournemouth University [2010] IRLR 445, CA. However, case-law shows that the conduct does need to be repudiatory in nature in order for there to be a breach of the implied term of trust and confidence (see Morrow v Safeway Stores Ltd [2002] IRLR 9, EAT). This was emphasised by the Court of Appeal in the case of Tullett Prebon Plc & ors v BGC Brokers & ors [2011] EWCA Civ 131; [2011] IRLR 420. There, the Court of Appeal cited the case of Eminence Property Developments Ltd v Heaney [2010] EWCA Civ 1168 and stressed that the question is whether, looking at all the circumstances objectively, from the perspective of the reasonable person in the position of the innocent party, the conduct amounts to the employer abandoning and altogether refusing to perform the contract.' The High Court in the Tullett case held (in a judgment subsequently upheld by the Court of Appeal) that 'conduct which is mildly or moderately objectionable will not do. The conduct must go to the heart of the relationship. To show some damage to the relationship is not enough'; Tullett Prebon v BGC [2010] IRLR 648, QB.

45. When assessing whether conduct was likely to destroy or seriously damage the trust and confidence, it is immaterial that the employer did not in fact intend its conduct to have that effect: Leeds Dental Team Ltd v Rose [2014] IRLR 8, EAT. Similarly, there will be no breach of the implied term simply because the employee subjectively feels that such a breach has occurred no matter how genuinely this view is held (Omilaju v Waltham Forest London Borough Council [2005] EWCA Civ 1493, [2005] ICR 481, CA). The question is whether, viewed objectively, the conduct is calculated or likely to destroy or seriously damage the trust and confidence. The employee's subjective response may, however, be of some evidential value in assessing the gravity of the employer's conduct (see the Tullett Prebon case above in the High Court).

46. ACAS has issued a Code of Practice on Disciplinary and Grievance Procedures. If any provision of the Code appears to the Tribunal to be relevant to any question arising in the proceedings it must be taken into account in determining that question: section 207(3) of the Trade Union and Labour Relations (Consolidation) Act 1992. The foreword to the Code says, amongst other things:

46.1. 'Employers and employees should always seek to resolve disciplinary and grievance issues in the workplace. Where this is not possible, employers and employees should consider using an independent third party to help resolve the problem.'

46.2. Many potential disciplinary or grievance issues can be resolved

informally. A quiet word is often all that is required to resolve an issue. However where an issue cannot be resolved informally then it may be pursued formally.'

47. The Code then goes on to set out guidance on how to deal with disciplinary and grievance matters formally, recognising that it may not always be appropriate for an employer to take all the steps set out in the Code and that the size and administrative resources of the employer are a relevant consideration on this regard. In relation to disciplinary proceedings, the Code provides, amongst other things, that the employer should give employees an opportunity to put their case before any decisions are made and to hold a meeting for that purpose, which the employee should make every effort to attend. As for Grievances, the Code provides, amongst other things, that employers should arrange for a formal meeting to be held without unreasonable delay after a grievance is received and that, where an employee raises a grievance during a disciplinary process, the disciplinary process may be temporarily suspended in order to deal with the grievance.

48. The duty not to undermine trust and confidence is capable of applying to a series of actions by the employer which individually would not constitute a breach of the term (United Bank Ltd v Akhtar [1989] IRLR 507). In Lewis v Motorworld Garages Ltd [1986] ICR 157, CA, Glidewell LJ said: '… the last action of the employer which leads to the employee leaving need not itself be a breach of contract; the question is, does the cumulative series of acts taken together amount to a breach of the implied term?'

49. In Omilaju v Waltham Forest London Borough Council [2005] EWCA Civ 1493, [2005] IRLR 35, CA the Court of Appeal held that where the alleged breach of the implied term of trust and confidence constituted a series of acts the essential ingredient of the final act was that it was an act in a series, the cumulative effect of which was to amount to the breach. Those acts need not all be of the same character but the 'last straw' must contribute something to that breach. Viewed in isolation, it need not be unreasonable or blameworthy conduct but the Court of Appeal noted in Omilaju that will be an unusual case where conduct which has been judged objectively to be reasonable and justifiable satisfies the final straw test.

<u>Acceptance of repudiation</u>

50. An employee will be regarded as having accepted the employer's repudiation only if his or her resignation has been caused by the breach of contract in question. Sometimes an employee has more than one reason for leaving a job and in such cases the question is whether the breach of contract played a part in the employee's decision to leave ie was one of the factors relied upon: Nottingham County Council v Meikle [2005] ICR 1.

<u>Affirmation</u>

51. It is a general principle of common law that even if a party has committed a

repudiatory breach of contract, the innocent party will lose the right to accept the breach and treat herself as discharged from the contract if she has elected to affirm the contract. In light of our conclusions on the breach of contract issue as set out below it is unnecessary to say any more about this matter.

Fairness of dismissal

52. If the Tribunal finds a claimant has been dismissed, the next issue to consider is whether the dismissal was fair. In a case of constructive dismissal that entails considering the reason for the treatment that led the employee to resign, whether there was a potentially fair reason for that treatment and, if so, whether the dismissal was, in all the circumstances, reasonable or unreasonable, having regard to that reason. In light of our conclusions on the dismissal issue as set out below it is unnecessary to say any more about this matter.

Evidence and facts

53. We heard evidence from Mrs Pritchard and Ms Vayro, the second respondent, who is the sole director of the first respondent. For the respondents we also heard evidence from Mrs Hoggart, who has been the Practice Manager for the first respondent since November 2017. We took into account the documents to which we were referred in a file prepared for this hearing.

54. Our primary findings of fact are set out below.

55. Mrs Pritchard was employed by the first respondent as a veterinary nurse. She was a longstanding employee, having started work at the practice in 2003. At some point after her employment began the claimant was issued with a document setting out particulars of her employment. That document appears at pages 221-2 of the bundle. In respect of grievances the document said ‘Where the Employee has a grievance relating to any aspect of her employment she should contact one of the partners and give full details of her grievance, in confidence.’ In 2013 the claimant was provided with a copy of a document headed ‘Grievance and Disciplinary Procedures’. In respect of grievances that document provided that, if a written grievance was lodged, the employee would be asked to attend a meeting to discuss the grievance within seven days of the grievance being received.

56. On 4 January 2017 the claimant wrote to Ms Vayro and her fellow director, Mr Glover, complaining that they had both spoken to her that day in a rude and bad-tempered manner. Ms Vayro replied two days later saying ‘We would like to offer you our sincere apologies for any insult that you have felt both in the incidents mentioned in your letter and any previous incidents unknown to us. As Directors at Kebir House Veterinary Practice Ltd, we will endeavour to prevent any recurrence.’

57. On 17 January 2017 Mrs Pritchard was asked to attend a meeting. Ms Vayro was present as was Mr Glover (who has since left the practice) and the then Practice Manager (Mrs Hoggart’s predecessor), who took notes. Mrs Pritchard

was called in to the meeting without prior notice and did not know what was going to be discussed. It was put to Mrs Pritchard in that meeting that her standards were slipping and she was not as conscientious as she had been. Mrs Pritchard responded with words to the effect that everyone makes mistakes, nobody is perfect and that mistakes were going to happen because they were busy and she felt there was understaffing. This is consistent with her letter of 4 January; there she said 'If I do something wrong, it is not out of neglect or laziness.' In our judgement, this was an implicit acknowledgement by Mrs Pritchard that errors had been made by her. We infer that Mrs Pritchard had recently made some mistakes in her work and this meeting was arranged to discuss that issue. The claimant explained in the meeting why she did not consider she had been at fault and that she felt she was being picked on.

58. On 27 January 2017 Mrs Pritchard wrote to the directors asking them to clarify their reasons for the meeting and saying she was 'unclear whether it was a disciplinary meeting, a practice meeting, an informal discussion or something else.' Ms Vayro replied saying 'The meeting was an informal discussion based around the points we discussed. We have no further information to give at this time.'

59. The claimant has suggested that calling her in to the meeting on 17 January was in retaliation for her complaint about the directors. Given Ms Vayro's prompt apology earlier in the month and the fact that the claimant herself acknowledged that mistakes had been made we find that was not the case. We find it more likely than not that the reason the meeting was called was, as Ms Vayro said, because she and Mr Glover had concerns about the claimant's work that they wanted to discuss with her.

60. In December 2017 the claimant's mother became very ill suddenly. From then on she could not live independently. The claimant's mother spent several weeks in hospital and then care homes. The claimant visited her every day in hospital and then at least three time a week in the care homes, took her out whenever possible and dealt on her behalf with health care details, finances and other such matters. The claimant was emotionally well supported by her siblings but they all lived too far away for regular visits.

61. In early February 2017 Mrs Pritchard saw her GP who noted she had symptoms of depression and anxiety 'in response to a work situation.' We accept Mrs Pritchard's evidence that she had had difficulty sleeping at this time. Mrs Pritchard's GP prescribed medication for depression on that occasion. For most of 2017 and then throughout 2018 and 2019 Mrs Pritchard took the prescribed medication. She also had therapy in this period.

62. The claimant was absent from work between 6 and 19 February 2018 on sick leave. She did not obtain a fit note or equivalent from her doctor but told Mrs Hoggart that she was off work because of stress.

63. On 15 March 2018 one of the other senior nurses in the practice, Mrs Christoffersen, approached Mrs Hoggart and told her of some concerns she had about the claimant. Mrs Cristoffersen told Mrs Hoggart that she felt Mrs

Pritchard was not pulling her weight in the shared daily nursing tasks and that she and the other nurses were tired of having to do the majority of the work. Mrs Christoffersen said that during busy periods Mrs Pritchard was often nowhere to be seen. She cited a particular instance of Mrs Pritchard going to the bank during the day and alleged that she had taken much longer than needed to get there and back. Mrs Christoffersen told Mrs Hoggart that she felt that something needed to be done. However, Mrs Cristoffersen said she did not want Mrs Pritchard to know that it was her that made the complaint, saying she was concerned Mrs Pritchard would not take this well and it would make working together difficult. At the time the claimant and Mrs Cristoffersen were on friendly terms and Mrs Hoggart had no reason to believe Mrs Christofferen was not genuinely concerned or had misrepresented her perception of matters.

