# EMPLOYMENT TRIBUNALS

**Claimant:** Miss J Levell

**Respondent:** Demicon Limited

**Heard at:** Manchester (by CVP) On: 27 and 28 February 2023
1 and 2 March 2023

**Before:** Employment Judge Leach
Ms J Whistler
Mrs J Byrne

**REPRESENTATION:**

**Claimant:** In person
**Respondent:** Mr Fakunle, Solicitor

# JUDGMENT

The unanimous decision of the Tribunal is that:

1. The claimant succeeds in the following claims:-

    1.1 Detriment (health and safety activities) under Section 44 Employment Rights Act 1996;

    1.2 Discrimination arising from disability (Section 15 Equality Act 2010).

    1.3 Breach of contract – constructive dismissal and failure to make pension contributions.

    1.4 Unauthorised deduction from wages (part 2 Employment Rights Act 1996).

2. All other claims fail and are dismissed.

# REASONS

## Introduction

1. The claimant claims that she was constructively dismissed from her employment with the respondent. She claims the principal reason for the constructive dismissal was her raising health and safety issues and therefore that it was automatically unfair, under s100 Employment Rights Act 1996. She does not have the requisite 2 years' continuous service to make a "standard" unfair dismissal complaint.

2. The claimant claims that the respondent's decision to place her on short time work at the beginning of the first Coronavirus lockdown period (late March 2020) amounted to (1) detrimental treatment because of health and safety issues raised by her and (2) disability discrimination (Section 15 Equality Act 2010).

3. The claimant also claims that the respondent applied a provision, criterion or practice of requiring employees to attend the workplace during lockdown which put her at a substantial disadvantage and as such reasonable adjustments should have been made.

4. The claimant also makes complaints of breach of contract (constructive dismissal) and unlawful deductions from wages.

## The Hearing

5. On day one the Tribunal read into the case. We also discussed with the parties some changes to a draft List of Issues that had been sent to the parties following the Preliminary Hearing (Case Management) in March 2021. Neither party had completed the draft List of Issues as had been required. We proposed some changes to the draft whilst keeping those changes to a minimum given that the draft as it then was appeared to be agreed. We ended up with an agreement between the parties on a final version of the list of issues. The updated list of issues is annexed to this judgment with changes identified at this hearing.

6. We were provided with an agreed bundle of documents. Some additions were made to the bundle during the course of the hearing. All additions were by agreement. Page references below are to the bundle of documents.

7. We started to hear evidence from the claimant late in the afternoon of day one and then throughout day two. On day three we heard evidence from Mr Janneh (IJ) Director of the respondent company. The parties also provided their oral submissions at the end of day three.

8. Day four was taken up with deliberations so that the Tribunal could provide the parties with this reserved judgment. The Tribunal was not in a position to provide oral reasons on the afternoon of day four. We decided that we needed the whole of day four for our deliberations and decision.

## The Issues

9. Please see Annex.

**Findings of Fact, relevant to the complaints and issues in this case.**

10. The claimant started work for the respondent in October 2019 having successfully applied for the role of Office Manager/Secretary.

11. The respondent is a small property development and construction company. It develops residential properties. At all relevant times it had some four or five active residential projects, these being apartment type developments.

12. There were only around five employees of the respondent at any one time although in its role as a contractor it engaged with a larger number of sub-contractors at each of its sites.

13. The claimant soon proved her worth. Having reviewed the evidence and heard from the claimant we have no doubt that she was a focussed, hard- working and capable employee. She also came to the respondent with useful previous experience, including in the area of health and safety. By the end of her three-month probationary period the claimant had shown her value. Her job title changed from Office Manager to Operations Manager and she was formally provided with some additional/new responsibilities. These are set out at page 112. Included are some responsibilities for health and safety although we accept the claimant's evidence that she had been carrying out a lot of health and safety related responsibilities for some weeks before then.

<u>The contract of employment</u>.

14. This is at pages 72 to 76 and includes the following:-

    14.1 A Probationary period of three months. The claimant successfully served that probationary period.

    14.2 <u>Place of work</u>. *You will normally be required to work at Universal Centre Devonshire Street North, M12 6JH. You will not be required to work outside the United Kingdom*.

    14.3 <u>Shortage of work.</u> *If there is a temporary shortage of work for any reason we will try to maintain your continuity of employment even if business necessitates placing you on short time working or alternatively, lay off. If you are placed on short time working your pay will be reduced according to time actually worked. If you are placed on lay off you will receive no pay other than statutory guarantee pay.*

    14.4 <u>Notice of Termination</u> – the contract provided that on successful completion of probation, 1 months' notice was required whether employee or employer gave notice

    14.5 <u>Pension.</u> A contractual right to be auto enrolled in the respondent's contributory pension scheme.

<u>The Claimant's alleged impairment</u>

15. We note here that in his submissions Mr Fakunle indicated that the respondent probably accepted that the claimant had a disability for the purposes of Section 6 Equality Act 2010. However, what he said did not amount to a clear admission and it appeared to be an acceptance on the part of Mr Fakunle himself rather than his client. Therefore we have decided it is necessary for us to make findings of fact so that we can reach a decision on the disability issue.

16. The claimant has Asthma. She told us that she did not categorise it as acute but it had become worse over the period 2017 to the relevant time (March/April 2020).

17. The claimant had suffered from Asthma as a small child and had used an inhaler (a reliever inhaler) from between the ages of 6 and 12.

18. During the claimant's teenage years and up to her mid to late 20's she did not suffer from any symptoms and did not use an inhaler. The claimant did notice during this time that certain conditions affected her breathing, for example when running in cold weather the claimant would struggle with her breathing. She also appeared to take longer than others to recover from chest infections.

19. In late 2017 the claimant had an Asthma attack. This occurred shortly after she had recovered from a chest infection. She only walked 100 yards or so and was unable to talk and had great difficulty breathing. The claimant was required to rest before then taking some time to manage to walk the 100 or so yards back to her home. She made an appointment with her GP, was told that she was asthmatic and was prescribed a reliever inhaler once more.

20. Over the next fifteen or so months the claimant controlled her symptoms by relying on the prescribed inhaler. When she felt herself starting to have symptoms she took two puffs every five minutes from the inhaler as prescribed. The claimant tended to rely on the inhaler once or twice a week, usually when exercising with moderately high intensity. The claimant gave examples of this being a 5k run or an exercise class.

21. At this time the claimant would not need to rely on the reliever inhaler if, for example, walking for a mile or so unless she had a chest infection or if the pollen count or pollution was high.

22. In January 2019 the claimant's condition worsened. She was starting to rely on the inhaler two to three times a week during simple tasks. The claimant gave some examples of tasks that she was doing at the time that made her need to use the inhaler. These included walking from one side of a construction site to another. The claimant developed a chest infection in January 2019 and again suffered a severe Asthma attack notwithstanding that she had the reliever inhaler to use. The claimant managed to get an emergency appointment with her GP who prescribed her an immediate course of steroids and two different inhalers.

23. One of the inhalers prescribed was a stronger reliever inhaler and the other was a preventer inhaler. The preventer inhaler had to be used twice a day (morning and evening) every day.

24. From then and throughout the relevant time the claimant used the preventer inhaler twice every morning and twice every evening.

25. The claimant has found that the preventer inhaler has been very helpful in controlling conditions although she still needs to rely on the reliever inhaler particularly in the following conditions:-

    (i) when she gets a respiratory infection;

    (ii) when there is high pollution, dusty conditions, cold or damp conditions;

    (iii) when exercising.

26. The claimant was asked to explain what the impact of the Asthma would be (and would have been at the relevant time) if she did not take the prescribed medication. She told us (and we accept) that she would not be able to do anything that was not sedentary as there would be a significant risk of an Asthma attack. She would struggle to walk up a flight of stairs, to walk in dusty conditions (such as a construction site) or in damp or mouldy conditions, to walk in the immediate vicinity of her city centre apartment given the city centre pollution.

27. We find that without the medication, she would be extremely limited to what physical tasks she could do, she would be breathless and potentially suffer an Asthma attack if walking upstairs, walking for short distances and that these risks would be increased in the event that she was carrying them out in dusty or cold or polluted or pollenated conditions.

The respondent's workforce

28. The respondent is a small employer. As well as its directors (IJ and another director called Mohamed Badran) at the relevant time the respondent employed the claimant and (for some of the relevant time) a Construction Manager. The claimant also engaged a number of sub-contractors to work on the building sites. In addition, the claimant engaged a sub-contracting Quantity Surveyor – see below.

The claimant's role as of February 2020

29. The roles and responsibilities applicable at this stage (following the successful probationary period review) are listed at page 112 of the bundle. The claimant was or was soon to be employed with the job title of Operations Manager. The respondent had arranged for business cards to be printed which noted that the claimant carried out this role (rather than the Office Manager/Secretary role that she had initially been engaged under).

30. The responsibilities listed at 112 are as follows.

    *"Jaime (Operations Manager)*

    - *Reviewing H and S processes on site;*

- *Receiving and managing requests for payment for plant machinery and site material;*
- *Maintain listing and develop relationship with trade suppliers – plant, machinery, material;*
- *Develop trade price lists – materials, plant hire;*
- *Maintain sub-contracts list – consultants, contractors;*
- *Keep a record of invoices, receipts, delivery notes;*
- *Liaise with Local Authority in respect of future development plans in Manchester and see how the company can benefit;*
- *Look into marketing opportunities for current properties;*
- *Assisting with HR.*

31. We also note the following in relation to the claimant's role and the changing nature of that role.

    (i) The claimant was initially based (and worked substantially the whole of her time) at the respondent's office in Withington although as her role evolved and particularly from late 2019 she was also required to travel to and work from the construction sites that the respondent then operated.

