EMPLOYMENT TRIBUNALS

Claimant: **Ms Victoria Arndt**

Respondent: **UBI Limited**

HELD at Birmingham by CVP ON: 16, 17, 18, 21, 22, 23, 24 and 25 February 2022

BEFORE: Employment Judge Dean
Members: Mr S Woodall
Mr N Howard

REPRESENTATION:

Claimant: **in person – and Mr Alistair Candlish to support**
Respondent: **Mr Paul Clarke, consultant**

JUDGMENT having been sent to the parties on 28 February 2022 and written reasons having been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, the following reasons are provided:

REASONS

Background

1. By way of background in this case the claimant was employed by the respondent from 12 July 2018 until 8 June 2020 as a fashion graphic designer. The respondent's business is that of fashion both retail and wholesale and is a business based in Stoke on Trent. The claimant was employed as a fashion graphic designer and received a salary of £26,000 per annum. Her employment was terminated shortly before she acquired two years' continuous employment with the respondents for reasons in relation to her performance standards and conduct.

2. The claimant is making the following complaints:

    a. Automatic unfair dismissal, and detriments over health and safety;
    b. Direct;
    c. indirect disability discrimination;
    d. discrimination arising from disability and
    e. harassment related to disability.

The Issues

3. The issues that are to be determined by the Tribunal are those agreed by the parties as directed by the Tribunal following a hearing on 5 November 2021. They were agreed and are produced by the parties to this Tribunal.

1. **Time limits**

1.1 Given the date the claim form was presented and the dates of early conciliation, any complaint about something that happened before 7 May 2020 may not have been brought in time.

1.2 Were the discrimination and victimisation complaints made within the time limit in section 123 of the Equality Act 2010? The Tribunal will decide:
1.2.1 Was the claim made to the Tribunal within three months (plus early conciliation extension) of the act to which the complaint relates?
1.2.2 If not, was there conduct extending over a period?
1.2.3 If so, was the claim made to the Tribunal within three months (plus early conciliation extension) of the end of that period?
1.2.4 If not, were the claims made within a further period that the Tribunal thinks is just and equitable? The Tribunal will decide:
1.2.4.1 Why were the complaints not made to the Tribunal in time?
1.2.4.2 In any event, is it just and equitable in all the circumstances to extend time?

2. **Automatic unfair dismissal**

2.1 Was the claimant dismissed? It is agreed that she was.

2.2 If the claimant was dismissed, what was the reason or principal reason for dismissal?
2.3 Was the reason or principal reason for dismissal that the claimant made a health and safety complaint? If so, the claimant will be regarded as unfairly dismissed.

3. **Remedy for unfair dismissal**

3.1 If there is a compensatory award, how much should it be? The Tribunal will decide:
3.1.1 What financial losses has the dismissal caused the claimant?
3.1.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
3.1.3 If not, for what period of loss should the claimant be compensated?
3.1.4 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?
3.1.5 If so, should the claimant's compensation be reduced? By how much?

3.1.6 If the claimant was unfairly dismissed, did she cause or contribute to dismissal by blameworthy conduct?
3.1.7 If so, would it be just and equitable to reduce the claimant's compensatory award? By what proportion?
3.1.8 Does the statutory cap of fifty-two weeks' pay or £86,444 apply?
3.2 What basic award is payable to the claimant, if any?

3.3 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?

4. Health and safety complaint - detriment

4.1 Did the claimant draw the respondent's attention to matters as defined in section 44 (1) (c) (d) and (e) of the Employment Rights Act 1996?

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

5.1 Did the respondent do the following thing:
5.1.1 Subjecting the claimant to performance review in person in the office.
5.2 By doing so, did it subject the claimant to detriment?
5.3 If so, was it done on the ground that she brought to the respondent's attention by reasonable means circumstances connected with her work which she reasonably believed were harmful to health or safety? And if so, did she leave or refuse to return to her place of work or, in circumstances of danger which the claimant reasonably believed to be serious and imminent.

6. Remedy for the detriment claim

6.2 What financial losses has the detrimental treatment caused the claimant?
6.2 Has the claimant taken reasonable steps to replace their lost earnings, for example by looking for another job?
6.3 If not, for what period of loss should the claimant be compensated?
6.4 What injury to feelings has the detrimental treatment caused the claimant and how much compensation should be awarded for that?
6.5 Is it just and equitable to award the claimant other compensation?
6.6 Did the claimant cause or contribute to the detrimental treatment by their own actions and if so would it be just and equitable to reduce the claimant's compensation? By what proportion?

7. Disability

7.1 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? The Tribunal will decide:
7.1.1 Did she have a physical or mental impairment?

7.1.2 Did it have a substantial adverse effect on her ability to carry out day-to-day activities?
7.1.3 If not, did the claimant have medical treatment, including medication, or take other measures to treat or correct the impairment?
7.1.4 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?
7.1.5 Were the effects of the impairment long-term? The Tribunal will decide:
7.1.5.1 did they last at least 12 months, or were they likely to last at least 12 months?
7.1.5.2 if not, were they likely to recur?

8. Direct disability discrimination (Equality Act 2010 section 13)

8.1 The claimant compares herself with a hypothetical, full-time Fashion

Graphic Designer at the Respondent, not materially different to the

Claimant, who also lacks two years' continuous service, and whose

performance is being reviewed.

8.2 Did the respondent do the following things:

8.2.1 The dismissal, and

8.2.2 The statements asserted to amount to harassment (in paragraph 23 of the grounds of complaint – these are alternative pleadings)

8.3 Was that less favourable treatment?

The Tribunal will decide whether the claimant was treated worse than someone else was treated. There must be no material difference between their circumstances and the claimant's.

If there was nobody in the same circumstances as the claimant, the Tribunal will decide whether she was treated worse than someone else would have been treated.

8.4 If so, was it because of disability etc?

8.5 Did the respondent's treatment amount to a detriment?

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

9.1 Did the respondent treat the claimant unfavourably by:

9.1.1 Using performance management, and

9.1.2 Dismissing her?

9.1.3 Labelling her as "weak" and "slow" (Grounds of Complaint, para 23)

9.2 Did the following things arise in consequence of the claimant's

disability:

9.2.1 The Claimant's need to shield via homeworking (Grounds of

Complaint, para 8 and 10), and

9.2.2 The Claimant's need to get up to walk about frequently to manage her disability whilst at work (Grounds of Complaint, para 23)

9.3 Was the unfavourable treatment because of any of those things?

9.4 Was the treatment a proportionate means of achieving a legitimate

aim? The respondent says that its aims were:

9.4.1 The respondent has until 4pm on 15 February 2021 to plead to

this point, if so advised.

9.5 The Tribunal will decide in particular:

9.5.1 was the treatment an appropriate and reasonably necessary

way to achieve those aims;

9.5.2 could something less discriminatory have been done instead;

9.5.3 how should the needs of the claimant and the respondent be

balanced?

9.6 Did the respondent know or could it reasonably have been expected to

know that the claimant had the disability? From what date?

10. Indirect discrimination (Equality Act 2010 section 19)

10.1 A “PCP” is a provision, criterion or practice. Did the respondent have the following PCP:

10.1.1 The requirement for the claimant to work from the office rather than from home in May 2020 and

10.1.2 The requirement for the claimant to work at a speed that was satisfactory, as assessed by Zhong Li and Jin Hua Li (Grounds of Complaint, para 23)

10.2 Did the respondent apply these PCPs to the claimant?

10.3 Did the respondent apply the PCPs to persons with whom the claimant does not share the characteristic, i.e. non-disabled people, or would it have done so?

10.4 Did the PCPs put persons with whom the claimant shares the characteristic, of being a disabled person, at a particular disadvantage when compared with persons with whom the claimant does not share the characteristic, i.e. non-disabled people, in that they would have to work in an unsafe working environment?

10.5 Did the PCPs put the claimant at that disadvantage?

10.6 Were the PCPs a proportionate means of achieving a legitimate aim? The respondent says that its aims were:

10.6.1 The respondent must by 4pm on 15 February 2021 plead to this point, if so advised.

10.7 The Tribunal will decide in particular:

10.7.1 were the PCPs an appropriate and reasonably necessary way to achieve those aims;

10.7.2 could something less discriminatory have been done instead;

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

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

11.1 Did the respondent know or could it reasonably have been expected to know that the claimant had the disability? From starting employment in July 2018 until the date of dismissal?

11.2 A “PCP” is a provision, criterion or practice. Did the respondent have the following PCPs:

11.2.1 The same as for indirect discrimination.

11.3 Did the PCPs put the claimant at a substantial disadvantage compared to someone without the claimant's disability, in the same way as for indirect discrimination?

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

11.5 What steps could have been taken to avoid the disadvantage? The claimant suggests:

11.5.1 Allowing the claimant to continue to work from home; and

11.5.2 Modifying the performance management process.

11.5.3 Allowing the claimant to continue to work at her own speed.

11.6 Was it reasonable for the respondent to have to take those steps and when?

11.7 Did the respondent fail to take those steps?

12. Harassment related to disability (Equality Act 2010 section 26)

12.1 Did the respondent do the following things:

12.1.1 Those matters set out in the grounds of complaint at paragraph 23.

12.2 If so, was that unwanted conduct?

12.3 Did it relate to disability?

12.4 Did the conduct have the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for the claimant?

12.5 If not, did it have that effect? The Tribunal will take into account the claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have that effect.

