



# EMPLOYMENT TRIBUNALS

**Claimant:** Ms N Coleborne

**Respondents:** Drs M P Clarke and M R Sarrington in practice as The Solent View Medical Practice

**Heard at:** Southampton (CVP)

**On:** 14, 15 and 16 November 2022; 9 and 10 February 2023

**Before:** Employment Judge Craft

**Members:** Mr K Sleeth  
Mr M Cronin

**Representation**  
Claimant: Ms R Jiggins, Consultant  
Respondent: Mr N Henry, Professional Representative

## UNANIMOUS RESERVED JUDGMENT

1. The Claimant's claims of disability discrimination alleging failure to make reasonable adjustments, harassment and victimization pursuant to sections 20, 21, 26 and 27 of the Equality Act 2010 fail and are dismissed.
2. The Claimant's claim of constructive discriminatory dismissal within the terms of s.39 of the Equality Act 2010 fails and is dismissed.

## REASONS

1. The Claimant was employed by the Respondents' medical practice ('the Respondent') as a Nurse Practitioner from 1 February 2016. She tendered a written letter of resignation on notice on 14 December 2020. Her employment terminated on 8 January 2021.
2. The Claimant pursues complaints of discrimination on the grounds of disability pursuant to sections 20 and 21, 26 and 27 of the Equality Act 2010 ('EqA'). She also pursues a claim of constructive dismissal which is not pursued under sections 95(1)(c) and 98(4) of the Employment Rights

Act 1996 ('ERA') but as a discriminatory dismissal under section 39 EqA.

3. The Respondent denied that the Claimant was disabled at the relevant time. This issue between the parties was determined at a Preliminary Hearing at which the Tribunal determined that the Claimant was a disabled person within the meaning of the EqA 2010 at the relevant time by reason of anxiety. The relevant time for the complaints which the Claimant pursues (save for victimisation) runs from 19 November 2020 to 8 January 2021.
4. At the Telephone Case Management Preliminary Hearing held on 19 October 2021 the Tribunal, in addition to fixing a Preliminary Hearing to determine the issue as to whether or not the Claimant was disabled at the relevant time, agreed with the parties the issues that would have to be considered by the Tribunal at the final hearing. A summary of those issues follows.
5. It was agreed in respect of the claim of failure to make reasonable adjustments that the Tribunal would have to determine whether or not the Respondent knew, or could reasonably have expected to know, that the Claimant was disabled by reason of anxiety and, if so, from what date. The PCP (provision, criterion or practice) relied upon by the Claimant, and which the Respondent accepts was in place at the relevant time, was a requirement for the Claimant to have internet access when working from home.
6. The adjustment suggested by the Claimant was that the Respondent should provide the Claimant with the certainty of internet access when she was working from home, which included the provision of a dongle. Her claim of harassment relies upon the same facts. She asserts that the Respondent's unwanted conduct was their refusal to put in place appropriate reasonable adjustments including the provision of a dongle.
7. The claim of victimisation is that the Respondent subjected the Respondent to a detriment by ignoring and / or unreasonably failing to deal with a grievance which the Claimant submitted on 15 December 2020 which complained of discrimination contrary to the EqA (which the Respondent accepts was a protected act).
8. The Claimant's claim of constructive, discriminatory dismissal is that the Respondent acted in fundamental breach of the implied term that it should not discriminate against her and relies upon her allegations that the Respondent failed to make reasonable adjustments, harassed her by reason of her disability and victimised her by failing to respond to her grievance.
9. There was an Agreed Bundle of Documents provided to the Tribunal: Exhibit C1. The Tribunal received evidence from the Claimant who gave her evidence in chief by written statement: Exhibit C2. The Claimant received evidence on behalf of the Respondent from Mrs J Hadley, the Practice Manager, who gave evidence in chief by written statement: Exhibit R1. The Tribunal received oral submissions from Mr Henry and Ms Jiggins and reserved its Judgment.