    (ii) The claimant was left substantially to work alone for much of December 2019. IJ and MB were overseas. The respondent business was also "between" construction managers. During this period the claimant took on increasing amounts of health and safety responsibilities and site-based activities.

Lockdown March 2020

32. It is relevant to note the increasing concern through March 2020 as far as the Coronavirus was concerned. This is reflected in three government announcements that were considered at the hearing and are contained in the bundle.

33. We attach these at Annex 2. The announcements are a helpful reminder of the increasingly concerning messages being delivered by Government in March 2020.

The claimant's annual leave

34. The claimant took annual leave from 11 March 2020 returning on 18 March 2020. The respondent has sought to make much of the claimant's behaviour around this leave, saying that the claimant had little regard for the impact of the Coronavirus and that her somewhat carefree attitude to the virus at this stage was in marked contrast to her behaviour from 17 March 2020 onwards (which we refer to below).

35. We accept the evidence of the claimant that, like the rest of the population, she was informed on an ongoing and changing basis about the risks that the virus imposed. As at the 6 March 2020 the UK was told by the Prime Minister not to go on a cruise or attend an International School Trip (see above). The UK population was not being told, at the beginning of her holiday, not to go on holiday generally. As it was the claimant did not travel abroad because travel abroad was becoming increasingly restricted and the claimant's flights had been cancelled. She chose instead to take a holiday at a cottage at a remote location in North Wales.

36. The claimant heard/viewed the Government announcement on 16 March 2020 whilst on holiday and returned to home from her holiday that evening. She sent an email to the respondent on her return to work (being the last day of her annual leave) which was 17 March 2020. This is what the claimant said in that email:-

> *"As you can probably imagine my flight was cancelled and I ended up holidaying in Wales. I have tried to call you. As I have Asthma I am on the Government list of vulnerable people who have been told to work from home. I understand this might be complex, especially with the site continuing. I suggest I come in tomorrow so I can retrieve what I need to plan tasks for me to complete from home. I am supposed to meet with the Estate Agent from Bridgefords at 11 am at Walkden Road. It is for the best I don't attend the meeting although I have had no contact from Bridgefords. Would you like me to call them and rearrange or would you like to go in my stead? I am happy to call them first thing tomorrow morning. Feel free to call me to discuss, hope everything is well."*

Claimant's return of 18 March

37. The claimant attended the office on 18 March 2020. She had not received a response to her email of 17 March. The 18 March was the last day that the claimant attended the office.

38. The claimant and IJ discussed working arrangements. The claimant made her request again to work from home. The claimant discussed carrying out risk assessments and putting together a risk assessment management statement (called RAMS) specifically in relation to Coronavirus. The claimant gave evidence (and we accept) that she was told by IJ it was not a priority for the business. It was discouraged.

39. The claimant asked about social distancing in the office and also about cleaning. Indeed it was in that context that the claimant raised the issue of a risk assessment for the office. There is no evidence that the claimant was given any assurances. She was told she could work in a spare room in the office. The respondent's view (and this comes out in the grievance investigation) was that this was sufficient in order to enable the claimant to attend the office and she should have done so. The claimant however was not satisfied that it was.

40. We accept the respondent's evidence that it was willing (at this stage) for the claimant to work from home. The respondent provided a Zoom account to assist the claimant. The claimant was able to set up systems to work remotely.

All of the respondents relevant systems could be accessed remotely by the claimant.

41. It is important to note here that the respondent did not opine at this stage that the claimant would not be able to carry out her role from home (or the vast majority of her role).

42. On 20 March 2020 the claimant emailed the respondent to set out the tasks that she was going to continue to carry out from home. We do not have the original email but it is quoted in the claimant's later grievance. We find that the tasks that the claimant listed as of 20 March 2020 (and are listed again at page 183) to be tasks that she had been doing. They were not all the tasks that fell within her role, but they were the tasks that she was doing at the start of the lockdown in the second half of March 2020. The respondent did not reply to the claimant's email of 20 March 2020 stating disagreement.

Health and safety responsibilities

43. There is a dispute between the parties as to whether the claimant was carrying out health and safety responsibilities to any significant extent. The email of 20 March 2020 referred to above indicates that she would continue to carry out a number of health and safety responsibilities. If, as the respondent now says the claimant was simply not carrying these tasks out, that she was inventing tasks, then where is the response, the objection to the claimant emailing to say that she would continue to do these things? There is none. It is also significant that the claimant's email of 20 March 2020 was sent at a time when there was no dispute between the parties. At that stage the claimant (as she had throughout her employment) was getting on with her role in an orderly way and reporting appropriately to IJ what she was and would be doing. The claimant had no motive as of 20 March 2020 to embellish the position, let alone (as the respondent now asks us to believe) invent tasks that she had not been doing.

44. We have also reviewed the roles and responsibilities document at 111 and 112 which details responsibilities for job roles other than the claimant. We note that the role of the Construction Manager particularly has more reference to responsibility for "RAMS" and health and safety. But we also note:-

    (i) That a new Construction Manager (NG) had only recently started work for the employer;

    (ii) The terms of an email of 6 February 2020 (page 107) indicates that the claimant was involved in health and safety (and not simply involved, as a secretary, typing or correcting typographical errors);

    (iii) The lack of response to the email of 20 March as noted above.

45. Having considered all of this evidence this is what we find in relation to the claimant's health and safety responsibilities:-

(i) That health and safety was initially not part of her role although she did join with health and safety experience and IJ accepted at this hearing it was of interest to the respondent.

(ii) When the claimant joined there was a Construction Manager who had health and safety responsibilities.

(iii) That Construction Manager (DC) left his employment before the end of November (we are not exactly sure when but note that it was before 29 November as he does not appear on a staff rota that we have seen for that date) and left something of a void to fill in terms of health and safety.

(iv) On 4 December 2019 the claimant was asked to attend a site health and safety meeting and from then on she picked up an increasing number of health and safety responsibilities.

(v) The new Construction Manager came into the respondent's business in early 2020. Again we are not sure exactly when but we note that his employment had started by 6 February 2020 (see email at 107 referred to above).

(vi) The new Construction Manager (NG) did not immediately pick up the health and safety responsibilities

(viii) The claimant's health and safety responsibilities (or rather the reason why they were taken away) was simply not addressed in her grievance (see below) though the claimant raised very clearly in the grievance, her health and safety tasks.

Visits/Inspections

46. The claimant was scheduled to carry out a site visit on 18 March 2020. On 17 March 2020 the claimant emailed the respondent to state her view that she should not carry this out (see paragraph 36 above).

47. The next time the claimant was asked to carry out a site visit was on 23 March 2020 (see page 141). This would have involved attending a property with estate agents so they could value it. The claimant queried if someone else could do it and if that was not possible she would take medical advice as she was vulnerable.

48. The claimant changed her position regarding the site visit on 24 March after she had heard the Prime Minister's announcement on the evening of 23 March. (email at page 147). Having heard that announcement the claimant was concerned that if she did attend she would be breaking the law and would risk contracting Coronavirus. She also reminded the respondent of her particular vulnerability.

49. In the grievance the respondent indicated that the claimant could have carried out these inspections from the car. The claimant's response when that was put

to her at the Tribunal hearing was that she had no recollection of this proposal being made. This is what we find:-

(i) That it was not made.

(ii) It was not an obvious solution that occurred (or should have occurred) to the claimant.

(iii) If that was what the respondent wanted the claimant to do then IJ could and should have told her; he could have discussed this over the phone with her; provided some assurances and discussed risk and the management of that risk with the claimant.

50. We also note here that Estate Agents were at this stage moving to virtual viewings. There is evidence in this case at page 149 which is an email from the claimant to the respondent of 24 March 2020 in which she stated *"please note that Sanderson James and Edward Miller have closed and cancelled our valuations in Gorton. They are looking into virtual valuations and will get in touch in the next couple of days with solutions."* The claimant's resistance to attending a meeting immediately following the PM's announcement on 23 March 2020 was unsurprising.

Michael Lomax

51. ML was a quantity surveyor (QS) engaged by the respondent on a sub-contractor basis. Although not regarded as an employee we accept that he was to a significant extent, integrated into the respondent business; we note for example references to him taking annual leave (staff schedule at page 98) and also to his Demicon email address.

52. On 16 March 2020 (page 323) ML told the respondent that he would be working from home. We have been provided with emails from ML for this day and the 2 days following. It is apparent that the respondent accepted ML's decision. However it is also apparent that ML was prepared to come in to the office sometimes too. In fact, IJ's evidence is that ML chose to work from the office (IJ witness statement at para 11). It appears therefore that ML initially expected to work from home but then changed his mind. We do not have any clear evidence on this and we have decided that the evidence such as we have, does not assist either party.

53. IJ also told us that the respondent had placed MS on short time working of just 3 to 4 hours per week. During the Tribunal, the respondent was provided with opportunities to present additional information for the bundle. IJ provided copy emails which he said showed ML to have been placed on short time working. In fact, the emails disclosed indicated that MS worked many more hours than the three to four hours a week that IJ told us that MS had his work reduced to. As with the work location, the position was far from clear. We find that MLs hours were not reduced to anything like 3-4 hours a week if they were reduced at all.

Why was the claimant placed on short time working?

54. On 24 March 2020 the respondent sent an email in the following terms:

> *"Further to Government announcement yesterday please be informed that the office and construction site will be operating as usual. However please contact me should you have need to stay away from work for any reason".*

55. There were four recipients to this email:-

    (i) The claimant who had already declared that she was working from home;

    (ii) ML – who had already told the respondent that he was working from home but may by that stage have changed his position.