13. Remedy for discrimination or harassment

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

13.2 What financial losses has the discrimination caused the claimant?

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

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

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

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

13.7 Should interest be awarded? How much?

The Applicable Law

4. The law that we are required to consider relates to the claimant's allegations that she made a health and safety complaint to the respondents in accordance with s44 of the Employment Rights Act 1996 and as a result the respondents caused her to suffer a detriment and dismissed her unfairly for an automatically unfair reason s100(1) (d) and (e).
5. The claimant also asserts that her employment was subject to unlawful discrimination because of the protected characteristic of her disability, in particular that the respondents discriminated against her because of the prohibited conduct of direct disability discrimination contrary to section 13, discrimination arising from disability contrary to section 15 of the Equality Act, indirect discrimination contrary to section 19 of the Equality Act, a failure to make reasonable adjustments contrary to sections 20 and 21 of the Equality Act and unlawful harassment contrary to section 26 of the Act.
6. We have been reminded of the statutory provisions, the various codes of practice and to the trite law in respect of matters to be considered. We have referred also to section 123 of the Equality Act in relation to the time within which claims have to be presented to the Employment Tribunal to present claims alleging discrimination and to the burden of proof, where relevant we have considered the provisions of section 33 of the Limitation Act.

Jurisdiction – time limits and continuing acts

7. The law provides that in respect of discrimination claims and detriment claims, if there is a continuing course of conduct it is to be treated as an act extending over a period. Time runs from the end of that period. The focus of the Tribunal's enquiry must be on the substance of the complaint that the respondent was responsible for an ongoing state of affairs in which the claimant was less favourably treated. The burden of proof is on the claimant to prove, either by direct evidence or by inference from primary facts, that the alleged acts of discrimination were linked to one another and were evidence of a continuing discriminatory state of affairs see Hendricks v Commissioner of Police for the Metropolis [2003] IRLR 96 CA.
8. If any of the complaints were not in time, the Employment Tribunal must consider whether there is nevertheless jurisdiction to hear them. In discrimination cases the test is whether it is just and equitable to allow the claims to be brought.
9. When deciding whether it is just and equitable for a claim to be brought, the Employment Tribunal's discretion is wide and any factor that appears to be relevant can be considered. However, time limits should be exercised strictly and the Tribunal cannot hear a complaint unless the claimant convinces it that it is just and equitable to do so. The exercise of discretion is therefore the exception rather than the rule Robertson v Bexley Community Centre [2003] IRLR 434 . The guidance provides:

> *"An Employment Tribunal has a very wide discretion in deciding whether or not it is just and equitable to extend time. It is entitled to consider anything that it considers relevant. However, time limits are exercised strictly in employment cases. When tribunals consider their discretion to consider a claim out of time*

of just and equitable grounds there is no presumption that they should do so unless they can justify failure to exercise discretion. On the contrary, tribunal cannot hear a complaint unless the claimant convinces it that it is just and equitable to extend time. The exercise of this discretion is thus the exception rather than the rule."

10. Case law provides that consideration of the factors set out in section 33 of the Limitation Act 1980 may be of assistance, though its requirements are relevant in considering actions relating to personal injuries and death and while a useful check list should not inhibiting the wide discretion of the Employment Tribunal. Of particular import for an Employment Tribunal considering the exercise of it's discretion will be the length and reasons for any delay and whether delay prejudiced the respondent for example in preventing or inhibiting its investigation of the claim while matters are fresh.

Direct discrimination

11. Direct discrimination is defined in section 13(1) of the EA10 as *"A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others*".
12. Accordingly, in order to claim direct discrimination under section 13, the claimant must have been treated less favourably than a comparator who was in the same, or not materially different, circumstances as the claimant. This does not impose an obligation on employers to treat every employee in exactly the same way.
13. When considering whether there has been less favourable treatment the test is objective – the fact that a claimant believes that he or she has been treated less favourably does not in itself establish that there has been less favourable treatment. A claimant who simply shows that he or she was treated differently from how others in a comparable situation were, or would have been, treated will not, without more, succeed with a complaint of unlawful direct discrimination (Chief Constable of West Yorkshire Police v Khan 2001 ICR 1065, HL).
14. A claimant may rely on an actual or hypothetical comparator but there must be "no material difference between the circumstances relating to each case" per section 23(1) EqA. In Shamoon v Chief Constable of the Royal Ulster Constabulary 2003 ICR 337, HL (sex discrimination), Lord Scott explained that this means that "the comparator required for the purpose of the statutory definition of discrimination must be a comparator in the same position in all material respects as the victim save only that he, or she, is not a member of the protected class."
15. A complaint of direct discrimination will only succeed where the tribunal finds that the protected characteristic was the reason for the claimant's less favourable treatment. The protected characteristic need not be the only reason for the treatment but it must be an "***effective cause***" (O'Neill v Governors of St Thomas More Roman Catholic Voluntarily Aided Upper School and anor 1997 ICR 33, EAT) or have a "significant influence" on the treatment (Nagarajan v London Regional Transport 1999 ICR 877, HL). In Nagarajan, Lord Nicholls stated:

"*'Decisions are frequently reached for more than one reason. Discrimination may be on racial grounds even though it is not the sole ground for the decision. A variety of phrases, with different shades of meaning, have been used to explain how the legislation applies in such cases: discrimination requires that*

racial grounds were a cause, the activating cause, a substantial and effective cause, a substantial reason, an important factor. No one phrase is obviously preferable to all others, although in the application of this legislation legalistic phrases, as well as subtle distinctions, are better avoided so far as possible. If racial grounds or protected acts had a significant influence on the outcome, discrimination is made out."

16. In a case of alleged subjectively discriminatory treatment, the test to be adopted was expressed by the House of Lords in Chief Constable of West Yorkshire Police v Khan 2001 ICR 1065, HL: A tribunal must ask: why did the alleged discriminator act as he or she did? What, consciously or unconsciously, was his or her reason?

The burden of proof

17. Section 136 EqA contains the burden of proof provisions. Section 136(2) provides that if there are facts from which the court or tribunal could decide, in the absence of any other explanation, that a person (A) contravened a provision of the EqA, the court must hold that the contravention occurred ('stage 1'); and S.136(3) provides that S.136(2) does not apply if A shows that he or she did not contravene the relevant provision ('stage 2').

18. In Royal Mail Group Ltd v Efobi 2021 ICR 1263, SC, the Court held that the enactment of S.136 EqA did not change the requirement on the claimant in a discrimination case to prove, on the balance of probabilities, facts from which, in the absence of any other explanation, the employment tribunal could infer an unlawful act of discrimination.

19. In direct discrimination cases, something more than less favourable treatment (discounting an employer's explanation for such treatment) is required to establish a prima facie case of discrimination. In Madarassy v Nomura International plc 2007 ICR 867, CA for example it was said that:

"*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 and unlawful act of discrimination*."

20. In Madrassy, the Court of Appeal said "*could conclude*" must mean "*a reasonable tribunal could properly conclude*" from all of the evidence before it.

Discrimination Arising from disability

21. The provisions of s15 of the Equality Act 2010 details that:

S15Discrimination 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.

22. We note the guidance laid down by Simler P in Pnaiser v NHS England [2016] IRLR 170 and more recently by HHJ Eady KC in A Ltd v Z [2020] ICR199

Reasonable Adjustments

23. Section 20 provides where the duty to make reasonable adjustments is imposed on a person comprises three requirements:

> *"(2)The duty comprises the following three requirements.*
>
> *(3)The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.*
>
> *(4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.*
>
> *(5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid."*

24. The respondent only has to make **reasonable** adjustments. Sometimes there is nothing that an employer can reasonably be expected to do to help an employee.

25. The bar is set fairly high in terms of what adjustments should be made. See comments of the House of Lords in Archibald v Fife Council:

> *'The duty to make adjustments may require the employer to treat a disabled person more favourably to remove the disadvantage which is attributable to the disability. This necessarily entails a measure of positive discrimination'*

26. If necessary, the claimant should have been treated more favourably than other non-disabled employees.

27. Employers are under no duty to make reasonable adjustments if:

    a. They did not know and could not reasonably be expected to have known that the claimant had a disability, or

    b. They did not know and could not reasonably be expected to have known that the claimant was likely to be placed at a substantial disadvantage as a result.

28. In considering whether or not there is a PCP established we have had regard to the recent guidance provided in Ishola v Transport for London [2020] IRLR 368.
29. The Equality and Human Rights Commission Employment Code of Practice talks about the duty to make reasonable adjustments in chapter 6. Tribunals must take into account any part of the Code which appears relevant.

