EMPLOYMENT TRIBUNALS

Claimant: **Jocelyn Lodge**

Respondent: **The Chief Constable of West Yorkshire Police**

Heard at: **Leeds**
On: **13, 20, 21, 23 and (deliberations only) 24 June 2022**

Before: **Employment Judge Maidment**
Members: **Mr W Roberts**
Mr M Brewer

Representation
Claimant: **In person**
Respondent: **Mr S Mallet, Counsel**

RESERVED JUDGMENT

1. The claimant was not dismissed. Her claim of unfair dismissal fails and is dismissed.

2. The claimant's claim of indirect sex discrimination fails and is dismissed.

3. The claimant's complaints of disability discrimination (failure to make reasonable adjustments) and disability related harassment fail and are dismissed.

REASONS

Issues

1. The claimant resigned from her employment as a civilian Prosecution Team Leader ("PTL") with effect from 3 January 2021 and brings a claim of constructive unfair dismissal. She maintains that a series of events amounted to a breach of the implied term of trust and confidence. The claimant provided further particulars of those acts during the case management process and they were set out in a table annexed to a summary of a case management hearing before Employment Judge Deeley on 10 November 2021 as follows:

1.1. Dave Roberts failed to prevent bullying and failed to act appropriately on the allegation around August 2017
1.2. lack of flexibility and support with the requirement of the rota, with bullying being allowed around the issue covering the period from 2018 – 2020
1.3. unfair criticism and bullying by colleagues regarding a return to work following stressful events, not addressed by line manager in May 2019
1.4. bullying from colleagues highlighted in meetings with HR and occupational health creating ongoing stress and line manager failing to act in September 2019
1.5. unreasonable and unfounded allegation of poor performance by a colleague (Emma Colman) in May 2020
1.6. failure to provide recognition, to provide support or career progression, to follow policy with regard to any professional development and refusal of training from 2017 – 2020
1.7. failure to adequately investigate or act upon complaints and formal grievance culminating in an unreasonable time delay from formal submission of grievance in September 2020 – an allegation covering the period from 2017 – 2020.

2. The claimant then brings a number of separate complaints of unlawful discrimination.

3. Firstly, she brings a complaint of indirect sex discrimination reliant on the respondent having a provision, criterion or practice of requiring the claimant and her colleagues to work from the office and/or work at certain times of the day in order to cover the work rota. It is said that this put women at a particular disadvantage when compared with men in that more women than men have a greater share of childcare responsibilities. The claimant says that she was put at that individual disadvantage. The respondent accepted that it had the aforementioned requirement, but did not accept that any group or individual disadvantage was caused. It maintained that, in any event, it acted proportionately in seeking to achieve a legitimate aim of providing a comprehensive and effective prosecution team service.

4. It is the claimant's case, as part of her complaint of constructive unfair dismissal, that other PTLs organised the rota to work from the office such that the claimant was expected to work on days and/or at times when she did not have alternative childcare arrangements and that management did not support the claimant to resolve those issues.

5. The claimant, it is accepted by the respondent, was at all material times a disabled person by reason of her impairment of depression and anxiety. The respondent accepts that it had knowledge of the claimant's disability status from 12 February 2019.

6. The claimant brings a complaint alleging a failure on the respondent's part to comply with its duty to make reasonable adjustments. The PCP relied upon is

the requirement that the claimant attend the office for 3 days or more per week from January to April 2020. That is said to have put the claimant at a substantial disadvantage compared to those who do not suffer from the claimant's disability in that the requirement to attend the office exacerbated the claimant's disability and her existing symptoms, including her anxiety. As a reasonable adjustment, the claimant maintains that the respondent should have agreed that the claimant could work from home for 2 – 3 days per week. The claimant maintains that this was the reasonable adjustment proposed in an occupational health report.

7. Finally, the claimant brings a claim of disability-related harassment in that on 24 June 2020 false allegations were made to the respondent's Professional Standards Department "at a meeting between the claimant and Mr Key". The allegations were raised by Mr Key, as her line manager, knowing of the claimant's disability and how issues at work had exacerbated her condition.

8. A further complaint of disability related harassment relating to Ms Colman raising an allegation of poor performance in an email of 9 April 2020 had been withdrawn prior to the commencement of this final hearing.

Evidence

9. The tribunal had before it an agreed bundle of documents numbering some 479 pages. Having identified the issues, in discussion with the parties, as set out above, the tribunal took some time to privately read the witness statements exchanged between the parties and relevant documents so that when each witness came to give their evidence they could confirm their statements and, subject to brief supplemental questions, then be cross examined on them.

10. The claimant commenced giving her evidence on Monday 13 June. It was anticipated that her cross examination would be completed the following day. However, the tribunal was notified by email on the evening of 13 June that the claimant was unwell, with an intimation that she was seeking an adjournment of this hearing. The nature of the claimant's sickness was, however, unclear and its likely duration. Employment Judge Maidment briefly explained the situation to Mr Mallett on his attendance at the tribunal on Tuesday 14 June and that the hearing was adjourned for that day pending further enquiries as to the claimant's situation. The claimant subsequently informed the tribunal that she did not believe she would be fit to attend until Friday 17 June. The tribunal had already in fact explained that it was not able to sit on that date due to the unavailability of one of its non-legal members. The tribunal took the decision then to adjourn the hearing until Monday 20 June.

11. Due to a rail strike from Tuesday 21 June the tribunal had sought the parties views as to whether the hearing could be conducted on that day and for the remainder of that week by videoconferencing. The claimant in fact on Thursday 16 and Friday 17 June emailed the tribunal asking that the hearing be by video from and including Monday 20 June. This correspondence had not been brought to the attention of Employment Judge Maidment until the morning of

Monday 20 June. Whilst the claimant had not been told that the tribunal agreed to her request, she had decided not to attend the Leeds Employment Tribunal in any event, but was prepared to do so by way of a video link. Ultimately, there was no objection from the respondent to the hearing restarting on 20 June as a hybrid hearing and with the claimant (only) attending by videoconferencing. Thereafter the hearing was fully remote. The claimant's cross examination was completed on 20 June.

12. Before it recommenced, however, the claimant suggested that the respondent did not need to call 4 of its witnesses, namely Amanda Hirst, Vanessa Charlton, Jaz Khan and Emma Colman. The claimant said that she had no questions for any of those witnesses. Her position, after reviewing their statements, was that any questions she might put to them would be duplicatory and her points could be dealt with by other of the respondent's witnesses. She referred to such approach saving tribunal time and reducing any distress which she might experience. The tribunal explained that from its perspective there was sufficient time for all of the witnesses to be heard within the remaining time listed. It asked the claimant whether she was still pursuing all of the allegations and she said that she was. Mr Mallett very fairly advised the claimant that he would in such circumstances submit the witness statements of those witnesses as their evidence and, in circumstances where that evidence was unchallenged, would be asking the tribunal simply to accept their accounts. The tribunal explained itself that if there was anything those witnesses were saying, which the claimant disagreed with, then their accounts would not have been challenged in cross examination and might, on that basis, be accepted. A number of the witnesses the claimant was saying she did not wish to question were individuals who the claimant was alleging had bullied her and who had very different perspectives regarding the workplace environment to that of the claimant. The claimant said that she fully understood, but did not wish those witnesses to be tendered for cross examination.

13. On 21 June the tribunal heard, on the claimant's behalf, from Alessia Telford, one of her former PTL colleagues, who had left the respondent's employment on 31 May 2022. On behalf of the respondent the tribunal then heard from Ruth Dell, another PTL.

14. During the claimant's cross examination of Ms Dell, the claimant raised that she had a series of text messages between herself and Ms Dell which she had not wished to disclose, but which she now wished to put before the tribunal in circumstances where they showed that Ms Dell had not responded truthfully to questions about her relationship with other colleagues. Those texts were forwarded to Mr Mallet for his consideration. He did not argue that they were not relevant, but said that they were clearly selective and ought to have been disclosed a long time previously. He was also concerned that the claimant might have messages between herself and other individuals, including other of the respondent's witnesses, which were disclosable. The claimant ultimately confirmed that there were no other text messages in her possession whether

communications with Ms Dell or any other relevant employee of the respondent.

15. The tribunal was ultimately of the view that the texts were relevant. It could not order further disclosure in respect of text messages which were not in the claimant's possession. However, there should not be partial disclosure and the claimant was required to provide to Mr Mallett an unedited set of her text messages with Ms Dell. These were then provided and accepted in as evidence. Ms Dell was questioned on them.

16. The tribunal then heard from Louise Chapman, Employee Relations Adviser. At the end of that day of hearing the claimant was then recalled to answer Mr Mallett's further questions regarding her text messages with Ms Dell.

17. The tribunal did not sit on Wednesday 22 June as the respondent's remaining witnesses, who the claimant wished to cross examine, were unavailable on that day. On Thursday 23 June, the tribunal heard from another PTL, Philip Butterfield and Jonathan Key, a Detective Chief Inspector. The tribunal formally accepted into evidence the witness statements of Ms Hirst, Ms Charlton, Ms Coleman and Mr Khan. The respondent did not seek to rely on a final statement of Mr Mark Walker. Following an adjournment the tribunal then heard submissions on behalf of the respondent and then from the claimant. The tribunal then reserved its decision and met privately to deliberate on Friday 24 June 2022.

18. Having considered all the relevant evidence, the tribunal makes the factual finding set out below.

Facts

19. The claimant worked in a civilian role in one of its district prosecution teams based at Elland Road, Leeds. They consisted of Prosecution Team Officers ("PTOs") dealing with disclosure issues and more complex administrative tasks and Prosecution Team Administrators ("PTAs") working in a purely administrative role without the need for any detailed knowledge or qualification in criminal justice. Such individuals were managed by a team of Prosecution Team Leaders ("PTLs"), who also quality assessed evidence submitted to the CPS to ensure compliance with national standards. This involved at times attendance at court and handling frequent and often urgent queries from police officers and the CPS to provide advice and guidance to them.

20. The claimant joined the respondent as a PTO in August 2016, but was then successful in her application to become a PTL from July 2017. She worked full-time hours of 37 hours per week in accordance with a flexitime scheme. There is no dispute that this was a senior, busy and pressured role with typically around 5 PTLs managing in the region of 60 PTOs and PTAs.

21. As a PTO, the claimant had been able to work predominantly from home, mostly with only one day each week in the office. The claimant was aware when applying for the PTL position, that this was more of an office based role and told the tribunal that she fully complied with the requirements of the role in terms of hours and location. She told the tribunal that she had never asked to work from home on any specific day and had no problem in going into the office on any nominated day. The claimant confirmed that she was aware of and understood that she was subject to the respondent's policy on Agile Working which included an expectation, in terms of remote working, that this would be routinely either 2 or 3 days each week from home and no more than 4 days. The claimant said this had never been a problem. The policy also provided that childcare responsibilities must not be combined with working from home.

22. The team of PTLs changed over the period of the claimant's employment. One of them, Amanda Hirst, left in early 2018. 2 others, Vanessa Charlton and Ruth Dell had a condensed hours arrangement whereby they worked 4 longer days each week. Emma Colman worked 32 hours each week with a half day on Monday and Friday and longer days on other weekdays because of her childcare commitments. Alessia ("Lacey") Telford worked 2½ days each week on part-time hours for childcare reasons starting work generally at 9am but as early as 7am if required. Amanda King worked on a normal full-time basis as did Phil Butterfield.

23. The team of PTLs were managed over the period by up to 6 different uniformed officers in turn, typically at detective inspector or chief inspector level. In the early stages of the claimant's employment that role was undertaken by Dave Roberts and in the latter stages by John Key. Both had significant responsibilities as part of their uniformed role and it is fair to describe their management of the PTLs as quite remote and "light touch".

24. The PTLs were based in two separate offices on different floors which did not assist dialogue and day-to-day communication between team members who might not often see each other in any event due to the way in which their work was rota-ed.

