EMPLOYMENT TRIBUNALS

Claimant: **Ms L Riley**

Respondent: **Dr D Burley, Dr N Taylor, Dr K Moore, Dr T Draghici and Dr R Grainger Trading as Hebden Bridge Medical Practice**

Heard at: Leeds on 30 November, 1 December and 2 December 2021

Deliberations in Chambers 11 January 2022

Before: **Employment Judge Shepherd**
Members: **Ms S Scott**
Mr G Corbett

Appearances:
For the claimant: Mr Price, counsel
For the respondent: Mr Johnson, Lay representative

RESERVED JUDGMENT

The unanimous judgment of the Tribunal is that:

1. The claim that the claimant was unfairly dismissed pursuant to section 94–98 of the Employment Rights Act 1996 is not well founded and is dismissed.

2. The claims that the claimant was discriminated against by reason of or arising from her disability are not well-founded and are dismissed.

3. The claim that the claimant was victimised because she had done a protected act is not well-founded and is dismissed.

REASONS

1. The claimant was represented by Mr Johnson and the respondent was represented by Mr Price.

2. The Tribunal heard evidence from:

Louise Riley, the claimant;
Rosalie Duke, Deputy Practice Business Manager;
Anthony Martin, Practice Business Manager;
David Burley, General Practitioner and partner.

3. The Tribunal had sight of a bundle of documents which, together with documents added during the course of the hearing, was numbered up to page 526. The Tribunal considered those documents to which it was referred by parties.

4. The Tribunal listened to a recording of a telephone conversation between Rosie Duke and the claimant on 7 July 2020.

The issues

5. A list of issues was contained in an annex to the orders made at a Preliminary Hearing before Employment Judge Cox on 14 April 2021. This was as follows:

A. Claim 1806400/2020

The Claimant alleges unfair constructive dismissal, direct disability discrimination because of her disability of anxiety and depression (resulting from a condition of emotionally unstable personality disorder) and discrimination because of something arising in consequence of her disability, namely her sickness absence due to anxiety and depression.

Detriments

The alleged acts of disability discrimination are as follows. These are all alleged to be direct discrimination and all but allegations 5 and 6 are also in the alternative alleged to be discrimination because of something arising in consequence of disability (her sickness absence):

1. The Respondent failed to offer the Claimant new jobs and roles that it was offering to others. The Claimant has been ordered to provide further particulars of this allegation.

2. On her return to work from sickness absence on 9 April 2020, Mr Martin (Practice Manager) shouted at the Claimant for contacting other managers

to ask for help, told her that others were too busy to help her and that she must sort her own problems out.

3. At her return to work interview, Mr Martin made ridiculing and demeaning remarks about the Claimant's sickness affecting deadlines and was openly critical of her going on sick leave.

4. After the Claimant's return to work, Mr Martin and Ms Duke (Deputy Practice Manager) failed to engage with the Claimant, did not make eye contact with her, avoided contact with her and declined her offers to make tea and coffee.

5. After a request by the Claimant on 15 April 2020 to learn invoicing, Ms Duke and Mr Martin immediately and without consultation dismissed the request.

6. Ms Duke ignored the Claimant's request on 21 April 2020 to meet her and discuss the issues between them and took no action.

7. On 4 and 19 May 2020 and 15 June 2020 Ms Duke became overbearing in her management of the Claimant and applied intimidating levels of supervision.

8. On 19 May 2020 Ms Duke left the Claimant using an 11-year old laptop which was not functioning well, while other staff were supplied with new laptops.

9. On 19 May 2020 Ms Duke criticised the Claimant for discrepancies in her work that resulted from computer issues.

10. Ms Duke failed to respond to the Claimant's request on 11 June 2020 that she be given the opportunity to learn new secretarial and finance skills.

11. Ms Duke failed to respond to the Claimant's email of 6 July 2020 drawing attention to the fact that she needed the Respondent to respond to her emails and communications to conduct the tasks she had been set

Dismissal

12. The Claimant alleges that the above acts individually or cumulatively amounted to a breach of the implied term of mutual trust and confidence. She alleges that she resigned in response to that breach and that the resulting constructive dismissal was:

    12.1 an act of direct discrimination because of her anxiety and depression and/or

    12.2 an act of discrimination because of something arising in consequence of her disability (her sickness absence) and/or

12.3 an unfair dismissal

13. In broad summary, the principal issues to be deciding in relation to these allegations are:

13.1 Was the Claimant a disabled person as a result of anxiety and depression?

13.2 Did the Respondent know that she was a disabled person?

13.3 Did the Respondent do the acts/omissions alleged?

13.4 If it did, was that because of the Claimant's disability and/or her sickness absence?

13.5 If any act/omission was because of her sickness absence, was it a proportionate means of achieving a legitimate aim?

13.6 Did any of the alleged acts or omissions of the Respondent individually or cumulatively breach the implied term of mutual trust and confidence?

