EMPLOYMENT TRIBUNALS

Claimant: Ms L Dunn

Respondent: Utilta Telesales Ltd.

Heard at: Leeds by CVP video link

On: 13,14,15,16,17, 20 and 21 September 2021

Before: Employment Judge Shepherd

Members: Ms Hiser
Mr Fields

Appearances:

For the Claimant: Mr Hunter, lay representative

For the Respondent: Ms Robinson, counsel

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The claims brought by the claimant of disability discrimination are not well-founded and dismissed.
2. The claim of victimisation is not well-founded and is dismissed.
3. The claim of constructive unfair dismissal is not well-founded and is dismissed.

REASONS

1. The claimant was represented by Mr Hunter and the respondent was represented by Ms Robinson.

2. The Tribunal heard evidence from:

Lynda Dunn the claimant;
Louise Bako, former employee;
Jane Woodhouse, friend of the claimant;
Danielle Wynter, Call Centre Manager;
Paul Taylor, Head of Telesales;
Neil Stancil, Campaign Manager;
Kieran Hollyoak, Campaign Manager;
Andrea Stevens Director of Human Resources.

3. The Tribunal had sight of written email statements from Annie Patterson and Brandon Churm, former employees. They did not attend to give oral evidence and, in those circumstances their evidence carries substantially less weight than evidence which could be challenged and the Tribunal could assess the demeanour and credibility of the witness.

Brandon Churm arrived at the claimant's house in the middle of Danielle Wynter's evidence. The claimant's evidence had by then been completed. The evidence of Brandon Churm was evidence relating to issues upon which Danielle Wynter had already given her evidence.

Danielle Wynter had a young baby and her evidence was being given between feeds. It was agreed that it was not appropriate to interpose Mr Churm. It was also agreed that the cross-examination of Danielle Wynter would be completed and the Tribunal would then hear the evidence of Brandon Churm. This was not in line with the usual procedure and the Tribunal considered this carefully and determined that, as the claimant was not legally represented, the Tribunal would allow Brandon Churm to give evidence the following day. He then failed to appear and it was agreed that, once the other witnesses had completed providing their oral evidence, the evidence was then closed.

4. The Tribunal had sight of a bundle of documents, supplemental bundle of documents from the claimant and documents added during the course of the hearing which together consisted of 585 Pages including the index. The Tribunal considered the documents to which it was referred by the parties.

5. At the start of the hearing Mr Hunter provided written submissions on behalf of the claimant. Ms Robinson objected to the submissions as they included a number of claims which had not been brought by the claimant. There had been numerous Preliminary Hearings in which the issues had been identified. After some discussion, Mr Hunter agreed that the issues to be determined by the Tribunal were those that had already been identified and that were contained within a consolidated list of issues provided by Ms Robinson. These were as follows:
(For the sake of clarity and convenience these issues have been copied retaining the original internal numbering.)

<u>Direct Disability Discrimination</u>

1. Was the Claimant subjected to less favourable treatment by the Respondent by:

   1.1 questioning the Claimant's suitability for her role on 3rd December 2019;
   1.2 accusing the Claimant of inappropriate behaviour at the Christmas Party on 9th December 2019;
   1.3 repetition of the accusation of inappropriate behaviour at the Christmas Party on 11th December 2019;
   1.4 requiring the Claimant to apologise for the sexist behaviour of a fellow employee on a date in January 2020;
   1.5 forcing the Claimant to resign from the role of Campaign Manager on 19th February 2020.

2. The Claimant relies on two comparators: Denis Kennedy and Kieran Hollyoak. The Claimant avers that the treatment was meted out by Danielle Wynter.

3. Was any such less favourable treatment because of her disability?

Failure to make Reasonable Adjustments

4. What was the provision, criterion or practice applied to the Claimant?

5. Did any such provision, criterion or practice put the Claimant at a substantial disadvantage because of her disability? What was that substantial disadvantage?

6. Was it a reasonable adjustment to:
   a) establish particulars of her disability following the filling in of the starter pack;
   b) arrange an occupational health assessment for the Claimant;
   c) refer the Claimant to a psychologist;
   d) arrange a welfare meeting for the Claimant.

Victimisation

7. Did the Claimant make a protected act relating to the less favourable treatment of her female colleague (Annie Patterson)?

8. Did Ms Wynter subject the Claimant to detriment by being unduly critical of the Claimant, requiring the Claimant to apologise to the maker of the sexist remark?

9. Was any such detriment because the Claimant had undertaken a protected act?

Harassment

10. Did Ms Wynter subject the Claimant to unwanted conduct which had the purpose or effect of violating the Claimant's dignity, creating an intimidating, hostile, degrading or humiliating or offensive environment by:

10.1 questioning the Claimant's suitability for her role on 3rd December 2019;

10.2 accusing the Claimant of inappropriate behaviour at the Christmas Party on 9th December 2019;

10.3 repetition of the accusation of inappropriate behaviour at the Christmas Party on 11th December 2019;

10.4 requiring the Claimant to apologise for the sexist behaviour of a fellow employee on a date in January 2020;

10.5 on 30th January 2020 Danielle Wynter insisted on the achievement of management targets without making adjustments to accommodate disability in terms of performance timeframe and performance criteria;

10.6 failing to announce in public that the Claimant had passed her probation;

10.7 forcing the Claimant to resign from the role of Campaign Manager on 19th February 2020.

10.8 HR drafting a letter confirming demotion without speaking to the Claimant or checking her welfare following which Danielle Wynter announced to the business floor that I had been demoted.

11. Was any such conduct related to the Claimant's disability?

Constructive Unfair Dismissal

12. Was the Claimant dismissed?

12.1 Did the Respondent do the following things after she started her sickness absence (from 20 February 2020 to 29 October 2020):

12.1.1 absence of welfare calls and/or visits during her absence;

12.1.2 the tone and content of emails and messages between her and members of the Respondent's HR function on 20th and 26th February 2020;

12.1.3 sending a recorded delivery letter dated 2nd March 2020 inviting the Claimant to participate in an internal investigation;

12.1.4 failing to pay a bonus in March 2020;

12.1.5 sending an email dated 6th March 2020 explaining the reduced pay;

12.1.6 sending a letter dated 12th March 2020 explaining that an internal investigation has been concluded and that the allegations had not been proved;

12.1.7 sending an email dated 20th April 2020 inviting the Claimant to a Capability Hearing to discuss request for structural adjustment and allegations;

12.1.8 sending an email dated 23rd April 2020 accusing the Claimant of a refusal to cooperate with the internal investigation and stating no longer aware of outstanding allegations as grievances had been dealt with;

12.1.9 sending an email dated 11th May 2020 confirming the provisional agreement reached at the Capability Hearing and questioning what was meant by the phrase "what has happened to me before";

12.1.10 sending an email dated 8th June 2020 re-enclosing the summary of the minutes of the Capability hearing of 30th April 2020 and the subsequent conversations and confirming that a letter had been sent to the Claimant's GP;

12.1.11 sending an email dated 18th June 2020 stating that a report had been received from the Claimant's GP and that they were not satisfied with the answers;

12.1.12 sending an email dated 19th June 2020 requesting a new Capability Hearing;

12.1.13 sending an email dated 22nd June 2020 acknowledging sever stress, insisting on a new Capability Hearing and enclosing the Capability Policy;

12.1.14 sending an email dated 25th June 2020 from Andrea Stevens asking the Claimant to adjust her tone and putting pressure on the Claimant to attend an Occupational Health Assessment and a new Capability Hearing:

12.1.15 sending an email dated 30th June 2020 requesting a new Capability Hearing and enclosing the Capability Policy;

12.1.16 sending an email dated 30th June 2020 enclosing a link to a Microsoft Teams Capability Hearing;

12.1.17 sending an email dated 16th July 2020 requesting a new Capability Hearing;

12.1.18 sending an email dated 17th July 2020 giving a deadline to re-schedule the Capability Hearing;

12.1.19 sending an email dated 21st July 2020 informing the Claimant that the Capability hearing had been conducted in her absence and giving a deadline to respond to the minutes;

12.1.20 sending an email dated 8th September 2020 requesting an informal phone call to check on the Claimant's welfare;

12.1.21 an email being sent on 15th October 2020 from the Occupational Health Psychiatrist diagnosing the Claimant with Depression.

13. Did the matters alleged breach the implied term of mutual trust and confidence?

13.1 The Tribunal will need to decide:

13.1.1 whether the Respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent

13.1.2 whether it had reasonable and proper cause for doing so.

13.2 Was the alleged breach a fundamental one? The Tribunal will need to decide whether the breach was so serious that the Claimant was entitled to treat the contract as being at an end;

13.3 Did the Claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the Claimant's resignation;

13.4 Did the Claimant affirm the contract before resigning? The Tribunal will need to decide whether the Claimant's words or actions showed that they chose to keep the contract alive even after the breach.

