



# EMPLOYMENT TRIBUNALS

**Claimant:** Linda Watson

**Respondent:** Richmond Care Villages Holdings Limited

## FINAL HEARING

**Heard at:** Midlands West (by CVP)

**On:** 20, 21, 22 and  
23 September 2022;  
and 3 November 2022  
(in Chambers)

**Before:** Employment Judge Dean

**Members:** Mr Ken Hutchison  
Mr Tony Liburd

### Appearances

For the Claimant: Mr Harry Cottam, Lay Representative

For the Respondent: Ms Rachel Barrett of Counsel

## RESERVED JUDGMENT

1. The unanimous judgment of the Employment Tribunal is that:
  - (1) The claimant resigned from the respondent's employment and was not constructively or unfairly dismissed. The claimant's claim of unfair dismissal does not succeed and is dismissed.
  - (2) The claimant's complaint of unlawful discrimination because of the protective characteristic of disability in respect of discrimination contrary to sections 13, 15, 20 and 21 and 26 of the Equality Act 2010 do not succeed and the claims are dismissed.
  - (3) The claimant's complaint for payment of accrued but untaken holiday pay in breach of Regulation 13 of the Working Time Regulations 1998 do not succeed and are dismissed.
  - (4) The claimant resigned from her employment on notice and no further payment in respect of notice pay is due to the claimant.

# RESERVED REASONS

## Background

1. By way of background in this case, the claimant was employed by the respondents, a provider of long-term care for older people as a Village Manager on 15 October 2015 until her resignation. The claimant says in her claims form that her employment ended on 31 July 2020, however the respondent says it ended on 16 September 2020, the claimant having resigned on 30 July 2020 on notice. Early conciliation began on 8 June 2020 and ended on 22 July 2020. A claim form was presented to the employment tribunal on 19 August 2020 and the claimant's resignation which was presented on 30 July 2020 expired such that the claimant's employment ended on 16 September 2020. The complaint has been subject to case management orders on 17 December 2020 [38-40] and 24 May 2022 [82-84]. Initially, the claimant presented complaints against her employer, Richmond Care Villages Holdings Limited, and two named individuals against whom the proceedings were withdrawn such that this claim continues against the named respondent Richmond Care Villages Holdings Limited only.
2. The claim is about the treatment of the claimant by the respondent and in particular by Mr Glenn Humphrey, her line manager. The claimant asserts that Mr Humphrey targeted her for unfair criticism, discriminated against her because of her disabilities and failed to provide appropriate support to her in relation to her health. The

Respondent's defence is that it had legitimate concerns about the claimant's conduct and performance which it addressed with her appropriately.

3. The claimant is making the following complaints:
  - 3.1 Constructive unfair dismissal;
  - 3.2 Disability discrimination, specifically:
    - 3.2.1 direct disability discrimination;
    - 3.2.2 discrimination arising from disability;
    - 3.2.3 failure to make reasonable adjustments and harassment;
    - 3.2.4 holiday pay;
    - 3.2.5 notice pay; and
    - 3.2.6 failure to make a bonus payment to the claimant.
  
4. The list of issues that are before the tribunal were settled by the parties following discussion with Employment Judge Edmonds in the case management hearing. Detail of these were in orders of 24 May 2022 [89 – 94]. The list is detailed and it is the roadmap by which the tribunal have considered the evidence before them. They are set out below:
  1. UNFAIR DISMISSAL
    - 1.1 Was the Claimant dismissed?
      - 1.1.1 Did the Respondent breach the Claimant's contract of employment? It is the Respondent's understanding from the Further Information that breaches of implied terms only are relied upon. These breaches are:
        - April 2018 to July 2020 – Comments made by Mr Humphrey about the language used by the Claimant
        - Summer 2019 – Following the Claimant's breakdown whilst on leave, Mr Humphrey made the Claimant feel there was something wrong with her language
        - Mr Humphrey asked the Claimant to write a staff smoking policy
        - On 14 August 2019 Mr Humphrey informed the Claimant of her 'failings' and made it clear that he did not agree with the dismissal of a member of the Claimant's team
        - August to September 2019 – Mr Humphrey ignored the Claimant's requests for support and told the Claimant her integrity was under question.

- On 7 October 2019 during a meeting with the Claimant, Mr Humphrey brought with him a list which he called 'your failings'
- As a result of weekly calls, Mr Humphrey would frequently criticise the Claimant saying that her answers were too long, too short, too complex, not complex enough, he did not understand the language she used, to use difference language etc.
- On 12 January 2020 the Claimant returned to her office (following a mental health breakdown) and found that all of her personal items had been removed and the office no longer looked like hers. The Claimant did not raise this with Mr Humphrey as she did not want to be told to go back home.
- Mr Humphrey did not prepare the team for the Claimant's return and was regimented in who she could speak to and the tasks she could and could not do.
- Mr Humphrey said to the Claimant 'can't we demote you or something?' and micromanaged the Claimant and criticised her language.
- In February 2020 the Claimant informed Mr Humphrey that she had contacted the speak up team, and he 'interrogated' her about it, even after she said she did not wish to discuss it further.
- In or around February 2020, Mr Humphrey informed the Claimant that she should be at the village and went back on one day a week he agreed with the Claimant.
- On 14 April 2020 the Claimant was texted by Mr Humphrey telling her not to return to work until she had spoken to Mrs Kirby. When the Claimant spoke to Mrs Kirby the following Monday she said 'we are in receipt of your occupational health report, there is no way we can meet the adjustments, do you want a pay out and leave?' to which the Claimant replied 'I will not be bullied out of my job'.
- Following the Claimant's return to work in January 2020, and despite informing Mr Humphrey how important an Occupational Health meeting was, it was not arranged until March 2020.
- The Respondent 'ruthlessly' expected the Claimant to attend calls relating to her grievance from March – July 2020 and no one asked about her mental health
- The grievance was a foregone conclusion as the Claimant was informed by an email from Ms Siron that Mr Humphrey would continue overseeing her village throughout the grievance process.
- Mr Humphrey did not protect the Claimant's professional reputation and she was informed by Mrs Ingram that she could not return to work until the grievances against her had been heard.

□ March 2020 – Despite the Claimant saying that over 80% of the Occupational Health adjustments would not be needed if her line management changed to Mrs Ingram, a meeting was scheduled to discuss the adjustments.

1.1.2 If so, was that breach serious enough to be a repudiatory breach? Did that breach the implied term of trust and confidence? The Tribunal will need to decide:

(a) Whether 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

(b) whether it had reasonable and proper cause for doing so.

1.1.3 What was the 'last straw' prompting the Claimant's resignation? The claimant submits that her resignation was due to the culmination of all of the treatment identified at 1.1.1 above but specifically refers to the final straw being when on/just before the date she resigned it became clear to the Claimant that the HR Departments of the Respondent still expected to attend meetings knowing she was ill and she was put under pressure to answer questions (she was being treated for trauma), her speech was impaired, and she was embarrassed.

1.1.4 Did the Claimant waive the breach?

1.1.5 Did the Claimant resign in response to the breach?

1.2 Was any dismissal fair?

1.2.1 Was there a potentially fair reason for the Respondent's conduct? The Respondent says that the reason was conduct and/or capability.

1.2.2 If there was, did the Respondent act reasonably in all the circumstances in treating it as a sufficient reason to dismiss the claimant?

## 2. DISCRIMINATION – DISABILITY

### 2.1 Jurisdiction

2.1.1 Was the claim form submitted more than 3 months (plus early conciliation extension) after some of the conduct complained of?

2.1.2 If so, did that conduct form part of a chain of conduct extending over a period which ended within 3 months of the claim form being submitted?

2.1.3 If not, would it be just and equitable for the Tribunal to hear that part of the claim which relates to the conduct which occurred more than 3 months before the claim was submitted (plus early conciliation extension)?

## 2.2 Was the Claimant disabled?

The Respondent concedes that:

- The Claimant was disabled by reason of dyslexia at all relevant times;
- The Claimant was disabled by reason of a mental health impairment from April 2018 onwards.

## 2.3 Direct discrimination

2.3.1 Who is the Claimant's comparator (actual or hypothetical), whose circumstances must be materially the same as the Claimant's?

The Claimant relies upon Stephen Griffin, Village Manager and upon a hypothetical comparator whose circumstances are not materially different to the claimant's.

2.3.2 Was the Claimant treated less favourably than the comparator was or would have been?

The Respondent understands that the Claimant seeks to rely on the following allegations of direct discrimination:

- Following a return from week's absence in August 2019, the Claimant was told by Mr Humphrey to consider time off work as he did not have time and did not know how to support the Claimant. Mr Humphrey did not discuss with the Claimant how she would be supported
- On 7 October 2019 during a meeting with Mr Humphrey, the Claimant became upset and challenged him about his perception of her failings. The Claimant reminded Mr Humphrey she had been mentally ill and Mr Humphrey responded that she should be at home as he did not know how to manage her and did not have time.
- On 9 October 2019 (following receipt of the notes from the meeting on 7 October, and the Claimant's follow up email on 8 October) Mr Humphrey confirmed that the issues discussed would be dealt with informally. The Claimant requested amendments to the notes (which she felt were missing a number of points discussed) and Mr Humphrey ignored this request (and other requests relating to lack of support, being set up to fail and inconsiderate timescales).
- As a result of weekly calls, Mr Humphrey would frequently criticise the Claimant saying that her answers were too long, too short, too complex, not complex enough, he did not understand the language she used, to use difference language etc.
- Mr Humphrey asked the Claimant to draft an email and he changed and corrected it all.

- Mr Humphrey said to the Claimant ‘can’t we demote you or something?’ and micromanaged the Claimant and criticised her language.
- During a meeting in March 2020, Laura Ryan said to the Claimant ‘so Linda, you mean to tell me, you knew about this meeting and you waited to tell me you are too ill to attend work?’ and ‘you go to your doctor and you get signed off sick’.
- Glenn Humphrey felt he was beyond reproach and made it obvious he was offended by the grievance the claimants had raised. He said as much in his conversation with the claimant when he was pressing her for more information despite her saying she felt too uncomfortable to discuss with him. The claimant alleges that this was due to the perception that the Claimant was a disabled person.

2.3.3 If so, was the reason for the treatment either:

- (a) the Claimant's disability: or
- (b) the perception that the Claimant was a disabled person?

2.4 Discrimination arising from disability

2.4.1 Did the Respondent know/could the Respondent reasonably have been expected to know that the Claimant had a disability in respect of dyslexia and/or a mental health condition? If not, when ought the Respondent to have been aware of the Claimant’s disability?.

2.4.2 Did the claimant’s vulnerabilities arise in consequence of her disabilities?

2.4.3 Was the Claimant treated unfavourably because of those vulnerabilities? The claimant alleges that the unfavourable treatment was:

- (a) ? constantly being told to consider her language, change her language, go away and think about her language.
- (b) Glenn Humphrey allowing/encouraging a number of grievances in her absence;
- (c) Being told to stay away from work and not to speak to anyone from work until the grievance is fully investigated. The Claimant compares her treatment to that of Glenn Humphrey who she says had serious grievances against him but was allowed to continue his work.
- (d) Allowing the grievances against her despite the issues being more than 6 months old (the Claimant alleges that this was normally considered to be too late within the Respondent but Mr Humphrey overlooked that rule in respect of the grievances against the Claimant).
- (e) Retaining Mr Humphrey as line manager to the Claimant.

2.4.4 Was the treatment a proportionate means of achieving a legitimate aim? This will include consideration of whether there was a less discriminatory way of achieving the Respondent's aims. The Respondent will set out its legitimate aims in its further Amended Grounds of Resistance.

## 2.5 Reasonable adjustments

2.5.1 Did the Respondent know/could the Respondent reasonably have been expected to know that the Claimant had a disability? If not, when ought the Respondent to have been aware of the Claimant's disability?