13.7 If they did, did the Claimant resign in response to that breach?

B. Claim no. 1802145/2021

The Claimant alleges that the Respondent failed to provide her with an itemised pay statement for her final instalment of salary, paid on or around the end of September 2020. She alleges that this was:

(a) a breach of Section 8 of the Employment Rights Act 1996 (ERA) and/or

(b) an act of victimisation contrary to Section 39(2)(d) read with Section 27 of the Equality Act 2010, done because the Claimant intended to bring a claim of discrimination (the early conciliation procedure in relation to the Claimant's earlier claim having begun on 18 August 2020).

The principal issues in this claim are:

1. Does the Tribunal have jurisdiction to hear either aspect of this claim, given that it appears to have been presented outside the statutory time limits?

2. Did the Respondent in fact fail to provide the Claimant with her final pay statement?

3. If it did, was that because the Claimant intended to bring a Tribunal claim alleging discrimination? In relation to her claim of breach of Section 8

ERA, the Claimant is entitled to compensation not exceeding the unnotified deductions made in the 13 weeks before the claim was presented.

The claim of victimisation and discrimination by association with the Claimant's son's disability was dismissed following withdrawal. It was clarified and accepted by the respondent that the complaints pursuant to section 8 of the Employment Rights Act 1996 with regard to provision of an itemised pay statement had been withdrawn but the claim for victimisation in case number 1802145/2021 remained to be determined.

It was agreed at the commencement of the hearing that those were the issues that were to be determined by the Tribunal.

6. Having considered all the evidence, both oral and documentary, the Tribunal makes the following findings of fact on the balance of probabilities. These written findings are not intended to cover every point of evidence given. These findings are a summary of the principal findings that the Tribunal made from which it drew its conclusions.

Where the Tribunal heard evidence on matters for which it makes no finding, or does not make a finding to the same level of detail as the evidence presented, that reflects the extent to which the Tribunal considers that the particular matter assists in determining the issues. Some of the Tribunal's findings are also set out in its conclusions, to avoid unnecessary repetition and some of the conclusions are set out within the findings of fact.

The Tribunal has anonymised the identity of those mentioned who were not parties, did not appear before the Tribunal or provide a witness statement.

6.1. The claimant was employed by the respondent as a Clinical Administrator from 16 January 2017. The claimant commenced on a fixed term contract and was provided with a permanent contract for 16 hours a week from 16 October 2017.

6.2. It was accepted by the respondent that the claimant was a disabled person within the meaning of section 6 of the Equality Act 2010 by reason of her mental health and that the respondent had knowledge of that disability.

6.3. The claimant suffered from severe difficulties in her personal life and was absent from work on a number of occasions with anxiety and depression.

6.4. The claimant was absent from 11 February 2020 to 16 March 2020.The claimant was placed into self-isolation due to the Covid pandemic from 18 March 2020 to 8 April 2020.

6.5. England went into the first lockdown on 23 March 2020.

6.6. On 25 March 2020 the claimant sent an email to Rosie Duke asking her:

> "… What happens if you can't get childcare and struggle with public transport?
>
> I'm really confused about what to do or what I'm supposed to do."

6.7. On 26 March 2020 Tony Martin, Practice Business Manager, wrote to the claimant indicating that he understood that the claimant was away from work due to Covid–19 symptoms. The claimant was advised to stay away and self-isolate while this persisted.

> "When you are symptom-free and able to return, then responsibility for childcare and access to transport remains with you as with all staff and you must make yourself available for work.
>
> If you have further concerns please refer to national guidance or contact me in the first instance rather than Rosie.
> I am self isolating at home with access to phone and email."

Tony Martin said that this was the beginning of the pandemic and Rosie Duke was on site and had her hands full responding to the ever-changing and often inconsistent advice. Her working day was chaotic and Tony Martin had more available time as he was at home.

6.8. On 27 March 2020 the claimant responded to Tony Martin referring to her domestic situation and concerns with regard to guidance.

6.9. The claimant persisted in contacting other members of the management team to ask the same questions. Tony Martin telephoned the claimant on 27 March 2020 and indicated that she should not be contacting other members of the team and should only contact him and only with regard to a return to work. Tony Martin told the Tribunal that the nature of the Pandemic was rapidly changing and that he had 55 staff and partners and 19,000 patients to worry about. He told the claimant that the questions about the pandemic could be answered from the same sources he was getting information from i.e. BBC News etc. He also advised the claimant that where she had questions about buses and schools she should contact the bus company and school directly.

6.10. On 27 March 2020 Tony Martin sent an email to the respondent's management team stating:

> "Despite my emailing Louise yesterday and making it very clear where our responsibility as her employer begins and ends, making it equally clear that transport, childcare etc are her responsibilities and telling her to contact me if she has any concerns re her return to work she persists in contacting other members of the team to ask the same questions.

> I've spoken to Louise just now, told her very clearly again what her responsibilities are and that only I want to hear from her and that's only regarding return to work and nothing else.
> In the unlikely event that she contacts any of you again, I expect you to reiterate this message."

6.11. On 28 March 2020 the claimant sent a lengthy email to Tony Martin setting out further concerns about her domestic situation and raising issues about her annual leave. She indicated that she would be in touch once she had spoken to the school.

6.12. On 8 April 2020 a return to work interview with Tony Martin commenced. There was discussion about a phased return to work.

