



# EMPLOYMENT TRIBUNALS

**Claimant:** Janet Siddons

**Respondent:** First Fence Ltd

**Heard at:** Nottingham ET

**On:** 24 – 28 May 2021 and 13 August 2021 (deliberations)

**Before:** EJ Jeram sitting with Mr Akhtar and Ms Lowe

## Representatives

**Claimant:** In person, assisted by Ian Watson (friend, retired trade union representative)

**Respondent:** Ms J Danvers of Counsel

# RESERVED JUDGMENT

1. The claim of indirect discrimination is dismissed on withdrawal by the claimant;
2. The remaining claims of direct discrimination, discrimination arising in consequence of disability, harassment related to disability victimisation, and failure to make reasonable adjustments are not well founded and are dismissed.

# REASONS

1. By a claim presented on 19 December 2018, the claimant claimed disability discrimination.
2. We had regard to an agreed bundle comprising of 697 pages. We read the statements and received supplemental oral evidence from: the claimant, Ian Watson (friend, landlord and representative of the claimant), Ashleigh Baldwin (Operations Supervisor), Stacey Grice (General Manager) and Vinny Kotecha (Director).
3. The claimant's application to amend having succeeded, and in respect of which reasons given orally, the issues for the Tribunal to determine, were agreed by the parties but are annexed hereto.

## FINDINGS OF FACT

4. The respondent is a manufacturer and supplier of security and temporary fencing as well as traffic management and access solutions.
5. The claimant has a lengthy history of depression and anxiety of varying severity and in respect of which she has received a variety of assistance, including counselling, medication and hospitalisation. In June 2018, at a time of personal and financial strain, she approached her GP for a fit note. On 25 May 2018, the GP note that the claimant was *'very anxious, doesn't feel confident or able to cope with applying or starting work yet'*. The claimant was provided with a fit note certifying her unfit to work from 25 May 2018 to 24 June 2018. Around the same time, the claimant applied to the Department of Work & Pensions for a work capability assessment on the basis that she was not fit for work or work related activity.
6. It was against that medical background that the claimant was offered the role of receptionist on 11 June and commenced work with the respondent on 12 June 2018. She said made no mention to her employer about her lack of fitness to work. The claimant's line manager in this role was Stacey Grice ('SG') General Manager.
7. The claimant completed a health questionnaire on her first day at work in which she denied having *'any psychological complaint'*, or *'any [other] significant medical problem'*. She stated she required the use of reading spectacles and in response to the question *'have you ever been in hospital?'* the claimant named three operations but made no mention of her hospitalisation for depression. In response to the question *'are you now on any treatment prescribed by your Doctor?'* the claimant wrote *'prescribed sertraline to aid sleep problems'*.
8. On 6 August 2018, there was an incident in which a complaint was made that the claimant had been rude and confrontational towards a colleague. The claimant was spoken to by Stacey Grice ('SG') Office Manager, about her response to the situation.
9. Two days later, on 8 August the claimant emailed SG to ask if she could be considered for the Operations Advisor / Customer Services role. She attended an interview for the role on 9 August 2018 with SG and Vinny Kotecha ('VK'), Director. The claimant said she was keen to occupy the role because of her significant experience in customer services. It was a new role and there was a general acknowledgment that the role would include other non-customer service tasks including reception duties and web sales and that the specific demands of the role would be open to review and revision. The claimant was told at interview that, if she were successful in securing the role, it would be subject to a 13-week probationary period. The following day claimant was sent an email to two separate but interlinked addresses, in which her offer of employment was confirmed as well as the fact of the 13-week probationary period. In making findings about the existence of a probationary period, we reject in the absence of any evidence to the contrary, the claimant's bare assertion that SG had fabricated oral and documentary evidence in support of the probationary period.

10. The claimant started her new role in the Operations department on 13 August 2018. Her direct line manager was Ashleigh Baldwin ('AB'), Operations Supervisor. The claimant got on well with AB. AB reported to SG. The claimant does not suggest that AB was anything other than genuine in her efforts to assist the claimant; we found SG to be an impressive witness and we consider her efforts to be wholly genuine also.
11. The role involved in particular resolving customer enquiries (or 'tickets'), dealing with web sales of products, dealing with the customer review programme ('Feefo') as well as other tasks, such as dealing with invoicing.
12. In addition, the claimant was required to answer calls that the two reception staff were unable to attend to originally by herself but later as part of a wider group.
13. The claimant was also required to attend weekly Operations meetings to share and discuss issues arising out of or affecting her work as well as that of others.
14. The job was desk based but the claimant was not required to remain at her desk; she was able to move away from her desk whenever she wished for example, to make herself a hot drink, to fetch printing (before she sought her own printer) to make enquiries with staff around the office and to take comfort breaks.
15. At regular intervals throughout her employment in this role, the claimant was contacted by both AB and SG to check how she was faring, and to ask whether she required assistance and to help with her work.
16. In the afternoon on 14 August 2018, SG emailed the claimant, it having come to her attention that the claimant was over her lunch break playing games on her computer, to ask her to stop, since it was in breach of company policy; the claimant subsequently apologised to SG.
17. The claimant received induction training into the role between 20 August and 7 September 2018 from SG. She received training on the various systems she would be expected to use, such as the ISO ticket system and Feefo customer feedback system.
18. On 22 August the claimant raised a grievance about the conduct of a colleague, JL, who, she alleged, had spoken to her in a disrespectful tone. The claimant, JL, SG and AB had a meeting the same day. During that meeting the claimant said that she was '*snowed under at present*' that she was doing '*an efficient and professional job*' but that she was '*having issues with bankruptcy at home*' and did not need to be spoken to rudely. The claimant and JL agreed to apologise and draw a line under the matter.
19. Later, and in the absence of JL, AB raised with the claimant an exchange between them the previous day. The claimant was asked to be more mindful of her conduct, which although may be intentional, could be taken personally. The claimant responded by stating that she had been spoken to, in relation to her tasks, about 'the one thing I have not done'.
20. SG raised the claimant's bankruptcy with the claimant directly and asked her if she needed any time off or any support. The claimant was told she was not

compelled to speak to SG and AB about it, but if she did need anything or any time off to go to appointments or anything then she was to simply to speak to AB who would make arrangements for her. On the claimant's own oral evidence, she confirmed that AB had been supportive, *'at this particular occasion'* that she did extend her help but that she, the claimant, did not take her up on her offer because she *'felt embarrassed about [her] personal issue and didn't want to discuss it in this forum'*.