2.5.2 Did the Respondent apply a provision, condition or practice ("PCP") as follows:?

(a) Not collecting disability information on recruitment paperwork

2.5.3 If so, did that PCP place the Claimant at a substantial disadvantage in comparison with employees who were not disabled, in that the Claimant's disabilities were insufficiently flagged up and/or taken into account by the Respondent when reaching decisions?

2.5.4 Did the Respondent make reasonable adjustments? The Claimant suggests that it would have been reasonable for the Respondent to have collected the disability information and/or taken it into account when making decisions.

## 2.6 Harassment

2.6.1 Did the respondent do the following things:

(a) Mr Humphrey telling the Claimant to change her language;

(b) Mr Humphrey chose to make the Claimant look ridiculous in front of managers, knowing of her disabilities.

(c) Allow the other Village managers to ignore the Claimant or to not acknowledge her on calls.

2.6.2 If so, was that unwanted conduct?

2.6.3 Did it relate to disability?



2.6.4 Did that conduct have the purpose or effect of:

(a) violating the Claimant's dignity; or

(b) creating an intimidating, hostile, degrading, humiliating or offensive environment for the Claimant?

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

### 3. HOLIDAY PAY

3.1.1 Is the Claimant entitled to payment of accrued but untaken holiday?

### 4. OTHER PAYMENTS

4.2 Is the Claimant entitled to any notice pay? Specifically:

4.2.1 What was the Claimant's notice period?

4.2.2 Was the Claimant paid for that notice period?

4.2.3 If not, was the Claimant guilty of gross misconduct / did the Claimant do something so serious that the Respondent was entitled to dismiss without notice?

## The law

### 5. Constructive Unfair Dismissal

1. Section 95 Employment Rights Act 1996 provides:

“(i) For the purposes of this Part an employee is dismissed by his employer if

(c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which he is entitled to terminate it without notice by reason of the employer's conduct.”

6. That situation has been referred to in numerous decisions as “constructive dismissal”. The authorities demonstrate that for an employee to be able to claim constructive dismissal, four conditions must be met, namely:

(i) There must be a breach of contract by the employer. This may be either an actual breach or an anticipatory breach;

- (ii) The breach must be sufficiently important to justify the employee resigning, or else it must be the last in a series of incidents which justify him leaving;
- (iii) The employee must leave in response to the breach and not for some other unconnected reason;
- (iv) The employee must not delay too long in terminating the contract in response to the employer's breach otherwise he may be deemed to have waived the breach and agreed to vary the contract.

7. The Court of Appeal in Kaur -v- Leeds Teaching Hospitals NHS Trust [2018] IRLR 841 paragraph 55 restate the elements of constructive dismissal which are well established, where in the Court of Appeal, Lord Justice Underhill identified the five questions that a Tribunal ought sufficiently to ask of itself: -

*“55. I am concerned that the foregoing paragraphs may make the law in this area seem complicated and full of traps for the unwary. I do not believe that that is so. In the normal case where an employee claims to have been constructively dismissed it is sufficient for a tribunal to ask itself the following questions:*

*(1) What was the most recent act (or omission) on the part of the employer which the employee says caused, or triggered, his or her resignation ?*

*(2) Has he or she affirmed the contract since that act ?*

*(3) If not, was that act (or omission) by itself a repudiatory breach of contract ?*

*(4) If not, was it nevertheless a part (applying the approach explained in Omilaju) of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a (repudiatory) breach of the Malik term ? (If it was, there is no need for any separate consideration of a possible previous affirmation, for the reason given at the end of para. 45 above.)*

*(5) Did the employee resign in response (or partly in response) to that breach ?*

*None of those questions is conceptually problematic, though of course answering them in the circumstances of a particular case may not be easy.”*

#### Disability Discrimination

8. The law to which we have addressed our minds is that contained in the Equality Act 2010 (“EA 10”) in particular in relation to the protected characteristics of

Disability at s6 and the prohibited conduct of Direct Discrimination s13, Discrimination Arising from Disability s15, Failure to make Reasonable Adjustments sections 20 and 21 and Harassment s26.

9. It should be borne in mind that the legislative intention behind the EA10 was to harmonise the previous legislation and to modernise the language used. Therefore, in general terms, the intention was not to change how the law operated unless the harmonisation involved codifying case law or providing additional protection in respect of a particular protected characteristic, in line with that which had previously been afforded to persons with other protected characteristics.
10. Because of that, much of the case law applicable under the SDA or RRA is relevant to how the provisions of the EA10 are to be interpreted and applied.
11. Sections 39 and 40 of the EA10 prohibit unlawful discrimination against employees in the field of work.
12. Section 39(2) provides that:

“An employer (A) must not discriminate against an employee of A's (B)—

- (a) as to B's terms of employment;
- (b) in the way A affords B access, or by not affording B access, to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service;
- (c) by dismissing B;
- (d) by subjecting B to any other detriment.”

13. Section 120 EA10 confers jurisdiction on an Employment Tribunal to determine complaints relating to the field of work.

14. Section 136 of the EA10 provides that:

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

This provision reverses the burden of proof if there is a prima facie case of discrimination, harassment, victimisation or failure to make reasonable adjustments. The courts have provided detailed guidance on the circumstances in which the burden reverses Barton v Investec [2003] IRLR 332 EAT as approved and modified by the Court of Appeal in Igen v Wong [2005] IRLR 258 CA but in most cases the issue is not so finely balanced as to turn on whether the burden of proof has reversed. Also, the case law makes it clear that it is not always necessary to adopt a two stage approach and it is permissible for Employment Tribunals to instead identify the reason why an act or omission occurred.

15. Section 123 of the EA10 concerns time limits. It provides:

“(1) Proceedings on a complaint within section 120 may not be brought after the end of—

(a) the period of 3 months starting with the date of the act to which the complaint relates, or

(b) such other period as the Employment Tribunal thinks just and equitable.

(3) For the purposes of this section—

(a) conduct extending over a period is to be treated as done at the end of the period;

(b) failure to do something is to be treated as occurring when the person in question decided on it.

(4) In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something—

(a) when P does an act inconsistent with doing it, or

(b) if P does no inconsistent act, on the expiry of the period in which P might reasonably have been expected to do it.”

#### Direct discrimination

16. 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”.
17. The guidance issued by the Government in respect of the EA10 stated that this was not intended to change to legal test and commentators have subsequently agreed that it has not done so. This means that the legal principles in respect of direct discrimination remain the same.
18. The application of those principles was summarised by the Employment Appeal Tribunal in London Borough of Islington v Ladele (Liberty intervening) EAT/0453/0.
19. In every case the Employment Tribunal has to determine the reason why the claimant was treated as he was. By reference to Nagarajan v London Regional Transport [1999] IRLR 572 HL In most cases this will call for some consideration of the mental processes (conscious or subconscious) of the alleged discriminator.
20. If the Employment Tribunal is satisfied that the prohibited ground is one of the reasons for the treatment, that is sufficient to establish discrimination. It need not be the only or even the main reason. It is sufficient that it is significant in the sense of being more than trivial. By reference to Nagarajan and also Igen v Wong [2005] IRLR 258 CA
21. Direct evidence of discrimination is rare, and Employment Tribunals frequently have to infer discrimination from all the material facts. The courts have adopted the two-

stage test which reflects the requirements of the Burden of Proof Directive (97/80/EEC). The first stage places a burden on the claimant to establish a prima facie case of discrimination. That requires the claimant to prove facts from which inferences could be drawn that the employer has treated them less favourably on the prohibited ground. If the claimant proves such facts, then the second stage is engaged. At that stage the burden shifts to the employer who can only discharge the burden by proving on the balance of probabilities that the treatment was not on the prohibited ground. If they fail to establish that, the Tribunal must find that there is discrimination. the Igen test.

22. The explanation for the less favourable treatment does not have to be a reasonable one. By reference to Zafar v Glasgow City Council [1998] IRLR 36 HL. In the circumstances of a particular case unreasonable treatment may be evidence of discrimination such as to engage stage two and call for an explanation. By reference to Bahl v Law Society [2004] IRLR 799 CA. If the employer fails to provide a non-discriminatory explanation for the unreasonable treatment, then the inference of discrimination must be drawn. The inference is then drawn not from the unreasonable treatment itself - or at least not simply from that fact - but from the failure to provide a non-discriminatory explanation for it. But if the employer shows that the reason for the less favourable treatment has nothing to do with the prohibited ground, the burden is discharged at the second stage, however unreasonable the treatment.
23. It is not necessary in every case for an Employment Tribunal to go through the two-stage process. In some cases it may be appropriate simply to focus on the reason given by the employer ("the reason why") and, if the Tribunal is satisfied that this discloses no discrimination, then it need not go through the exercise of considering whether the other evidence, absent the explanation, would have been capable of amounting to a prima facie case under stage one of the Igen test. The employee is not prejudiced by that approach, but the employer may be, because the Employment Tribunal is acting on the assumption that the first hurdle has been crossed by the employee. By reference to Brown v London Borough of Croydon [2007] IRLR 259 CA
24. Madarassy v Nomura [2007] IRLR 247 predates the Equality Act 2010 but it is considered as the seminal case for the approach for employment tribunals on when the evidential burden will shift to an employer to prove that its acts were not discriminatory. Lord Justice Mummery stated as follows: "The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination."
25. It is incumbent on a Employment Tribunal which seeks to infer (or indeed to decline to infer) discrimination from the surrounding facts to set out in some detail what these relevant factors are. By reference to Anya v University of Oxford [2001] IRLR 377 CA
26. It is implicit in the concept of discrimination that the claimant is treated differently than the statutory comparator is or would be treated. The determination of the comparator depends upon the reason for the difference in treatment. The question

whether the claimant has received less favourable treatment is often inextricably linked with the question why the claimant was treated as he was. By reference to Shamoon However, as the EAT noted (in Ladele) although comparators may be of evidential value in determining the reason why the claimant was treated as he or she was, frequently they cast no useful light on that question at all. In some instances comparators can be misleading because there will be unlawful discrimination where the prohibited ground contributes to an act or decision even though it is not the sole or principal reason for it. If the Employment Tribunal is able to conclude that the respondent would not have treated the comparator more favourably, then it is unnecessary to determine the characteristics of the statutory comparator. By reference to Watt (formerly Carter) v Ahsan [2008] ICR 82 EAT

27. If the Employment Tribunal does identify a comparator for the purpose of determining whether there has been less favourable treatment, comparisons between two people must be such that the relevant circumstances are the same or not materially different. The Tribunal must be astute in determining what factors are so relevant to the treatment of the claimant that they must also be present in the real or hypothetical comparator in order that the comparison which is to be made will be a fair and proper comparison. Often, but not always, these will be matters which will have been in the mind of the person doing the treatment when relevant decisions were made. The comparator will often be hypothetical, and that when dealing with a complaint of direct discrimination it can sometimes be more helpful to proceed to considering the reason for the treatment (the “reason why” question) See for example Shamoon and Nagarajan v London Regional Transport[199] IRLR 572 HL

#### Arising from Disability

28. Section 15 of the Equality Act 2010 provides:

#### **15 Discrimination arising from disability**

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

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

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

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

29. In Sheikholeslami v University of Edinburgh 2018 IRLR 1090, EAT, a s15-related appeal, Simler J held that:

‘On causation, the approach to S.15... is now well established... In short, this provision requires an investigation of two distinct causative issues: (i) did A treat B unfavourably because of an (identified) something? and (ii) did that something arise in consequence

of B's disability? The first issue involves an examination of the putative discriminator's state of mind to determine what consciously or unconsciously was the reason for any unfavourable treatment found. If the "something" was a more than trivial part of the reason for unfavourable treatment then stage (i) is satisfied. The second issue is a question of objective fact for an employment tribunal to decide in light of the evidence.'

30. A respondent has a defence to a s15 complaint if it can be shown that the unfavourable treatment is a proportionate means of achieving a legitimate aim. To determine the question of whether treatment is proportionate to achieve a legitimate aim requires an objective balance between the discriminatory effect of the condition and the reasonable needs of the party who seeks to apply the condition. Hampson v Department of Education and Science [1989] ICR 179.

