EMPLOYMENT TRIBUNALS

Claimant: Ms V. Britton

Respondent: Ministry of Justice (HMCTS)

Heard at: Bristol Employment Tribunal (via CVP)

On: 14th – 17th November 2023

Before: Employment Judge Lambert

Mrs C Monaghan

Mr E Beese

Representation

Claimant: Mr Todd, counsel

Respondent: Miss Williams, counsel

JUDGMENT

1 The Claimant's complaints of constructive unfair dismissal and disability discrimination are not well-founded and fail. The Claimant's case is dismissed.

REASONS

2 The Claimant, Ms Britton, presented a Claim Form to the Tribunal on 7th April 2023 complaining of disability discrimination and constructive unfair dismissal arising out of her resignation, with notice, on 23rd December 2022. This was recorded under case number 1401427/2023.

3 The Claimant asserted that she started work with the Respondent on 1st November 2022 but contended that her previous service with the Department of Work and Pensions ("**DWP**"), which commenced on 1st September 2017 and ended on 31st October 2022, was recognisable by the Respondent (both civil service employers).

This provided her with the requisite service to pursue a complaint of constructive unfair dismissal against the Respondent, in accordance with Section 108 of the Employment Rights Act 1996 ("the **ERA**").

4 The Claimant relied upon the impairments below which she asserted amounted to disabilities under the Equality Act 2010 ("the **EqA 2010**"). These were:

4.1 hearing loss in both ears;

4.2 mobility issues arising from Freiburg's disease, Scoliosis, Arthritis and Complex Regional Pain Syndrome;

4.3 PTSD and Depression/Anxiety; and

4.4 Asthma and Long Covid.

5 The discrimination claims pursued were:-

5.1 failure to make reasonable adjustments (breaches of sections 20 and 21 EqA 2010);

5.2 harassment (breach of section 26 EqA 2010); and

5.3 indirect discrimination (breach of section 19 EqA 2010).

6 The Respondent entered a Response dated 25th May 2023:-

6.1 accepting that the Claimant was an employee and recognising her previous service with DWP;

6.2 accepting that she was a "disabled person" for the purposes of the EqA 2010 for all of the impairments contended by the Claimant;

6.3 denying that it had discriminated against the Claimant at all;

6.4 contending that her resignation was simply that, a resignation. It says that there was no fundamental breach of contract entitling the Claimant to assert that her resignation was a dismissal in law; and

6.5 whilst it had knowledge of the Claimant's disabilities generally, it says that it did not have specific knowledge with regard to the substantial disadvantage that the Claimant may have been suffering in relation to some of the reasonable adjustments.

The Hearing

7 The hearing took place via CVP. I was supported on the panel by Mr Beese and Mrs Monaghan and we were unanimous in our findings.

8 Both parties were represented by counsel, Mr Todd for the Claimant and Miss Williams for the Respondent. The parties had agreed a single trial bundle consisting of 412 pages and this was referred to throughout the hearing.

9 The page numbers contained within this judgment are references to the pages in the trial bundle. We read the documents referred to within the statements and which we were directed to in cross examination of the witnesses. Any text appearing in [brackets] has been added by the Tribunal panel to assist the reader.

10 The Claimant gave evidence herself and supplied a witness statement (C1). The Respondent called 4 witnesses: Mrs Zoe Evison, Criminal Fines Collection and Enforcement Team Leader (R1); Mrs Denise Bucknall, Enforcement Delivery Manager (R2); Mr Matt Plaisted, Enforcement Team Leader (R3) and Mr Stephen Lee, Head of Operations (South) (R4).

The Issues

11 The issues were agreed between the parties and were appended to Case Management Orders made at a Preliminary Hearing before EJ Livesey on 5th July 2023. Those issues were set out at pages 51 – 54 of the trial bundle and are recorded below. It was agreed at the outset of the hearing that these were the Tribunal was being asked to determine. We have added the references **RA[number]** for the reasonable adjustment allegations and **H[number]** for the harassment allegations, for ease of reference.

12 Failure to make reasonable adjustments

12.1 Was the Claimant put at a substantial disadvantage as a result of the following provisions, criterions or practices ("**PCP**");

12.1.1 staff members have to take annual leave or use flexi time to attend medical appointments relating to disabilities ("**RA1**").

12.1.2 staff members are not allowed to have their mobile phones on their desks/visible or use their mobile phones during working hours ("**RA2**").

12.1.3 staff members are not allowed to take their mobile phones to the bathroom with them ("**RA3**").

12.1.4 car parking spaces are not allocated due to accessibility/disabilities and staff cannot park in the public car park ("**RA4**").

12.1.5 there is no restriction on language used in the office to give instructions ("**RA5**").

12.2 Did the Respondent know or ought reasonably to know that the Claimant was likely to be placed at a substantial disadvantage as a consequence of the PCPs in [paragraph 12.1] above because of her disability? The Claimant alleges that she was put at the following disadvantages:

12.2.1 the Claimant needed to attend medical appointments due to her disabilities (long covid and musculoskeletal conditions) and was not able to take disability leave for these resulting in her being required to take annual leave, this caused the Claimant stress and anxiety (until 2 December 2022).

12.2.2 the Claimant was not able to adjust her hearing aids when she needed to, this resulted in her having headaches and facial/eye twitching making her unwell and was not being able to hear things in the office at certain times (until 18 November 2022).

12.2.3 the Claimant needed to be able to take her mobile phone with her to the toilet due to her PTSD and self-harm safety plan that was in place through her GP. Not being able to do this aggravated her PTSD symptoms contributing to her self-harming on 23 November 2022 (until 18 November 2022). The Claimant also needed her mobile phone with her as it had her steroid emergency card in it which contained the critical information required in an emergency and not being able to carry this on her caused her stress and anxiety about what would happen in an emergency.

12.2.4 The Claimant was allocated a parking space that was the second furthest away, this aggravated her mobility issue, Freiburg's Disease, Scoliosis, arthritis of the cervical spine, Complex Regional Pain Syndrome and long covid-19 symptoms (until 8 December 2022).

12.2.5 Triggers words [see those set out below for the harassment allegations] were used in verbal and written communication, triggering the Claimant's PTSD and resulting in a deterioration in her mental health and contributing to her self-harming on 23 November 2022 (during the Claimant's employment).

12.3 Did the Respondent fail to take reasonable steps to avoid the disadvantage identified above? The Claimant alleges that the following adjustments could have been made:

12.3.1 Allow the Claimant to take disability leave to attend disability related medical appointments.

12.3.2 Allow the Claimant to use her mobile phone at work to adjust her hearing aids.

12.3.3 Allow the Claimant a parking space near the entrance of the office or allow her to park in the public car park. Allocate the disabled parking spaces to those with disabilities.

12.3.4 Refrain from using trigger words.

12.4 If the Respondent did not take reasonable steps to avoid the substantial disadvantage identified in [paragraph 12.3 above], was any such failure unreasonable in all the circumstances?

13 Harassment

13.1 Did the Respondent engage in the following unwanted conduct:

13.1.1 Matt Plaisted accused her of making up reasonable adjustments and lying on 23 November 2022 ("**H1**").

13.1.2 Zoe Evison using the following triggers words:

13.1.2.1 On 11 November 2022 via Microsoft Teams "*you must".* ("**H2**").

13.1.2.2 On 23 November 2022 via email *"should I not… I will assume"* ("**H3**").

13.1.2.3 On 23 November 2022 via email *"needs to be given…should have been"* ("**H4**").

13.1.2.4 On 23 November 2022 via email *"I asked that you…I also asked that you."* ("**H5**").

13.1.2.5 On 23 November 2022 via Microsoft Teams *"these will need to be"* ("**H6**").

13.2 Did the above conduct relate to the Claimant's disability?

13.3 Did the matters identified in [paragraph 13.1 above] amount to unwanted conduct? Did they have the purpose or effect of creating an intimidating, hostile, degrading, humiliating and offensive environment for the Claimant?