## Findings of Fact

10. The Tribunal made the following findings of fact after considering the oral and documentary evidence before it and the submissions it received from Mr Henry and Miss Jiggins.
11. The Claimant is, following a divorce, a single mother living with her two young children both of whom attend a local school. She was diagnosed with anxiety and depression in September 2015. This was subsequently diagnosed as mixed anxiety and depression in February 2020 for which she had been prescribed medication that she was taking at the relevant time.
12. The Claimant commenced working for the Respondent on 1 February 2016. She was based at the Respondent's Surgery and undertook all her work attending on patients there until the commencement of the Covid lockdowns. The Claimant was initially contracted to work for the Respondent for 32 hours per week. The Claimant's Line Manager was the Respondent's Nurse Manager who was Mrs Anderson at the relevant time. The Respondent had supported the Claimant's studies to gain a further qualification at Modular Level 7 of the Advanced Nurse Practitioner Course which she achieved with a successful exam result in 2020.
13. Mrs Hadley employed as Practice Manager had a wide range of management responsibilities. The Claimant told the Tribunal that she had a friendly relationship with Mrs Hadley until 30 November 2020. She had frequently attended on Mrs Hadley in her office to discuss difficult personal issues causing her anxiety which had included a difficult divorce. She regarded the Surgery as a safe place. The anxieties she discussed with Mrs Hadley had been largely related to matters outside of work. It was for this reason that the Claimant had made no mention of her disability when she completed her application form for the Modular Level 7 course. It had not caused issues for her at work up to that time.
14. Mrs Hadley considered the Claimant to be an experienced Nurse Practitioner who was well regarded at the Surgery for her experience and skills. Mrs Hadley had recently agreed that the Claimant could resume her studies and her request to increase her hours of work to 37.5 over her four day working week which ran from Monday through to Thursday. The Claimant told the Tribunal that the Respondent had been helpful in allowing her time off when her daughter was suffering from ill health during the summer of 2020.
15. Although the Surgery remained open throughout the lockdowns the Claimant and her colleagues were able to work from home if the demands of the lockdowns, particularly childcare and home schooling, required them to do so. The Claimant preferred to work in the Surgery if she was able to do so. The Respondent's employees who did work from home were required to have an internet connection from their own provider and a mobile telephone to enable them to do so. When the Claimant was working from home her face-to-face attendance on patients at the Surgery was replaced by her supporting the Respondent's practice by conducting triages with patients by remote consultation by telephone.

16. The Respondent provides its employees with a confidential employee support helpline and access to an Occupational Health Service. Following the introduction of lockdowns the Respondent allocated a room, for which it provided facilities, which enabled its employees to bring their children into work rather than working from home. The Respondent operates a TOIL arrangement. This enables employees who are able to work additional hours to gain extra holiday entitlement and allows flexibility to employees to catch up on any hours of work that may have been missed for any reason. The Respondent also provides one day's emergency paid leave to its employees in the event of unforeseen domestic difficulties, for example children falling ill, which prevents attendance at work, or working from home.
17. The Respondent has the benefit of IT support which is provided by The Healthcare Company. This is procured by and paid for, by the NHS. This support includes the Respondent being able to send IT technicians from the Company to attend on employees at their home to assist with any IT difficulties that may have arisen for them.
18. The Respondent purchased two dongles shortly after the start of the first lockdown. The dongles were purchased to enable doctors undertaking home visits to be able to gain remote access to the Respondent's IT network which is provided to the Respondent by the NHS. Mrs Hadley sought advice from The Healthcare Company when the dongles failed to provide the remote access required. The Healthcare Company informed Mrs Hadley that dongles would not be able to access the NHS network through which the Respondent operated because the network's security protocols do not allow access from a cellular network on which a dongle operates.
19. On Thursday 19 November 2020 the Claimant had to work from home to enable her to look after her children who had to remain home on that day. At some time during the morning the Claimant's cat urinated on a connector which disabled the Claimant's internet connection. She telephoned the surgery and was able to speak to Mrs Hadley about what had happened.
20. Mrs Hadley accepted that this would prevent the Claimant undertaking any further work on that day. She offered to replace the cable/connector and to send an IT technician from The Healthcare Company (who were contracted to provide such assistance to the Practice and its staff) to advise on next steps. The Claimant had already contacted Amazon to replace the damaged equipment. She did not take up Mrs Hadley's offer for that reason. Mrs Hadley confirmed that the Claimant would be paid a full day's pay for her work on that day notwithstanding that she had not been able to work for a considerable part of it.
21. The Claimant's difficulties on that day did not end there. There was a rapid and worrying deterioration in her daughter's health which resulted in her daughter being taken into hospital for observation. The Claimant endured a difficult, anxious and sleepless night with her daughter at the hospital before she and her daughter returned home from hospital early the following morning.