#### Failure to make Reasonable Adjustments

31. 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."*

32. 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.
33. The case of Environment Agency v Rowan [2008] IRLR 20 sets out the approach to be taken at para 27:

*".. an employment tribunal ....must identify :*

*(a) The provision, d=criterion or practice applied by or on behalf of the employer, or*

- (b) *The physical feature of premises occupied by the employer,*
- (c) *The identity of non-disabled comparators (where appropriate) and*
- (d) *The nature and extent of the substantial disadvantage suffered by the claimant.”*

34. 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’*

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

36. 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.

37. 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. The provision criteria or practise will not be narrowly construed but it must be ‘*capable of being applied to others*’ and carries the connotation of the state of affairs, ‘*indicating how similar cases are generally treated or how a similar case would be treated if it occurred again.*’

38. 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.

39. The Equality and Human Rights Commission: Code of Practice on Employment (2011) at 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.”*



40. Paragraph 6.28 of the Code identifies factors which may be relevant to the reasonableness of a proposed step:
- c. whether taking any particular steps would be effective in preventing the substantial disadvantage;
  - d. the practicability of the step;
  - e. the financial and other costs of making the adjustment and the extent of any disruption caused;
  - f. the extent of the employer's financial or other resources;
  - g. the availability to the employer of financial or other assistance to help make an adjustment (such as advice through Access to Work); and
  - h. the type and size of the employer.

### Harassment

41. 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.”

42. This is a similar definition to that contained in the SDA and RRA although the predecessor legislation used “grounds of” rather than “related to”. It is arguable that “related to” could be wider.
43. As can be seen from the wording, 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.

44. 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.
45. 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 Lindsay v LSE [2013] EWCA Civ 1650 . 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 EOC v Secretary of State for Trade & Industry [2007] IRLR 327 HC .
46. 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).

#### Holiday Pay

47. The applicable regulations are Regulation 13 of the Working Time Regulations 1998 which give every worker the entitlement to 4 weeks annual leave and an additional 1.6 weeks leave pursuant to regulation 13A.

#### **The evidence**

47. The tribunal has heard evidence from the claimant and on her behalf from Mrs Ellen Copperthwaite and Stephen Griffin. For the respondents, we have heard evidence from Mr Glenn Humphrey, the claimant's line manager and operations manager of that part of the respondent's business in which the claimant worked, Laura Louise Kirby, senior HR business partner, in respect of parts of the respondent's business including the Richmond Care Village Bede where the claimant was employed, and from Philippa Fieldhouse, managing director for Richmond Villages, who conducted the grievance appeal. We have also been provided a witness statement from Laura Ryan who at the time was the interim lead employee relations business partner whose evidence was limited to a written witness statement but whose health prevented her attending the tribunal to give evidence.
48. We have been referred to a bundle of documents that is indexed and extends over some 660 pages. The witness statements provided by the parties refer to pages within the bundle of documents to which we have been referred. Document reference numbers are included within the statements, and the destination table provided by the claimant references the documents within the bundle and references to documents referred to in examination are noted in the tribunal's notes of the evidence.
49. The tribunal is grateful to the assistance provided by the parties representatives and for the written submissions provided by both Mr Cottam and Ms Barrett. The

representatives have addressed the tribunal in oral submissions to supplement those made in writing.

### **Findings of fact**

50. We are grateful that the parties have provided to the tribunal a chronology list of events to assist us in our navigation of the documents and the evidence.
51. The claimant was employed by the respondent BUPA, trading as Richmond Villages working at the Richmond Bede Village on 15 October 2015 as a Village Manager. The Village is a large care Village in Coventry, consisting of grounds that hold 52 bungalows and apartments, a building of 48 suites where domiciliary care can be provided along with a restaurant/function room and full hotel services. There is another building housing nine adults in a learning disabilities and mental health unit and the main building holds a reception, care home restaurant, 47 bed nursing home and offices housing the Village Manager and heads of department. The respondent is a care organisation with substantial human resource structures. As Village Manager, the claimant held a key position of responsibility managing approximately 134 employees at the site. She was operationally and financially responsible for the delivery of services in the retirement Village and the general management of the site.
52. As a full time Village Manager, the claimant was managed by an operations manager who at the relevant time was Mr Glenn Humphrey. Mr Humphrey had oversight of a number of retirement Villages and Village Managers. When he was appointed in early May 2018, Mr Humphrey had responsibilities for four Villages including Richmond Bede located in Coventry. Subsequently, that number was increased to five and then to six Villages.
53. When the claimant was recruited by the respondent, they were made aware that she had neurodiverse characteristics having been diagnosed with dyslexia when she was in her thirties. The claimant stated that she had developed strategies to assist herself whilst at work so that her dyslexia was not a problem. Notwithstanding her diagnosis, she completed her college and university studies to her satisfaction. Although already aware of the claimant's dyslexic diagnosis, the claimant has confirmed that in May 2017, she confirmed her dyslexic status on the respondent's system known as WorkDay.
54. We would observe at this stage that the claimant, it is acknowledged by the parties, does not at present enjoy good mental health and she has throughout the course of giving her evidence, acknowledged that the effects of her poor mental health and stress causes her to have difficulty in recalling facts and dates and we have taken note of that fact when reaching our findings of fact. We do remark however that despite allowing the claimant time to think about and compose her answers to questions, she has in giving evidence frequently become muddled, confusing the chronology of events and sadly is not a reliable historian of her employment with the respondent.

55. We noted that the claimant had confirmed on the respondent's WorkDay records that she had dyslexia. When Glenn Humphrey became the operations manager in early May 2018, we accept the evidence he has given that he had a discussion with the claimant who held a key role at the Richmond Bede Village about, amongst other things, her dyslexia and he asked what if any adjustment she required to operate effectively in regard her disability. The claimant informed Mr Humphrey that it took her longer to digest information and to think about and give feedback and that she had strategies she used to manage on a day-to-day basis. In contrast, the claimant says that she simply cannot recall any such discussion with Mr Humphrey on this matter and we prefer Mr Humphrey's account.
56. The claimant describes that in early 2018, there were changes made within the organisation before Mr Humphrey began working for the respondent in May 2018. Philippa Fieldhouse who had long worked for the respondent was appointed managing director and Laura Taylor, the claimant's former manager, was promoted from operations manager to operations director who then appointed a Village Manager, Bev Ingram, to the position of operations manager, and Glenn Humphrey was appointed as a second operations manager and at this stage, the claimant's account is that she began to feel some unsurety and discomfort. It is the claimant's account that although their early relationship was friendly, as is objectively demonstrated by emails from her being referred to, November 2018 [144], 18 November 2018 [147], May 2019 [150]. The claimant considers that positive feedback was given to her that was somewhat begrudgingly given although she has been unable to identify how it is said the positive feedback was begrudgingly given.
57. The claimant acknowledges that Mr Humphrey did on occasion make time to speak to her. She suggests that the support had a disingenuous motive and that what was said by him in writing by email was written deliberately to give the appearance of being supportive when it was not e.g. 26 July 2019, email [178]:

*"Hi Linda,*

*We didn't get a chance to discuss the business review on Tuesday. Are you on track/do you need any support/are you bringing anyone with you?*

*I would like to ensure I at least know the key themes around the positives and challenges you want to highlight so I can help during the session."*

58. Of significance is the fact that the claimant suggests that Mr Humphrey, while managing four Villages within his remit, had quickly identified the claimant's vulnerabilities and that he wasn't:

*"up for being jovial and relaxed with me, he stepped away from that and with an audience of directors, he would make sure that they could see that from him too, which would clearly embarrass me as it was only me that felt like that."*

The claimant in her evidence (witness statement (“w/s”) para 8) suggests that Mr Humphrey spoke to her in a derogatory manner and continually made her feel that she was not able to carry her role, did not support her and that he was:

*“someone who comes across as a public schoolboy who would use boy’s club analogies like football pitch techniques to explain what he wanted from me. He was renowned for this, it went down well with the rest of the Village Managers as they had similar backgrounds to Glenn and they liked football and they were mainly male!”*

59. Looking at the evidence we find that when he managed the four Villages initially under his remit the majority of them were managed by woman. We note that Ashton on Trent was managed by Joanne Wilson initially then by Karen Taylor and Bede by the claimant, three of the four Villages were managed by women. Moreover, Mr Humphrey reported to his line manager who at the time was Laura Taylor, the operations director, and her manager, Philippa Fieldhouse, managing director. We find that the respondent business had a managing structure which was well represented by females in senior posts and there was a mix of male and female in other managing roles within the Village structures. Whilst there were some men who joined the weekly management briefings, we have heard no evidence to suggest that the claimants allegations that Mr Humphrey’s motives were disingenuous in any way or excluding of the claimant were well founded.
60. The claimant expresses concern about comments which she states Mr Humphrey made to her about the language that she used during the period April 2018 to July 2020. Mr Humphrey denies commenting on the claimant’s language however acknowledges that he gave her feedback about her presentation style in meetings and he encouraged her to use answers to probing questions about her reports in a clear and concise way in order to deliver the information that she had to convey as effectively as possible. We accept the account that Mr Humphrey sought to coach the claimant as he did other Village Managers to effectively manage the wider business. The claimant, whilst making the allegation that comments were made about her language, is not able to provide us with specific examples of when such comments were made or the nature of them. What is clear is that the claimant perceives that there were criticism of her and she perceived Mr Humphrey to be a “public schoolboy” and he used boys club analogies and used football pitch techniques to explain what he wanted from the claimant and that although other Village Managers liked his approach, the claimant says that the managers were mainly men. We find that the claimant’s perception of Mr Humphrey’s behaviour being that of a boy’s club based upon the objective evidence to be inconsistent with the evidence.
61. The evidence before us is that as early as July 2018, before she went on leave, the claimant spoke with Philippa Fieldhouse, the managing director, to ask if Mr Humphrey’s appointment had some meaning that the claimant was not aware of and in response, Ms Fieldhouse gave the claimant reassurances that he was tasked

simply with overseeing the effective management and development of the Villages of which he had overall management.

62. We conclude that the coaching and guidance given to the claimant by Mr Humphrey as her line manager, was communication that was reasonable and proper as would be reasonably done by an operations manager providing proper support to his direct report staff. Such coaching guidance as was given to the claimant we conclude could not objectively be or reasonably be seen to be unreasonable management guidance and instruction and is not reasonably to be seen as destroying, undermining or seriously damaging trust and confidence in a relationship between an employee and their line manager nor is it conduct that might reasonably be seen to be or perceived to be humiliating, intimidating or degrading behaviour that amounts to harassment whether because of a protected characteristic or at all.
63. In her complaint, the claimant suggests that at an unspecified time, before August 2019, Mr Humphrey asked her to draft a smoking policy to be used in the Villages of which he was operations manager. Although Mr Humphrey says he cannot recall having asked the claimant to draft such a policy, he acknowledges it is routine for operations managers to delegate the review of policies to Village Managers and the claimant has not disputed that fact and had he done so, it would have been within the ordinary conduct of the respondent's business. We cannot reasonably conclude that the delegation of drafting a smoking policy can be seen as a criticism of the claimant calculated to destroy trust and confidence and it would not reasonably be perceived as doing so whether such a policy was in due time issued or not.
64. The claimant suggests that the reason why she had been asked to draft the smoking policy was as a dig or criticism at her for having smoked. This we find is inconsistent on the basis that Mr Humphrey himself is a smoker and known to be such.
65. We have no doubt that as operations manager, Mr Humphrey was tasked with ensuring the effective management of the Villages under his management and that financial and other management information was delivered at regular meetings across the group.
66. Sadly, the claimant's perception of Mr Humphrey coaching guidance is that there was a class divide between them, it being her perception that Mr Humphrey was a public schoolboy while she had been to a state school.
67. On 14 August 2019, the claimant asserts that Mr Humphrey informed her of her "failings" and disagreed with the dismissal of a member of the claimant's team. Mr Humphrey agrees that at a meeting on 14 August, he raised concerns with the claimant about a decision that had been taken to dismiss a member of staff and his concern that the decision to dismiss that member of staff had been delegated to the claimant's deputy instead of the decision and dismissal meeting being conducted by the claimant. The dismissal was one which was subsequently overturned on appeal.