6.13. The claimant sent an email to Tony Martin on 8 April 2020 in which it was stated:

> "Finally, my mental health is the best it's been for a very long time. It was crucial for me to take time out to get myself better. I have overcome certain battles and I'm dealing with others in a much better way. I am happier, my mind is clear and I have come off all my tablets. I would like to think that my bad luck is over with and I can continue to remain in good health and look forward to a better future.
>
> Let's say my health takes another turn for the worse and I suffer with the same or similar problems in the near future or that R (the claimant's son) is struggling with school again and we face the same problems we have for the last 12 months then I would imagine we will all have to admit defeat and I will have no choice but to be a stay at home mum or find something that is more doable for me."

6.14. The return to work meeting continued on 9 April 2020.

6.15. The claimant returned to work. On 9 April 2020 the claimant emailed Rosie Duke asking for access to BACS payments. Rosie Duke replied indicating that it was not appropriate for the claimant to have access to the bank and also indicating how invoicing should be done.

6.16. On 15 April 2019 the claimant sent an email to Rosie Duke stating:

> "Just chasing up my last email. Can BT show me how to produce the invoices etc?"

Rosie Duke replied to the claimant stating:

> "I emailed you on 9th April answering your questions and I explained that it is neither appropriate or necessary for you to have this access. BT's opinion on this is irrelevant.
>
> Please don't ask this again. If you have any further concerns about my response, please raise them with Tony directly."

6.17. On 16 April 2020 the claimant sent an email to Tony Martin indicating that she didn't want access to the bank, she just wanted to be able to assist with the invoicing process.

6.18. Tony Martin replied stating:

> "Rosie's email is very clear and I agree with her assessment. Given that she and I (and I hope you) are far too busy to revisit issues that have been already dealt with there is no need for further discussion.
>
> Thank you for your suggestion, but I consider this matter closed."

6.19. Rosie Duke arranged a meeting on 21 April 2020 with the claimant headed "Remote working discussion". The claimant sent an email indicating that she had to leave at 1.50 and she did not think that 10 minutes would be enough.

6.20. The minutes of the administrative team meeting on 21 April 2020 show that Rosie Duke indicated that they had no technical support until then to enable the team to work from home. It was then said that Rosie Duke was to have meetings with each team member to discuss the possibility of them working from home.

6.21. Prior to the pandemic, none of the respondent's staff worked from home. At the start of the pandemic the Health Informatics Service provided 6 laptops which could be configured for remote working. The 6 laptops were issued to 5 GPs and one to Rosie Duke. The respondent was later issued with a further 3 laptops which were issued to the remaining GPs and the Reception Manager.

6.22. In April 2020 the respondent began exploring the possibility of staff working from home. Health Informatics set up a secure network solution.

6.23. The claimant was supposed to be working from home on 1 July 2020. Rosie Duke saw that she had not logged on. She ran an audit and found that the claimant hadn't logged on to work that day at all. Rosie Duke went on to check other days in order to see whether the claimant had worked a different day instead. She found that on 23 June 2020 it was shown that the claimant had logged on at 8:25 and had logged off at 13:53 and no working activity was shown.

6.24. On 6 July 2020 the claimant sent an email to Rosie Duke in respect of arranging a day for her to come into the office. Within that email she stated:

> "Let me know if that works for you as I've sent a few emails recently and had no direct or clear responses so I'm unsure of how to plan ahead without affirmatives.

> I will need to speak to you anyway about that record so hopefully we'll chat tmrw"

6.25. On 7 July 2020 Rosie Duke telephoned the claimant. A number of work matters were discussed including the claimant's request to change working days which would cause difficulties in view of the administrative bubbles the respondent had set up during the lockdown and the amount of planning that had gone in to arranging working patterns. Rosie Duke asked the claimant what had happened the previous Tuesday (23 June 2020).

6.26. On 7 July 2020 the claimant sent an email to Rosie Duke indicating that she was too anxious to come to work. The claimant said that she would be raising a grievance.

6.27. On 14 July 2020 the claimant was certified as not fit for work due to work-related stress.

6.28. On 20 July 2020 the claimant submitted a grievance to the respondent. In that grievance she raised issues in respect of Tony Martin and Rosie Duke.

6.29. On 27 July 2020 the claimant was invited to attend a Grievance Hearing on 30 July 2020 with Dr Draghici. The claimant indicated that she could not attend on 30 July 2020 and asked for it to be rearranged for the following week.

6.30. On 30 July 2020 Dr David Burley wrote to the claimant inviting her to an investigatory meeting with him on 13 August 2020 (it actually stated 13 July 2020 which was clearly in error). It was stated:

> "This meeting has been arranged as part of the investigation of issues raised in relation to matters regarding your work following your telephone conversation with Rosie Duke on 7 July 2020.
>
> Please note that the purpose of the meeting is entirely a fact-finding exercise and does not form part of the practice formal disciplinary procedure. As such, you do not have a statutory right to be accompanied at this stage."

6.31. The reason for the delay in arranging the investigation meeting was caused by the respondent taking advice in view of the claimant having indicated that she intended to submit a grievance on 7 July 2020.