22. The Claimant could not now go into work on Friday 20 November because her daughter required continuing care at home and she was exhausted. She was also unable to undertake any work from home because the internet connection had not yet been restored because the Claimant was still awaiting delivery of the required equipment from Amazon. The Claimant telephoned the surgery and spoke to Mrs Prosser, the Deputy Practice Manager about her difficulties. Mrs Prosser confirmed that the Claimant should remain at home and that her absence would be recorded as sick leave.
23. The Claimant's next working day was Tuesday 24 November. Amazon did not deliver the necessary equipment to restore the Claimant's internet connection until early that afternoon. It was only then that the Claimant could resume working from home. The Claimant was paid a full day's pay by the Respondent for her work at home on that day. The Claimant was able to attend work at the surgery on Wednesday 25 November and duly did so.
24. At some time on 25 November Mrs Mandy Anderson, the Nurse Manager attended on the Claimant in the Claimant's office. Mrs Lucy Cusack, Deputy Nurse Manager, was also present. Other staff were working in nearby offices and may have been able to hear what was discussed between the Claimant and Mrs Anderson. The purpose of Mrs Anderson's attendance was to find out why the Claimant had not attended work, either at the surgery or worked remotely from home, on Friday 20 November.
25. The Claimant was taken by surprise by this enquiry and was upset by it. She felt that she must have done something wrong for Mrs Anderson to attend on her in this way. Her recollection is that her mind went blank and that she could not remember what had happened on 20 November and why she had taken the day off. She then panicked and told Mrs Anderson that she had not been sick even though on 20 November Mrs Prosser had agreed that she was not well enough to attend work and that this would be treated as a sickness absence.
26. Mrs Anderson informed the Claimant that her absence on 20 November would be deducted from her annual leave entitlement. The Claimant did not think Mrs Anderson had dealt with the matter properly or that she had been treated fairly and decided to pursue the matter by writing to Mrs Hadley.
27. On the following day the Claimant sent an email to Mrs Hadley which was copied to Mrs Anderson, Mrs Prosser and Dr Clarke. The Claimant described what happened when Mrs Anderson attended on her and the anxiety and confusion which this had caused to her. She explained why Mrs Prosser had agreed that her absence on 20 November would be treated as sickness absence. She also requested that any questions about her mental health and well-being should be asked with appropriate privacy and confidentiality in the future. She also referred to a further concern on which her email states:

*"Therefore, as a reasonable adjustment for my anxiety, please can we discuss how to ensure that I will have all the equipment I need to be able to work from home as needed during the pandemic without*

*losing annual leave entitlement."*

28. Mrs Hadley and Mrs Anderson responded to this email by making arrangements to meet with the Claimant on 30 November 2020 to discuss what had happened on 25 November and the matters raised in the Claimant's email of 26 November. Mrs Anderson conducted the meeting. Mrs Hadley attended as a witness. She observed that the Claimant appeared stressed at the start of the meeting and subsequently she intervened to offer the Claimant a break when the Claimant became distressed and upset. The Claimant declined this offer because she said she wanted to get the meeting over as quickly as possible.
29. During the meeting the Claimant asked Mrs Anderson why she had not been provided with a dongle to enable her to maintain an internet connection after the incident involving her cat. Mrs Hadley explained to the Claimant that dongles had not worked previously, and would not work in the future. Then, either Mrs Hadley or Mrs Anderson, informed the Claimant that she would not be provided with a dongle, and that it was her responsibility to arrange internet access at her home through her own provider. Mrs Hadley said that it became clear that the Claimant considered that if she was not provided with a dongle and lost her internet connection while working from home then she should still be paid by the Respondent and that her pay should not be taken from her annual holiday entitlement.
30. There are no minutes of this meeting held on 30 November. The Respondent relies on the email which Mrs Anderson sent to the Claimant and others after the meeting as its record of it. This records that it was agreed that all future discussions about work absences would be managed by either Mrs Anderson or Mrs Cusack, and that Mrs Anderson had changed her mind about the Claimant's absence on 20 November. She had agreed that the absence would be recorded as sick leave as had been previously agreed by Mrs Prosser on that day. Mrs Anderson explained in the letter how the Respondent deals with, and records staff absences. She also maintained that the discussion on 25 November included only her, the Claimant and Mrs Cusack, but apologizes to the Claimant if she felt Mrs Anderson had not handled the meeting in the best way.
31. During their submissions Mr Henry and Miss Jiggins both sought to persuade the Tribunal of facts which apparently contradicted one of the issues which had been agreed between the parties at the Preliminary Hearing which they both attended before Judge Roper on 19 October 2021. It was agreed by the parties at this hearing that the suggestion that had been made by the Claimant to provide certainty of internet access for her if her internet connection was disrupted when working from home included the provision of a dongle. Mr Henry submitted that during her evidence the Claimant had stated that she did not know what a dongle was when she attended the meeting on 30 November and could not have suggested the adjustment on which she relied. Miss Jiggins submitted that the first time a dongle was mentioned was in the grievance letter which she had drafted for the Claimant and sent to the Respondent on her behalf on 15 December 2020.