14 Indirect Discrimination

14.1 Has the Respondent applied to the Claimant a PCP namely that staff members are not able to use their mobile phones or carry their phones on them during working hours?

14.2 Does the Respondent apply the PCP above to persons who do not have the Claimant's disability?

14.3 Does the PCP put those with the Claimant's disability at a particular disadvantage when compared to other persons?

14.4 What is the nature of the disadvantage contended for? The Claimant asserts that the particular disadvantages suffered were:

14.4.1 She was not able to adjust her hearing aids when she needed to, this resulted in her having headaches and facial/eye twitching making her unwell and was not being able to hear things in the office at certain times.

14.4.2 Not being able to have her steroid emergency card on her caused increased anxiety and fear of something happening.

14.4.3 She was also not able to carry her phone on her and knowing she could not action her care plan aggravated her PTSD symptoms and made feel vulnerable and exposed.

14.5 Can the Respondent show that the PCP is a proportionate means of achieving a legitimate aim?

15 Constructive Dismissal

15.1 Did the Respondent's alleged failure to make reasonable adjustments and their approach to this and their conduct, the continued use of trigger words, the nature of the meeting on 23 November 2022 and the environment that the Claimant was having to work in either individually or cumulatively, constitute a breach by the Respondent of the implied term of trust and confidence of the Claimant's contract of employment.

15.2 If any such specific breach occurred and constituted a breach by the Respondent of the implied term of trust and confidence of the Claimant's contract of employment, then (by an objective standard), was any such breach sufficiently serious (i.e. repudiatory to have justified the Claimant

resigning? Further and in the alternative, was there a breach which was the last in a series of events (the "last straw") which amounted to such a repudiatory breach entitling the Claimant to resign? The Claimant asserts that the last straw was the meeting on 23 November 2022.

15.3 If a repudiatory breach did occur, then did the Claimant resign in response to that breach rather than for some other unconnected reason?

15.4 If a repudiatory breach did occur, then did the Claimant wait so long before resigning that she affirmed the contract?

Relevant Law

16 The Tribunal determined, after hearing submissions from both parties' representatives, that the law relevant to the issues to be determined was:

Failure To Make Reasonable Adjustments

17 The relevant extracts of Sections 20, 21 and Schedule 8, Part III of the EqA 2010 state:

> ***20 Duty to make adjustments***
> *(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.*
>
> *(2) The duty comprises the following […] 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….*
>
> ***21 Failure to comply with duty***
>
> *(1) A failure to comply with the first …requirement is a failure to comply with a duty to make reasonable adjustments.*
>
> *(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.*
>
> ***Schedule 8, Part 3***

Limitations on the duty

Lack of knowledge of disability, etc.

20(1) A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know—

(a) …;

(b) [in any case referred to in Part 2 of this Schedule], that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, … requirement.

Harassment

26 Harassment

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

(a) A engages in unwanted conduct related to [disability], 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 conduct 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.

Constructive Dismissal

19 The Tribunal will need to decide (in accordance with the authorities of Western Excavating (ECC) Ltd v Sharp [1978] ICR 221 and Malik v BCCI SA (in liquidation) IRLR 462) whether the Respondent committed a repudiatory breach of the implied term of trust and confidence. To answer this question, the Tribunal will need to decide whether:

19.1 the Respondent behaved in a way that was calculated or likely to destroy or seriously damage the trust and confidence between the Claimant and the Respondent; and

19.2 whether the Respondent had reasonable and proper cause for doing so.

19.3 Did the Claimant resign because of the Respondent's breach(es) of contract?

19.4 Did the Claimant delay before resigning and as a consequence affirm the contract?

Indirect Discrimination Claim

20 Shortly after the commencement of the hearing, the Respondent's counsel raised a point as to whether the Claimant intended to pursue the claim for indirect discrimination. Miss Williams asserted that there was no evidence within the bundle, nor within the Claimant's witness statement, that dealt with group disadvantage. This is an integral element of a claim for indirect discrimination. She suggested that in cases where Claimants raised claims of reasonable adjustments, it was often unnecessary to continue with a similar, but possibly more difficult to establish, claim for indirect discrimination.

21 The Tribunal panel invited the Claimant's counsel to take instructions on this point. Mr Todd did so and his instructions were to continue with the claim. However, during closing submissions, Claimant's counsel accepted that there was no evidence placed before the Tribunal that demonstrated group disadvantage. Therefore, on the Claimant's own case, she failed to establish the necessary legal ingredients to succeed on a claim for indirect discrimination. In any event, on the basis of the findings we make below in relation to the PCPs and reasonable adjustments, the claim would fail because the Claimant was not placed at the disadvantages she claimed. This claim is therefore dismissed.

Findings of Fact and conclusions

22 We make the following findings of fact based on the balance of probabilities. Several of the complaints raised arise out of the same events. Therefore, we considered it easier to set out the facts chronologically but have provided our conclusions at suitable intervals within this section.

23 The Claimant was employed by the Respondent as an Administrative Officer from 1st November 2022 until 23rd December 2022. The Claimant had earlier recognisable service from her employment with the DWP (both Civil Service employers) from 1st September 2017.

Workplace Adjustments Passport

24 The Civil Service operates a system where individuals with disabilities are encouraged to discuss barriers they may encounter within their workplace with their managers and to agree adjustments that may assist them to alleviate or entirely remove the impact of such barriers. These discussions and agreements are recorded in a document referred to as a Workplace Adjustments Passport ("**WAP**"). The WAP document contains various sections and has boxes for sign off by the individual and the line manager.

25 The agreed evidence before us was that WAPs would be kept under review but would travel with the individual, so that if the individual moved to different departments, or different employers within the Civil Service, the individual would take their WAPs with them to provide to their new managers. The intention was that adjustments could be put in place more quickly and effectively. The onus was on the individual, in this case the Claimant, to make her managers aware. This was confirmed by the Claimant when she accepted that if she had a new line manager, she would bring the WAP to their attention.

26 The Claimant had drafted a WAP when she was employed by the DWP ("the **DWP WAP**") (p.149). It was a feature of this case that the Claimant did not supply a completed DWP WAP, which had all of the relevant information boxes completed, and importantly was counter signed by her line manager at DWP. This is referred to in paragraph 114 below.

Interview

27 The Claimant was interviewed on 15 August 2022 for an Administrative Officer role for the Respondent. Mrs Evison, the Respondent's Criminal Fines Collection and Enforcement Team Leader, who became the Claimant's line manager, chaired the interview panel. The Claimant completed the application form in advance of the interview and indicated in the appropriate section that she had disabilities.

28 The Respondent has a practice of not sharing all of the disability information provided by candidates on their application forms to the interview panel, no doubt to ensure that the panel remain as objective as possible when assessing candidates for interview. The evidence before us was that Mrs Evison was aware that the Claimant had

indicated that she considered herself disabled (p.78) but had no specific detail of what those disabilities were, because the data the Claimant had provided in relation to her disabilities was not contained on the document supplied by the Respondent to Mrs Evison. It was common ground that the Claimant was not asked about her disabilities at interview, as there was no need for the panel to do so. The Claimant was successful at interview and was offered and accepted the position, with an agreed start date of 1st November 2022.