64. Later that day Mrs Hoggart asked Mrs Pritchard to come with her to the staff room for what she described as an 'informal chat'. Mrs Pritchard said she would like to bring someone with her. Mrs Hoggart agreed to this but Mrs Pritchard asked for Mrs Christoffersen. Mrs Hoggart thought it would be unfair on Mrs Christoffersen to put her in that position and so she told Mrs Pritchard that it would have to be someone else. Mrs Hoggart arranged for Dr Smith, one of the veterinary surgeons at the practice, to accompany the claimant instead. The claimant and Dr Smith were on friendly terms at the time.

65. We accept Mrs Hoggart's evidence that the purpose of the discussion was simply to tell Mrs Pritchard what she had been told by Mrs Christoffersen (although without revealing that it was Mrs Christoffersen who had complained) and to get Mrs Pritchard's view of matters.

66. Later the same day Mrs Pritchard sent a letter addressed to 'Kebir House Management' in which she said, amongst other things, ' As it has not been made clear to me how I have not done my job properly, I have no way of putting things right. I was given no instances, dates or circumstances, just that I have been absent for considerable periods of time during work hours. I have no idea what Lynne is referring to and completely disagree with the statement.' Mrs Pritchard said she did not believe managers offered her trust and respect and that she had been left feeling deeply upset.

67. Mrs Hoggart replied on 9 April 2018 saying 'As mentioned already the complaint was in reference to you attending the bank during a very busy period in the practice on Wednesday 7th March, you were absent for a longer period of time than previous visits. That same week your co-workers felt a pattern was starting to form that questioned your whereabouts within the practice and what you were doing, this in turn was causing your co-workers to have to look for you in times of need and work was not getting completed as a team.' Mrs Hoggart thanked the claimant for her cooperation during the meeting and apologised for any inconvenience she had been caused. She said that she did not feel any further action was needed, 'having listened to the complaint and your feedback.' She added 'You are a valued member of the team and we are very grateful for all the support and hard work you have provided us with over the years. You are very good at your job and your commitment has not gone

unnoticed…'

68. That day the claimant replied to Mrs Hoggart saying she could respond to the complaints and make complaints about others but she did not have the emotional strength to do so. She ended saying that she had learned three lessons: 'We are not a team. Trust no-one. Watch your back.' We note that in her evidence to this Tribunal the claimant said the 'accusation' put to her in the meeting with Mrs Hoggart, being anonymous, made her unsure of which work colleagues she could trust.

69. Around a week later the claimant wrote to Mrs Hoggart again saying 'I am upset at the vagueness of the complaints against me, none of which are supported by tangible evidence - even despite the video surveillance of the staff that has been installed in the practice. The only fact I have been presented with is that on Wednesday 7th March I went to the bank as part of my work and that the practice was 'busy'. There has been no mention of how long I was out of the practice, how busy the bank was (on market day) and how long I was expected to take to go to the bank; but nevertheless, it was decided that there was sufficient reason to admonish me. You also chose to give me no details of the even more vague 'complaints' allegedly from other members of staff. Who said that "a pattern was starting to form that questioned your whereabouts within the practice", which of my co-workers had to "look for you in times of need" and what work was "not getting completed as a team".' Mrs Pritchard said she hoped that in future 'any substantial complaints could be fully investigated, backed up by hard evidence and presented to me in writing so that I can have a reasonable chance of proving them incorrect. I can't argue effectively against hazy hearsay related verbally in an 'informal chat'.' The claimant ended her letter saying 'If you wish to respond to this letter or make any comments, please do so in writing so that I can read it at a time of my choosing - because as you can perhaps appreciate, there are times these days when I am very emotionally stressed.'

70. Mrs Hoggart replied saying 'I have taken your comments on board and will bear them in mind going forward. I have nothing more to say regarding your letter that I have not already said in my previous communications, so therefore I believe this matter is now closed.'

71. Mrs Pritchard's evidence to us was that she was not given 'details of the complaints' during the meeting in March. Mrs Hoggart told the Tribunal that in the March meeting she gave the claimant the same information about the complaints as was contained in the letter she sent on 9 April made by staff during the meeting. We find it more likely than not that Mrs Hoggart did do so, given that, when she set out the complaints in her letter she introduced that section by saying 'As mentioned already…' We also accept Mrs Hoggart's evidence that she had never envisaged that the matters she raised with the claimant in the meeting might lead to any kind of disciplinary investigation or action.

72. In the period before June 2019, the nurses at the practice worked a mixture of length of shifts. There was only one day a week on which there were shifts

covering the full day. Ms Vayro found that on the other days it was often the case that, when clients dropped off their animals in morning and picked them up in the afternoon, the nurse working the afternoon would be unable to answer questions the client may have had about their animal's treatment as they were not present in the morning or during the procedure. This resulted in client complaints. In addition, Ms Vayro would mainly be out on call in the morning and when she returned in the afternoon the nurses would often not be able to brief her on what had and had not been done in the morning. In 2015 the practice had introduced one full day a week for the nurses and Mrs Vayro found there to be a significant improvement in communication on those days. Ms Vayro therefore decided to consider rolling out similar working patterns across the whole week.

73. On 3 June 2019 Ms Vayro wrote to the nursing staff, including Mrs Pritchard, outlining the changes to their rotas she was proposing. In the claimant's case the proposal was to change her shift pattern so that she would work three long (10.5 hour) shifts each week rather than one long shift and three shorter shifts each week. In the letter Ms Vayro asked Mrs Pritchard to confirm whether she accepted the proposal and if not to put her objection in writing along with the reasons for her objection.

74. Mrs Pritchard replied by letter dated 13 June 2019 saying she did not want to work three long shifts. She referred to this having been proposed previously and the fact that she had then very reluctantly agreed to do one long shift per week. Giving her reasons for not wishing to work three long days, Mrs Pritchard said '… since then I have become the principal carer in my family for my mother and because of that fact and other elements in my personal situation, I am even less able to work three long, tiring shifts. I already find my single weekly 'long shift' exhausting and I firmly believe it is detrimental to my health. I have suffered from back pain for over ten years and from diverticulitis for over twelve years. Stress and anxiety issues, many caused by conflicts at Kebir House since the management changed in 2007, have often worsened those conditions. I have been taking prescribed antidepressants since February 2017.' The claimant went on to challenge the need for any shift changes. She ended her letter with a request to change her shift pattern to Monday to Thursday, 8am to 4pm and a Saturday morning every fortnight, which she described as a 'clearer and simpler rota pattern than my current one.' She made it clear this was a 'statutory request' to change her hours of work.

75. On 17 June 2019 Dr Smith wrote to Ms Vayro raising what she described as 'a concern regarding patient safeguarding'. In summary, Dr Smith alleged that, whilst operating on a guinea pig a few days earlier, she had noticed that Mrs Pritchard was not keeping a written record of the patient's heartrate she was supposed to and then when she (Dr Smith) queried this Mrs Pritchard challenged the need to record the heartrate and only started recording the heart rate when Dr Smith insisted. Dr Smith said 'I believe the attitude displayed in refusing to comply with my instructions in this situation is indicative of resentment present amongst some of the nursing staff due to an ongoing dispute with management.'

76. The following day Ms Vayro asked the claimant to a meeting, saying it was to discuss her flexible work request. In that meeting Ms Vayro asked Mrs Pritchard whether she wanted her flexible working request dealt with as part of the formal consultation for her proposed changes, or whether she wished to have it dealt with separately. Mrs Pritchard said she wanted the request dealt with first, to which Ms Vayro agreed. Ms Vayro said she would get back to Mrs Pritchard and that was the end of the discussion about that matter. Ms Vayro then told Mrs Pritchard about the concern that had been raised by Dr Smith. Mrs Pritchard gave an account of what had happened. Ms Vayro asked whether the claimant had recorded the heartbeat. The claimant said she had. She told us that was 'a question I couldn't see the need for as the sheet on which I recorded the heartbeat was available for her to check without asking me'. Ms Vayro then asked Mrs Pritchard '...you understand why we do it, don't you?...'. The claimant told the Tribunal she found the question 'extremely demeaning' 'deeply insulting' and 'humiliating' as she had worked as a veterinary nurse for 45 years and she 'could see no purpose for the question except to demean me in front of Lynne Hoggart.' In her evidence to this Tribunal the claimant acknowledged that she could perhaps have been more diplomatic with Dr Smith and added 'I think there may have been some friction there between an experienced nurse who had learnt to do what works and a young and relatively inexperienced vet who wanted everything done by the book.'

77. Ms Vayro ended the meeting by saying she had never had any reason to be concerned about the claimant's nursing skills.

78. We accept Ms Vayro's evidence that there was no connection between the claimant objecting to her proposed rota and the discussion with her about Dr Smith's complaint. Ms Vayro was notified of Dr Smith's complaint by her letter dated 17 June 2019, the day before the meeting. There was no reason for her to consider Dr Smith's concerns were anything but genuine. Furthermore, they concerned a serious matter: a failure to record an animal's heartbeat under anaesthetic could have serious consequences for the welfare of the animal and the practice. It was understandable that Ms Vayro would want to discuss the matter with Mrs Pritchard as soon as possible.

79. After the meeting Ms Vayro checked the monitoring sheet which appeared to show that the patient's heartbeat had indeed been recorded. She trusted that Mrs Pritchard was telling the truth and decided there was no reason for any further action.

80. On 20 June 2019 Ms Vayro sent Mrs Pritchard a letter asking her to attend a meeting on 24 June 2019 to discuss her flexible working request and notifying her of her right to be accompanied. At the meeting Ms Vayro asked Mrs Pritchard how Ms Vayro's shift proposal would affect care for her mother. Mrs Pritchard said that she was tired and stressed after long shifts and that impacted on her visiting her mother. Mrs Pritchard handed over a copy of a proposed rota for the nurses which in her view could accommodate her request, together with a note explaining what she said were the benefits of her

proposal. Ms Vayro said she would review her request and respond in due course.