6.32. On 2 August 2020 the claimant sent her resignation to Dr Burley. Within this she stated:

> "As stated within my grievance, I did not want any matters to be dealt with outside of any court or legal procedure and was open to suggestions for a possible resolution within work.

Since this, it has become quite apparent that my suspicions were right, and my employers are targeting me and are trying to get rid of me.

It is now been made impossible to reach any kind of resolution and this has had a huge impact upon my health.

I will not tolerate any kind of bullying or threatening behaviours.

I was right to believe my work has been questioned and right to believe that all the tactics raised in my grievance have amounted to me being forced to leave my job.

The fact that a potential disciplinary investigation has been raised after submitting my grievance clearly proves an admission of guilt in my opinion.

There is actually no need for any fact-finding against me and I can back up this statement with evidence.

However, now that I have no choice but to leave, there will be no need for an investigation so you may cancel our fact-finding meeting.

I find this an extremely poor attempt of trying to scare me.

Admittedly it has had a negative effect on my health and anxieties and made me feel sad and upset but had the investigation gone ahead, I can guarantee that there would be no grounds for disciplinary hence me feeling no fear in this particular circumstance.

Any issues around my work have been evidently raised, I am not to blame for my concerns being ignored by management leading to further issues in my health/performance and/or the technical difficulties I have been experiencing working from home. I asked Rosie for a new laptop but was refused as it was not ideal. I had nothing else to work with and completed my work to the best of my ability using what I had. It is as simple as that. I am not in the wrong!

All of this has completely shattered my self-esteem and confidence.

My health is more important than my job and I cannot stand to be treat like this any longer…"

6.33. On 6 August 2020 Dr Burley wrote to the claimant offering her the opportunity to reconsider her decision to resign. He also indicated that the investigatory meeting was part of a process of investigation into discrepancies in the claimant's work and if she decided to retract her resignation he intended to carry on with the investigation.

6.34. On 7 August 2020 the claimant sent an email to Dr Burley indicating that she had attended the grievance meeting and said that she would hold off her resignation to see what the grievance had to say.

6.35. On 12 August 2020 the claimant informed Dr Burley that she would not be attending the meeting and would not be reconsidering her resignation.

6.36. On 13 August 2020 Dr Draghici wrote to the claimant notifying her of the outcome of grievance. This was a detailed letter which set out the investigation. It was stated:

> Where a great deal of your grievance is based upon your feelings towards tone, body language and verbal face-to-face interaction, where it is just "one person's word against another's". I have tried to find and examine any tangible evidence in order to facilitate a decision based on fact.
>
> My investigation included both interviewing and taking statements from Tony Martin and Rosie Duke. I have also examined every email exchange between yourself and both Tony Martin and Rosie Duke and listen to every recorded call which we hold between yourself and both Tony Martin and Rosie Duke, since January 2020.
>
> During a grievance meeting I repeatedly asked you to provide me with evidence or examples of the points you are highlighting. Your response was consistently the same. He referred to the emails, body language and your perception of a change. You did not provide you me with anything further…."

6.37. The claimant appealed against the grievance outcome and attended a grievance appeal hearing by video link before Dr Burley and Dr Moore.

6.38. On 20 September 2020 Dr Burley wrote to the claimant providing the outcome of the grievance appeal. It was stated:

> "It is very clear that throughout both the original grievance in the appeal, a wealth of evidence was presented that clearly demonstrated consistent and continuous support for you in dealing with personal matters. This included numerous adjustments to your working hours as well as positivity and encouragement from your line manager and the Practice Business Manager.
>
> During the hearing you stated that you believed that there was no reason to "check your work". In your letter you believed that an investigation had been started after you raised your grievance. The panel believes that this is incorrect.
>
> Your original grievance was raised shortly after your line manager tried to discuss with you the IT issues you said you were having when

> working from home in order to understand the issues you are having and any discrepancies in IT logs that were apparent.
>
> An investigatory meeting was arranged which you declined to attend.…"

6.39. On 27 October 2020, following the ACAS early conciliation procedure, the claimant presented a claim to the Employment Tribunal. She brought claims of unfair dismissal and disability discrimination.

6.40. In March 2021 the claimant raised an issue with regard to not receiving her final payslip.

6.41. On 17 March 2021 the claimant presented another claim to the Employment Tribunal for failing to provide a payslip and victimisation. The claim of failing to provide an itemised pay statement pursuant to section 8 of the Employment Rights Act 1996 was dismissed upon withdrawal.

6.42. Dr Burley said he first became aware of an issue with the claimant's final payslip was on 12 March 2021 and on 18 March 2021 he sent a copy of the claimant's final payslip to her. It had been confirmed to him by the Practice's Finance Manager that the claimant's payslip and P45 had been issued and that hard copies had been sent to the claimant's home address.

The law

Constructive dismissal

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

> "It is clearly established that there is implied in the contract of employment a term that the employers will not, without reasonable and proper cause, conduct themselves in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee. Any breach of this implied term is a fundamental breach amounting to a repudiation of the contract since it necessarily goes to the root of the contract. To constitute a breach of this implied term, it is not necessary to show that the employer intended any repudiation of the

> contract. The employment tribunal's function is to look at the employer's conduct as a whole and determine whether it is such that its cumulative effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it".