30. The Equality and Human Rights Commission: Code of Practice on Employment (2011) at paragraph 6.19 provides [Sch 8, para 20(1)(b)] if the employer does not know the worker is disabled that:

> *"For disabled workers already in employment, the employer only has a duty to make an adjustment if they know, or could reasonably be expected to know, that a worker has a disability and is, or is likely to be, placed at a substantial disadvantage. The employer must, however, do all they reasonably can be expected to do to find out whether this is the case. What is reasonable will depend on the circumstances. This is an objective assessment. When making enquiries about disability, employers should consider issues of dignity and privacy and ensure that personal information is dealt with confidentially."*

31. Paragraph 6.23 the Code identifies what is meant by 'reasonable steps':

> *"the duty to make reasonable adjustments requires employers to take such steps as it is reasonable to have to take, in all the circumstances of the case, in order to make adjustments. The act does not specify any particular factors that should be taken into account. What is a reasonable step for an employer to take will depend on all the circumstances of each individual case."*

Indirect Discrimination

32. Under s.19(1) EqA, the R will have discriminated against the C if they have applied provision, criterion or practice (PCP) which was discriminatory in relation to the C's disability.
33. The PCP will be discriminatory if: (s.19(2)(a-d) EqA)
    i. The R applies, or would apply, it to persons with whom the C does not share the disability,
    ii. it puts, or would put, persons with whom the C shares the characteristic at a particular disadvantage when compared with persons with whom the C does not share it,
    iii. it puts, or would put, the C at that disadvantage, and
    iv. the R cannot show it to be a proportionate means of achieving a legitimate aim.

34. The burden is on the Claimant to prove:

    a. That there was a PCP;

    b. That the PCP disadvantaged people with C's disability generally ('group disadvantage');

    c. That what was a disadvantage to the general was a particular disadvantage to C.

35. If C proves the above matters, then the burden is on R to justify the PCP

Harassment

36. Harassment is defined in section 26 of the EA10 as:

"(1) A person (A) harasses another (B) if—

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

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

(i) violating B's dignity, or
(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

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

(a) the perception of B

(b) the other circumstances of the case;

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

37. If the Employment Tribunal concludes that unwanted conduct related to a protected characteristic has taken place, there is a distinction between cases where the conduct was for the purpose of violating B's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for B, and conduct which has that effect.

38. If the unwanted conduct was for that purpose, it would, as a matter of law, constitute harassment. However, if the conduct was not for that purpose, but had that effect, the Employment Tribunal must also consider B's perception, the other circumstances of the case, and whether it was reasonable for the conduct to have that effect. If so, the conduct would amount to harassment.

39. It is therefore important for the Employment Tribunal to state whether it is a "purpose" or "effect" case and to explain the reasoning as to why, in an "effect case", the conduct constituted harassment. In an "effect" case, there are two questions: the first is whether B felt that their dignity had been violated or that A had created a hostile etc. environment (a factual question dependent on B's subjective perception); the second is whether it was objectively reasonable for B to feel that way.

40. The law also provides that direct discrimination and harassment are discrete matters, because "detriment" does not include conduct amounting to harassment (section 212(1) EA10).

<u>The Evidence</u>

41. In considering the issues that are before us we have heard evidence from the claimant on her own behalf and from a Dr Zhong Li a director of the company and Mrs Jin Li, also known as Jean, who is also a director of the company who had day

to day management of the business. We have heard from Miss Sinead Bradford who is employed by the respondent. We note that the director respondents are individuals for whom English is a second language. Neither have required the assistance from an interpreter although Mrs Jin Hua Li has indicated that her command of English is sometimes more challenged than that of her husband. We have taken time to understand clearly the evidence that Mrs Jin Li has given.

42. We have had produced to us a number of documents contained in various bundles and in certain circumstances delivered piecemeal to the Tribunal. In particular we have referred to a final bundle extending over 186 pages. In addition we have been referred to the preliminary hearing bundle ("PH") that extends over some 280 pages. Further we have been sent additional documents that were submitted by the claimant, pages 97A and B and additional unpaginated documents that were copies of the documents that the claimant sought to provide to the respondents following her performance review. The respondent has submitted additional documents including a portfolio of photographs of the respondent's workplace and an additional thirteen documents followed by an additional further four documents that are identified as additional documents.

43. We are mindful that there is a wealth of documents that may well have been relevant to the case that have not been disclosed, including emails and Slack messages which we have been informed are no longer available for disclosure. We have referred only to the documents to which we have been referred by the parties either in the witness statements produced by them or during the course of examination. In light of the evidence that is before us we make the following findings of fact.

Findings of Fact

44. The respondent company is a small fashion brand. It sells to wholesale and retails to members of the public in two retail units. The business is a relatively small employer. It had 22 full time staff and eight part time staff including staff working in the retail side and in the warehouse at the relevant time. The business has for a number of years engaged the services of HR consultants from the business of whom Mr Clarke is a representative at this hearing.

45. The claimant was employed by the respondent on 12 July 2018 as a Fashion Graphic Designer. We have been referred to her contract of employment [23 to 39] which identified a salary of £26,000 per annum plus expenses and bonuses. In addition, the claimant's expenses were paid as they were incurred on an ad hoc basis and in addition she was paid a number of rewards, discretionary payments which varied from time to time entirely at the company's discretion [191 to 192]. We have been referred to the example of reward payments in November 2019 to January 2020. The reward payments are described by Dr Zhong Li as being related to performance only. The claimant has submitted bank records to evidence the payments which varied from £250 to £500 being paid on 24 December 2019.

46. The reward payments to which the claimant has referred us was several hundred pounds a month and indicative of payments made to her as a reward for her contribution to the business and was determined on a discretionary basis by Mr Zhong Li. In November 2019 the reward was £300, 10 December £250, 23 December £500 all in addition to her monthly salary. Dr Zhong Li has suggested that the payments are not contractual payments and are not referred to in the

contract. That is correct. They are discretionary payments. Nonetheless they reflect the contribution the claimant made at the relevant time.

47. During the course of her employment the claimant took on additional responsibilities which she clearly enjoyed. There was increased work to create mood boards for photoshoots after the visual manager and photographer who were originally employed in-house left the business in 2018. Although the claimant was not responsible for physically completing the photoshoots she helped to plan them, identified the mood and the contents of the photoshoot, the locations and the themes and introduced a new team of independent contractors to undertake make-up, styling and photography. She introduced new models. Quite clearly the claimant enjoyed that aspect of her work in the fashion industry even though much of the photoshoot was undertaken outside of office hours so as not to disrupt the office operations. The claimant's efforts were clearly appreciated.

48. The claimant was part of the digital team managed by Ramaya Hany, also known as Rumi or Maya, the Digital Office Manager who joined the company in August 2019. There were weekly meetings to which the claimant originally was invited. However soon after the recruitment of Sinead Bradford on 11 November 2019 as Digital Marketing Manager the claimant was no longer required to attend the management meetings. That was a fact that the claimant appreciated as it gave her more time on a Friday, when the management meetings were held with Dr Zhong Li, to enable her to concentrate on work including preparation for photoshoots to be conducted over the weekend. Ms Bradford formerly worked in the construction industry and in education and she had no prior knowledge of the fashion world. We observe that the claimant was the only member of the digital team who had prior fashion industry experience. She was prepared to share her experience with the fellow digital team members. However the claimant often demonstrated behaviour which evidenced her view that she knew best, in terms of how matters needed to be done, and was reluctant to accept criticism of her plans and actions from people who had no prior fashion experience.

49. The company was operated and managed on a day to day basis by Mrs Jin Li and the relatively flat management structure was operated by the respondents including the digital team of which the claimant was one. The digital team was one that was managed closely by Rumi Hany. In late 2019 the company recruited Sinead Bradford on 11 November and later in January 2020 they recruited Charlotte who was recruited as an intern to support the claimant's role. We acknowledge that the claimant was supported by the respondent to give her additional help as she had taken on a number of additional roles over a period of time. It is accepted that no formal warnings in relation to the claimant's performance were ever issued to the claimant. The account the claimant gives is that she showed Sinead the ropes in relation to the fashion business and that is not disputed. Similarly it is not challenged that the claimant was asked by Jin Li to train up Charlotte, the intern, to be "exactly like her".

50. The respondent has not challenged a significant part of the claimant's evidence of the supportive contacts she had with her manager Rumi also known as Maya and Jean (Mrs Jin Li). Mrs Jin Li has given an account that she wrote a number of praising texts and emails to the claimant that were necessary she said to praise the claimant to avoid the claimant crying and shouting at her. Mrs Jin Li said that positive feedback had to be given, otherwise the following week at work would be difficult. The respondent was happy with the claimant's work on photoshoots which

were in practice outsourced and the claimant was responsible for co-ordinating the schedule of photoshoots and identifying the products to be photographed but not for the production or direction of the photoshoots and the taking of photography. Mrs Jin Li sent a congratulatory text to the claimant when her work was good (preliminary hearing bundle PH206). On 15 January she sent a text saying:

> "*Hi Victoria Sinead chose a few images which are amazing, amazing, amazing. Well done to you and your team. Have a good rest tonight. See you tomorrow morning*."

51. Jin Li was not entirely happy with the claimant's efforts at trade shows and she gives an account that she was reluctant to give negative feedback to the claimant as if she did so the claimant became upset, crying or shouting at Jin Li and that made the team uncomfortable. Jin Li suggested that the claimant had some skills but they were not right for the respondent's business and that the claimant's production rate eg of EDMs was slow and that she would on occasions spend whole days on creating EDMs. Rumi apparently reported to Jin Li that the claimant could take on average three or four hours for her to prepare the EDMs.