81. Ms Vayro considered Mrs Pritchard's request and decided that it could not be accommodated as she believed it would have entailed finding staff to work 4pm-6.30pm, which was not feasible and the proposed rota also failed to make any account for holiday cover. Ms Vayro wrote to Mrs Pritchard on 26 June 2019 informing her of that decision, her reasons for it and Mrs Pritchard's right to appeal within seven days. On the same day Ms Vayro wrote to Mrs Pritchard inviting her to a formal meeting on 3 July 2019 to discuss her objections to the rota that had been proposed by Ms Vayro. Ms Vayro said the claimant had the right to be accompanied and that if she failed to attend the meeting a decision may be made in her absence.

82. Ms Vayro received a letter from Mrs Pritchard dated 1 July 2019 taking issue with the reasons given for refusing her flexible work request and saying she would not be attending the meeting arranged for 3 July 2019. Mrs Pritchard gave a number of reasons for not attending the meeting, including that she did not believe consultation was meaningful, that she could not be accompanied from someone from outside the practice, that the notetaker would not be impartial and that she felt her medical conditions would be 'adversely affected by such a confrontation.' On this latter point, Mrs Pritchard said 'As you know, I have previous experiences of meetings at Kebir and I have always found them very stressful. They have very often left me feeling bullied and intimidated. I have learnt to my cost that body-language, tone of voice and emotional attitude are not represented in the minutes of the meeting.' The claimant said she 'would welcome all further discussion in writing.'

83. Later that day Ms Vayro approached Mrs Pritchard to ask her a short question to check whether the letter was intended as an appeal against the refusal of her flexible work application. We accept Ms Vayro's evidence that she asked this because she was unsure whether Mrs Pritchard's letter was intended to be a notification of appeal against the refusal of her request to change her hours. Mrs Pritchard said it was not an appeal but added 'it will have to go to an appeal at some point.' In that very short encounter, Ms Vayro also encouraged Mrs Pritchard to attend the meeting on 3 July to discuss proposed shift changes but Mrs Pritchard said she would not and that it was a 'reasonable adjustment' not to have to attend meetings.

84. The meeting on 3 July 2019 went ahead without Mrs Pritchard being present. Ms Vayro sent Mrs Pritchard a copy of the minutes by letter dated the same day and invited her to a further consultation meeting on 4 July 2019. In that letter Ms Vayro said 'if you do not attend without good reason we shall have to make a decision without further input from yourself.' Mrs Pritchard replied by letter dated 4 July 2019, again refusing to attend the meeting that day.

85. As a result of the consultation process, Ms Vayro put forward a compromise proposal which reduced the number of full-day shifts and included a half-day shift. Ms Vayro handed a document setting out the proposal to Mrs Pritchard on 6 July 2019 and asked her to send her any comments. Mrs Pritchard

rejected the compromise proposal by email on 8 July 2019. At this point Mrs Pritchard said she wished to appeal against the decision to reject her request for flexible working. She also repeated her request for all communication to be in writing.

86. Ms Vayro wrote back saying the appeal was out of time. However, as Mrs Pritchard had cited medical reasons for being unable to work long shifts Ms Vayro asked her to provide medical evidence so she could take it into consideration when deciding how to proceed. Mrs Pritchard replied on 12 July 2019 saying she would supply that medical evidence. She also challenged Ms Vayro's assertion that her appeal was too late, saying she had sent it in within 14 days. In doing so she referred to her letter of 1 July, making the point that she had not said it was a letter of appeal, and to her conversation with Ms Vayro later that day, saying she had made it clear then that she 'would' appeal.

87. On 15 July 2019 Mrs Pritchard sent Ms Vayro a copy of a Statement for Fitness for Work of the same date saying she may benefit from amended duties and altered hours due to issues that Mrs Pritchard had with her back caused by long periods of standing, heavy lifting and over-exertion. The claimant's GP advised that an occupational health review should be organised if changes to work patters were planned. The fit note also referred to 'stress' but did not identify any ways in which this may affect the claimant at work or suggest that any adjustments might be beneficial to the way meetings with Mrs Pritchard should be conducted.

88. Ms Vayro subsequently referred Mrs Pritchard to an occupational health clinician, who prepared a report. The report concentrated on physical problems which Mrs Pritchard was experiencing and which were adversely affected by long hours at work. The advice given was that, due to back pain, the claimant should not work longer than 6.5 hours per day. The report also made reference to Mrs Pritchard's mental health, saying: 'Nicola advised her mum has dementia, is in a local residential care home and that the deterioration in her mother's health continues to cause Nicola worry and stress. Nicola's siblings do not live locally and so Nicola has sole responsibility for supporting and visiting her mum several times a week. It became clear in Nicola's appointment that she is finding it very challenging to manage her back pain, the stress of her mother's deteriorating health and any additional stress arising from work. Nicola's responses to two validated questionnaires for mental health suggested she is currently living with a burden of symptoms associated with severe anxiety and significant low mood. Nicola has already been assessed for a course of NHS Talking Therapy but is waiting for this to begin. For information, the waiting list for NHS counselling in the North East is commonly around 9 months. She has been encouraged to discuss her symptoms with her GP. It is possible that medication may help her to recover her mental health and wellbeing. Nicola was encouraged to continue all the self-help strategies she is already implementing, which include daily exercise, in daylight if possible, a structured day with achievable goals and positive social interaction. She was also advised to explore guided Cognitive Behavioural Therapy websites which may be helpful whilst waiting for psychological intervention. With appropriate treatment and support, Nicola should recover her mental

health and resilience. This will also help her to find the energy to self-manage her back pain.'

89. In light of that report, Ms Vayro proposed a change to Mrs Pritchard's shift pattern. The claimant wrote back suggesting an alternative shift pattern. In her letter, Mrs Pritchard said 'Although I have asked for communications to be in writing, rather than face to face, I am aware that this matter needs to be resolved quickly. I am therefore prepared to have a meeting in person, provided that Dawn accompanies me.' Ultimately, Ms Vayro and Mrs Pritchard agreed to a change in the claimant's shift pattern.

90. On 30 October 2019 Mrs Pritchard was folding laundry in the staff room while chatting with Ms Christoffersen, who was having her lunch in the room. Mrs Hoggart saw this and instructed the claimant to carry on her work in the laundry room. Mrs Pritchard refused to do so. Mrs Hoggart asked Mrs Pritchard if she was refusing a direct request. Mrs Pritchard did not answer. Mrs Pritchard carried on talking to Ms Christoffersen in the staff room for a while before leaving and going to the drying room. Later that day Mrs Hoggart emailed Ms Vayro an account of what had happened.

91. Later still that day Ms Vayro asked to speak with Mrs Pritchard. Ms Vayro prepared a note of the meeting immediately afterwards. The claimant did not agree with every detail and provided an alternative version. Although the two disagree on precisely what was said, they agree on the gist of the conversation, which was that Ms Vayro said she understood the claimant was asked to do something by Mrs Hoggart and Mrs Pritchard had refused; Mrs Pritchard indicated that she agreed that is what had happened; Ms Vayro then said she expected Mrs Pritchard to carry out reasonable requests made by management, whereupon Mrs Pritchard said it had been unreasonable; Mrs Pritchard offered no explanation as to why she believed the request to have been unreasonable, she simply asked 'is that it?' Ms Vayro then said that when Mrs Pritchard was working until 6.30 she was not to leave the practice before then to collect her car. In saying this Ms Vayro was alluding to the fact that she had seen Mrs Pritchard leave the premises at 6.15 on 24 October to collect her car; Mrs Pritchard made no comment other than possibly 'ok' before saying 'is that it?'

92. As Mrs Pritchard had not denied that either she refused to comply with Mrs Hoggart's instruction or that she left work early on 24 October 2019, Ms Vayro decided to start formal disciplinary proceedings. She sent a letter to Mrs Pritchard on 4 November 2019 requiring her to attend a disciplinary hearing on 7 November 2019 to discuss two 'matters of concern', described as follows:
    92.1. 'Alleged failure to follow a reasonable management instruction. Further particulars being that on 30th October you were asked by the practice manager not to fold the clothing in the staff room but instead in the drying room where this task has always been carried out.'
    92.2. 'Alleged unauthorised absence. Further particulars being that on 24th October you left your place of work at 6.15pm, 15 minutes before the end of your shift time of 6.30pm without informing management and without any authorisation.'

93. Attached to the letter were copies of a statement dated 4 November from Mrs Hoggart about the incident in the staff room, a statement dated 31 October from a student nurse about what the claimant had said when she left the premises on 24 October, Ms Vayro's version of the minutes of the meeting of 30 October, and a copy of the respondent's Grievance and Disciplinary Procedures. The letter warned Mrs Pritchard that if she did not give a satisfactory explanation for her conduct she could be given a warning and that if she did not attend the meeting without advance notice or good reason that would be treated as a separate issue of misconduct.

94. On 5 November 2019 Mrs Pritchard wrote saying that she would not be attending the meeting as she found 'such encounters intimidating and stressful…' Mrs Pritchard then went on to give her version of events in respect of the two allegations that had been put to her. With regard to her refusal to comply with Mrs Hoggart's instruction on 30 October, the claimant said 'As I see it, I was carrying out one of my nursing duties and one which I was perfectly capable of doing in that room and there was no good reason for me to halt halfway through the job just to continue it in an equally suitable room. If it is a misdemeanor for two colleagues to be sociable while a required task is being completed, I have to say I was not aware of that fact. When I said I would be continuing with the work, the practice manager did not give any good reason why it could not be completed there and if she was aware that being sociable in the practice was a misdemeanor, she could have stated that fact at the time. I must say, I found Lynne's interference with my job insulting and quite unnecessary.' Addressing the allegation about 24 October, Mrs Pritchard said 'I certainly did go to get my car (which was parked within sight of the practice and which I would normally simply walk over to at the end of the day) at 1815. If the Practice Director or the Practice Manager had been in the building for me to ask and I had realised that I was not allowed to act on my own initiative, I would have requested to be allowed to move my car up to the door of the practice so that I could load the hedgehog which had been received by the practice and which I was taking home to care for in my own time. I have not been asked for my reasons until now. I have to also point out that when I finish work five minutes late (as I frequently do) I do not put it on my time sheet as I accept that a level of flexibility is of benefit to the practice. I hope you agree. ...'