25. There was no recognised level of seniority amongst the PTLs. They were at all material times responsible for organising their own rota as a group on a four weekly basis. In the early months of the claimant's employment this was not particularly prescriptive. PTLs took individual responsibility at various times to arrange the rotas which they did alongside determining the rota arrangements for the PTOs and PTAs they supervised. The PTL responsible would send out an email asking for everyone's preferences during the forthcoming four week period. Commitments were expected to be recorded also in the PTL's shared electronic calendar. Each PTL could pick the days they could attend the office or work from home. The rota would then be prepared taking into account any holiday and sickness absence and to seek to ensure that each PTL had at least 3 days per week in the office and no more than 2 days each week working from home. Cover needed to be provided so that CPS and police officer queries

could be responded to each day from 7am until 4.30pm, but in this early period there was no set number of days that any PTL had to start work at 7am. Typically, they would seek to arrange a rota so that, if 2 PTLs were in the office, then 1 would start at 7am and the other stay until 4.30pm. Courts were covered on Mondays, Thursdays and sometimes on Fridays. The claimant agreed that responsibility for putting together the rota was a "thankless task".

26. The claimant had one pre-school age child at the time she became a PTL. However, her appointment also coincided with a separation and subsequent divorce from her husband. The claimant then in September 2018 relocated her home address to Holmfirth to be closer to her family, a distance of around 30 miles from the office and involving a journey on the habitually problematic M62 motorway. This was a longer journey than she had previously had to make. The claimant's subsequent agreement with her ex-husband involved him having custody of their son on Tuesday nights and alternative weekends from the Friday evening. This meant that the claimant could typically, without any change in her personal arrangements, work late on Tuesdays and early on Wednesdays and could also work late every other Friday. Sometimes her ex-husband might be away from the area, but she would know well in advance. She told the tribunal that she had never sought to see if he might be flexible in changing the days he had their son.

27. When put to the claimant in cross examination that, when the rota was compiled, there was an attempt to ensure it was fair as between the PTLs, the claimant acknowledged that that was how it started. She agreed also that there was scope for her to swap her days of work with other PTLs by agreement, but she believed that this did not happen as much as it could have and Ms Telford was, in practice, the only person who would swap shifts with her.

28. The claimant said that on starting her role, 2 other PTLs, Amanda Hirst and Vanessa Charlton appeared to take an instant dislike to her, making it obvious that they didn't agree with her promotion so soon after starting with the respondent. The claimant told the tribunal that she thought that Ms Charlton was put out when the claimant asked Ms Dell for help in her job application rather than her. The team at that point was managed by Mr Roberts who she described as managing the situation appallingly. However, due to her recent separation and childcare situation, he had been willing to allow her to do some of her work at home in the morning from 7am before dropping her son at nursery and then travelling to the office - indeed, despite this being at odds with the Agile Working policy.

29. The claimant said that she felt that Ms Hirst and Ms Charlton took umbrage with this and claimed she was "playing the victim" and didn't want to be in the office early. Mr Roberts asked the claimant to provide him with a list of tasks completed, which was not something asked of any other PTL. The claimant said that the "unilateral bad feeling" continued to grow and that the bullying by Ms Hirst and Ms Charlton resulted in another PTL, Ruth Dell, going on sick leave for nearly 6 months. She said that she then took the difficult decision to

formally complain about them to Mr Roberts. During 2018 she said she recalled Ms Hirst having meetings with HR and Mr Roberts about her behaviour, but said she was not updated on the outcome and did not believe that any action was taken. Another PTL, Belinda Bostock, joined the Department and experienced the same kind of problems with Ms Hirst and Ms Charlton. Shortly afterwards Ms Hirst was seconded to HQ, which she said Mr Roberts described as "moving the problem".

30. Mr Roberts left his management role for the team also in 2018. Other than as already stated, the claimant said that she couldn't recall any specifics of the bullying treatment she said she had suffered from Ms Hirst and Ms Charlton. The claimant accepted in cross examination that she did not complete any grievance form or put her concerns in writing. The evidence of Louise Chapman, Senior Employee Relations Adviser was that there was no HR involvement in any complaint of bullying at this time, with no grievance records and no notes in the Performance Example Notebook ("PEN") system for any of the PTLs concerning any complaint of that nature. There is nothing to contradict that evidence, which the tribunal accepts.

31. Ms Telford told the tribunal that there were tensions within the team because of different ways of working amongst the PTLs. The office layout across two separate floors made communication quite difficult. She couldn't recall anything more specific. She said that Mr Roberts did attempt to reconcile the team by speaking to individuals. Often, she said, complaints were made against the claimant by Ms Hirst and Ms Charlton. She was not aware of any formal grievance being raised by any PTL, including the claimant, or any investigation. She described Ms Hirst's departure from the team as a relief to many including Ms Hirst herself.

32. The tribunal has seen an email from Ms Dell to Mr Roberts of 5 October 2017 where she recorded that she had had a good chat with Ms Hirst that morning and felt they had reached a better understanding of each other's perspective. She said that she was going to try and become slightly less involved in taking on the claimant and Ms Telford's personal issues and felt that they needed to stay as one team, learn from the situation and move on in a professional way. She thanked Mr Roberts for his support and referred to appreciating a referral to occupational health to address a personal ongoing anxiety issue – Ms Dell told the tribunal that she suffered from stress which was in part work-related but in combination with a number of personal issues. She referred in her email to Mr Roberts still needing to speak to the claimant and that the claimant perhaps needed to sit down with Ms Hirst and have "that honest conversation also".

33. Ms Dell denied having any issues of her own with Ms Hirst and Ms Colman, but her evidence cannot be accepted, including in the light of the text message exchanges the tribunal has reviewed between her and the claimant (as set out below). They clearly considered themselves both to be in something of an opposing camp from Ms Hirst and Ms Charlton. Whilst Ms Dell now considers

herself to have been manipulated by the claimant, when the claimant told her that she felt she was being bullied by Ms Hirst, she felt a duty to report this to Mr Roberts. However, it is clear that in attempting to deal with the issues, Mr Roberts then went directly and without further discussion to Ms Hirst, which had not been constructive and certainly upset Ms Dell.

34. Mr Roberts emailed all of the PTLs on 6 October saying that his approach to workplace issues had been to raise them with people directly, noting that, him having done so, people felt that he had breach their confidentiality, lost trust in him and that what he had said had been repeated to others, exacerbating the issue. He acknowledged that, rather than assisting in resolving issues, he had become part of the problem. He apologised and promised a change in approach.

35. The claimant was referred to occupational health by Ms Dell in connection with her marriage breakdown and attended an appointment on 10 August 2017. The report produced on 11 August 2017 referred to the claimant experiencing some emotional health issues and currently going through a difficult time. Consent was obtained to refer her for counselling. Management was said to be aware of these issues. No immediate adjustments were required at present, albeit it was stated that the claimant was aware of the potential for staff to work “agile and flexible”.

36. On 22 August 2017 Ms Charlton emailed Mr Roberts regarding a staffing issue in a week where a number of individuals were on annual leave and the claimant had booked a coaching and mentoring course on the Wednesday and Thursday and a day of leave on the Friday. She asked if he might be able to have a word with the claimant to see if she could postpone her course to a more convenient time. Ms Charlton referred to having come across the claimant being booked on the course by chance and it was put to the claimant that she had not communicated this to Ms Charlton in advance of the rota preparation. She said that she had no reason to do anything other than put it on the calendar.

37. The claimant said in her evidence that the bullying she received from Ms Hirst and Ms Charlton was unrelated to issues relating to the rota. She accepted that in 2017 they had tried to assist with how she was rota-ed.

38. On 13 October 2017 the claimant emailed Ms Hirst listing out a significant number of commitments from 17 October which were additional to those previously notified in advance of the rota being prepared. The claimant referred to being able to do, however, a 7am start on Tuesday 17 and Friday 20 October as well as Wednesday 1 November. Ms Hirst, on receipt of this information, asked if she needed 2 agile days each week and continued: “want to try and support you on this rota as much as possible until you are sorted.” The claimant agreed in cross examination that people were trying to be helpful at this point. She agreed that this was even after she had complained about Ms Hirst.

39. As already referred to, the tribunal has received from the claimant as late disclosure, admitted in evidence, a series of text messages she had with Ms Dell from 6 January 2018. At this point Ms Dell was absent due to sickness. In communications, which the tribunal accepts were intended only ever to be private, she referred to Mr Roberts as a "spineless piece of shit." They referred with great pleasure to his and Ms Hirst's departures from the team. One reference by the claimant refers to: "bullying allegation over her head…". Ms Hirst is referred to at times by a nickname of "Trunchbull" and it is suggested by the claimant that she: "fuck off you silly cunting bastard". The claimant describes Ms Charlton as a "cow bag" saying that she obviously wasn't happy at losing her buddy. Referring to Ms Hirst's departure the claimant said: "Dave Roberts was chunnering on the other week about what a loss she will be… fucking wank face arse hole – let's ram it up his fucking navy fucked ass." They both appeared to want Emma Colman to apply for the vacant PTL position. At one point the claimant stated:"Gonna work from home on Tuesday. Ha ha. Make it work for me".

40. There were changes to the rota in 2018. The PTLs, including the claimant, but not Ms Telford, met on 8 February and one of their current number, Belinda Bostock, circulated an update she was intending to send to Mr Roberts. This recorded that they had agreed that the core time to be covered was from 7 – 7:30am until 4.30pm to enable the PTAs to have the services of a PTL during their core hours which were in line with those of the CPS. She went on that they would each do one early and one late finish a week and, where they were unable to commit to their allocated day, would swap with another PTL to ensure fairness to all. There is no record of any objection being made to this being communicated to Mr Roberts. The claimant, in cross-examining the respondent's witnesses, accepted that this was the agreed position. Ms Dell accepted that the claimant had said that she would struggle to be in at 7am on certain days. She told the tribunal, while she recalled the claimant referring to her ex-husband having their son on Tuesdays/Wednesdays, the claimant didn't stick to those days when working her early and late shifts

41. Ms Telford's position was that the changes were not welcomed by everyone, but that as professionals they knew what was required and they all agreed as a team that the changes were necessary. Ms Telford considered that a practice of now allocating set jobs to each PTL, subject to periodic rotation, increased stability rather than moving PTLs from one task to another on a shift by shift basis. There was then the introduction of a requirement for there to be cover each day from 7am. Ms Telford said that she agreed that this would ensure that subordinate staff would have support, particularly with remand files that needed to be processed by 8.30am. She herself couldn't get in for 7am due to her childcare arrangements, but could commence work from 7.30am which she was told was absolutely fine. She did not have to disclose that the reason for her inability to start earlier was related to childcare. Subsequently, the requirements to ensure that there was cover each day up to 4.30pm was introduced.

42. Ms Telford accepted that it was required for all employees to contribute to the rota in a fair and helpful manner. Her evidence was that all the other PTLs commented that the claimant did not cover her "fair share". The claimant said that being allowed to work from home from 7am before dropping off her son at nursery caused a lot of resentment - some PTLs thought that there was a need to be in the office physically from 7.00am.

43. Ms Telford said that it was not set in stone that the claimant would work her late shift on a Tuesday and early shift on a Wednesday, but she said that people's days of work did fall into a pattern as certain days suited people and they sought to work around people's commitments and childcare responsibilities. This happened quite naturally. The tribunal accepts that this was accurate and is corroborated by other evidence. Whilst called by the claimant, Ms Telford was clearly seeking to give an unembellished factual account. She agreed that putting together a rota was a difficult task and indeed sometimes a thankless task. She agreed that Ms Colman tried to accommodate the claimant if she couldn't work, for instance, on earlies on a Monday. However, she felt that over time there were instances where the claimant was put on days she said she couldn't do. This was because there was felt to be a need for her to take on her fair share of the busier Mondays. However, if for instance there was a lot of annual leave that week, it was sometimes impossible for Ms Colman to allocate anyone else to do that day. On being pressed, Ms Telford accepted that if the claimant couldn't work an early Monday shift, then she didn't and that it was rare for her to be allocated for such shift. She felt it was rare that people, other than her, would swap with the claimant and, if they did, they felt frustrated in doing so. Ms Telford was frustrated herself at having to cover more early and late shifts than she felt was her own fair share. Clearly, this had caused her significant upset allied with the general atmosphere and her being fed up with office politics. Ms Telford accepted that the claimant did sometimes book annual leave or appointments which she then cancelled and worked from home. There was, she said, a general feeling that the claimant worked from home more than everyone else and, again, this caused tensions.