Findings of fact

6. Having considered all the evidence, both oral and documentary, the Tribunal makes the following findings of fact on the balance of probabilities. These written findings are not intended to cover every point of evidence given. These findings are a summary of the principal findings the Tribunal made from which it drew its conclusions:
Where the Tribunal heard evidence on matters for which it makes no finding, or does not make a finding to the same level of detail as the evidence presented, that reflects the extent to which the Tribunal considers that the particular matter assists in determining the issues. Some of the Tribunal's findings are also set out in its conclusions, to avoid unnecessary repetition and some of the conclusions are set out within the findings of fact. The Tribunal has anonymised the identity of those mentioned who did not appear before the Tribunal or provide a witness statement.

6.1. The claimant was employed by the respondent as a Telesales Agent from 5 August 2019.

6.2. The claimant has a highly traumatic background and it is accepted that she was a disabled person suffering from complex post-traumatic stress disorder.

6.3. Within the employee starter pack the claimant completed details. Where it is asked whether the employee considers themselves to have a disability she ticked the yes box and where it is asked for details for any reasonable adjustments that may be required the claimant wrote "I am currently going to be assessed for PTSD".

6.4. The claimant said that this was mentioned during her initial training and she was told by the trainer and someone from HR that her line manager would be aware of this.

6.5. The claimant's manager was Danielle Wynter.

6.6. Danielle Wynter said that, after the claimant joined the respondent she had a number of personal conversations with the claimant. The claimant had informed her that her sister had recently passed away. The claimant told Danielle Wynter that she suffered from nightmares and flashbacks because of her past but Danielle Wynter said that she did not ask any questions or request further information as it was clearly a personal matter for the claimant.

6.7. The claimant informed Danielle Wynter that she had an appointment to see a psychiatrist on 1 November 2019 and time off was authorised for this appointment.

6.8. On 31 October 2019 the claimant sent an email to Danielle Wynter in which she complained about feedback she had received from a member of the compliance team (A). In that email she stated:

> "Danielle, I have disability where I suffer from severe complex PTSD and anything unnecessary stress can make my symptoms worse. Today, after my feedback I was left leaving really upset about how it was delivered to me…
> Please can this be addressed as going forward I prefer not to be given feedback by A until she has been given training on how to deliver feedback in the correct way.
> This has now disrupted my day and left me feeling upset and taking time from my own production which has a knock-on effect on me because I care so much about my statistics being on green.
> Thank you for your ongoing support Danielle please can you speak to J about my concerns in the way this has left me feeling."

6.9. On 1 November 2019 the claimant attended an appointment with a consultant psychiatrist. In the report the psychiatrist set out the claimant's traumatic history. Within the report he stated:

> "Lynda explained that generally she copes well. She works in a call centre selling utilities and is very good at her job having previously been a team leader. She enjoys her work and has a full life outside of work including walking, history, geography, going on holidays and generally trying to relax. She does not abuse alcohol or drugs. She sleeps well and

> wakes refreshed but has recurrent nightmares which relate to some of the many traumatic events of her life. She has been told that she grinds her teeth and frequently shouts out in her sleep. Although she functions she says that in the background she is always thinking about the dramatic elements to her life. She will think of an episode and then replay the event in her mind as though she is actually back there. This will tend to make her feel rather sad and distressed. There are many situations in which she feels anxious and would rather avoid which relate again directly to some of her traumatic experiences. She has not had suicidal thoughts and does not self-harm. She said that she is a very positive person who likes to keep very busy and productive. There is no sustained abnormality to her mood and no problems with self-care.…
> Summary:
> 1. I think that the diagnosis here is in fact post-traumatic stress disorder, given the symptomology detailed above. It is complex in the sense that it does not to a specific incidence but an accumulation of the traumas which she has experienced in her life.
> 2. She has coped remarkably well with all of this, particularly as she has never had professional help."

The remainder of the summary has been redacted and there is another section within the report that has been redacted. Danielle Wynter had informed the investigation that she had seen the unredacted version but at the Tribunal hearing, she could not remember what contents had been redacted.

6.10. The claimant telephoned Danielle Wynter following their appointment with the psychiatrist and indicated that the appoinment had been difficult and she was upset. It was agreed that the claimant would take the rest of the day off which was recorded as holiday as employees are only allowed a two hour slot to attend medical appointments and anything longer is recorded as either unpaid leave for sick leave. The claimant said that she had seen entry in the system recording it is sick leave and that it had later been altered to refer to holiday. This was not one of the identified issues that had been agreed at the commencement of the hearing. However, the Tribunal is not satisfied that the entry for the day had been altered and Danielle Wynter had recorded this as a holiday in order to assist the claimant and ensure that she did not lose pay.

6.11. On 13 November 2019 the Compliance Team Manager sent an email to EW, senior HR Adviser. The email referred to issues with regard to feedback the claimant had received. The claimant had accepted an explanation about the process and had requested to sit down with A, who had given the feedback and the meeting would take place after A returned from holiday. The claimant did not want to raise a formal grievance and felt it was better to resolve these issues amicably.

6.12. The claimant said that she had to ask permission to go to the toilet and that on several occasions Danielle Wynter had said that she was not to go until she had got two sales. The claimant's evidence was not entirely clear on this point as to whether there was a requirement only in Danielle Wynter's team to ask permission. The claimant said that she felt under pressure to sell as fast as

she could and this was why she asked permission. Danielle Wynter denied requiring people to ask permission to go to the toilet. The claimant was an extremely keen, competitive salesperson and as a result of that asked for permission – at one point she said that it was a requirement for her personally and then that she would always ask permission. The evidence of Kiaran Holyoak was clear that employees were not required to ask permission to go to the toilet but if they asked for a cigarette break they would be asked to have two sales first.

6.13. In her amended list of claims provided on 9 September 2020 the claimant had stated that, before having sight of the psychiatrists report Danielle Wynter was supportive towards her.

6.14. Danielle Wynter was promoted to the role of Call Centre Manager on 11 November 2019.

6.15. On 15 November 2019 the claimant was off sick for one day by reason of anxiety. Upon her return no return to work meeting was held as required in the respondent's Capability Policy and Procedure. The policy refers to a return to work interview after any period of sickness with the employee's line manager. Danielle Wynter said that she could not say for certain why this didn't happen. It was a transitional period in the call centre as her promotion meant that there was no Campaign Manager in charge of the claimant's team and the other three campaign managers had kept an eye on the team.

6.16. The claimant applied for the position of Campaign Manager. The claimant discussed this with Danielle Wynter who encouraged the claimant to apply for it. Danielle Wynter reviewed each of the applications and selected individuals, including the claimant, to attend an assessment day.

6.17. On 27 November 2019 EW, HR Manager, noticed the claimant was crying outside. EW then took the claimant to a meeting room. The claimant informed her that she was worried about repeating sensitive personal information to strangers. She said that she had been through so much lately and felt absolutely drained when she had to speak to a psychiatrist about her past and she told EW about the traumatic events in her life. The claimant said she told EW about her regular nightmares, flashbacks and anxiety. EW asked if she needed support to work the claimant indicated that she did. EW that she would hold a welfare meeting for her. The claimant said also promised that anything said in the meeting would remain confidential to her.

6.18. On 28 November 2019 the claimant received a letter from SJ, an HR Advisor which stated that a welfare meeting had been arranged to be chaired by SJ on 3 December 2019. The purpose of the meeting was to establish the nature and extent of the claimant's illness and what support could be put in place to help her at work.

6.19. The claimant was extremely uncomfortable and anxious. EW had assured her that EW would be dealing with everything for the claimant but she had now received a letter from another member of the HR team. The claimant was

concerned that her sensitive information must have been disclosed to SJ. The claimant asked Louise Bako to accompany her to the meeting.

6.20. On the evening of 2 December 2019 Danielle Wynter said that she received a telephone call from the claimant who indicated that she did not want to meet with HR as she preferred not to discuss the details of her personal history and said she would be happier speaking to Danielle Wynter.

6.21. On 3 December 2019 the claimant decided to go to the meeting alone. She said that on her way to the HR office Danielle Wynter waved her to go into her office. She told Danielle Wynter that she was worried about anyone reading her extremely private documents. Danielle Wynter asked if she would rather Danielle Wynter conduct the welfare meeting and the claimant confirmed that she said yes because Danielle Wynter was her manager

6.22. The claimant showed Danielle Wynter a copy of the letter she had received from the psychiatrist which included the full extent of the traumas the claimant had suffered. Danielle Wynter said that although the claimant had previously alluded to something from her past, this was the first time she had been made aware of the details and she was absolutely shocked and appalled that anyone gone through such dreadful experiences. The claimant said that Danielle Wynter as to whether she thought Utilita was the right place for her and also said “where’s your head at Linda? Where’s your head at? You sound depressed, and if you are depressed you may never recover.”

6.23. Danielle Wynter said that the claimant’s account of the meeting was unrecognisable to her. The claimant did not, at any time, say that she needed extra support or changes at work to help her. She asked the claimant whether she wants to speak to HR but the claimant was adamant that she did not want to and everything should be kept confidential. The claimant and Danielle Wynter were in her office for several hours.

6.24. On 4 December 2019 the claimant attended the assessment day for the Campaign Manager role. Each of the candidates are interviewed by Danielle Wynter, a recruitment manager and the Call Centre Manager from the respondent’s Chesterfield site. Danielle Wynter scored the claimant’s performance lower than the other two interviewers. Danielle Wynter said that the claimant deservedly received the highest score overall and that she personally scored the claimant the highest.