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15. Mr Price, on behalf of the respondent referred to the case of **Ishaq v Royal Mail Group Ltd UKEAT/0156/16/RN** where the Employment Appeal Tribunal found that an Employment Tribunal permissibility found that the true reason for the resignation was to avoid disciplinary action and that a fundamental breach in fact had nothing to do with the resignation.

Disability Discrimination

16. Section 6 of the Equality Act 2010 states:

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

Schedule 1 provides:

Long-term effects

(1) The effect of an impairment is long-term if—
(a) It has lasted for at least 12 months,
(b) It is likely to last for at least 12 months, or
(c) It is likely to last for the rest of the life of the person affected.

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

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

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

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

Direct discrimination

18. Section 13 of the Equality Act 2010 states:

(1) A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.
(2) If the protected characteristic is age, A does not discriminate against B if A can show A's treatment of B to be a proportionate means of achieving a legitimate aim.
(3) If the protected characteristic is disability, and B is not a disabled person, A does not discriminate against B only because A treats or would treat disabled persons more favourably than A treats B.

Discrimination arising from Disability

19. Section 15 of the Equality Act 2010 states:

Section 15

"(1) A person (A) discriminates against a disabled person (B) if –

(a) A treats B unfavourably because of something arises in consequences of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Sub-Section (1) does not apply if A shows that A did not now, and could not reasonably have been expected to know, that B had the disability.

20. Under section 15 there is no requirement for a Claimant to identify a comparator. The question is whether there has been unfavourable treatment: the placing of a hurdle in front of, or creating a particular difficulty for, or disadvantaging a person; see Langstaff J in *Trustees of Swansea University Pension & Assurance Scheme & Anor v Williams* *UKEAT/0415/14* at paragraph 28. As the EAT continued in that case (see paragraph 29 of the Judgment), the determination of what is unfavourable will generally be a matter for the Employment Tribunal.

21. The starting point for a Tribunal in a section 15 claim has been said to require it to first identify the individuals said to be responsible and ask whether the

matter complained of was motivated by a consequence of the Claimant's disability; see *IPC Media Ltd v Millar [2013] IRLR 707*: was it because of such a consequence?

22. With regard to justification, The EAT in *Hensman v Ministry of Defence* UKEAT/0067/14/DM, [2014] EqLR 670 applied the justification test as described in *Hardy and Hansons Plc v Lax* [2005] ICR 1565, CA to a claim of discrimination under section 15 Equality Act 2010. Singh J held that when assessing proportionality, while an ET must reach its own judgment, that must in turn be based on a fair and detailed analysis of the working practices and business considerations involved, having particular regard to the business needs of the employer. In effect the Tribunal needs to balance the discriminatory effect of the stated treatment against the legitimate aims of the employer on an objective basis in considering whether any unfavourable treatment was justified .

23. The statute provides that there will be no discrimination where a respondent shows the treatment in question is a proportionate means of achieving a legitimate aim or that it did not know or could not reasonably have known the Claimant had that disability.

24. In the case of *Pnaiser v NHS England* [2016] IRLR 170 it was provided as follows:

> "In the course of submissions I was referred by counsel to a number of authorities including *IPC Media Ltd v Millar* [2013] IRLR 707, *Basildon & Thurrock NHS Foundation Trust v Weerasinghe* UKEAT/0397/14/RN and *Hall v Chief Constable of West Yorkshire Police* [2015] IRLR 893, as indicating the proper approach to determining section 15 claims. There was substantial common ground between the parties. From these authorities, the proper approach can be summarised as follows:
>
> (a) A Tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises.
>
> (b) The Tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a section 15 case. The 'something' that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.
>
> (c) Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A's motive in acting as he

or she did is simply irrelevant: see *Nagarajan v London Regional Transport* [1999] IRLR 572. A discriminatory motive is emphatically not (and never has been) a core consideration before any prima facie case of discrimination arises.

(d) The Tribunal must determine whether the reason/cause (or, if more than one), a reason or cause, is "something arising in consequence of B's disability". That expression 'arising in consequence of' could describe a range of causal links. Having regard to the legislative history of section 15 of the Act (described comprehensively by Elisabeth Laing J in Hall), the statutory purpose which appears from the wording of section 15, namely to provide protection in cases where the consequence or effects of a disability lead to unfavourable treatment, and the availability of a justification defence, the causal link between the something that causes unfavourable treatment and the disability may include more than one link. In other words, more than one relevant consequence of the disability may require consideration, and it will be a question of fact assessed robustly in each case whether something can properly be said to arise in consequence of disability.

(e) For example, in *Land Registry v Houghton* UKEAT/0149/14 a bonus payment was refused by A because B had a warning. The warning was given for absence by a different manager. The absence arose from disability. The Tribunal and HHJ Clark in the EAT had no difficulty in concluding that the statutory test was met. However, the more links in the chain there are between the disability and the reason for the impugned treatment, the harder it is likely to be to establish the requisite connection as a matter of fact.