68. The claimant in her witness statement at paragraph 14 appears to conflate the subject of the discussion on 14 August being about the dismissal, staff reorganisation and the return of an employee from maternity leave. In cross examination, the claimant gave a confused account of the meeting and accepted that she could not fully recall whether the discussion listing a number of concerns which she described as “failings” was in August or in subsequent months.
69. Having been referred to the contemporaneous documentation [198], we find that at a meeting on 14 August 2019, the discussion with the claimant and Mr Humphrey was limited to that in relation to Mr Humphrey’s legitimate concern about the dismissal of a staff member and that it was a concern that he had reasonable and proper cause to discuss with the claimant. We find that nothing in that discussion did objectively or was intended to destroy the trust and confidence in the relationship between the company and the claimant.
70. We have heard evidence that at this time, the claimant had unfortunately needed to book two weeks’ annual leave in August 2019 to move from her home. She had been the subject of domestic violence by her long term partner and undoubtedly during the summer of 2019, the claimant underwent a very difficult personal time relating to her abusive partner, grieving the death of her mother the previous year and the fact that a business dealing outside of work had resulted in the claimant being a victim of criminal and fraudulent activities which caused her to lose all her life savings. The claimant understandably felt vulnerable and her mental health was fragile. The claimant complains that during the period of August to September 2019, Mr Humphrey ignored her request for support and told her that her integrity was under question. The claimant has not provided any specific detail of any requests that she made for support from Mr Humphrey during that period. In her witness statements [paragraph 17] the claimant acknowledges that she did not inform Mr Humphrey of the full detail of her domestic circumstances and although he was aware that the claimant had left the home and that the claimant had the previous year lost her mother, she acknowledges that he was not aware of the trauma surrounding the criminal activities and the fact that a person had coerced the claimant into losing her life savings.
71. From the claimant’s account of the state of her mental health in August and September 2019 as detailed in the witness statement [paragraph 18], it was evident that the claimant’s home life was subject to significant pressures. We have been referred to the claimant’s medical records and notes [639] that the claimant’s GP was seeing her on 2 September 2019 and recorded that the claimant was suffering from “stress at home”. The claimant acknowledges that although she had no diagnosis from the mental health team, she made a self referral to that team around about that time. We have been referred to contemporary text messages between the claimant and Mr Humphrey in August and September 2019 [198] which appear to be supportive of the claimant and show no indication that Mr Humphrey was asked by the claimant to provide support that was not forthcoming from him.

72. We were referred to an email from Mr Humphrey of 7 September to the claimant: “Welcome back” [212] welcoming the claimant back to work at a time when Mr Humphrey was on a period of his own annual leave. We conclude that the tone of the communications between the claimant and Mr Humphrey is not evidence of the claimant’s assertion that Mr Humphrey was not supportive of her. On the contrary, Mr Humphrey concludes his email on 7 September saying:

*“Take it steady and catch up when I am back on 23 September”.*

73. The claimant in response to our examination remained convinced that Mr Humphrey was not supportive of her and told her that her integrity was under question in the period August to September 2019 however there is no evidence before us to support such a finding of fact.
74. In her allegation of alleged breach of contract, the claimant asserts that on 7 October 2019, during a meeting with the claimant, Mr Humphrey brought with him a list which he called “*your failings*”. Mr Humphrey denies that he took a list to the meeting on 7 October and gives an account that the meeting is summarised in his email following it which referred to “*concerns*” [244]. The claimant in cross examination accepted that in fact, Mr Humphrey had not brought a physical list to the meeting and she says “*bullies don’t write things down, they’re not stupid*”. On the evidence before us, we conclude that there was a meeting held on 7 October during which Mr Humphrey raised a number of concerns that he had which were summarised in an email described as “*meeting feedback*” [244 – 245]. The email refers to a summary of the discussions during which Mr Humphrey shared his concerns about the claimant’s management decisions and specific discussion in relation to consultation with the Bede carer team highlighting an intention to change shifts within a “24 rolling rota” which did not have sufficient regard to the impact such change would have on the carers. As a result of the consultation, it was necessary to make a U-turn proposal which Mr Humphrey was concerned undermined the claimant’s credibility and potentially that of the wider Richmond leadership team, such that the process had unsettled the team. The discussion considered also concerns about the claimant’s management or rather a lack of her direct management of the dismissal of a 20 years serving member of staff for gross misconduct which had led to her subsequent reinstatement.
75. There was discussion also about other matters including:
- 75.1 about the claimant’s initial refusal of a request being made by a member of staff returning from maternity leave to be allowed to work flexibly.
- 75.2 feedback from staff members that they were not aware of the claimant’s working arrangements.
- 75.3 It was acknowledged that it had been agreed that the claimant would be given protected time to enable her to work from home on a Friday on a flexible basis at the end of a tiring week but there was concern that the staff were unsure



of where she was on any given day and the arrangement was one that was to be operated flexibly to ensure efficiency in the business.

Mr Humphrey concluded that he would be working on the claimant's performance plan and would arrange regular meetings with her.

76. We have considered the evidence given by Mr Humphrey and the claimant in respect of the discussion on 7 October. The claimant accepts that her belief is described at paragraph 14 of her witness statement that Mr Humphrey had reprimanded her about consultations in August was not correct as that had been a matter discussed for the first time in October.
77. In her response to examination, the claimant sought to avoid answering questions about concerns in relation to the proposed change of shifts asserting that Mr Humphrey "favoured people". The claimant did accept that Mr Humphrey was right to raise the concern with her that he did about the way in which she engaged in consultation with the workforce, and that her actions had raised serious issues and the possibility of discrimination claims being brought against the respondent business in respect of flexible working requests.
78. It was acknowledged by the claimant that the agreement that Mr Humphrey had extended to the claimant that she would be allowed to work from home on Friday was an agreement that required her to be flexible such that if she was required to be in the Village on that day she would be in the Village then and on all other days and she had to be accessible to staff. The claimant somewhat begrudgingly acknowledging Mr Humphrey's agreement that she would be able to work from home to have protected time appears to be a decision to accommodate her request as she considered it was justified as she lived further from work than did others in the management team at that time. We conclude that the claimant's assertion that the respondent's manager Mr Humphrey called into question her integrity is mistaken and that what the claimant in fact referred to was the concerns Mr Humphrey made about the claimant's credibility amongst her staff members.
79. Following the email of 7 October from Mr Humphrey, the claimant sent a response on 8 October [243] and as a result, Mr Humphrey set up an informal meeting with the claimant under managing underperformance which was to be held on 17 October offsite at the Southam Village on 17 October [243]. The Tribunal find that based upon the issues raised by Mr Humphrey at the meeting on 7 October, there was an open discussion to raise concerns with the claimant about aspects of her performance in a senior management role which were concerns that might reasonably be raised by an employer who had reasonable and proper cause to do so without being a discussion either calculated or likely to destroy trust and confidence in the working relationship between the claimant and Mr Humphrey. We find that the discussion on 7 October was one that reasonably raised concerns and it was the first occasion at which the claimant informed Mr Humphrey of the problems she had outside of work and the support that she was being given.

80. A meeting to discuss performance management was held with the claimant on 17 October and the contents of that meeting was summarised in Mr Humphrey's email to the claimant on 24 October 2019 [255]. It is evident that at the meeting on 17 October, the claimant disclosed more detail about her personal circumstances to Mr Humphrey than she had previously done on 7 October. The summary of the meeting details the concerns that were discussed at it which included:
- 1 Acknowledging the claimant's personal circumstances were challenging and identified that the claimant should inform Mr Humphrey when she needed time out of managing the business and if the personal circumstances were likely to impact on her work.
  - 2 The need to communicate her availability clearly to members of staff and suggested a means of managing "drop ins" which disrupted her working day.
  - 3 To agree quarterly face to face meetings ahead of the business review meetings and to arrange monthly one to ones, if not face to face then over Skype, to focus on actions and objectives for the then next month and to provide feedback to each other.
  - 4 To review the changes proposed to the care floor and the nightshifts.
  - 5 To review facilities.
  - 6 A discussion about how the claimant could stay connected to the business by emails and diary notes and diary appointments to be managed more effectively.
81. The claimant accepted in response to examination that Mr Humphrey was not trying to oust her authority with the other heads of departments and acknowledges that she in fact only recalls part of the meeting.
82. On 28 October, the claimant informed Mr Humphrey that she was being supported by the mental health team in Rugeley for trauma [257] and the tribunal conclude that Mr Humphrey in response was supportive of the claimant. The claimant during this period perceived that Mr Humphrey considered her to be a nuisance at the operation of the business. We have had no evidence brought to our attention to suggest that the claimant's perception was one that was reasonably held as nothing corroborates such a view. In the event, we find evidence that indicates he was supportive of the claimant [265] and on 13 November, congratulated her on the efforts of Bede Village in the Village of the Year competition [275].
83. On 14 November, the claimant became unwell and had a breakdown and later that day at 15:55 she wrote an email to Mr Humphrey [277] to inform him that the breakdown was part of a trauma condition and she was certified unfit for work for a period of six weeks that would be reviewed after four weeks. Mr Humphrey responded to the communication from the claimant later the same day at 21:45 in

a manner which we find to have been supportive of the claimant and her recovery. He said:

*"I will let the team know that you will be out for a few weeks and we will also discuss with Sonia the extent to which she can stand in for you during this time.*

*Please do not worry about doing more work on the BR slides. I will sort these out with Sonia and she will support me with the session on Monday.*

*I will let you know your entitlement and our requirements to cover your sickness absence. In the meantime, please take the advice that you are being given, I will keep in touch and I do wish you well."*

84. We have been referred to the claimant's GP records [638]. The claimant was diagnosed with depression and certified not fit until 13 December. The mental health had diagnosed the claimant with "trauma" and the history records "sustained emotional trauma over four months" and that the claimant had been in an emotionally and financially abusive relationship which contributed to her overall breakdown.
85. The claimant criticised the respondents and in particular Mr Humphrey for telling her to take a break from emails and for advising her that her deputy Sonia would sort out any issues at work, we do not find the claimant's criticism of the respondent in that regard to be well founded. The claimant was unfit to return to work in December and questioned at that stage whether sick pay would continue or whether it would be reduced to half pay. The respondent's policy was to pay six weeks full pay and six weeks half pay and the claimant indicated that she wanted to take annual leave so that any continued absence would be on full pay.
86. We have been referred to Whatsapp messages during the period, between the claimant and Mr Humphrey [194] which we conclude were supportive of the claimant in general terms. The claimant returned to work on 10 January 2020 on a phased return to work and in an email, drafted by the claimant with suggested amendments from Mr Humphrey, was sent to the staff to inform them of the claimant's return [285]. Mr Humphrey made some minor editing suggestions to the claimant's draft which were accepted by the claimant and which we find were not oppressive drafting edits. The tribunal finds that at a meeting on 10 January, a phased return to work with support from Mr Humphrey and the gradual taking of the reins back from Sonia, her deputy, was put in place [292] and Mr Humphrey's communications to staff clearly indicated that the claimant was back in charge of Bede Village rather than Sonia with effect from 13 January 2020 [287].
87. During his discussions with the claimant, before she began a period of sick leave, Mr Humphrey had indicated to her that her Blackberry needed updating and during the course of the winter period in December 2019, there was a refurbishment within

the office when five laptops were upgraded including the claimant's. During her absence from work, Sonia, her deputy, had based herself in the claimant's office.

