Case No: 2300027/2022

EMPLOYMENT TRIBUNALS

Claimant: Mr David Drozdowski

Respondent: British Telecommunications PLC

Heard at: London South ET by video link **On:** 13,14,15 and 16 February 2024

Before: Judge MM Thomas, Ms N Murphy and Mr S Townsend

Representation

Claimant: Unrepresented – Litigant in Person

Respondent: Ms R Page, Solicitor

JUDGMENT and the reasons for it were given orally by the Tribunal on 16 February 2024 and the Judgment sent to the parties on 26 February 2024. Written reasons have been requested in accordance with Rule 62(3) of the Employment Tribunals Rules of Procedure 2013, and as such, the following reasons, as set out orally on 16 February 2024, are provided:

Reasons

Issues

1. The issues for the Tribunal to determine are the Claimant's claims of

   (i) Constructive Unfair Dismissal;
   (ii) That he was disabled for the purposes of section 6 of the Equality Act 2010;
   (iii) Indirect Disability Discrimination;
   (iv) Indirect Sex Discrimination;
   (v) Indirect Marriage or Civil Partnership Discrimination ;
   (vi) Indirect Sex Discrimination by Association; and
   (vii) Indirect Disability Discrimination by Association.

Judgment

2. The unanimous decision of the Tribunal was that all complaints be dismissed. In short,

the Tribunal held that the Claimant was not disabled at the relevant time and was not constructively unfairly dismissed; indirectly discriminated against on grounds of disability or sex; indirectly discriminated against by association on grounds of disability or sex; or indirectly discriminated against on grounds of marriage or civil partnership.

Proceedings to date of Final Hearing

3. The claim was presented 5 January 2022. There had been one preliminary hearing prior to this hearing and that had been on 20 September 2023.

Documents and Witnesses

4. The Claimant represented himself. The Respondent was represented by their Solicitor, Ms Page.

5. Both parties were introduced to the members of the Tribunal. I took time to explain to, in particular, the Claimant the format that would be adopted for the hearing and assured him that he would be guided through the process as we went along. I explained to the Claimant about the independence of the Tribunal and its role. I discussed with the Claimant as to whether there were adjustments that he thought would be helpful bearing in mind his recent diagnosis of autism. The Claimant identified no specific adjustment other than there be some further breaks in the hearing. The Tribunal also suggested, which was implemented, that after each witness gave evidence, that a break would be taken to allow the Claimant an opportunity to go over his notes and refresh his mind as to what questions he may wish to put to that witness.

6. I explained to the Claimant that the burden of proof in regard the constructive unfair dismissal and discrimination claims brought was upon him. As such, he would be the first to present his case. Equally, the standard of proof was the balance of probability, in short, *'more likely than not'*. The Claimant confirmed that he understood this and, what I had told him. Further, it was confirmed, that all of this had been addressed at the earlier preliminary hearing.

7. A bundle of documents had been provided which ran to 358 pages ('the Bundle'). Additional documents were submitted in the course of the hearing, which included the *'Smart Working FAQ'* document dated 19.10.2021 ('Smart Working FAQ'), and the *'Message from Nick – Changes in Covid restrictions and returning to the office'* email sent to all employees dated 06.07.2021 ('return to work' email). In addition, the Respondent had been able to access the audio recording of the meeting that the Claimant had the Respondent's witness, Mr Neal MacDonald on 4 October 2021. It was not in issue that that recording had been disclosed very late within the proceedings. The Respondent did not seek to rely upon it however, disclosed its existence as it had come across it inadvertently on a laptop which was due to be destroyed. The Respondent did not seek to rely upon the contents of the audio recording. The Claimant had received a copy of the recording. The Tribunal's understanding was that he had had an opportunity to listen to it. The Tribunal offered him another opportunity to so and make a decision as to whether he wanted that recording to be introduced as evidence. The Claimant did not seek to rely upon the

contents of it. As such, the Tribunal did not listen to the recording and although disclosed, the recording was not adduced as evidence to be considered in the round.