44. Ms Hirst's uncontested evidence was that the claimant prioritised working from home. Also, on days she volunteered or was on the rota to work in the office, she would ring up, say something had come up and she couldn't now come in. As Ms Hirst lived nearest to the office, she said it often fell to her to come in. The claimant would give varied reasons for her unavailability, including dental appointments, appointments for her child, appointments at the bank or getting the car its MOT. These, however, were the type of planned appointments that they sought to build the rota around. The claimant was the only PTL who operated like that. This created tension. Sometimes the claimant would say that she would work for instance up to 4.30pm, but would then leave early.

45. The uncontested evidence of Emma Colman was that the claimant was always the last to provide her availability and she always had to chase the claimant, but would wait until she received it, then include what she gave to her in the rota. Mostly the claimant would offer a Tuesday late and early Wednesday, but

this would often change after the rota had been compiled. Ms Colman would create the rota so that the claimant was doing the early and late on the day she said she could do them. The claimant would rarely give more than one early and one late. She particularly rarely gave any availability on Mondays which became the biggest issue as that was by far the busiest day. Once a rota had been published, the claimant would often make last-minute changes forcing other PTLs to cover at late notice. Having committed to come into the office, she would take last-minute leave, have an appointment or another reason why she couldn't attend. PTLs would often complain to Ms Colman and she felt she was stuck in the middle trying to keep everyone happy. She always endeavoured to make the allocation of days fair to everyone and accommodate people's requests where possible. She asked the claimant at one point whether she could manage to cover 1 early Monday every 8 weeks, but the claimant refused and said she wasn't prepared to do so.

46. The uncontested evidence of Vanessa Charlton was that the claimant frequently avoided working to the rota that had been drawn up. She often took annual leave all of a sudden on her office days or, if she had booked annual leave, she would say that her plans had changed so that she could in fact work but that she may as well work from home because they had already planned the rota to cover her absence from the office. She did this a lot on Fridays. She gave various reasons for deviating from the rota. She would rarely attend work at 7am and would leave early saying that she had to get back without any further explanation. She didn't share her diary with the other PTLs making it hard to coordinate cover. She couldn't recall the claimant ever saying that she needed a set pattern every week or for instance that she wanted earlies always on a Wednesday. The claimant's view regarding the need to cover the work differed from that of the other PTLs. Ms Charlton rejected the suggestion that she had taken an instant dislike to the claimant and said that they had a laugh together in the office and she always thought they got on okay, whilst not being friends. She could not remember having had a bad word with the claimant despite her frustration that she didn't cooperate over the rota. The claimant never gave her the impression that there was bad feeling between them.

47. The unchallenged evidence of Ms Hirst, Ms Colman and Ms Charlton. It is corroborated largely indeed by other oral and documentary evidence.

48. On 12 February 2019, the claimant completed and submitted to HR a disability assessment form. In this she referred to depression and anxiety which she had managed for the last 3 years after a postnatal depression diagnosis which had resulted in medication she had been kept on until that point. She referred then to her marriage breakdown and that her condition had lapsed again in the past few weeks. Her GP had suggested she complete this form. She referred to having had little line management support. She referred to struggling with motivation, putting a ridiculous amount of pressure on herself and feeling tired, a particular concern with reference to her commute to work. She made no reference to having suffered from any form of bullying. HR recorded that the claimant's condition of depression and anxiety was likely to be covered by the

Equality Act. The claimant accepted that no reasonable adjustments were sought or recommended. The claimant did not want the information shared with her then line manager, Mr Jessup, who was about to retire. The claimant said that she subsequently told Mr Key, who took over her line management in February 2019, whilst the claimant was in fact absent due to sickness, about her impairment. Mr Key was not aware of the claimant's issues going back to 2017.

49. In March 2019 the claimant suffered the bereavement of her grandmother and then her father. She agreed that Mr Key had been very supportive to her and she had no criticism as to how he dealt with the bereavement. This included providing for a phased return to work (working no more than 4 hours each day from 18 March) punctuated by a period of compassionate leave from 1 – 12 April. At the time she described Mr Key as "lovely" and confirmed to the tribunal that he was. He continued to allow the claimant to work from home from 7am while still caring for her child before dropping him off at nursery and coming into work. He also allowed her on one occasion to bring her son into work with her.

50. On 13 May 2019 the claimant emailed Mr Key saying that she thought there was some bad feeling from the other PTLs. This followed her own email of 9 May - having seen the rota covering her ongoing phased return to work, she had requested some changes. In terms of changes the claimant said that she could do an early shift on Thursday 23 May, Thursday 30 May and Thursday 30 June. She said that she felt supported and reassured having spoken to Mr Key the other day, but was now at rock bottom. She said that she was doing a plumbing course on Wednesday nights and felt she was being criticised by colleagues for doing so. Indeed, the evidence is that other PTLs were expressing opinions that claimant undertaking a plumbing course, which would enhance her skills in another area, did not sit well with her being currently on a phased return to work. Mr Key met with the claimant after receiving this, which was the first he knew of the claimant's issues of concern. The claimant was not then required to cover any days which she said were problematical for her to work,

51. On 19 June 2019, the claimant emailed Mr Key about her continuing bereavement issues and that she was going to start late the following Wednesday due to an appointment to register her father's death. She said that she felt awkward telling the others, but didn't want to be criticised.

52. On 20 June 2019, Ms Dell noted a number of issues with the forthcoming rota including that the claimant's forthcoming leave arrangements left the team short staffed. The claimant emailed Mr Key on 21 June regarding her annual leave and the staffing left in the office. Mr Key subsequently arranged a meeting to discuss arrangements with the claimant, Mr Telford and Ms King, the PTLs affected by the claimant's requested change of rota.

53. The claimant, back working her full hours, emailed Mr Key on 5 July describing the situation with the draft rota as "becoming a joke". She referred to them not having earlies or lates when she started the role, albeit she could see the sense in that arrangement. However, she felt the need for additional cover in the office was being overstated. She referred to the only thing keeping her in the job as being the flexibility. She said that, as regards each rota Emma Colman had prepared, she had told her the earlies and lates she could do according to her ex husband being available to undertake the care for their son. However, all of a sudden she said that it was being considered that it was not fair that the same people did the early and late shifts on certain dates. She said she was not prepared to have her mother to sleepover so that she could leave the house at 6am, when she could do another day. She described the situation as being done "for martyrdom and point proving". She said that Ms Dell and Ms Charlton when working their condensed hours were in from 7am to 5pm. The rota had provided for nearly 3 PTLs in the office at any one time, which she said was overkill.

54. The claimant in cross examination said that her position was that she had said that she could do one late and one early each week i.e. Tuesday/Wednesday but others deemed that not to be fair. One factor in this was that Monday morning was always a particularly busy time due to having to deal with arrests which had taken place over the weekend and the other PTLs' belief that it was fair for everyone to do some Mondays. The claimant's position was that as her son's nursery was not open until 7.30am and she couldn't therefore be in the office until after 8am on days where she had to drop him off. She said that she was not prepared to ask her mother to help in taking her child to nursery.

55. In August 2019 the claimant was absent from work due to sickness giving tonsillitis as the reason and thereafter self-certifying that the absence was related to stress. She did not return to work until 26 March 2020.

56. In September 2019 she applied for a post with Inside Justice in which she was unsuccessful after an interview on 19 September. The claimant agreed that she saw her prospects of career progression at the respondent as limited. She said that she was ambitious to progress from the PTL role although she had not put a timescale on this. Whilst the PTL role was a busy one, she told the tribunal that it didn't particularly challenge her. She said that she thought she could do it more easily and confidently than other PTLs in lots of ways. At this point in time, she said that she had decided to leave the respondent because of the issues with the rota and the "unimaginable situation in the office". Around the same time, she also applied for a position with Greater Manchester Police.

57. The claimant described going off sick with stress after a final moment of "awkward comment" by Vanessa Charlton and Ruth Dell after she had tried to let them know, out of courtesy, that she would be in a bit later after taking her son to the doctor. She described receiving a "frosty and obstructive" reply with no concern as to her or her child's welfare saying this was the straw that broke

the camel's back. She described this "dismissive and abrasive attitude" as a common occurrence.

58. The tribunal has been taken to the claimant's email informing Ms Charlton of her son's illness. The reply she received from Ms Charlton stated: "ok well me and Ruth are in interviews." The claimant responded saying "cool" before confirming that she would be in work that morning at some point. In cross examination, the claimant accepted that, as a one-off, the response from Ms Charlton was not particularly obstructive, but she maintained that it was short. The claimant suggested that she was put out by a lack of any expression of sympathy regarding her son's condition.

59. Whilst absent due to sickness, the claimant sent to HR on 13 November 2019 an appeal against her dropping to half pay. She was asked if this could be shared with Mr Key. The claimant said that she had no problem in HR doing so, continuing that she was not critical of Mr Key and hoped that hadn't come across in the letter. She said there was nothing in there that he wasn't already aware of.

60. The appeal letter went through the claimant's history of illness and personal issues. She referred to a previous bullying allegation against a former colleague (a reference to Ms Hirst) having been "essentially swept under the carpet". She said that after Ms Hirst's and Mr Roberts' departure the new SLT introduced the idea of there being cover in the office from 7.30am to 4.30pm on most days where possible, which she agreed with, but where, if the office was only covered until 3pm on occasions, she didn't see there to be any problem. She referred to her ability to work a late and early shift midweek due to the childcare arrangement she had with her ex-husband. She said that in September 2018 she had moved house to Holmfirth and said that she had expressed to her colleagues that she was beginning to struggle with the commute and asking if she could increase her number of days at home from typically 2 to 3 each week. She said that this caused some conflict between the PTLs. She referred then to the compromise reached that the rota would give her 2 days each week from home and 3 days the following week.

61. However, subsequently other PTLs had voiced the opinion that the arrangement wasn't fair. She had considered a transfer to Huddersfield which her manager at the time had thought would be the best option. Her colleagues had, however, suggested that they would prefer to make the arrangements work instead of losing her. However, tensions had continued. She was then faced with the view of colleagues that it was not fair that she did the same early shift each week. She said that she wasn't prepared to drop off her son at 5.45am on a morning to do a different early shift. She said that subsequently the rota became in fact stricter. This led to a period of 2 weeks sickness in early 2019. She then described the bereavements she had suffered and Mr Key taking over line management. She described Mr Key as having been "lovely". She mentioned the issue within the team caused by her plumbing course, saying that she felt like she was treading on eggshells. Since then, she

described herself as just trying to keep her head down. Then in July she had asked for another agile day which had resulted in an abusive message saying that this was why people were "fucked off" – the tribunal has not seen this. She had explored again the possibility of working in Huddersfield, but working arrangements there had changed. She described having been let down by the respondent. In the circumstances she believed her pay should not be reduced.

62. The claimant attended an absence review meeting with Mr Key on 28 November. The claimant confirmed that the reason for her absence related to issues involving the rota. Mr Key said he could intervene where the rota was concerned to ensure that it was completed fairly. The claimant said she was struggling with her commute. She said that her ex-husband had her child midweek so that she could work late on a Tuesday and early on a Wednesday. She said that the team wanted her to work earlies and lates on different days. The claimant agreed that Mondays and Fridays were the busiest days. Mr Key commented that he felt he couldn't effectively manage the prosecution team due to the number of staff he had. The claimant said that she did not see a solution which would enable her to come back to work. She commented that the service was archaic with nowhere to go in terms of promotion and that she was ambitious. Mr Key asked whether the claimant would want to work as a PTO, after the claimant had referred to herself as also needing a work/life balance. The claimant said that she could not do so as she had financial commitments. Mr Key suggested that the PTLs take turns in completing the rota. He informed her that she would be receiving another month's full pay before going on to half pay further to her appeal.

63. Before the tribunal the claimant described this meeting as confrontational and aggressive in nature. When put to her that she had not referred to this in the grounds of complaint she said that she was referring to the suggestion that she demoted herself which was a way of simply moving the problem. On further questioning, she said she was not saying that Mr Key was trying to get her out of the department.