6.25. After the assessment Danielle Wynter told claimant that she had been successful and would start as Campaign Manager the following Monday. Danielle Wynter said that she was really excited for the claimant and told her “you smashed it!”

6.26. The claimant said that Danielle Wynter did not want her to get the job. Danielle Wynter said that was not the case. The Tribunal finds that it was not likely that Danielle Wynter, as the Call Centre Manager and who selected those to attend the assessment day and was one of the three people who interviewed the claimant, would have wanted to prevented the claimant becoming the

Campaign Manager**.** Danielle Wynter gave unchallenged evidence that she had personally given the claimant the highest score.

6.27. At an event with staff the claimant was presented with a large bottle of champagne by Paul Taylor.

6.28. On 7 December 2019 the respondent's Christmas party took place at Sheffield United Football club. Danielle Wynter left the party for some time and when she returned she said she had a conversation with the claimant asking whether there was anything she had missed. The claimant said that Danielle Wynter took her to a quiet space and asked her angrily whether she had kissed another member of staff, KH.

6.29. Another of the respondent's agents had become poorly at the Christmas party. Paramedics attended and the claimant assisted with the situation. She left to stay in a local hotel on her own.

6.30. The claimant sent a message to Danielle Wynter at 1:26 am on 8 December 2019 in which she stated:

> "Hi Danny got to the Hilton safe have a nice sleep huge hugs
> Lynda xxxx"

Danielle Winter responded as follows:

> "Hi Lynda, your message has only just come through. Glad you got back ok, enjoy the rest of your weekend and I'll see you Monday x
>
> Thanks for your help tonight too x"

6.31. The claimant was appointed to the position of Campaign Manager with effect from 9 December 2019 which was a six-month secondment, in effect, a probationary period.

6.32. The claimant said that on 9 and 11 December 2019 Danielle Wynter questioned her again about kissing KH at the Christmas party. She said she felt she was being interrogated. This was denied by Danielle Wynter.

6.33. Kieran Holyoak said that the claimant struggled to develop a relationship with the telesales agents once she had been made Compliance Manager.

6.34. She told him that she found the role really stressful and that she was missing the bonus she earned when she was "on the phones".

6.35. His evidence was persuasive. He said that the claimant never said that she was having any issues with Danielle Wynter at all and would often talk about how they were best friends.

6.36. Kieran Holyoak said that the claimant went outside for a cigarette with him after the meeting when it was announced that she was stepping down to being

a Telesales Agent again. She seemed entirely comfortable with the decision and said she thought she would be better off on the phones. She did not at any point suggest that she had been forced to resign or that she had been bullied.

6.37. On 10 or 11January 2020 the claimant sent a text message to Danielle Wynter which stated:

> "Being there for me when I need you most means the world to me thank you. I understand Sam because he is thinking about my job but I tried to make him see that work is work and I am okay when I'm working and you know understand this more than anything but I still need someone there for me sometimes and you know I've been through and said I can call you if it gets too much he said I future I have to keep calling him for the police station haha as if I do that bawling my eyes xxxx oh that quote is so beautiful thank you you are a rock to me through my difficulties in my life xxxx

6.38. Danielle Wynter sent an email to the claimant on 11 January 2020 stating:

> "Yes he will be worrying for you but it's okay. You've got a lot of support around you when you need it…"

6.39. On 15 January 2020 the claimant sent an email to Danielle Wynter in which she stated:

> "Thanks for making me see that even though it's tough it's doable even if sometimes I'm negged out because of performance issues I left to tonight clearly saying that I'm able to do that dipping coaching and Rdd's at one time something I didn't think was possible but it is. You are right you can do that mould me and I can learn from this even if sometimes I just pull my face and come back with excuses it's my way of growing and learning Hope that makes sense. I think sometimes you have to show frustration to grow and learn in difficult times but I'm grasping it more and more how you want it done and I'll get there because I won't give in. What a day again :) I really could do with camping out at work sometimes haha. See you tomorrow love thanks xxx"

Danielle Wynter responded as follows:

> "It's okay Lynda I know you are trying and I really want you to do well. You are capable and it is doable but you've just got to stay on the ball. You're still very new remember but take things on board on and you'll get there! Great day again today! Have a good night and I'll see you tomorrow x"

The claimant sent a further message to Danielle Wynter stating:

> "You are so fair and supportive to everyone don't think that goes amiss because it doesn't I get why you are performance mad I'm the same but do you know something underneath you are so lovely when you have the

> same bday as my grandad who I adored. There are times when I watch you just on how you support everyone and I often wonder where do you get that trait from be proud because people are learning from you too xxx"

6.40. In a 1-2-1 form following a meeting with Danielle Wynter on 22 January 2020 the claimant completed the employee comments stating:

> "Happy with support from Danielle and my colleagues. Sensitive to feedback, yet. I clearly see why it's needed and what I need to change. Those were things that I had identified. Thought I could manage workload or time, obviously knew it would get highlighted Definitely need to prioritise take on board any action feedback and importance of"

6.41. The manager's comments included:

> "You have great enthusiasm and want to do well in the job, you engage well with the rest of the management team and have already developed in confidence. This is clear as you deliver full briefs in support motivating the entire floor throughout day vocalising support.
> This is only your 2nd month remember that, actionable feedback and take this as you opportunity to develop to your full potential."

6.42. On 27 January 2020 the claimant sent a birthday card to Danielle Wynter and gave her a present.

6.43. In January 2020 the claimant found Telesales Agent AP in tears. She explained to the claimant that DK had stated:

> "It's nothing to do with you! Get on with your job and be quiet! Your place should be at home in the kitchen!"

6.44. AP told Danielle Wynter that the claimant had told AP to put in a complaint and said that DK was always doing stuff like this.

6.45. The claimant said that Danielle Wynter told her to apologise to DK. Danielle Wynter said that she suggested that the claimant have a word with DK but she did not tell her to apologise to him. She was not aware of the contents of the sexist comment.

6.46. On 30 January 2020 there is a recorded discussion between the claimant and Danielle Wynter in which concerns were raised with regard to lack of coaching support given to agents. There were indications that the compliance and other rates were below target. There were also concerns raised with regard to the claimant's professionalism and derogatory comments made about other campaign managers to agents.

6.47. On 4 February 2020 HR wrote to the claimant and confirmed she had passed her probationary period. This would normally be announced by the Telesales Agent's manager on the floor around the other employees would applaud. This was not done on this occasion. Danielle Wynter said she honestly couldn't remember why this was. The claimant's promotion to Campaign Manager had been announced and Danielle Wynter said she was confident that it was nothing more than an oversight.

6.48. This was confirmation of the claimant passing her probation period from when she started at the respondent and was not in relation to her position as Campaign Manager.

6.49. On 19 February 2020 the claimant asked if she could meet with Danielle Wynter. There was discussion about whether the claimant should return to being a telesales agent. The claimant said that Danielle Wynter had shouted at her, stood over her pointing in her face and says as to achieve it thought about going back on the phones and stated that she was happy on the phones, earned good money was a top seller.

6.50. They went to the pub next door and the claimant said that she was forced to go back on the phones. Danielle Wynter said that the decision was that of the claimant. She had made up her mind that she did not want to be campaign manager any more. She was not upset at all.

6.51 Danielle Wynter asked the other campaign managers to join them in the meeting. She said that the claimant told them she decided to go back in the phones. The claimant was very positive in the meeting and indicated that she wanted to go back to earning big bonuses and get back into the competitive nature telesales. Kieran Holyoak said that, after the meeting the claimant and him went outside for a cigarette. The claimant seemed entirely comfortable with the decision and said she thought she would be better off on the phones. At no point did she suggest that Danielle Wynter had forced her to resign or that she had been bullied into her decision.

6.52. On 20 February 2020 the claimant sent an email to HR stating:

> "Due to being involved in a very unpleasant and distasteful meeting with my manager (Danielle Wynter) yesterday on the 19. 02. 2020. I feel I'm in no mental state to perform my duties as required by the company and employed by.
> As you are aware the result of the meeting was that I was forced to resign from my current post of campaign manager to a lesser position of telesales agent. This decision was made under duress in a very fraught and stressful situation for me due to the general environment I have been working in since gaining the post of position.
> Due to the events of today and the obvious disregard of my current medical condition by my manager and co-workers at managerial level I feel I now require the help of my GP whom I will be seeking help from as soon I'm able to arrange an appointment and have my current situation assessed and treated."

6.53. On 27 February 2020 the claimant sent an email to EW in which she stated:

> "As a vulnerable person dealing with severe PTSD, it has taken me decades to build my self-confidence. However the Harassment and Victimisation I've suffered at the hands of my supervisor of late has completely knocked my self-confidence and self-esteem to the point where I have now been referred for counselling by my GP with no realistic timescale of recovery. Therefore I am not in any suitable state to attend any meetings in regards to the allegations I made in an email to you dated 20 February 2020.
>
> I am well aware that Utilita have a disciplinary and grievance process in place and a HR led team. I was verbally informed by my supervisor that as they are in charge of all the Sheffield site they had full authority including the HR team, as well as this my supervisor has also broken confidentiality and ridiculing that employee whilst they were away from the business on maternity leave. Information I should not know anything about nor have to witness ridiculing.
> As a result, I have total loss of confidence and trust in Utilita's grievance process. Which is why I didn't bring this to your attention and felt I had no alternative but to seek legal advice and take the matter further."