21. The claimant was tearful during this meeting; we accept the evidence of both SG and AB that, other than 12 October, this was the only occasion when the claimant was tearful.
22. A week later, on 29 August, AB emailed the claimant to ask how she was following the meeting the previous week. The task of web sales had been removed from the claimant and two staff who had been absent had returned to work; AB asked the claimant whether she required any support to carry out her tasks. The claimant replied by saying she was *'gradually getting on top of things'*. She said she was keen to undertake all her tasks, but that there was more to learn about from a colleague, Rachel. Later that same day, the two women agreed how to, between them, reduce the back log of open work tickets; they agreed to meet, at AB's suggestion, for an hour or so each morning. On the claimant's own oral evidence, the work had not yet impacted on her by this date.
23. By 29 August, the task of invoicing had been removed from the claimant by SG to allow her to better concentrate on her customer service tasks.
24. By end of August in response to the claimant mentioning that she was struggling to adjust to her workload, the claimant was moved from the reception group into what the respondent termed the *'secondary receiver group'* consisting of around 15 staff including AB, two administration staff, the accounts team and the sale team. Staff were required to answer the diverted calls within 3 rings. On one occasion, both reception staff were on leave simultaneously, thereby adding pressure to the secondary receiver group – and therefore also the claimant - to respond to a greater volume of calls alongside their usual tasks than it might ordinarily be expected to deal with.
25. Staff in the secondary receiver group were able to engage a *'do no disturb'* facility at times when they needed to concentrate on their own tasks; they were required to communicate the period over which they intended to be unavailable to answer calls as well as the reasons why. The claimant and three administration staff (JL, JS and RJ) were all required to attend to calls, i.e. not engage *the 'do not disturb facility'* when covering lunch breaks and specifically between 2.45 and 3.15 when planning tasks were being carried out for the following day.
26. On 30 August, SG again enquired of the claimant asking how she was faring and whether she required any assistance. In reply, the claimant stated that she was falling behind with customer tickets and that she believed the customer service aspect of the role was in itself a full-time role from which she felt distracted by the requirement to carry out other tasks. She posited to SG that *'it would be more beneficial to the business, for me to concentrate on customer service solely. . . To increase the kudos of the company'*.

27. On the claimant's own oral evidence, she was not feeling signs of stress yet.
28. On Friday 31 August 2018, however, the claimant emailed SG again, this time in more pressing terms. She again expressed her concern about the number of unresolved customer service tickets which were accumulating. She requested someone to sit with her to show her how to complete the tickets through to completion and entrust her to work on cases autonomously, when she said, she would be more than capable of completing all but those that were more complicated or required approval. She pointed out that two colleagues had been on leave. She repeated that she felt the customer service role was a stand-alone role, which should not be encumbered with a requirement to cover reception duties and that she did not, other than for her lunch break. She said she not afraid of hard work, but felt she was being spread too thinly and was concerned about how she was being perceived. She said the lack of a printer in the same office hindered her. She raised an issue with her ability to utilise the Feefo system on which she had been trained. She summarised by asking for assistance to identify *'a more productive way to forward which can only benefit the business as a whole'*.
29. SG responded on Tuesday 4 September apologising for not having seen or responded to the claimant's message sooner and confirmed that she would look into matters.
30. The morning meetings between the claimant and AB commenced in the week commencing 3 September and took place on most days thereafter; they lasted between half an hour to an hour. In response to the claimant's complaint about a lack of a printer, AB brought in and installed her personal printer in the claimant's office, thereby obviating the need for the claimant to leave her room to collect her printing. Tasks using the Feefo system was also deferred.
31. By 6 September, a member of staff emailed SG to raise concerns that the claimant had been disturbing and distracting sales staff. AB therefore asked in an email that the claimant approach her with any queries she had, including those relating to the sales team and that a procedure would be in place by tomorrow to enable her to obtain the information she required. The claimant's response was to ask AB was to ask for an explanation for what she perceived to be implicit criticism of her.
32. On 7 September 2018, the claimant attended her GP after work. Work was not recorded as being mentioned as a factor; she cited long-term issues affecting her life, which appear to be recorded as being better than before although the daily dose of sertraline was increased to 150 mg.
33. On 12 September 2018, AB emailed the claimant to ask her to disengage her *'do not disturb'* setting and thereby be able to take calls by 3pm so as to enable AB to carry out planning work for the following day undisturbed. This was the only occasion when she was asked to not place herself of *'do not disturb'* at any time other than the usual period of 2.45pm until 3.15pm. The claimant asked for assistance once AB had finished her tasks, describing herself as being *'at the end of her tether . . . everybody is too busy to help me and I have had enough'*. AB agreed to do so; the claimant provided a very direct response as to why she had placed herself on *'do not disturb'*.

34. AB and SG resolved to speak to the claimant the following day, but did not do so, due to work commitments.
35. On 13 September 2018, AB received an email from a colleague, DD, about the claimant being *'in [her] face'* and asking if she had a problem with her. DD said she felt *'a bit uncomfortable about it'*.
36. On 17 September, the claimant approached AB to discuss with her how the work was becoming too much for her and that she did not feel on top of it. AB and the claimant spoke about commencing some work (the 'Feefo' tasks) and removing other tasks from her (foc's and credit notes) thereby freeing the claimant up to concentrate on resolving customer service issues.
37. AB and SG met on 18 September to discuss the claimant's workload, and how to allocate and time manage her tasks. It is apparent from an email exchange that same day that AB had described verbally to SG the claimant as *'having a breakdown'* and asked AB to provide further detail to be better informed. We are satisfied that that to *'a breakdown'* was a reference to an alleged lack of time to complete tasks, since AB's email to SG documents the claimant's concern that she could not get the work done together with her own thoughts to reallocate a further task to colleagues and that *'this may take a lot of the pressure of [sic] Jan as I seem to think this is what she is so concerned over'*. Furthermore, in an email sent later that evening, summarising their discussion, SG asked AB to *'explain that we have eased her tasks by taking off the foc, credit notes etc to try to assist her. But each meeting we have she just keeps stating she doesn't have time. Please let me know if she sits there shaking her head and being rude again as she was in last week's meeting'*.
38. On 18 September, AB and SG met; they agreed that AB should meet with the claimant the following day to provide assistance in formulating a plan for the day and breaking down tasks so as to enable her to complete her, now reduced, tasks within the working day.
39. The claimant was off work on the afternoon of 18 September; she told the receptionist, Louise, that she had a headache and migraine.
40. In the late evening of 18 September, SG emailed AB with a note of the discussion they had had earlier in the day, in which SG mentioned her belief of the existence of an email in which the claimant was recorded as having been to the doctors to be *'put on tablets'*. That was a reference to a comment made by Louise in the context of the claimant leaving work early because of a migraine. Insofar as the claimant sought to suggest that she had told Louise of medication for her depression, we reject that suggestion; if that were correct, we have no doubt that the claimant would, given the length and detail of her communications immediately after dismissal, have been explicit in saying that sooner and she did not. In the same email, SG stated that she was aware that the claimant simply repeated that she didn't have the time and asked AB to let her know if the claimant responded negatively by shaking her head or being rude, as she had done the week before.
41. On 19 September, the claimant was absent from work, on sick leave, having notified her employer that she was suffering from a headache, sickness and dizziness.