95. Ms Vayro responded on 7 November saying that the disciplinary meeting would go ahead that day, that it was Mrs Pritchard's opportunity to put forward her version of events and that it was not intended to be stressful or intimidating. She told Mrs Pritchard that if she did not attend without a reasonable explanation then that would be treated as a further act of misconduct in not following a reasonable management instruction. Ms Vayro went on to say that if Mrs Pritchard was not well enough to attend the hearing, then she must provide medical evidence of that fact.

96. Mrs Pritchard replied saying she would not be attending and could take time off to see her GP that afternoon if Ms Vayro wished. In the event, Mrs Pritchard began a period of sickness absence that afternoon. She attended the

GP surgery the next day and was advised to self-certify. A week later her GP signed her off from work for two weeks.

97. In the meantime, on 6 November, the claimant and the two other most senior nurses in the practice had sent a letter to Ms Vayro making a formal complaint of what they labelled 'workplace bullying.' In summary, their complaints were that managers (ie Ms Vayro, Mr Vayro and Mrs Hoggart): treated nurses as 'lesser beings' and with distrust, subjecting them to excessive and intrusive monitoring (including by CCTV); adopted a culture of 'having a word', making false accusations and blaming nurses for things incorrectly; created a culture of suspicion and fear of reprisals; created division in the workplace between nurses and vets, treating the vets more favourably; and made the nurses feel less important and undervalued. Ms Vayro had discussions with the other two nurses soon after she received that letter. Because Mrs Pritchard had gone on sick leave, however, Ms Vayro did not contact her about it.

98. On 23 November 2019 Mrs Pritchard sent a formal letter of grievance to Ms Vayro in almost the same terms as the letter sent on 6 November. Mrs Pritchard said 'While I am not available for work due to stress and anxiety, I would still like to be informed of progress in the investigations as it would be more beneficial to my condition than the present apparent inertia.' She also said 'I would also like to know if you have found an independent person to carry out the investigations or if it is your intention not to do so…I understand that you may not be able to find an independent investigator and if that is the case, I will apply for Early Conciliation from ACAS on Tuesday to try to move the process forward.'

99. On 29 November Mrs Pritchard's GP signed her off work for a further two weeks. On 2 December 2019 Ms Vayro wrote to Mrs Pritchard telling her that she had decided to hold the disciplinary matter in abeyance temporarily so that they could hear her grievance. Ms Vayro addressed the claimant's grievance in a separate letter of the same date. She explained that she had not contacted Mrs Pritchard about the 6 November letter because Mrs Pritchard had been off work with work related stress and she had not wanted to add to that stress and 'respectfully allow you to have time to recover.' She apologised for her misunderstanding. Ms Vayro went on to suggest holding a meeting to discuss the claimant's grievance. She said she was happy to hold the meeting now if that was what the claimant preferred, either at the practice or at a neutral venue, or, if the claimant did not feel well enough to attend a face to face meeting she could arrange a meeting when the claimant felt better. She added, 'In relation to who should hear the meeting, it can only realistically be me as the sole director in the business given that we have limited options and are a small business.'

100. On 2 December emailed Ms Vayro saying she had already given a full response to the disciplinary matters, that she had nothing to add and that she considered Ms Vayro's continued insistence on a face to face meeting to be solely for Ms Vayro's own benefit. In fact, Ms Vayro was not insisting on a disciplinary meeting at that point: she had said she would hold the disciplinary matter in abeyance. As for the grievance, Mrs Pritchard said she could

'understand that a small business may not be willing to afford to employ an unbiased person and cannot find one in a small workforce.' However, she then went on to say 'as you are unable or unwilling to nominate an independent investigator, I will take that step and contact ACAS tomorrow and apply for their early conciliation service.' The next day the claimant contacted ACAS.

101. Ms Vayro replied on 4 December 2019 saying she was happy to appoint someone independent to hear her grievance and, if Mrs Pritchard could confirm that was an acceptable way forward, she would make the necessary arrangements. Mrs Pritchard responded saying that, as she had now begun the ACAS Early Conciliation process, she would talk with their conciliator 'before making any decisions about meetings within the Kebir House process.' She said that in the meantime she would bear the offer in mind and would be interested to know who the proposed independent investigator is. Mrs Pritchard added that she did not agree with the postponement of the disciplinary investigation, that she had nothing to add to the written explanation she had previously sent and asked Ms Vayro to 'give me your full response to my statement'. Ms Vayro agreed to make a decision on the disciplinary matter taking into account what the claimant had said in correspondence, saying she expected to have an opportunity to deal with the matter during week commencing 16 December.

102. On 13 December Mrs Pritchard's GP completed a further fit note, signing Mrs Pritchard off work until 11 March 2020.

103. Ms Vayro considered Mrs Pritchard's written submissions regarding the 24 October 2019 and 30 October 2019 allegations. She believed there was some blameworthy conduct on Mrs Pritchard's part. Specifically, Ms Vayro considered that the claimant was wrong to have refused Mrs Hoggart's instruction to fold laundry in the laundry room; Ms Vayro took the view that the instruction had been reasonable, had been made in a reasonable manner and was within the scope of Mrs Hoggart's authority as a manager. In addition Ms Vayro did not accept that the claimant had a good enough reason for leaving the practice without authorisation on 24 October, because she had not been asked to look after the hedgehog. Notwithstanding those conclusions, Ms Vayro decided not to impose a disciplinary sanction as she thought this would be yet another obstacle in getting Mrs Pritchard to return to work. Ms Vayro wrote to Mrs Pritchard explaining her conclusions on 19 December. In her letter, Ms Vayro said 'I am somewhat concerned and disappointed that you do appear to present an adversarial attitude on occasions particularly in relation to perceived authority. I am sorry if you feel that some requests may occasionally appear trivial or petty but Lynne has a job to do in managing the practice and ensuring that everyone is working diligently and productively. This letter is not intended to be a formal warning and does not form part of the company's disciplinary procedure, however it will be kept in your personnel file and thus takes the form of what we consider to be a reasonable management instruction. Should there be a repeat of this conduct or indeed any misconduct in general you may be subject to formal disciplinary action…'

104. On 22 December the claimant emailed Ms Vayro saying that the ACAS

Early Conciliation process was due to end on 2 January and asking, amongst other things, who Ms Vayro was proposing to investigate her grievance. By a letter of 27 December Ms Vayro replied ‘we looked at initially asking our Company Accountant to consider hearing your grievances but these discussions and arrangements were superseded by your decision to go direct to ACAS.’

105. The Early Conciliation process was extended beyond 2 January to 17 January 2020. On 20 January 2020 Mrs Pritchard resigned her employment, saying ‘I feel that I have no choice but to resign due to the total breakdown of trust and confidence brought about by your actions, the prospect of a continuation of the harassing, unfair and discriminatory treatment I have been subjected to by your management team and the subsequent risk to my mental health. I am extremely reluctant to be forced to leave a job which has in the past been everything I could have wished for, but I have now exhausted all means available to me to remedy the situation while employed at Kebir House and will be pursuing a claim for Constructive Dismissal.’ Ms Vayro replied, asking Mrs Pritchard to let her know by 27 January if she still wanted to pursue her grievance. Mrs Pritchard replied, making it clear she was not pursuing her grievance. The claimant’s employment ended on 27 January 2020.

Conclusions

Complaint of discrimination by failing to make reasonable adjustments

106. Mrs Pritchard’s case is that the respondent failed to make reasonable adjustments and thereby discriminated against her in the following respects:
   106.1. by requiring her to attend face to face meetings (in January 2017, March 2018 and in June, July, October, November and December 2019).
   106.2. by failing to appoint an independent investigator to investigate her grievances set out in her letters of 6 Nov and 23 Nov 2019.

Was Mrs Pritchard a disabled person at the material times?

107. Mrs Pritchard’s case is that she was disabled by virtue of the impairments of anxiety, work related stress and depression.

108. In early February 2017 Mrs Pritchard saw her doctor who prescribed medication for depression and noted Mrs Pritchard had symptoms of depression and anxiety in response to a work situation. Mrs Pritchard was having difficulty sleeping. The fact that Mrs Pritchard’s GP did not simply record that Mrs Pritchard was experiencing work related stress, but referred to Mrs Pritchard having symptoms of depression and anxiety and prescribed medication, is evidence that that what Mrs Pritchard was experiencing in February 2017 was more than just a reaction to adverse circumstances. We find that Mrs Pritchard had a mental impairment from that time.

109. Mrs Pritchard’s mental health impairment affected her ability to sleep. Sleeping is a day to day activity. We infer from the fact that Mrs Pritchard’s GP

considered it appropriate to prescribe medication, and the fact that Mrs Pritchard engaged with therapy, that the effects of Mrs Pritchard's mental health impairment were not minor or trivial. There is a relatively short period when Mrs Pritchard was not taking the medication but for most of 2017 and throughout 2018 and 2019 she did so. We find that, had she not taken medication, her symptoms, including her difficulties sleeping, were likely to have been worse.

110. In light of those facts, we are satisfied that that Mrs Pritchard had a mental impairment (depression and anxiety) that had a substantial adverse effect on Mrs Pritchard's ability to carry out day to day activities from February 2017 and that that continued throughout the remainder of 2017 and throughout 2018 and 2019.

111. The events with which we are concerned, apart from an event in early January 2017, all occurred from March 2018. By March 2018, the effects of Mrs Pritchard's mental impairment on her ability to carry out day to day activities had continued for more than a year. We conclude that, by no later than March 2018 Mrs Pritchard was a disabled person, within the meaning of that term in the Equality Act 2010, and she remained so throughout the rest of 2018 and 2019.