    (iii) MB – fellow director of IJ and sometime attendee at the office;

    (iv) NG – the new Construction Manager who (we now know) had a very cynical view at that time of the pandemic.

56. This email contained no assurances about the steps being taken to offer protections to attendees at the office.

57. On 25 March 2020 at 9.34 am the claimant provided the following email to the same recipients:-

> *"Dear all whilst we currently have the go ahead to work on site there is growing pressure to close building sites. Hopefully this will not happen, but as we have seen over the last week, the announces have come very late in the day, often surrounded with confusion.*
>
> *Would it be prudent to have a Zoom meeting today to discuss a contingency plan in light of the potential halt to work? I will be happy to prepare a report and collect information on government support for companies, including the furlough workers scheme, small business grants and loan and the delaying of tax payments. If this seems like a good idea please let me know and I will arrange it. Hope everyone is remaining well and managing to social distance."*

58. IJ did not pay close attention to the claimant's email. In fact, the respondent had little regard for the cautious approach that was being adopted by the claimant even though that was no more than a reflection of what was happening in the UK at the time. We base this on:-

    a. The respondent's email of 24 March – above (particularly the phrase – "operating as usual").

    b. The respondent's actions that followed this email (see next).

    c. IJ's misrepresentation of the claimant's information and suggestions in this email. At paragraph 15 and 16 of his statement:-

> *"15. On 24 March [claimant] sent an email that estate agents were also closing……I informed [claimant] that the site was working as usual*
>
> *16. On 25 March [claimant] replied and insisted we close sites because of pending changes in government advice…"*

The claimant did not insist that the respondent close sites.

59. On 25 March 2020, some thirty minutes after the claimant had sent her email of 09.34am, IJ emailed the claimant in the following terms:-

> *"Dear Jaime, it is with regret that due to shortage anticipated from next week the company must notify you that you are being placed on short time working in accordance with your contract, with effect from 26 March 2020.*
>
> *Your hours of work will change to 8 hours per week. By separate email I will outline tasks to be undertaken in this time. The days of working to be agreed in discussion. Entitlement to Statutory Guarantee Pay (SGP) will be in accordance with statutory provisions. SGP is payable in respect of a maximum of five workless days in any rolling period of three calendar months.*
>
> *Whilst you are on short time working you will be paid on the basis of hours actually worked.*
>
> *We assure you that we are doing everything we possibly can to rectify this situation and will notify you as soon as normal duties resume.*
>
> *As you may be entitled to benefits this letter should be taken to the Department of Work and Pensions as proof that you have been placed on short time working. If you have any queries about the contents of this letter please contact me."*

60. The claimant was understandably shocked to receive this email message. She replied almost immediately (three minutes later) as follows:-

> *"Hi Ibrahim, is there any way we could discuss with payroll making me a furloughed worker, this will not cost you anything but will protect 80% of my pay".*

61. The response from the respondent (IJ) three minutes after that was as follows:

> *"OK I will look into that today for you for times outside reduced hours".*

62. Twenty minutes after that the claimant wrote in more detailed terms:-

> *"I have tried calling you as I feel I am entitled for this to be discussed further. Given all that I have done to help with your business since I joined which you acknowledged when you promoted me in*

*February, I am devastated that you have decided to give me just one day's notice of this decision which will cause me significant financial hardship. I am sure you that will know that I cannot go down to one day a week's income and to such little notice of your decision is extremely disappointing and distressing. Please note I will be taking legal advice to protect myself and intend to enforce all of my rights to fullest extent".*

63. At about the same time IJ emailed the claimant in the following terms:-

*"As discussed yesterday I am trying to come up with a list of things that you can reasonably do from home.*

*I have come up with the following things that I would like you to look into in your reduced hours:*

- *Firstly opportunities for collaborating with Local Authorities development strategies and schemes as relates to our schemes at Barton Road, Worthington and Denton.*
- *Opportunities for benefiting from government housing schemes;*
- *Opportunities for working with Housing Associations;*
- *Part by schemes*

*It would be good for us to carry out weekly reviews and develop some sort of rapport as you go.*

64. It is relevant that we note next the various reasons provided for the respondent for reducing the claimant's hours:-

a. At the Tribunal hearing IJ told us that at the time the respondent business was struggling and that the issue of placing the claimant on short time working was considered by the directors as early as 13 March 2020 and was not related to Covid.

b. At other points in IJ's evidence (and in submissions from Mr Fakhunde) Covid was the central reason for the claimant being placed on short time working.

c. In the email informing the claimant of the decision to place her on short time working there is a reference to *"due to shortage anticipated from next week."* But the anticipated shortage of that following week has never been explained. Further, it has not been explained, if shortage of work was "anticipated" the following week, why the respondent told the claimant she was on short time working with effect the following day. The 25 March 2020 was a Wednesday.

d. In its ET response form (at page 42) the respondent stated:-

*"on 25 March 2020 due to the impact of Covid 19 on the construction industry Mr Janneh emailed the claimant advising*

*her that due to the shortage of work the claimant was being placed on short time working".*

e. In the grievance investigation (at page 199) IJ is quoted as follows:-

*"not enough work for her we discovered that we are overspending on material costs and there was no appropriate checks and balances in place with* [the claimant] *in place. She just did not have the experience. The result is that we have passed the responsibility to the contractor. When you remove responsibility for material and plant not much can be done from home. Also,* [claimant] *does not have sufficient experience of the construction industry to work on her own. Lastly, after* [claimant] *reviews invoices she was sending them to me and I was also making payment. This double handling was adding unnecessary costs".*

*f.* By email of 25 March (sent shortly after the claimant had been told her hours were reduced) IJ replied to an earlier email of the claimant and told her "*Alan is not happy about you getting involved material because he [thinks] this is his role. So please hold on looking at material quotes."*

g. IJ's evidence at the Tribunal was not consistent with this. His evidence was that the pandemic was creating a shortage of materials and that the sub-contractors were better placed at sourcing materials during the shortage at a reasonable price.

65. We find that the decision to place the claimant on short time working was a reaction by the respondent to the claimant's request to work from home because she reasonably believed that it was unsafe for her to attend the workplace. It was also a reaction to her risk averse approach to the pandemic and her decision to follow the instructions as communicated by the government. We make this decision having regard to:-

a. The timing of the decision, including in relation to (1) the claimant's refusal on 24 March 2020 to attend a site visit in person and (2) the email by which she suggested a discussion to manage the risks caused by coronavirus.

b. The lack of a clear, alternative explanation. We were not impressed with the various reasons provided by the respondent which was a significant factor in our decision not to believe the respondent.

Tasks provided to the claimant

66. IJ was asked whether tasks listed in his email of 25 March 2020 (paragraph 63 above) amounted to essential and urgent work. His response was that it would be helpful for the business whilst they (not just the claimant) had the time, to carry out the tasks. There was a downturn in other activities, caused by the pandemic. The work was not urgent and not necessary the continuation of existing activities.

67. The claimant's evidence was consistent with this. Further, the wording of the email itself really reflects this *"I am trying to come up with a list that you can reasonably do from home".* The wording indicates that IJ was trying to find something for the claimant to do.

**Claimant's Grievance**

68. As noted above the claimant raised a number of objections in the hours following the respondent's email on 25 March 2020, telling her she would be on short time working. The claimant's objections continued over the following days. She was shocked. Her income had been reduced to 20% of what it was.

69. The claimant did not accept that the respondent could lawfully do what it did. Later on 25 March 2020, she sent a further email to the director and the claimant said as follows:-

> *"I would also like to remind you that any decision to reduce my hours must be for a lawful reason. I am currently concerned that the basis of this decision is not lawful and may be based on discrimination, both on grounds of disability and my gender."*

70. The respondent responded to a very limited extent to the claimant's objections by stating it would delay the commencement of the short time working until 30 March 2020 (only a few working days). The claimant was told that in the week commencing 30 March she would work one day - 1 April 2020.

71. The claimant also asked how long the short time working would last. At the hearing IJ and Mr Fakunle made much of this being a short-term temporary arrangement and that the claimant had been made aware of this. We have no written reason of any assurances being given. The most assurance provided in writing to the claimant is in an email dated 30 March 2020 when the claimant was told "*please be informed the reduced hours will be in place until work you can do picks up. We will notify you as soon as things change"* (page 162).

72. By 6 April 2020 the claimant had put together a detailed grievance. Some of the grievances do not now concern this case (particularly allegations of sex discrimination – those complaints have been dismissed following withdrawal by the claimant).

73. The respondent decided to outsource the grievance investigation to a company called Face-2-Face, part of Peninsula (the respondent's representative in these Tribunal proceedings, an HR advice consultancy that the respondent used). We have not heard any evidence from the individual who investigated the grievance and compiled a grievance report. We have seen limited disclosure of that investigation in that we have seen a transcript of the interview with the claimant but not any other interview transcripts.

74. IJ wrote to the claimant on 4 May 2020 with the outcome of the grievance. In doing this we find he simply accepted and adopted the findings made by the external consultant. He sent the grievance by email to the claimant's personal email account at 22.18. We accept IJs explanation that he did so because he

sometimes works in the evening and that he sent the email to the claimant's personal account because he considered it to be a confidential communication.

75. We make the following findings in relation to the grievance:-

    (i) One of the recommendations was to provide the claimant with a copy of the transcript of her interview but the respondent did not do this.