29 In advance of commencing her employment with the Respondent, the Claimant emailed Mrs Evison on 11th October 2022 and asked what she needed to bring with her on her first day of employment (p.115). Mrs Evison responded by email on 13th October 2022 and confirmed that the Claimant could park near reception and Mrs Evison would sort out a parking space and access to the secure car park for the Claimant, for day 2 (p.114). The Claimant responded to this email on 25th October 2022 with some information requested by Mrs Evison. The Tribunal considered this exchange was noteworthy because there was communication between the Claimant and Mrs Evison prior to the Claimant commencing employment but there was no mention by the Claimant of any of her disabilities, nor of any adjustments she might require, nor did she supply a copy of the DWP WAP. At this point, the only indication Mrs Evison had that the Claimant had disabilities was the interview document which confirmed that the Claimant would like to be considered as a disabled person (p.78).

Employment

30 The Claimant commenced employment on 1st November 2022. Mrs Evison met her at reception and they completed a walkaround of the office. During this walkaround, the Claimant says that she told Mrs Evison that she had reduced hearing and used hearing aids, which could be adjusted via an app on her mobile phone [relevant for **RA2** and **RA3** from the list of issues]. The Claimant also suggested that during this discussion she informed Mrs Evison of all of her disabilities, including PTSD and her requirement for certain trigger words not to be used in her presence, because this may trigger a reaction due to her PTSD [relevant to **RA5** from the list of issues].

31 Mrs Evison agreed that she met the Claimant at reception but says that prior to meeting the Claimant, the security officer on reception mentioned the Claimant's name and indicated that they thought the Claimant had hearing issues. The security officer knew this because they had previously worked at the same DWP location as the Claimant. Mrs Evison noticed that the Claimant was wearing hearing aids and, whilst

showing the Claimant around the office, asked the Claimant whether she needed any adjustments. Mrs Evison says that the Claimant did not tell her about needing to use her phone to control her hearing aids or raise any matters relating to reasonable adjustments with her on the first day.

Medical Leave Adjustment [**RA1**]

32 On the first day of employment, the Claimant made a request for significant annual leave, as well as requesting leave to attend a short Zoom appointment on 22nd November 2022 with individuals from the English National Opera about breathing lessons ("the **ENO Request**") (p.126-127). She simply forwarded on an email she had received from the English National Opera to Mrs Evison (p.126). Mrs Evison says that she was not aware that the ENO Request was to assist the Claimant's long covid at this time. She informed the Claimant that this would need to be taken as flexi leave and the time made up. This latter point is relevant to the alleged failure of the Respondent to make reasonable adjustments by allowing the Claimant to take time off to attend medical appointments [**RA1** in the list of issues].

33 The Claimant accepted in cross examination that her email to Mrs Evison did not indicate that this request was part of a proposed programme of treatment for her. For this reason, we accept Mrs Evison's evidence that she was not aware, at this point in time, that the ENO Request was linked to the Claimant's disability.

34 On 7th November 2022, during a discussion with Mrs Evison via Teams, the Claimant requested 5 minutes to complete a survey related to the ENO Request. The Teams entries appeared in the bundle (p.369) and are set out below:

> ***"[07/11/2022 15:11] Britton, Vicki:***
> *Hi, is it Ok to complete a Survey that I need to do for the Breathe programme for my Long Covid ENO Programme as due in today? Currently working through Common Platform, should only take 5 minutes.*
>
> ***[07/11/2022 15:25] Evison, Zoe***
> *Yes if only 5 mins.*
>
> ***[07/11/2022 16:27] Britton, Vicki***
> *… I have a meeting scheduled on the 22nd for 20 minutes on Zoom/Teams as a 121 that is in the email I sent you*

35 This entry was part of a long chain of communication between the Claimant and Mrs Evison over the duration of her employment with the Respondent. Looking at the first two entries, it is clear that Mrs Evison agrees to the Claimant taking time during her working hours to complete the survey. Pausing there: the Claimant's case is that she was required to take annual leave or flexi-leave for all of the appointments linked to the ENO Request. The evidence before the Tribunal is that in relation to the survey linked to the ENO Request on 7th November 2022, the Claimant was not required to take such. Therefore, in respect of this request on 7th November 2022, the Claimant has failed to establish her claim.

36 In any event, the Claimant says that the actual wording of the Teams entry set out above was sufficient to put Mrs Evison on notice that this was linked to her disability because the entry refers to her "… *Long Covid ENO Programme"*. Mrs Evison's evidence was that she did not notice that wording, or if she did, she did not appreciate its significance. We considered that this reference alone in a Teams exchange was not sufficient to put Mrs Evison on notice that the ENO Request was part of a medical programme to assist in her recovery from long covid. It seems to us that it is placing too high a duty upon Mrs Evison to forensically review each and every interaction with the Claimant to consider whether the Claimant is putting her on notice of a disadvantage linked to her disability. We consider that the Respondent could not reasonably be expected to know this solely from the interaction above.

37 The Claimant's case is that she requested time off to attend appointments linked to the ENO Request, via Teams on 23 November 2022 (p.373). These state:

> ***"[23/11/2022 08:52] Britton, Vicki***
> *Do you have the dates for the 6 week BREATHE ENO NHS course I am due to start next week?*
>
> ***[23/11/2022 09:58] Evison, Zoe***
> *Yes thank you, all are on the calendar. Denise has said these will need to be taken as either lunch/flexi/leave, we will provide flexi to and from home so can be in comfort of home for the sessions. Please advise which option you would like me to use.*
>
> ***[23/11/2022 10:08] Britton, Vicki***
> *I will have a look at the policy tonight as these are medical appointment through the NHS so should be allowed as part of the normal process of medical*

appointments and not taken as leave/flexi etc. My consultant has said that they are happy to write you a letter if there are any issues, so I will request this at lunch time and hopefully it will get completed before next week's appt.- like 1

38 Mrs Evison said that until the last message stated above, she was not aware that the ENO Request was a medical appointment. Once she was aware, she spoke with Mrs Bucknall and it was agreed that all of these appointments could be taken as disability leave, so that it could happen within working time and the Claimant would not be required to take time off out of her own leave. Mrs Evison notified the Claimant via Teams on 2nd December 2022 that she could have disability leave:

> *"**[02/12/2022 10:30] Britton, Vicki***
> *Hi, just checking that it is all recorded that I will be in late Monday morning as I am at my MSK appointment in Clevedon. I am hoping to be back by 10:30 am as appt is early, will update you by text when I leave the appt*
>
> ***[02/12/2022 11:12] Evison, Zoe***
> *Yes all in diary no problem at all, I also spoke to Denise as promised and they have now agreed to provide time for the breathe appointments. However, we would ask that from next week you amend your lunch on the appointment days to 1-2 to enable you to work in the office in the morning have lunch then appointment. I am happy for you to work from home after the breathe if required please advise."*
>
> [Underlining is the Tribunal's emphasis]

39 The Respondent's case is that it permitted the Claimant to have leave on 7th November 2022 and there was no discussion about the short appointment on 22nd November 2022. Therefore, it did not refuse the Claimant's request. It says that the Claimant's application was related to 6 future appointments from 2nd December 2022.