(f) This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.

(g) Miss Jeram argued that "a subjective approach infects the whole of section 15" by virtue of the requirement of knowledge in section 15(2) so that there must be, as she put it, 'discriminatory motivation' and the alleged discriminator must know that the 'something' that causes the treatment arises in consequence of disability. She relied on paragraphs 26 to 34 of *Weerasinghe* as supporting this approach, but in my judgment those paragraphs read properly do not support her submission, and indeed paragraph 34 highlights the difference between the two stages - the 'because of' stage involving A's explanation for the treatment (and conscious or unconscious reasons for it) and the 'something arising in consequence' stage involving consideration of whether (as a matter of fact rather than belief) the 'something' was a consequence of the disability.

(h) Moreover, the statutory language of section 15(2) makes clear (as Miss Jeram accepts) that the knowledge required is of the disability only, and does not extend to a requirement of knowledge that the 'something' leading to the unfavourable treatment is a consequence of the disability. Had this been required the statute would have said so. Moreover, the effect of section 15 would be substantially restricted on Miss Jeram's

construction, and there would be little or no difference between a direct disability discrimination claim under section 13 and a discrimination arising from disability claim under section 15.

(i) As Langstaff P held in ***Weerasinghe***, it does not matter precisely in which order these questions are addressed. Depending on the facts, a Tribunal might ask why A treated the claimant in the unfavourable way alleged in order to answer the question whether it was because of "something arising in consequence of the claimant's disability". Alternatively, it might ask whether the disability has a particular consequence for a claimant that leads to 'something' that caused the unfavourable treatment."

Victimisation

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

(1) A person (A) victimises another person (B) if A subjects B to a detriment because--
(a) B does a protected act, or
(b) A believes that B has done, or may do, a protected act.

(2) Each of the following is a protected act--
(a) Bringing proceedings under this Act;
(b) Giving evidence or information in connection with proceedings under this Act;
(c) Doing any other thing for the purposes of or in connection with this Act;
(d) Making an allegation (whether or not express) that A or another person has contravened this Act.

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

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

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

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

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

27. The Tribunal has to consider (1) the protected act being relied on; (2) the detriment suffered; (3) the reason for the detriment; (4) any d, efence; and (5) the burden of proof. To benefit from protection under the section the claimant must have done or intended to or be suspected of doing or intending to do one of the four kinds

of protected acts set out in the section. The allegation relied on by the claimant must be made in good faith. It is not necessary for the claimant to show that he or she has a particular protected characteristic but the claimant must show that he or she has done a protected act. The question to be asked by the tribunal is whether the claimant has been subjected to a detriment. There is no definition of detriment except to a very limited extent in Section 212 of the Act which says, "Detriment does not ... include conduct which amounts to harassment". The judgment in **Shamoon v Chief Constable of the Royal Ulster Constabulary** [2003] IRLR 285 is applicable.

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

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

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

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

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

Burden of Proof

31. Section 136 of the Equality Act 2010 states:

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

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

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

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

"unfavourably".

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

> "all unlawful discriminatory treatment is unreasonable, but not all unreasonable treatment is discriminatory, and it is not shown to be so merely because the victim is either a woman or of a minority race or colour … Simply to say that the conduct was unreasonable tells nothing about the grounds for acting in that way … The significance of the fact that the treatment is unreasonable is that a tribunal will more readily in practice reject the explanation given for it than it would if the treatment were reasonable."

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

Time limits

37. Section 123 of the Equality Act 2010 states:

> (1)...Proceedings on a complaint within section 120 may not be brought after the end of—
> (a) the period of 3 months starting with the date of the act to which the complaint relates, or
> (b) such other period as the employment tribunal thinks just and equitable.
> ...
> (3) For the purposes of this section—
> (a) conduct extending over a period is to be treated as done at the end of the period;
> (b) a failure to do something is to be treated as occurring when the person in question decided on it.
>
> (4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—
> (a) when P does an act inconsistent with doing it, or
> (b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.

38. The Tribunal had the benefit of detailed written and oral submissions provided by Mr. Johnson on behalf of the claimant and Mr Price on behalf of the respondent. These were helpful. They are not set out in detail but both parties can be assured that the Tribunal has considered all the points made and all the authorities relied upon, even where no specific reference is made to them.

Conclusions

39. The Tribunal considered the agreed issues identified at the Preliminary Hearing before Employment Judge Cox on 14 April 2021. In respect of the alleged acts of disability discrimination

> 1. The Respondent failed to offer the Claimant new jobs and roles that it was offering to others.

40. The claimant said that, towards the end of 2018 the respondent placed an advertisement on the NHS website. She had made it clear to the respondent's managers that she was interested in secretarial work. She said that she believed it was deliberate that she was not made aware of the role to stop her progressing.

41. The role was advertised through NHS jobs. The claimant did not apply for the role and an external applicant was appointed to the role. The person who was appointed had significant experience as a secretary from working at a hospital.

42. The claimant alleged that Rosie Duke was fast tracked into helping the practice in several roles, taking on leadership, IT management, finance, CQC control and deputy management.