88. The claimant's witness statement confirms that in or around August or September 2019 to give her some emotional support, she had been gifted a puppy and in trying to care for the puppy she had on a number of occasions taken the puppy to work for her. Unfortunately, the puppy was not toilet trained. Despite the claimant's efforts to put pads for the puppy to use, almost inevitably there was soiling of the office carpets and during the period of refurbishment, the claimant's office in her absence was deep cleaned and the claimant's possessions and office equipment were placed in the cupboard within her office pending her return.
89. The claimant in her complaint form suggested that on 12 January 2020 when she returned to her office following her mental breakdown, she had found that all of her personal items had been removed and the office no longer looked like hers. The claimant says that she didn't raise this with Mr Humphrey as she did not want to be told to go back at home. The tribunal acknowledges that a return to work after a period of absence extending over some six weeks can be unsettling however we find that the objective reasons why the claimant's personal items were placed for safekeeping in a cupboard were reasonable and the claimant did not complain about that fact at the time. Although the claimant asserts that Mr Humphrey had not prepared the team for her return and was regimented on who she could speak to and the tasks that she could and could not do, we have found nothing to suggest that Mr Humphrey's direction was anything other than reasonable and supportive management guidance. The direction that the claimant should not trouble herself with work whilst she was certified unfit to work was a perfectly reasonable one and when it became clear that the claimant was in a position to return to work, the confirmation of her return was communicated to the claimant's work colleagues with her agreement. There is nothing to lead us to consider that the claimant's absence and then return to work was anything other than supported by the respondents. A phased return to work plan was in place with a provision for the claimant to gradually resume her line management responsibilities for heads of department and communications clearly confirmed that the claimant was resuming the responsibility from her deputy manager [287].
90. Based upon the objective contemporary documentation, we cannot support the claimant's assertion that the claimant's return was not supported by the respondent and by her manager Mr Humphrey.
91. In her complaint, the claimant asserts that Mr Humphrey said to the claimant "*can't we demote you or something?*" and micromanage the claimant and criticised her language. The allegation is denied and in the face of the starkly contrasting oral accounts, we find that it more likely than not that no such comment would have been made by Mr Humphrey. The documentary evidence indicates that Mr Humphrey, the claimant's manager, was supportive of her mental health recovery and had put in place a phased return to work plan. Although the claimant asserts that she was micromanaged by Mr Humphrey, that flies in the face of her suggestion

that he spent insufficient time with her and, absent any documentary evidence of emails or text messages supporting micromanagement, we do not consider the allegation to be one that is credible. On the contrary, the claimant accepts that she was asked by Mr Humphrey to provide the same information as were all managers and she accepts that Mr Humphrey gave coaching and positive feedback which we consider is inconsistent with the suggestion that Mr Humphrey sought to exclude her or treated her less favourably because of a disability or at all.

92. Following a meeting with the claimant on 16 January Mr Humphrey sent her an email [292 – 293] setting out the details of a phased return to work and the ongoing support that will be provided.
93. In the claimant's list of issues, the claimant identifies that in February 2020, she informed Mr Humphrey that she had contacted the Speak Up team and he *"interrogated her about it, even after she said she didn't want to discuss it further."* The claimant we find is mistaken. The first record of the claimant having made contact with the "Speak Up team" is recorded to have been on 9 March 2020 [369 – 370] and Mr Humphrey's evidence is that he recalled the conversation on 10 March with her when the claimant told him that she couldn't speak to him, Mr Humphrey did not press her further.
94. The claimant was engaged in a phased return to work and, as he had previously indicated he intended to do, Mr Humphrey through the HR team sought the advice of occupational health as to the likelihood of the claimant being able to return to full time working in a phased manner. An occupational health referral was sent on 9 March 2020 [335].
95. As acknowledged by the claimant in her claim form and particulars of complaint, Mr Humphrey had spoken to the claimant about the importance of an occupational health report being prepared to help and manage the claimant's return to work. Unfortunately, there was delay in the employment relations team organising the occupational health referral that was not sent until 9 March [335]. We accept that Mr Humphrey's email of 16 January considered the need for the occupational health report was to reassure both him and the claimant that the phased return and ongoing arrangements supported her return to full health and that there was no risk of a relapse.
96. On her return to work, a number of adjustments were made to accommodate the claimant's needs including:

*"Meeting agendas were sent to the claimant in advance to enable her to prepare in advance of a call.*

*Monthly one to one meetings were placed in the diaries.*

*The claimant agreed to contact Mr Humphrey if she required any additional time outside of the one to ones to meet with him.*

*During the phased return, Mr Humphrey will contact the claimant to ensure that she was progressing as planned.”*

97. It is universally accepted that during the course of February and early March 2020, the number of cases of COVID-19 within the UK were rapidly increasing and the respondent Villages including the Bede Village were working subject to unprecedented pressures within the care sector and the workplace was an extremely stressful environment. We find that during the period, Mr Humphrey identified to the claimant where she was able to find support and training and sought to ensure that good lines of communication and the exchange of information was updated. We are mindful that Mr Humphrey on 24 February sent an email to the claimant [316] reminding her of the need to keep him and the reception at the Village informed of where she would be if not on site.
98. In her allegations, the claimant suggests that on or around February 2020, Mr Humphrey informed her that she would be at the Village and went back on the one day a week working from home he had previously agreed with the claimant. Although Mr Humphrey in his witness statement at paragraph 36 indicates that he cannot comment on this point, he did not at any stage agree that Linda would only be in the Village one day a week. It is clear that the suggestion is that he sought to renege on her being allowed to work from home with protected time on the Friday as had historically been the case albeit as a flexible arrangement. We find that the claimant’s concern in this regard related to the wording of the occupational health referral [336] to specific questions, namely:
- “Is there anything further that can be explored to facilitate a successful return to work (to 5 days and no work from home option)?”*
- “Do you have any specific recommendations or observations that you wish to make which would either help in managing the employee’s employment with us or facilitate a five day working week from the Village.”*
99. Whilst reading the detail of the occupational health report, the claimant may have been concerned that there was a possibility of her no longer having the ability to have protected time working from home on the Friday if business needs permitted, we do not consider that it was a question that was unreasonable or not a proper query and it was not calculated or likely to destroy trust and confidence.
100. As the claimant returned to work, she was scheduled to receive training and refresher training that unfortunately she had to cancel in early March and the exchange of emails with Mr Humphrey demonstrates that he was trying to arrange the training which she required which the claimant suggested should be undertaken after her return from annual leave but was scheduled for March.
101. On 9 March 2020, the claimant made contact with “Speak Up” which is a facility operated by BUPA where employees can seek support. Notes of that initial referral

to the Speak Up team were provided [369 – 370]. The notes record other concerns raised by the claimant who reported amongst other things that:

101.1 she did not feel her manager was supporting her mental health/dyslexia;

101.2 she struggles with Excel and Finance and needs to take time to slowly read and understand;

101.3 her manager made her feel under pressure on calls;

101.4 she felt that her manager would rather she was off sick than spend time with her to understand her health condition;

101.5 she did not feel supported by her manager;

At the conclusion of the discussion the claimant was told that she could consider what approach she wished to take, either raising her concerns informally with the manager or through a formal grievance. The claimant had informed the Speak Up team that she wanted to think about her next steps and she wanted to take time to think about her options.

102. In the event in mid March 2020, the claimant then became unwell with a diagnosis possibly of COVID-19 and although she was not tested as positive for COVID, she isolated. On 16 March, Mr Humphrey emailed the team to inform them that given updated government guidelines, it was agreed that the claimant would, as a precaution, isolate at home for the two days ahead of her annual leave that was due to start on Thursday thereby avoiding any potential risk to the Village residents and staffing teams [379 – 380]. The respondent's team at the Bede Village were emailed to inform them that Sonia would be deputy Village Manager and we conclude that the respondent's email was a reasonable one to communicate to staff in the context of COVID and to cover the claimant's period of annual leave.
103. The claimant was scheduled to return to work on 5 April 2020 [385] and at that time, the claimant's occupational health appointment was pending. It was rescheduled to 6 April 2020. The response to the COVID-19 pandemic having changed during the course of the claimant's annual leave, Mr Humphrey sent an email to the claimant on 5 April [385] proposing that the claimant on her return to work, should work from home on 6 and 7 April to enable her to complete the OH consultation and to update herself on the operational status and people expectations within the business.
104. An occupational health report was issued on 7 April 2020 following a consultation on 6 April [389 - 392]. At the occupational health assessment, the claimant identified that she felt that pressure at work was a trigger for her anxiety and in particular the claimant says that it was Mr Humphrey who was the trigger. The claimant told occupational health assessment that the stress made her dyslexia more difficult as her coping strategies were less effective when she was under pressure. The claimant accepts that her employer took the occupational health reports seriously and consider the occupational health recommendations that the claimant should be

allowed to work one day a week from home and given more time to complete tasks. It is noteworthy that the occupational health report does not recommend that the claimant ought to be managed by a different manager and the claimant confirmed in answer to cross examination that she did not recall having asked for that change to be made as an adjustment.

105. The tribunal acknowledges that at any time and never more so than during the extreme pressure of the COVID response, an employer would only act responsibly if they ensured a return to work was made with suitable reasonable adjustments in place. The respondent having the report to hand asked the claimant that she should continue to work from home until the following week when there could be a full discussion about the occupational health report and its various implications.
106. On or around 14 April, Louse Kirby, senior HR business partner at the time, contacted the claimant by email [404 – 408] to inform her that because of the issues that she had raised against Mr Humphrey, her line manager, that for the immediate future Beverley Ingram who would be having a conversation with her about the occupational health report who would agree a plan moving forward and on the fifteenth, it was confirmed that line management would be passed temporarily pending the grievance outcome to Ms Ingram [407].
107. The account of the telephone conversation between the claimant and Louise Kirby differs in each of their recollections. On the claimant's account, she alleges that Ms Kirby said to her *"we are in receipt of your occupational health report, there is no way we can meet the adjustments, do you want to pay out in leave?"* to which the claimant says she replied *"I will not be bullied out of my job."*
108. Ms Kirby's recollection differs. She says that she had a conversation along the lines that *"I can see from your OH report that you are still unwell. I have read that you struggle to cope with changing information. The current pandemic means that information gathering and cascading is continuous – are you sure this is an environment you want to return to, or would you like to enter into a without-prejudice conversation?"* It is her recollection that the claimant became angry and shouted that she was *"good at my job"* at which point Ms Kirby did not pursue the conversation.
109. The tribunal is clearly aware that protected conversations and without-prejudice discussions about the proposed conclusion of employment on mutually agreed terms is a reality in the workplace. We do not find it plausible that an experienced HR professional such as Ms Kirby, having 15 years experience with the respondent, would have had a conversation in the way that the claimant outlines. Ms Kirby indicates that the conversation along the same lines as she had previously described was also had later the same day at the end of the reasonable adjustments meeting that was held with the claimant [615].
110. The occupational health report was a frank and constructive report which identified a series of reasonable adjustments that might be made to try and mitigate the



effects of stress within the workplace. The context of the landscape in which these discussions took place was on 14 April, some three weeks into the national lockdown imposed in response to the COVID-19 pandemic, and in times unprecedented pressure upon the care sector and on the demands within the workplace. That the respondents had serious concerns about the claimant's ability to perform under the pressures that were in play we find was reasonable and as soon as the claimant made it plain that she was upset by the without prejudice offer, the conversation was brought to a close. We find that the conversation of itself was not a breach of trust and confidence.