Conclusion [**RA1**]

40 Looking at all of the evidence as presented to the panel, we have concluded that the Respondent's case is correct. As discussed in paragraph 35 above, the evidence demonstrated that the Claimant was permitted leave, within working hours, to complete the survey on 7th November 2022. Therefore, she was not placed at any disadvantage.

41 Similarly, there was no evidence before us that the Claimant was deducted time off or was required to make time up for her attendance at the short appointment on 22nd November 2022. As such, there was no disadvantage to the Claimant.

42 The Claimant's case, listed as **RA1** above, is that staff members have to take annual leave or use flexi time to attend medical appointments relating to disabilities.

43 The agreed evidence before us was that the Respondent notified the Claimant on 2nd December 2022 that disability leave would be permitted for all of the appointments related to the ENO Request. She was not required to take annual leave or flexi leave for the appointments on 7th and 22nd November 2022. Therefore, on the evidence before us, we concluded that the Claimant has not made out the factual basis that the Respondent required the Claimant to take annual leave or use flexi time to attend these medical appointments. The opposite is true: the evidence shows that the Respondent allowed the Claimant to attend medical appointments without her having to use annual leave or flexi time.

44 This conclusion means that the Claimant's reasonable adjustment claim, listed as **RA1**, fails.

MoJ WAP

45 Mrs Evison became aware of the Claimant's requirement for adjustments on the second day of the Claimant's employment, when she received an email from the Claimant as set out below.

46 The Claimant's evidence was that she was requested by Mrs Evison to draft an MoJ WAP. She did so using information from the earlier DWP WAP. From the evidence (p.88), the Claimant prepared this document although it was not completed fully. The Claimant emailed this document ("the **Initial MoJ WAP**") to Mrs Evison on 2nd November 2022 (p.134). Within this email, the Claimant stated:

> "*We can discuss, as some of these are still active on medical record but haven't had any issue recently. At DWP I just had a special chair from OH and a noise cancelling head set for making calls."*

47 Within the Initial MoJ WAP, under the heading: *"Details of your disability or workplace barriers that you currently experience"* the Claimant recorded most of her disabilities but did not include any reference to her PTSD or reduced hearing. Under the heading

"Please provide a description of your disability or any workplace barriers that you currently experience that may impact your wellbeing or work…" the Claimant did not include any mention of the requirement to use her mobile phone to control her hearing aids [**RA2** and **RA3**], nor was there any reference to work colleagues refraining from using trigger words [relevant to **RA5**]. Under the heading *"Communication"* the Claimant recorded that she has moderate deafness and wears hearing aids. However, she did not provide any further details, such as she uses an app on her mobile phone to control her hearing aids.

48 Mrs Evison's evidence was that looking at the contents of the email, she felt that the only adjustments required for the Claimant was the provision of a chair and a noise cancelling headset. Mrs Evison responded the same day, via email, confirming that she had arranged for a DSE assessment to be completed over the next few days and that they should:

> *"… get together and work out the best way forward to ensure you [the Claimant] are suitably supported etc."*

49 Further to this email, Angela Clarke (the person carrying out the DSE assessment) sent an email to the Claimant on 4th November 2022 requesting that the Claimant complete her sections of a DSE form (p.135). The Claimant responded attaching an edited document just over an hour later, at 10:33am. The DSE assessment was carried out on 7th November 2022 and the report was included within the bundle. It recorded that the Claimant had multiple health conditions and noted that the standard office chair did not provide adequate support and recommended a referral to Occupational Health (p.140). It also stated that the Claimant required a better head set with a longer cable (p.145). Mrs Evison made an Occupational Health referral on 8th November 2022.

50 On 10th November 2022 at 12:08, Mrs Evison emailed the Claimant and stated that she had:

> *"… begun to look into you[r] WAP and wondered if you have the full copy available from DWP as it should contain any workplace adjustments put in place including dates and signatures etc. from your previous line managers etc. as the one you sent seems to only have your input included on it."*

51 Later that day at 17:01, the Claimant emailed Mrs Evison attaching the DWP WAP (p.149) a Wellness Recovery Action Plan ("**WRAP**") and an Occupational Health report, which were drafted whilst she worked at DWP.

Trigger Words (H2)

52 One of the Claimant's allegations of harassment [listed as **H2**] was that Mrs Evison used trigger words *"you must"* in a Teams message on 11th November 2022.

53 The Teams message in question was in a chain of messages relating to the Claimant asking to complete a flexible working application (p.370).

> ***[10/11/2022 13:32] Evison, Zoe***
>
> *Please stop and have a break*
>
> ***[10/11/2022 14:08] Evison, Zoe***
>
> *You must have a break email yourself the policy and look at it of an evening if necessary, but I'm concerned re your work life balance.*
>
> *[Tribunal's emphasis]*

54 In cross examination, the Claimant accepted that the message was sent on 10th November 2022, not 11th November 2022 as pleaded in the list of issues [**H2**].

55 The Claimant accepted that the first written reference to the trigger words adjustment [**RA5**] was contained within the DWP WAP and WRAP. This document stated:

> *"PTSD – Raised male/female colleagues voices or demanding verbs being used. MUST, WILL, GOT TO when being told to do tasks. Need to be asked, CAN YOU, WOULD YOU etc."*

56 She also accepted that these documents were only provided to Mrs Evison in the Claimant's email at 17:01 on 10th November 2022. The Claimant conceded that the earliest time that Mrs Evison was put on notice that she should refrain from using trigger words, in writing, was through this email which was sent after the Teams message. Therefore, Mrs Evison would have no knowledge of the requirement to refrain from using trigger words when she sent the Teams message.

57 However, the Claimant's case in full was that she provided information orally about all of her disabilities and the adjustments required to Mrs Evison on 1st November 2022. Therefore, she says, Mrs Evison had full knowledge of the need to refrain from using

trigger words for the purposes of harassment allegation [**H2**] and of the substantial disadvantage the Claimant would be placed at from day one.

58 The Respondent's case was that the earliest Mrs Evison knew of the trigger words adjustment [**RA5**] was not until she read the Claimant's email attaching the DWP WAP and WRAP dated 10th November 2022, which was received after working hours. Mrs Evison was not told orally on 1st November 2022.

Conclusion [**H2**]

59 On the Claimant's own evidence, the earliest that Mrs Evison could have been aware, in writing, of the requirement not to use the triggers words set out above was when she reviewed the DWP WAP sent to her by the Claimant at 17:01 on 10th November 2022. She relies upon her assertion that she told Mrs Evison about all of her disabilities and the adjustments required on 1st November 2022 during the office familiarisation meeting. Mrs Evison denies this. For the reasons we have set out below at paragraph 71, we prefer Mrs Evison's evidence on this point. We concluded that Mrs Evison had no knowledge of the Claimant's PTSD and the substantial disadvantage using these words could cause to the Claimant at this point in time. In accordance with Schedule 8, Part III, paragraph 20(1) of the EqA 2010 (set out above), we found that the Respondent was not under a duty to make adjustments at this time. In any event, for the reasons set out in paragraph 109 below, we do not consider that it would be reasonable to conclude that these words would have the effect of harassing the Claimant.