42. On 19 September AB and JL worked their usual tasks and managed to close i.e. resolve 15 customer service tickets. AB emailed SG describing the day as *'amazing'*. She continued *'I'm kind of happy in a way this has happened because we can help. Janet tomorrow that it can be done around everything else. Think it's a good way to show it without it coming across in a horrible way.'*
43. On 20 September the claimant, having returned from sick leave, met with AB to discuss those matters that AB had discussed with SG, namely, to address how the claimant might break up the day to enable her to manage her tasks more efficiently. The claimant was asked to resume the management of the customer review Feefo facility, that task having been suspended since her training to allow her to prioritise other work. She was asked to ensure that 12 customer enquiries were resolved per day, with a view to ensuring that no more than 5 were left unresolved at the end of the day. The claimant neither agreed nor disagreed with the proposals made of her.
44. On 21 September 2018, AB awarded JL a bottle of wine. AB recognised that JL had been consistently with AB hitting her own targets over a long period of time; she had successfully completed a department challenge to upsell delivery charges and add extra items to orders and take payments for redelivery charges; she had stepped up and assisted AB on 19 September 2018 when the department was understaffed due to sickness absence. The bottle of wine was given to JL in recognition of her hard work and positive attitude. The claimant did not participate in the challenge, nor was she present on 19 September; her attitude was causing the respondent some concern.
45. On 27 September 2018 a return to work interview was undertaken by AB in respect of the day's absence on 19 September. She indicated her reason for absence was *'migraine, dizziness and sickness'*. In the form, the claimant was noted as not being on any medication that might affect her role; that part of the form in respect of *'any other relevant information'* remained blank. In the circumstances, a decision was made to not refer the claimant to occupational health for an assessment. AB and the claimant signed and dated the form.
46. At some point in September 2018, SG accepts that she may well have said to the claimant words to the effect of *'what do you do with your time'*, in the context of discussing how the claimant used her time and what adjustments to her tasks might be necessary or desirable. She does not accept, and we are not satisfied that SG also said to the claimant – about the claimant's tasks – words to the effect of *'well I can do it, why can't you?'*, there being no contemporaneous – or proximate - complaint of those words being spoken.
47. By 2 October 2018, there being concern about the number of tickets that were being resolved, AB asked the claimant to complete a daily report form to allow her to track how many customer service tickets were received each day, how many were resolved, and how many remained unresolved at the end of each day. That same afternoon, AB received an email from a colleague, DD, stating that the claimant was having heated conversations with customers on the telephone at a level that DD said she believed could be over heard via staff headsets by other customers. As the claimant accepts, the possibility of customers overhearing heated conversations was high likely to affect the respondent's reputation.

48. In early October, a customer contacted VK to complain about the manner in which the claimant had spoken to him/her, and that the exchange had resulted in the claimant terminating the call. VK asked SG asked to listen to the recordings of that and any other calls to check for inappropriate conversations.
49. SG instructed AB and Diane Prince ('DP') (HR Advisor) to meet with the claimant to review the claimant's progress and to extend the probationary period for two weeks, on the basis that identifiable improvements needed to be made.
50. On 9 October 2018, AB and DP met with the claimant to hold a probationary review meeting. A review form was completed, although not signed, reflecting the discussions had with the claimant. We accept the oral evidence of AB and the review form as an accurate reflection of events on 9 October, there being nothing other than the claimant's contention to suggest that the form was fabricated by the respondent in order to further its case before us.
51. AB and DP told the claimant in the meeting that: her attendance was satisfactory and timely; that she had introduced her own system of working to work more efficiently; that she was working well to resolve customer service tickets and was close to hitting targets; she had been completing the Feefo customer review tasks.
52. The concerns were said to be not hitting targets, lack of communication when requiring assistance or explaining why targets were unmet; displaying a negative attitude when being asked to do extra tasks or tasks or when they were being explained to her. They discussed how it had been noted that occasionally the claimant was working through breaks when she should be having a proper break away from her screen and her desk. They discussed the fact that the claimant was, unlike other staff, failing to notify the rest of the team when they were engaging the '*do not disturb*' facility because it was adversely impacting the rest of the team who could see one another but since they worked behind a glass partition, not necessarily appreciate why the claimant was not taking calls.
53. The claimant was set a target of achieving resolution of 12 customer tickets a day, to ensure that she completed a daily task sheet, to ensure that she was available to take calls i.e. not place herself on do not disturb between 2.45pm to 3.15pm each afternoon, and to ensure that she took a proper break during her lunch away from her desk.
54. During the meeting, the claimant stated that there was insufficient time in the day to carry out the tasks required of her. AB explained how to manage her tasks more efficiently. DP stated words to the effect of '*all I heard in that sentence is can't; you can do it*'. In response to a query whether she required any further support, the claimant asked for a headset and a whiteboard, which were provided to her.
55. On 11 October, the receptionist, LD copied AB into a strained email exchange with the claimant, which AB forwarded to SG, suggesting having a meeting with the both of them.
56. Also on or around 11 October, SG contacted VK to inform him that, having listened to a 'handful' of other calls, she had identified two further recordings in



which the claimant made inappropriate statements: in one, she invited the customer to take legal action against the respondent; in the other, she intimated that she did not agree with the company policy and that she too had been in business and *'ended up going bankrupt'*. There is no evidence, other than the claimant's own contention, that the calls, or their transcripts, have been edited in any way. On the claimant's own evidence, the content of those transcripts, if unedited, discloses unacceptable behaviour. We have no reason to believe SG's evidence that the transcripts are a true reflection of the recording.