112. Going back to January 2017, we are not satisfied then at that point that Mrs Pritchard had a disability. The GP notes suggest that Mrs Pritchard's depression was a reaction to workplace events. It is possible that Mrs Pritchard was feeling some stress and anxiety before then but, on the evidence before us, we are not satisfied that was a mental impairment until she sought medical advice in early February 2017.

113. It follows that, at the time of the events of January 2017, Mrs Pritchard was not a person with a disability. Therefore, Mrs Pritchard's complaint that the respondent failed to comply with a duty to make reasonable adjustments and thereby discriminated against her by requiring her to attend a face to face meeting in January 2017 must fail.

Did the respondent know, or could it reasonably be expected to know, that the claimant had a disability?

114. Mrs Pritchard's other complaints that the respondent failed to make reasonable adjustments relate to the period between March 2018 and the end of 2019.

115. Before March 2018 Mrs Pritchard had taken two weeks off work. She told Mrs Hoggart that she was off work because of stress. We find that, at that point, the respondent either knew, or at least ought to have known, that Mrs Pritchard was having a difficult time. It does not follow from that limited information divulged to the respondent, however, that the respondent knew or ought reasonably to have inferred or deduced that Mrs Pritchard had a mental impairment rather than that she was experiencing a reaction to adverse

circumstances in her life (whether at work or outside work). Still less does it follow that the respondent ought to have known at that time that the effects of any impairment could well last for 12 months. All the respondent knew at that point was that Mrs Pritchard had felt the need to take two weeks' off work due to stress.

116. Our conclusion is that, in March 2018, the respondent neither knew nor could reasonably be expected to know that Mrs Pritchard had a disability.

117. It follows that Mrs Pritchard's complaint that the respondent failed to comply with a duty to make reasonable adjustments and thereby discriminated against her by requiring her to attend a face to face meeting in March 2018 must fail.

118. The next complaint of a failure to make adjustments occurs in some considerable time later, starting with a meeting on 18 June 2019.

119. Mrs Pritchard said, in a letter to the respondents dated 13 June 2019, "I have been taking prescribed anti-depressants since February 2017". The respondent had no reason to disbelieve Mrs Pritchard when she said that. It is implicit in that statement that Mrs Pritchard had been prescribed anti-depressants because she had an impairment, that the effects of the impairment were considered serious enough by a clinician and Mrs Pritchard to warrant taking medication, and those effects had been going on for over two years. Based on that information, even if the respondent could not have known precisely what Mrs Pritchard's impairment was at that time, it could reasonably be expected to know on receipt of that letter that Mrs Pritchard had an impairment that was likely to be a mental health impairment given the nature of the medication prescribed, and that the effects of the impairment on Mrs Pritchard's day to day activities were substantial (ie more than minor or trivial) and had lasted more than two years, or that those effects would have been substantial and long term had Mrs Pritchard not been taking medication. We conclude, therefore, that by 13 June 2019 or very soon after (and certainly by 18 June 2019) the first respondent knew or could reasonably be expected to know that Mrs Pritchard had a disability.

Did the respondent apply a provision criterion or practice that put Mrs Pritchard at a substantial disadvantage in comparison with persons without a disability?

120. For the claim to succeed, it is not enough that the claimant had a disability and that their employer knew they had a disability. The duty to make reasonable adjustments is only triggered if the respondent applied a provision, criterion or practice which placed Mrs Pritchard at a substantial disadvantage in comparison with persons who are not disabled.

121. Mrs Pritchard's case is that the respondent failed to make reasonable adjustments and thereby discriminated against her in the following respects:

121.1. by requiring her to attend face to face meetings (in June, July, October, November and December 2019); and

121.2. by failing to appoint an independent investigator to investigate her grievances set out in her letters of 6 Nov and 23 Nov 2019.

Complaint about face-to-face meetings

122. One element of Mrs Pritchard's complaint that there was a failure to make adjustments concerns the requirement to attend face to face meetings.

123. Mrs Pritchard's complaints about having to attend meetings in January 2017 and March 2018 have been rejected for reasons already explained. The remaining aspect of this complaint concerns meetings in June, July, October, November and December 2019.

124. Mrs Pritchard's complaint is not limited to formal discussions which could lead to some formal adverse consequence for her: that is clear from the fact that one of the 'meetings' which she alleges disadvantaged her was that which took place on 1 July 2019 which, we have found, was nothing more than a brief discussion with Ms Vayro approaching Mrs Pritchard to ask whether correspondence she was sent was an appeal against a refusal of flexible work request.

125. We accept that in the workplace there was a practice applied to everybody of being required to speak, face to face, with managers from time to time. We also accept that this practice was applied to Mrs Pritchard up until the point at which she went on sick leave in November 2019.

126. At no stage after Mrs Pritchard began her period of sickness absence in November 2019, however, did the respondent insist Mrs Pritchard attend face to face meetings with managers or otherwise speak with managers face to face. Although a disciplinary meeting had been arranged before Mrs Pritchard went off sick, after Mrs Pritchard went on sick leave the respondent did not initially pursue the disciplinary matter. We accept that that was because Mrs Pritchard was on sick leave and the respondent considered it inappropriate to be contacting Mrs Pritchard about such matters. Mrs Pritchard then told Ms Vayro that she wanted to progress her grievance and at that stage Mr Vayro informed Mrs Pritchard she would put the disciplinary matter on hold pending resolution of the grievance. Mrs Pritchard replied that she did not want the matter put on hold and that she had said all she wanted to say, in response to which Ms Vayro agreed to consider the matter on paper without the need for Mrs Pritchard to attend a disciplinary meeting. As far as the grievance meeting was concerned, when Mrs Pritchard made it clear that she wanted her grievance dealing with notwithstanding that she was on sick leave, Ms Vayro suggested holding a meeting to discuss the grievance (which was in line with the grievance procedure) but did not insist that there must be a meeting at that time; rather, Ms Vayro said she was willing to wait if the claimant did not feel well enough to attend a meeting. Then, at the claimant's suggestion, Ms Vayro agreed to arrange for the grievance be dealt with by an external third party. In

the event, no meeting was arranged because Mrs Pritchard herself asked for the grievance process to be put on hold whilst she dealt with ACAS.

127. In the circumstances, we find that the respondent did not apply its practice of requiring employees to speak with managers face to face to the claimant at any time after she began her period of sick leave in November 2019. Therefore, even if the practice could be said to have disadvantaged Mrs Pritchard before she went on sick leave, it did not do so thereafter. Even if it could be said that the existence of the practice disadvantaged Mrs Pritchard because managers could, in theory, have required her to attend meetings, Ms Vayro made such adjustments as were reasonable to avoid that disadvantage by putting the disciplinary hearing on hold; when Mrs Pritchard said she did not want the matter putting on hold, agreeing to Mrs Pritchard's request to reach a conclusion on the disciplinary issue without holding a meeting; by agreeing that Mrs Pritchard's grievance would be considered by an external third-party; and by agreeing to Mrs Pritchard's request to put the grievance process on hold whilst Mrs Pritchard engaged with the ACAS early conciliation process.

128. It follows that, between Mrs Pritchard beginning her period of sick leave in November 2019 and her terminating her employment, the respondent was not in breach of a duty to make reasonable adjustments as alleged.

129. We return now to the period from June 2019 to Mrs Pritchard beginning her sick leave.

130. Mrs Pritchard complains in particular about: the meeting on 18 June 2019 with Ms Vayro (which started off as a meeting to discuss a flexible work request and then went into a discussion about an incident involving an operation on a guinea pig); the discussion with Ms Vayro on 1 July 2019 when Ms Vayro approached Mrs Pritchard to ask whether correspondence she was sent was an appeal against a refusal of flexible work request and to encourage her to attend a consultation meeting to talk about proposed shift changes; the meeting on 30 October 2019 during which Ms Vayro spoke to Mrs Pritchard about Mrs Pritchard allegedly refusing to follow an instruction from Mrs Hoggart; and the subsequent requirement, set out in a letter of 4 November 2019, to attend a disciplinary hearing on 7 November (which was then overtaken by events when Mrs Pritchard took sick leave).

131. We accept that, on those occasions, the respondent applied to Mrs Pritchard its usual practice of requiring employees to speak, face to face, with managers.

132. It is for Mrs Pritchard to prove that the usual practice of requiring employees to speak, face to face, with managers on occasion put her at a disadvantage that was more than minor or trivial in comparison with persons without a disability.

133. At this hearing Mrs Pritchard said face to face discussions with managers disadvantaged her because she found confrontation stressful and this

exacerbated her mental health impairment. She also suggested that she found it difficult to concentrate or think on her feet and therefore the risk in face to face meetings was that she would made a decision in the moment that would then disadvantage her. With regard to that latter point, the claimant points to the response she gave to Ms Vayro on 1 July 2019, when Ms Vayro asked her if her letter of that date was an appeal, as evidence of her making a decision when put on the spot that ultimately disadvantaged her because she was then unable to appeal. We do not accept that was the case. The claimant told Ms Vayro on 1 July that her letter of that date was not intended as an appeal but that she did intend to appeal. She maintained that was the case even after reflection, including when Mrs Pritchard wrote to Ms Vayro on 12 July 2019 after learning that her appeal (lodged on 8 July) was too late. Mrs Pritchard did not say then, or at any time before then, that she had made a mistake or changed her mind and that her letter of 1 July was meant to be an appeal. Her stance then was that her letter of 1 July was never intended to be an appeal but she had always intended to appeal and that her letter of 8 July was that appeal. We do not accept this goes any way to support the claimant's assertion that she was prone to making poor decisions in face to face discussions. As for the assertion that the claimant found confrontation stressful we see that, on 1 July 2019, Mrs Pritchard told Ms Vayro in correspondence that she did not want meetings in person because she found confrontation stressful. That is consistent with what she says now. We bear in mind that that that is the case for most people, whether or not they have a mental impairment such as depression or anxiety. Nevertheless, we can see that the impact of such stress on someone with an existing mental impairment might be greater than on someone in robust mental health. Having said that, when we step back and look at the evidence in this case in the round, It appears clear to the Tribunal that it was not the requirement to discuss matters face to face with managers that the claimant objected to, but any attempt by Ms Vayro and/or Mrs Hoggart to exercise their authority when the claimant perceived that to be to her potential disadvantage. The clear picture we see is of an employee who had little respect for her managers (both Ms Vayro and Mrs Hoggart), whom she treated with disdain (as evidenced, amongst other things, by the claimant's refusal to obey Mrs Hoggart's instruction on 30 October, the manner in which she responded to Ms Vayro when Ms Vayro asked her about the incident that day, her description of Mrs Hoggart at this hearing as 'little more than a clerical assistant' to Ms Vayro, and the tone of Mrs Pritchard's communications to Ms Vayro and Mrs Hoggart in 2018 and 2019), who bristled at any criticism (as evidenced by the sentiment that people who complained about her were not to be trusted) and who resented having to account for her actions (as evidenced by, amongst other things, her reaction to Dr Smith raising safeguarding concerns in June 2019).