43. Rosie Duke was appointed as Compliance Officer in 2018 and Deputy Business Practice Manager in 2019.

44. Both these roles were advertised within the practice. The claimant did not apply for the role of Compliance Officer. There were two applicants and they were both interviewed. Rosie Duke was appointed.

45. The role of Deputy Business Practice Manager was advertised internally and Rosie Duke was the only person to apply. The claimant did not apply and Tony Martin said that her CV would not have met the essential requirements of the person specification.

46. Two medical summarizers were appointed, one in November 2018 and one in December 2019. Both of these roles were advertised nationally. The claimant did not apply. The applicant's appointed were interviewed by a panel.

47. The claimant alleged that secretarial training was provided to NF by Rosie Duke. NF was already training in the secretarial role at the time of Rosie Duke taking over management of the administration team. She was a trainee secretary and performed the secretarial role when the practice's designated secretary was off work. Rosie Duke said that she was not aware that the claimant was looking for training at the time and, when it was discussed with the claimant, they were still in the first wave of the pandemic. She said that everything was chaotic and they were trying to comply with government advice and guidance and trying to run the practice in unprecedented circumstances.

48. In 2019 a vacant receptionist's job was offered to a new member of staff. The claimant alleged that this offer was following Rosie Duke's recommendation.

49. This role was advertised nationally twice with no suitable applicants. The claimant had shown no interest in the position and did not apply for it. Rosie Duke said that the successful applicant sent in her CV after the advertisement had ended. Rosie Duke had worked with her before. She passed the CV to Tony Martin. Rosie Duke had nothing to do with the interview or the appointment process.

50. The Finance/invoice clerk role was given to BT, the 20 year old son of a GP partner in the practice. BT was a graduate who was appointed on a short-term contract to fill general administrative roles.

51. Limited finance functions had been allocated to BT because Rosie Duke needed to delegate certain tasks and BT had the skills and spare capacity to perform to basic finance functions.

52. The claimant could not have been allocated these tasks as she was not working at the time they were delegated to BT and had expressed no desire to perform those tasks.

53. The Finance Manager had retired. The role was taken on by Rosie Duke but during the outbreak of the pandemic the workload of managers and partners increased and Tony Martin asked the retired Finance Manager to return to carry out the day-to-day finance functions.

54. The Tribunal is satisfied that the respondent did not fail to offer the claimant new jobs or roles that it offered to others. The roles were fulfilled by others because they applied when the claimant did not or they were delegated tasks when the claimant was not at work. The respondent's decision to appoint others to roles did not arise in consequence of the claimant's disability. The claimant could have applied for a number of the roles but did not do so.

> 2. On her return to work from sickness absence on 9 April 2020, Mr Martin (Practice Manager) shouted at the Claimant for contacting other managers to ask for help, told her that others were too busy to help her and that she must sort her own problems out.

55. Tony Martin denied shouting at the claimant or being openly critical of her going on sick leave.

56. He had asked the claimant to contact him instead of Rosie Duke on 26 March 2020 as he had the time due to self-isolating and not being in the building or involved in the operational running of the respondent practice. In the return to work interview a phased return to work was discussed and the claimant's working days and hours were agreed.

57. The claimant had contacted a number of the managers in the practice and she was informed that she should contact Mr Martin. There was no credible evidence that Mr Martin shouted at the claimant and the Tribunal is not satisfied

that this occurred. The request to contact Mr Martin instead of the other managers was not established to be on grounds of the claimant's disability.

> 3. At her return to work interview, Mr Martin made ridiculing and demeaning remarks about the claimant's sickness affecting deadlines and was openly critical of her going on sick leave.

58. It was not established that Tony Martin shouted at the claimant or made ridiculing and demeaning remarks about the claimant's sickness. There were remarks made to the claimant about improving her absence record with which the claimant agreed. The claimant gave no details of what ridiculing or demeaning remarks had been made. There was no credible evidence that Mr Martin shouted at the claimant or made ridiculing or demeaning remarks or was critical about her going on sick.

> 4. After the claimant's return to work, Mr Martin and Ms Duke failed to engage with the claimant, did not make eye contact with her, avoided contact with her and declined her offer to make tea and coffee.

59. The Claimant returned to work during the pandemic and the atmosphere at work was not the same as before due to social distancing and the difficulties following the government guidance at that time. The Tribunal finds that it was not established there was any failure to engage with the claimant arising in consequence of the claimant's disability.

> 5. After a request by the claimant on 15 April 2020 to learn invoicing, Ms Duke and Mr Martin immediately and without consultation dismissed the request.

60. It was not appropriate for the claimant to be given access to the respondent's banking system. BT had been allocated some limited finance functions by Rosie Duke at a time when the claimant was not at work.

61. The request was discussed with the claimant and not dismissed immediately without consultation. The respondent informed the claimant that it was not necessary for her to learn invoicing and it was not established that the request was refused because of the claimant's disability or anything arising in consequence of her disability.

> 6. Ms Duke ignored the claimant's request on 21 April 2020 to meet her and discuss the issues between them and took no action.