8. The Tribunal heard oral evidence from the Claimant and three witnesses on behalf of the Respondent, namely, the aforementioned Mr Neal MacDonald, trading manager for the Respondent since March 2022 but at the time the Claimant was employed, the operation's manager for the Canterbury location/office. Ms Sharon Finnie, human resources business partner, and Mr Gareth Protheroe, operation's manager . All relied upon what was set out in their witness statements. All witnesses gave evidence by affirmation.

9. Both parties provided closing written submissions.

Preliminary issues

10. It had been agreed at the preliminary hearing that the issue pertaining to as to whether the Claimant was disabled at the relevant time would be a point for determination by the Tribunal having hear the evidence. The Tribunal at the outset affirmed that that would be the approach adopted by it.

11. The only other potential preliminary issue related to an amendment of the Claimant's claim to include two further incidents of asserted indirect discrimination or indirect discrimination by association. However, at the outset of the hearing the Claimant confirmed that those amendments were no longer pursued and as such, no longer in issue.

Background

12. The Claimant's account is set out within his statement and impact statement. Equally, the Respondent's account is set out within the witnesses statements.

Finding of Facts

13. The Claimant was employed as a sales advisor from 11 November 2018 for the Respondent at their contact centre in Canterbury ('office').

12. Under the terms of his contract, his contracted place and location of work was the office.

13. In January 2019 the Claimant reduced his working hours from 37.5 hours per week to 30 hours per week. In January 2021 he returned to working 37.5 hours per week.

14. In April 2020 as a result of the impact of the Covid-19 pandemic, to keep employees *'safe',* all of the Respondent's employees were given the opportunity to work from home as opposed to coming into the office. Working from home required the employee to have a good internet connection and an appropriate private workspace in their home. Subject to the latter, working from home was viable.

15. Prior to the Covid-19 pandemic for the majority of the Respondent's employees working from home was not an option. Before April 2020 the Claimant had never

worked from home for the Respondent. Even though telecommunication employees were considered key workers and as such, were able to still work from the office, the Respondent made the decision to allow all telecommunication employees the opportunity to work from home if the employee wanted to do so or be furloughed. This was entirely driven at the time because of the government guidance that homeworking if viable, should be an option. Also, and significantly, to ensure that the Respondent's business needs could be met in a period when there was a high demand and need for it.

16. From April 2020 the Claimant was based at home for work.

17. In the email from the Claimant to his line manager Mr David Weston dated 30 May 2021, the Claimant made an enquiry in regard to his eligibility to be contracted as a homeworker under the Home Working Policy ('HWP'). In his email he, to summarise, stated his enquiry was as a result of childcare requirements, his wife now becoming self-employed as a creative writing coach and commute issues. He indicated that his request was motivated by a decline in his wife's mental health going from a previous miscarriage and postpartum issues in addition to the lockdown itself. In short, as a result of *'her personal needs'* and '*her employment'* there was an increase in childcare requirements for him (page 212).

18. On an unknown date following that email the Claimant met remotely with Mr David Weston, his team leader , where they discussed what was set out within his email. The Claimant was told that he would not qualify under the HWP as his position, that of a sales advisor, was not suitable for homeworking. In short, a homeworking contact was not appropriate for an employee in a '*customer facing role'*.

19. Following that meeting, the Claimant did not make a separate application/request as is required under the terms of the HWP. In short, no further steps were taken by him in regard pursuing the HWP following the enquiry he made and his meeting with Mr Weston.

20. On 23 June 2021 the Claimant submitted his flexible working application form ('FW application'). The FW application submitted by him was premised on same basis as that set out in his enquiry in regard the HWP. His request for flexible working ('FW') was for his work location being entirely home based, and a commitment of 1 to 5 days in office per month but '*only as necessary'*.

21. At the time that the Claimant sent his email enquiring as to his eligibility under the HWP and submitted his FW application, he was aware of the new initiative being introduced by the Respondent that is, *'Smart Working'* either *'Max'* or *'Lite'* following the success of hybrid working throughout the Covid -19 pandemic. Further, he was aware that he could under the terms of Smart Working Max work primarily from home, up to 80% of the time, with a maximum of up to 5 days a week in the office.