    (ii) Another recommendation was to ensure the claimant's pension was paid up. This was not actioned until a year later (just after the case management hearing in these proceedings) and it is still not clear whether the payment has been made, although it may have been.

    (iii) Otherwise all grievances were rejected.

**Official Warning**

76. In the days following the decision to place the claimant on short time working the claimant submitted daily timesheets for the non-working days. On those timesheets she indicated that she remained willing to work and did this because she wanted to ensure that her legal position was protected as far as possible.

77. On 9 April 2020 the respondent gave the claimant a warning for this action. She was told ( and we accept) that the warning was given on the basis that they had reduced her hours yet she continued to submit time forms, expecting to be paid.

78. Despite the claimant's contract of employment referring to a disciplinary procedure the claimant was issued with a formal warning without any investigation, any hearing, any opportunity to respond to the allegations made. She was not offered a right of appeal either.

**Claimant's resignation letter**

79. The claimant received the grievance outcome and very shortly after that decided that she would resign. The reasons are set out in a letter (undated but sent on 11 May 2020) at page 226. We find this letter accurately records the reasons why the claimant resigned. It is important in the context of the complaints in these proceedings that we set out the reasons in full which are below.

*I have now read and digested your response to my grievance. I am extremely disappointed, not only with the result but with the content and conduct of the process. Besides the response on my pension contributions, the rest of the response to the concerns I have raised is completely inadequate. Not only that but it raises points that are completely irrelevant to the issues at hand. I set out some concerns regarding your conduct during the investigation and the impartiality of the investigator below.*

*These concerns, along with your apparent assertion throughout the response that I do not have the experience to do my job properly, despite never having raised any such concerns before this process, have led me to lose all trust and confidence in you as an employer and in this grievance process. I am therefore resigning my position. I will*

*honour my contractual notice period which is one month. On the assumption that you do not return me to full time hours until that point, my final day working will be 8 June 2020.*

*You have also failed to pay me in full for April. You specifically stated in your email in which my hours were reduced that I would be paid for time worked and told me to work 8 hour days. However, you have simply paid me 20% of my monthly salary. My contract states that my working hours are 7.5 hours per day, with 28 days holiday (including bank holidays). Therefore, my hourly rate is £12.82. I worked 5 8 hour days in April. Therefore, I should have been paid £512.80. Despite repeated requests, you failed to supply me with a breakdown of how my pay was calculated. It is now clear, that it was calculated incorrectly and I expect to be paid the balance of £96.13 immediately.*

*Regarding my disappointment with the response to my grievance, I do not intend to respond to each and every issue, but there are numerous instances throughout where either your answers to the investigator are factually incorrect, or where her questions are based on false assumptions. For example, your claim that you were not aware of my asthma until the day I asked to work from home is either deliberately misleading of the investigator or indicates a worrying lack of memory on your behalf since I referred to my inhaler often during work hours. Secondly, you say that after telling you on the phone how uncomfortable I was attending viewings that I then emailed to say I would seek medical advice. However, the email in question clearly stated that I was not comfortable attending, asked whether anyone else could attend instead, and stated that if you insisted it had to be me then I would need to seek medical advice first to make a proper assessment of the risk. You never replied to that email asking me to seek such medical advice. The investigator's failure to pick up on this basic discrepancy between your response and the written evidence I shared with her is alarming. Furthermore, her assertion that being given a formal warning to be an appropriate response to my supplying a time sheet with the words 'available to work' demonstrate a worrying lack of impartiality. It is this lack of impartiality, and my concerns regarding your engagement with the process that mean I have no confidence in its effect and see no value in continuing with it any further.*

## Appeal

80. On 14 May the claimant raised an appeal. It was heard internally on this occasion but not by either IJ or MB (the two directors). Instead it was heard by the Construction Manager NG. Whilst NG met with the claimant, neither he nor anyone else at the respondent provided the claimant with an outcome to her appeal.

81. It is relevant that we record relevant findings in relation to NG.

    a. The first relates to an audio file/message he sent to the claimant on or about the 3 April 2020 the contents of which we summarise as a conspiracy theory about coronavirus being a hoax, linked to a roll out of a 5G network. We accept IJ's explanation that this was not known to the respondent at the time and in no sense reflected the views or attitudes of the respondent.

b. IJ told us that NG left his employment with the respondent quite suddenly and that is why the fact that NG had not completed the appeal had not been picked up. We accept that is what happened. However the respondent remined responsible for completing the appeal and providing the claimant with an outcome. It did not do so.

**Submissions**

82. Both parties made oral submissions that we considered when reaching our decisions, set out below.

**The Law**

Constructive and unfair dismissal

83. The claimant claims (1) that her resignation amounted to a constructive dismissal and (2) that this dismissal was automatically unfair under s100 of the Employment Rights Act 1996 (ERA).

84. Dismissal for the purposes of the ERA includes the circumstances stated at s95(1)( c). *"…..an employee is dismissed by his employer if…….the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct."* This is commonly referred to as a constructive dismissal.

85. In considering the issue of constructive dismissal, an Employment Tribunal is required to consider the terms of the contractual relationship, whether any contractual term has been breached and, if so, whether the breach amounts to a fundamental breach of the contract (**Western Excavating (ECC) Limited v. Sharp [1978] QC 761**).

86. It is an implied term of every employment contract that the employer shall not without reasonable and proper cause, conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of confidence and trust between employer and employee (see for example **Malik v. BCCI [1997] IRLR 462** at paras 53 and 54). We refer to this term as "the Implied Term."

87. In considering the Implied Term, Browne-Wilkinson J in **Woods v WM Car Services (Peterborough) Limited [1981] ICR 666** ("Woods"), said that the tribunal must *"look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it."*

88. The EAT referred to the Woods judgment in the later case of **United Bank v. Akhtar [1989] IRLR 507:**

> *In the field of employment law, it is proper to imply an overriding obligation in the terms used by Browne-Wilkinson J which is independent of and in addition to the literal interpretation of the actions which are permitted to the employer under the terms of the contract, since there may well be conduct which is calculated or likely to destroy or seriously damage the relationship*

*of confidence and trust between employer and employee which a literal interpretation of the written words of the contract might appear to justify.*

89. Here, the EAT (following the Court of Appeal in Woods) made clear that an employer cannot apply an express contractual term in such a way that is calculated or likely to destroy trust and confidence. To do so would be a breach of the Implied Term.

90. Once repudiatory breach of contract has been established, it is necessary to consider the part it played in the claimant's decision to resign. In this case, we have to consider whether the health and safety issues were the principal reason for the constructive dismissal.

Detriment

91. The claimant claims that she was subjected to detriments on the grounds that she made one or more protected disclosures. Section 48(2) ERA provides that on a complaint of being subjected to a detriment contrary to section 47B ERA, it is for an employer to show the ground on which any act or deliberate failure to act was done. The burden of proof therefore is on the employer/respondents, although that burden of proof only applies in the event that the claimant proves:-

    a. That she made one or more protected disclosures

    b. That she was subjected to a detriment.

92. Where an employer is unable to show to the Tribunal the reason for an act or failure to act, it does not automatically follow that the claimant succeeds in an unlawful detriment complaint (**Ibekwe v. Sussex Partnership NHS Foundation Trust [2014] WLUK 593**).

93. On the issue of causation, we have been helped by the Court of Appeal's judgment in Fecitt **v. NHS Manchester [2011] EWCA 1190**, including:-

    c. Paragraph 45: *"Section 47B will be infringed if the protected disclosure "materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistleblower."*

    d. Paragraph 51 "... *where the whistleblower is subject to a detriment without being at fault in any way, tribunals will need to look with a critical — indeed sceptical — eye to see whether the innocent explanation given by the employer for the adverse treatment is indeed the genuine explanation. The detrimental treatment of an innocent whistleblower necessarily provides a strong prima facie case that the action has been taken because of the protected disclosure and it cries out for an explanation from the employer."*

Disability

94. The claimant claims she has (and had at the relevant time) a disability for the purposes of section 6 Equality Act 2010 (EQA). Section 6 provides as follows:-

*(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.*

95. S212(1) of the EQA defines "substantial" as meaning *"more than minor or trivial."*

96. We have also considered:-

(i) Part one of schedule one to the EQA regarding the definition of disability.

(ii) The Secretary of State's guidance on matters to be taken into account in determining questions relating to the definition of disability. (Guidance)

(iii) The EHRC Employment Code

97. We note from the materials above and from relevant case law:-

a. That we are to apply this definition at around the time that the alleged discrimination took place; **Cruickshank v. VAW Motorcast Limited [2002] ICR 729;**

b. That we should apply a sequential decision-making approach to the test (see for example **J v. DLA Piper [2010] WL 2131720)** ("DLA Piper") addressing the following in order

- did the claimant have a mental and/or physical impairment? (the 'impairment condition')
- did the impairment affect the claimant's ability to carry out normal day-today activities? (the 'adverse effect condition')
- was the adverse condition substantial? (the 'substantial condition'), and
- was the adverse condition long term? (the 'long-term condition').

c. That the appendix to the Guidance includes a non-exhaustive list of factors that would be reasonable to regard as having a substantial adverse impact on normal day to day activities.

d. The same appendix also includes a non-exhaustive list of factors that would not be reasonable to regard as having a substantial adverse impact on normal day to day activities.

e. That when applying the Guidance, we should consider the effect that an impairment has on a person's professional life. See for example the judgment of Judge David Richardson in **Banaszczyk v. Booker Limited UKEAT/0132/15** where he states (para 47)

*"It is to my mind essential, if disability law is to be applied correctly, to define the relevant activity of working or professional life broadly: care should be taken before including in the definition the very feature which constitutes a barrier to the disabled individual's participation in that activity"*

s.15 EqA Discrimination arising from disability

*(1) A person (A) discriminates against a disabled person (B) if—*

*(a) A treats B unfavourably because of something arising in consequence of B's disability, and*

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

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

98. In **Secretary of State for Justice and another v Dunn EAT 0234/16** the Employment Appeal Tribunal ("EAT") noted 4 findings to be made, for the claimant to succeed in a section 15 claim:-

a. there must be *unfavourable treatment;*

b. there must be *something* that arises in consequence of the claimant's disability;

c. the unfavourable treatment must be *because of* (i.e. caused by) the something that arises in consequence of the disability; and

d. the alleged discriminator cannot show that the unfavourable treatment is *a* proportionate *means of achieving a legitimate aim*.