63. Rosie Duke arranged a one-hour meeting with the claimant. Work and personal issues were discussed in that meeting. There was no credible evidence that the claimant raised any issues in respect of hostility she felt following her return to work. At that meeting Rosie Duke said that they had discussed the claimant's difficulties in the pandemic and that the claimant left the meeting happily.

64. A meeting took place on 22 April 2020 at which remote working and the claimant's personal issues were discussed. The Tribunal finds that there was no

evidence of the meeting or discussions arising from or in consequence of the claimant's disability.

> 7. On 4 and 19 of May 2020 and 15 June 2020 Ms Duke became overbearing in her management the claimant and applied intimidating levels of supervision.

64. It was submitted by Mr Price, on behalf of the respondent, that it was not put to Rosie Duke that she was overbearing in her management or that she applied intimidating levels of supervision. There was no evidence that Rosie Duke was overbearing or applied intimidating levels of supervision**.**

65. The Tribunal accepts this submission. There was no evidence to support this allegation. The transcripts of the telephone conversations were considered by the Tribunal and do not support this allegation. There was no evidence that Rosie Duke was overbearing or applied intimidating levels of supervision.

> 8. On 19 May 2020 Ms Duke left the claimant using an 11 year old laptop which was not functioning well while other staff were supplied with new laptops.

66. The respondent was issued with laptops. These were provided to members of staff taking into account the respondent's reasonable assessment of priority priority. The laptops were provided by NHS Health Informatics Service. There was a total of 9 laptops eventually available these were provided to GPs and to managers.

67. The respondent had not had employees working from home before the outbreak of the pandemic and they began exploring a solution whereby staff could be set up with a secure network. There were around 50 staff and only 9 laptops were available.

68. The laptops had been distributed on a priority basis and any issues the claimant had with her laptop did not arise in consequence of disability.

> 9. On 19 May 2020 Ms Duke criticised the claimant for discrepancies in her work that resulted from computer issues.

69. It was not established that Rosie Duke criticised the claimant for discrepancies in her work that resulted from computer issues. There were attempts to resolve the claimant's issues as they arose.

> 10. Ms Duke failed to respond to the claimant's request on 11 June 2020 that she be given the opportunity to learn new secretarial and finance skills.

70. It was not put to Rosie Duke that she failed to respond to this request. There was a response to the email from the claimant. It was discussed in the telephone call on 16 June 2020. There was discussion about the balance of the claimant getting to learn things and what needed doing.

11. Ms Duke failed to respond to the claimant's email of 6 July 2020 drawing attention to the fact that she needed the respondent to respond to her emails and communications to conduct the tasks she had been set.

71. There was a response to the claimant's email in the telephone call on 7 July 2020. The Tribunal listened to the recording of that telephone call. The claimant said that it was the most important of the recordings and that the Tribunal should listen to it. It was a reasonable and amicable conversation between a manager and a member of staff. There was discussion about the claimant's computer issues, returning to full-time work and altering the claimant's working days.

72. The Tribunal has considered each of the allegations and whether there was any act or omission which constituted less favourable treatment on grounds of the claimant's disability. The Tribunal is not satisfied that there were any acts or omissions of the respondent that were acts that the Tribunal could decide, in the absence of any other explanation, that there was an act of discrimination.

73. The burden of proof did not shift to the respondent. If it had, the Tribunal is satisfied that none of the actions of the respondent amounted to discrimination on grounds of the claimant's disability or something arising from the claimant's disability. The Tribunal is satisfied that the respondent has shown non-discriminatory reasons for each of its actions.

74. The Tribunal is not satisfied that any of act or omission of the respondent individually or cumulatively breached the implied term of mutual trust and confidence.

75. The claimant resigned in response to the invitation to a fact-finding meeting. The claimant's letter of resignation made it clear that that was why she was resigning.

76. The invitation to an investigation meeting was entirely reasonable. There were clear concerns about the issues in respect of the claimant's work on 23 June 2020 and it was appropriate for this to be investigated.

77. The Tribunal finds that this was not a response to the claimant's grievance. The Tribunal accepts the respondent's evidence was that there was a delay whilst it took advice and it was considered that the investigation should continue even though the claimant had indicated that she wished to raise a grievance.

78. It was not established that the claimant resigned in response to a repudiatory breach of contract.

79. The claim of victimisation was brought out of time and it was not shown that it was just and equitable to extend time.

80. The Claimant's payslip was uploaded by the respondent to the system in September 2020. The claimant did not raise this issue until February or March 2021.

81. Dr Burley was informed that the claimant's payslip had been sent to the claimant's last home address held by the respondent. Once he was aware of the claimant's complaint about her final payslip he provided a copy within a week of receiving the claimant's email. There was no evidence that the claimant's payslip had been withheld and no evidence that there was any detriment to the claimant

82. The Tribunal is not satisfied that the claimant was subject to a detriment because the claimant had indicated that she intended to bring a claim of discrimination to the Tribunal.

83. In the circumstances, the unanimous judgment of the Tribunal is that the claims of unfair dismissal, disability discrimination and victimisation are not well-founded and are dismissed.

Employment Judge Shepherd
18 January 2022