22. On 30 July 2021, the Claimant's application for FW was refused. The reason given for the refusal was *'on business grounds'* on the basis that *'a restructure is planned'* and then went on to refer to the Smart Working initiative. His application was refused

without there having taken place any meeting/ discussion with his line manager Mr Weston or, any other member of management (page 229).

23. On 3 August 2021 the Claimant appealed the decision to refuse his FW application page 233). His appeal was sent to Mr Neal MacDonald, the then operation's manager for the office. In the emails that followed the application the Claimant stated that he wanted to be considered for the HWP, he sought a *'permanent change to my place of work'* on the grounds of having another child, his wife doing more self-employed '*teaching writing'* since lockdown began and having an average one hour of commute either way to work. He identified that not having to do that had improved his performance and *'our'* mental health managing the household.

24. The Claimant was then off work caring for his wife and children as a result of his wife having physical health issues from the 27 August 2021 to the end of September 2021. On return to work, the Claimant had an appeal meeting with Mr MacDonald in regard to his request for FW on 4 October 2021. In that meeting the Claimant identified that he wished his contractual place of work to be home. The Claimant was advised that his role was not suitable for permanent placement at home. A discussion was had in relation to adjustments that could be made to the Smart Work Max option to accommodate his working requirements at that time such as, an attendance of less than 5 days in the office, days for coming into the office to be on an *'ad hoc'* basis, later start times, and earlier finish times to allow him to provide the relevant support at home. It was also discussed an exceptional change of hours or a change to the working pattern to support the Claimant.

25. On 7 October 2021, the Claimant's FW appeal was refused. The reason given for the refusal was *'on business grounds'* on the basis that *'a restructure is planned - namely the introduction of Smart Working with effect from October 2021'* (page 237). In its refusal the Respondent stated that although not able to agree to a permanent change to the Claimant's contract to that of a homeworker that there were *'many temporary adjustments'* that could be made to give him the support he needed. In his letter he referred to their discussions have centred upon difficulties that the Claimant had supporting childcare at home, and his own well-being. Mr MacDonald indicated that he would be in touch *'very shortly'* to arrange a time for them to have a conversation to discuss how they could support and the adjustments that could be offered.

26. On 13 October 2021 the Claimant was absent from work on grounds of ill health- *'cold/flu/pneumonia/respy infec'* symptoms (page 126). As a result of his sickness absence there were no further communications between the Claimant and the Respondent. His absence was self-certified.

27. On 19 October 2021 the Claimant emailed Mr MacDonald to advise that he had raised a grievance. Also, that following having been in the office for 3 days at the beginning of October, that he would be unable to offer that commitment any longer (page 242 to 244). He stated that because of his wife's mental and physical health, his mental health, his children's emotional health and due to their *'specific circumstances'* over the previous 2 to 3 years and having come into the office for 3 days earlier in the month, it had *'become untenable'* for him to come into the office for more than the '*very few*

days planned in advance in which it is required for my performance and the workplace in general…..'.

28. On 22 October 2021 the Claimant resigned with notice, the latter expiring on 30 November 2021. The reasons for his resignation were the refusal of his application for FW, and the Respondent's change of terms in regard to the calculation of a bonus (page 245).

29. On 4 November 2021 the Claimant submitted a *'Statement of Fitness to Work'* ('fit note'). The Claimant was signed off work from the 4 November to the 11 November 2021. His absence was on the basis of *'work related stress'*. On 19 November 2021 a further fit note was submitted for the period form 19 November 2021 to the 30 November 2021. His absence was on the basis of *'Stress at work'*.