52. When challenged that she sent positive emails and texts to the claimant [41] Jin Li has suggested the reason she sent the emails to her was as an encouragement to her otherwise the claimant said she would not sleep all night and there would be a big issue in the office the next day and the whole office would be 'stormed'. Jin Lin gives her account that the claimant shouted and cried in the office and it was necessary to send congratulatory and encouraging messages to the claimant in order to protect the respondent's business.

53. We find that Mrs Jin Li sent encouraging messages [PH 205] on 20 December:

> "*Good morning Victoria. I'd just like to say thank you so much for your hard and creative work. Your EDM brought in amazing sales results yesterday. Please keep up with the good momentum and have the best EDM campaign over Christmas! Many thanks*."

This is an accurate reflection of the reward payment made in December 2019. We find Mrs Li refused to give the claimant any credit for good work in the office and her evidence in that regard is not credible.

54. We find that while relationships in the office may have deteriorated after the appointment of Sinead it does not support the respondent's suggestion that the claimant was not working and conscientious in her role. It is suggested by the respondent's witnesses that after management meetings Rumi would give feedback to the claimant of matters of concern. Unfortunately Rumi is no longer employed by the respondent and the company has not been called by them to give her account in evidence. We have however had sight of email feedback to the digital team after the Friday management meetings which the claimant and Charlotte did not attend (additional bundle pages 1 to 13). The contemporary feedback documents, evidence the claimant was reminded of her shortcomings in relation to her time management and the projection of EDMs and the need to focus on her areas of responsibility. It is apparent from the documentary evidence that Rumi the claimant's manager, offered the claimant support and to assist her in undertaking certain of the tasks that the claimant couldn't complete within a deadline. Certain of the claimant's tasks were reallocated to Charlotte to ease the claimant's responsibilities.

55. The evidence submitted by the claimant is that Maya's communications were supportive and encouraging, it is however a far cry from the claimant's suggestion that her capability and performance was never questioned or doubted at any of the meetings throughout her employment. There are documents within the additional bundle which demonstrate that there were concerns about the claimant's time management and her answerability to undertake the breadth of tasks that she had to do in a timely fashion. In considering the end of month report for retail on 30 April 2020 [67] Rumi Hany acknowledges that, whilst EDM and social had improved, the team were helped by the addition of Charlotte's illustrations. We find that the respondent did have concerns about the aspects of the claimant's performance and were considering the need to undertake a more formal review of her performance with the claimant in relation to the standard of her work at that time.

56. We recognise that the claimant had less than two years' service with the respondent business and this respondent, like very many employers large and small, was mindful both of the need to consider whether the claimant should remain in their employment beyond a period where she had two years' continuous employment and would have additional employment rights not to be unfairly dismissed.

57. On 20 May 2020 at 11:57 [PH 152 to 153] Rumi Hany, writing to Dr Zhong Li, wrote regarding the claimant's capability and performance review referring to their previous conversations and prospective performance review. She said:

> "*I would like to be involved in the meeting from the prospective of what I can do to help the resource and team rather than pointing out faults if that's ok with you. In terms of my management of the team I find it more effective to go down the route of positive reinforcement and open support in order to keep everyone projective and happy. As much of this is between us and Vicky I'm sure it will be discussed with other members of the team in a personal capacity and I don't want to affect productivity*".

She identified three areas of concern:

> *"1.Performance issues – takes much longer than necessary, EDMs continue to be overcomplicated even though we have had discussions about them being simplified and product category focus for the marketing message provided. Vast majority of work needs revisions when sent across.*
>
> *2.Capability issues - lack of focus on one particular task. Even if time sensitive lack of time management.*
>
> *3.Behaviour concerns – not good at taking instruction from anyone other than me, emotionally disruptive when in the office. However this has been less of an issue when working remotely. "*

58. We find that the communication sets out very clearly that the respondent had a background of concerns about the claimant's performance and time management and behaviour and there was a clearly expressed intention by management to look at the claimant's performance and review its suitability. The document plainly demonstrates objectively that the respondents had a previous intention to conduct a performance review of the claimant's work with the respondents. We acknowledge that despite their intentions there is no evidence that the respondent's concerns were raised at a level with the claimant before May to

suggest that she was subject to any warnings that her employment may be in jeopardy other than as referenced in the additional documents [1-13].

59. In the absence of clear and unequivocal warnings the claimant, whose own well deserved opinion as to her level of experience in the fashion industry, seems to have minimised the importance of negative feedback comments made to her by her managers, perhaps because she believed that she knew the fashion market better than they did. We find Rumi tried to encourage the claimant to improve her performance. However the claimant saw herself as the lynch pin of the digital team rather than an integral member of it as she had fashion experience while other members of the respondent's digital team did not. The claimant was of the view that the photoshoots were produced by her in contrast in fact we find that the claimant had co-ordinated the work of the outsource team and did so very well. Whilst the claimant's role in the digital team was extended to include merchandising and the commissioning of photoshoots that was not her primary role. She assisted her work colleagues as best she could, often to the detriment of the timely delivery of her own tasks. We find that well intentioned though the claimant was to assist others, it was beyond her primary role and contrary to the direction she had been given by Rumi.

60. The evidence given by Sinead and Jin Li is that the claimant was not always available and contactable while working from home ether by email or phone during the period of lockdown and that has not been challenged by the claimant in cross-examination. We find that the respondent and in particular Rumi sought to encourage the claimant and reinforce positive feedback where she could. The claimant's performance was not without criticism and it is clear that the respondent Rumi identified to the claimant areas where there was a shortfall in her delivery (see additional bundle).

61. Whilst we have not been referred to KPIs that were issued to the claimant nor to any formal warnings or performance reviews, it is evident the respondent had concerns in relation to the claimant's performance standards some time before March 2020. We accept that this relatively small employer was not entirely satisfied with the claimant's performance in the period January to March 2020 and thereafter. Dr Zhong Li's evidence and that of Jin Li was that the company were considering whether the claimant's employment required a performance review in March as the claimant's employment was then approaching two years continuous employment.

<u>Lockdown and Return to work</u>

62. We turn to consideration of the circumstances relating to lockdown in response to the Covid-19 pandemic and subsequent return to work. The respondent company, in response to the government direction to lock down the UK and the Health Protection Coronavirus Regulations 2020 [159], issued emails to all staff on 24 March 2020 [60 - 62]. In preparation for working from home Rumi confirmed to Dr Zhong Li on 24 March [60] that she had set up Zoom and sent invitations to the team so that they could have remote meetings where necessary, had set up a WhatsApp group to ease the messaging if staff were away from their laptop or PC for any reason while people were working at home, and had set up a Slack, a collaboration hub which was set up to enable the parties to easily share skus / graphics and plans and had established Google Drive which Drew Brown, the IT manager had introduced. In summary Rumi indicated to Dr Zhong Li that there were various lines of communication that everyone in the teams could use to make

sure that they were keeping each other up to date on what they were working on and what need there was to change that would be key to ensuring that the team remained as productive as possible during the period of national lockdown.

63. On 24 March Dr Zhong Li wrote to all employees [61] thanking staff for their efforts working onsite and offsite to keep the online business running in a difficult climate and encouraging everybody to keep themselves safe and maintain the best services to their customers as they could while the operation was scaled down for a period of lockdown.

64. The claimant and Drew Brown had on 24 March 2020 been into the respondent's office to remove their computers and other equipment that was needed to enable them to work from home as well as copying over files and work to the Cloud in order that they and other members of the digital team would be able to access their workloads remotely. Dr Zhong Li speaking to Drew Brown and the claimant on a speaker phone on 24 March 2020 confirmed that they could take home whatever equipment they needed and asked them to remain in the office until Jin Li had arrived to direct and agree what equipment should be removed. We find that Dr Zhong Li indicated that Jin Li would agree what equipment should be removed from the premises. In the event the claimant, who had intended to remove her Mac which was loaded with the most sophisticated programmes and apps, was directed by Jin Li to leave her Mac in the office and instead take home with her an older version of Mac that was used by Sinead to be able to complete her work from home.

65. The claimant has given an account that she lives in a house with her mother who has COPD who, during the pandemic was advised that she was classified as extremely clinically vulnerable and should shield in accordance with the Department of Health advice. The claimant has confirmed that it was only her mother and she who lived in the household and although not required to shield herself she did so in order to protect her mother and didn't leave the home, rather completing shopping online.

66. Whilst working from home the claimant has given an account that she could continue to be productive. We have found however that the claimant's performance was not considered entirely satisfactory and Rumi in May 2020 had clearly had continuing discussions with Dr Zhong Li about concerns about the claimant's performance [PH 152-153]. We have been referred also to reports made by Rumi and Sinead in June expressing concerns about the claimant's behaviours both prior to and during the pandemic and lockdown [101-104 and 105-106 respectively].