32. The Claimant may not have known about the Respondent's previous unsuccessful attempt to use dongles to access the NHS network used by the Respondent before the meeting on 30 November but it had been agreed when confirming the issues in this case that she had made representations to Mrs Hadley and Mrs Anderson at the meeting on 30 November that she should be provided with a dongle to ensure a continuing internet connection if her connection failed. This had also been claimed in the Claimant's Particulars of Claim and was confirmed in the emails of 26 and 30 November and the evidence of the Claimant and Mrs Hadley before the Tribunal.
33. The Tribunal finds, after considering all the evidence placed before it that the Claimant's Particulars of Claim confirm the representations which the Claimant made to Mrs Anderson and Mrs Hadley at their meeting on 30 November that the Respondent should provide the Claimant with access to a dongle to reassure her that she would not suffer loss of annual leave entitlement or pay if her IT connection was disrupted while working from home.
34. The Particulars of Claim state as follows:

*'The Claimant formally requested that the Respondent purchase a mobile internet dongle to keep at the Practice for emergency use to avoid a repetition of a situation which she found particularly stressful and exacerbated her mental symptoms. The Respondent refused to purchase a mobile internet dongle, estimated cost of £40 - £150 for up to 12 months coverage. The Claimant felt humiliated by the refusal to acknowledge the impact of this situation on her and felt devalued as a professional by the refusal to spend a relatively small amount of money on an auxiliary aid that would have a substantial, positive impact on the Claimant's well-being, being able to be confident that future disruption to her home internet would not impact on her annual leave entitlement or pay.'*

35. The Claimant has said that her suggestion of a dongle was rudely rejected by either Mrs Anderson or Mrs Hadley and that she was informed that dongles would not be provided to her. Mrs Anderson's email of 30 November confirms that the Claimant's proposal was rejected. Mrs Anderson's e mail states: *'The Surgery is unable to provide extra equipment to facilitate working from home other than what is already in place.'* Miss Jiggins' and Mr Henry's submissions are unsustainable by reference to both the Particulars of Claim, the terms of the Claimant's grievance and the other matters already referred to above.

36. The Particulars of Claim explain that it was this refusal of the Claimant's request for a dongle that resulted in her making an application for a new job and submitting her resignation from the Respondents' employment after being offered that job:

*'Shortly after the Claimant received notification that the Respondent had refused her request for the provision of the auxiliary aid, the Claimant applied for a role at a different practice as she no longer felt she could continue to work in an environment so dismissive of her*

*needs. The Claimant was successful and handed in her notice, resigning in response to the Respondent's fundamental breach of her employment contract.'*

37. The Claimant, while on self-certified sick leave, submitted her resignation on notice within the terms of her contract of employment on 14 December 2020. Subsequently, she was signed off work by her GP by reason of anxiety from 16 December 2020 to 8 January 2021. The Claimant did not undertake any further work for the Respondent because of continuing sickness absence. This was the first time that the Claimant had taken any time off for depression and anxiety during her employment with the Respondent.
38. The Claimant's legal advisers submitted a grievance to the Respondent on behalf of the Claimant. A copy of the grievance is in the Agreed Bundle. It is dated 15 December 2020 but there is no covering email/letter in the Bundle to ascertain when that document was sent to the Respondent or to who it was addressed. Mrs Hadley told the Tribunal that she had never seen this document when she was referred to it when giving her evidence to the Tribunal.
39. Mrs Hadley accepted that she had been informed that a grievance had been submitted by the Claimant when she spoke to ACAS. She confirmed that the Respondent's legal advisers had advised the Respondent that it had no obligation to either acknowledge receipt of this grievance, or deal with it because it had been submitted after the Claimant had submitted her resignation. The Respondent accepts that it received the grievance before she left its employment and that the submission of this grievance was a protected act.
40. There was correspondence between the Claimant and Mrs Hadley during the notice period to confirm the Claimant's last day of employment, and how payment, including accrued holiday pay due to her, would be paid. Mrs Hadley was aware that the Claimant had accepted an offer of employment with another surgery and was leaving for that reason. There is no indication in this correspondence that there were any difficulties in making these arrangements. The grievance is not referred to by either Mrs Hadley or the Claimant in this correspondence. These are the facts which the Tribunal has found.