57. On 12 October, early in the morning, SG and VK decided that the claimant's performance and conduct was not acceptable as it was having an adverse impact on the running of the business and on colleagues. Prior to this discussion, SG and VK had had a number of discussions about the claimant but SG had suggested giving her further time to improve. On this occasion, they decided that they would move to terminate her employment, after the operations meeting took place that same morning.
58. The claimant does not dispute the events of 11 October and early 12 October 2018, as the respondent describes them.
59. The Operations meeting was due to start imminently; AB interrupted the discussions between VK and SG to ask if they were joining. VK would not ordinarily do so, but did on this occasion in part because he happened to be immediately adjacent to the room in which the meeting was to start imminently and in part because he wanted to ask the claimant some questions to hear how she responded; we consider it highly likely that he sought reassurance for the decision he had made.
60. At the Operations meeting, each person was, as usual, asked to speak about the issues and responsibilities that arose in relation to their work during the previous week; the claimant was treated no differently. There were in the past concerns that the claimant attended the meetings unprepared. On this day, she had difficulties responding to AB's query; VK followed by asking her, in the same manner and tone as he addressed others in the room, what the main issues were. He was perfectly entitled to seek information from the claimant about how his business had been operating in the past week. The claimant responded by saying that there was an issue with powder coatings. She could not answer how times it had arisen but estimated in the region of 50%. A colleague, JS, retrieved the relevant information, which suggested that the claimant's estimate was incorrect. VK asked the claimant what other issues had arisen, but the claimant was unable to answer. Discussions then moved on, away from the claimant. VK received a call and left the room soon after; soon thereafter the claimant left the room in tears. On the claimant's own evidence, her upset was, in part, to do with the fact that she could not answer the questions posed to her.
61. At 10.21am the claimant sent an email to AB. In it, she said that the expectations of her were unrealistic, that she was frustrated by the volume of work required of her on a daily basis and that it impacted on her quality of work, something which mattered to her. She *continued 'I have tried to communicate this to you in a way that you'd understand, but I feel it's not being looked at seriously and I am only met with further negative feedback and challenging expectations entailing more work which I simply cannot bear'*. She said that she had implemented some changes to improve the customer services department which were working well

and cited that the previous day she had closed off 13 tickets, but that required work at continuous top speed, a rate which she could not sustain. She said she took the receptionist role believing it to be a low-stress job but was keen to progress. She asked AB to note *'that this situation is causing me severe stress and anxiety and as such, is having a massive impact on my health and home life'*. She said she felt very unwell and would be unable to work *'at this present time'*. She told AB that she would attend her GP to obtain a fit note for 'stress at work' and would undoubtedly be absent from work for *'a short time'*. She thanked AB for her kindness and support but asked her to seriously consider the amount of work she was expected to undertake which she felt was detrimental to the quality of output.

62. The claimant sought out AB shortly after sending the email, to check that AB had received the email, to which AB responded in the affirmative; she had only at that stage taken a quick glance at its contents and there were others in the room, so AB told the claimant that if there was anything that she could do, to let her know. The claimant left the room.
63. At 10.27am, AB forwarded the email to SG, without comment.
64. In the meantime, after the meeting, SG collected papers from her office and went to see DP, to inform her of the decision to terminate the claimant's employment. She found the claimant with DP; the claimant declined SG's offer to pick up the discussion later. SG therefore joined the claimant with DP at 10.25am and in a meeting lasting 30 minutes, discussed the contents of the recorded calls and her ongoing issues with time management; she summarised by saying that the lack of improvement despite support were the reasons for the decision to terminate her employment during the probationary period. The claimant became upset; DP escorted her from the premises. SG drafted a note of the meeting immediately afterwards; DP signed it to confirm its accuracy. SG returned to her desk, when she read the email forwarded to her at 10.27am by AB.
65. At 12.35pm, the claimant emailed AB again, from home. On the claimant's own evidence, she was unaware that her depression might amount to a disability until she returned home to speak to her landlord and friend, Ian Watson ('IW'), who is a retired union representative.
66. In her email, the claimant repeated how much effort she had made to ensure to complete her tasks, but that the pace of work required to achieve them was unrealistic. She set out 4 grounds upon which she believed her dismissal to be procedurally unfair. She stated that she would be signed off from work for several days as a result of the stress incurred at work. She said she had evidence to support a tribunal claim *'on the grounds of disability'* and invited the respondent to consider its position *'to avoid legal consequence'*. Nowhere in her email did she contend that she had informed the respondent explicitly, or otherwise, of her disability.
67. Although it was often unclear whether the claimant accepted in evidence that her performance was unsatisfactory, she accepted that insofar as it was, or may be, she knew during her employment that that was attributable to her mental health and that she did not tell her employer of that fact because of the stigma she felt accompanied mental health issues.

68. Later that same afternoon, the claimant visited her GP. In her medical records, her GP has noted that the claimant had said that she *'was abruptly terminated on the spot. Tried to speak to HR about stress but was fired on the spot'*.
69. The GP records, together with the statement subsequently taken by DP and the lack of reference in her email sent at 12.35 lead us to conclude that the claimant did not, as she contended, tell DP either before or after the meeting in which SG communicated to her the fact of her dismissal, that she suffered from depression.
70. On 15 October 2018, the claimant wrote to VK raising a grievance. The letter comprised of 5 pages setting out in detail why her dismissal amounted was unfair, amounted to a breach of the Equality Act 2010 and various other health and safety legislation. Included in her complaints was one of a failure on the part of the respondent to give her *'a chance for [her] to disclose and explain [her] disability'*. She put the respondent on notice of her intention to bring tribunal proceedings. The respondent accepts that it acquired acknowledge knowledge of the claimant's disability from the contents of this email.
71. On 22 October 2018, the claimant wrote a letter of appeal against her dismissal. In it, she contended that as a result of the *respondent's 'failure to follow your own company disciplinary policy, I was denied the opportunity to inform you of my existing disability; and as such, you have automatically discriminated against me in contravention of the Equality Act 2010'*.
72. On 23 October 2018, VK wrote to the claimant confirming her dismissal. The reasons for the decision were said to be that during her probationary period, there were concerns about the manner in which the claimant dealt with customer service issues, spoke to customers, terminated calls, failed to bring weekly reports to meetings, the frequency with which she placed her phone on *'do not disturb'*, not completing tasks in a timely manner, and her attitude towards other staff.
73. The claimant was invited to attend a combined grievance and appeal hearing on 2 November.
74. In preparation for that hearing VK: sought and obtained statements from SG and DP. DP stated that immediately before SG joining their discussion on 12 October, the claimant had been speaking to her about her personal life, that she did not mention her email to AB sent shortly before the discussion and that it was only after SG had informed her of her dismissal that the claimant informed DP that she was expecting to be absent on sick leave due to stress at work. VK sought evidence from SG of the claimant's quality of work, the support given to her, and of her attitude to work. He obtained the attendance note of 12 October drafted by SG and agreed by DP. He asked the Accounts Manager to interview 3 participants of the Operations Meeting on 12 October 2018.
75. At the combined hearing on 2 November 2018, the claimant was assisted by IW; it was chaired by VK and lasted 2.5 hours. On behalf of the claimant it was argued that the new role was not subject to a probationary period; that there existed 3 emails the contents of which, in addition to verbal comments about workload and stress levels *'should have set warning bells or alarm bells'*. The claimant accepted that she had *'made mistakes'*. The claimant said she told the respondent of her depression the day her contract was terminated. The claimant

stated that the grievance was a necessary step to bring Tribunal proceedings. IW told VK that even if the claimant *'was offered her job back, she couldn't come back'*.