30. On 27 October 2021, following his letter of resignation, the Claimant had a telephone conversation with Ms Lea Conner, sales and retention team leader in the absence of his own team leader Mr Weston, pertaining to adjustments that could be made. Ms Conner identified the Claimant as an employee classed as Smart Working Max. In the letter she referred to the discussion that they had pertaining to the difficulties that he had in attending the office for one designated week in a month along with others on his team. Further, his reasons as to why he requested to work from home on a full-time permanent basis and that being in the main to support his wife because of her mental health issues, and the noticeable changes of not having to commute. On that date they had a discussion about an exceptional change of hours to accommodate the office attendance requirement, but that was something the Claimant did not feel he would benefit from. It was discussed being flexible with notice around the days the Claimant would be required to work in the office and support him with alterations should that arise. Equally, it was explored as to what friends and family could help. Further, it identified that the Claimant's refusal was on the basis that it would be temporary arrangement whereas his *'desire'* was to work from home permanently and any commitment would be limited to office attendance 2 days a month.

31. The Claimant is not disabled for the purposes of section 6 Equality Act 2010 ('EqA 2010').

32. The Claimant's wife is disabled by reason of mental impairment for the purposes of section 6 EqA 2010.

Constructive Unfair Dismissal Claim

Legal framework

33. Section 95(1)(c) of the Employment Rights Act 1996 (ERA) states that there is a dismissal when the employee terminates the contract, with or without notice, in circumstances such that he or she is entitled to terminate it without notice by reason of the employer's conduct.

34. In **Western Excavating (ECC) Ltd v Sharp 1978 ICR 221**, it was held for an employer's conduct to give rise to a constructive dismissal, it must involve a repudiatory breach of contract

'If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so, then he terminates the contract by reason of the employer's conduct. He is constructively dismissed.'

35. Where an employer breaches the implied term of trust and confidence, the breach is *'inevitably' fundamental'* (**Morrow v Safeway Stores plc 2002 IRLR 9, EAT *&* Dental Team Ltd v Rose 2014 ICR 94, EAT,**)

36. The test of whether there was a repudiatory breach of contract is an objective one (**Western Excavating**).

37. A course of conduct can cumulatively amount to a fundamental breach of contract entitling an employee to resign and claim constructive dismissal following a *'last straw'* incident, even though the last straw by itself does not amount to a breach of contract (**Lewis v Motorworld Garages Ltd 1986 ICR 157, CA)**. In short, it is the cumulative effect that amounts to a breach of the implied term of trust and confidence.

38. An entirely innocuous act on the part of the employer cannot be a final straw, even if the employee genuinely, but mistakenly, interprets the act as hurtful and destructive of his trust and confidence in the employer.

39. In summary, the test of whether the employee's trust and confidence has been undermined is objective and while it is not a prerequisite of a last straw case that the employer's act should be unreasonable, it will be an unusual case where conduct which is perfectly reasonable and justifiable satisfies the last straw test.

40. **Kaur v Leeds Teaching Hospitals NHS Trust 2019 ICR 1, CA** identified the questions that it will normally be sufficient for the Tribunal to ask in order to decide whether an employee was constructively dismissed:

    (i) 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?

    (ii) has he or she affirmed the contract since that act?

    (iii) if not, was that act (or omission) by itself a repudiatory breach of contract?

    (iv) if not, was it nevertheless a part of a course of conduct comprising several acts and omissions which, viewed cumulatively, amounted to a repudiatory breach of trust and confidence?

    (v) did the employee resign in response (or partly in response) to that breach?

Constructive Unfair Dismissal claim

41. The Claimant's claim of constructive unfair dismissal is on the basis of the breach of implied term of trust and confidence.

Place of work

42. Dealing with first, the Claimant's claim that by allowing telecommunications employees to work from home from April 2020 there had been a permanent change in his place of work. As such, the Respondent's request to return to the office amounted to in the first instance a breach of an express term of the contract alternatively, the implied term of what is asserted to be *'custom and practice'*.

43. The Tribunal find that there was no change in the place of work. The temporary change brought in, in April 2020, was because of the unprecedented impact of the Covid -19 pandemic and the direction from the government that at that time, that even those who were key workers, if viable, work from home. The Tribunal accept the Respondent's evidence that homeworking had never been permissible for someone in the Claimant's role prior to the Covid -19 pandemic. Equally that it was never intended to be on a permanent basis. As such, even though telecommunication employees were considered key workers and were still able to work from the office, the Respondent made the decision to allow them the opportunity to work from home if they wanted to do so if they had a good internet connection and a private workspace in their home or, be furloughed. In short, for the Respondent's business to remain operational and for it to meet its business needs, its employees were allowed to work from home.