64. From Mr Key's perspective, all departments organised their own rotas, including the PTLs. They were the experts on where cover was needed and how tasks could best be organised. He did not consider it be useful for himself to put together the rota from an uninformed position. The PTLs knew what their individual commitments were and he was reluctant to take on the role. However, he did intervene when needed if there was no agreement or the claimant raised a need for support. There is indeed evidence that he did. He felt that at times he had almost negotiated with the other PTLs on the claimant's behalf.

65. The claimant attended an occupational health appointment on 23 December 2019. The report produced recorded that she was suffering from both personal and workplace stressors and was engaging in counselling sessions. The main barrier to her returning to work was the difficulty in achieving a satisfactory work/life balance. The claimant had referred to her long commute to work and

interpersonal difficulties with a colleague who managed the rota. This was making it difficult for her to arrange childcare. The physician did not anticipate a successful return would be achieved without support and it was advised that consideration be given to allowing her to work 2 – 3 days agile from home. The claimant was said also to have expressed interest in transferring to Huddersfield.

66. The claimant met with Mr Key and Ms Coton of HR again on 27 February 2020. There was discussion regarding her general well-being. The claimant said she had been learning how to do plastering – her case before the tribunal is that Mr Key had reacted angrily to that but there is no evidence to corroborate such reaction at all. Mr Key certainly had no recollection of asking the claimant any questions about any money she was earning from plastering and the tribunal rejects the proposition that Mr Key was looking for any basis for putting the claimant through a disciplinary process. That is completely at odds with the claimant's own evidence elsewhere as to Mr Key's attitude towards her. There was reference to her child attending school. The claimant said that currently she did not need childcare but that in future her mother could drop her son off and pick him up. The claimant said that the main issue was her stress level at work. The claimant became tearful. Ms Telford had been in touch with her, which was nice, but she had issues with some of the other PTLs. She said the work wasn't an issue as she "could do the job standing on her head". Mr Key repeating the suggestion that responsibility for completing the rota be shared out. He said that, as a rule team, PTLs could only work 1 day agile each week. The claimant said that she was not comfortable with the agile working as it currently was. Mr Key referred to the issue of absences due to annual leave and sickness. They asked if the claimant had thought about reducing her hours or working condensed hours. She said that she did not want to. The possibility of her working as a PTO was raised again as that was more flexible. Mr Key stated his understanding that the claimant could only do earlies on a Wednesday and lates on a Tuesday or Thursday – the claimant said that she couldn't say that categorically. Mr Key was clear that the lack of clarity from the claimant related to the Tuesday and Wednesday working rather than just the Thursday, a day which had not previously been raised by the claimant as a day she might have flexibility and which is likely to be a misrecording by the notetaker. The tribunal accepts the accuracy of the note. The claimant was advised by Ms Coton that if she should fail to return to work a sickness management process might be commenced. It was agreed that they would meet again on 23 March and that a return to work/recuperative plan would be discussed at this meeting.

67. On 11 March Mr Key met with the PTLs, other than the claimant, together with an HR adviser. There was discussion as to how the agile working currently operated and how it was shared out. The PTLs explained why their presence was required from 7am to 4.30pm to manage remands and the PTOs. The view was expressed that the preference was to have 3 PTLs in the office, but certainly a minimum of 2 given the number of staff to be supervised. There was a general consensus of it being useful and possible to work from home 1 day each week. A lot of changes had taken place which meant the requirement to

be in the office was more rather than less. Ms Telford said that she felt they could support the claimant if she was in the office every day given the changes. It was easier to discuss things face-to-face. There was a consensus that they were too busy and there was too much work for them each to work 2 days a week from home. At this point in time Emma Colman was completing the rota. Mr Key raised whether it would be a good idea to share out its completion. Ms Dell commented that Ms Colman bent over backwards to accommodate everyone's needs. Amanda King raised that PDRs were due. There was some discussion on workload issues with the comment that everyone had suffered in the team with their health. Amanda King described there being no release valve and Ruth Dell as slowly sinking and on the edge. Mr Key said he was happy to hold bi-monthly meetings of the PTLs either on a Tuesday or Wednesday.

68. Mr Key did not raise with the PTLs the claimant's health or the occupational health recommendations as he did not believe it appropriate to do so given the confidential nature of that information. However, the tribunal accepts his evidence that he was mindful of the need to make adjustments if and when the claimant returned to work. He had asked the claimant if she would be able to return to work if she could work 2 days from home, but had received no response. On the claimant's return to work he would have looked to allow additional homeworking, but the claimant then returned to work during the period of Covid lockdown when all working was from home in any event. He envisaged that after the homeworking due to Covid had ceased, a significant amount of time would have passed and there would probably then be a need for a new occupational health assessment. He couldn't however implement any adjustments until the claimant was sufficiently well to return to work.

69. Mr Key's position was that it was not unreasonable for the claimant to highlight that she could work a late shift on a Tuesday and early shift on a Wednesday. However, he felt there was still a need for some flexibility. Nevertheless, this was a good starting point for those doing the rota. The claimant was of the same rank as her colleagues and in a position to influence the rota by advising those doing the rota of her commitments. Mr Key got involved when the claimant had been unable to negotiate a satisfactory arrangement and he felt that in doing so he got it about right in terms of his level of input. It was necessary that all the days of work were properly covered and that required agreement between the PTLs. The days were in fact always covered and in agreement always reached. He had chaired the aforementioned discussion with the PTLs. There was already a mechanism for advising each other of their commitments/requirements through the shared calendar. The claimant should have populated her calendar with the days she could not work in the office. He did not believe days, other than the Tuesday/Wednesday and alternative Friday, ought to have been blocked out for the claimant as that was too prescriptive in circumstances where the claimant's own arrangements were subject to periodic change and there was always the need for flexibility when problems might arise with the availability of others to cover the other days.

70. He disagreed with the claimant's proposition that it would have been disproportionate for her to effectively record her childcare requests in the calendar. Those arrangements could change and the claimant was contracted to work Monday-Friday. She might have more flexibility if, for example, her ex-husband took their child on holiday. Different considerations may apply in terms of availability during school holidays.

71. Shortly after that meeting it was clear that working arrangements would have to change due to the coronavirus pandemic. The claimant said that, whilst she did not feel that issues had been addressed with the rota, she had decided that since everyone would be working from home to contact the respondent as the rota was not an issue. She said she decided to return to work and to put those issues aside.

72. She emailed Mr Key on 19 March saying that her issues arose because of her colleagues and the management of time within the office, but that as working from home has now been suggested for the foreseeable future, she could offer to work again. She said: "I'm willing to put the differences aside for this interim period and can look at continuing our discussions on acceptable working practices when things return to a more stable level of normality." The claimant indeed returned to work from 26 March working from home on a phased basis.

73. The claimant in cross examination said that she believed that there had been a failure to make a reasonable adjustment because she only returned to work because of Covid and all of the work being carried out from home. She wasn't allowed to work from home as a reasonable adjustment, she considered, because that applied to the whole office.

74. On her first day back, the claimant had a Skype meeting with Mr Key. The claimant's case is that other than Ms Telford, no colleagues contacted her. Ms Telford believed that Ms Colman and Ms Dell had not wanted to speak to the claimant. In fact, on 8 April Ms Colman emailed the claimant saying: "Welcome back. Hope you doing ok." The claimant had referred to the only contact being an email from Emma Colman copied to every other PTL with an accusation of misconduct that she had completed pre-charge work incorrectly and badly. She described this as entirely false and that she was forced to justify herself to the entire department feeling humiliated, degraded and utterly ostracised.

75. On 9 April Ms Colman emailed the claimant, albeit not copied to anyone else, saying that she knew that Ms Telford had gone through pre-charge procedures with the claimant but wished to raise a few points that had come up on a file that morning. She listed 8 issues largely relating to the use of the correct templates and how electronic files ought to be attached. She said that, if the claimant needed to go through anything with her or she was not sure about anything, to just let her know. Ms Telford had been assigned to assist in updating the claimant regarding numerous changes which had occurred in the pre-charge process. The claimant considered that Ms Colman had no business

to be looking at this issue and everything the claimant had done had been for a reason. There was one point raised in terms of pre-charge procedures where Ms Telford had told her there had been an error, but otherwise she believed that the approach she had taken was justifiable.

76. The claimant responded 4 minutes later addressing some of the points and saying that this task followed a large operation so was "a one-off". Ms Colman replied 11 minutes thereafter ending her communication: "I completely appreciate it is a one-off, I just wanted to make you aware."

77. The claimant believed that others were aware of the supposed errors she had made. She said that she had decided not to complain to Ms Colman as she didn't want to get into an argument. The claimant showed Ms Telford the email from Ms Colman.

78. The claimant emailed Mr Key on 29 April saying she had spoken to her doctor who felt she shouldn't consider full-time hours "for a bit". She said that, when things got closer to normality with Covid, there were still issues to be addressed saying that this was: "just a heads up really, out of courtesy."

79. The claimant emailed Mr Key on 15 May referring to her still having outstanding issues which were lying idle due to Covid. She referred to her return to work as "very much a without prejudice approach". By then the first stages of resuming some office-based cover had commenced and the claimant had been sent a rota for the week commencing 18 May which had her working an early shift in the office on the Friday. A message came with that rota from Ms Dell that she was conscious that people needed to sort out childcare arrangements with their partners and so needed to know what shifts they were working the following week. The claimant was able to and did work that allocated shift.

80. Mr Key responded promising to arrange a further meeting with the claimant which took place on 24 June, albeit with some delay due to periods of leave and unavailability.

81. On 26 May 2020 Mr Harper of PSD emailed Mr Key saying that a follow-up audit of the claimant's time recording had been completed noting that on 6 May she appeared to have been logged on to her computer just after 7.30am, but recorded subsequently that she had started work at 7.10am. On 5 May she physically booked on and off at the same time showing her working a 7am – 1pm shift. None of the audits undertaken showed any computer usage. Mr Key was asked to reiterate the advice given to the claimant regarding booking on and off at the time and not doing so retrospectively.

82. On balance the tribunal accepts that Mr Key raised this with the claimant during their Skype meeting on 24 June albeit he made no note of that in his rather sketchy bullet point handwritten notes. The PSD issue was not the purpose of

the meeting but to discuss the concerns the claimant had raised in her 15 May email. Mr Key asked about childcare. The claimant suggested that he had been put up to do so by the other PTLs, but there is no basis in evidence for that suggestion. Mr Key did raise the possibility of the claimant participating in mediation, noting that initially she did not believe it was worth it but then said that she would engage.

83. The claimant emailed him on 25 June with some information regarding the tasks she said she had been carrying out at the relevant times noted by PSD. She said that she wished to raise a formal complaint of bullying against the person who reported her to PSD. Mr Key reverted to Mr Harper on 26 June saying that the claimant had provided him with some details of work carried out on 5 and 6 May. He said that he had updated the claimant regarding the correct procedures and that he had found evidence that she did complete some meaningful work that could be tracked on the days outlined and was satisfied with her response. A gap in the PSD audit was noted – accessing systems remotely through apps had not been recognised. He said that the claimant wanted to make a formal complaint against the unidentified person who had brought the matter to the attention of PSD. He recorded that he had told the claimant that it was not possible without knowing who had raised the issue and that on face value the audit had suggested that she had not done work on the dates which she had now explained and therefore the matter was now concluded. If someone had made a referral to PSD he said he had told the claimant that they could be seen as a potential whistleblower. It would be another matter if he perceived false allegations were persistently being made against her, but at this time he expressed that he had refused to take a formal complaint from her in relation to bullying by an unidentified individual in the circumstances. On 10 July the claimant asked Mr Key amongst other things whether anything had come back from PSD. There is no evidence of any written response to that question. Mr Key said he had told the claimant that there was no ongoing PSD issue. The tribunal accepts that as likely to have been the case. The matter was not further chased up by the claimant, who would have been concerned if there had been the possibility of a conduct issue given that she was applying for alternative roles.