134. Looking at the evidence in the round, Mrs Pritchard has not persuaded us that the usual practice of requiring employees to speak, face to face, with managers on occasion put her at a disadvantage that was more than minor or trivial in comparison with persons without a disability. Therefore, we are not satisfied that any duty to make reasonable adjustments to avoid that disadvantage arose.

135. In any event, even if the claimant had persuaded us that the requirement to

speak, face to face, with managers on occasion put her at a disadvantage that was more than minor or trivial in comparison with persons without a disability, it is our conclusion that the adjustment Mrs Pritchard asserts should have been made was not one that it was reasonable for the respondent to have to make. Mrs Pritchard's case is that the respondent should have established some method of communication that would have avoided her having to have any face to face interactions with managers ie Ms Vayro and Mrs Hoggart, suggesting that communication should have been done in writing. That would have been simply unworkable: it is unreasonable to expect managers to effectively avoid all face to face interactions with a member of staff and to communicate only in writing.

136. Furthermore, we are not persuaded that communicating with the claimant only in writing would have avoided the disadvantage claimed by the claimant. For example, had Ms Vayro written to Mrs Pritchard in June 2019 seeking the claimant's comments in writing about the allegation made by Dr Smith, rather than simply raising them with her in person, it is difficult to see how that could possibly have been less stressful for the claimant than having them discussed informally. On the contrary, had the respondent put the allegation to the claimant in writing and asked her to respond in writing, that would have introduced a degree of formality that the claimant would likely have found even more upsetting.

137. For those reasons, we conclude that, in relation to the complaint about requiring Mrs Pritchard to attend face to face meetings, the respondent did not fail to comply with a duty to make reasonable adjustments.

<u>Complaints about investigation of grievances</u>

138. We have accepted that Mrs Pritchard submitted grievances in November 2019, the first a collective grievance with colleagues, the second an individual grievance. It was the employer's practice to deal with grievances in-house, in the sense of having them considered by somebody who worked within the company. We accept that that was a practice of the employer that was applied – at least initially - to Mrs Pritchard.

139. Mrs Pritchard's case is that this practice put her at a substantial disadvantage in comparison with someone without a disability; the respondent was therefore under a duty to make such adjustments as were reasonable to avoid that disadvantage; that the disadvantage could have been avoided by appointing someone from outside the company to investigate; and that the respondent breached its duty to make reasonable adjustments by failing to do that.

140. The insurmountable difficulty for Mrs Pritchard is that the respondent did in fact agree to appoint someone from outside the company to investigate her grievance. Even if the usual practice of dealing with matters in-house put Mrs Pritchard at a substantial disadvantage in comparison with people who are not disabled, and even if the employer knew or ought to have known that was the

case, the adjustment Mrs Pritchard says the respondent failed to make was, we find, implemented.

141. Mr Hartley submits that the respondent did not in fact make the adjustment because although the respondent agreed to appoint somebody to investigate the grievance, it did not actually appoint a named person to carry out the investigation in the sense of specifically asking and instructing an identified individual to deal with the grievance. However, we accept that the reason for that was that Mrs Pritchard had said that she wanted to go through ACAS early conciliation before progressing her grievance; for that reason matters were put on hold. The respondent was willing to engage someone external to the company to deal with Mrs Pritchard's grievance and Ms Vayro told Mrs Pritchard they would do so. In agreeing to do so the respondent made such adjustments to its usual practice as were reasonable to avoid any disadvantage that Mrs Pritchard might experience by having her complaint dealt with internally. It was not reasonable for the respondent to have to go further than that and specifically appoint and instruct a named person to deal with the grievance given that Mrs Pritchard herself effectively asked that matters be put on hold and then resigned. Therefore, we find that even if the practice of dealing with grievances in house did put Mrs Pritchard at a particular disadvantage in comparison with somebody without a disability and even if the employer knew that or ought to have known that was the case, the respondent did not fail to comply with the duty to make reasonable adjustments.

142. For completeness, we have also considered whether the practice of dealing with grievances internally did put Mrs Pritchard at a substantial disadvantage in comparison with persons without a disability. On analysing that issue our conclusion is that Mrs Pritchard was not actually put at a disadvantage in comparison with persons without a disability. The reason Mrs Pritchard was seeking external involvement in her grievance was her distrust of management together with the fact that the subjects of her grievances were managers. Anybody without a disability who had a grievance against their manager whom they distrusted to the same degree would be put at the same disadvantage. It follows that no duty to make adjustments arose in any event.

143. It follows from the above that Mrs Pritchard's complaints that the first respondent discriminated against her by failing to comply with a duty to make reasonable adjustments are not made out.

Constructive Unfair Dismissal and Disability Related Harassment

144. We set out at the beginning of this judgment the allegations and facts relied on by Mrs Pritchard as being a breach of contract in response to which she resigned. Mrs Pritchard also alleges that the same matters amounted to disability-related harassment. Our conclusions on those matters follow.

<u>Failure to make reasonable adjustments</u>

145. We have rejected the claimant's complaint that the respondent failed to comply with a duty to make reasonable adjustments for reasons explained above. Therefore, the claimant's allegation that a failure to comply with a duty to make reasonable adjustments contributed to a breach of contract is not made out.

<u>January 2017</u>

146. Mrs Pritchard complains that, in January 2017, the respondent did the following things which, she says, constituted or contributed to a breach of the implied term of trust and confidence and constituted disability related harassment:

146.1. Called Mrs Pritchard to a meeting on 17 Jan 2017 attended by both Directors (who were also the senior working vets at the practice) and the Practice Manager, without prior notice and without being told what was to be discussed.

146.2. In bad faith, made vague and unsubstantiated allegations that Mrs Pritchard's standards were slipping and that she was not as conscientious as she once was, without producing any evidence or clearly identifying the problems.

146.3. Failed to fairly and fully investigate the allegations made in that meeting.

147. It is not in dispute that the claimant was asked to attend a meeting in January 2017, that both directors were there and the Practice Manager, and that the claimant was called in without prior notice and that she did not know in advance what was going to be discussed. It was put to the claimant in that meeting that her standards were slipping and that she was not as conscientious as she once was. We have found that the reason the meeting was called was that the respondent's directors had concerns about the claimant's work because the claimant had recently made some mistakes and the meeting was arranged because they wanted to discuss those matters with her. The respondent had reasonable and proper cause to speak to the claimant about those matters as they did. We have rejected the claimant's allegation that the meeting was called because she had recently complained about the directors being rude to her. We reject the claimant's allegation that the allegations made to the claimant about her performance were made in bad faith or were unsubstantiated.

148. As for the fact that the claimant was not given advance warning of the meeting or what was going to be discussed, we are satisfied that the approach taken was in line with the ACAS Code on discipline and grievances, which recognises that many potential issues of performance can be dealt with informally. It seems to us is, in essence, what was happened here. Certainly there was no suggestion that the claimant was facing any formal sanction for poor performance. And although it appears somewhat heavy handed to have both directors present and a notetaker, in no way can the respondent's approach be said to be conduct calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. As for the fact that the respondent did not conduct a full

investigation into the allegations made or produce 'evidence', we find the respondent cannot fairly be criticised for its approach. The claimant had made some mistakes; the respondent's directors made the claimant aware that they had concerns; there was no suggestion that disciplinary action was being considered; no further action was taken.

149. We are not persuaded that the respondent's actions constituted or contributed to a breach of the implied term of trust and confidence as alleged.

150. Nor could this be an incident of disability related harassment given that Mrs Pritchard did not have a disability at this point.

<u>March 2018</u>

151. Mrs Pritchard complains that, in March 2018, the respondent did the following things which, she says, constituted or contributed to a breach of the implied term of trust and confidence and constituted disability related harassment:
   151.1. Called Mrs Pritchard to a meeting on 15 March 2018 with the Practice Manager (Lynne Hoggart) without prior notice and without being told what was to be discussed.
   151.2. Refused Mrs Pritchard's request to be accompanied by Dawn Christoffersen and instead appointed a vet chosen by the Practice Manager to accompany Mrs Pritchard.
   151.3. Made vague and unsubstantiated accusations that Mrs Pritchard had been absent for considerable periods of time during work hours, without providing any details or evidence and without clearly identifying the problems.
   151.4. Failed to provide further information about the allegations made at that meeting when asked.

152. Mrs Hoggart had good reason to call the claimant to the meeting on 15 March: she had received a complaint from a senior nurse colleague that the claimant was not pulling her weight and was missing from the practice when needed. It was perfectly proper for Mrs Hoggart to ask the claimant to a meeting to discuss those matters. It was also entirely appropriate for her to do so without first conducting an investigation into what was being said given that she had no reason to question Ms Cristoffersen's motivation in complaining or the genuineness of her concerns and did not envisage that disciplinary action would be warranted. Mrs Hoggart put to the claimant what she had been told by Ms Cristoffersen and in doing so gave the claimant an opportunity to have her say; we are satisfied that was an appropriate thing for her to do. The approach taken, including in not giving the claimant advance notice of the meeting, was consistent with the ACAS code, which recognises that in many cases a quiet word is often all that is needed to deal with a matter of potential concern. Mrs Hoggart cannot be criticised for not allowing the claimant to be accompanied at the meeting by Ms Cristoffersen given that (although the claimant did not know it) Ms Cristoffersen had been the person who complained about the claimant. The claimant also appears to criticise Mrs Hoggart for failing to carry out further investigations after the meeting and provide the claimant with further detail of what others were criticising her for. Given that Mrs Hoggart was satisfied that no further action needed to be taken

that was unnecessary. Carrying out a formal investigation would have been making far more of this matter than Mrs Hoggart thought it warranted.