## **Conclusions**

41. The unfortunate accident which disrupted the Claimant's internet connection was not the reason for the difficulties that arose between the Claimant and the Respondent's managers in the period from 20 to 30 November 2020. The Claimant, if she did not know already, was advised by Mrs Hadley that The Healthcare Company could provide emergency assistance with IT difficulties and that an IT technician could attend at her home to do so. She suffered no financial loss for the accident preventing her from continuing to work at home on 19 October or being unable to start work until the afternoon of 24 October. She was paid her wages in full for those two days.



42. The contentious issue arose because of Mrs Anderson's uncertainty about the Claimant's position on 20 October on which day, as a consequence of her daughter's medical difficulties on 19/20 October it was agreed with the Respondent's Deputy Practice Manager that she should be signed off sick and receive sick pay. This was not because her IT was still unavailable. She was not able to work by reason of sickness. If that had not been agreed then under the Respondent's absence arrangements her daughter's illness would have enabled her to have an emergency day off for which she would also have received full pay.
43. Mrs Anderson attended on the Claimant on 25 November to find out why she had not attended work on 20 November not to pursue enquiries about her health. The Claimant was disconcerted and upset by her enquiry and mistakenly informed Mrs Anderson that she had not been absent due to sickness on that day. This resulted in Mrs Anderson making the decision to pay her for that day's work from her annual leave entitlement (although under the terms of the Claimant's contract of employment she would not have been entitled to any pay). The Claimant was understandably upset by the outcome of this misunderstanding and fortunately made written representations which resulted in the meeting on 30 November in which the error was corrected and the Claimant was paid sick leave in accordance with the decision made by Mrs Prosser at the relevant time.
44. The Respondent provided substantial support to its employees in a number of ways which Mrs Hadley explained to Miss Jiggins during her evidence. The Claimant had been employed by the Respondent for nearly five years. She enjoyed a good, and supportive working relationship with Mrs Hadley until this incident. She had also been working full time in the surgery with her work colleagues until the Covid lockdowns. The Tribunal finds that, although the IT support that could be provided by The Healthcare Company to those working at home, may not have been known to the Claimant until this was offered to her by Mrs Hadley on 19 November she was fully aware of the other support that was available to her and her colleagues before this misunderstanding arose.
45. The Claimant preferred to work at the surgery. She was able to do so, subject to other domestic demands, because the surgery remained open throughout the Covid lockdowns. She had the option of working from home but to do so had to secure internet access through her own provider and use her mobile phone. There was a facility available to the Claimant and her colleagues to bring their children into work as an alternative to working from home. The Claimant and her colleagues also had support available from The Healthcare Company if they encountered IT difficulties while working from home. The Respondent's position if an employee was unable to work from home due to internet/laptop/phone issues was that such time would be documented as either unpaid or annual leave. However, the position which the Respondent had taken in respect of the accident that occurred on 19 November which disrupted the Claimant's IT connection was to offer her IT support from The Healthcare Company and subsequently to pay her in full for the two days during which she had not been able to complete a full day's work because of that internet disruption.