60 The Claimant's case under **H2** fails.

Use of Mobile Phone Adjustment [RA2 and RA3]

61 Mrs Evison sent an email to the Claimant on 11th November 2022 at 11:48 (p.152) which stated:

> *"I hope the chair is making things easier?*
>
> *Thank you so much for providing this OH Information etc., it gives me a much better insight into how things are and what I can do to support you within QET etc.*

> *I will set a meeting for next week but on first look the main thing seems to be positive, clear communications so keep me updated some staff have safe or alert words that let me know if they are under stress or finding things difficult so that we can disappear for a little walk around car park or for fresh air etc. happy to put this in place if it will help you, have a little think over the weekend and let me know of anything more I can do as obviously want you to feel as comfortable as possible."*

62 In cross examination, the Claimant suggested that on or around 8th or 9th November 2022, she complained to Mrs Evison that she had been told by Alex Dunton, an employee of the Respondent who was providing training on use of the Respondent's systems to the Claimant, to put her mobile phone away because it was a breach of an office etiquette code (p.397) ("the **Etiquette Code**"). This was a reference to a document that Mrs Evison described in evidence, and which was not contested, as being put together and agreed by the employees to provide a suitable working environment for them, and which was subsequently adopted by the Respondent. Paragraph 6 of the Etiquette Code (which is the basis for the PCPs asserted by the Claimant for **RA2** and **RA3**), states:

> *"**Phones** – Office phones are for work purposes only; however, if you need to make or receive private calls you should speak with your manager. You are permitted to give your desk direct dial to your next of kin or childcare provider for emergency use only but be aware that on desk moves you are not to move telephones and therefore your direct dial number will change.*
>
> *Mobile phones are not to be used whilst working unless it is a specific work mobile e.g., DSO or in agreement of management. All personal phones must be on silent and not kept on the desk or your person when working. If you need to have access to your phone, please ask your manager in advance and should you need to use or answer your mobile for an emergency this should be done outside of the office. No mobile phones should be not [sic] be taken into any secure rooms/offices without prior permission or bathrooms during working times."*
>
> [The underlining in the above paragraph is the Tribunal Panel's emphasis]

63 The Claimant objected to this because she required access to an app on her phone to control her hearing aids and she claimed that denying access was a breach of the control of hearing aid adjustment [**RA2** and **RA3**]. She said that Mrs Evison also instructed her, on several occasions commencing on 1st November 2022, not to use her mobile phone whilst sitting at her desk, despite being aware that the Claimant

required this to control her hearing aids. Whilst giving evidence, the Claimant was taken to her statement and asked why such important points were not included within her statement? The Claimant did not provide a satisfactory response to this question. This matter was also relevant to the Claimant's first allegation of harassment that on 10th November 2022 [**H2**].

64 For completeness, by 11th November 2022, the Respondent had made arrangements with DWP for the collection of the specialist chair and noise cancelling headset used by the Claimant when she worked for it. These were collected by the Claimant. These issues did not form part of the actual claims raised by the Claimant in these proceedings.

Events on 14th November 2022

65 On 14th November 2022, the Claimant says that Mrs Evison approached her whilst she was sitting at her desk, where she had placed her mobile phone on her desk. She says that Mrs Evison told her to put her mobile phone in her bag or in her drawer as it could not remain on the desk because it was a breach of the Etiquette Code. The Claimant says that by doing so, Mrs Evison triggered an episode relating to her PTSD, which was a breach of the trigger words adjustment [**RA5**] and a breach the control of hearing aids adjustment [**RA2** and **RA3**] because Mrs Evison knew that by issuing this instruction, the Claimant would not be able to control her hearing aids.

66 Mrs Evison denies this version of events. She says that she approached the Claimant, who was sitting at her desk, to enquire as to how the training was going. She noticed that the Claimant had her mobile phone on her desk and asked her if she would mind putting it away in her bag or in her drawer. She did so because she wanted employees to comply with the Etiquette Code and, she says, she asked this politely.

67 Mrs Evison said that a short while later, on the same day, the Claimant approached her and explained that she had to keep her mobile phone near because it contained her steroid card. In the event of an incident, it would be important for first aiders to know where they could find it. Mrs Evison responded to the Claimant that other employees have similar cards and as long as the Respondent had information as to where the card was located, they would be able to pass this on to the emergency services if the need ever arose. It was after this comment that the Claimant then stated that she objected to the instruction given to her by Mrs Evison because Mrs Evison used the trigger words in breach of **RA5**.

68 Mrs Evison referred to an email she sent to the Claimant, on 15th November 2022, at 14:48. This stated:

> *"I have read through the [DWP] WAP now and as I recollect, I am sure I asked you if you could simply pop your phone into your drawer or bag yesterday rather than have it on the desk, I didn't use any of the language quoted, and explained that it's the office etiquette that asks we all do this, unless we need it for an emergency of course and then we just need to speak to a team leader in advance. You read the etiquette on the Tuesday and had not mentioned anything to anyone up until after I had approached you yesterday for it not to be on the desk. But as said yesterday if I made you uncomfortable that was never my intention and I apologise.*

69 This section of the email accords entirely with Mrs Evison's oral evidence on this matter. We were not directed to any response to this email within the bundle from the Claimant.

70 The same email continues:

> *I am still awaiting some responses my end about our queries, especially in regard to you everything that you state was declared your end as part of the recruitment process and you believed that all that information was passed on to me as your new line manager. As you know, from our chat yesterday, I was given absolutely no previous information at all in regards to anything about you including your disabilities, workplace passport, dse requirements, other employment (you undertake both as salaried and through self-employment.), or specific time off requirements to allow for this work. I literally knew nothing at all about you accept name, address and contact details and last employer. Unfortunately none of these things were mentioned by yourself over the 6 weeks before you started (when we exchanged both calls and emails) or when you very first started last week. However, hindsight is a great thing and my priority is to move forward ensuring we are both on the same page, you are supported as much as reasonably possible and also business needs are met."*

71 The panel agreed that this recorded Mrs Evison's desire to understand more about the Claimant's issues in order to support her. Having heard the evidence on these matters, we concluded that we preferred the evidence of Mrs Evison on this point and indeed on all points where there was a conflict of evidence between Mrs Evison and the Claimant. The reasons for this are:

71.1 The Claimant asserted that she informed Mrs Evison of all of her disabilities and the adjustments required for her on 1st November 2022. She also asserted that she was told several times by Mr Alex Dunton and Mrs Evison to put her phone away when she was undertaking training. However, the Claimant had several opportunities to raise the matter with Mrs Evison prior to 14th November 2022 if her version of events was to be believed. She sent an email to Mrs Evison on 2nd November 2022 (p.134) referred to above. This attached the Initial Draft MoJ WAP and refers specifically to two reasonable adjustments, the specialist chair and the noise cancelling headset. If, as the Claimant contends, she had been instructed at this point to put her mobile phone away, thus preventing her from controlling her hearing aids [**RA2** and **RA3**], we consider this would have been the ideal time to raise it as she was discussing what adjustments she required. However, it was not raised in this email. We consider it more likely than not that this matter was not an issue for the Claimant at this point.

71.2 A DSE assessment was carried out for the Claimant on 7th November 2022. Prior to this, the Claimant was requested to complete a DSE form in advance (page 135) and a DSE report was completed (page 140). Nowhere within these documents was there reference to the Claimant being instructed to put her phone away. Bearing in mind the nature of these documents was to consider adjustments for the Claimant and the DSE report refers to the Claimant's moderate hearing and the need for a *"better headset with a longer cable"* we find it inconceivable that the Claimant would not have mentioned to the DSE assessor that she could not access her mobile phone because she had been instructed to put it away.