99. In **Paisner v.NHS England (UKEAT/0137/15/LA)** the EAT provided guidance to Employment Tribunals when considering these claims which we summarise below.

a. The Tribunal should decide what caused the treatment complained of – or what the reason for that treatment was.

b. There may be more than one cause. The "something" might not be the sole or main cause but it must have a significant impact.

c. Motives are irrelevant.

d. The Tribunal should decide whether the/a cause is "*something arising in consequence of*" the claimant's disability. There could be a range of causal links under the expression *"something arising in consequence of…"*

100. When deciding whether a measure is proportionate in the context of the legitimate aim being pursued (s15(1)(b) EqA above) a tribunal must weigh the real needs of the employer against the discriminatory effect of the proposal. (see most recently, **DWP v. Boyers UKEAT/0282/19).**

Objective justification

101. Unlike direct discrimination, there is a potential defence to an indirect discrimination claim – where the employer can show that the application of the PCP was a proportionate means of achieving a legitimate aim. It is often the main focus of indirect discrimination claims.

102. The EHRC Code of Practice on Employment 2011 (Code) provides guidance and comment. In short, the aim pursued should be legal, should not be discriminatory in itself and must represent a real, objective consideration (see para 4.28 of the Code).

103. Although business needs and economic efficiency may be legitimate aims, the Code states that an employer simply trying to reduce costs cannot expect to satisfy the test (para 4.29).

104. As to proportionality, the Code notes that the measure adopted by the employer does not have to be the only possible way of achieving the legitimate aim; it is sufficient that the same aim could not have been achieved by less discriminatory means — para 4.31.

105. The following is stated at paragraph 4.30 of the Code

> *'Even if the aim is a legitimate one, the means of achieving it must be proportionate. Deciding whether the means used to achieve the legitimate aim are proportionate involves a balancing exercise. An employment tribunal may wish to conduct a proper evaluation of the discriminatory effect of the provision, criterion or practice as against the employer's reasons for applying it, taking into account all the relevant facts'*

106. A PCP will not be proportionate if it is not an appropriate means of achieving the legitimate aim.

Duty to Make Reasonable Adjustments

107. The claimant raises claims under s20(3) EqA. This imposes a duty on an employer *"where a provision* criterion *or practice of [the employer] puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage."*

108. We note that, for the duty to make reasonable adjustments to apply, a claimant needs to show that s/he has been put to a substantial disadvantage in relation to a relevant matter in comparison to persons who are not disabled.

PCPs

109. For a provision criterion or practice to be a valid PCP for the purposes of s19 and 20 of the EQA, it must be more widely applied ( or would be more widely applied).

110. Chapter 4 of the EHRC Code of practice on Employment 2011 concerns indirect discrimination. Paragraph 4.5 says this in relation to PCPs:-

> *"The first stage in establishing indirect discrimination is to identify the relevant provision criterion or practice. The phrase provision criterion or practice is not defined by the Act but it should be construed widely so as to include for example any formal or informal policies rules practices arrangements criteria conditions prerequisites qualifications or provisions. A provision criterion or practice may also include decisions to do something in the future - such as a policy or criterion that has not yet been applied - as well as a one off or discretionary decision."*

111. Whilst PCPs should be construed widely, there are limits. The word "practice" indicates some degree of repetition and where a PCP was identified from what happened on a single occasion, there must be some evidence of a more general practice. Paragraph 59 of the judgment in **Gan Menachem Hendon Limited v Ms Zelda De Groen UKEAT/0059/18:-**

> *So, while it is possible for a provision, criterion or practice to emerge from evidence of what happened on a single occasion, there must be either direct evidence that what happened was indicative of a practice of more general application, or some evidence from which the existence of such a practice can be inferred.*

Victimisation – section 27 Equality Act 2010.

112. Section 27 states

> *(1) A person (A) victimises another person (B) if A subjects B to a detriment because –*
>
> *(a) B does a protected act all;*
>
> *(b) B believes that A has done or may do a protected act.*
>
> *(2) Each of the following is a protected act –*
>
> *(i) bringing proceedings under this act;*
>
> *(ii) giving evidence or information in connection with this Act;*

*(iii) doing any other thing for the purposes of or in connection with this Act;*

*(iv) making an allegation (whether or not express) that A or another person has contravened the act.*

113. The word "because" used in s27(1) appears to allow for multiple causes of the detrimental treatment. We note here para 9.10 of the Code:

*Detrimental treatment amounts to victimisation if a "protected act" is one of the reasons for the treatment but it need not be the only reason."*

114. We also note Underhill LJ's explanation of the term "because of" at paragraph 12 of the judgment in Chief Constable of Greater Manchester Police v. Bailey 2017 EWCA 425.

*This replaces the terminology of the predecessor legislation, which referred to the "grounds" or "reason" for the act complained of. It is well-established that there is no change in the meaning, and it remains common to refer to the underlying issue as the "reason why" issue. In a case of the present kind establishing the reason why the act complained of was done requires an examination of what Lord Nicholls in his seminal speech in Nagarajan v London Regional Transport [1999] UKHL 36, [2000] 1 AC 501 , referred to as "the mental processes" of the putative discriminator (see at p. 511 A-B). Other authorities use the term "motivation" (while cautioning that this is not necessarily the same as "motive"). It is also well-established that an act will be done "because of" a protected characteristic, or "because" the claimant has done a protected act, as long as that had a significant influence on the outcome: see, again, Nagarajan , at p. 513B.*

Burden of Proof

115. We are required to apply the burden of proof provisions under section 136 EqA when considering complaints raised under the EqA. Section 136 states:

*This section applies to any proceedings relating to a contravention of this Act.*

*(1) If there are any facts from which a court could decide in the absence of any other explanation, that a person (A) has contravened the provision concerned, the court must hold that the contravention occurred.*

*(2) But subsection 2 does not apply if A shows that A did not contravene the provision."*

116. We have considered the guidance contained in the Court of Appeal's decision in **Wong v. Igen Limited [2005] EWCA 142**. This case concerned the test as set out in discrimination legislation that pre-dated the EqA but the guidance

provided in there remains relevant. The annex to the judgment sets out guidance. (the amended Barton guidance). We are also clear that the wording of the statute itself – s136 EqA - is the key reference in relation to burden of proof when reaching decisions about whether there has been a contravention of the EqA.

117. Finally, on the issue of burden of proof, we are mindful of guidance from case law indicating that something more than less favourable treatment may be required in order to establish a prima facie case of discrimination; see for example **Madarassey v. Nomura International [2007] ICR 867,** where the following was noted in the judgment:

> "*The bare facts of a difference in status and a difference in treatment only indicate 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."*

ACAS Code of Practice on Disciplinary and Grievance Procedures 2015 ("ACAS Code")

118. Section 207A of the Trade Union and Labour Relations Consolidation Act 1992 requires us to consider and increase or decrease of any award ( by up to 25%) in complaints under relevant jurisdictions (which include the complaints in this case brought under the ERA and EQA) where there has been a failure by either claimant or respondent, to follow the ACAS code.

119. The ACAS Code requires employees who are dissatisfied with a grievance outcome, to appeal without unreasonable delay. An employer is then required to hear the appeal without unreasonable delay and to communicate the outcome of the appeal to the employee "*in writing without unreasonable delay."* (paragraph 45 of the ACAS Code).

**Discussion and Conclusion**

120. Having considered the complaints and issues, we have reached the following conclusions, based on our findings of fact and applying the relevant law. We follow the same numbering as in the List of issues annexed

A1 Breach of section 44 ERA

1. *Did the Claimant inform the Respondent that she was at higher risk of contracting Covid-19 because of her alleged disability, namely Asthma? If so, when, to whom and by what method?*

121. Response. Yes, on 17 March 2020 and 18 March 2020. First by email and then during a discussion on 18 March 2020.

2. *Was the Claimant at a higher risk?*

122. Response. Yes she was at higher risk due to the impairment of asthma.

3. *Was the Respondent's workplace unsafe?*

123. Response. Objectively the workplace (like other places involving the mixing of people) had become less safe due to the coronavirus. That is why the Government had stopped people from mixing unless it was necessary. No risk assessment specific to the coronavirus at least, had been carried out by the respondent. The claimant noted an absence of hot water and hand sanitiser. The claimant's proposal to carry out a risk assessment was rejected. The workplace was particularly unsafe for the claimant due to her condition but generally unsafe due to the absence of any measures taken to stop or minimise the spread of the virus.. Whilst the claimant had been offered the spare office, she would still be using facilities in a shared space

4. *Was the Claimant at greater risk from contracting Covid-19, if she worked from the office?*

124. Response. Yes – see above.

5. *Did the Claimant work from the home subsequent to government guidance?*

125. Response. Yes – and it was not just guidance. By that stage it was a requirement to stay at home unless travel to work was necessary. See Government release 23 March 2020 (Annex 2).