111. The claimant complains that the delay in arranging the occupational health referral from when first suggested by Mr Humphrey until it was made shortly after 9 March was unreasonable. We find that the delay was an administrative delay and again within the context of pressures within the care sector at the time, we conclude that such delay was administrative at the hands of the employer relations team and was not one calculated or objectively likely to destroy or seriously damage trust and confidence in the employment relationship.
112. On 14 April 2020 Bev Ingram accompanied by Louise Kirby, conducted an occupational health review meeting at which the claimant described that she had raised her Speak Up complaint when on her return to work she found her office had been "gutted" and that she did not feel supported but that she did not want to discuss that matter as it was being investigated through the Speak Up procedures. The claimant had described that she felt her symptoms had got worse since her return to work and that when she is on a call and she is interrogated on numbers, she felt she was being asked more questions than ever since she didn't have a financial background that some of her managerial colleagues had. The claimant asked to be given support with more guidance and instructions. The claimant was reminded that she had the opportunity to speak with Healthy Minds in addition to additional support from BUPA's counselling services.
113. Following the meeting on 15 April 2020, Louise Kirby confirmed to the claimant that she would report to Bev Ingram until the claimant's grievances and concerns about Glenn Humphrey as her line manager were resolved. The claimant was asked to stay at home and work on full pay until the business was able to address the concerns and ensure her safe return to work in circumstances where the claimant would not be subject to further stresses that might exacerbate her poor mental health.
114. It was determined that in terms of the claimant's grievance against Mr Humphrey, an independent person would investigate it and the company indicated that they wanted to be able to address the concerns the claimant had raised and then decide on the most appropriate steps to move forward.
115. The claimant has conceded that the respondent was starting to implement the recommendations of the occupational health report and were taking steps to prepare a personal risk assessment for the claimant and for the preparation of use

of standard reporting tools. However, the claimant suggested that whilst the Speak Up grievance investigation was still pending, to do the risk assessment was premature as she felt she was not able to speak openly. The claimant accepts that she asked for a change in her line manager in the short term at least and that she did not suggest that if a new manager was in place that she would require further reasonable adjustments or that she considered that the recommendations of the occupational health report could otherwise be cancelled.

116. The claimant alleges that the respondents *“ruthlessly expected the claimant to attend a course relating to her grievance from March to July 2020 and no one asked about her mental health”*. We observe that the occupational health report advised that the claimant was fit to attend workplace meetings [391] and it is entirely reasonable and not at all ruthless for the respondent to expect the claimant to attend an investigation meeting in relation to her own grievance and an appeal meeting relating to her appeal. We have been referred to the minutes of the grievance meeting and the appeal [420 - 563] and at the start of each, the claimant was asked if she was comfortable to continue and she was.
117. The claimant was accompanied to the meeting by her supporter Stephen Griffin and she was reminded of the housekeeping rules for the meeting and of the fact that the meeting was hers and if she required a break for 5 minutes or so or for the company to slow down in the questions to speak up and that the meeting could take a break at any point if she required.
118. The claimant has suggested that the grievance which she brought was a foregone conclusion and she was informed by email from Ms Siron that Mr Humphrey would continue overseeing her Village throughout the grievance process. We have not been referred to any specific email to which the claimant refers from Ms Siron. We have considered the notes of the grievance meeting of 6 May [420 – 435] which lasted almost two hours and at the conclusion of which Ms Siron, the senior business partner, conducting the investigation, indicated that she would review the notes and would complete investigations to understand other people’s perspectives and that she would respond back in writing in what her findings were as soon as possible. The tribunal concludes that the conduct of the grievance investigation was reasonable and we have been referred to the outcome letter confirming the reasons why Ms Siron reached the decision that she did.
119. Following the grievance investigation interview, an outcome letter was sent to the claimant on 26 May 2020 [484 – 496]. We find that the letter sets out in details Ms Siron’s investigation into each of the complaints that the claimant raised and gives an account for it. The outcome is a detailed one and with limited exceptions does not uphold the grievances that the claimant raised and gives a full account for the rationale for each determination.
120. Only in respect of the claimant’s grievance insofar as it related to the occupational health referral and the conversation that had been held between the claimant with Louise Kirby on 14 March was the claimant’s grievance upheld in part. Insofar as

the conversation on 14 March 2020 had been held whilst the claimant was travelling to work and that it could have been better planned, albeit that although the discussion was to ask the claimant whether she was open to have a conversation about discussing options that might be available, we find it was not a conversation had in the terms reported by the claimant but instead was a conversation with a view to reaching a solution aimed to resolve concerns about the claimant's wellbeing.

121. The claimant submitted a grievance appeal on 1 June 2020 [517] and further grievances were submitted by her on 2 June [521 – 523]. Meanwhile, on 7, 8 and 10 May, the respondent received grievance letters from six of the claimant's work colleagues [436 – 458] and on 2 and 3 June 2020, the respondent interviewed the individuals who raised grievances against the claimant in relation to what were described as a 'collective grievance' [530, 535, 538 and 541].
122. While the grievances were raised against the claimant the respondent, having delivered the grievance outcome to the claimant on 26 May 2020 [484], determined that the claimant should be suspended from the workplace pending the investigation of grievances then brought against her [479, 359 – 360].
123. The letter of suspension was a precautionary suspension from duty following receipt of six grievances from colleagues at the Richmond Village Bede. This suspension was on pay and the terms of the suspension were detailed in the letter as to the details of support that was available to the claimant from BUPA Healthy Minds, confidential telephone service, providing counselling services to employees.
124. The claimant alleges that the respondent, in particular Mr Humphrey, did not protect the claimant's professional reputation and that she was told that she could not return to work until the grievances against her had been heard. The claimant suggests that she was treated differently to her comparator Mr Humphrey who was not suspended whilst she raised grievances against him.
125. We note that Mr Humphrey did not himself raise a grievance against the claimant rather six of the heads of department reporting to the claimant at Richmond Bede Village submitted grievances against her which the claimant acknowledged raised serious allegations. The Heads of Department who presented their grievances were individuals with whom the claimant, had she been at work, would have been in daily contact. In contrast, the claimant was one of four reports to Mr Humphrey and Mr Humphrey did not have day to day with the claimant and moreover site visits were more restricted during the times of COVID and the claimant was on her return to work in any event was working from home. The tribunal accept that in the case of the claimant raising a grievance against Mr Humphrey, there was no immediate business need to suspend Mr Humphrey from duty as he could continue to manage the operation without direct line management of the claimant which was delegated to Ms Beverly Ingrams. The tribunal find that Mr Humphrey was not a suitable comparator in this case the tribunal consider whether a hypothetical comparator in the circumstances would have been treated in the same way. The tribunal find that

a hypothetical comparator would be a manger whose various direct line reports with whom they had day to day management contact presented grievances against their manger and was suspended pending investigation of the grievances. We are mindful that it was not practicable frothe respondent to remove the claimant from line management of her 6 line reporting Heads of Department in the Village she managed.

126. The claimant accepts that after she had submitted her formal grievance, she was no longer working with Glenn Humphrey. The tribunal can find no evidence that the claimant was treated "*like a child*" after her grievance was raised. The circumstances in which the claimant was suspended when six grievances were raised against her by her direct line reports were significantly different to those in relation to the respondent's treatment of Mr Humphrey when the claimant raised a grievance against him and his direct line management of the claimant was removed. A similar option to remove the claimant's direct line management of her heads of department would not have been feasible were the claimant to return to work.
127. There were six grievances raised against the claimant by her heads of department and within those six grievances, there were certain common themes but each had specific points in relation to each of their own specific circumstances. The claimant suggests that those raising grievances against her were friends of each other and some lived together and they felt proud to be able to get rid of a manager. We have heard no evidence to support the claimant's allegations. The claimant had somewhat grudgingly accepted that the allegations that were presented in the grievances raised against her were serious allegations and that the respondent were obliged to investigate the allegations in the way that they did. The claimant was the line manager for each of the heads of department and if she had returned to work and if reasonable adjustments were put in place, it would have been stressful for her to work with individuals who she was aware had lfive grievances presented against her, a situation which was very different to that in relation to the claimant's grievances against Mr Humphrey.
128. We find that the claimant was suspended from work because of five grievances raised by her direct line reports.
129. The claimant attended a grievance appeal hearing on 16 June 2020 [563] at which she was accompanied again by Stephen Griffin.
130. On 17 June 2020, Beverley Ingram had a meeting with the claimant to discuss reasonable adjustment at which the claimant told Beverley Ingram and Laura Kirby that she remained unfit and they told her that she ought to see her GP. The claimant was subsequently signed off for a further two months by her GP who confirmed that the claimant would be able to attend meetings by Skype even if she was not fit to attend work [570].
131. The claimant, during the course of the meeting, felt that the options suggested which were ways to adopt strategies to manage her dyslexia would not assist until

her Speak Up grievance had been investigated and resolved. In essence, the claimant reiterated that she felt issues arose when she was put on the spot and that her dyslexia was not *“too much of a problem, as long as I am not under undue stress”*. At the meeting, Bev Ingram indicated that due to COVID-19, there was a lot of stress in the care environment in the then climate and the requirement to provide statistics from care homes including confirmed suspected COVID and deaths and to report them externally meant that all the Village Managers including the claimant had to know the live statistics in their Village at any one time and that the claimant was being required to provide statistics that were unavoidable. The claimant suggested that although she could provide fact-based statistics about COVID calls, she found it more difficult to provide performance related statistics, that her Village was subject to more scrutiny than others on cause and that she described Mr Humphrey’s feedback as *“never nice”*.

132. The claimant had asked that she needed more flexibility in her working arrangements, including the option of working from home in the afternoons and for some short days [613]. The tribunal accepts the account given by Ms Kirby that the respondent’s experience was that the claimant frequently missed meetings and not because of her Outlook as she did not have a good internet signal and phone signal at home and moreover that it was unprecedented for Village Managers to work from home as the role requires the individual to be on site supporting and troubleshooting with staff, residents and relatives.
133. The claimant indicated that she felt ridiculed on calls however Ms, Ingram who also was in attendance on the calls to which the claimant referred, advised the claimant that she had never seen that experience when she had been attending the same meetings and that requiring the claimant as Village Manager to be accountable for the performance of the Village was an objective measure and was undertaken with a view to monitor performance and not to ridicule a particular individual.
134. Having submitted an appeal against the grievance outcome on 1 June [517] and further grievances on 2 June [521 – 523], a grievance appeal hearing took place on 16 June [563 – 571]. The meeting was conducted before Philippa Fieldhouse, managing director of Richmond Villages, with breaks extending over 90 minutes. It was agreed that the three grievance letters that had been submitted by the claimant shortly after her grievance appeal was linked to the current case and would be heard as part of the current process with which the claimant agreed. The claimant agreed that she was happy to proceed with the hearing and was accompanied by Mr Stephen Griffin.
135. Having received a fit note from the claimant’s GP on 18 June certifying the claimant unfit for work for a period of two months, there followed an email from Philippa Fieldhouse, the appeals manager, on 29 June [587] asking the claimant to confirm that she was fit to participate in the appeal investigation. Email exchanges continued from 13 to 17 July [589 – 590]. When writing to the claimant on 29 June, Ms Fieldhouse sought clarification as to the claimant’s fitness for work or to attend meetings whilst in the same communication Ms Fieldhouse asked the claimant to

ensure that she had put on her out of office reply to her emails as she had been previously asked to do. She also reminded the claimant of the details of contacts for Healthy Minds who will be able to provide the claimant with some support in addition to the support available in the interim from Beverley Ingram. As soon as the claimant confirmed that she was fit to attend Skype meetings, she was asked to provide any further information that she wished to be considered by Ms Fieldhouse by 15 July and on 17 July, the claimant confirmed that she wanted Ms Fieldhouse to proceed with her decision based on the information already before her [589 – 590]. In the event, a grievance appeal outcome letter was sent to the claimant on 31 July 2020 [592 – 596].