71.3 On 10th November 2022, the Claimant sent an email to Mrs Evison at 17:01 attaching the DWP WAP. This document dealt with reasonable adjustments. The Claimant did not complain about the instructions she had been issued to place her mobile phone in her bag or in her drawer. In the light of the importance of this issue to the Claimant, we consider that if her evidence was accurate, then she would have raised it within this email. She did not and we consider this to be a significant omission. If her claim was accurate, one would have expected it to have been dealt with in an email of the same day that was dealing with the same subject matter.

71.4 In addition, we gained the impression from Mrs Evison's evidence that she was very keen on ensuring proper processes were completed and was trying her best to support the Claimant, as evidenced from the second section of her Teams message on 15th November 2022 to the Claimant (set out in para 70 of this judgment). She referred to having OCD about this. She is also someone who has disabilities herself and is a mental health ally. We considered that she was someone who would be very supportive of an individual with disabilities. This flies in the face of the Claimant's evidence because if that is to be believed, then Mrs Evison, knowing that the Claimant controlled her hearing aids via an app on her mobile phone, instructed the Claimant not to have immediate access to those controls. We did not consider this to be credible.

71.5 The panel felt that at times during her evidence that the Claimant was evasive or failed to answer the questions put to her. She engaged in providing statements about other matters which she felt were favourable to her case when faced with difficult questions where the answers did not support her case. As an example of this, the Claimant raised the issue of a discussion with Mrs Evison about the trigger words adjustment [**RA5**] on 8th or 9th November 2022 for the first time in response to a question in cross examination. We felt it was significant that such an important conversation supporting the Claimant's case was not referred to in her statement. She included details of a discussion with Mrs Evison on 10th November 2022 dealing with unrelated matters and if, as the Claimant was suggesting, she had raised it with Mrs Evison, we could see no reason why this discussion would also not have been included within her statement.

71.6 Mrs Evison had drafted notes of events which were within the bundle (p.197). Her evidence, which was not contested, was that she is an avid note taker and records matters either contemporaneously, or soon afterwards. These notes were entirely consistent with her evidence and statement. There was an overall consistency with Mrs Evison's evidence.

71.7 In contrast, the Claimant's evidence seemed to change and important pieces of evidence were not included within her statement. This cast doubt within the Tribunal panel's minds about the Claimant's ability to recollect matters accurately. For all of these reasons, we considered that the Claimant's

evidence was unreliable. Where there was a conflict between the evidence of the Claimant, Mrs Evison and, as discussed below, Mrs Bucknall, we preferred the evidence of Mrs Evison and Mrs Bucknall.

Conclusion [**RA2** and **RA3**]

72 We accept, as set out in the Etiquette Code, that the Respondent had a PCP requiring employees to place their phones in their bag or in a drawer, during working hours. This was applied to the Claimant via a request by Mrs Evison on 14th November 2022 for the Claimant to put her mobile phone in her bag.

73 By preferring Mrs Evison's evidence to that of the Claimant's, it follows that we do not accept that Mrs Evison was aware that the Claimant used an app on her mobile phone to control her hearing aids at the time she made this request to the Claimant. In accordance with Schedule 8, Part III, paragraph 20(1) of the EqA 2010 (set out above), we found that the Respondent was not under a duty to make adjustments at this time.

74 In relation to **RA3**, we accept the Claimant's assertion that staff members were not allowed to take their mobile phones to the bathroom with them, as it was set out in the Etiquette Code, that the Respondent had this PCP in place. However, no evidence was put before the Tribunal that this was applied to the Claimant and the same point arises in relation to the Respondent's knowledge as set out above.

75 It follows that the Claimant's claim for a failure to make reasonable adjustments in **RA2** and **RA3** fails.

Events on 18th November 2022

76 Shortly prior to sending her email to the Claimant on 15th November 2022, Mrs Evison sent an email to David Tunmore, Recruitment Manager, and James Prisk, Operations Manager, copying in her line manager Denise Bucknall, Enforcement Delivery Manager (p. 161/162). She set out her concerns that she did not have any information about the Claimant's disabilities prior to her starting date; still did not have a signed copy of the DWP WAP (the copy supplied was not signed by a line manager) and the Claimant's passive aggressive nature.

Car Parking Adjustment [RA4]

77 Following this, Mrs Bucknall arranged a meeting with the Claimant on 18th November 2022 to discuss, amongst other items, putting in place a completed WAP. In her evidence, Mrs Bucknall explained that this was to assist Mrs Evison by emphasising to

the Claimant that she should complete an MoJ WAP. Initially, the Claimant refused to have a meeting with Mrs Bucknall unless her trade union representative was present. Mrs Bucknall confirmed to the Claimant that it was not appropriate to have a trade union representative at a normal management meeting and the Claimant then agreed to meet.

78 Mrs Bucknall confirmed that at this meeting she discussed issues relating to the adjustments the Claimant required, including the need for a suitable parking space. Mrs Bucknall suggested that the Claimant discuss the parking space issue with Mrs Evison and confirmed that whilst the Claimant mentioned that she controlled her hearing aids via a mobile phone app, the Claimant did not say that she had been told to put her phone away by Mrs Evison or Mr Dunton. The Claimant suggested in her evidence that she did inform Mrs Bucknall of this. For the reasons given above, we preferred the evidence of Mrs Bucknall to that of the Claimant on this point.

21st November 2022

79 On 21st November 2022, the parties agreed that a meeting took place, which was attended by the Claimant and Mrs Evison, to discuss the Initial Draft MoJ WAP and the adjustments that the Claimant required. This meeting was significant to the Claimant's claims of being assigned a car parking bay.

80 The Claimant says it was made clear to her that she could not use the disabled parking bays available to the Respondent because they were assigned to employees with disabilities. She says that she wanted another space close to the disabled bays (bay 19) but was told this was not within the Respondent's control. She says that Mrs Evison unilaterally assigned her bay 67. This was some distance from the bay she had been using, bay 61 and she was also told she could not use the public car park. This caused her substantial disadvantage.

81 Mrs Evison agreed with the Claimant that the Respondent did not have control of bay 19 and the Claimant was informed of this at this meeting. Mrs Evison says that she produced a plan of the car park (p.412) which set out details of which bays the Respondent controlled. She says that she offered the Claimant the opportunity to select whichever bay she wanted that was within the Respondent's control, other than the two disabled parking bays which were already allocated to other employees of the Respondent who had disabilities. She says that the Claimant selected bay 67 because, whilst it was further away from the office, it was on the end of an aisle,

meaning that the Claimant would have no difficulties in opening her car door fully to ensure easier access and egress to her vehicle.

Conclusion [**RA4**]

82 The Tribunal noted that the Claimant did not challenge Mrs Evison's evidence that the two disabled parking bays were allocated to employees with disabilities. The Claimant's case for a failure to make a reasonable adjustment (pleaded as **RA4**) was that car parking spaces were not allocated due to accessibility/disabilities and staff cannot park in the public car park. We accepted the Respondent's evidence that parking bays were allocated to employees with disabilities, which in and of itself, means that [**RA4**] as pleaded is not supported on the facts and therefore fails.

83 Setting that point aside, the Claimant put forward the argument at the hearing that it was not logical for a person with mobility issues to request a parking bay further away from the entrance. However, we noted that in evidence she confirmed that when she worked for DWP she had to park in a car park some distance away from where she worked. Moreover, the explanation offered by Mrs Evison was that the Claimant selected the parking bay because it meant she could open the door fully. We understood the logic that someone with difficulty accessing and egressing a vehicle may prefer to have a parking bay with no obstacles preventing the full opening of a vehicle door. Additionally, if the Claimant's case was correct, that this parking space was assigned to her without any discussion or agreement, we consider that she would have raised it with the Respondent at the time, or via emails that followed this meeting. She did not.