44. In summary, the Tribunal find that allowing the Claimant to work from home from April 2020 was a temporary measure to ensure that the business needs of the Respondent could still be met. There was never any intention that that would be on a permanent basis or, a permanent variation to the Claimant's Contract of Employment in regard to his place of work. In short, as stated on his contract of Employment his place of work location remained the Canterbury office (page 118). As such, there was no breach of as asserted either an express or implied term of the employment contract in the Respondent, following the lifting of the government regulations, requesting the return of Claimant to work in the office.

Home Working policy

45. The Tribunal heard extensive evidence from the Claimant, and the Respondent's three witnesses in regard to the interpretation of the HWP.

46. In oral evidence when clarification was sought in regard to how often, and as to when the Claimant would have been prepared to go into the office it was clear from his answers that his intention was that such attendance would have been as limited as possible. Further, he could not identify as to why he would even have needed to attend for training on the basis that it could continue remotely as it had done throughout the Covid -19 pandemic. In oral evidence the Claimant accepted that face-to-face contact in the workplace was of benefit.

47. In summary, the Tribunal find that the sole purpose of the Claimant's initial enquiry in regard to his eligibility under the HWP was to be allowed to work from home on a permanent basis. The Tribunal find his intention was to have a contractual permanent

change of work location which would mean that he would not be contractually bound to go into the office if he did not wish to do so.

48. In regard to whether the Claimant made a formal request to be considered to be a homeworker under the HWP, the Tribunal find that he did not. The Tribunal find that although he made the enquiry by way of his email to Mr Weston on 30 May 2021 and thereafter then followed their discussion in regard to his eligibility, no further steps were taken by him in relation to making a written request.

49. As such, the Tribunal did not find credible the Claimant's evidence that when he went into the office at a date sometime around 30 May 2021, that he was 90% certain he submitted a formal written request. The Tribunal make this finding on the basis of what he has set out in particular in his FW application and in his letter to Mr MacDonald dated 3 August 2021 where he specifically identifies that he did not submit the '*proper homeworking application'* (page 231). The Tribunal find that the clear implication in what is set out is that no formal request was made as required under the HWP. Further, the Tribunal did not find consistent that if the Claimant had made such an application, just as he had done with the FW application, that he would not have chased that up if there had not been a definite response. In summary, the Tribunal find no formal request was made for homeworking under the HWP.

50. That said, the Tribunal are unimpressed that following the Claimant having sent the email of 30 May 2021, that other than a meeting with Mr Weston advising him that any request pursuant to the that route would not be successful, that the Respondent did not have any further specific discussions with the Claimant. In particular, in regard to as to how the proposed Smart Working Max initiative, which the Claimant accepts he was aware of at the time, may have given him the flexibility that he required.

51. As such, although the Claimant has repeatedly referred to how he would have met the terms of a HWP, the Tribunal find no formal request was made in regard to it in the first instance.

52. Further, the Tribunal find that even if it had been made, that the latter position would not have changed. Although the HWP states that the criteria covers those who are carers, have a disability or childcare requirements and it is open for applications from all employees that is nevertheless subject to further qualification. In short, '*In general, homeworking isn't appropriate for customer facing roles (for example contact centres and retail). There may be some exceptions (for example sales) but in these cases occasional homeworking should be first option'.* The Tribunal accept that there could have been a misunderstanding on the literal interpretation of what is set out within the HWP in that it appears to contradict itself by identifying it is not suitable for customer facing roles, which was the Claimant's role in a contact centre (the office) nevertheless, on the contrary, refers to exceptions in sales, which, again, the Tribunal accept the Claimant may have believed extended to him as a sales advisor when he read the policy. Nevertheless, that said, when the Claimant made his enquiry as to whether he would be eligible under the HWP, he was told definitively he would not be.