6. *Did the Respondent allow the Claimant to work from home? If so, from when?*

126. Response. Yes, from 18 March 2020 although:-

1. It expected the claimant to undertake viewing at properties
2. It resulted in a reduction to the claimant's hours – see below.

7. *In the circumstances as found by the Tribunal, was the claimant protected from detriment under section 44(1)( c) and/or 44(1A) Employment Rights Act 1996?*

127. Response. Yes, under section 44 (1)( c). We find that the claimant did bring to her employer's attention, circumstances which were harmful to health and safety and that she did so by reasonable means. The focus of the claimants concern was her own vulnerability due to her asthma but the concerns she raised were wider than this.

8. *By laying off the Claimant/placing her on short time working, as per the Claimant's contract of employment, did this amount to a detriment under Section 44 Employment Rights Act?*

Response. Clearly, it was a detriment to reduce the claimant's work and pay by 80%.

128. The next issue we need to consider (having regard to the CA judgement in **Feccitt**) is whether the fact that the claimant brought to the respondent's attention the health and safety issues, materially influenced its decision to place the claimant on short time working.

129. We conclude that it did. See our findings at para 65 above

1. *Unfair dismissal*

*Constructive dismissal (alleged automatic unfair dismissal and wrongful dismissal)*

*1.1 Can the claimant prove that there was a dismissal?*

*1.1.1 Did the respondent do the following things:*

*1.1.1.1 Reduce the claimant's hours and pay?*

*1.1.1.2 Put pressure on the claimant to return to work in the office/on site?*

*1.1.1.3 Question the severity of the Covid Pandemic in a WhatsApp to the claimant?*

*1.1.1.4 Issue the claimant with an oral warning at a grievance hearing?*

*1.1.1.5 Reject the claimant's grievance?*

130. Response. See our findings of fact; we find the respondent did all of these things except for 1.1.1.3 above. The respondent was not associated with the WhatsApp message sent by NG personally.

*1.1.2 Did that breach the implied term of trust and confidence?*

131. Response. We find that cumulatively, these acts did.

132. Further, whilst the reduction in hours and pay was done in reliance on an express term of the contract of employment, that term was relied on in order to put the claimant at a detriment because she had raised health and safety issues. That in itself amounts to a breach of the Implied Term (see our comments under **United Bank v. Akhtar** at paragraph 131 above) .

*1.1.3 Did that breach any term of contract?*

133. Response. See above.

*1.1.4 Was the breach a fundamental one?*

134. Response. Yes, a breach of the implied Term is a fundamental breach.

*1.1.5 Was the fundamental breach of contract a reason for the claimant's resignation.*

135. Response. Yes. See the terms of the resignation letter set out in the findings of fact.

*1.1.6 Did the claimant affirm the contract before resigning, by delay or otherwise?*

136. Response. No, she presented her resignation, very soon after she received the grievance outcome and received the warning,. Further, she continued to object to the reduction in hours.

*Fairness*

*Automatically unfair cases*

*1.2 Had the claimant brought to the respondent's attention the health and safety risks alleged pursuant to section 100( c) and/or (d) of the Employment Rights Act 1996, and was that the reason or principal reason for dismissal? If so, the claimant will be regarded as unfairly dismissed.*

137. Response. Whilst the claimant brought to her employer's attention, the health and safety risks (see our conclusions under s44 above) we find that this was not the principal reason for her dismissal. The terms of the resignation letter itself confirm this. It may have been a reason; but it was not the principal reason.

2. *Remedy for Unfair Dismissal*

138. Response. No findings required.

3. *Wrongful dismissal / Notice pay*

*3.1 What was the claimant's notice period?*

139. Response. One month.

*3.2 Was the claimant paid for that notice period?*

140. Response. She worked her notice period (albeit on short time working).

*3.3 If not, can the respondent prove that the claimant was guilty of gross misconduct which meant that the respondent was entitled to dismiss without notice?*

141. Response. Not applicable.

4. *Detriment (Employment Rights Act 1996 section 48)*

*4.1 What are the facts in relation to the following alleged acts or deliberate failures to act by the respondent?*

*4.2 Did the claimant reasonably see that act or deliberate failure to act as subjecting her to a detriment?*

*4.3 If so, was it done on the ground that the claimant raised health and safety complaints?*

142. Response. See our conclusions under A1. Breach of section 44 ERA above. Part 4 of the list of issues is repetition.

5. *Remedy for detriment.*

143. Response. To be determined.

6. *Disability.*

*6.1 Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about 22 March 2020 to 8 June 2020? The Tribunal will decide:*

*6.1.1 Did she have a physical impairment of asthma?*

144. Response. Yes. This is probably not disputed ( see our comments above). In case it is, we have applied the decision-making approach in the DLA Piper case.

a. The claimant had a physical impairment of asthma

b. It affected the claimant's ability to carry out normal day to day activities, particularly when considering the impact of the impairment without the benefit of the medication that the claimant was taking. Without that medication her movement would be severely restricted; she would struggle to walk up a flight of stairs; she would struggle to work in dusty conditions (given her work in construction this would be very restricting for her) she would struggle to work in or be active in polluted areas such as cities.

c. We find these affects were substantial for the purposes of section 6 EQA.

d. We find the condition to have been long term for the purposes of section 6 EQA.

*6.1.2 Did it have a substantial adverse effect on her ability to carry out day-to-day activities?*

*6.1.3 If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?*

*6.1.4 If so. would the impairment have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?*

*6.1.5 Were the effects of the impairment long-term? The Tribunal will decide:*

*6.1.5.1 did they last at least 12 months, or were they likely to last at least 12 months?*

*6.1.5.2 if not, were they likely to recur?*

145. Response to 6.1.2 to 6.1.5. See our conclusions under 6.1.1 above. We are satisfied that without the prescribed medication, the impairment would have had a substantial adverse effect on the claimant's ability to carry out day to day activities.

7. *Direct disability discrimination (Equality Act 2010 section 13)*

*7.1 It is not disputed that the respondent placed the claimant on short time working, reducing her working week from 5 days to one day and reducing her income by a proportionate amount ( 20% of her full time pay).*

*7.2 Has the claimant proven facts from which the Tribunal could conclude that in placing the claimant on short time working the claimant was treated less favourably than someone in the same material circumstances without a disability was or would have been treated? The claimant relies on a hypothetical comparison.*

146. Response. No. We conclude that a hypothetical comparator in the same circumstances as the claimant but without a disability, would have been treated by the respondent in the same way. The hypothetical comparator we have relied on is an employee (without the claimant's disability) who took the same law abiding, cautious approach as the claimant at the start of the pandemic and who raised health and safety concerns about attending the workplace and site visits.

## 8. Discrimination arising from disability (Equality Act 2010 section 15)

*8.1 Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?*

147. Response. From 17 March 2020 latest.

*8.2 If so, did the respondent treat the claimant unfavourably by placing her on short time working.*

148. Response. Yes, the placing of the claimant on short term working was unfavourable even though there was a contractual provision allowing this.

*8.3 Did the following things arise in consequence of the claimant's disability:*

*8.3.1 The inability to attend the office/site from 22 March 2020 to 8 June 2020?*

149. Response. *Yes,* because the claimant was particularly vulnerable due to the coronavirus. Whilst the Government announcement made clear that people should only go to work where absolutely necessary, the general instruction from

the respondent was that employees, contractors should continue to attend work. The claimant reasonably considered that she was particularly vulnerable to coronavirus because of her disability. That was the main reason for her decision that she was unable to attend the office.

8.4 *Has the claimant proven facts from which the Tribunal could conclude that the unfavourable treatment was because of any of those things?*

150. Response Yes – see findings at para 65.

*8.5 If so, can the respondent show that there was no unfavourable treatment because of something arising in consequence of disability?*

151. Response. No.

*8.6 If not, was the treatment a proportionate means of achieving a legitimate aim? The respondent says that its aims were to protect the respondent business in the face of the disruption caused by the pandemic, by relying on an existing contractual provision.*

*8.7 The Tribunal will decide in particular:*

*8.7.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;*

*8.7.2 could something less discriminatory have been done instead;*

*8.7.3 how should the needs of the claimant and the respondent be balanced?*

152. We do not find that the respondent placed the claimant on short time working to achieve a legitimate aim. See our findings above.

153. However, even if it was in pursuit of a legitimate aim, we would then need to consider whether the decision to place the claimant on short time working with very little notice, was a proportionate means of achieving the legitimate aim. A far less discriminatory option would have been to have placed the claimant on furlough. The decision to reduce the claimant's hours to 20% was at a time when the furlough scheme had been announced. The work that the respondent told the claimant to do was not ( by IJs own admission) urgent. If any of that work needed to be done at all during lockdown then it could have been done by others. We note particularly IJ's evidence that MLs hours had been reduced to 3-4 hours a week.

## 9. Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

*9.1 Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?*

*9.2 A "PCP" is a provision, criterion or practice. Did the respondent have the following PCPs:*

*9.2.1 The requirement that operations manager attends the office and/or goes on site?*

154. Response No. they did not put in place this requirement. They allowed the claimant to work from home. The way that they then treated the claimant unfavourably is what gives rise to her claim under section 15 EQA – see above.

## 10. Victimisation (Equality Act 2010 section 27)

*10.1 Did the claimant do a protected act as follows:*

*10.1.1 Grievance dated 7 April 2020.*

155. Response. The Respondent accepts the grievance is a protected act.

*10.2 Did the respondent believe that the claimant had done or might do a protected act?*

156. Response. Not applicable

*10.3 Did the respondent do the following things:*

*10.3.1 Issue the claimant with a warning?*

*10.3.2 Send a grievance outcome letter late in the evening on 4 May 2020*

*10.4 By doing so, did it subject the claimant to detriment?*

157. Response to 10.3 and 10.4 Yes, the respondent did both of those things and by doing so, subjected the claimant to detriments. .