67. In anticipation of the relaxation of lockdown Sinead Bradford, whose previous work experience in construction and education sectors meant that she had experienced undertaking risk assessments in the past in both industries including safeguarding, was asked by Dr Zhong Li to take responsibility for completing risk assessments to implement the safe working practices to comply with Government guidance [159] on staff returning to work as the restrictions on working were to be eased. Miss Bradford has given a persuasive and detailed account of the assessment that she made, including planning the re-distribution of workstations to ensure that all employees worked in isolation from each other which included amongst other things moving desks and equipment to spaces not ordinarily used as offices including kitchens and corridors.

68. We are satisfied that Miss Bradford had identified the claimant's workspace to move to a different room where she would be sitting alone whereas formerly she had sat at one of five desks within the main office space for the digital team. The respondent's office is not a large one and it was hoped that staff adopting safe working practices would be able to work in a more collegiate and communicative way than they would otherwise do working remotely and would have access to the physical stock of the respondent's fashion business that would enable them to have a better understanding of the merchandising needs and new stock as it came in with a view to marketing and merchandising it.

69. We have observed that sadly the detail of the seating plans that Miss Bradford sent to Dr Zhong Li was not shared in advance of the return of staff to the office. However Dr Zhong Li wrote to all staff in anticipation of a proposed return to office space work on 21 May [73-74]. We find that the communication sent by the respondent's director was clear and unequivocal, that staff were invited to return to work in the office on 21 May to enable more effective team working emphasising also the need to maintain social distancing rules as laid out by the government to ensure that the guidance was followed, not only in the office but also out of work. Staff were required to follow guidelines in the office in relation to personal protection equipment, workspace, the kitchen, the bathrooms and the behaviour during breaks and staff were encouraged to contact Dr Zhong Li if they had any concerns or suggestions of having work together in the" new normal" in the office.

70. Addressing Dr Zhong Li's correspondence the claimant emailed her concerns to him on 20 May at 14:38 [76]. She wrote:

> "*I'm still concerned that the government guidelines are to work from home if you can and as you know the digital team have been able to work remotely in these circums*tances.
>
> *I will feel more comfortable continuing to work remotely but I would be happy to work in the office when work cannot be done remotely, for example arranging photoshoots, which I hope we can start to do now as the team are willing."*

71. We find the words used by the claimant to express her feeling that she would be 'more comfortable'' working from home no doubt reflected the fact that the claimant enjoyed no longer having to commute the 15 mile journey to and from work. However, it did not communicate any concerns to suggest that the claimant felt at real and imminent risk to in terms of her health and safety but suggested that she could work from home digitally and therefore it was not necessary for her to attend the office. Dr Zhong Li replied at 15:56 the same day [75] reinforcing his view that working from home had a big impact on team collaboration and collective efficiency on digital operations and that a return to office based operations was necessary. It is clear that the employer held a reasonable belief that face to face, albeit socially distanced within teamwork and collaboration, was necessary. Furthermore, we find Dr Zhong Li was not happy that the claimant's performance could be monitored effectively with her working remotely.

72. Dr Zhong Li wrote wishing the claimant well, to remind her that distant working had had an impact on team collaboration and collective efficiency on digital operations and that, whilst there was a good start on bounce back, the business needed to uplift the team collaboration and collective efficiency on the digital office operation. He confirmed [75] that:

> *" I appreciate on your concerns which is exactly the reason that we put strict procedure of "social distancing" and "office hygiene" to keep all team members safe in the office.*
>
> *I understand that you took Sinead's Mac back home – please can you bring it back to the office tomorrow since she will be needing the Mac in the office tomorrow.*
>
> *Jean also need the photo disks you took back home – please bring them back to the office tomorrow since she need the photos from the disks."*

In response the claimant replied at 16:08 :

> "*I'll return Sinead's machine and the disk tomorrow. I assume I can take my machine in replacement? I appreciate your trying to put safety measures in place but I'm staying with my mother who is in a vulnerable category so I do have real concerns about coming back too early given the current government advice*" [83].

73. The claimant advised the respondent for the first time that her mother was in a vulnerable category and for that reason she had concerns about returning to the office too early given the current government advice to work from home, if at all possible. Dr Zhong Li replied at 18:39 on 20 May [83] asking the claimant to return Sinead's Mac and the photo disks to the office for use the next day. Initially the claimant responded at 19:39 [82] to confirm that she would be in the office the next day and asked for clarification about a replacement computer to continue working from home. On reflection later the same day the claimant wrote at 22:23 :

> "*I have lots of work to do tomorrow in preparation of the upcoming bank holiday. Would it just make more sense for me to continue working using this Mac as my Mac in the office will be available for Sinead to use which is a lot faster than this one so she shouldn't have any issues.*
>
> *All images of the disk drive I have also uploaded to the Cloud and server. This was my backup of them to allow me to work remotely. I really don't want to make an unnecessary journey if it can be avoided.*
>
> *Hopefully in a week or so the situation would be different and the advice will change for more vulnerable situations like mine, but also the current guidelines for offices are still to make every effort to work remotely as the first option.*
>
> *Please let me know your thoughts*." [82]

74. The claimant refers on this occasion to hers being a vulnerable situation. We find the email communication refers to her mother's health and shielding, albeit not expressly, and to the fact that under current guidelines workers were to make every effort to work remotely as the first option. Dr Zhong Li replied on 21 May at 06:59 reminding the claimant:

> "*I understand that each one of the team has lots of work to do every day and we all know that distant working from home has a big impact on team collaboration and collective efficiency.*
>
> *This is exactly the reason that we bring the team in the office together to improve efficiency in the meantime meanwhile protecting each one with strict social distancing procedures.*

> *The rest of the team will be back in the office 8.30am this morning. Please bring back company assets to the office by 8.30 in the morning.*
>
> *Jean will be sorting out your working arrangements in the office later on. Many thanks. Speak to you soon.*" [81]

75. We find that the rest of the team namely the digital team including Charlotte and Sinead were returning to the office on the morning of 21 May. Having already referred to the distancing arrangements that would operate in the office and initial communication the claimant was told that her working arrangements in the office would be sorted out. We find implicitly that it would be clarified in terms of where the claimant would sit when she attended the office later that day and Mrs Jin Li was able to update the claimant about working arrangements in the office.

76. In response to the latest communication the claimant wrote again at 8:18 on 21 May to inform the respondent more clearly of her situation [80]. The claimant also enquired whether her Mac could be collected from her house instead of her delivering it as she knew that Phil Davies from the warehouse lived nearby to her. The claimant wrote saying:

> "*You know the rest of the team won't be in the office at 8.30 this morning so I'm worried you are specifically trying to force me to come back in today. I don't understand why? I've explained to you I'm in a vulnerable situation shielding my mother. My own underlying physical conditions put me at higher risk from the virus too.*
>
> *The government health and safety guidelines to make every effort to work from home at all possible. This hasn't changed and it's clearly possible for us. I don't think improving team efficiency is a good reason to return to the office when we were available on phone, Zoom, Slack etc throughout the day (and the whole team won't be there anyway so any improvements would be quite limited)*." [80]

77. Dr Zhong Li did not press the claimant to return on the 21st and confirmed that the claimant's Mac at home would be collected and she would not be required to attend the office [80].

78. We find that the claimant's email indicated for the first time that not only was she in a vulnerable situation in relation to her mother who was shielding but also refers to her own underlying physical conditions which she said felt put her at a high risk from the virus. The claimant has confirmed that she never received advice from the Department of Health that she should shield, although she says that she was informed by her GP that she was susceptible to contracting the virus. We have however seen no medical evidence to support the assertion and we note that the claimant's conditions of arthritis and Fibromyalgia are not among the conditions referred to in the Regulations as requiring people with those conditions to shield. We find that on the most generous interpretation of the provisions of section 43 of The Employment Rights Act 1996 the claimant in that last email was alerting to the respondent to the risk of a danger to her health.

79. It is clear that the claimant in her evidence in her witness statement para. 47 stated that she was shocked to receive the information about the return to office based working as it did not appear to her to be in line with the then Government Guideline in relation to Covid-19 at that time and that she was living with her mother who was shielding. The claimant held a general view that the office environment was not

safe notwithstanding that she had not attended the office since March 2020, some eight weeks previously.

80. We find that the respondent's request that the claimant return to work in the office was also one that was made to enable them to oversee more clearly the claimant's performance of her duties in light of the concerns previously expressed before lockdown. Those shortcomings in the claimant's performance had been confirmed by Maya to Dr Zhong Li before any communications began from the claimant in response to the respondent's request that she returned to the office.

81. We are mindful at this stage Mr Drew Brown, an employee of seven years standing with the respondents and who was the individual responsible for IT support was easily able to work from home and supervise and he did not return to the office because he expressed concerns in relation to his personal circumstances living with his older parents who were in a bubble with his grandmother who was herself shielding. We note also that Rumi was not working from the office. She was required to remain at home because she was responsible for providing childcare support to her child who had been sent home from school and required home schooling. We concluded the respondent was clear that the digital team working remotely was not an efficient use of resources. However in the event the respondent did not require the claimant to return to work in the office when she raised her specific concerns.