76. Following the hearing, VK sought further information in the form of statements from two further members of staff about their feelings of the working environment.
77. The outcome of the claimant's appeal was dated 16 November 2018. The grounds for dismissing the appeal were stated as being the failure to make adequate improvements in performance during the extended period.
78. A separate letter dismissing the outcome of the grievance was prepared; by reason of oversight, it was not in fact sent to the claimant. Of the findings relevant to this claim, VK found that, contrary to the claimant's contention, DP denied that she told her, immediately before and again immediately after SG joined them on 12 October 2018, that she told DP of her depression.
79. Three other employees, Debbie, Katy and Louise had transferred from one role to another because they had either asked to transfer or had indicated a desire to do so and were invited to transfer, in circumstances where a relevant vacant role existed. The claimant did not, on 12 October 2018, or at any time during her role in Customer Services indicate she wished to return to her reception role, and nor was there in fact a vacancy there. The claimant does not contend that she should have been transferred to a role in the Sales team where there were vacancies, but which are, in any event, significantly more demanding and pressurised than the Customer Services or reception roles.

## **THE LAW**

80. Section 13 of the Equality Act 2010 ('EqA') provides follows: *"(1) a person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others"*.
81. Section 15(1) of the Act provides that person A discriminates against a disabled person B if A treats B unfavourably because of something arising in consequence of B's disability and A cannot show that the treatment is a proportionate means of achieving a legitimate aim. Section 15(1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.
82. In some circumstances, an appeal can form part of the unfavourable treatment of dismissal: Baldeh v Churches Housing Association of Dudley & District Ltd UKEAT/0290/18/JOJ at 14-17.
83. Section 20(2) and (3) provide that where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with person who are not disabled, there is a duty to take such steps as it is reasonable to have to take to avoid the disadvantage.
84. Schedule 8 para 20 of the Act provides that A is not subject to the duty if A does not know, and could not be reasonably expected to know that an interested

disabled person has a disability and is likely to be placed at the disadvantage at s.20(3).

85. An employer does not need to know that an employee would be considered to be 'disabled' under the Act; knowledge or constructive knowledge of the facts constituting disability is sufficient: Gallop v Newport City Council [201] IRLR 211 at para 36.
86. The Employment Code at paragraph 5.14 and 5.15 provides that employers should consider whether a worker has a disability even where one has not been formally disclosed, as, for example, not all workers who meet the definition of disability may think of themselves as a '*disabled person*'. Further that an employer must do all they can reasonably be expected to do to find out if a worker has a disability, and that what is reasonable will depend on an objective assessment of the circumstances.
87. A failure to enquire in circumstances where they could reasonably be expected to do so will not, in and of itself, mean the employer has constructive knowledge. The Tribunal must also consider what the employer might reasonably have been expected to know if it had made such enquiries: A Ltd v Z [2020] ICR 199 at paras 38-43.
88. Section 26(1) of the Act provides that A harasses B if A engages in unwanted conduct related to a protected characteristic, and the conduct has the purpose or effect of violating B's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for B. Section 26(4) requires the Tribunal, when deciding whether the conduct has the effect at s.26(1) to take into account the perception of B,; the other circumstances of the case; whether it is reasonable for the conduct to have that effect.
89. The concepts of violating an employee's dignity or creating the prohibited environment convey a degree of seriousness and the Tribunals must not cheapen the significance of these words: Land Registry v Grant [2011] ICR 1390 at 47.
90. Section 27(1) provides that person A victimises another person B if A subjects B to a detriment because B does a protected act. Section 27(2) defines a 'protected act'.
91. Section 136 of the Act stipulates that if there are facts from which the Tribunal could decide, in the absence of other explanation, that a person ('A') contravened a provision of the Act, the court must hold that the contravention occurred. That will not apply if A shows that A did not contravene the provision.

## **CONCLUSIONS**

### Knowledge

92. The respondent accepts that the claimant was a disabled person within the meaning of s.6 Equality Act 2010 at the material time. It accepts that it acquired actual knowledge of that matter on receipt of the claimant's grievance letter on 15 October 2018.

93. We therefore deal with whether the respondent acquired or should be fixed with knowledge of the claimant's disability at any stage before that date.
94. The respondent made enquiries of the claimant by requesting completion of the health questionnaire. Although she made mention of taking Sertraline, an anti-depressant medication, she qualified that by stating it was for sleep problems and having specifically denied having any psychological issue or any other significant problem.
95. Furthermore, at the meeting on 22 August 2018 to discuss her grievance against a colleague, the claimant advanced a different reason for her personal life being unsettled, namely her bankruptcy. In those circumstances, we find that it is not objectively reasonable for AB or SG to have either questioned that reason or be expected to seek an additional reason that might amount to something more than an adverse life event.
96. The period of employment lasted two months; that was a very short window in which the respondent ought reasonably be expected to know that the claimant's performance could be observed as being attributable to anything other than performance issues; particularly when almost no issues arose whilst she occupied the reception role, and those that did occur arose in respect of a role which she was not initially recruited for.
97. Furthermore, the customer services role was a new, multifunctional, one. It was against this background that both parties explicitly recognised at interview that the volume and nature of tasks would be subject to review and revision. The demands of the role were plainly kept under constant review and revised throughout her employment; the demands on the claimant were therefore not constant and her ability to cope with them therefore still being identified. The claimant said she had significant customer service experience and made various improvements to the role of her own and provided suggestions as to how the role should be altered, often stating that the revisions would be advantageous to the respondent. Numerous discussions were had with both AB and SG and claimant stated, consistently, that the problems she was encountering were due to workload / time pressures rather than anything that might have placed AB and SG on notice that there was an underlying health concern.
98. Linked to the short period of the employment was the respondent's lack of ability to test whether the claimant's negative response to her tasks, and the assistance or intervention of SG and AB was one that could be attributable to her health, her response to her bankruptcy, or a general personality trait; although no performance issues arose in the period when she performed the role of receptionist, the claimant had had one altercation with her colleague Will during that time. Furthermore, the claimant was seen in tears on two occasions only, on 22 August (in her grievance meeting when she disclosed her bankruptcy) and again on 12 October (when the claimant was unable to correctly respond to questions in the Operations meeting); on both occasions, the events that immediately preceded the claimant's demeanour would objectively explain her behaviour.
99. The claimant contends that the respondent should be fixed with knowledge as of 18 September, when there was reference to her having 'a breakdown' as well as

being 'put on tablets' in exchanges between AB and SG. We have already found that the reference to tablets was understood to be a reference to medication for migraines. The reference to a 'breakdown' was initially in a verbal description given by AB to SG; we have already accepted that the word was used by AB in its vernacular sense to convey a sense of disagreement about how realistic it was of the respondent to expect anyone to meet the demands of the role.