*10.5 If so, has the claimant proven facts from which the Tribunal could conclude that it was because the claimant did a protected act or because the respondent believed the claimant had done, or might do, a protected act?*

158. Response. We accept the warning was issued because the claimant persisted with the submission of time sheets. We are very critical of the warning, but we do not find that it amounts to victimisation under section 27 EQA. .

159. In terms of the grievance outcome letter, we accept IJ's explanation – that he sometimes sends work related emails in the evening. IJ did not deliberately wait until late in the evening before sending the email in question

*10.6 If so, has the respondent shown that there was no contravention of section 27?*

160. Response. Not applicable

## 11. Unauthorised deductions

*11.1 Were the wages paid to the claimant with effect from I April 2020 until the date of termination of employment, less than the wages she should have been paid?*

161. Response. Yes

*11.2 Was any deduction required or authorised by statute?*

162. Response. No

*11.3 Was any deduction required or authorised by a written term of the contract?*

163. Response. Yes

*11.4 Did the claimant have a copy of the contract or written notice of the contract term before the deduction was made?*

164. Response. Yes

*11.5 Did the claimant agree in writing to the deduction before it was made?*

165. Response. The claimant agreed to the terms of the contract that included a short time working clause. The claimant did not agree to a deduction which prevented her from receiving Statutory Guarantee Payments.

*11.6 How much is the claimant owed?*

166. Response. To be determined.

## 12. Breach of Contract

12.1 Did this claim arise or was it outstanding when the claimant's employment ended?

167. Response. Yes

*12.2 Did the claimant have a contractual entitlement to be part of the respondent's pension scheme?*

168. Response. Yes – see contractual terms

*12.3 Was it a breach of contract for the claimant not to be included in the respondent's pension scheme?*

169. Response. Yes (the respondent has not sought to deny this).

*12.4 Was the Claimant's salary deducted for a pension contribution?*

*12.5 How much should the claimant be awarded as damages?*

170. Response to 12.4 and 12.5 - To be determined at remedy hearing (recognising some payments have now been made).

**Remedy**

171. We have made a finding relevant to remedy in the detriment and discrimination complaints. This is in relation to the respondent's non-compliance with the ACAS Code, in that the respondent did not communicate an outcome to the claimant's appeal. We have decided that it is appropriate to apply an uplift of 10% to relevant compensation amounts. In reaching this decision we have taken account of:-

a. The size and resources of the respondent.

b. The employer's explanation – being the termination of GN's employment. We do not accept that as anything like an adequate explanation, which is why we impose an uplift to awards made.

c. The claimant's decision to give notice of resignation before submitting her appeal.

172. This case is now listed for a remedy hearing to take place on 5 May 2023. At that hearing, the Tribunal will consider and decide on remedy in relation to the following successful complaints:-

a. Detriment – health and safety

b. Constructive dismissal – breach of contract; particularly whether any damages should be awarded given that the claimant gave notice and worked her notice

c. Discrimination – section 15 EQA

d. Unauthorised deductions.

e. Breach of contract (pension)

Employment Judge Leach

29 March 2023

JUDGMENT SENT TO THE PARTIES ON

5 April 2023

FOR THE TRIBUNAL OFFICE

**Note**
Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision.

**Public access to employment tribunal decisions**
Judgments and reasons for the judgments are published, in full, online at www.gov.uk/employment-tribunal-decisions shortly after a copy has been sent to the claimant(s) and respondent(s) in a case.

**ANNEX ONE**

# Complaints and Issues

A1. **Breach of s.44 of the Employments Rights Act**

1. Did the Claimant inform the Respondent that she was at higher risk of contracting Covid-19 because of her alleged disability, namely Asthma? If so, when, to whom and by what method?

2. Was the Claimant at a higher risk?

3. Was the Respondent's workplace unsafe?

4. Was the Claimant at greater risk from contracting Covid-19, if she worked from the office?

5. Did the Claimant work from the home subsequent to government guidance?

6. Did the Respondent allow the Claimant to work from home? If so, from when?

7. In the circumstances as found by the Tribunal, was the claimant protected from detriment under section 44(1)( c) and/or 44(1A) Employment Rights Act 1996?

8. By laying off the Claimant/placing her on short time working, as per the Claimant's contract of employment, did this amount to a detriment under Section 44 Employment right Act?

1. **Unfair dismissal**

Constructive dismissal (alleged automatic unfair dismissal and wrongful dismissal)

1.1 Can the claimant prove that there was a dismissal?

1.1.1 Did the respondent do the following things:

1.1.1.1 Reduce the claimant's hours and pay?

1.1.1.2 Put pressure on the claimant to return to work in the office/on site?

1.1.1.3 Question the severity of the Covid Pandemic in a WhatsApp to the claimant?

1.1.1.4 Issue the claimant with an oral warning at a grievance hearing?

1.1.1.5 Reject the claimant's grievance?

1.1.2 Did that breach the implied term of trust and confidence? Taking account of the actions or omissions alleged in the previous paragraph, individually and cumulatively, the Tribunal will need to decide:

1.1.2.1 whether the respondent had reasonable and proper cause for those actions or omissions, and if not

1.1.2.2 whether the respondent behaved in a way that when viewed objectively was calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent.

1.1.3 Did that breach any term of contract?

1.1.4 Was the breach a fundamental one? The Tribunal will need to decide whether the breach was so serious that the claimant was entitled to treat the contract as being at an end.

1.1.5 Was the fundamental breach of contract a reason for the claimant's resignation.

1.1.6 Did the claimant affirm the contract before resigning, by delay or otherwise? The Tribunal will need to decide whether the claimant's words or actions showed that they chose to keep the contract alive even after the breach.

~~Reason~~

~~1.2 Has the respondent shown the reason or principal reason for the fundamental breach of contract?~~

~~1.3 Was it a potentially fair reason under section 98 Employment Rights Act 1996?~~

Fairness

Automatically unfair cases

1.4 Had the claimant brought to the respondent's attention the health and safety risks alleged pursuant to section 100( c) and/or (d) of the Employment Rights Act 1996, and was that the reason or principal reason for dismissal? If so, the claimant will be regarded as unfairly dismissed.

~~1.5 If so, applying the test of fairness in section 98(4), did the respondent act reasonably in all the circumstances in treating that reason as sufficient reason to dismiss the claimant?~~

2 **Remedy for unfair dismissal**

2.1 What basic award is payable to the claimant, if any?

2.2 Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

2.3 If there is a compensatory award, how much should it be? The Tribunal will decide:

2.3.1 What financial losses has the dismissal caused the claimant?

2.3.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?

2.3.3 If not, for what period of loss should the claimant be compensated?

2.3.4 Is there a chance that the claimant would have been fairly dismissed anyway if a fair procedure had been followed, or for some other reason?

2.3.5 If so, should the claimant's compensation be reduced? By how much?

2.3.6 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

2.3.7 Did the respondent or the claimant unreasonably fail to comply with it ~~by [specify alleged breach]~~?

2.3.8 If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?

2.3.9 If the claimant was unfairly dismissed, did s/he cause or contribute to dismissal by blameworthy conduct?

2.3.10 If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?

2.3.11 Does the statutory cap of fifty-two weeks' pay or [£86,444] apply?

2.4 What basic award is payable to the claimant, if any?

2.5 Would it be just and equitable to reduce the basic award because of any conduct of the claimant before the dismissal? If so, to what extent?

## 3 Wrongful dismissal / Notice pay

3.1 What was the claimant's notice period?

3.2 Was the claimant paid for that notice period?

3.3 If not, can the respondent prove that the claimant was guilty of gross misconduct which meant that the respondent was entitled to dismiss without notice?

## 4 Detriment (Employment Rights Act 1996 section 48)

4.1 What are the facts in relation to the following alleged acts or deliberate failures to act by the respondent?

**See above**

4.2 Did the claimant reasonably see that act or deliberate failure to act as subjecting her to a detriment?

4.3 If so, was it done on the ground that the claimant raised health and safety complaints?

## 5 Remedy for Detriment

5.1 What financial losses has the detrimental treatment caused the claimant?

5.2 Has the claimant taken reasonable steps to replace any lost earnings, for example by looking for another job?

5.3 If not, for what period of loss should the claimant be compensated?

5.4 What injury to feelings has the detrimental treatment caused the claimant and how much compensation should be awarded for that?

5.5 Has the detrimental treatment caused the claimant personal injury and how much compensation should be awarded for that?

5.6 Is it just and equitable to award the claimant other compensation?

5.7 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

5.8 Did the respondent or the claimant unreasonably fail to comply with it?

5.9 If so is it just and equitable to increase or decrease any award payable to the claimant? By what proportion, up to 25%?

## 6 Disability

6.1 Did the claimant have a disability as defined in section 6 of the Equality Act 2010 at the time of the events the claim is about 22 March 2020 to 8 June 2020? The Tribunal will decide:

6.1.1 Did she have a physical impairment of asthma?

6.1.2 Did it have a substantial adverse effect on her ability to carry out day-to-day activities?

6.1.3 If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?

6.1.4 If so. would the impairment have had a substantial adverse effect on her ability to carry out day-to-day activities without the treatment or other measures?

6.1.5 Were the effects of the impairment long-term? The Tribunal will decide:

6.1.5.1 did they last at least 12 months, or were they likely to last at least 12 months?