84. As Covid restrictions were relaxed, the situation developed so that from at least July 2020, there was a requirement for each PTL to attend the office on one day each week with the remainder of their time continuing to be worked from home. Mr Key explained that with 3 days to cover each week and 6 PTLs to do so, there was loads of flexibility giving the claimant far beyond the 2/3 days working from home previously recommended by occupational health. Had the working practices then been different, Mr Key said that the need for reasonable adjustments would have directed the claimant's office-based hours, but the restrictions on working from the office still in place gave the claimant a significant amount of homeworking in any event.

85. Phil Butterfield, who had commenced as a PTL only from October 2019, started doing the rotas from July. He thought volunteering to do this task would make

him more part of the team. Given the claimant's sickness and then the period of remote working due to Covid, he had not worked significantly with the claimant in a PTL role. He knew none of the history pre-October 2019. Ms Colman did not give him any information as to how she had put together the rota – Mr Butterfield simply knew and expected that the PTLs would have entered any commitments they had in the shared diary. He was looking to allocate a single PTL to be in the office on Monday, Wednesday and Friday. The claimant had made no entries in the calendar to signify dates of unavailability and Mr Butterfield had not been told by her on anyone else to avoid particular days for her office working. He had no knowledge of the claimant's childcare issues. His evidence was that, if he had known that the claimant couldn't do a particular date, he would have excluded her from the rota for that day. He became frustrated when, having put together a rota, the claimant contacted him regarding dates of unavailability. The claimant put to Mr Butterfield that he was a puppet and deliberately put her on Mondays because the other PTLs had told him to as it was not perceived as fair for the claimant not to work that day. He strenuously denied that to be the case. There is no evidential basis for the claimant's assertion.

86. The claimant emailed Mr Key, Ms Colman and Mr Butterfield on 24 June to say that the rota for the following week was sorted while she was on leave. At that point she had not yet been asked to go into the office. She noted that she had been put down for cover on Monday, which was absolutely no problem, but she had issues with the school drop-off and collection as her ex-husband was already committed to meetings at work. She said there were no other childcare options available to her at the minute. She said she could come in at 9.30am and leave around 2.45pm or was willing to swap a day. Mr Butterfield quickly replied saying that he was happy to swap doing the Monday 29 June if the claimant was alright doing the Friday 3 July. The claimant responded that that was great/perfect and that she would work 3 July.

87. On 30 June Mr Butterfield sent the rota for the weeks commencing 6 and 13 July asking people to contact him if there were any problems/issues. He referred to this as being the first time he had completed the PTL rota "so thoroughly expecting to do a few versions". The rota had the claimant working in the office on earlies on Friday 10 July and lates on Friday 17 July. The claimant responded on 1 July saying that on the Friday 6 July she would struggle to do a full day in the office because of school drop-off and pickup, saying that she could do Wednesday 8 July as she did not have to drop-off her son and Friday 17 July was also fine.

88. On 8 July he sent off the draft rota for the last two weeks in July asking for any comments before the end of the following week. This had the claimant in the office on Monday 20 July. She was recorded as on leave for the week commencing 23 July. The claimant responded that she definitely couldn't be in the office on the Monday and would have to make enquiries with her ex-husband to see what they could sort out for either the Wednesday or Friday. She then responded that she could do the early on the Wednesday in the office,

but was struggling for another day. Mr Butterfield contacted Mr Key by email. He told Mr Key that the claimant had been put down for Monday 20 July in the office as the previous rota had to be amended to accommodate her not been able to do the previous Mondays and those Mondays were covered by other PTLs, the majority by Ms Dell. He said that Mondays were notoriously the busiest days and in fairness they tried to share them out equally.

89. On 10 July 2020 the claimant emailed Mr Key saying that there appeared to be a problem with her request to do a different day in the office for the next rota. She described the situation is getting "a bit beyond a joke this". She referred to him as apparently being involved and said she was close to going sick again describing the situation as "appalling".

90. The claimant messaged Mr Butterfield on 10 July to ask if he had managed to swap the Monday in the office on the rota. He said he had not, but it would be looked at next week and said he was not sure if it could be covered.

91. On 7 August Mr Butterfield sent the draft rota for the weeks commencing 17 and 24 August. This had the claimant working earlies in the office on Friday 21 August with her recorded as being on annual leave the subsequent week. The claimant replied on 10 August that she couldn't do the Friday because it was her birthday and she intended to take it off as flexitime. She said however that she could be in the office on Monday 24 August. The claimant said that her ex-husband was taking some leave with her son that summer.

92. On 24 August the claimant emailed the PTLs saying that she was unable to come into the office the following Wednesday 2 September – the rota had her working an early shift that day- and apologised for the late notice. She said she would be working remotely from home that day. The tribunal has seen an email from Ms Dell to Ms King on 24 August containing a draft of an email intended to be sent to Mr Key. This referred to Ms Dell as being demoralised and that "one PTL just has no interest in the job and no thought for anyone else but herself." The claimant was noted as having left at 2pm on the Monday, referred to as the busiest day. She was recorded as having left at 1pm on the Friday. On the last day before her leave she was said to have already said that she was leaving at 1.30pm. Other criticisms were made of the amount of work the claimant was doing. Ms Dell's evidence on this communication was unchallenged.

93. Emma Colman emailed Mr Key on 1 September saying that the claimant had made no attempt to swap her days or liaise with the rest of the team to arrange any cover. Ms Dell was said to have changed her day once again to cover the Wednesday coming. Ms Dell was described as being at breaking point. She said that she understood that Mr Key did not want to get involved, nor should he have to get involved with the PTL rota, however it was virtually impossible to come up with a rota that suited the claimant and was fair to them all. She said it would be helpful if the claimant provided dates she was able to cover the

office and also stay the full day to provide the necessary supervisory cover to the PTAs. Ms Dell's evidence was that the rota only became a problem because the claimant wouldn't do her fair share. She said that they all had their problems, but all made it work apart from the claimant. Ms Dell's view was that Mr Key had been happy to allow the PTLs to resolve the rota themselves, but when they did have issues, he constantly tried to assist and resolve the situation.

94. The claimant had not been rota-ed to come into the office on the week commencing 31 August apart from earlies on Wednesday 2 September. For the week commencing Monday 7 September she was to work entirely from home with her home working continuing apart from an early shift on Friday 18 September and Monday 21 September.

95. By mid-July 2020 the claimant had successfully applied for a role with the National Crime Agency and was thereafter, having accepted the role, simply awaiting the completion of the vetting process before she resigned from the respondent's employment effective in January 2021. She agreed that her focus by then and thereafter was on leaving the respondent. The claimant took a demotion and drop in salary initially but received a pay point increase within a few months and a promotion to a higher level than PTL from April 2022. This was into a newly created role which had not been anticipated at the time she had joined the National Crime Agency.

96. By September, the claimant had decided, in her own words to the tribunal, to "spit her dummy out" and to refuse to work to any rota. She believed that working in accordance with any rota might be taken as an acknowledgement that she was okay with it. From September she worked from home and then obtained a sick note. She was simply waiting to move on to her new role.

97. The claimant raised a grievance regarding her treatment on 16 September. The claimant accepted before the tribunal that this was just a tick box exercise as a precursor to her complaint of constructive dismissal. The grievance was forwarded to Ms Chapman of HR on 12 October. Mr Key moved away from the Leeds district during October.

98. The claimant wrote to the respondent on 20 November simply asking that this be accepted as her resignation. She did not refer to any reason for leaving. She was contractually required to give 2 months' notice, but it was subsequently agreed that she could leave on 3 January 2021. She commenced employment with the National Crime Agency the next day.

99. Due to absences on leave there was a delay in determining who should handle the claimant's grievance and the person originally earmarked for it was then leaving to start a new role. On 25 November, Detective Superintendent Khan was appointed to handle the grievance. He made contact with the claimant and met her by Skype on 2 December. She explained to him that the grievance was

just a tick in the box, she intended to bring proceedings and was leaving the respondent.

100. Detective Superintendent Khan completed his investigation in March 2021 and contacted the claimant to clarify points arising from his discussion with Mr Key. It is noted that Mr Key told Mr Khan that he was unaware of the claimant's status under the Equality Act - in cross-examination Mr Key accepted that that was not an accurate statement in respect of the entirety of the period he managed the claimant. The claimant told Mr Khan that she had commenced Employment Tribunal proceedings, didn't think it was appropriate to discuss further and asked him to check with the respondent's legal department. Mr Khan sought Ms Chapman's advice and then finalised his grievance findings which he sent to Ms Chapman on 28 April 2021. This was not however sent to the claimant as it appeared that she was no longer wishing to engage with the respondent. Amongst other things he concluded that Mr Key had supported the claimant. He felt, however, that a PDR should still be completed as it was important to recognise the hard work and commitment the claimant had shown in her role.

101. The last PDR completed for the claimant was in March 2017 as a PTO. Mr Key was told (inaccurately) by his predecessor, Mr Jessup, that all the PDRs were up to date. Chief Superintendent Miller contacted Mr Key to ask him to take immediate action to address this and show a significant improvement in the completion of PDRs by the end of August 2020. Mr Key's overall completion rate stood at 48%. He subsequently sought to arrange one with the claimant, but she did not reply in circumstances where she was already leaving the respondent.

102. The claimant's case is that she requested to be put on a number of training courses referring to around six emails. The tribunal has seen only one email referring to a number of courses.

Applicable law

103. In order to bring a claim of unfair dismissal an employee must have been dismissed. In this regard, the claimant relies on Section 95(1)(c) of the Employment Rights Act 1996 which provides that an employee is dismissed if she terminates the contract under which she is employed (with or without notice) in circumstances in which she is entitled to terminate without notice by reason of the employer's conduct. The burden is on the claimant to show that she was dismissed.

104. The classic test for such a constructive dismissal is that proposed in **Western Excavating (ECC) Ltd v Sharp 1978 IRLR 27CA** where it was stated:

> *"If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment or which shows that the employer*

no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed. The employer is entitled in those circumstances to leave at the instant without giving any notice at all or, alternatively, he may give notice and say he is leaving at the end of the notice. But the conduct must in either case be sufficiently serious to entitle him to leave at once. Moreover he must make up his mind soon after the conduct of which he complains; or, if he continues for any length of time without leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract".

105. Here no breach of an express term is relied upon. The claimant asserts there to have been a breach of the implied duty of trust and confidence.

106. In terms of the duty of implied trust and confidence, the case of **Mahmud v Bank of Credit and Commerce International 1997 IRLR 462** provides guidance clarifying that there is imposed on an employer a duty that he "will not without reasonable and proper cause conduct himself in a manner calculated [or] likely to destroy or seriously damage the relationship of trust and confidence between the employer and employee". The effect of the employer's conduct must be looked at objectively.

107. The Court of Appeal in the case of **London Borough of Waltham Forest v Omilaju 2004 EWCA Civ 1493** considered the situation where an employee resigns after a series of acts by his employer. Essentially, it was held by the Court of Appeal that in an unfair constructive dismissal case, an employee is entitled to rely on a series of acts by the employer as evidence of a repudiatory breach of contract. For an employee to rely on a final act as repudiation of the contract by the employer, it should be an act in a series of acts whose cumulative effect is to amount to a breach of the implied term of trust and confidence. The last straw does not have to be of the same character as the earlier acts, but it has to be capable of contributing something to the series of earlier acts. There is, however, no requirement for the last straw to be unreasonable or blameworthy conduct of the employer, but it will be an unusual case where perfectly reasonable and justifiable conduct gives rise to a constructive dismissal.

108. If it is shown that the employee resigned in response to a fundamental breach of contract in circumstances amounting to dismissal (and did not delay too long so as to be regarded as having affirmed the contract of employment), it is then for the employer to show that such dismissal was for a potentially fair reason. If it does so, then it is for the tribunal to be satisfied whether the dismissal for that reason was fair or unfair pursuant to Section 98(4) of the Employment Rights Act 1996.

109. The duty to make reasonable adjustments arises under Section 20 of the Equality Act 2010 Act which provides as follows (with a "relevant matter" including a disabled person's employment and A being the party subject to the duty):-

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

110. The Tribunal must identify the provision, criterion or practice applied, the non-disabled comparators and the nature and extent of the substantial disadvantage suffered by the claimant. 'Substantial' in this context means more than minor or trivial.