100. Turning to the events of 12 October, the claimant does not dispute the chronology of events of that day, as described by the respondent i.e. that the decision to dismiss her was taken before the Operations meeting and therefore before she sent her email a short time after the meeting to AB. The email itself contains nothing to suggest that respondent could be reasonably be expected to know that any adverse impact of her work related stress was likely to have a long term impact on her day to day activities; it refers only to the possibility of a short term absence, attributable to having too much work to do. The suggestion that the claimant told DP of her depression both immediately before and immediately after the communication to her of the fact of her dismissal is not consistent with DP's recollection, what she appears to have told her GP later the same day, or what is recorded in her grievance of 15 October, when she complained she had not been given a chance to disclose and explain her disability.
101. We acknowledge that the claimant genuinely perceives that her demeanour was such that it should have placed the respondent on notice of an long term impairment that was affecting her ability to cope – and we have little doubt that that belief is based on her inner thoughts - but we are not satisfied, on the evidence before us, that that is objectively sustainable.
102. We find that the respondent did not know and could not reasonably be expected to know at any stage before 15 October 2018, that the claimant was a disabled person.
103. When considering whether the respondent could reasonably have been expected to do more than it in fact did, we are satisfied that she would have continued to suppress information about her depression. We do so for the reasons that follow.
104. The claimant was aware that she was not fit to work and in her evidence to us she confirmed that that she knew at the relevant time that her performance was impaired by her mental health condition. She contends that she did not make a conscious decision to withhold that information from the respondent, but in the face of the evidence, we are bound to disagree with her. Despite many discussions with AB and SG about how she was unable to complete the volume of tasks given to her to standard she was content with, she did not disclose the possibility of her performance being linked to her health; rather she continued to attribute the problems to the workload or made suggestions that she contended would benefit the respondent. Furthermore, the claimant's return to work meeting on 27 September, in an enquiry into her health and its impact on her employment, the claimant told her employer that she was not taking medication that might affect her role and did not impart any other relevant information. On 9 October, at her probationary review meeting, the parties explored the respondent's concerns about the claimant's performance; the claimant met with AB and DP neither of whom the claimant criticises even now as being genuine or supportive. As before, the claimant repeated that the root of the problem was the

volume and variety of tasks required of her, rather than what she knew to be the true position. We are unable to find on the evidence before us that the claimant's, reluctance and refusal to disclose to her employer her mental health problems - as understandable as her motivation was - was likely to change. The claimant contends that had the respondent enquired of her '*why are you struggling?*' she would have in response divulged her disability; we agree with the respondent's submission that that is fanciful since that was in substance precisely what SG and AB had enquired of her routinely throughout her employment in her customer services role. Finally, taking into account the claimant's reluctance to reveal her impairment, her evidence that she was unaware that depression amounted to a disability until she spoke to IW on her return home after she was dismissed, and her failure to tell DP on 12 October 2018, we are far from satisfied that if the respondent could reasonably have been expected to do more, that it could reasonably have been expected to have known of the claimant's disability.

### Direct Discrimination

105. The respondent having satisfied the Tribunal that it did not know that the claimant was disabled at the relevant time; the claims are not well founded.
106. The allegation that dismissal amounted to an act of direct discrimination is dismissed, for the avoidance of doubt, even if we were to include the decision to reject the appeal as being integral to the dismissal. Certainly, VK was aware of the fact of the claimant's disability by the time he determined the appeal. But there was a significant amount of evidence for the initial decision to dismiss; we accept the evidence of VK that the 'reason why' he decided to dismiss the claimant's appeal was that he was satisfied that the original decision to dismiss was sound i.e. that there was significant concern '*about [the claimant's] performance, things in relation to phone calls or day to day problems and complaints*'.
107. Further and in any event, the Tribunal, had it been required to do so, would have decided that in respect of each of the allegations made, the claimant had not made out facts from the which the Tribunal could reasonably conclude that an act of discrimination had taken place.

### Discrimination Arising From Disability

108. The Tribunal is satisfied that the respondent did not know and could not reasonably be expected to have known that the claimant was disabled at any stage on 12 October whether before or after the meeting with DP.
109. The claimant has not advanced a complaint about the appeal stage at all, despite the claimant having been represented by IW and had her claim articulated in considerable detail throughout her claim. Nevertheless, assuming that the appeal stage as an integral part of the decision to dismiss, we have nevertheless considered the position.
110. The reasons supporting the decision to dismiss were numerous, including the claimant's failure to complete tasks in a timely manner, her attitude towards colleagues, not attending weekly meetings prepared and the manner in which



she spoke to customers. When VK came to reject the claimant's appeal, he had acquired knowledge of the disability as well as the fact that the claimant had taken a leave of absence due to work related stress.

111. The burden rests upon the claimant to satisfy us that the treatment – here dismissal including the dismissal of her appeal - was because of something arising in consequence of her disability. The claimant relies on 'telling the respondent that she was taking a leave of absence'. We are far from satisfied that the information that the decision to dismiss the claimant or dismiss the appeal was because the claimant informed the respondent that she was taking a leave of absence. The reasons for dismissing the claimant at the first stage were numerous and varied and based on sound evidence; we fail to see how the claimant's leave of absence affected the decision of VK to dismiss the appeal against the evidence against the claimant. Put another way, we are satisfied that the reason for dismissing the claimant's appeal was that VK was for the reasons set out in his appeal outcome letter, and nothing to do with the fact that the claimant had indicated that she intended to take a leave of absence from work.

112. Furthermore, we would have found, in any event, that the respondent had discharged the burden of proving that the decision to dismiss the claimant was objectively justified. We would have found that the respondent's aim – of ameliorating the effect of the claimant's poor performance and conduct on the respondent's ability to run its business, the impact on the claimant's colleagues and the costs resulting from the claimant's poor performance were all legitimate aims.