6.1.5.2 if not, were they likely to recur?

## 7 Direct disability discrimination (Equality Act 2010 section 13)

~~7.1 What are the facts in relation to the following allegations:~~

~~7.1.1 [*date and brief details including name of person responsible*]~~

~~Placing the claimant on short time working~~

~~7.1.2 *Etc*~~

7.1 It is not disputed that the respondent placed the claimant on short time working, reducing her working week from 5 days to one day and reducing her income by a proportionate amount ( 20% of her full time pay).

7.2 ~~If so,~~ Has the claimant proven facts from which the Tribunal could conclude <u>that in placing the claimant on short time working</u> ~~in any of those respects~~ the claimant was treated less favourably than someone in the same material circumstances *without a disability* was or would have been treated? The claimant ~~says she was treated worse than [*names of comparators*] and/or the claimant~~ relies on a hypothetical comparison.

7.3 If so, has the claimant also proven facts from which the Tribunal could conclude that the less favourable treatment was because of *disability*?

7.4 If so, has the respondent shown that there was no less favourable treatment because of disability?

7.5 The Tribunal will decide in particular:

7.5.1 Were the aims legitimate and of a public interest nature;

7.5.2 was the treatment an appropriate and reasonably necessary way to achieve those aims;

7.5.3 could something less discriminatory have been done instead; and

7.5.4 how should the needs of the claimant and the respondent be balanced?

## 8 Discrimination arising from disability (Equality Act 2010 section 15)

8.1 Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

8.2 If so, did the respondent treat the claimant unfavourably in any of the following alleged respects:

~~8.2.1 [ *date and brief details including name of person responsible*]~~

By placing her on short time working.

8.3 Did the following things arise in consequence of the claimant's disability:

8.3.1 The inability to attend the office/site from 22 March 2020 to 8 June 2020?

~~8.4~~ Has the claimant proven facts from which the Tribunal could conclude that the unfavourable treatment was because of any of those things? ~~/ *Did the respondent constructively dismiss the claimant because of [ that*?~~

8.5 If so, can the respondent show that there was no unfavourable treatment because of something arising in consequence of disability?

8.6 If not, was the treatment a proportionate means of achieving a legitimate aim? The respondent says that its aims were to protect the respondent business in the face of the disruption caused by the pandemic, by relying on an existing contractual provision.

8.7 The Tribunal will decide in particular:

8.7.1 was the treatment an appropriate and reasonably necessary way to achieve those aims;

8.7.2 could something less discriminatory have been done instead;

8.7.3 how should the needs of the claimant and the respondent be balanced?

## 9 Reasonable Adjustments (Equality Act 2010 sections 20 & 21)

9.1 Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From what date?

9.2 A "PCP" is a provision, criterion or practice. Did the respondent have the following PCPs:

9.2.1 The requirement that operations manager attends the office and/or goes on site?

9.3 Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in that she was unable to attend?

9.4 Did the respondent know or could it reasonably have been expected to know that the claimant was likely to be placed at the disadvantage?

9.5 Did the respondent fail in its duty to take such steps as it would have been reasonable to have taken to avoid the disadvantage? The claimant says that the following adjustments to the PCP would have been reasonable:

9.5.1 Working from home her full contractual hours

9.5.2

9.6 By what date should the respondent reasonably have taken those steps?

## 10 Victimisation (Equality Act 2010 section 27)

10.1 Did the claimant do a protected act as follows:

10.1.1 Grievance dated 7 April 2020.

***~~RESPONDENT TO STATE WHETHER THIS IS DISPUTED?~~***

Respondent accepts the grievance is a protected act.

10.2 Did the respondent believe that the claimant had done or might do a protected act?

10.3 Did the respondent do the following things:

10.3.1 Issue the claimant with a warning?

10.3.2 Send a grievance outcome letter late in the evening on 4 May 2020

10.4 By doing so, did it subject the claimant to detriment?

10.5 If so, has the claimant proven facts from which the Tribunal could conclude that it was because the claimant did a protected act or because the respondent believed the claimant had done, or might do, a protected act?

10.6 If so, has the respondent shown that there was no contravention of section 27?

## 11 Remedy for discrimination or victimisation

11.1 Should the Tribunal make a recommendation that the respondent take steps to reduce any adverse effect on the claimant? What should it recommend?

11.2 What financial losses has the discrimination caused the claimant?

11.3 Has the claimant taken reasonable steps to replace lost earnings, for example by looking for another job?

11.4 If not, for what period of loss should the claimant be compensated?

11.5 What injury to feelings has the discrimination caused the claimant and how much compensation should be awarded for that?

11.6 Has the discrimination caused the claimant personal injury and how much compensation should be awarded for that?

11.7 Is there a chance that the claimant's employment would have ended in any event? Should their compensation be reduced as a result?

11.8 Did the ACAS Code of Practice on Disciplinary and Grievance Procedures apply?

11.9 Did the respondent or the claimant unreasonably fail to comply with it ~~by~~ [~~*specify breach*~~]?

11.10 If so is it just and equitable to increase or decrease any award payable to the claimant?

11.11 By what proportion, up to 25%?

11.12 Should interest be awarded? How much?

## 12 Unauthorised deductions

12.1 Were the wages paid to the claimant <u>with effect from I April 2020 until the date of termination of employment,</u> less than the wages she should have been paid?

12.2 Was any deduction required or authorised by statute?

12.3 Was any deduction required or authorised by a written term of the contract?

12.4 Did the claimant have a copy of the contract or written notice of the contract term before the deduction was made?

12.5 Did the claimant agree in writing to the deduction before it was made?

12.6 How much is the claimant owed?

## 13 Breach of Contract

13.1 Did this claim arise or was it outstanding when the claimant's employment ended?

~~13.2 Did the Respondent have a pension scheme?~~

13.3 ~~If not, why? If yes,~~ Did the claimant have a contractual entitlement to be part of the respondent's pension scheme?

13.4 Was it a breach of contract for the claimant not to be included in the respondent's pension scheme?

13.5 Was the Claimant's salary deducted for a pension contribution?

13.6 How much should the claimant be awarded as damages?

## ANNEX TWO

## Government Announcements

### Extract from announcement on 12 March 2020

But it is now a global pandemic.

And the number of cases will rise sharply and indeed the true number of cases is higher - perhaps much higher - than the number of cases we have so far confirmed with tests.

I've got to be clear, we've all got to be clear, that this is the worst public health crisis for a generation.

Some people compare it to seasonal flu. Alas, that is not right. Owing to the lack of immunity, this disease is more dangerous.

And it's going to spread further and I must level with you, level with the British public, many more families are going to lose loved ones before their time. And the Chief Scientific Adviser will set out the best information we have on that in a moment.

Today therefore we are moving forward with our plan. From tomorrow, if you have coronavirus symptoms, however mild – either a new continuous cough or a high temperature – then you should stay at home for at least 7 days to protect others and help slow the spread of the disease.

We advise all those over 70 and those with serious medical conditions against going on cruises and we advise against international school trips.

At some point in the next few weeks, we are likely to go further and if someone in a household has those symptoms, we will be asking everyone in the household to stay at home. We are not introducing this yet for reasons Sir Patrick will explain, but I want to signal now that this is coming down the track.

We are considering the question of banning major public events such as sporting fixtures. The scientific advice as we've said over the last couple of weeks is that banning such events will have little effect on the spread.

But there is also the issue of the burden that such events can place on public services. So we're discussing these issues with colleagues in all parts of the United Kingdom and will have more to say shortly about the timing of further action in that respect.

### Extract from announcement on 16 March 2020

So, first, we need to ask you to ensure that if you or anyone in your household has one of those two symptoms, then you should stay at home for fourteen days.

That means that if possible you should not go out even to buy food or essentials, other than for exercise, and in that case at a safe distance from others. If necessary, you should ask for help from others for your daily necessities. And if that is not possible, then you should do what you can to limit your social contact when you leave the house to get supplies.

And even if you don't have symptoms and if no one in your household has symptoms, there is more that we need you to do now.

So, second, now is the time for everyone to stop non-essential contact with others and to stop all unnecessary travel.

We need people to start working from home where they possibly can. And you should avoid pubs, clubs, theatres and other such social venues.

It goes without saying, we should all only use the NHS when we really need to. And please go online rather than ringing NHS 111.

Now, this advice about avoiding all unnecessary social contact, is particularly important for people over 70, for pregnant women and for those with some health conditions.

**……..**

So third, in a few days' time – by this coming weekend – it will be necessary to go further and to ensure that those with the most serious health conditions are largely shielded from social contact for around 12 weeks.

**Extract from announcement on 23 March 2020**

And that's why we have been asking people to stay at home during this pandemic. And though huge numbers are complying - and I thank you all - the time has now come for us all to do more.

From this evening I must give the British people a very simple instruction - you must stay at home.

Because the critical thing we must do is stop the disease spreading between households.

That is why people will only be allowed to leave their home for the following very limited purposes:

- shopping for basic necessities, as infrequently as possible
- one form of exercise a day - for example a run, walk, or cycle - alone or

with members of your household;
 any medical need, to provide care or to help a vulnerable person; and
 travelling to and from work, but only where this is absolutely necessary and cannot be done from home.

That’s all - these are the only reasons you should leave your home.

You should not be meeting friends. If your friends ask you to meet, you should say No.

You should not be meeting family members who do not live in your home.

You should not be going shopping except for essentials like food and medicine - and you should do this as little as you can. And use food delivery services where you can.

If you don’t follow the rules the police will have the powers to enforce them, including through fines and dispersing gatherings.