111. Otherwise in terms of reasonable adjustments there are a significant number of factors to which regard must be had which as well as the employer's size and resources will include the extent to which the taking the step would prevent the effect in relation to which the duty is imposed. It is unlikely to be reasonable for an employer to have to make an adjustment involving little benefit to a disabled person.

112. In the case of **The Royal Bank of Scotland –v- Ashton UKEAT/0542/09** Langstaff J made it clear that the predecessor disability legislation when it deals with reasonable adjustments is concerned with outcomes not with assessing whether those outcomes have been reached by a particular process, or whether that process is reasonable or unreasonable. The focus is to be upon the practical result of the measures which can be taken. Reference was made to Elias J in the case of **Spence –v- Intype Libra Ltd UKEAT/0617/06** where he said: *"The duty is not an end in itself but is intended to shield the employee from the substantial disadvantage that would otherwise arise. The carrying out of an assessment or the obtaining of a medical report does not of itself mitigate, prevent or shield the employee from anything. It will make the employer better informed as to what steps, if any, will have that effect, but of itself it achieves nothing."* Pursuant, however, to **Leeds Teaching Hospital NHS Trust v Foster UKEAT/0552/10**, there only needs to be a prospect that the adjustment would alleviate the substantial disadvantage, not a 'good' or 'real' prospect.

113. If the duty arises it is to take such steps as is reasonable in all the circumstances of the case for the respondent to have to take in order to prevent the PCP creating the substantial disadvantage for the claimant. This is an objective test where the Tribunal can indeed substitute its own view of reasonableness for that of the employer. It is also possible for an employer to fulfil its duty without even realising that it is subject to it or that the steps it is taking are the application of a reasonable adjustment at all.

114. The complaint of harassment is brought pursuant to Section 26 of the Equality Act 2010 which states:

"(1) A person (A) harasses another (B) if -
A engages in unwanted conduct related to a relevant protected characteristic, and
the conduct has the purpose or effect of—
violating B's dignity, or

creating an intimidating, hostile, degrading, humiliating or offensive environment for B……

(4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—
the perception of B;
the other circumstances of the case;
whether it is reasonable for the conduct to have that effect."

115. Harassment will be unlawful if the conduct had either the purpose or the effect of violating the complainant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. A claim based on "purpose" requires an analysis of the alleged harasser's motive or intention. This may, in turn, require the tribunal to draw inferences as to what the true motive or intent actually was. The person against whom the accusation is made is unlikely to simply admit to an unlawful purpose. In such cases, the burden of proof may shift from accuser to accused.

116. Where the Claimant simply relies on the "effect" of the conduct in question, the perpetrator's motive or intention – which could be entirely innocent – is irrelevant. The test in this regard has, however, both subjective and objective elements to it. The assessment requires the tribunal to consider the effect of the conduct from the complainant's point of view. It must also ask, however, whether it was reasonable of the complainant to consider that conduct had that requisite effect. The fact that the claimant is peculiarly sensitive to the treatment accorded him does not necessarily mean that harassment will be shown to exist.

117. Indirect discrimination, as defined in Section 19 of the Equality Act 2010, occurs where:

"A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—

A applies, or would apply, it to persons with whom B does not share the characteristic,

it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,

it puts, or would put, B at that disadvantage, and

A cannot show it to be a proportionate means of achieving a legitimate aim."

118. The principles relating to a claim of indirect discrimination were considered by the Supreme Court in **Essop v Home Office 2017 ICR 640**. These were referred to in **Dobson v North Cumbria Integrated Care NHS Foundation Trust UKEAT/0220/19**. The group disadvantage can be established in a number of ways including using statistical evidence, but the absence of such evidence does not mean that particular disadvantage cannot be shown. The particular disadvantage may be one in respect of which judicial notice may be taken. In such a case, there would not be any requirement for actual evidence of disadvantage and the claimant would have established a prima facie case of particular disadvantage. In **Essop**, Baroness Hale considered that one of the "context factors" relevant to a claim of indirect discrimination may be "the expectation that women will bear the greater responsibility for caring for the home and family than will men". Quoting other authorities making such similar reference, the EAT concluded that the fact that women bore the greater burden of childcare responsibilities than men and that this can limit their ability to work certain hours was a matter in respect of which judicial notice has been taken without further enquiry on several occasions. Whilst things might have progressed somewhat in that men do now bear a greater proportion of childcare responsibilities than they did decades ago, the position is still far from equal. The assumptions made and relied upon in the authorities quoted were still very much supported by the evidence before the EAT of current disparities in relation to the burden of childcare. However, taking judicial notice of the childcare disparity does not necessarily mean that the group disadvantage is made out. This will depend on the interrelationship between the general proposition that is the result of the childcare disparity and the particular PCP in question. The childcare disparity means that women are more likely to find it difficult to work certain hours e.g. nights or changed hours (where the changes are dictated by the employer) than men because of childcare responsibilities. However, if the PCP involves some other arrangements that might not necessarily be more difficult for those with childcare responsibilities to meet, it will be open to the tribunal to conclude that the group disadvantage is not made out.

119. Mr Mallet refers the tribunal to the case of **Shackletons Garden Centre Ltd v Lowe UKEAT 0161/10** as support for the proposition that the claimant may by not wishing to investigate alternative childcare arrangements be exercising a personal choice rather than suffering a detriment by reason of the disparate impact of the PCP on women. He submits that in this case any disadvantage the claimant suffered was self-inflicted. All others with childcare issues made appropriate arrangements to enable them to work in accordance with the rota arrangements. The claimant had difficulties because of her own failure to put childcare arrangements in place rather than the PCP. She exacerbated the situation by moving the house, not asking her ex-husband whether he could take their child on additional occasions, not utilising the availability of the claimant's own mother for childcare and not adopting any sort of flexible approach.

120. **Homer v Chief Constable of West Yorkshire Police 2012 UKSC 15** gives guidance on what is now section 19(2)(d) – the issue of justification. Consideration of section 19(2)(d) involves approaching the issue of justification in a structured way, asking the right questions. These questions were outlined as follows.

> *"19. The approach to the justification of what would otherwise be indirect discrimination is well settled. A provision, criterion or practice is justified if the employer can show that it is a proportionate means of achieving a legitimate aim. The range of aims which can justify indirect discrimination on any ground is wider than the aims which can, in the case of age discrimination, justify direct discrimination. It is not limited to the social policy or other objectives derived from article 6(1), 4(1) and 2(5) of the Directive, but can encompass a real need on the part of the employer's business: Bilka-Kaufhaus GmbH v Weber von Hartz, Case 170/84,* [1987] ICR 110.
>
> *20. As Mummery LJ explained in R (Elias) v Secretary of State for Defence* [2006] EWCA Civ 1293, [2006] 1 WLR 3213*, at [151]:*
>
> *". . . the objective of the measure in question must correspond to a real need and the means used must be appropriate with a view to achieving the objective and be necessary to that end. So it is necessary to weigh the need against the seriousness of the detriment to the disadvantaged group."*
>
> *He went on, at [165], to commend the three-stage test for determining proportionality derived from de Freitas v Permanent Secretary of Ministry of Agriculture, Fisheries, Lands and Housing* [1999] 1 AC 69*, 80:*
>
> *"First, is the objective sufficiently important to justify limiting a fundamental right? Secondly, is the measure rationally connected to the objective? Thirdly, are the means chosen no more than is necessary to accomplish the objective?"*
>
> *As the Court of Appeal held in Hardy & Hansons plc v Lax* [2005] EWCA Civ 846, [2005] ICR 1565 *[31, 32], it is not enough that a reasonable employer might think the criterion justified. The Tribunal itself has to weigh the real needs of the undertaking, against the discriminatory effects of the requirement."*

121. At paragraph 22 in **Homer** Lady Hale added that: *"To be proportionate, a measure has to be both an appropriate means of achieving the legitimate aim and (reasonably) necessary in order to do so." "A measure may be appropriate to achieving the aim but go further than is (reasonably) necessary in order to do so and thus be disproportionate."*[23]. The availability of non-discriminatory alternatives is relevant: see [25]."

122. In performing the required balancing exercise therefore, an employment tribunal must assess not only the needs of the employer, but also the discriminatory effect on those who share the relevant protected characteristic. In **University of Manchester v Jones 1993 ICR 474** the Court of Appeal held that this involved both a quantitative assessment of the numbers or proportions of people adversely affected and a qualitative assessment of the amount of

damage or disappointment that may result to those persons, and how lasting or final that damage is. Particular hardships suffered by the claimant may also be taken into account provided proper attention is paid to the question of how typical those hardships are of others who are adversely affected. The greater the discriminatory effect, the greater the burden on the employer to show that the PCP corresponds to a real commercial objective and is appropriate for achieving that objective. The degree of justification required is "proportionate" to the degree of disparate impact caused by the employer's practice or policy.

123. Applying the legal principles to the facts as found, the tribunal reaches the conclusions set out below.

Conclusions

124. The tribunal considers firstly the claimant's complaint of indirect sex discrimination. This is reliant on the respondent having a practice of requiring the claimant and her PTL colleagues to work from the office and/or work at certain times of the day in order to cover the work rota. This was not a respondent, as employer, particularly prescriptive regarding how the PTL role was carried out, including in terms of place and hours of work. The respondent largely left it to the claimant and her PTL colleagues to determine their own working patterns. However, the PCP relied upon is of the broadest and most general of natures. The respondent did require the PTLs to work from the office as part of their working pattern. Clearly, there was a requirement to work at certain times of the day, in the sense that the PTLs had to be working at the same time as the subordinate employees they managed, their uniformed colleagues and those involved in court work, including the CPS. The degree of cover required for the efficient performance of the role include the need for a PTL presence early and late in the day. This was largely driven by the agreement of the PTLs (they thought as a group, albeit with the claimant a dissenter, that 2-3 PTLs ought typically be present at the busiest times) but was certainly adopted by higher management and the respondent as employer. The respondent does not dispute that the respondent applied the pleaded PCP.

125. The policy was then applied to the claimant as one of the PTLs. It was applied to male and female employees, Mr Butterfield being the only male employee within the group at any material time.

126. Did then the PCP put women at a particular disadvantage when compared with men in that more women than men have a greater share of childcare responsibilities? Whilst this issue might be determined simply by the tribunal taking judicial notice of the reality of women still bearing a greater burden of responsibility for the care of children than men, this was a workforce where out of a typical complement of 6, 3 of the PTLs, including the claimant, were females with childcare responsibilities who had to factor in the need for them to look after children in the hours of work they agreed to and their working patterns. Ms Colman worked 2 short days and 3 longer days to give her flexibility and Ms Telford worked on a part-time basis, where she struggled to attend the office to provide cover from 7am, albeit could do so from 7.30am,

which the respondent accepted. Mr Butterfield worked full-time with no evidence of any constraints on his work due to childcare responsibilities. The group disadvantage is shown.

127. Did then the claimant suffer an individual disadvantage by the respondent's practice. Mr Mallett reminds the tribunal that it must be the PCP which puts the claimant at a disadvantage, rather than something that might be described as self-inflicted. Certainly, the claimant made it more difficult for herself by relocating to Holmfirth which involved a long and difficult commute to and from work. The location certainly made it more difficult for her to work the rota-ed hours because of her childcare responsibilities. Of course, the claimant made the move to be closer to her family to assist with childcare. However, the clamant was reluctant to use potential assistance available. In particular, the claimant's son by 2020 was attending school and the claimant had told Mr Key that her mother could assist her with drop offs and pick-ups. There is no evidence thereafter that the claimant sought to utilise this available support. She was generally unwilling to involve her mother. She was also reluctant to see if her ex-husband could ever offer additional childcare or if there could be any flexibility in their agreed custody arrangements. The claimant did, on the evidence, expect the PTLs to work around her arrangements, in the context of a working arrangement which ought to and did provide a significant degree of flexibility, including for the claimant. The claimant wanted to maximise her own home working regardless of the constraints on her due to her young son.