153. In the circumstances we conclude that Mrs Hoggart did not conduct herself in a manner which, viewed objectively, was calculated or likely to destroy or serious damage the relationship of confidence and trust between the respondent and the claimant. In any event, she had reasonable and proper cause for her actions. Therefore we reject the claimant's allegation that her actions caused of contributed to a repudiatory breach of her contract of employment.

154. As for the complaint that this constituted disability-related harassment, there are no facts from which we could conclude that Mrs Hoggart's actions were in any way influenced by Mrs Pritchard's disability or anything connected with it.

June 2019

155. Mrs Pritchard complains that, in June 2019, the respondent did the following things which, she says, constituted or contributed to a breach of the implied term of trust and confidence and constituted disability related harassment:

155.1. Called Mrs Pritchard to a meeting on 18 June 2019 with the Director (Ms Vayro) to discuss a flexible work request and, without notice, asked questions about a recent occasion which implied, without justification, that Mrs Pritchard had:- (1) been unwilling to follow instructions; (2) not performed her duties during an operation on an animal, specifically that she had not monitored the heart-rate.

155.2. Provided no evidence, witness statements or further details regarding the alleged failings.

155.3. During the meeting, asked Mrs Pritchard, in front of a colleague, "You understand why we do it, don't you..?" [ie monitor the heart rate] which Mrs Pritchard found deeply insulting and regarded as an attempt to demean her.

155.4. Failed to check documents before the meeting which would have proved Mrs Pritchard had monitored the heart rate and avoided the need for a meeting.

156. We find it was entirely appropriate for Ms Vayro to want to speak to Mrs Pritchard about her flexible work request in a meeting. She also had reasonable and proper cause to raise the concern about the way the claimant had dealt with a patient in an operation given that this was a serious matter that had been raised by one of the veterinary surgeons the previous day and Ms Vayro had no reason to think Dr Smith's concerns were not genuine. It was appropriate for Ms Vayro to raise that with the claimant at this meeting.

157. Mrs Pritchard complains again that she was not provided with evidence in the form of witness statements or further details regarding the alleged failings. However, the claimant was clearly given enough information about the concerns to be able to respond: it is clear from what Mrs Pritchard said that she understood what the complaints were. It was appropriate to deal with this

informally in the first instance, an approach recognised as appropriate by the ACAS Code. Mrs Pritchard complains that the implication was that she had been unwilling to follow instructions and not performed her duties. We accept that that is what was being implied. That is because that is what the vet had accused the claimant of and Mrs Pritchard was being given an opportunity to respond. The respondent had a reasonable and proper cause to put that to Mrs Pritchard. We have no doubt it made her feel uncomfortable but, given the concerns raised issues of safeguarding, it was entirely proper for Ms Vayro to make the claimant aware of the complaint, to seek to discuss it with her, and to do so in this manner.

158. Ms Vayro said in the meeting "you understand why we do it don't you", referring to monitoring the heart rate. Mrs Pritchard says she found this deeply insulting and regarded it as an attempt to demean her. We do not accept that was an attempt to demean Mrs Pritchard: it was a perfectly reasonable and proper question to ask; this was a serious matter and it was appropriate for Ms Vayro to check that Mrs Pritchard did understand what her obligations were.

159. Mrs Pritchard criticises Ms Vayro for not checking documents beforehand, which, Mrs Pritchard says, would have proved that she had in fact monitored the heart rate and would have avoided the need for a meeting. That, however, misses the point of the vet's complaint: what the vet said was that Mrs Pritchard was reluctant to monitor the heart rate until pressed to do so. Looking at the document may have shown that Mrs Pritchard recorded something, but it does not answer the question about whether she had to be pressed to do so. In any event, it would be reasonable and proper for any manager in these circumstances to discuss with an individual a potential safeguarding issue that had been raised recently by a colleague, and it was reasonable and proper for Mrs Vayro to do that in this instance.

160. In the circumstances we conclude that Ms Vayro did not conduct herself in a manner which, viewed objectively, was calculated or likely to destroy or serious damage the relationship of confidence and trust between the respondent and the claimant. In any event, she had reasonable and proper cause for her actions. Therefore we reject the claimant's allegation that her actions caused of contributed to a repudiatory breach of her contract of employment.

161. As for the complaint that this constituted disability-related harassment, there are no facts from which we could conclude that Ms Vayro's actions were in any way influenced by Mrs Pritchard's disability or anything connected with it.

July 2019

162. Mrs Pritchard complains that, in July 2019, the respondent did the following things which, she says, constituted or contributed to a breach of the implied term of trust and confidence and constituted disability related harassment:

162.1. Instigated a face-to-face meeting on 1 July 2019, without notice, only four hours after Mrs Pritchard had handed in a letter explaining fully that she

did not want to attend such meetings because she "always found them very stressful. They have very often left me feeling bullied and intimidated. I have learned to my cost that body-language, tone of voice and emotional attitude are not represented in the minutes of a meeting".

162.2. Notwithstanding that Mrs Pritchard made it clear that she would not be attending a meeting on 3rd July for that reason, on 3rd July requested that Mrs Pritchard attend another meeting in person on 4th July, again stating that "if you do not attend without good reason" etc.

163. In our judgement the encounter between the claimant and Ms Vayro on 1 July 2019 barely qualifies as a meeting. It was an impromtu conversation initiated by Ms Vayro, who approached Mrs Pritchard to ask her a short question to check whether some correspondence Mrs Pritchard had sent in was intended as an appeal against the refusal of her flexible work application. It was understandable Ms Vayro would want to ask that question given that the purpose of the letter was not clear. The other thing Ms Vayro did in that very short encounter was to encourage Mrs Pritchard to attend a meeting that had been set up to discuss proposed shift changes. Again, nobody could reasonably criticise her for that. Mrs Vayro clearly had reasonable and proper cause for mentioning those matters to Mrs Pritchard.

164. Mrs Pritchard is critical of the fact that Mrs Vayro spoke to her in person, rather than adopting some other means of communication, such as in writing. Indeed, Mrs Pritchard's position appears to be that she should not have been expected to participate in any face to face discussion with Mrs Vayro, or managers generally. No employee in Mrs Pritchard's position could reasonably expect their managers to manage in that way.

165. As for the invitation to the further meeting on 4 July 2019, in her further particulars of claim Mrs Pritchard includes a partial quote from the letter of 3 July from Ms Vayro ie "if you do not attend without good reason etc". Looking at those words in isolation one might infer that Ms Vayro's letter threatened some sort of sanction for non-attendance. In fact that was not the case. What Ms Vayro said was "if you do not attend without good reason we shall have to make a decision without further input from yourself". That was a perfectly proper point for the respondent to have made. It was letting Mrs Pritchard know that this was her opportunity to have her say on proposed shift changes. Mrs Pritchard was not being threatened with any sanction if she did not attend the meeting; she was simply being told of the consequences of not attending. Ms Vayro had reasonable and proper cause for holding the meeting: it was to discuss rota changes that would potentially affect Mrs Pritchard and others in the business, providing Mrs Pritchard with an opportunity for a discussion in a manner that could not be replicated effectively in an exchange of written correspondence. We reject the suggestion that Ms Vayro held this meeting in order to cause the claimant stress or distress.

166. Again, we reject the allegation that this contributed to or caused any breach of the implied term of trust and confidence. We conclude that Ms Vayro did not conduct herself in a manner which, viewed objectively, was calculated or likely to destroy or serious damage the relationship of confidence and trust between the

respondent and the claimant. In any event, she had reasonable and proper cause for her actions. Therefore we reject the claimant's allegation that her actions caused of contributed to a repudiatory breach of her contract of employment.

167. Nor is there any evidence that could properly lead us to infer that Ms Vayro conducted herself in this way because of the claimant's disability or that that it was conduct that was related to Mrs Pritchard's disability in some other way. Therefore the complaint of disability related harassment fails.

<u>October – December 2019</u>

168. Mrs Pritchard complains that, between October and December 2019, the respondent did the following things which, she says, constituted or contributed to a breach of the implied term of trust and confidence and constituted disability related harassment:

168.1. Summoned Mrs Pritchard to a meeting on 30 October 2019 with the Director (Ms Vayro), without notice, at which Mrs Pritchard was unaccompanied.

168.2. At that meeting, made a complaint that Mrs Pritchard had refused to comply with a reasonable request by the Practice Manager (Mrs Hoggart) and had left work early.

168.3. Subsequently began a disciplinary process against Mrs Pritchard in respect of those matters, which continued until 19 Dec 2019.

168.4. Failed to conduct the disciplinary process fairly and in an unbiased way, in that the respondent failed to take a statement from a vet nurse, Dawn Cristoffersen, who the Claimant had been talking to at the time and Ms Vayro proposed to conduct the disciplinary hearing herself.

168.5. Required Mrs Pritchard to attend a disciplinary meeting on 7 November in person and threatened her with further disciplinary action if she did not do so.

168.6. When Ms Vayro wrote to Mrs Pritchard on 19 Dec 2019 to inform her that no formal disciplinary action would be taken, she went on to admonish her over the same events as if her 'guilt' had been proved, warning her that "Should there be a repeat of this conduct or indeed any misconduct in general you may be subject to formal disciplinary action".

169. When Ms Vayro asked Mrs Pritchard to meet with her on 30 October 2019 she had reasonable and proper cause for doing so given that Mrs Hoggart had reported to her that Mrs Pritchard had refused to follow an instruction and Ms Vayro had herself seen Mrs Pritchard leave the premises before the end of her shift the week before. It was entirely reasonable for Ms Vayro to ask Mrs Pritchard to join her in a meeting to discuss those issues and to do so without inviting the claimant to be accompanied. The meeting was in line with the ACAS Code of practice, which recognises that sometimes all that is needed to deal with an issue is an informal chat. That, we find, was Ms Vayro's intention on 30 October.