82. On 26 May Dr Zhong Li at 12:18 sent an email to the claimant to ask her to provide information as to what work she was doing during May [94]. He made a similar request to Drew Brown an employee of seven years' standing. The claimant, who no longer had access to her Mac nor access to the Company Information Statistics, communicated with her work colleague Drew Brown who provided core information to her that enabled the claimant to respond to Dr Zhong Li on 26 May at 17:07 [93]. We note at this stage the claimant had not been told that Sinead and Charlotte were at work and completing any necessary EDMs. On 27 May at 10:53 [90] Dr Zhong Li invited the claimant to attend a performance review session scheduled for 29 May to be held in the office showroom. In reply the claimant at 13:57 asked if the performance review could be undertaken by Zoom and the respondent in reply informed the claimant that the meeting would however proceed at the respondent's premises at 2:15 on 29 May in person. We find that the meeting on 29 May 2020 was held in the upstairs showroom in a socially distanced location at which the claimant chose not to wear a mask.

<u>Performance review</u>

83. We turn to a review of the performance review meeting held on 29 May 2020 between the claimant, Dr Zhong Li, Mrs Jin Li who were the two directors and Rumi Hany who was in attendance at the meeting to take notes. It is disappointing that the notes of the meeting taken by Rumi Hamy have not been produced. We have been referred to the typed notes Dr Zhong Li [96 -97] which were subsequently sent to the claimant. The claimant has confirmed to us that she annotated comments for her own information on those notes [97A and 97B] which, though the comments were not shared with the respondent at the time, we accept reflect the claimant's view on the integrity of the notes. The claimant giving her evidence has sought to assert that additional topics were discussed in the meeting that were not recorded either in the company's note nor in her own annotations. We find that where the claimant has not annotated comments contemporaneously and now refers to omitted discussions and having heard the evidence we conclude

it is more likely than not that those additional points that were not noted were not in fact raised at the meeting. We find that the notes of the meeting as originally drafted nor with the claimants annotated comments recorded that there was any discussion about health and safety concerns in the workplace. In the event after the meeting the claimant was not required to attend the business premises to work. Having been referred to photographs of the re-arranged and distanced workplace we find that prior to the claimant's attendance at the office on 29 May 2020 the work stations had been reorganised to ensure that all the members of the Digital Team of which the claimant was a part were able to work within the Government Guideline Regulations at all times. We find that the working arrangements introduced to the workplace, as evidenced by the contemporaneous photographs of the workplace, did not present any or imminent danger in the workplace

84. We observe that the meeting and the conduct of it and the notes taken do not comply with any code of practice on the conduct of grievance and disciplinary proceedings advocated by the ACAS code of practice. We would have regard however to the fact that where an employee has less than two years' continuous employment to enable them to assert the right that they have been unfairly dismissed employers are less inclined to comply with good practice. The notes would have been found to be wanting in respect of performance management of an employee with employment protection rights. We have in mind however that the respondent is a relatively small employer, is not a particularly sophisticated employer and this employer was reviewing the performance of an individual whose work standards we found were wanting to a degree which caused the respondents to consider whether or not employment should continue beyond that stage when the individual had acquired the right not to be unfairly dismissed effectively following the two year anniversary of employment which would have fallen due on 11 July 2020.

85. During the course of the meeting the respondent discussed their concerns in relation to the claimant's employment. The claimant sought to present information, that had been provided to her by Drew Brown, on a tablet device that belonged to the company. It was not possible to show the information on the device and in the circumstances were the respondent dealing with an employer of more than two years' service we would have expected the meeting should have been adjourned to enable the information to be produced and considered. However, the claimant in this case did not have general employment protection rights against unfair dismissal and the discussion proceeded perhaps in rather more cavalier terms than would have been the case had the claimant had statutory employment protection rights.

86. In her evidence to the Tribunal the claimant says that she referred during the performance review meeting to her health and safety concerns in relation to her physical conditions. However, the claimant has not annotated her notes to reflect any such discussion having been omitted from the company's note. The claimant has not annotated the note to say that in relation to the concern raised by the email that some members of the team had raised concerns regarding some of her emotional and professional behaviours within the office, that she responded to the allegation. The claimant in her evidence to the tribunal asserts that at the meeting she had mentioned that the concerns about her unprofessional behaviour were completely out of the blue and that such concern, if it was true, it had not been brought up with her before. The claimant claims to have mentioned her behaviour

could well be due to her disability ie that her emotional reaction was due to a disability. We consider that, had the notes been deficient to the extent the claimant now asserts that they were, she would have annotated them accordingly. However, the claimant made no such contemporary annotations to lead us to conclude at the meeting she raised health and safety concerns regarding her physical conditions. We find that on the balance of probability the record made by the respondent is the accurate one together with the claimant's contemporary annotations.

87. The claimant's more recent recollection to now seek to identify significant additional omissions from the original notes is perhaps a recollection viewed through the lens of litigation. However, we note that there was no reference in the discussion to the matter about which the claimant complains in the grounds of a complaint at paragraph 23 [11]. We find that the notes of the meeting do refer to Dr Zhong Li expressing concerns about the claimant's inefficiency and slowness in producing daily EDMs which was the claimant's main routine task on a daily basis. We find that although the respondent referred to 'slowness' the content of those comments was made in relation to the claimant's productivity not to any physical slowness that the claimant may have demonstrated whilst moving about in the office.

88. Having heard the evidence and considered the email correspondence in relation to performance issues discussed with the claimant we conclude that the claimant was aware of the respondents concerns regarding aspects of her performance which needed to be addressed [107-108] and additional bundle. The claimants manager had been supportive of the claimant when she needed to work from home when she had painful flare-ups of her condition both prior to and later during the lockdown. At no time did the claimant suggest to the respondnet that her personal condition was the reason for her poor performance nor has she suggested that on the occasions when the claimant took a walk outside to have a cigarette break to mobilise her limbs is it suggested that was the cause of the respondents concerns about her performance or her demeanour in the workplace.

89. During the meeting it is accepted that the claimant was asked to provide an improvement plan in respect of concerns raised in order that she would be able to deliver the performance that the business would expect of her. After the meeting the claimant produced additional information that she had not been able to demonstrate to the respondents during the performance review meeting. Having been asked to put forward an improvement plan on 2 June at 15:52 the claimant submitted a response to the meeting [98-100]. The note we conclude is not an improvement plan, rather it is comment upon the notes of the meeting, albeit one which did not indicate to the respondent any of the additional information that the claimant had suggested she discussed with the respondents at the meeting.

90. On 4 June Dr Zhong Li sent an email replying to the claimant at 12:51 [101] which provided the claimant with further clarifications from Rumi on the claimant's comments and reply. Dr Zhong Li requested that the claimant provide an improvement plan as soon as possible and in any event by 14:00pm on 5 June. Later on that day at 13:00 [105] Dr Zhong Li sent to the claimant comments provided by Sinead in relation to the concerns raised in relation to team collaboration.

91. On 5 June at 12:16 the claimant emailed Dr Zhong Li [107-108] apologising for the comments that she had made in the meeting saying that she had not been honest in the meeting regarding Jin Li's comments about the claimant having said that Maya was a rubbish manager. The claimant agreed that EDMs frequently had not

been sent out early in the mornings and that the visual work had had many requests for changes. The claimant agreed to adhere to deadlines and time schedules for management and agreed to stop assisting others which diverted her attention from her core role. The claimant [108] apologised if her behaviour impacted upon the team and she indicated that she was not aware of the problem previously. Strikingly in the improvement plan the claimant suggested for the first time:

> "*Also I have arthritis and Fibromyalgia which can cause excruciating pain at times during the day. If this builds up then I will often leave the room just to get movement in my limbs to go for a cigarette break. I really hope we can move on from this as I am eager to start back work*."

We observe that this was the first time that the claimant had suggested to the respondent that she had two named conditions, arthritis and Fibromyalgia and that as a result of pain she often leaves the room to get movement in her limbs. Previously on the claimant's own account she in her communications with Mrs Jin Li sought to minimise her conditions which she perhaps euphemistically referred to as her 'bones'. Despite the improvement plan, without further discussion with the claimant, the respondent determined that the claimant's proposals did not suggest a way forward to rectify the shortcomings in performance and, without further discussion, the respondent determined that the claimant's employment should be terminated. We find that the claimant's reference to her physical health conditions are not cited as the reason why she was subject to performance improvement concerns.

92. On 8 June Dr Zhong Li wrote to the claimant [111] to terminate the claimant's employment with immediate effect and payment in lieu of notice. The claimant's employment was terminated, five weeks short of the claimant having achieved two years' continuous employment. The respondent did not consider the claimant's reference to her conditions of arthritis and Fibromyalgia as requiring any further enquiry to suggest reasonable adjustments might be put in place to adjust the claimant's performance. We are mindful of course that the claimant references her condition to the reasons why she had to mobilise and leave a room to get movements in her limbs. We find it did not refer to her inability to complete tasks within the timetable or the deadline periods or that it was the reason why her individual behaviour impacted on team spirits and collaborative work.