128. Fundamentally, the claimant can point to no single occasion where she was required to work on a day or at times which she was unable to because of childcare. The claimant would say that there was a disadvantage to her in the way the rota was put together (rather than the PCP itself) and without due consideration of her needs, but, ultimately, she was always allocated work she could and did perform. The reality was that the claimant contributed to any difficulties by a lack of co-operation in ensuring that personal commitments were communicated in advance of the rota preparation. The PCP did not put her at an individual disadvantage.

129. Nevertheless, on the basis of the claimant being able to show a disadvantage, the tribunal considers whether the PCP was a proportionate means of achieving a legitimate aim. The tribunal has no difficulty in concluding that the respondent had the legitimate aim of ensuring that an efficient service was provided by the PTLs, including the supervision of subordinate employees and liaison with outside agencies including the CPS at crucial times of the day in terms of court attendance. There was consensus amongst all of the PTLs, apart from the claimant, about the amount and timings of office-based cover required to provide an efficient service. The claimant had agreed to the underlying principles of the rota in February 2018. These are factors which also go to the question of proportionality.

130. The tribunal has then to conduct the appropriate balancing exercise in assessing the respondent's needs against the claimant's difficulties in

complying with the PCP. That brings back into consideration the fact that the claimant was always able to work on days and at times which suited her childcare arrangements. The broad and general nature of the PCP is relevant in this context. The respondent was not requiring each PTL at all times to work on particular days or according to a particular pattern. It wanted its business needs met at all relevant times, but was extremely flexible as to how that was accomplished. Indeed, whilst it required flexibility from the staff, it allowed the PTLs the ability to work the hours which suited them each individually. It gave the PTLs an opportunity amongst themselves to discuss the requirements of the service and agree, which they did, their working requirements. A shared diary was in place for each PTL to populate so that whoever was organising the rota would do so with reference to such declarations of availability. Even then, the claimant was at liberty to notify the PTL compiling the rota of a change in her circumstances and had the ability to organise swaps with other employees. There are examples in the tribunal's factual findings of late changes made by the claimant to her working arrangements.

131. The claimant maintains that it was not proportionate to ask her to complete her calendar entry to show that ordinarily she would be available to work an early shift on a Wednesday, a late shift on a Tuesday and a late shift on alternative Fridays. It was not, however, a great burden for the claimant to do such task for her own benefit and particularly in circumstances where it is clear that the claimant's domestic arrangements would and did fluctuate from time to time. For instance, the occurrence of school holidays would change her childcare needs, as well as her husband's whereabouts - whether he was away working and unable to assist with childcare or on leave and spending a period of holiday with their son. The claimant on 27 February 2020 could not be categoric as to the days she could work early and late shifts. The reality of the situation is that the claimant did not wish to commit to any particular days and was dismissive of the need for the level of cover which her PTL colleagues thought ought to be in place each day. Covid changed everyone's domestic arrangements as well as the workplace needs, with again childcare issues depending upon the opening of nurseries and schools and, in the claimant's case, also whether or not her husband was working, where from or whether he was furloughed. The PCP during times of Covid restrictions, of course, became still more relaxed. Such factors support the reasonableness of employees having to complete the calendars which, if done, provided an efficient and effective mechanism for ensuring that employees were not asked to work at times on the rota which would not suit them in terms of their childcare arrangements. The claimant was not alone in having childcare responsibilities, yet was the only PTL who did not regard the respondent's practice as flexible so as to allow them to manage their childcare arrangements around their patterns of work. Of course, this was not always easy, but the difference in impact was in part arising out of the claimant's own attitude to her own flexibility or lack of it. The respondent did act proportionately.

132. In all the circumstances the claimant's complaint of indirect sex discrimination must fail and is dismissed.

133. The tribunal turns next to the complaint regarding a failure to make reasonable adjustments. The respondent accepts that at all material times the claimant was a disabled person by reason of her suffering from depression and anxiety. It conceded it had knowledge of the claimant's disability from 12 February 2019 onwards. The claimant identifies the failure to make reasonable adjustments as occurring in the period from January to April 2020. She asserts that the respondent applied a provision, criterion or practice of requiring her to attend the office for 3 days or more per week over this period.

134. Such PCP can be seen to have been applied in the period prior to the claimant's sickness absence from August 2019. Obviously, however, whilst she was absent due to sickness there was no such requirement. When she returned to work, she did so during the first Covid lockdown from 26 March 2020 such that she was working then entirely from home.

135. For the duty to make reasonable adjustments to arise, any practice must put the claimant at a substantial disadvantage compared to those who do not suffer from her disability. The claimant says that the requirement to attend the office exacerbated her disability and existing symptoms, including her anxiety. The tribunal has no evidence from which it can conclude that working more than 3 days in the office would exacerbate the claimant's anxiety and depression. There is a recommendation in the occupational health report that the respondent give consideration to allowing the claimant agile working for 2-3 days each week, but the reality was that this was already happening and had been a pattern for some time. From January to June 2019 the rota records show the claimant working habitually 2/3 days at home each week. There is a greater prevalence of office working then in the month of July, albeit the claimant had periods of annual leave such that she was not ever working as many as 4 days in a week in the office.

136. The claimant maintains that she was absent due to her mental health condition because of her need to work from the office, but whilst that may have been a factor, the situation was far more complicated in that her issues related to how the rota was put together, bullying the claimant claims she was suffering from and, as noted by occupational health, personal stressors as well as stressors arising out of a poor relationship with colleagues.

137. The respondent was not in a position to make any adjustment until the claimant was fit to return to work, which only arose on 26 March 2020. Again, prior to that date the reality was that the claimant had already been working from home to an extent which accorded with the occupational health recommendation. When she did return to work in March 2020, again, she worked entirely from home so that the occupational health recommendation was honoured. When lockdown restrictions eased and the claimant started to return to the office, this was at most for one day in a week. Whilst the claimant maintains that any reasonable adjustment came about not by design, but because of a Covid related practice which applied to all PTLs, that does not change the reality of there being an effective adjustment to the claimant's days

and place of work which, on her own case, was what was necessary to alleviate any disadvantage. Mr Key would have intervened to ensure any return to work allowed 2-3 days of homeworking if that had been necessary. The claimant was allowed a phased return and he knew that due to Covid restrictions the claimant's office time was limited and could be reviewed once Covid restrictions ended.

138. The respondent did not fail to comply with any obligation to make reasonable adjustments.

139. The final freestanding complaint of unlawful discrimination is of disability related harassment in a false allegation made to PSD at a meeting on 24 June 2020 between the claimant and Mr Key. She refers in her particularised complaint to anonymous malicious complaints by Mr Key as a line manager knowing of her disability and how issues at work had exacerbated her condition.

140. There was of course, as the claimant had to accept, no complaint brought by Mr Key himself. A concern was raised with him by PSD in respect of which he was obliged to act. The evidence is that this concern arose out of an audit conducted by PSD and, if there was any individual source of the need to audit the claimant's work, the identity of that individual was not at the time, nor has since been, divulged. Whilst the tribunal might wonder whether one of the claimant's colleagues in the context of a dysfunctional relationship between them had reported her, there is no evidence whatsoever upon which the tribunal could conclude that to have occurred, let alone who might have been responsible.

141. Mr Key dealt with the matter informally. In the context of the claimant suffering from a mental health impairment it may be said, as the claimant now does, that she ought to have been given advance notice of the concern before their meeting on 24 June and the opportunity to be accompanied. On the other hand, that would have elevated the issue to a level in excess of how it was being viewed by PSD and Mr Key and would inevitably have caused the claimant a different type of worry.

142. There is clearly an evidential basis for the concern being raised, as it had been identified that the claimant could not show any work activity during times she had declared herself as working. It turned out that the claimant could provide evidence of work activity and the PSD audit was not all embracing, as it did not pick up work activity conducted through apps. Nevertheless, it was a legitimately raised concern. Mr Key behaved reasonably and appropriately in asking the claimant about the type of work she had undertaken on the days in question, evidence of which was quickly provided and the issue effectively closed in circumstances where the respondent was satisfied with the claimant's explanation. Whilst Mr Key had never envisaged dealing with the matter as a serious issue, certainly he did not see any justification for taking further action regarding the claimant's working methods.

143. In any event, the claimant has shown no facts from which the tribunal could reasonably conclude that Mr Key's actions or indeed those of PSD were in any sense whatsoever related to the claimant's mental health impairment. There is no evidence that Mr Key had been frustrated regarding the claimant's absence or any limitations in the work she could carry out as a result of her mental health condition. The claimant had by this time of course returned to work and there is no evidence that there was any dissatisfaction with the work she produced. The evidence in fact is of Mr Key being a sympathetic individual who showed genuine concern for the claimant's health difficulties throughout his management of her employment and was quick to allow leave where appropriate and adjustments to her work as part of phased returns following sickness absence. The claimant's complaint of disability related harassment fails and is dismissed.

144. The tribunal then turns to the complaint of constructive dismissal which relies on a number of events set out by the claimant as singularly or, more likely, cumulatively amounting to a breach of trust and confidence.

145. The claimant firstly relies on Mr Roberts failing to prevent bullying and acting inappropriately on the claimant's allegations around August 2017. The claimant has told the tribunal that she had conversations with Mr Roberts, but has given no details of what they were. The tribunal has not found that a formal grievance was submitted and has not concluded that Mr Roberts said that he would deal with her complaints formally. The tribunal considers that the requirement of a formal process would have been for the claimant to set out her grievances in writing, which she clearly never did. The claimant was a senior employee and, the tribunal considers, would have known how to initiate a grievance or to find out what she needed to do to formalise a grievance. Had she submitted a formal grievance and nothing occurred, she would have followed this up. There is no evidence of any human resources investigation - the tribunal indeed accepts that this did not occur. An investigation would have occurred had there been a formal complaint and individuals within the team would have been interviewed – none were. There is, in fact, no evidence of what bullying behaviour the claimant was complaining about. She has said that it was certainly not in respect of Ms Hirst's involvement in the rota arrangements. The tribunal has before it unchallenged evidence of Vanessa Charlton that she had no exchange of words with the claimant and the claimant again has pointed to no specific altercation or aspect of anyone's behaviour which formed part of the concerns she says she raised.

146. The evidence in fact is not of the claimant being singled out for any adverse treatment. The evidence is suggestive of there being at least 2 distinct camps within the PTLs – two groups of senior employees who did not get on with each other. Despite her denials, it is clear that Ms Dell together with the claimant had a dislike of Ms Hirst and Ms Charlton. Ms Telford, to perhaps a lesser degree, was aligned with the claimant. This was a dysfunctional team where personal relationships had deteriorated, but not in the context of any acts of bullying by one person or another that the tribunal can find on the evidence. The tribunal has considered the claimant's text messages exchanged with Ms Dell and,

whilst the language is quite bullish, these are communications between 2 people who at the time got on well and were never meant to be more widely viewed. The existence of those texts is not indicative of their being in fact no bullying, but nor are they corroborative of bullying behaviour.

147. Ms Dell raised issues with Mr Roberts and Mr Roberts did not deal with these well, on his own admission at the time. He thought that talking directly to people would resolve matters, whereas in fact there was a perceived breach of confidence (particularly affecting Ms Dell). He did not, however, simply ignore the issues and in the context of the tribunal being unaware of any concrete allegation against Ms Hirst or Ms Charlton, it cannot conclude that Mr Roberts, in his admittedly misguided attempt to resolve matters, acted in breach of the obligation of trust and confidence as regards the claimant.

148. In terms of other distinct allegations, the claimant complains of an email sent by Emma Colman to her in May 2020 which is categorised as an unreasonable and unfounded allegation of poor performance. The claimant had been absent from the workplace during a time when procedures had changed. Whilst she was being reintroduced into the workplace and advised of the new ways of working by specifically Ms Telford, Ms Colman identified on a particular file some actions of the claimant which were not in accordance with the new current practices. She pointed those out to the claimant. She did so in a very factual manner, where the claimant recognised that, at least in respect of one matter, what she had done was technically incorrect. The claimant had a view that she had acted appropriately in the circumstances, but where clearly there might be different ways of doing things. The claimant, in her email in reply, does not appear at the time to have taken great offence at the communication and Ms Colman makes it clear in reply that she saw the matter as a “one-off”. There were no consequences flowing from the email. Ms Telford was shown the email by the claimant and on balance other PTLs were aware of the communication, but in no evidenced sense did this amount to a public humiliation of the claimant. The claimant’s position now in respect of this email represents a misconstruing of its wording and exaggeration of its effect.