6.54.On 2 March 2020 EW wrote to the claimant acknowledging receipt of her emails raising a complaint of harassment and victimisation regarding her mental health. The claimant was invited to an investigation meeting arranged for 12 March 2020 in a café away from the office. It was indicated that it would be helpful if the claimant could bring any specific examples of the actions or behaviour that the claimant had found "harassing towards your mental health"

6.55. On 3 March 2020 the claimant sent an email to EW stating that she was currently unfit mentally and physically to be involved in any work or associated activity.

6.56. On 4 March 2020 Paul Taylor, Head of Telesales wrote to Danielle Wynter asking her to attend an investigation meeting on 6 March 2020.

6.57. On 4 March 2020 the claimant sent an email indicating that she fully intended to take her case before a judge in the employment tribunal and that she had several signed witness statements that would be used in evidence.

6.58. Paul Taylor carried out an investigation. He had meetings with Danielle Wynter, Neil Stancil, DK, KH and Kieran Holyoak.

6.59. On 12 March 2020 EW wrote to the claimant enclosing a copy of the investigation and indicating that Paul Taylor could not find sufficient

grounds to substantiate the claimant's grievance. The investigation report went through 24 terms of reference which were those which the claimant had provided to ACAS which had been forwarded to the respondent.

6.60. On 13 March 2020 the claimant sent an email to EW in which she stated:

> "I fail to understand however, how you're able to investigate a complaint or grievance when I have not formally submitted a request to you to conduct any such meeting.
> At no given point have I requested any investigation to take place, nor have I placed a grievance with yourselves, but instead, have chosen to take this matter further myself down the legal route, due to the seriousness of my allegations.
> Hence my reason wanting to go forward to an employment tribunal.…
> You have sent me out the outcome of an investigation without my presence or any written evidence from myself.
> You then say I have a right to appeal:
> Appeal what I ask?….
> I want to make you aware that my full intentions are to take this matter before the tribunal courts along with my evidence."

6.61. On 18 April 2020 the Claimant sent an Email Indicating that she would like the Respondent to consider making structural adjustments including the possibility of the claimant working from home, a phased return to work starting with initially 4 hours a day for the full two weeks and the possibility of being supervised by most senior manager, Paul Taylor.

6.62. The claimant agreed to attend a capability hearing arranged over video. It was indicated that the complaint against Danielle Wynter had been dealt with in the internal procedure and the respondent saw these issues as being resolved. The claimant was invited to a capability hearing. It was stated that the purpose of the hearing would include the following:

> "To gain an update on how you are feeling
>
> Discussion on the reason for absence, any treatment to date and the outlook
>
> Consider any reasonable adjustments which will assist you in returning to work
> Request for consent to obtain medical information such as a report from your GP or specialist
>
> Agreement on the ways of moving forward"

6.63. On 1 May 2020 EW wrote to the claimant and Neil Stancil thanking them both for their attendance at the capability hearing, enclosing a copy of the notes and outlining the initial agreements in relation to the request for reasonable adjustments which will support the claimant's phased return to work.

6.64. On 11 May 2020 EW sent an email to the claimant setting out the details that would be provided for the claimant to work from home and that Neil Stancil would be her line manager.

6.65. On 14 May 2020 indicating that her GP had recommended that her certificate in respect of fitness to work be extended by a further six weeks and providing authorisation for the respondent to have access to the claimant's GP notes.

6.66. On 17 May 2020 the claimant presented a claim to the Employment Tribunal. She brought claims of disability discrimination.

6.67. On 3 June 2020 the respondent wrote to the claimant's GP asking a number of questions. On 5 June 2020 the claimant's GP wrote to the respondent stating that her current medical problems were complex post-traumatic stress disorder and work stress related problems. The GP indicated that he is not trained in occupational therapy and suggested the respondent to obtain an individual occupational health assessment to ascertain the claimant capacity/ability to return to work.

6.68. On 8 June 2020 EW sent a letter to the claimant indicating the present position enclosing the capability hearing notes and that the respondent had requested a medical report. It was stated that the claimant wished to speak to her councellor and GP before confirming that she would return to work.

6.69. On 18 June 2020 EW sent an email to the claimant stating:

> "How are you?
> We have now received back the medical report from your GP however they are unable to answer queries and advised that we speak with you about attending and Occupational Health appointment.
> I will need to speak to our provider regarding how this will be carried out due to the current climate but for now, it would be helpful to understand whether you would be open to attending this."

6.70. On 18 June 2020 the claimant sent an email to the respondent stating:

> "Presently, my stress levels seem to be rising more and more and I have been advised by my counsellor to concentrate on lowering them. As you can understand anything to do with official meetings has the potential to raise my stress levels even higher therefore I am not in a position to attend an OH meeting at this time. I will re-contact you as soon as I feel strong enough to attend a meeting".

6.71. On 19 June 2020 EW replied as follows:

> "Thank you for your email and I'm sorry to hear that.

> I understand, however this is why I wanted to ask whether you were able to attend such a meeting with a third party provider.
> I'm also conscious it has been seven weeks since our last meeting and that your fitness to work form expires next Thursday so I would like to know if you feel able to attend the next capability hearing next week.
> I think it would be beneficial to understand how you are feeling and discuss the GP report on possible ways of moving forward."

6.72 On 22 June 2020 the respondent wrote to the claimant indicating that it wanted to meet with the claimant to obtain any updates on her health and well-being and whether there are any reasonable adjustments that could be made to facilitate her return to work.

6.73. On 22 June 2020 the claimant sent an email to EW stating:

> "My previous two emails were very clear and I do not know how else to make it clearer to you. It appears that you are just not willing to listen to me therefore unfortunately I will have to repeat myself to you again.
> Presently, my stress levels seem to be rising more and more and I have been advised by my counsellor to concentrate on lowering them. As you can understand anything to do with official meetings has the potential to raise my stress levels even higher. Therefore I am not in a position to attend an OH/capability meeting at this time. I will recontact as soon as I feel strong enough to attend a meeting."

6.74. On 25 June 2020 Andrea Stevens, director of human resources wrote to the claimant stating:

> "I'm sorry to learn that your sickness absence continues due to your current levels of stress.
> I am, however, slightly confused at the tone of your emails to EW. This organisation takes great deal of care about its people and my team are here to support all those that need it, when they need it. As far as I can follow on all the correspondence that you have been sent, EW has been caring, sensitive and kind. However, your responses have been less than courteous. I appreciate that you are feeling unwell at this present time, however, I would ask you to adjust your toning responses. We really do want to help…."

6.75.On 30 June 2020 EW wrote to the claimant inviting her to the next capability hearing "to understand your current health and well-being and what we can do to support your return to work."

6.76. On 16 July 2020 EW sent an email to the claimant indicating that they were sorry they were unable to meet on 6 July 2020 and writing to reschedule the capability hearing on 20 July 2020.

6.77. On 16 July 2020 the claimant sent an email stating that she was not in a position to attend a capability meeting.

6.78. On 17 July 2020 EW wrote to the claimant asking her to consider attending the meeting or reschedule it. It was indicated that they were sympathetic towards her illness but it was not realistic for the sickness -related absence to continue indefinitely and they wished to discuss the claimant's current health and well-being and how they could support her return to work effectively.

6.79. On 21 July 2020 the respondent sent the claimant notes of a capability meeting which had been held in her absence. The claimant responded indicating that she had explained that she was unable to attend a capability hearing. She complained about the respondent ignoring her repeated requests to be given breathing space in respect of her high stress levels and said that she did not believe that she needed any further medical assessment. She enclosed a copy of a medical assessment carried out by the DWP.

6.80. On 8 September 2020 EW sent an email to the claimant indicating she would like to arrange to have a telephone call with her to informally check how she was. The claimant replied that situation not changed she was still suffering from stress and anxiety, especially when contacted by the respondent and she referred to an impending Tribunal against the respondent and that they may have to wait the outcome of that before she reassessed position.

6.81. On 14 September 2020 the respondent wrote to the claimant indicating that they hope to expand the dialogue so they can understand how best to support the claimant.

6.82. On 23 September 2020 the claimant responded to ask if a telephone appointment could be arranged with the Occupation Health Doctor.

6.83. On 12 October 2020 the Occupational Health Psychiatrist provided a report following a telephone consultation with the claimant. This stated:

> "As stated above I have not been able to identify any modifications that would currently enable this employee to return to work. She reports this has currently entered into a legal challenge which is a business matter.
>
> In terms of future employment some of the adjustments cited by her and in my opinion would include being normal business practice which is to have appropriately aligned of management, ability to go to the loo and to use breaks during the day appropriately. In the future she is likely to continue to be impacted by her PTSD even when not depressed. This means that there may be times when she needs to take a period away from her desk to regain focus. This may impact upon her ability to complete all targets. An appropriate considered response may be to review daily business targets and perhaps look at them in the longer term way and perhaps by agreement to reduce thresholds.…
>
> I believe that the complex PTSD is likely to be something that is ongoing and is only likely to be reduced or mitigated by future specialist trauma work. There may be increases related to stress those or the course of the disorder during treatment."