136. In the event before the claimant received her appeal outcome letter of 31 July, the claimant wrote to Ms Fieldhouse on 30 July confirming that she was terminating her employment with the respondent from 31 July considering that she had been constructively dismissed and, as she was then currently unavailable to work on medical advice, she believed that she should be paid three months payment in lieu of notice in accordance with her contract. The claimant asserted that the respondent, BUPA Richmond Villages, Glenn Humphrey and Louise Kirby, broke the implied terms of her employment contract by subjecting her to:

*“vicious and arbitrary treatment;*

*breached my trust and confidence;*

*not taking reasonable care of my health and safety given my disabilities;*

*undermining my role as a Village Manager;*

*not taking care of my reputation in my absence.”*

137. The claimant asserted that she suffered discrimination because of her disability in the form of harassment, bullying and victimisation and terminated her own employment from the end of July on taking legal advice.
138. The grievance appeal outcome provided to the claimant on 31 July 2020 sets out in detail the outcome of the grievance. The conclusion of the grievance was that the claimant’s appeal was not upheld and the recommended action to move forward was to arrange a welfare meeting to consider what adjustments could be made in order to facilitate the claimant’s return to work and that arrangements had been made for there to be mediation with the claimant and Mr Humphrey with a view to facilitating her return to work as part of the reasonable adjustments. As the claimant’s grievances against Mr Humphrey had not been upheld, the claimant was informed that there was no further right of appeal.
139. Having received the claimant’s resignation, Ms Fieldhouse wrote to the claimant [597] on 4 August inviting the claimant, if she considered she had taken a decision to resign in haste, to arrange a meeting to discuss the resignation letter. In light of the appeal outcome letter with a view to facilitating the claimant’s return to work

with BUPA and to address any concerns that she had the claimant was given until 10 August to confirm if she wanted to discuss her reasons for leaving in more detail and only if there was no further word from the claimant by that time would she be processed as leaving from the company.

140. Ms Fieldhouse met with the claimant early in September to discuss the claimant wanting to reconsider the termination of her employment. Having had the opportunity to speak with her support worker, Ms Fieldhouse agreed not to action the termination of the claimant's employment until the following Friday 11 September. Ms Fieldhouse confirmed to the claimant that on her return to work, it would be necessary for the respondents to recommence the grievance process in terms of the grievances received from members of her team against the claimant and the claimant has confirmed that she understood that to be the case. It was confirmed that any return to work would be on making any reasonable adjustments where possible to support the claimant in performing the role as Village Manager.
141. Despite the conciliatory terms of Ms Fieldhouse's letter, on 16 September, the claimant confirmed that she had no trust or confidence in continuing to work in the "*toxicity that Richmond continue to promote*" and she confirmed her resignation stood as in her previous correspondence [603].
142. We find that Ms Fieldhouse conducted a fair and objective grievance appeal hearing and reached conclusions detailed in her outcome letter that were within the range of reasonable responses.
143. The tribunal would observe that having heard evidence from the claimant, we have referred throughout our findings of fact to the reasons why where that was conflict, In each case, her account of events has not been preferred. The claimant has called evidence from witnesses to support her claims. We have found Ms Copperthwaite has given evidence which gives an account that records circumstances which the claimant has recounted to her that she felt marginalised although Ms Copperthwaite had not seen any of the complained of treatment of the claimant herself. Although Ms Copperthwaite reports that she saw that the claimant's personality change, we are mindful that Ms Copperthwaite left the respondent's employment in January 2020, before the claimant returned to work, in the period of time following the claimant's trauma of being the subject of domestic violence and financial fraudulent abuse.

## Conclusions

144. We have detailed above the chronology of events and our findings of fact upon them. We now turn where necessary and not already detailed in our findings in fact to reach our conclusions in this case. We turn first to consider the allegations that the claimant was subject to a constructive and unfair dismissal.

### Constructive Dismissal

145. The findings that the facts we have made have led us to consider whether or not, based upon the claimant's detailed allegations of breaches of implied terms, we consider the acts or omissions of the respondents amount to a breach of contract sufficiently serious to amount to a repudiatory breach of contract and whether that breaches the implied term of trust and confidence. We have considered whether based upon the allegations as detailed by the claimant, the respondent behaved in the way that she says they did.
146. Sadly, save to the limited extent that the respondents held a conversation with the claimant on 14 April 2020 with Mrs Kirby, which conversation was perhaps poorly timed, there is nothing that leads the Tribunal to consider that the respondents behaved in any way which was unreasonable or without proper cause or in a manner calculated or likely to destroy or seriously damage the trust and confidence between the claimant and the respondent.
147. The claimant has suggested that her resignation when it came in a letter of 30 July 2020 was in response to the last straw being the culmination of a history of treatment that she had been subjected to . Whilst the appeal against her grievance was waiting to be concluded and there was outstanding a collective grievance against her brought by five members of staff at the Village she managed, all Heads of Department reporting to the claimant, the claimant says it became clear to her, on or shortly before the date when she resigned, that the HR department of the respondent still expected her to attend meetings knowing that she was ill and she was put under pressure to answer questions and her speech was impaired and she was imbalanced.
148. We were satisfied on the facts that we found, that whilst the claimant complains about the respondent's treatment of her extending over a period of more than a year, when she did resign, she was certified unfit for work. Though unfit to work the claimant confirmed that she was fit to attend the grievance meetings that she did and moreover during the course of the conduct of the grievance appeal procedures, in answer to specific questions of her GP, it was confirmed that she was fit to answer questions in interview about outstanding grievances and her appeal. We have made no findings to suggest that the claimant was placed under pressure to answer questions whilst she was being treated for trauma. On the contrary, the claimant was given the opportunity of deferring her meetings, was to given the opportunity to take extended periods of time to take breaks during meetings and was accompanied at the meetings by her support and no objection to the conduct of the meeting was made during the course of them or in her appeal against the grievance outcome.
149. The Tribunal concludes that the claimant's resignation was no doubt prompted by her difficulties in responding to the pressure that she felt subject to in fulfilling the prospect of returning to work, reasonable adjustments notwithstanding, in a highly pressured environment being the manager of a Retirement Village providing care to a group of vulnerable adults during the height of the COVID-19 pandemic and the increased reporting requirements required of the managers of the business in



those circumstances. The claimant seeks to say that the last straw was at the end of a series of behaviours which were unfair however in light of our findings we have found that the respondent, with the exception of an ill timed telephone call from HR, had at all times acted reasonably.

150. In all those circumstances of the case, we find that the claimant's resignation was one which was considered in light of legal advice and was one in respect of which the claimant was provided with the opportunity to reconsider by her employer. We find the claimant's resignation was voluntarily and was not one in response to circumstances which amounted to a constructive and unfair dismissal. The claimant's decision to resign we find was prompted by her response to the reasonable demands of the working environment in respect of which the claimant had discomfort.
151. For the avoidance of doubt, we conclude that to the extent that the respondents sought to require the claimant to provide reports and information in a structured, clear and concise way and to issue management directions to her, such management directions were those that were reasonably necessary for the efficient and effective running of the respondent's business having regard to the claimant's senior role within the organisation.
152. There is nothing we find that leads us to believe that the respondent behaved in a way that shows they no longer intended to be bound by the contract of employment with them or that was likely to destroy or seriously damage the trust and confidence between the claimant and her employer. That the claimant considered the respondents reasonable directions to destroy her trust and confidence in her employer was not reasonable. The evidence before us leads us to conclude the respondent's engagement with the claimant was evidence to the contrary, that the respondent sought to coach and improve the claimant's performance and took steps to train and coach the claimant to reach the changing and increasing the demanding business standards. The claimant was not subject to a constructive and unfair dismissal by the respondent.

#### Unlawful discrimination

153. It is accepted by the respondent that the claimant was disabled by the condition of dyslexia at all material times and was disabled by reason of a mental health impairment from April 2018 onwards. The claimant presents a complaint of direct discrimination, discrimination arising from disability and a failure to make reasonable adjustments and harassment because of the claimant's disability.

#### Direct discrimination

154. The claimant alleges that the respondent treated the claimant less favourably than either Stephen Griffin, another Village Manager, or a hypothetical comparator whose circumstances were not materially different to the claimant's and that the claimant was treated less favourably than a comparator was or would have been.

155. The claimant refers to a schedule of allegations of direct discrimination that are detailed in the agreed list of issues (p91 – 92). The allegations that the claimant refers to are in large part repeated repetitions of the allegations referred to as those which the claimant asserted amounted to breaches of the implied term of trust and confidence in respect of the claimant's complaint of constructive unfair dismissal.
156. In suggesting that Mr Humphrey did not know how to manage the claimant and her mental health illness, it is accepted by the respondent that at the meeting on 7 October 2019, the claimant became upset. However, from the contemporary documentation, it is plain that Mr Humphrey took a reasonable approach to managing concerns about the claimant's performance, provided lengthy notes of the meeting and took time to provide coaching to the claimant with a view to managing an improvement in her performance. Notwithstanding the claimant sent annotated comments on the lengthy notes in a reply and felt able to accuse Mr Humphrey of creating the concerns as a "setup" [p662], she made no mention of the allegations that Mr Humphrey was not able to understand or manage her mental health illness.
157. Having received the claimant's comments on Mr Humphrey's summary of her meeting with the claimant on 7 October, there was already a meeting scheduled to continue the discussion on 17 October and there is no basis upon which the Tribunal can confirm that the claimant was treated less favourably than a non-disabled comparator who sent a similar email to that which the claimant did would have been treated. The Tribunal concluded that the reason for the treatment of the claimant was that the email of the claimant's annotations did not require a response because of the fact that they were to be discussed at a further scheduled meeting. We have found that there was no less favourable treatment of the claimant when compared to Mr Griffin or more accurately any hypothetical comparator. Although Mr Griffin has been referred to as a comparator in respect of direct discrimination, we have been referred to no evidence to suggest that he is a comparator in respect of whom his circumstances were substantially the same as the claimant's save for the claimant's disability.
158. In respect of the claimant's allegations that Mr Humphrey was critical of the claimant on weekly calls, saying her answers were too long, too short, too complex or not complex enough, we have referred to our findings of fact above in relation to the claimant's perception of Mr Humphrey's coaching of her and in consequence we do not find the allegations made to be well founded.
159. We have been referred to one email in respect of which the claimant's drafting was annotated with a suggested change. In light of our findings that such guidance given was coaching reasonably given to improve the quality of the presentation of the claimant's information to support the claimant we conclude that the claimant has not established facts in respect of which the Tribunal can find a complaint of less favourable treatment.

160. In respect of the suggestion that Mr Humphrey asked whether the respondent could demote the claimant and micromanaged the claimant and criticised her language we refer to our findings of fact above. We have found that the claimant's allegations of fact in this regard are not well founded and the claimant's complaint of less favourable treatment because of disability is not made out.
161. The claimant has alleged that during a meeting in March 2020 with Laura Ryan, a comment was made to the claimant *"so Linda you mean to tell me, you knew about this meeting and you waited to tell me you were too ill to attend work, and you go to your doctor and you get signed off sick."* We have been unable to make any determination that the claimant had any meeting with Ms Ryan in March 2020 although a meeting did take place on 17 June 2020 with Ms Ryan to discuss reasonable adjustment. The minutes of the 17 June meeting note that the claimant expressed that she was not well enough to return to work and an adjournment was taken after which Ms Ingram, the claimant's then acting line manager, advised her to visit her GP. There is nothing that the Tribunal find that leads us to believe that Ms Ingram's comments or those of the HR representative Ms Ryan in advising the claimant to visit her GP for a fit note if she was too unfit to return to work was inappropriate. It is a comment that would have been made to an employee in not dissimilar circumstances were they not disabled in the way that the claimant was. There is no basis upon which the Tribunal can infer that the claimant was treated less favourably than a non disabled comparator who raised fitness to work as an issue would have been treated.
162. The allegation that Mr Humphrey felt he was beyond reproach and made it obvious that he was offended by the grievance that the claimant raised, is one which the claimant makes in respect of her perception of Mr Humphrey's view of the claimant as a disabled person. With respect to the claimant, the claimant did not attend work from 16 March 2020 onwards having begun a period of two days COVID self-isolation and then being absent for two weeks due to annual leave and thereafter she was asked to remain at home pending the outcome of an occupational health report. The claimant submitted a grievance on 9 April 2020 [401]. The claimant made an earlier telephone call on 9 March after which she, it is understood, told Mr Humphrey that she could not speak to him. Mr Humphrey not unreasonably asked the claimant who had told her that she did not have to discuss anything with him, as her manager. We conclude that any reasonable manager told by a direct line report that they are not prepared to speak to them on the basis of some unspecified advice would have been treated the same way as the claimant was by Mr Humphrey.
163. In respect of the complaints that are brought for direct discrimination, we reach the conclusion that the reason for the respondent's treatment of the claimant was unrelated to the claimant's disability that her named or hypothetical comparators would in similar circumstances to her would have been treated the same. The claimant has not provided sufficient evidence to shift the burden of proof to the respondent in respect of any of her allegations of direct discrimination because of disability. Moreover, on the basis of the findings of fact that we have made, the

respondent has shown that the reason for the treatment of the claimant was for a reason that is unrelated to the claimant's disability at all.