149. The claimant then, as a distinct issue, complains of a failure to provide recognition, support or career progression or to follow policy with regard to any personal development including a refusal of training over her entire period as a PTL from 2017 – 2020 and under the management of in particular Mr Roberts, Mr Jessup and Mr Key. The tribunal has seen one email very early in the claimant’s employment where she could not attend training courses she wished to. However, there is no other evidence of the claimant seeking relevant training and being refused. Certainly, there is no evidence of the claimant chasing up this matter or raising a complaint about it. The claimant was firmly of the view at the time and before the tribunal that she could do the role of a PTL without difficulty and certainly in circumstances where there were no training needs to enable her to perform it. Any training she might have wished was with a view to progression into an alternative role, but again there is no evidence as to this being continually refused as the claimant suggests without giving specifics. There was a failure to provide regular PDRs, but the evidence is clear, certainly

in terms of Mr Key's period of management, that he believed, because he had been told, that his predecessor, Mr Jessup had carried out the PDRs. The lax approach Mr Key took to this part of his duties must be seen in the context where he was extremely busy and had a lot of people elsewhere to manage. It is certainly not illustrative of the claimant being singled out for any adverse treatment, but rather of a more general lapse. The claimant maintains that no PEN notes were made during her employment recording achievements or praise. The tribunal, however, is completely unaware as to whether or not this was atypical amongst the PTLs and the failure had, on the evidence, no consequences. Certainly, any lack of training and support cannot be said to amount to a breach of trust and confidence. This was in no sense whatsoever a factor in the claimant's resignation from her employment.

150. The claimant complains further of the respondent not adequately investigating or acting upon complaints and formal grievances, culminating in an unreasonable time delay from the submission of her grievance in September 2020. This allegation relates to the earliest issue of the claimant raising concerns with Mr Roberts which the tribunal has already dealt with. The only formal grievance ever raised was in September 2020, which in truth, on the claimant's own evidence, was a tick box exercise and not something she was seeking any resolution from, particularly given that she was by this time simply awaiting vetting approval before moving away from the team and into her new role with the NCA. In any event, whilst there is evidence of delay in considering this grievance, it is delay explicable by a lack of availability of personnel to undertake it and in circumstances where the claimant and her grievance were not ignored. The claimant's grievance was initiated and concluded after she had made her decision to leave the respondent's employment and was not causative in any sense whatsoever of her decision to leave.

151. More generally, the tribunal has set out a number of instances where Mr Key was quick to intervene if concerns were raised about or by the claimant and where, in his words, he did to an extent seek to negotiate working arrangements on the claimant's behalf. Mr Key was clearly a sympathetic individual who showed genuine concern for the claimant's various issues, not least her mental health and sought genuinely to find a resolution and to promote a more harmonious working relationship amongst the PTLs. In her half pay appeal, the claimant was at pains to point out that she was not being critical of Mr Key. His approach to her concerns did not become adverse to her thereafter.

152. No breach of trust and confidence can arise out of the claimant's treatment under this heading.

153. The remaining acts complained of overlap and together encompass the main issue in this case – one already considered to a significant extent in the complaint of indirect sex discrimination. The claimant maintains that from 2018 – 2020 there was a lack of flexibility and support with the requirements of the rota, with bullying being allowed around the issue. She complains that in May

2019 that there was unfair criticism and bullying by colleagues regarding her return to work following stressful events which were not addressed by her line manager. She then complains of bullying from colleagues highlighted in meetings with HR and occupational health creating ongoing stress and again her line manager failing to act in September 2019.

154. There is again a distinct lack of evidence of specific acts of bullying, indeed from the claimant herself. The essence of her case is that the bullying manifested itself in other PTLs allocating her to work a rota which she could not work or only with difficulty, that her treatment in the rota was unjustified and to make life difficult for her. The respondent's management, she maintains, failed to step in to prevent this.

155. It is noted that the claimant was contracted to work full-time hours Monday – Friday and in accordance with an agile work policy which allowed for flexibility, but required that the claimant would attend a place of work whenever required.

156. The concerns raised with Mr Roberts have been found to be exaggerated, with no evidence of HR involvement or any formal grievance.

157. The claimant was then, on the tribunal's findings, difficult and uncooperative with the rota. This caused tensions amongst other PTLs, with a feeling developing amongst some of their number of a lack of fairness, of the claimant avoiding work, particularly if it was office based, and of effectively dropping others in it and forcing them to cover for her last-minute changes - changes which could have been communicated by her at a much earlier stage. Vanessa Charlton, Emma Coleman and Amanda Hirst have all given evidence suggestive of that state of affairs which the claimant has chosen not to challenge. Their evidence can and is accepted in circumstances where other evidence before the tribunal is corroborative of their standpoint. The tribunal has seen and referred to, in its factual findings, examples of the claimant requesting changes in her rota in situations where commitments had not been advised by her through the shared calendar facility in advance of the preparation of the rota. One of the claimant's texts to Ms Dell is indicative of her attitude, signifying that she was going to make the rota work for herself. She had not advised that she was on a course on 22 August 2017. She was late on 13 October 2017 raising that she had commitments clashing with the rota, yet Ms Hirst was supportive. Ms Dell was clear that the claimant did not stick to late Tuesdays and early Wednesdays. Ms Telford accepted that those days were not set in stone (the claimant could not indeed be categorical about those being available days in February 2020). She was allowed to work early whilst caring for her child at home despite this being against policy. Ms Telford said that whilst there were attempts to get the claimant to work Mondays, they were never actioned when the claimant said she couldn't work them. The claimant was able to work 3 early Thursdays in May/June 2019. The claimant did not agree with the genuine consensus otherwise amongst the PTLs of the amount of cover required in the office for them to provide an effective service. She was an outlier in this regard. The claimant herself recognised that the

other PTLs had tried to help her to avoid losing her and has suggested that the situation was satisfactory up to July 2019. In June 2020, the claimant could not work a Monday and Mr Butterfield swapped over to assist the claimant with another day. In August 2020 she didn't wish to work a Friday on which her birthday fell, but was able to work a Monday. She gave late notice of not being able to work on Wednesday 2 September. By that point the claimant had determined that she would simply do her own thing, regardless of the rota.

158. The claimant was clearly of the view that she ought not to have had to complete the calendar so as to signify in particular her preferred dates arising out of her childcare arrangements. In circumstances the tribunal has already explained, where her personal arrangements could and did change from week to week and month to month, no one putting together the rota could know in advance which days suited the claimant in terms of, in particular, office working. The claimant confirmed at her meeting with Mr Key in February 2020 that she could not be categorical about days upon which she was able to work early or late shifts. Ms Coleman's unchallenged evidence is that the claimant would mostly offer Tuesdays and Wednesdays, but would change her preferred working days once the rota was sent out. Ms Telford agreed that this sometimes happened. The uncontested evidence of Ms Coleman Ms Charlton and Ms Hirst is that last-minute changes communicated by the claimant caused others to have to rearrange their own affairs. Ms Dell was of the view that the claimant did not care and Ms Charlton that there was a lack of consideration by the claimant for her colleagues. The tribunal has seen emails where the claimant offers to work early shifts on a Monday and Wednesday (4 July 2017), a Tuesday early shift (13 October 2017) and of her saying on 5 July 2019 that she had notified the early and late shifts she could do according to when her ex-husband was taking their son. Mr Butterfield's accepted evidence was that the claimant had never suggested to him that there were fixed days on which she could work early/late shifts.

159. The context, in any event, is that it was difficult to allow prescribed dates of early/late working where there was a need for the PTL team to be flexible, where they had a variety of working patterns, their own personal arrangements and preferences including medical or dental appointments issues with vehicles or the need to attend family events, as well as childcare. There were also obviously regular occurrences of periods of annual leave and sickness absence amongst the team. The evidence is that all of the PTLs with the exception of the claimant were able to make the system work for them. The claimant has at times maintained that she was always given an early shift on a Monday which she could not work, whereas the rota evidence the tribunal has seen suggests that those shifts were allocated only rarely. There is no evidence that the claimant was put down for shifts which transpired to be inconvenient other than when the person compiling the rota (an admittedly thankless task) could not avoid it or did not know of the claimant's unavailability.

160. The evidence is then that the claimant never in fact had to work a shift which she raised as problematical. Whilst any rota arranged which was inconvenient

to the claimant arose primarily out of her failure to signify her availability dates in the calendar, as soon as she did raise clashes with her personal arrangements, she was taken off those dates. The claimant may have seen it as a burden to have to complete the calendar in circumstances where there were often common days where she could and preferred to work early and late shifts. However again, these did fluctuate and it was certainly proportionate to require her to do so, in her own interests and in the interests of the efficient provision of cover amongst the PTLs.

161. In the overall context, it is unsurprising that the claimant's PTL colleagues reacted badly in May 2019 regarding news that the claimant was undertaking a plumbing course on an evening at the same time as she was attending work only on a phased basis. The tribunal agrees that there is nothing inconsistent with the claimant attending that course and her being on a phased return, but it remains understandable that a view might be taken by some colleagues that the claimant was not being fair. This was not ignored by Mr Key, but how the claimant's colleagues were said to have behaved was not made clear and it is difficult to see what he could have done. Again, the context was one of mutually strained relationships between colleagues which were difficult to pinpoint and resolve.

162. There is then evidence of the claimant being supported and given further flexibility so that she could work at home whilst her child was still under her care and even bring her child into work on one occasion.

163. Then, every time the claimant raised an issue, Mr Key responded and/or arranged a meeting to discuss the issue with the claimant. Mr Key was described as being "lovely" in the context of his attitude towards the claimant and his treatment of her working arrangements when she suffered her bereavements. He was amenable to rearranging shifts to allow the claimant phased returns to work. The most significant absence of the claimant occurred from August 2019 to 26 March 2020 where the claimant highlighted exceptionally a specific incident which she regarded as the last straw in terms of a culmination of bullying behaviour. The email correspondence however was of the most innocuous nature, the claimant taking unnecessary and unintended offence at a lack of enquiry as to the welfare of her child in the context of a brief exchange of messages between her and Ms Charlton. Certainly, Mr Key wanted the PTLs to sort the issues out between themselves. The tribunal accepts that he was not an individual with direct and intimate knowledge of the working of the service and that it would have been an inappropriate burden for him to have to put together the rota of PTLs. He couldn't have done it. The PTL team suffered from there being no recognised hierarchy where no single person had responsibility for rota arrangements, where the responsibility was shared and where there was scope for enmities and jealousies arising which in fact resulted in a quite fractured team. Nevertheless, the claimant had as much flexibility as could reasonably have been allowed to her in her role and a mechanism, through populating the shared calendar, of ensuring, so far as possible, a working arrangement which was convenient to her circumstances.

164. Fundamentally, there is no evidence of the rota being engineered to inconvenience the claimant. When it was inconvenient, it was changed. There is no evidence of her issues being ignored. Mr Key may not have been able to find the solution the claimant wanted and the claimant may consider that he could have been more prescriptive in his conversations with the other PTLs, but he had reasonable cause for the approaches he took to a situation where the claimant's own attitude was at times problematical. A breach of trust and confidence is a fundamental breach of the contract of employment which involves behaviour indicative of an employer no longer considering itself to be bound by that contract. The test is not whether behaviour was unreasonable and it may be viewed as a high hurdle for a claimant to surmount. Certainly, the facts as found in relation to the completion of the rota, the behaviour of the claimant's PTL colleagues in respect of it (and the claimant's difficulties in working particular shifts) and management's reaction to her raising of concerns does not amount to a breach of trust and confidence.

165. Standing back and looking at the entirety of its factual findings and conclusions, there was no fundamental breach of the claimant's contract of employment. The claimant was not therefore dismissed and her complaint of unfair dismissal must fail and is dismissed.

Employment Judge Maidment
Date 30 June 2022

Reserved Judgment & Reasons Sent to The Parties On
Date 6 July 2022