6.84. On 3 October 2020 a Preliminary Hearing took place before Employment Judge Dr Morgan. In the notes of discussion it is stated:

> "Following the previous preliminary hearing, the claimant has lodged further and better particulars. These generated amended Grounds of resistance from the respondent . The claimant has also filed a 'refutation'document. Within the course of the refutation document, it is suggested that the claimant wish to advance a claim of constructive dismissal. Upon discussion with the parties, it is apparent that there has been no dismissal. The claimant remains in the employment of the respondent and has not tendered her resignation. It was explained to the claimant that in those circumstances, the potential for a claim of unfair dismissal does not arise."

6.85. On 29 October 2020 the claimant resigned from her employment with the respondent. In the letter of resignation she stated:

> "Following months of bullying by my manager Danielle Wynter and my subsequent sick leave, my PTSD has now been compounded with a new diagnosis of depression as detailed in your nominated OH Psychiatrist report of 12/10/20.
> The bullying I suffered at the hands of Danielle Wynter and the absolute lack of protection afforded to me by Utilita Telesales Ltd have resulted in a total breach of my trust and confidence in Utilita Telesales Ltd and its internal grievance procedure. Coupled with my recent diagnosis of depression which has been precipitated by the above discrimination, I can no longer foresee a situation where I am able to function as an employee of Utilita Telesales Ltd again or indeed any other company before my retirement age…."

The Law

Disability

7. Section 6 of the Equality Act 2010 states:

> (1) A person (P) has a disability if—
>
> (a) P has a physical or mental impairment, and
>
> (b) The impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

Schedule 1 provides:

Long-term effects

> (1) The effect of an impairment is long-term if—
>
> (a) It has lasted for at least 12 months,

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

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

(2) If an impairment ceases to have a substantial adverse effect on a person's ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur.

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

Section 212 provides that "substantial" means more than minor or trivial.

8. It is accepted by the respondent that the claimant was a disabled person at the material time.

Direct discrimination

9. Section 13 of the Equality Act 2010 states:

(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.

(2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.

(3) If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more faourably than A treats B.

Duty to Make Reasonable Adjustments

10. Section 20 of the Equality Act 2010 states:

"(1) Where this Act imposes a duty to make reasonable adjustments of a person, this Section, Sections 21 and 22 and the applicable schedule apply; and for those purposes a person on whom the duty is imposed is referred to as A.

(2) The duty comprises the following three requirements,

(3) The first requirement is a requirement, where a provision, criterion or practice of A puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to take to avoid the disadvantage.

(4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

(5) The third requirement is a requirement, where the disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid."

11. Paragraph 20 (1) of Schedule 8 provides:

" 20 (1) A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know—

(a) in the case of an applicant or potential applicant, that an interested disabled person is or may be an applicant for the work in question;

(b) In any other case referred to in Part 2 of this Schedule, that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement."

Under sections 20 and 21, discrimination by reason of a failure to comply with an obligation to make reasonable adjustments, the approach to be adopted by the Tribunal was as set out in **Environment Agency v Rowan [2008] ICR 218**, where it was indicated that an Employment Tribunal must identify the provision, criterion or practice ("PCP") applied by or on behalf of the respondent and also the non-disabled comparator/s where appropriate, and must then go on to identify the nature an keep jumping about d extent of the substantial disadvantage suffered by the claimant. Only then would it be in a position to know if any proposed adjustment would be reasonable.

12. Consulting an employee or arranging for an Occupational Health or other assessment of his or her needs is not in itself a reasonable adjustment because such steps do not remove any disadvantage: **Tarbuck v Sainsbury's Supermarkets Ltd [2006] IRLR 664, EAT; Project Management Institute v Latif [2007] IRLR 579, EAT**.

Harassment

13. Section 26 of the Equality Act provides

(1) A person (A) harasses another (B) if--

(a) A engages in unwanted conduct related to a relevant protected characteristic, and

(b) the conduct has the purpose or effect of--

(i) violating B's dignity, or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account--

(a) the perception of B;

(b) the other circumstances of the case;

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

14. The test is part objective and part subjective. It requires that the Tribunal takes an objective consideration of the claimant's subjective perception. was reasonable for the claimant to have considered her dignity to be violated or that it created an intimidating, hostile, degrading, humili my electronic document that just ating or offensive environment.

15. In the case of **Grant v HM Land Registry [2011] IRLR 748** the Court of Appeal said that:

> "Tribunals must not cheapen the significance of the words "intimidating, hostile, degrading, humiliating or offensive environment". They are an important control to prevent trivial acts causing minor upsets being caught by the concept of harassment."

16. In the case of **Richmond Pharmacology v Dhaliwal [2009] IRLR 336** the EAT stated

> "We accept that not every racially slanted adverse comment or conduct may constitute the violation of a person's dignity. Dignity is not necessarily violated by things said or done which are trivial or transitory, particularly if it should have been clear that any offence was unintended. 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 cognate legislation to which we have referred), it is also important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every unfortunate phrase."

Victimisation

17. Section 27 of the Equality Act provides as follows:-

(1) A person (A) victimises another person (B) if A subjects B to a detriment because--

(a) B does a protected act, or

(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act--

(a) Bringing proceedings under this Act;

(b) Giving evidence or information in connection with proceedings under this Act;

(c) Doing any other thing for the purposes of or in connection with this Act;

(d) Making an allegation (whether or not express) that A or another person has contravened this Act.

(3) Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

(4) This section applies only where the person subjected to a detriment is an individual.

(5) The reference to contravening this Act includes a reference to committing a breach of an equality clause or rule.

18. In a victimisation claim there is no need for a comparator. The Act requires the Tribunal to determine whether the claimant had been subject to a detriment because of doing a protected act. As Lord Nicholls said in **Chief Constable of the West Yorkshire Police v Khan [2001] IRLR 830**:-

> "The primary objective of the victimisation provisions ... is to ensure that persons are not penalised or prejudiced because they have taken steps to exercise their statutory right or are intending to do so".

19 . The Tribunal has to consider (1) the protected act being relied on; (2) the detriment suffered; (3) the reason for the detriment; (4) any d, efence; and (5) the burden of proof. To benefit from protection under the section the claimant must have done or intended to or be suspected of doing or intending to do one of the four kinds of protected acts set out in the section. The allegation relied on by the claimant must be made in good faith. It is not necessary for the claimant to show that he or she has a particular protected characteristic but the claimant must show that he or she has done a protected act. The question to be asked by the tribunal is whether the claimant has been subjected to a detriment. There is no definition of detriment except to a very limited extent in Section 212 of the Act which says, "Detriment does not ... include conduct which amounts to harassment". The judgment in **Shamoon v Chief Constable of the Royal Ulster Constabulary** [2003] IRLR 285 is applicable.

20 . The protected act must be the reason for the treatment which the claimant complains of, and the detriment must be because of the protected act. There must be a causative link between the protected act and the victimisation and accordingly the

claimant must show that the respondent knew or suspected that the protected act had been carried out by the claimant, see **South London Healthcare NHS Trust v Al-Rubeyi** EAT0269/09. Once the Tribunal has been able to identify the existence of the protected act and the detriment the Tribunal has to examine the reason for the treatment of the claimant. This requires an examination of the respondent's state of mind. Guidance can be obtained from the cases of **Nagarajan v London Regional Transport** [1999] IRLR 572 and **Chief Constable of West Yorkshire Police v Khan** [2001] IRLR 830, and **St Helen's Metropolitan Borough Council v Derbyshire** [2007] IRLR 540. In this latter case the House of Lords said there must be a link in the mind of the respondent between the doing of the acts and the less favourable treatment. It is not necessary to examine the motive of the respondent see **R (on the application of E) v Governing Body of JFS and Others** [2010] IRLR 136. In **Martin v Devonshires Solicitors** EAT0086/10 the EAT said that:

> "The question in any claim of victimisation is what was the "reason" that the respondent did the act complained of: if it was, wholly or in substantial part, that the claimant had done a protected act, he is liable for victimisation; and, if not, not. In our view there will in principle be cases where an employer had dismissed an employee (or subjected him to some other detriment) in response to a protected act (say, a complaint of discrimination) but he can, as a matter of common sense and common justice, say that the reason for dismissal was not the act but some feature of it which could properly be treated as separable."

21. In establishing the causative link between the protected act and the less favourable treatment the Tribunal must understand the motivation behind the act of the employer which is said to amount to the victimisation. It is not necessary for the claimant to show that the respondent was wholly motivated to act as he did because of the protected acts, **Nagarajan v Agnew** [1994] IRLR 61. In **Owen and Briggs v James** [1982] IRLR 502 Knox J said:-

> "Where an employment tribunal finds that there are mixed motives for the doing of an act, one or some but not all of which constitute unlawful discrimination, it is highly desirable for there to be an assessment of the importance from the causative point of view of the unlawful motive or motives. If the employment tribunal finds that the unlawful motive or motives were of sufficient weight in the decision making process to be treated as a cause, not the sole cause but as a cause, of the act thus motivated, there will be unlawful discrimination."