93. Turning to the respondent's awareness of the claimant's disability, the claimant in her evidence has given an account that in the early days of her employment she told Mrs Jin Li that she had had juvenile arthritis but that she was strong despite the condition. She recounted to us an occasion when Jin Li had not been able to open a flask of tea and the claimant had managed to open the top and when Jin Li remarked upon on the claimant's strength the claimant explained to her her history of juvenile arthritis and that she was strong despite the disability. The claimant's evidence in her witness statement (paragraph 20) confirmed that she assured the respondent that despite her disability she was strong, though she had weak wrists and the respondent did not need to do anything to assist her to do the job.

94. We find that at work the claimant sought to minimise her disability and its effect on her ability to undertake her normal duties. The respondent had in practice allowed the claimant to work from home when she indicated her condition caused pain. It was not until in the performance hearing that she suggested that her disability made her emotionally vulnerable. When Rumi joined the business we have seen evidence that the claimant told Rumi of the pain that she experienced from her arthritis which Rumi plainly accommodated and was sympathetic to the claimant

about. She in fact allowed reasonable adjustments to enable the claimant to work from home when it was necessary because of her pain and to travel to work late when she was waiting for painkillers to take effect. The claimant perhaps euphemistically refers to a condition as being trouble with her "bones" and that phrase was adopted by the respondents reflecting the description used by the claimant. We find that although the claimant sought to minimise the effect of her condition on her ability to do her work, Jin Li was aware of the claimant's health and was solicitous of her health as she and Rumi sought to encourage the claimant to do her work in working time and not to overly exert herself and to take care of herself particularly when the claimant was seen to lose weight and work long hours to get her job done. We find that while making adjustments to assist the claimant manage her pain when required the respondent had no reason to believe that additional adjustments were required to enable the claimant to complete her work.

95. Rumi's explicit correspondence with the claimant, to which we have been referred, refers to offering to assist the claimant if she required further help. Even though the respondent director asserts that the claimant did not directly inform them that she was disabled with clarity, the communications by which the claimant informed her line manager Rumi of the effects of pain on her ought to have put the respondents on notice that the claimant was a disabled person. We find that notwithstanding a clear lack of appreciation of her condition amounting to a disability, the respondent did nonetheless make reasonable adjustments in the workplace, allowing the claimant where necessary to work from home because of the pain that she was in and the respondents in fact made reasonable adjustments whilst the claimant was in the workplace. The respondent was not aware that the claimant described her condition as being labelled Fibromyalgia until the claimant submitted her performance management plan.

96. We turn to consider the allegations that the claimant's behaviour was not professional, it was part of the claimant's performance management plan, in particular that the claimant left meetings. Whilst we accept the claimant's account that in general she would leave meetings and walk around to mobilise herself from time to time there is no suggestion that that was the reason why she left meetings when she was being challenged about her performance standards. We find that the claimant was not accepting of criticism from those who were not experienced like her in the fashion industry. Mrs Jin Li has criticised the claimant for crying when challenged and Sinead refers to the claimant criticising or dismissing her contribution as she was inexperienced in fashion. We find that the claimant considered her opinion in relation to fashion was superior to that of her team colleagues and she was dismissive of their opinions. It is evident the claimant believed that she knew best and was trying to share her experience, the claimant's comments were unfortunately dismissive of others opinions.

97. Though not referred to KPI's there is nonetheless objective evidence before us that the claimant was not meeting her targets. The claimant has not suggested a causal link in her getting up and moving around frequently to suggest that that was the cause of her unprofessional behaviour. The respondent's performance management of the claimant was in relation to her productivity being weak and slow, not to her physical condition, namely her disability.

Argument and Conclusions

98. The parties have provided written submissions to us in advance of their relatively brief oral arguments and we do not intend to repeat those arguments here. They

have been taken into account, set against the background of our findings of fact and we have considered them in the determination of the issues that we have required to consider. Understandably Mr Candlish who is a friend of the claimant and has ably assisted her in cross-examining the respondent's witness has not referred us to the law. He was not expected to do so. We are thankful for his assistance to the claimant in presenting her case as well as she could. Mr Clarke has referred us to the statutory provisions but to none of the other legal authorities to which we have had regard together with the relevant aspects of the Codes of Practice.

99. In conclusion we turn to consider the issues that we must determine that were the agreed list of issues set out on 5 November 2021.

Time limits

100. We are reminded that one of the key issues relates to time. In respect of something that happened before 7 May 2020 events prior to that date are initially to be considered out of time unless the claimant is able to demonstrate to us reasons why the claims for harassment or failure to make reasonable adjustments are not presented in time. We conclude that the claimant has not provided any evidence to convince us that there are reasons why our discretion should be exercised to allow a just and equitable extension of time to allow those claims which were out of time to proceed. We consider the claims that are clearly in time on their merits.

Automatic unfair dismissal

101. The claimant was dismissed for a reason relating to her competence and behaviour and compellingly the fact that she had less than two years' service with the respondents and the respondents were not satisfied that she would improve before gaining the basic employment right not to be unfairly dismissed. The evidence demonstrates to us that the respondents were of the opinion that the claimant's performance and attitude was not satisfactory and that was clearly in their mind to review her continued employment before March 2020 when the government lockdown was introduced and the information was revisited in May 2020 in particular in Rumi Hany's email of 21 May 2020. The reason for the claimant being required to attend a performance review meeting and her subsequent dismissal was not in any way connected with the claimant's assertion that there were health and safety concerns.

102. We conclude that the claimant is not to be regarded as dismissed for having raised health and safety concerns of an imminent danger to risk to her health. We conclude that the claimant brought matters to the respondent's attention in relation to her reluctance to return to work in the office rather than working from home once the first Covid lockdown was being relaxed. However, before that time when the claimant expressed reluctance to return to work in the office and first suggested it was because of imminent danger to her health and safety, the respondent had already evidenced concerns about the claimant's performance. We find that at no time was the respondent's treatment of the claimant a detriment caused as a result of her having raised health and safety concerns that as a result the respondent treated the claimant in a detrimental way in conducting a performance review or requiring the claimant to attend the office in response to any suggested concerns related to health and safety. The claimant has not been caused to suffer detriment because she raised health and safety concerns. Such treatment by the respondent

of the claimant was unconnected with such a disclosure and was for a pre-existing reason, namely the claimants performance standards which the respondent found lacking.

103. The claimant's complaint that she was subject to unlawful detriment in breach of section 48 of the Employment Rights Act 1996 do not succeed and are dismissed.

104. The claimant's complaint that she was subject to an Automatically Unfair dismissal having made a health and safety complaint for the same reasons articulated above in respect of detriment do not succeed and are dismissed. The respondent decision to terminate the claimant's employment was

Disability Discrimination

105. Turning to disability it has been accepted that the claimant is disabled by arthritis and Fibromyalgia as determined by Employment Judge V Jones at a preliminary hearing held on 27 April 2021 [PH 64 to 68]. We have found that the respondent was aware that the claimant's condition had a disabling effect on her quite clearly from October 2019 when it was made plain to the manager Rumi, although Miss Jin Li was aware of the claimant having a condition prior to that time, its disabling effect was not known to the respondents before more explicit reference was made to Rumi.

Direct Discrimination s13 Equality Act 2010

106. In considering the complaint of direct disability discrimination the claimant compares herself to a hypothetical full time fashion graphic designer at the respondent business not materially different to the claimant who also lacks two years' continuous employment and whose performance was being reviewed as not of a satisfactory standard in the same respects as the claimant. We consider also whether the respondent dismissed the claimant or made statements amounting to harassment because of the claimant's disability.

107. It is telling that the claimant referred to concerns about her 'bones' and was concerned that in the performance meeting Dr Zhong Li called the claimant 'slow'. We have concluded on the facts as we find them to be that there was no material difference between the circumstances in which the respondents would have treated a hypothetical comparator to the way that the respondent treated the claimant. Our findings of fact referenced above confirmed that reference to 'bones' was only ever to reflect the claimant's own reference to her condition and as a result of why she was not well. The reference to "weakness" or "slowness" referred to during the performance management meeting referred to the shortcomings regarding the claimant's performance and to productivity and to delivery of her work in a timely fashion not to her health. The hypothetical comparator would find have been referred to in exactly the same terms.

108. In reference to performance we conclude that the claimant was not less favourably treated than her hypothetical comparator because of her disability. We have found that a hypothetical comparator whose performance was unsatisfactory approaching the time when she would acquire the right not to be unfairly dismissed would have been treated in the same pre-emptive and procedurally robust way by this employer. The reason why the claimant was treated as she was, was clearly identified to be because of her unsatisfactory performance in particular in regard to inefficient working practices, poor time management impacting on the

performance of critical tasks assigned to her and her un-professional behaviour. The respondent viewed the claimant's responses to the performance concerns which was considered unacceptable and that there was no realistic prospect that the claimant would attain the required level of performance expected for the business within a reasonable period of time.