84 There was no evidence put forward that the Respondent did not allocate spaces taking into account accessibility or disability issues. The evidence was to the contrary. Similarly, Mrs Evison's evidence, which we accepted, was that the Claimant was permitted to park in the public car park.

85 Considering all of the evidence placed before us, the panel accepted Mrs Evison's evidence and **RA4** fails.

Trigger Words [RA5, H3, H4, H5 and H6]

86 After this meeting, Mrs Evison updated the Initial Draft MoJ WAP ("the **Revised Draft MoJ WAP**") (p.182) in accordance with their discussion and attached it to an email to the Claimant, dated 21st November 2022 and sent at 17:43. The Revised Draft MoJ

WAP did not mention the Claimant's PTSD or the trigger words adjustment [**RA5**]. It did contain wording under the heading: *"Summary of agreed workplace adjustments"* that *"Hearing Aids/Mobile Phone controlled so mobile needs to be near"* and that this was identified on 1st November 2022 and was implemented from start 1st November 2022.

87 The Claimant placed great store on this entry to support her evidence that she informed Mrs Evison about having to use the mobile phone app to control her hearing aids, on the first day of her employment, as evidenced in this document. Mrs Evison, in evidence, conceded that this was an error in drafting and acknowledged that it was not dealt with in her statement. However, for the reasons set out in paragraph 71 above, we preferred the evidence of Mrs Evison that this was an error in drafting and not recognition that the Claimant informed her on 1st November 2022.

88 On 23rd November 2022, the Claimant sent two emails to Mrs Evison. The first was at 8:25am, with the subject heading "*other jobs*", discussing the Claimant's other positions that she held, in addition to the Administrative Officer role she held with the Respondent. The second email, sent at 8:35am concerned time off the Claimant wanted allocated to union hours.

89 Mrs Evison sent three emails to the Claimant on 23rd November 2022 timed at 8:49am, 8:53am and 9:00am (pages 203, 204 and 206 respectively). The Claimant complains that these emails contained trigger words in breach of the trigger words adjustment [**RA5**] and also amounted to harassment in respect of allegations [**H3, H4, H5** and **H6**]. The email timed at 8:49am (and which forms the basis of the complaint for **H3**) stated:

> *"Hi Vicki,*
>
> *Please may I have the signed PEEP and WAP from our meeting Monday am returned to me by the end of the day today, due to the importance of these documents should I not receive a response I will assume agreement and start implementation tomorrow. I'm sure you'll agree these documents are my highest priority at present before union and other matters etc.*
>
> *Kind Regards Zoe"*
>
> [Tribunal's emphasis]

90 The email timed at 9:00am (basis of the complaint for **H4**) stated:

> *"Hi Vicki,*
>
> *Here at QET any requests from myself or management needs to be given your attention asap, unless an alternative deadline is clearly stated, responses should be incorporated into the working day. Time management is an important part of our days and as stated*

these documents are high priority as they involve making and ensuring you are safe while at work, please respond by end of day. I have received 2 emails this morning from you already re union time and other jobs the PEEP email should have been prioritised above these. If you are ever unsure of importance of emails then please just ask.

Kind Regards Zoe"

[Tribunal's emphasis]

91 The email timed at 8:53am (basis of the complaint for **H5**) stated:

"Hi Vicki,

Just to clarify, on Monday, I asked that you read the relevant sections of the MOJ Conduct policy in regards to other employment and complete any necessary tasks instructed from that to inform of other employment. Has this been completed? As previously advised I do not have any access to any materials/documents from the application process and also there may be differences to the requirements of DWP and MOJ. I also asked that you confirm which is your principal employment in regards to time and commitments etc.

Kind regards Zoe"

[Tribunal's emphasis]

92 The Teams message timed at 9:58am sent by Mrs Evison to the Claimant (basis for complaint **H6**) stated:

[23/11/2022 09:58] Evison, Zoe

Yes thank you, all are on the calendar. Denise has said these will need to be taken as either lunch/flexi/leave, we will provide flexi to and from home so can be in comfort of home for the sessions. Please advise which option you would like me to use.

[Tribunal's emphasis]

93 There was no dispute by the Respondent that the words emphasised above and set out in the list of issues were contained in the relevant emails and Teams message quoted above. Its challenge was that not all of the emphasised sections are "trigger words" as the Claimant contended, as set out in the DWP WAP (p.150) and referred to in paragraph 55 above. As a reminder, this stated:

"PTSD – Raised male/female colleagues voices or demanding verbs being used. MUST, WILL, GOT TO when being told to do tasks. Need to be asked, CAN YOU, WOULD YOU etc."

94 Looking at the email timed at 8:49am, *"should I not… I will assume"* is not referred to as words to avoid. Therefore, the Respondent says that the Claimant has failed to establish her case on the evidence in respect of this email. The same can be said of the emails timed at 9:00am and also 8:53am. This does not apply to the Teams

message which uses the verb *"will"*. In any event, the Respondent says that it would not be reasonable, both as an adjustment [**RA5**] and when considering whether any unwanted conduct could reasonably be considered to have the effect when determining the harassment complaints [**H3** – **H6**].

95 The Claimant asserted in evidence that the trigger words adjustment required went further than her pleaded case in that it was not only the trigger words set out within the DWP WAP, but it also required the Respondent's employees not to give command style instructions which provided her with no choice. The Claimant explained that she interpreted these instructions as being coercive, command style instructions which did not provide her with a choice but a demand to respond.

96 The Claimant responded to this instruction by reviewing the Revised MoJ WAP, making amendments to it and then attaching it to an email which she sent to Mrs Evison at 9:40am (p.208).

Conclusion [**RA5, H3, H4, H5** and **H6**]

97 The panel reviewed the contents of the email and considered that the words used in the Team message included a trigger word, *"will"* as set out in the DWP WAP. None of the email messages did so.

98 The Tribunal noted that there was no medical evidence put before it confirming what the specific trigger words were, or any requirement to avoid command style instructions. The evidence came solely from the Claimant and the DWP WAP itself, which was not signed by a DWP manager.

99 We reminded ourselves that the Claimant is using these emails and Teams message to support two separate and distinct legal claims: a failure to make reasonable adjustments and a separate claim of harassment.

100 The relevant excerpts of the EqA 2010 have been set out above at paragraph 17 and are not repeated here. Dealing with each claim in turn:

Reasonable Adjustments [**RA5**]

101 The Claimant identified the Respondent's PCP as a practice of applying no restriction on language used in the office to give instructions. She claimed that she suffered a disadvantage when certain trigger words were used in verbal and written

communication because it triggered her PTSD and the adjustment required was for the Respondent to refrain from using these trigger words.

102 Looked at in context, this is a busy working environment where managers are required to issue instructions to employees. The Tribunal considered the background facts set out above and accepted that the words or phrases used were common parlance within a workplace. Moreover, some of the phrases were not directed at the Claimant herself. As an example from the above excerpts: "*Denise has said <u>these will need to be</u> taken…".* This is a command style instruction making it clear to the Claimant what she needs to do. If this was amended to say something that provides the Claimant with an option, such as "*Denise has asked whether you would mind taking annual leave…"* it loses it effect and it may be difficult for the Respondent to criticise the Claimant for failing to comply.