22. In **O' Donoghue v Redcar and Cleveland Borough Council** [2001] IRLR 615 the Court of Appeal said that if there was more than one motive it is sufficient that there is a motive that there is a discriminatory reason, as long as this has sufficient weight.

Burden of Proof

23. Section 136 of the Equality Act 2010 states:

> "(1) This Section applies to any proceedings relating to a contravention of this Act.
>
> (2) If there are facts from which the court could decide, in the absence of any other explanation, that a person (A) contravened the provision concerned, the court must hold that the contravention occurred.
>
> (3) But sub-Section (2) does not apply if (A) shows that (A) did not contravene the provision.
>
> (4) The reference to a contravention of this Act includes a reference to a breach of an equality clause or Rule.
>
> (5) This Section does not apply to proceedings for an offence under this Act.
>
> (6) A reference to the court includes a reference to –
>
> (a) An Employment Tribunal."

24. Guidance has been given to Tribunals in a number of cases. In **Igen v Wong [2005] IRLR 258** and approved again **in Madarassy v Normura International plc [2007] EWCA 33.**

25. To summarise, the claimant must prove, on the balance of probabilities, facts from which a Tribunal could conclude, in the absence of an adequate explanation that the respondent had discriminated against her. If the claimant does this, then the respondent must prove that it did not commit the act. This is known as the shifting burden of proof. Once the claimant has established a prima facie case (which will require the Tribunal to hear evidence from the claimant and the respondent, to see what proper inferences may be drawn), the burden of proof shifts to the respondent to disprove the allegations. This will require consideration of the subjective reasons that caused the employer to act as he did. The respondent will have to show a non-discriminatory reason for the difference in treatment. In the case of **Madarassy** the Court of Appeal made it clear that the bare facts of a difference in status and a difference in treatment indicate only a possibility of discrimination: "They are not, without more, sufficient material from which a tribunal 'could conclude' that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination".

26. In the case of **Strathclyde Regional Council v Zafar [1998] IRLR 36** the House of Lords held that mere unreasonable treatment by the employer "casts no light whatsoever" to the question of whether he has treated the employee "unfavourably".

27. In **Law Society and others v Bahl [2003] IRLR 640** the EAT agreed that mere unreasonableness is not enough. Elias J commented that

> "all unlawful discriminatory treatment is unreasonable, but not all unreasonable treatment is discriminatory, and it is not shown to be so

> merely because the victim is either a woman or of a minority race or colour … Simply to say that the conduct was unreasonable tells nothing about the grounds for acting in that way … The significance of the fact that the treatment is unreasonable is that a tribunal will more readily in practice reject the explanation given for it than it would if the treatment were reasonable."

28. A Tribunal must also take into consideration all potentially relevant non-discriminatory factors that might realistically explain the conduct of the alleged discriminator.

29. In **Project Management Institute v Latif (2007) IRLR 579** The EAT gave guidance as to how Tribunals should approach the burden of proof in failure to make reasonable adjustments claims. The burden of proof only shifts once the claimant has established not only that the duty to make reasonable adjustments has arisen, but also that there are facts from which it could reasonably be inferred, in the absence of an explanation, that it has been breached. It was noted that the respondent is in the best position to say whether any apparently reasonable amendment is in fact reasonable given its own particular circumstances. Therefore, the burden is reversed only once a potential reasonable adjustment has been identified. It will not be in every case that the claimant would have to provide the detailed adjustment that would have to be made before the burden shifted, but "it would be necessary for the respondent to understand the broad nature of the adjustment proposed and to be given sufficient detail to enable him to engage with the question of whether it could reasonably be achieved or not". The proposed adjustment might well not be identified until after the alleged failure to implement it, and in exceptional cases, not even until the Tribunal hearing.

30. In **Romec v Rudham (2007) All ER 206** the EAT held that if the adjustment sought would have had no prospect of removing the substantial disadvantage then it could not amount to a reasonable adjustment. However, if there was a real prospect of removing the disadvantage it may be reasonable. In **Cumbria Probation Board v Collingwood (2008) All ER 04** the EAT stated "it is not a requirement in a reasonable adjustment case that the claimant prove that the suggestion made will remove the substantial disadvantage" the finding of a failure to make a reasonable adjustment which effectively gave the claimant a chance of getting better through a return to work was upheld.

31. In **Leeds Teaching Hospital NHS Trust v Foster UKEAT/0552/10/JOJ** the EAT held that when considering whether an adjustment is reasonable it is sufficient for a Tribunal to find that there would be a prospect of the adjustment removing the disadvantage.

32. In **Noor v Foreign and Commonwealth Office 2011 ICR 695** Richardson J stated "Although the purpose of a reasonable adjustment is to prevent a disabled person from being at a substantial disadvantage, it is certainly not the law that an adjustment will only be reasonable if it is completely effective"

Constructive dismissal

33. Section 95(1)(c) of the Employment Rights Act defines constructive dismissal as arising when "the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate without notice by reason of the employer's conduct". The conduct must amount to a breach of an express or implied term of the contract of employment which is of sufficient gravity to entitle the employee to terminate the contract in response to the breach. In this case, the breach of contract relied upon by the claimant is a breach or breaches of the implied term of trust and confidence. That is expanded upon in a well known passage from the judgment of the EAT in **Woods v WM Car Services (Peterborough) Limited [1981] IRLR page 347**:-

> "It is clearly established that there is implied in the contract of employment a term that the employers will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. Any breach of this implied term is a fundamental breach amounting to a repudiation of the contract since it necessarily goes to the root of the contract. To constitute a breach of this implied term, it is not necessary to show that the employer intended any repudiation of the contract. The employment tribunal's function is to look at the employer's conduct as a whole and determine whether it is such that its cumulative effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it".

34. Next, there is the significance of what is colloquially called a final straw. This was considered in the Court of Appeal judgment in **London Borough of Waltham Forest v Omilaju [2005] IRLR page 35**:-

> "In order to result in a breach of the implied term of trust and confidence, a final straw, not itself a breach of contract but must be an act in a series of earlier acts which cumulatively amount to a breach of the implied term. The act does not have to be of the same character as the earlier acts. Its essential quality is that, when taken in conjunction with the earlier acts on which the employee relies, it amounts to a breach of the implied term of trust and confidence. It must contribute something to that breach, although what it adds may be relatively insignificant so long as it is not utterly trivial. The final straw, viewed in isolation, need not be unreasonable or blameworthy conduct. However, an entirely innocuous act on the part of the employer cannot be a final straw, even if the employee genuinely, but mistakenly, interprets the act as hurtful and destructive of his trust and confidence in the employer. The test of whether the employee's trust and confidence has been undermined is objective".

35. Further clarification of the objective nature of the test is provided in the Court of Appeal judgment in **Bournemouth University Higher Education Corporation v Buckland [2010] IRLR page 45**:-

> "The conduct of an employer who is said to have committed a repudiatory breach of the contract of employment is to be judged by an objective test rather than a range of reasonable responses test. Reasonableness may be one of the tools in the employment tribunal's factual analysis in deciding whether there has been a fundamental breach but it cannot be a legal requirement".

36. There is also an issue surrounding the circumstances of the treatment of the claimant's grievance by the respondent. As the EAT put it in **WA Goold (Pearmak) Limited v McConnell & Another [1995] IRLR page 516**:-

> "There is a fundamental implied term in a contract of employment that an employer will reasonably and promptly afford a reasonable opportunity to its employees to obtain regress of any grievance they may have".

37. A further helpful passage concerning treatment of grievances to be found in the judgment of Judge Richardson in the EAT in **Blackburn v LD Stores Limited [2013] IRLR page 846 paragraph 25**:-

> "In our judgment failure to adhere to a grievance procedure is capable of amounting to or contributing to such a breach. Whether in any particular case it does so is a matter for the tribunal to assess. Breaches of grievances procedures come in all shapes and sizes. On the one hand, it is not uncommon for grievance procedures to lay down quite short timetables. The fact that such a timetable is not met will not necessarily contribute to, still less amount to a breach of the term of trust and confidence. On the other hand, there may be a wholesale failure to respond to a grievance. It is not difficult to see that such a breach may amount to a contributory breach of the implied term of trust and confidence. Where such an allegation is made, the tribunal's task is to assess what occurred against the **Malik** test".

38. In **Meikle v Nottinghamshire County Council [2005] ICR page 1**, Keane LJ said:-

> "The Appeal Tribunal pointed out that there may well be concurrent causes operating on the mind of an employee whose employer has committed fundamental breaches of contract and that the employee may leave because of both those breaches and another factor, such as the availability of another job. It is suggested that the test to be applied was whether the breach or breaches were the 'effective cause' of the resignation. I see the attractions of that approach but there are dangers in getting drawn too far in questions about the employee's motives. It must be remembered that we are dealing here with a contractual relationship, and constructive dismissal is a form of termination of contract by repudiation by one party which is accepted by the other … The proper approach therefore, once a repudiation of the contract by the employer has been established, is to ask whether the employee has accepted that repudiation by treating the contract of employment as at an end. It must be in response to the repudiation, but the fact that the employee also objected to the other actions or inactions of the employer, not amounting to a breach of contract, would not vitiate the circumstances of the repudiation. It follows that, in the

present, it was enough that the employee resigned in response at least in part, to fundamental breaches of contract by the employer".