109. The claimant asserts that the comments made to her at the performance management meeting were an act of direct discrimination the complaint is detailed at para 23 of her particulars of complaint [11] to be:

> *" Throughout the Claimant's employment Jin Hua Li would frequently call the Claimant "weak" because of her disability and tell the Claimant that she was worried about "her bones". At the performance management meeting on 29 May 2020, Zhong Li stated that the Claimant was "slow".*

110. In light of our findings of fact the nature meaning of the word said by the Mr and Mrs Li were reference to the claimants productivity and time management and did not have the purpose of discriminating against the claimant because of her conditions which were disabling. It has not been found that the claimant was treated less favourably because of her disability. The claimant's complaint that she was subject to the prohibited act of direct discrimination because of her disability does not succeed.

Something Arising from Disability s15 Equality Act 2010

111. The claimant asserts that she was subject to unlawful discrimination arising from her disability and the respondent's unfair treatment of her in using performance management, dismissing her and labelling her as weak and slow as identified in the grounds of complaint at paragraph 23 [11].

112. For the reasons that we have described above and in our findings of fact we conclude that the respondent's treatment of the claimant was objectively by reference to her performance. There has been no suggestion in the evidence produced to us that the claimant's productivity or lack thereof was related to her disability or arising from her disability. The claimant sought not to return to the office because she asserts she needed to shield via homeworking. It is clear from our findings of fact that the claimant preferred to work at home and was more comfortable working at home because of her mother's vulnerable status, not any clinically extremely vulnerable or vulnerable status of the claimant who had not wanted to attend to work and the attendant travel and not because of her need to shield personally. The claimant has expressed a need to get up and walk about frequently to manage her disability whilst at work and that was accepted. It was evidenced in text messages that when the claimant was in too great pain to travel to work, reasonable adjustments were made and she either worked at home or travelled late to the office when she had taken pain medication to take effect. The respondent and managers within the business were concerned about the claimant's well being but the claimant was not treated less favourably by reference to the claimant's disabling condition. The claimant had asserted a need to shield via homeworking and that was a matter arising from her disability. Our findings of fact are that there was no evidence before us that the claimant needed to shield because of her disability or arising from her disability. Furthermore there has been no evidence before us that the respondent treated the claimant less favourably in dismissing her or subjecting her to performance management because she took

cigarette breaks to '*get up to walk about frequently to manage her disability while working'* We conclude that the respondent did not treat the claimant unfavourably by performance managing her, dismissing her, labelling her 'weak' or 'slow' as a result of something arising from the claimant's disability.

113. The claimant's complaint that she was treated less favourably for something arising from her disability does not succeed.

Indirect Discrimination

114. Turning to the consideration of the complaints of indirect discrimination. The claimant identifies the provision criterion or practice (the "PCP") as being a requirement that she worked from the office rather than from her home in May 2020 and that the claimant was required to work at a speed that was satisfactory as assessed by Dr Zhong Li and Mrs Jin Hua Li as identified in the claimant's ground for complaint (paragraph 23).

115. Whilst the respondents did introduce a provision criteria or practice to the claimant as described, and applied such a practice to people with whom the claimant who did not share the claimant's characteristic, we conclude however that the PCP did not place the claimant at a disadvantage. The claimant's reluctance to attend the office was her perception that she was at risk of getting Covid. However, we have an absence of any medical evidence to support the claimant's statement. There is evidence before us that the claimant clearly stated that she was more 'comfortable' working from home. However she had not made a request to be allowed to work from home as a reasonable adjustment to accommodate her disability, rather her wish to avoid getting Covid and potential exposure to the virus and protecting her mother who was shielding.

116. In event the respondent's request that the claimant worked from the office was to improve communication and that was a proportion means of achieving a legitimate aim, of improving the business efficiency and the requirement was reasonably necessary for the business needs. We note however that it may be out with the Government's guidance expressing a preference that if people could work from home that they should do so.

Failure to make Reasonable Adjustments

117. We turn next to the claimant's reasonable adjustments complaint. We have found that the respondents were aware that the claimant's condition existed in terms of arthritis soon after her employment began following discussions with Mrs Jin Li. However Mrs Jin Li was not initially aware of the disabling effect of that condition as there was reference only to juvenile arthritis in the example provided to us by the claimant. However they were aware of the disabling aspects of the claimant's condition with effect from the discussions she had with Rumi in October 2019. For the reasons identified in relation to indirect discrimination there is no evidence before us that the claimant needed to work from home because of her condition. She said to the contrary and likewise the need to work at speed. The claimant's argument to her employer that she should not be required to attend the office for a poor performance management meeting was, she said, because the respondents were not acting in accordance with the government's then advice to work from home if possible. The respondent's business view was that they needed the claimant to attend the workplace as the job was not as effectively done remotely for business reasons and also to provide support on site to the claimant whose

performance standards were unsatisfactory. The claimant's disabling conditions did not cause the claimant to not be able to meet time deadlines.

118. This is a case where the claimant, like the general populous, preferred to work from home to minimise exposure to the risk of Covid not in relation to her disability. The advantage of not attending the workplace was not in relation to the claimant's disabling condition but to her perceived risk of exposure to Covid. The respondent's business interests sought that staff worked at the best advantage to the business with employees coming out of the lockdown and returning to work in the office. The respondent had implemented a Covid secure workplace to enable employees to return to a covid safe working environment when the business needs prioritised a return to office based working. The government advice at the time was to work from home if possible and, although that decision was taken by the respondents may not have been entirely consistent with the sentiment of the government guidance, the business decision was an objectively justified one and it was not a decision taken in relation to the claimant's disability or a failure to make reasonable adjustments to accommodate the claimant's disability. We note that even in the claimant's letter of 5 June (page 108) the claimant does not link her conditions to her ability to do the work which meant that the PCP to attend the office or complete tasks within time were causing the claimant to be at a disadvantage.

Harassment

119. Finally, we turn to the complaints that the claimant was subject to unlawful harassment related to her disability. The complaints related to the references to the claimant being weak, slow and to her bones. In our findings of fact we have identified that the claimant refers herself to her condition as being in relation to 'bad bones' and to 'trouble' with her 'bones' and it is evident that that was her shorthand description of the pain she experienced in relation to her arthritis and/or Fibromyalgia though not articulated the respondent as that condition. As the reference to 'bones' was the claimant's own self-description of her condition the respondent's use of that word was to reflect the claimant's own language. It would not reasonably be understood as a derogatory, harassing, degrading or intimidating language in the context in which it was used and the claimant has referred in the references to her being slow including references being made by Dr Zhong Li in the meeting.

120. It is evident that the references to slowness were made in reference to the claimant's work output and not the claimant's physical movement about the office. Such references ought not reasonably to be considered to be an act of harassment as defined by the Equality Act 2010.

121. The comments such as they were made were not made with the intention for subjecting the claimant to unlawful harassment. If the comments were made to the claimant were nonetheless perceived by her to have the effect of her feeling harassed because of her disability we must consider whether or not the claimant's perception was reasonable. It would not reasonably be understood as a derogatory, harassing, degrading or intimidating language in the context in which it was used and the claimant has referred in the references to her being slow including references being made by Dr Zhong Li in the meeting.

122. The claimant has referred to Mrs Jin Li's reference to her being 'weak'. We have heard Jin Li refer to the claimant's weakness and in context it may be

considered that such a tone of phrase is an offensive term if it were not simply referring to the weak standard of her performance of her tasks at work. In the circumstances had the claimant raised a complaint in respect of those comments by Jin Li of 'weakness' and had they been made shortly after they were made to her some time before the lockdown commenced on 21 March 2020, her claim may well have been considered to be in time and may have been one that could have succeeded. However the claimant has not provided any satisfactory explanation why such a complaint was not raised in a timely manner whilst she was in the respondent's employment and in the circumstances there was no basis upon which we consider it is just and equitable to extend time under the provisions of section 123 of the Equality Act 2010. The extension of time on a just and equitable basis is an exception rather than the rule in cases such as these.

123. We reflect that this is a case in which, had the claimant been employed by the respondent for more than two years, the respondent ought to have followed the ACAS code of practice and a more lengthy process of performance, management and improvement plan would have then had to have been adopted and the claimant's employment may have been extended for a short period to enable performance standards to be reviewed and improved. However we have no doubt that the reason for the termination of the claimant's employment by the respondent when it was, was a reflection of the respondent's dissatisfaction with the claimant's performance and her refusal of reluctance to accept unfavourable feedback. The claimant's conduct in not accepting feedback without emotional and sometimes angry response was considered by the respondents to be unprofessional and the respondent sought to terminate her employment before a less than ideal employee had acquired two years' employment protection. It is a sad fact that this employer like so very many others sought to terminate the employment of an employee who, though in some aspects was excelling, was not in others satisfactory and employment terminated before employment protection rights were established.

124. The unanimous decision of the Tribunal is that the claimant's complaint of unlawful discrimination because of the protected characteristic of her disability and in breach of sections 13, 15, 19, 20 and 21 and 26 of the Equality Act 2010 does not succeed and is dismissed. The Tribunal does not have jurisdiction to entertain the claims in respect of complaints for acts occurring on or before 7 May 2020.

125. The claimant's complaint that she has been subject to unlawful detriment in breach of section 48 of the Employment Rights Act 1996 do not succeed and are dismissed.

126. The claimant's complaint that she has been subject to an automatically unfair dismissal having made a health and safety complaint does not succeed and is dismissed.

Employment Judge Dean
4 April 2023