103 We consider that it would be too onerous to place such a wide ranging restriction, which in all likelihood would be frequently broken, upon the Respondent not to use the trigger words or use instructions that fail to give the Claimant an option within a busy working environment. It is not an adjustment that could, in our view, be considered reasonable. This view is reinforced by the fact that we were not provided with any medical evidence which supported such a recommendation.

104 The complaint of a failure to make a reasonable adjustment to refrain from using the trigger words [**RA5**] fails.

<u>Harassment [**H3**, **H4**, **H5** and **H6**]</u>

105 We accept that the words used amounted to unwanted conduct and related to her disability, PTSD. This position is different from our findings in respect of **H2** because of our findings of fact that Mrs Evison was not aware of the need to avoid using trigger words at the time she drafted that message. For the allegations **H3** – **H6**, Mrs Evison was aware of this issue due to her having read the DWP WAP.

106 It was accepted by the Claimant's counsel that the Claimant had put no evidence before us that would allow us to conclude that the Respondent sent the emails and Teams message with the *purpose* of harassing the Claimant, but, contended that this was the *effect* of those messages.

107 Where the Tribunal is asked to consider the effect of unwanted conduct, it has to consider the Claimant's perception, the other circumstances of the case and whether it is reasonable for the conduct to have the effect.

108 The Claimant gave clear evidence that these emails were harassing in nature.

109 We were conscious that the Claimant did not immediately object to the use of such words when she received the email. In actual fact, she complied with the instruction to complete the form. We note that we were not provided with any medical or psychiatric evidence that confirmed that these trigger words or instructions should not be used, which we would have expected. Looking at this in the context of a business working environment where instructions have to be given by managers, the words are commonly used in such an environment but are also frequently used in conversations in any event, the Claimant was aware that she was not under any physical threat and was able to respond directly to her line manager if she felt threatened. She did not do so and we do not consider that it is reasonable for the conduct to have the effect complained of by the Claimant.

110 It follows that her complaints of harassment linked to emails and messages containing trigger words [allegations **H3**, **H4**, **H5** and **H6**] fail.

Discussion of confidential matters in open office [**H1**]

111 Later that day, Mrs Bucknall became aware of an allegation, from another Team Leader, that the Claimant was discussing confidential trade union matters with another employee. She was concerned that the Claimant should not be discussing such matters in an open office and requested that Mrs Evison speak with the Claimant about this. Mrs Evison did so but the Claimant denied that she was discussing confidential trade union matters and asked for the name of the person accusing her, because she felt they were lying. Mrs Evison says that the Claimant then stormed out of the office.

112 Mrs Evison updated Mrs Bucknall about the nature of her discussion with the Claimant. At this time, the Team Leader who had raised the matter with Mrs Bucknall had spoken directly with the other employee involved. The evidence was that the employee had accepted that they were discussing confidential trade union matters with the Claimant.

113 Mrs Evison requested that the Claimant attend a further meeting with her to discuss this matter. Mrs Evison says she was concerned from her earlier discussions with the Claimant about the DWP WAP, in particular that it was not signed by a line manager, and the Claimant's insistence that Mrs Evison did not understand the DWP process because she had not worked at DWP. She was mentoring Mr Plaisted, Criminal Fines collection and Enforcement Team Leader, whom she was aware had previously worked at DWP, and for these reasons she requested that he also attend the meeting with her and the Claimant.

114 At the meeting itself, it appears there was an initial discussion between Mrs Evison and the Claimant about the WAP process and the need to complete the Revised MoJ WAP. The Claimant says that Mr Plaisted accused her of making up the adjustments contained within the DWP WAP and called her a liar when she insisted that was not correct. Mr Plaisted's evidence was that he had previously worked for DWP and in his experience WAPs prepared by DWP managers were complete and countersigned. He made this point to the Claimant and also suggested that in the absence of a signature from a manager, and as the DWP WAP did not record any adjustments, it had been necessary for Mrs Evison to complete the WAP process, via the drafting of the Revised MoJ WAP. This could have been avoided if the DWP WAP was complete and counter signed.

115 Dealing with the allegation that Mr Plaisted harassed the Claimant by suggesting that she had made up the entries in the DWP WAP and called her a liar, both counsel acknowledged that this was a question of one witness's word against the other. We consider the evidence of Mr Plaisted to be logical and consistent with the purpose of the DWP WAP form and also from our own expectations of a form of this nature. It was designed to evidence a discussion and agreement for reasonable adjustments which could be provided by the employee to their next job or manager. The form contained a box for a line manager to sign to evidence the agreement. We would need strong and credible evidence before we would be prepared to accept that it was the position within the DWP for these DWP WAPs not to be counter signed by a line manager. We have set out above why we do not accept the Claimant's evidence where her evidence conflicted with others and we reassert that reasoning here. For these reasons we preferred Mr Plaisted's evidence on this point.

116 This finding disposes of the Claimant's allegation of harassment against Mr Plaisted [**H1**].

117 Continuing our findings about the meeting, the discussion moved back to the conversation between the Claimant and the other employee. Mrs Evison says that the Claimant denied the allegation again. However, when Mrs Evison explained to the Claimant that the other employee had admitted to the conversation, the Claimant changed her story and asserted that it had been taken out of context. Mrs Evison asked the Claimant why she had denied the conversation but the Claimant failed to engage with this question. In response, the Claimant said she would be handing in her resignation.

118 At 16:05 the same day, the Claimant sent an email to Mrs Evison providing one month's notice to terminate her employment. Within this email she stated:

> *"It has become apparent that the culture and environment is not suitable for me to work within, with my disabilities."*

119 The Tribunal heard evidence from Stephen Lee about the Claimant's grievance, the investigation into it and his outcome letter. However, the Tribunal found that because the grievance was not raised by the Claimant until 30th January 2023, over 2 months after her resignation and no issue was raised by the Claimant about the conduct of the grievance within the List of Issues, it was irrelevant to the matters we were determining.

Reasonable Adjustments and Harassment Allegations

120 The table below sets out where our conclusions in respect of each allegation can be found within this judgment.

Adjustment	Paragraph	Harassment	Paragraph
RA1	44	H1	116
RA2	75	H2	60
RA3	75	H3	110
RA4	85	H4	110
RA5	104	H5	110
		H6	110

Constructive Unfair Dismissal

121 The legal test for establishing a constructive unfair dismissal is set out in paragraph 17 above and is not repeated here. The Claimant's complaint of constructive unfair dismissal relied upon the following Respondent's alleged repudiatory breaches:

(i) alleged failures to make reasonable adjustments;

(ii) the environment that the Claimant was having to work in, essentially the harassment allegations; and

(iii) the meeting itself on 23rd November 2022.

122 From the panel's findings above, we did not consider that the Respondent had failed to make reasonable adjustments, nor did it harass the Claimant as she alleges. We have confirmed our finding in relation to **H1** that we preferred the evidence of Mr Plaisted about the meeting and do not consider that this amounted to a breach of contract, lesser still a repudiatory breach of contract. The Claimant's complaint of constructive unfair dismissal fails.

123 In any event, we consider that the reason for the Claimant's resignation was due to the fact that she had lied to Mrs Evison about the nature of her discussion with the other employee and had been caught out. She felt she could no longer work for the Respondent and this was the reason for her resignation.

124 We consider that this reason was not connected with any alleged repudiatory breach of contract by the Respondent.

Employment Judge Lambert

Date: 12th December 2023

Judgment sent to the Parties on 08 January 2024

For the Tribunal Office