39. The test was put in slightly different terms in an EAT case, **Wright v North Ayrshire Council UKEATS 0017/13 (27 June 2013)**, in which Langstaff P endorsed a test first propounded by Elias P in **Abbey Cars West Horndon Limited v Ford UKEAT 0472/07**:-

> "The crucial question is whether the repudiatory breach played a part in the dismissal … it follows that once a repudiatory breach is established, if the employee leaves and even if he may have done so for a whole host of reasons, he can claim that he has been constructively dismissed if the repudiatory breach is one of the factors relied upon".

40. It is to be noted that the proper conduct of a grievance process is not capable of curing an earlier breach of the term of trust and confidence (if it has occurred), even if it upholds the grievance in the claimant's favour. Still less does the fact that the claimant has chosen to go down the grievance route before resigning, of itself amount to an affirmation of the contract? This is confirmed by a passage in the judgment in the Court of Appeal in the **Buckland** case, see in particular at paragraph 44 in the judgment of Lord Justice Sedley:-

> "Albeit with some reluctance, I accept that if we were to introduce into employment law the doctrine that a fundamental breach, if curable and if cured, takes away the innocent party's option of acceptance, it could only be on grounds that were capable of extension to other contracts, and for reasons I have given I do not consider that we would be justified in doing this. This does not mean however that tribunals in fact cannot take a reasonably robust approach to affirmation:-
>
> > 'A wronged party, particularly if it fails to make its position entirely clear at the outset, cannot ordinarily expect to continue with the contract for very long without losing the option of termination, at least where the other party has offered to make suitable amendments'".

41. The Tribunal had the benefit of written and oral submissions from Mr Hunter on behalf of the claimant and Ms Robinson on behalf of the respondent. They are not set out in detail but both parties can be assured that the Tribunal has considered all the points made and all the authorities relied upon, even where no specific reference is made to them.

Conclusions

42. The claimant's evidence was difficult, she was extremely emotional. She broke down and was unable to continue answering questions on a number of occasions. She tended to answer straightforward questions by giving very lengthy responses setting out her case. Her evidence was inconsistent and contradictory

43. She gave evidence that she was bullied from the start of her employment. When referred to the coaching documents from when she had started as a telesales agent

and she then went back to her original claim that the bullying commenced when she was appointed as Campaign Manager. She was unable to provide any evidence with regard to direct discrimination with regard to comparators or, in respect of victimisation how any treatment was linked to a protected act. The cards messages and emails which the Tribunal was provided with showed on multiple occasions that the claimant appreciated the support she was provided with by Danielle Wynter and showed an entirely supportive friendship.

44. The evidence of Danielle Wynter was disrupted on a number of occasions due to connection problems, and the nature of the questioning by Mr Hunter , iwhich made it difficult for the witness to answer. He often made a statement based on facts he contended that had been proven and then went on to a second part of the question such as asking that all of those omissions amounted to discrimination. It was not possible for the witness to answer such questions. Danielle Wynter's evidence was relatively clear and straightforward although the questioning meant that she struggled at times. She did breakdown in tears one stage and was clearly affected by the matters in this case and her own mental health issues.

45. Taking each of the agreed identified issues as follows:

(once again, using the original numbering)

Direct Disability Discrimination

1. Was the Claimant subjected to less favourable treatment by the Respondent by:

1.1. questioning the Claimant's suitability for her role on 3rd December 2019;

1.2. accusing the Claimant of inappropriate behaviour at the Christmas Party on 9th December 2019;

1.3. repetition of the accusation of inappropriate behaviour at the Christmas Party on 11th December 2019;

1.4. requiring the Claimant to apologise for the sexist behaviour of a fellow employee on a date in January 2020;

1.5. forcing the Claimant to resign from the role of Campaign Manager on 19th February 2020.

46. The Tribunal has considered these issues thoroughly. There was a conflict of evidence with regard to each of these matters. It is clear that there was a difficult conversation on 3 December 2019. The claimant showed Danielle Wynter the report from the psychiatrist. There was a long conversation. There was talk about attendance at church and beliefs of both the claimant and Danielle Wynter. The claimant said that Danielle Wynter made remarks about "where's your head at?" and said that "you sound depressed and if you are depressed you may never recover". this was denied by Danielle Wynter.

47. The two statements provided by the witnesses for the claimant were remarkably similar with regard to the quotes and punctuation. The Tribunal was suspicious of the evidence of these witnesses who were both close friends of the claimant and did not witness any of the events. The evidence was entirely hearsay and recounted the claimant's version of events.

48. There was clear evidence that the claimant and Danielle Wynter had a close relationship and exchanged extremely friendly messages. The Tribunal does not accept that the text messages were extreme examples of the claimant "grovelling". The claimant was appointed to the role of Campaign Manager with the encouragement of Danielle Wynter who scored her higher than she scored any of the other candidates and congratulated the claimant on "smashing it".

49. The evidence of the respondent's witnesses with regard to the events of 19 February 2020 were clear and, in particular, Kieran Holyoak gave persuasive evidence about the claimant being happy about her decision to return to the position of telesales agent. The claimant had informed him that she found the campaign manager role really stressful and she missed the bonus she received on the phones. He said that when they went for a cigarette together and the claimant was entirely comfortable with the decision, she thought she would be better off on the phones and at no point suggested that Danielle Winter forced her to resign or that she had been bullied into her decision.

50. Neil Stancill also gave evidence about the meeting on 19 February 2020 and said that that the claimant had said to the campaign managers that she missed being a telesales agent and she missed the bonus she was able to earn. The claimant was going to join his team. The claimant had made her decision and they understood her reasons.

2. The Claimant relies on two comparators: Denis Kennedy and Kieran Hollyoak. The Claimant avers that the treatment was meted out by Danielle Wynter.

51. The Tribunal is satisfied that there was no evidence that the claimant was treated less favourably than these two comparators

3. Was any such less favourable treatment because of her disability?

52. There was no evidence that the comparators or any other employee would have been treated any differently to the way the claimant was treated and nothing from which it could be inferred that there was less favourable treatment because of the claimant's disability. The burden of proof does not shift to the respondent.

<u>Failure to make Reasonable Adjustments</u>

4. What was the provision, criterion or practice applied to the Claimant?

53. There was no provision, criterion or practice identified.

5. Did any such provision, criterion or practice put the Claimant at a substantial disadvantage because of her disability? What was that substantial disadvantage?

54. The claimant was successful in the role of Telesales Agent and did not request or require any adjustments to undertake that role.

6. Was it a reasonable adjustment to:

a) establish particulars of her disability following the filling in of the starter pack;

b) arrange an occupational health assessment for the Claimant;

c)refer the Claimant to a psychologist;

d) arrange a welfare meeting for the Claimant.

55. Once again, the claimant was successful in the role of telesales agent and required no reasonable adjustment to undertake that role.

56. The claimant struggled with the role of Campaign Manager. However, it was made clear by Danielle Wynter that she was still new to the role and there were numerous supportive text messages sent.

57. It was submitted by Ms Robinson, on behalf of the respondent, that the argument put forward by the claimant's representative appeared to be that the respondent should have entirely ignored the claimant's own wishes, overridden her choices and, against her will, established the particulars of her disability and carried out an occupational health assessment (with a psychiatrist), referred her to a psychologist and arranged a welfare meeting for her. The claimant's representative appeared to say that the claimant was unable to make her own sensible choices as if she lacked capacity to do so. The respondent refuted that approach. There was no medical evidence whatsoever that suggested that the claimant was unable to make informed choices that suggested she lacked mental capacity. It was disputed that it would be appropriate to assume that those with mental health conditions are unable to make appropriate choices and thereby to ignore them.

58. The claimant did not wish to go to a formal welfare meeting and chose to meet with Danielle Wynter who was asked not to take any notes and not to discuss matters with HR. The claimant was given the opportunity to speak to HR but did not wish to do so. It was submitted by Ms Robinson that, when an agent is doing well in their role, has made clear that discussing her mental health causes her extreme distress, that the matters are personal and she does not wish to have the details recorded anyway, it would be wholly inappropriate to insist that she should be referred to an Occupational Health Psychiatrist or Psychologist – what would be the purpose of this?

59. The Tribunal accepts these submissions, there was no duty to make reasonable adjustments and there was no failure to make reasonable adjustments.

Victimisation

7. Did the Claimant make a protected act relating to the less favourable treatment of her female colleague (Annie Patterson)?

60. There was no evidence that the claimant made a protected act. The claimant confirmed that she did not tell Danielle Wynter about the sexist comment.

8.Did Ms Wynter subject the Claimant to detriment by being unduly critical of the Claimant, requiring the Claimant to apologise to the maker of the sexist remark?

61. The Tribunal is satisfied that the claimant was not required to apologise to the maker of the sexist remark. She was told that she had to be more professional and that she had overstepped the mark and made an inappropriate remark by informing an agent that another manager had done similar things in the past. It was suggested that she should have a chat with that manager.

9.Was any such detriment because the Claimant had undertaken a protected act?

62. The Tribunal is satisfied that there was no protected act and that the suggestion that she should have a chat with the other manager was not a detriment.