46. The first issue before the Tribunal is to determine whether the Respondent knew, or could reasonably have been expected to know, that the Claimant had a disability at the relevant time which is agreed was between 19 November 2020 and 8 January 2021. The Claimant had not been signed off work due to anxiety and depression before 19 November 2020. However, it is accepted that Mrs Hadley, to her credit, had supported the Claimant in addressing various difficulties and anxieties during her employment with the Respondent. The Tribunal find that in such circumstances Mrs Hadley would have become aware of the fact that the Claimant had been diagnosed with suffering from anxiety and depression and had in recent months been prescribed medication to deal with it.
47. The Claimant's email of 26 November showed that she was disappointed, upset and anxious following her meeting with Mrs Anderson and the decision she had made in respect of her absence from work on 20 November. Furthermore, when the Claimant attended the meeting on 30 November Mrs Hadley had observed that she was stressed, and became upset and distressed as the meeting progressed, and wanted to be given additional support when working from home in the future. The Tribunal, in looking at all these circumstances have concluded that while the Respondent had not considered whether the Claimant was disabled or not it could reasonably have been expected to have known that the Claimant's stress and anxiety was a disability and that the Claimant was disabled at the relevant time.
48. The statutory duty to make a reasonable adjustment is complex and nuanced. An employer is required to make reasonable adjustments to alleviate disadvantages suffered by employees with disabilities which in effect is a requirement to take positive action to accommodate the specific needs of those who have a protected characteristic. However, the adjustment must deal with a substantial disadvantage. This means a disadvantage that is more than minor, or trivial, and puts the disabled employee at a substantial disadvantage in comparison to employees who are not disabled.
49. A claimant will bear the burden of establishing a prima facie case as to what adjustment could and should have been made. The onus falls on a claimant, not the employer, to identify in broad terms the adjustment that would ameliorate the disadvantage, and it will then fall to the employer to show that the disadvantage would not have been eliminated or reduced and / or that it would not have been a reasonable adjustment to make. The test of reasonableness is an objective one. A failure to comply with a reasonable adjustment amounts to discrimination.
50. There is a contractual requirement for the Respondent's employees, who work from home, to accept responsibility to provide and maintain their own internet connection through their own provider through which they access the Respondent's NHS networks. The Respondent provides IT support through The Healthcare Company which was offered to the Claimant after the accident that disconnected her internet on 19 November 2020. This can provide assistance to the Respondent's employees in maintaining their internet connections or resolving problems with it. The Respondent had

also exercised its discretion to pay the Claimant for two full days of work when her internet connection had been disrupted by a domestic accident.

51. The Tribunal concludes that the PCP, and the arrangements that have to be made to meet it, which includes the risk of losing their internet connection, are the same for all employees who undertake home working and did not put the Claimant at any disadvantage in carrying out her work at home in comparison to her colleagues by reason of her disability. She did not seek assistance in carrying out the tasks required of her when working from home. There could be a number of ways in which an internet connection could be interrupted and all those employees had to bear that risk unlikely as it might be, but with the knowledge that the Respondent was able to provide professional IT support if that situation arose.
52. The Claimant was in reality not seeking an adjustment but an assurance that she would not suffer any loss of annual leave or pay if she was not able to meet her contractual obligations (which applied to all the Respondent's employees who worked from home) to provide and maintain an internet connection.
53. The Tribunal have accepted Mrs Hadley's evidence that the Respondent had already tried to utilize dongles and that this had been unsuccessful and that The Healthcare Company had advised Mrs Hadley that dongles would not be able to operate satisfactorily on the NHS network used by the Respondent. This meant that the Claimant's request for access to a dongle would not have addressed the potential disadvantage which she perceived might arise by the Respondent's contractual arrangements and which was a risk not only for her but for all her colleagues who worked from home. The Tribunal have found that this was not a reasonable adjustment within the terms of the EqA, and that even if this was not the case the suggested additional equipment would not have addressed the issue with which the Claimant was concerned.
54. The Claimant's harassment claim relies on the same grounds as her claim that the Respondent failed to make reasonable adjustments to her contract of employment. It is pleaded in the alternative for that reason and the Tribunal having dismissed the Claimant's claim that the Respondent failed to make reasonable adjustments now consider the harassment claim.
55. Unwanted conduct can include a wide range of behaviour. The Claimant's case is that Mrs Hadley's and Mrs Anderson's conduct of, and at, the meeting with her on 30 November had the purpose or effect of violating her dignity, and created an intimidating, hostile, degrading and humiliating or offensive environment for her. The Tribunal has to apply a test that has subjective and objective elements, subjective in considering the effect the meeting had on the Claimant and objective to consider whether it was reasonable for the Claimant to claim, as she does, that it had that effect taking into account all relevant circumstances
56. The Tribunal has already referred to the lack of communication and misunderstanding which resulted in Mrs Anderson's attendance on the Claimant on 25 November and her decision that the Claimant's pay on 20 November when she was absent from work would be taken from her

annual leave entitlement. The Claimant objected to the outcome and in response to the email which she sent explaining the reasons for that Mrs Anderson and Mrs Hadley made arrangements to meet with her on 30 November. There is no allegation before the Tribunal that this was a meeting arranged in bad faith. The Tribunal are satisfied that Mrs Anderson and Mrs Hadley arranged the meeting in good faith to deal with the matters which the Claimant had raised in her email to them and ensure there were no misunderstandings as to the contractual position on absences going forward.