170. Mrs Pritchard also complains that Ms Vayro subsequently began the disciplinary process against her in respect of those matters which continued until 19 December 2019. Again, we find the respondent had reasonable and

proper cause to take disciplinary action against Mrs Pritchard in light of Mrs Pritchard's response when Ms Vayro raised the matters with her informally on 30 October: Mrs Pritchard had admitted she had refused to comply with an instruction and, on the face of it, that could be viewed as having undermined a manager's ability to manage. Although, when Ms Vayro asked her about the 30 October incident that day, the claimant said Mrs Hoggart's instruction was unreasonable, she had not said why she considered that to be the case and had declined to engage further. It is hardly surprising, in the circumstances, that Ms Vayro decided then to instigate formal disciplinary proceedings.

171. The fact that the disciplinary matter was continued until 19 December 2019 is because Mrs Pritchard initially was on sick leave and Ms Vayro quite properly put matters on hold until Mrs Pritchard said she wanted matters dealt with on paper on her written submissions.

172. It is alleged that Ms Vayro failed to conduct the disciplinary process fairly and in an unbiased way and that she failed to take a statement from a vet nurse and proposed to conduct the disciplinary hearing herself. Ms Vayro was the sole director of the business: it was appropriate for her to conduct the disciplinary hearing. The fact that she did not take a statement from Ms Cristoffersen cannot reasonably be criticised: as she explained at the hearing, given that Mrs Pritchard had admitted that she had refused to follow an instruction, it was difficult to see what Ms Cristoffersen could add that might have any bearing on the outcome. At this hearing Mrs Pritchard suggested that it would not have been possible for her to fold the laundry in the laundry room at the particular time in question. Had the claimant said that at the time of the events in question (whether to Mrs Hoggart on 30 October, to Ms Vayro when they spoke on that date, or in subsequent correspondence with Ms Vayro) it would perhaps have been appropriate for Ms Vayro to make further enquiries about that matter. However, that is not what she said, despite being given every opportunity to respond to the allegation. On the contrary, Mrs Pritchard said the laundry room had been an 'equally suitable' room in which to perform the task.

173. Mrs Pritchard criticises Ms Vayro for requiring her to attend a disciplinary meeting on 7 November in person and threatening her with further disciplinary action if she didn't do so. Again, that was a reasonable approach for Ms Vayro to take. There was a disciplinary case to answer and we have rejected Mrs Pritchard's argument that it was a failure to make reasonable adjustments. It is a standard step in a disciplinary process to have a disciplinary hearing, and is provided for in the ACAS Code. It is for the benefit of the employee as much as for the employer, to give them an opportunity to respond to the allegations and state their case.

174. Mrs Pritchard also criticises Ms Vayro because when she wrote to her on 19 December to inform her that no disciplinary action would be taken she went on to criticise her conduct. Ms Vayro had reasonable and proper cause for doing so. Notwithstanding that she decided not to impose a disciplinary sanction she did believe the claimant had done wrong. That was a conclusion that she had reasonable grounds for reaching in the circumstances: the

claimant admitted she had refused to follow a direct instruction from the Practice Manager and Ms Vayro was not persuaded that the instruction had been unreasonable. As noted above, Mrs Pritchard says now that she could not have folded the laundry in the laundry room but that was not what she told Ms Vayro at the time. It was not unreasonable for Ms Vayro to decide not to impose any disciplinary sanction on this occasion but to say that the letter would be held on the personnel file: there was nothing unusual in that approach from an employer's perspective, and it was appropriate to tell Mrs Pritchard that her behaviour was not considered appropriate so that she knew what the implications could be in the future.

175. Once again, we reject the allegation that Ms Vayro's conduct contributed to or caused any breach of the implied term of trust and confidence. We conclude that Ms Vayro did not conduct herself in a manner which, viewed objectively, was calculated or likely to destroy or serious damage the relationship of confidence and trust between the respondent and the claimant. In any event, she had reasonable and proper cause for her actions. Therefore we reject the claimant's allegation that her actions caused of contributed to a repudiatory breach of her contract of employment.

176. Nor is there any evidence that could properly lead us to infer that Ms Vayro conducted herself in this way because of the claimant's disability or that that it was conduct that was related to Mrs Pritchard's disability in some other way. We reject the suggestion that Ms Vayro conducted herself as she did in order to cause the claimant stress. The claimant's case appears to be that the conduct aggravated her mental health condition and was, by virtue of that aggravation, conduct related to disability. Even if it was the case that the claimant's mental health was affected by the respondent's conduct that, in itself, does not mean the conduct was related to disability. Therefore, the complaint of disability related harassment fails.

Grievances

177. Mrs Pritchard also complains that the respondent failed to deal adequately with her grievance letters of 6 November and 23 November by what she says is unreasonable delay and a failure to appoint an independent individual to investigate the grievances and that this was, or contributed to a repudiatory breach of contract and constituted disability related harassment.

178. With regard to the failure to appoint an independent individual, as recorded above, the respondent did agree to appoint somebody independent. It is correct to say that this was not Ms Vayro's initial response to the grievances: she had initially intended to consider the grievances herself and Mrs Pritchard, in her correspondence with Ms Vayro, acknowledged that the respondent, as a small employer, may have difficulty finding somebody independent. However, when Mrs Pritchard pressed the point Ms Vayro agreed that she would appoint someone else from outside the organisation to look into the grievance. We accept that Ms Vayro did make enquiries with a view to appointing someone to deal with the grievance, given that she identified the company accountant as a suitable candidate for the task. She did not, get to the point of actually

appointing somebody and arranging for them to hold the grievance hearing and we accept that the reason for that was that Mrs Pritchard herself said she wanted to put matters on hold whilst she went through the ACAS conciliation process. That was a choice made by Mrs Pritchard that was respected by Ms Vayro. The claimant then tendered her resignation two days after the early conciliation process ended and told Ms Vayro she did not want to continue her grievance. Viewed objectively, nothing in the way Ms Vayro dealt with this matter could properly be said to have been calculated or likely to destroy or seriously damage the relationship of trust and confidence between Mrs Pritchard and the respondent.

179. As for the matter of alleged delay, Mrs Pritchard complains that she was not invited to a meeting within seven days of her grievance in accordance with the respondent's grievance procedure.

180. In our judgement the grievance procedure in question did not form part of the claimant's contractual terms of employment: the terms and conditions that were signed by (or at least sent to) Mrs Pritchard do not incorporate that grievance procedure. At most, the policy set out how employees might normally expect disciplinary matters to be dealt with.

181. In this case the respondent had good reason for not arranging a meeting to discuss the grievance within seven days of receipt; Mrs Pritchard had signed herself off sick the day after she and her two colleagues sent in their original grievance and we accept Ms Vayro's evidence that that was the reason for not contacting Mrs Pritchard in response to the original grievance. That was a reasonable approach for an employer to take when faced with an employee who was off sick from work with stress. Mrs Pritchard then restated her grievance. The respondent acknowledged that email within nine days but did not arrange for a meeting to take place within that period. Rather, Ms Vayro offered to hold a meeting. Upon the claimant saying she intended to contact ACAS Ms Vayro then reconsidered and wrote to Mrs Pritchard promptly agreeing to the grievance being considered by an external third party and saying she would make the appropriate arrangements. Ms Vayro did not, in the event, make those arrangements; we accept that was because the claimant asked for her grievance to be put on hold so that she could pursue ACAS conciliation and then promptly resigned when the ACAS early conciliation period came to an end.

182. Looking at the circumstances in the round, the only mild criticism that could be levelled at the respondent is in respect of the very slight delay in acknowledging the claimant's grievance once she had confirmed, on 23 November, that she expected Ms Vayro to address her grievance notwithstanding that she was absent from work. The fact that the respondent's grievance policy indicated that a meeting would be arranged within seven days of receipt suggests that, even if (as here) organising a meeting in that timescale may not have been feasible, an employee might at least expect an acknowledgement of the grievance within that seven day timeframe. On no account, however, can the fact that it took nine days rather than seven days to acknowledge the claimant's grievance be said to be conduct that, from the

perspective of a reasonable person in Mrs Pritchard's position, amounted to the respondent abandoning and altogether refusing to perform the contract. Overall, the respondent dealt with the claimant's grievance in a reasonable manner, affording Mrs Pritchard a reasonable opportunity to obtain redress of her grievance and doing so in a reasonable and prompt manner. We reject the allegation that the respondent failed to deal adequately with her grievance letters of 6 November and 23 November and thereby breached her contract of employment.

183. As for disability-related harassment, it was suggested on behalf of the claimant that Ms Vayro delayed acknowledging the claimant's grievance and appointing an independent person to hear the grievance in order to cause the claimant stress, knowing she found it difficult to deal with stress because of her disability. We do not accept that was Ms Vayro's motivation. Nothing the respondent did in dealing with the grievance can properly be said to be unwanted conduct related to Mrs Pritchard's disability. Although Ms Vayro's reason for not acknowledging the claimant's 6 November grievance was related to her absence from work, which in turn may have been related to her disability, we do not accept that meant the delay, such as it was, was related to disability. Even if it was, it was not reasonable for that to have the effect of violating Mrs Pritchard's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for Mrs Pritchard and nor was that Ms Vayro's purpose: her purpose was to leave the claimant in peace to recover at a time when she said she was experiencing workplace stress. Therefore, this complaint of disability-related harassment fails.

Conclusion

184. Whether each of the incidents relied on by the claimant is considered individually or collectively, Mrs Pritchard has not satisfied us that the respondent breached the implied term of trust and confidence. For that reason we find that Mrs Pritchard was not dismissed by the respondent. Her claim of unfair dismissal therefore fails.

185. For reasons already explained, the complaints of disability related harassment also fail.

Employment Judge Aspden

Date 20 September 2021