Harassment

10 .Did Ms Wynter subject the Claimant to unwanted conduct which had the purpose or effect of violating the Claimant's dignity, creating an intimidating, hostile, degrading or humiliating or offensive environment by:

10.1. questioning the Claimant's suitability for her role on 3rd December 2019;

10.2 accusing the Claimant of inappropriate behaviour at the Christmas Party on 9th December 2019;

10.3 repetition of the accusation of inappropriate behaviour at the Christmas Party on 11th December 2019;

10.4 requiring the Claimant to apologise for the sexist behaviour of a fellow employee on a date in January 2020;

10.5 on 30th January 2020 Danielle Wynter insisted on the achievement of management targets without making adjustments to accommodate disability.

63. The Tribunal is not satisfied that the claimant was questioned about her suitability for the role on 3 December 2019 or that she was accused of inappropriate behaviour at the Christmas party on 9 or 11 December 2019.

64. As set out above, the Tribunal is satisfied that the claimant was not required to apologise for the sexist behaviour of a fellow employee.

65. The recorded discussion was with regard to the question of coaching and getting claimant's staff to perform. It was made clear that the claimant was performing adequately as a Campaign Manager. There were very supportive

text messages. The claimant felt she was struggling and received feedback with regard to coaching and the perception that she had gone beyond the professional boundaries between a manager and an agent and had indicated that another manager had done things like that before.

> 10.6. failing to announce in public that the Claimant had passed her probation;

66. The claimant's promotion had been announced and she had been provided with a bottle of champagne. With regard to passing her promotion, Danielle Wynter had been promoted to Call Centre Manager and the announcement of the claimant passing her probation would normally have been made by her line manager. At the time, the claimant had been promoted and she would have made the announcement for members of her team who had passed their probation. Obviously, she could not announce passing her own probation and, in the circumstances, the Tribunal is not satisfied that there was any behaviour that would amount to unwanted conduct related to the claimant's disability which had the purpose or effect of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.

> 10.7. forcing the Claimant to resign from the role of Campaign Manager on 19th February 2020.

67. The Tribunal is not satisfied that the claimant was forced to resign from the role of Campaign manager on 19 February 2020. As set out above, this was her decision. She had struggled to cope with working as a Campaign Manager in the respondent's employment.

> 10.8. HR drafting a letter confirming demotion without speaking to the Claimant or checking her welfare following which Danielle Wynter announced to the business floor that I had been demoted.

68. Danielle Wynter had suggested that the claimant should wait until the following Monday before resigning from her role of Campaign Manager but the claimant insisted on it being done straightaway. Once again, it was the claimant's decision that it should be dealt with immediately.

> 11.Was any such conduct related to the Claimant's disability?

69. The Tribunal is not satisfied that the claimant was subject to any conduct related to her disability.

<u>Constructive Unfair Dismissal</u>

> 12. Was the Claimant dismissed?
>
> 12.1 Did the Respondent do the following things after she started her sickness absence (from 20 February 2020 to 29 October 2020):
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> > 12.1.1 absence of welfare calls and/or visits during her absence;
> >
> > 12.1.2. the tone and content of emails and messages between her and members of the Respondent's HR function on 20th and 2 6th February 2020;

12.1.3. sending a recorded delivery letter dated 2nd March 2020 inviting the Claimant to participate in an internal investigation;

12.1.4. failing to pay a bonus in March 2020;

12.1.5. sending an email dated 6th March 2020 explaining the reduced pay;

12.1.6. sending a letter dated 12th March 2020 explaining that an internal investigation has been concluded and that the allegations had not been proved;

12.1.7. sending an email dated 20th April 2020 inviting the Claimant to a Capability Hearing to discuss request for structural adjustment and allegations;

12.1.8. sending an email dated 23rd April 2020 accusing the Claimant of a refusal to cooperate with the internal investigation and stating no longer aware of outstanding allegations as grievances had been dealt with;

12.1.9. sending an email dated 11th May 2020 confirming the provisional agreement reached at the Capability Hearing and questioning what was meant by the phrase “what has happened to me before”;

12.1.10. Sending an email dated 8th June 2020 re-enclosing the summary of the minutes of the Capability hearing of 30th April 2020 and the subsequent conversations and confirming that a letter had been sent to the Claimant’s GP;

12.1.11. sending an email dated 18th June 2020 stating that a report had been received from the Claimant’s GP and that they were not satisfied with the answers;

12.1.12. sending an email dated 19th June 2020 requesting a new Capability Hearing;

12.1.13. sending an email dated 22nd June 2020 acknowledging severe stress, insisting on a new Capability Hearing and enclosing the Capability Policy;

12.1.14. Sending an email dated 25th June 2020 from Andrea Stevens asking the Claimant to adjust her tone and putting pressure on the Claimant to attend an Occupational Health Assessment and a new Capability Hearing;

12.1.15. Sending an email dated 30th June 2020 requesting a new Capability Hearing and enclosing the Capability Policy;

12.1.16. sending an email dated 30th June 2020 enclosing a link to a Microsoft Teams Capability Hearing;

12.1.17. sending an email dated 16th July 2020 requesting a new Capability Hearing;

12.1.18. sending an email dated 17th July 2020 giving a deadline to re-schedule the Capability Hearing;

12.1.19. Sending an email dated 21st July 2020 informing the Claimant that the Capability hearing had been conducted in her absence and giving a deadline to respond to the minutes;

12.1.20. sending an email dated 8th September 2020 requesting an informal phone call to check on the Claimant's welfare***;***

12.1.21. an email being sent on 15th October 2020 from the Occupational Health Psychiatrist diagnosing the Claimant with Depression.

70. The Tribunal has considered each of these allegations carefully and is satisfied that they do not, individually or collectively amount to a repudiatory breach of contract.

13. Did the matters alleged breach the implied term of mutual trust and confidence?

13.1. The Tribunal will need to decide:

13.1.1. whether the Respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent

13.1.2. whether it had reasonable and proper cause for doing so.

71. The claimant and her representative referred to a distinction between welfare meetings and capability hearings. Mr Hunter referred to the use of capability as heavy-handed and a legal way of managing people out of the business. This was a misunderstanding of the true position. The Tribunal is satisfied that the respondent was seeking to support the claimant in accordance with the respondent's Capability Policy and Procedure (Sickness Absence).

72. The claimant said the respondent just left her to rot but also complained about the amount of contact with her from when she went off sick on 20 February 2020.

73. The Tribunal has considered each of the issues referred to as amounting to conduct which would establish a breach of the implied term of mutual trust and confidence. There were persistent requests for the claimant to attend capability meetings and it was made clear that these were in order that the respondent could consider any reasonable adjustments and support the claimant in returning to work. The Tribunal is satisfied that the contents of the emails and letters made it clear that the respondent was seeking to understand the claimant's medical condition and consider reasonable adjustments which would assist the claimant in returning to work. There was no evidence that this was a

device to manage the claimant out of the business. They were not individually or cumulatively breaches of the contract of employment.

74. It is notable that there was an agreement reached on 11 May 2020 that the claimant could work from home and have a phased return to work. Unfortunately, the claimant's sickness was then extended by a further six weeks.

75. The Tribunal is satisfied that sending the Occupational Health report of 12 October 2020 was not a breach of contract. The claimant referred to that as the final straw. It was submitted by Ms Robinson, on behalf of the respondent, that it was not an action by the respondent calculated or likely to undermine mutual trust and confidence. It was diagnosis of a subsisting state of affairs by a professional third-party. The Tribunal accepts this submission. There was no breach of the implied contractual term of mutual trust and confidence.

76. The claimant also said that the email of 25 June 2020 from Andrea Stevens was the last straw. That was four months before the claimant resigned. That email made it clear that the respondent wanted to help the claimant and to urge her to see the Occupational Health team. There had been a planned return to work the previous month.

> 13.2. Was the alleged breach a fundamental one? The Tribunal will need to decide whether the breach was so serious that the Claimant was entitled to treat the contract as being at an end;

77. The Tribunal has found that there was no breach of contract.

> 13.3. Did the Claimant resign in response to the breach? The Tribunal will need to decide whether the breach of contract was a reason for the Claimant's resignation;

78. There was no breach of contract entitling the claimant to resign and claim constructive dismissal.

> 13.4. Did the Claimant affirm the contract before resigning? The Tribunal will need to decide whether the Claimant's words or actions showed that they chose to keep the contract alive even after the breach.

79. The claimant resigned shortly after a Preliminary Hearing in which the Employment Judge considered a 'refutation'document which suggested that the claimant wished to advance of a claim constructive unfair dismissal and she was informed that, as she remained in the respondent's employment, there was no potential for a claim of unfair dismissal. It was following this information given at the Preliminary Hearing that the claimant resigned. It was alleged that the letter from Andrea Stevens was the final straw. If so, the claimant left it four months before she resigned and, although there were difficulties in the relationship, it is clear that the claimant remained in employment and had affirmed her contract.

80. The Tribunal has an enormous amount of sympathy with the claimant. However, her health problems meant that she was unable to cope with the normal vicissitudes of working as a manager in a high-pressure sales environment.

81. In the circumstances, the claims of disability discrimination, victimisation and constructive unfair dismissal are not well-founded and dismissed.

Employment Judge Shepherd
27 September 2021