113. As the claimant herself recognised in cross examination, her behaviour towards customers (for example, in the recorded calls) were not acceptable and would have the effect of damaging the respondent's reputation. Dismissal was certainly capable of achieving the legitimate aims. The claimant's role, and her core responsibilities were to look carry out her tasks and look after customers, not to upset them. The claimant was not fit to work when she started her job in reception with the respondent. We find that dismissal was reasonably necessary to achieve those aims; since IW informed VK at the appeal hearing that the claimant if she 'was offered her job back, she couldn't come back' it follows that the aim could not be achieved by less discriminatory means. Furthermore, since the respondent is able to draw and does draw on after acquired information in relation to the claimant's medical history, which reveals that the claimant suffered severe chronic and recurrent depression and continues to suffer the same following her employment.

114. Had we have had to consider the defence, we would have found that the respondent had satisfied us that the decision to dismiss the claimant was objectively justified.

#### Reasonable Adjustments Claims

115. The respondent having satisfied the Tribunal that it did not know and could not reasonably be expected to have known that the claimant was disabled at the relevant time, the claims are not well founded.

#### Victimisation

116. The respondent accepts that the claimant's grievance amount to a protected act within the meaning of s.27(2) Equality Act 2010.
117. The allegation that the respondent failed to carry out an investigation into the claimant's grievance is dismissed on its facts; statements were taken from DP, SG, 3 participants at the Operations meeting on 12 October and a further two statements in respect of the general working environment. A significant number of documents were collated to illustrate the tasks required of the claimant and measures set in place to support her.
118. Furthermore, there is no evidence that a grievance that did not contain a protected act would have been treated any differently.
119. The allegation of victimisation is not well founded.

### Harassment

120. We do not consider that any of the acts complained of can amount to conduct 'relating to' the claimant's disability even on the broad test to be applied, simply on the basis that the conduct is said to have been suffered by the claimant, who happened to be disabled. Nevertheless, we consider each allegation individually.

### *Refusing to transfer the claimant to another department*

121. The claimant did not ask to transfer to another department; there was no refusal to do so and therefore no 'unwanted conduct'. In fact, on the one occasion she sought to be transferred, from the role of receptionist to that in customer services, she was considered for the role and transferred.
122. Insofar as it is necessary for us to go further, if we were to equate '*refusal*' with '*a failure to consider*' there was in fact no vacancy in reception for the claimant to transfer into as an alternative to dismissal. Nor would it have been appropriate to transfer the claimant to a sales role, where vacancies did exist, since it was significantly more demanding than the role in customer services. We accept these as plausible, non-discriminatory explanations for why the claimant was not considered for either a role. The allegation is not well founded.

### *Awarding Jodie Loveridge a bottle of wine on 21 September 2018*

123. At the outset of the hearing, the claimant contended that gifting a bottle of wine to JL amounted to a detriment to the claimant. In her evidence and her closing submissions the claimant noticeably distanced herself from this allegation, contending instead that she, too, would have appreciated a token gesture for her own efforts in her customer services role. She did not withdraw the allegation, however, and we find as follows.
124. The claim is not well founded. We are not satisfied that the conduct was unwanted in the sense of unwanted or uninvited; JL was provided with a gift to recognise her meeting targets consistently over a long period of time, and for succeeding with a specific challenge. Neither do we understand how it is said

that the gift was related to the claimant's disability; the claimant does not suggest that AB knew of the claimants' disability or of facts amounting to her disability by the date in question. We are satisfied that it was not said with the purpose of creating the necessary environment, rather it was said in a genuine attempt to assist the claimant with managing her tasks. It is not, in all the circumstances reasonable for the words to have the prohibited effect; to do so would be cheapen the significance of the concept of harassment. The allegation is not well founded.

*Stacey Grice saying in September 2018: 'well I can do it, why can't you?' and 'What do you do with your time, Jan?'*

125. We have found that the first comment was not made and that the second comment was made or was likely to have been made, in the context of discussions about time management and task allocation. We are not satisfied that the comment was related to the claimant's disability; rather it was related to discussions about time management more generally and in that sense, neither was unwanted. The comment was not made with the purpose of causing the prohibited environment; insofar as it had that effect it was not reasonable to have done so, given the context in which it was said and the fact that to uphold the allegation would be to cheapen the significance of the concept of harassment. The allegation is not well founded.

*Diane Price saying on 9 October 2018: 'All I heard in that sentence is I can't! You can do it!'*

126. We have found the words were spoken as alleged. We have heard no complaint about DP's behaviour towards the claimant; we were given no reason to believe that the comment was said with a sense of criticism, or that the claimant genuinely believed that to be so. We find that even if the words amount to be 'unwanted conduct' and we are not satisfied that they are, in the legal sense, it is not reasonable for the effect of those words to create the prohibited environment. The context is that they were spoken during a probationary review meeting, in circumstances where the claimant was complaining of having inadequate time and a potential outcome of the meeting was dismissal. We have little doubt that they were uttered as words of encouragement, and furthermore that the claimant knew this at the time. The allegation is not well founded.

127. In summary, all the claims pursued by the claimant are not well founded and are dismissed.

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Employment Judge Jeram

Date: 8 November 2021

JUDGMENT SENT TO THE PARTIES ON

9 November 2021

.....

.....  
FOR THE TRIBUNAL OFFICE

**ANNEX A**  
**AGREED LIST OF ISSUES**

**DISABILITY (S.6 EqA)**

1. It is admitted the Claimant suffered from a disability, namely depression, at the relevant time.
2. It is denied that the Respondent was aware or ought to have been aware at the material time that the Claimant suffered from the aforementioned disability.

**DIRECT DISCRIMINATION (s.13 EqA 2010)**

3. Was the Claimant treated less favourably than the Respondent treated or would treat others?

The Claimant relies on the following treatment:

- 3.1. not transferring the Claimant to another role or department (actual comparator: Louise Dissington);
  - 3.2. not awarding the Claimant with a bottle of wine when she reduced the number of dashboard tickets to 6 in the week ending 21 September 2018 (actual comparator: Jodie Loveridge);
  - 3.3. In September 2018, in response to the Claimant saying she was not coping with workload Stacey Grice saying 'Well I can do it, why can't you?' and 'What do you do with your time, Jan?';
  - 3.4. dismissing the Claimant.
4. Was such treatment because of disability?

**HARASSMENT RELATED TO DISABILITY (s.26 EqA 2010)**

5. Did the Respondent engage in unwanted conduct? The Claimant relies on the following matters (which are pleaded):
  - 5.1. refusing to transfer the Claimant to another department;
  - 5.2. awarding Jodie Loveridge a bottle of wine on 21 September 2018;
  - 5.3. Stacey Grice saying in September 2018: 'Well I can do it, why can't you?' and 'What do you do with your time, Jan?';
  - 5.4. Diane Prince saying on 9 October 2018: 'All I heard in that sentence is can't! You can do it';

- 5.5. Vinny Kotecha on 12 October 2018 repeatedly questioning the Claimant in front of other team members.
6. If so, was the conducted related to disability?
7. Did it have the purpose or effect of (a) violating the Claimant's dignity, or (b) creating an intimidating, hostile, degrading humiliating or offensive environment for the Claimant? This should be considered taking into account the Claimant's perception, the other circumstances of the case and whether it was reasonable for the conduct to have that effect.