57. The meeting enabled the Claimant to set out her position in support of her email and to explain the further concern which she had referred to and the proposal she wanted to put forward to deal with it. It is clear that the Claimant found the meeting demanding and stressful but those difficulties were not ignored by Mrs Hadley and there were successful outcomes for her from the meeting. These were that Mrs Anderson reversed her decision and the Claimant received sick pay for her absence on 20 November and an apology from Mrs Anderson if the Claimant felt that she had conducted the earlier meeting with her inappropriately.
58. The Claimant also received an explanation from Mrs Hadley as to why the suggested provision of a dongle would not assist the Claimant going forward. Mrs Hadley and Mrs Anderson did not hold the meeting with the purpose of creating an adverse or hostile environment for the Claimant. The Tribunal find that the matters discussed during that meeting, its conduct and, its outcomes did not have the effect of creating an adverse environment for her in which she was subjected to harassment by reason of her disability. Furthermore, it was not reasonable for the Claimant to claim, as she does, that it had that effect. Mrs Hadley and Mrs Anderson had a sound reason for rejecting the adjustment which the Claimant made to them which was that a dongle would not provide access to the relevant network. They had no alternative but to reject the adjustment proposed by the Claimant.
59. The circumstances in which the meeting was held, and the overall context of it, together with all that was discussed, and the support already provided by the Respondent lead the Tribunal to conclude that it is not reasonable for the Claimant to claim she was harassed apparently because of her disappointment with the outcome of the meeting in respect of the proposed dongle. Therefore, her claim of harassment is dismissed.
60. In pursuing her claim of victimization the Claimant has to show that she was subjected to a detriment for submitting her grievance on 15 December 2020. The Respondent did not acknowledge receipt of that grievance or respond to it. The question for the Tribunal is whether by failing to acknowledge receipt of or respond to it the Respondent subjected the Claimant to a detriment and, if so, whether that was because of the protected act.
61. The findings of fact make it clear that an unfortunate sequence of events resulted in the Claimant concluding that unfortunately what had been a good working relationship with the Respondent's managers had broken

down for her and that she would leave the Respondent's employment if she could secure a job with another surgery for which she made a job application shortly after the meeting on 30 November.

62. She was successful in that application and informed the Respondent that she would be leaving their employment to take up the new job and gave due notice to do so. She had also decided to pursue employment tribunal proceedings. She contacted ACAS to commence the early conciliation procedure three days after her advisers had submitted her grievance on 18 December 2020.
63. The reason that the Respondent did not communicate with the Claimant about her grievance when Mrs Hadley was pursuing correspondence with the Claimant to agree arrangements for her departure is that it was advised by its legal advisers that it did not need to do so because she had submitted her resignation before submitting the grievance. The submission that the Respondent's failure to respond to the grievance was detrimental to the Claimant because it removed any possibility of her being able to agree that she would remain in the Respondent's employment is on the facts before this Tribunal unsustainable. She now had a poor regard for Mrs Hadley and Mrs Anderson and was focused on starting her new job and pursuing Tribunal proceedings.
64. It was most unfortunate the accident on 19 November and subsequent misunderstanding, brought what had been a good and successful working relationship which benefited both parties to an end. It is clear, however, from the evidence before the Tribunal that the Claimant did not want to continue to work with the Respondent and her actions confirm that this was an irrevocable decision and that she was intent on pursuing tribunal proceedings against the Respondent. The Tribunal find for all these reasons that the Claimant was not victimized by the Respondent because its failure to respond to her grievance was not because of the protected act and subjected her to no detriment.
65. This means that the Tribunal dismiss the Claimant's complaints of discrimination on the grounds of disability pursuant to sections 20 and 21, 26 and 27 of the EqA 2010 and, as a result of those judgments must also dismiss her claim of constructive discriminatory dismissal under section 39 EqA.

Employment Judge Craft  
Date 28 March 2023

Judgment sent to the Parties: 31 March 2023

FOR THE TRIBUNAL OFFICE