### **Discrimination arising from disability**

164. The unfavourable treatment to which the claimant refers are the matters complained about as being included in the reasons why the claimant asserts that she was constructive and unfairly dismissed. We deal with each in turn. The respondent acknowledged that they were aware that the claimant had a disability in respect of dyslexia at all material times and by reason of a mental health impairment from April 2018.

165. The claimant asserts that she was unfavourably treated because she was

A *“Constantly being told to consider her language, change her language, go away and think about her language.”*

166. In our findings of fact, we have found that the claimant's perception of Mr Humphrey was that there was a class difference between them and that Mr Humphrey coached her to be more concise and clear in the language that she used to communicate information. There has been no evidence produced to us to specify comments made by Mr Humphrey about the language used by the claimant and in its absence, the allegation is rejected.

B *“That Glenn Humphrey allowed and encouraged a number of grievances in her absence”*

167. We have referred in our findings in fact to five grievances being submitted by Heads of Department at the Richmond Bede Village which raised some common overlapping themes as well as individual concerns. The Tribunal is satisfied that the grievances were drafted by the individuals concerned perhaps to raise concerns about their manager whilst she was on leave from the business and before anticipated return to the workplace. The claimant has accepted that the allegations raised in grievances against her were serious allegations justifying the investigation by the respondent. The claimant has provided no evidence whatsoever that Mr Humphrey was involved in encouraging individuals to raise grievances against the claimant and at that time, such serious allegations being raised against her manager, we conclude that it was necessary for the respondent reasonably to conduct an investigation into serious concerns, a matter conceded by the claimant. The Tribunal concluded there is no merit in the allegation that the claimant was treated less favourably than others would have been in the circumstances or that the treatment of her was as a result of the claimant's vulnerabilities of dyslexia or her mental health condition.

C *“Being told to stay away from work and not to speak to anyone from work until the grievances were fully investigated”*

168. The claimant compares her treatment to that of Glenn Humphrey who she says had serious grievances against him but was allowed to continue his work.
169. We refer to our findings of fact in regard this allegation that are set out in detail above. The claimant wishing to return to work at the Bede Village was the direct line manager of the six Heads of Department who had presented grievances against her. Unlike the circumstances of Mr Humphrey, it was not possible for the claimant to be replaced as the line manager of the Heads of Department by a different line manager whilst she herself continued to undertake that role as Village Manager. We find that although the claimant was treated differently, we conclude that the reason why she was treated differently was because in her case, there were collective grievances against her in comparison to the claimant's single grievance against Mr Humphrey. In the claimant's case it was possible for the line management of the grieving employee, the claimant, to be transferred to another manager whilst continuing to allow Mr Humphrey to continue the most substantial part of his role. In contrast, to remove the claimant from her line management role of six Heads of Department at the Village who were her direct reports and to have delegated management of those grieving individuals to another Village Manager would have undermined the ability of the respondent to have the claimant continue to work on site.

*“D Allowing the grievances against her despite the issues being six months old” (The claimant alleges that this was normally considered to be too late within the respondents but Mr Humphrey overlooked that in respect of the grievances against the claimant)*

170. In our findings of fact, the claimant has acknowledged that the grievances raised by the six individuals were serious concerns which required investigation. Although they were common overlapping themes, not all of the grievances were identical as they were made in individual concerns against the claimant. We have heard no evidence to lead us to conclude that the respondent had a policy that grievances in relation to matters more than six months old would not be considered. Indeed, the claimant's own grievances against Mr Humphrey included complaints of matters that were over a year old. We conclude that the claimant was not treated less favourably because of her disability by the respondent.

*E “Retaining Mr Humphrey as line manager to the claimant”*

171. In our findings of fact, we have concluded that at the claimant's request, Beverley Ingram replaced Mr Humphrey as the claimant's line manager with effect from 15 April 2020. Ms Ingram continued to line manage the claimant for the duration of the remainder of the claimant's employment. Following the outcome of the grievance, it was recommended that Mr Humphrey resume line management of the claimant following a mediation process as the claimant's grievances against him had not been upheld. In the event, the claimant did not return to work and our consideration

is limited only to the respondent's recommendation that Mr Humphrey should resume line management of the claimant and that was to be after suitable mediation between the two individuals.

172. Considering a complaint of discrimination arising from disability because the claimant asserts that the respondent "*retaining Mr Humphrey as line manager to the claimant*" was less favourable treatment of the claimant arising from her disabilities, it is evident that the grievance procedures having been concluded, it was recommended that Mr Humphrey would resume line management of the claimant because the allegations against him were rejected on consideration of all the available evidence gathered during a full investigation and report. The grievance outcome and the decision to restore Mr Humphrey's line management was not a decision that arose in consequence of the claimant's disabilities rather in consequence of the determination that the claimant's grievances were not upheld.
173. In conclusion in relation to the complaints of discrimination arising from disability, we have considered the steps taken by the respondents to investigate the claimant's grievances against Mr Humphrey and of unfavourable treatment and the collective grievances of five of her direct reports against her. We conclude that the steps taken by the respondent at each stage were a proportionate means of achieving the legitimate aim namely to ensure the consistent and proactive line management of their business at the Bede Village in treating grievances seriously, formally and in line with the businesses' policies and procedures.
174. The claimant's complaint of discrimination arising from disability do not succeed.

### **Failure to make reasonable adjustments**

175. The respondent accepts that at all material times that the claimant was a disabled person. The claimant relies upon the claim that the respondent applied a provision criterion or practice being that the respondent did not collect disability information on recruitment paperwork which she asserts placed her at a substantial disadvantage in comparison with employees who are not disabled.
176. In our primary findings in fact, we have found that the respondent did not apply the PCP as is alleged. Our findings in fact concluded that the claimant's dyslexia was identified at recruitment stage and was accommodated [539]. The claimant further gave evidence that she notified the respondent of her dyslexia by recording the fact on the respondent's "WorkDay" system in 2017. The claimant's disability in respect of her mental health impairment was not one which existed at the time of her recruitment but arose from April 2018 onwards and became increasingly apparent from the summer of 2019. In the circumstances, absent an applicable PCP and in any event, our findings of fact lead us to conclude that the claimant was not placed at a substantial disadvantage in comparison to employees who are not disabled. We have found that the claimant's disabilities were known to the respondent at all

material times and taken into account by the respondent in reaching the decisions that they did to provide her with more coaching, performance review and the investigation of grievances.

177. The findings of fact we have made lead us to conclude that the respondent contrary to the claimant's view made reasonable adjustments to their working practices to support the claimant. In respect of the claimant's specific complaint that the respondent did not collect disability information or take it into account in dealing with the claimant the claimants complaint of failure to make reasonable adjustments does not succeed.

### **The claim for disability related harassment**

178. The claimant has identified three acts which she identifies as being unwanted conduct relating to her disability:

*A Mr Humphrey telling the claimant to change her language*

179. We refer to our findings of fact in this matter. Whilst the claimant was coached by Mr Humphrey as to the best means by which she might communicate information in a clear and concise way, there is no evidence put forward to suggest that Mr Humphrey told her to change the language that she used.

*B Mr Humphrey chose to make the claimant look ridiculous in front of managers, knowing her disability*

180. Whilst the claimant would appear to suggest that at the weekly management meetings, she refers in her witness statement to the weekly phone call meetings with all Village Managers to review the business output of the Villages including occupancy, staffing, agency use, income etc to become more structured following Mr Humphrey's appointment. The claimant has not detailed how it is she asserts Mr Humphrey made her look ridiculous. We have found that Mr Humphrey did indeed coach the claimant on ways in which her presentation to the weekly phone meetings could be most effective and our findings in fact confirm that Mr Humphrey informed the claimant that she could defer answering questions in the weekly management calls, he provided her with a spreadsheet to help with prepare and structure her answers [322 - 324A] and he provided the claimant with positive feedback [325].

*C "Allow the other Village Managers to ignore the claimant or to not acknowledge her on calls"*

181. The claimant refers at paragraph 16 of her witness statement to an occasion when she joined a call and having said good morning to all, she had not got one response which caused the claimant to feel ostracised. We observed that during the claimant's examination, she could not remember when the alleged incident had occurred, nor could she recall whether Mr Humphrey had been present on the call on that occasion when she answered questions during her grievance interview on 6 May 2020 [45 – 46] whether work colleagues did not return the pleasantries of the

claimant's greeting. There is nothing to suggest that, were Mr Humphrey on the call, he "allowed other Village Managers to ignore the claimant or to not acknowledge her."

182. We remind ourselves that in referring to her allegation that Mr Humphrey told the claimant to change her language, on the evidence before us, the claimant's evidence was that the alleged comments were made due to, what she perceived to be, a class difference.
183. In relation to the allegations about allowing Village Managers to ignore the claimant or to make the claimant look ridiculous in front of managers, in light of the findings in fact we have made, we conclude that the construction that the claimant makes upon the guidance and coaching provided by Mr Humphrey and the management of telephone weekly meetings with Village Managers was a perception that is not reasonably grounded based upon the evidence that has been considered by the Tribunal.
184. The Tribunal has not been able to conclude from the findings of fact that we have made that Mr Humphrey behaviour towards the claimant had the purpose of violating the claimant's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment from her although that was clearly the claimant's perception of his behaviour.
185. We consider whether the claimant's perception that the treatment she received was reasonably seen to be conduct having the effect of violating her dignity or creating an intimidating hostile degrading humiliating or offensive environment for her. In light of our findings of fact we conclude that the treatment of the claimant, done or permitted by Mr Humphrey, was not any objective reasonable basis treatment which reasonably ought to be considered to create an intimidating, hostile, degrading, humiliating or offensive environment for the claimant.
186. We find that the claimant's complaint of unlawful harassment because of disability does not succeed.

### **Holiday pay**

187. The claimant in her witness statement and evidence to the Tribunal does not particularise what her accrued and untaken holiday pay that she claims is owed in June. The Tribunal has heard no evidence from the claimant on the issue and she has not raised a case for the respondent to answer. In his submissions to the Tribunal, Mr Cottam has not presented an argument and in the circumstances the claimant's claim for holiday pay does not succeed and is dismissed.
188. The claimant resigned from her employment on notice and no further payment in respect of notice pay is due to the claimant.



189. The unanimous judgment of the Employment Tribunal is that:

- (1) The claimant resigned from the respondent's employment and was not constructively or unfairly dismissed. The claimant's claim of unfair dismissal does not succeed and is dismissed.
- (2) The claimant's complaint of unlawful discrimination because of the protective characteristic of disability in respect of discrimination contrary to sections 13, 15, 20 and 21 and 26 of the Equality Act 2010 do not succeed and the claims are dismissed.
- (3) The claimant's complaint for payment of accrued but untaken holiday pay in breach of Regulation 13 of the Working Time Regulations 1998 do not succeed and are dismissed.
- (4) The claimant resigned from her employment on notice and no further payment in respect of notice pay is due to the claimant.

Employment Judge Dean  
7 February 2024