**VICTIMISATION (s.27 EqA 2010)**

8. Did the Claimant do a protected act? The Claimant relies on: her grievance dated 15 October 2018.
9. Did the Respondent subject the Claimant to a detriment? The Claimant relies on: the Respondent failing to carry out an investigation into her grievance at all.
10. Was the Claimant subjected to any such detriment because she had done a protected act or because the Respondent believed that she had done or may do a protected act?

**DISCRIMINATION ARISING FROM DISABILITY (s.15 EqA 2010)**

11. Did the Respondent know or could it reasonably have been expected to know that the Claimant had the disability in question?
12. Did the Respondent treat the Claimant unfavourably? The Claimant relies on: the Respondent immediately dismissing the Claimant.
13. Was that treatment because of something arising in consequence of the Claimant's disability? The Claimant relies on: telling the Respondent that she was taking a leave of absence (the Claimant says the leave of absence was due to her inability perform and deliver targets).
14. If so, can the Respondent show that the treatment was a proportionate means of achieving a legitimate aim? The Respondent relies on (in relation to both) ameliorating the effect of the Claimant's poor performance and conduct on the Respondent's ability to run its business, the impact on the Claimant's colleagues, and the costs resulting from the Claimant's poor performance.

**REASONABLE ADJUSTMENTS (s.20/21 EqA 2010)**

15. Did the Respondent know or could it reasonably have been expected to know that the Claimant was disabled?

**Workload review**

16. Did the Respondent apply a PCP of failing to review the workload and targets of the Operations Advisor Role?

17. If so, did that PCP put the Claimant at a substantial disadvantage in relation to her employment as compared to those people who are not disabled? The Claimant relies on being subjected to an amount of workload that became too much to cope with and targets that were unreasonable, impractical, unworkable and therefore unachievable.

18. Did the Respondent know or could it reasonably have been expected to know that the Claimant was likely to be placed at the disadvantage set out above?

19. Did the Respondent take such steps as it was reasonable for it to take to avoid the disadvantage? The Claimant says the Respondent should have:

19.1. delegated tasks to other staff members; or

19.2. reinstated the position of manager of the customer service element until the new systems were fully integrated.

**Providing cover**

20. It is accepted that the Respondent had a PCP of instructing the Claimant to provide cover for the other reception staff members.

21. Did that PCP put the Claimant at a substantial disadvantage in relation to her employment as compared to those people who are not disabled? The Claimant relies on being unable to concentrate on multiple tasks at any one time.

22. Did the Respondent know or could it reasonably have been expected to know that the Claimant was likely to be placed at the disadvantage set out above?

23. Did the Respondent take such steps as it was reasonable for it to take to avoid the disadvantage? The Claimant says the Respondent should have:

23.1. delegated tasks to other staff members;

23.2. relaxed performance targets and deadlines.

**Answering within 3 rings**

24. It is accepted that the Respondent had a PCP of requiring calls to be answered within 3 rings.

25. Did that PCP put the Claimant at a substantial disadvantage in relation to her employment as compared to those people who are not disabled? The Claimant relies on finding it difficult to pick up on a task due to her inability to concentrate on multiple tasks.
26. Did the Respondent know or could it reasonably have been expected to know that the Claimant was likely to be placed at the disadvantage set out above?
27. Did the Respondent take such steps as it was reasonable for it to take to avoid the disadvantage? The Claimant says the Respondent should have: taken the duty away from the Claimant by placing overflow calls to ring to other members of staff.

**Do not disturb**

28. Did the Respondent have a PCP of requiring that phones were not put on 'do not disturb' after 3pm?
29. If so, did that PCP put the Claimant at a substantial disadvantage in relation to her employment as compared to those people who are not disabled? The Claimant relies on her working day being reduced by 4 hours.
30. Did the Respondent know or could it reasonably have been expected to know that the Claimant was likely to be placed at the disadvantage set out above?
31. Did the Respondent take such steps as it was reasonable for it to take to avoid the disadvantage? The Claimant says the Respondent should have: delegated additional staff members to accept incoming calls.

**Screen time**

32. Did the Respondent have a PCP of requiring the Claimant to do continual computer screen work over an 8.5 hour period without breaks?
33. Did that PCP put the Claimant at a substantial disadvantage in relation to her employment as compared to those people who are not disabled? The Claimant relies on increased fatigue which impaired her ability to concentrate on singular or multiple tasks.
34. Did the Respondent know or could it reasonably have been expected to know that the Claimant was likely to be placed at the disadvantage set out above?
35. Did the Respondent take such steps as it was reasonable for it to take to avoid the disadvantage? The Claimant says the Respondent should have: allowed the Claimant to take frequent breaks throughout the day.

**Transfer**

36. Did the Respondent have a PCP of not adopting the same approach as they did to others by transferring the Claimant to another department?



37. Did that PCP put the Claimant at a substantial disadvantage in relation to her employment as compared to those people who are not disabled? The Claimant relies on being required to perform in a role with unrealistic and unachievable targets and to manage a workload she could not cope with.
38. Did the Respondent know or could it reasonably have been expected to know that the Claimant was likely to be placed at the disadvantage set out above?
39. Did the Respondent take such steps as it was reasonable for it to take to avoid the disadvantage? The Claimant says the Respondent should have: given her the opportunity to transfer to her previous role of receptionist or into an alternative role or department.

**Disciplinary**

40. Did the Respondent have a PCP of invoking the disciplinary procedure rather than initiating an investigation?
41. Did that PCP put the Claimant at a substantial disadvantage in relation to her employment as compared to those people who are not disabled? [The Claimant does not appear to have identified a disadvantage].
42. Did the Respondent know or could it reasonably have been expected to know that the Claimant was likely to be placed at the disadvantage set out above?
43. Did the Respondent take such steps as it was reasonable for it to take to avoid the disadvantage? The Claimant says the Respondent should have: investigated.

**DISMISSAL IN ANY EVENT (Chagger)**

44. What is the likelihood that, but for any discrimination, the Claimant's employment would have ended in any event on the same date?
45. What is the likelihood that, but for any discrimination, the Claimant's employment would have ended in any event at a later date and at what date?