He was advised at an early stage that the *'sales'* employees referred to where those employed in business sales who were *'road based'* and out the majority of the time visiting clients/customers. It did not extend to employees, such as the Claimant, who worked as part of a sales team in a contact centre. The Tribunal attached weight in particular to Ms Finnie's evidence pertaining to the fact that as a person in a senior HR role, she knew of no other employee who had ever been contracted as a homeworker under the HWP in the Claimant's role.

53. As such, the Tribunal find that although the enquiry could have been better addressed and followed up by the Respondent, nevertheless, no formal request was ever made, nor was the Claimant eligible in his role as a sales advisor as part of a sales team to be a homeworker under the HWP.

Flexible Working application ('FW')

54. The Tribunal were advised that the Respondent's FW policy aligns with that of statute. It is not in issue that the application was made, nor that it was refused.

55. Again, the Tribunal are unimpressed that the Respondent, considering the size and resources of the organisation failed to comply with the FW process. A copy of the FW policy is within the bundle. It clearly states within it that following the submission of the application that there should be a meeting between the applicant and management to discuss the application. No such meeting took place for the Claimant's application. In short, the application was submitted and the next communication that the Claimant received in relation to it was notification that it had been refused (page 229) .

56. The refusal letter date 30 July 2021 indicated that the reason for the refusal was as '*A restructure is planned'*. It then went on to refer to the upcoming launch of Smart Working Max, its flexibility and that it would enable the Claimant to continue to work from home when requited, with his attendance in the office 5 to 7 days a month which could be completed all together or, on ad hoc days.

57. The Tribunal accept that in line with statute, an application for FW can be refused for the reason stated (section 80G ERA). Ms Finnie accepts best practice would have been for a discussion to have taken place between the Claimant and Mr Weston, or someone in management, before and following that refusal as to the *'way forward'*, particularly in light of Smart Working. In regard to the terminology *'business restructure'*, although the Tribunal acknowledge that this could be misleading if read in isolation that said, both the initial letter and then the appeal letter refusing FW referred to the reason being the introduction of Smart Working. Clarification was sought as to whether Smart Working was a new policy, and although all of the Respondent's witnesses at different points in their oral evidence described it as such nevertheless, on clarification, it was described as an '*initiative/ new way of working/new culture'*. Not one of the Respondent's witnesses' evidence was that Smart Working was ever considered to be a *'business restructure'*, although, in evidence, Ms Finnie identified that a business restructure from the Respondent's perspective could be a change of working hours, the location of a contact centre, the services a team provide, or a

change to centre operatives in short, what falls or fell under a business restructure is and was not exhaustive nor definable.

58. In summary, the Tribunal are satisfied that the Claimant knew and understood as to why his FW application was refused both in first instance and appeal. Equally he understood that the flexibility under the terms of Smart Working Max. Otherwise, the Tribunal say no more in relation to the terminology used and the appropriateness of it as this was not an issue previously raised or identified as one for determination. Equally, prior to this hearing, closure of the Canterbury office in 2022 and as to when those engaged in the process with the Claimant had that notice of closure, was never raised as an issue.

59. It is not in issue that the appeal meeting in regard to the FW took place outside the three month window envisaged for the process. Nevertheless, the Tribunal accept that that undoubtedly was as a result of delays caused by no one being in office and the Claimant's five week's absence on special leave to care for his wife following her operation, and their children. The Tribunal accept that although the appeal meeting and decision fell outside the window for the process, the delay was explainable and reasonable given what had happened.

60. The appeal meeting took place on 4 October 2021 and was between the Claimant and Mr MacDonald. The Tribunal find Mr MacDonald a credible witness and have no reason to doubt the truth of his evidence that on that date he did discuss with the Claimant at length as to why he required the flexibility that he identified which was because of a contribution of factors, namely, commute time, childcare, and supporting his wife. Further, that the Claimant's application was that his contractual place of work be changed to be at home. In short, the Tribunal have no reason to doubt the truth of Mr MacDonald's evidence that the business model identified the Claimant's role as one, to meet the business needs of the Respondent, that required the employee to attend the office 5 to 7 days a week, in the Claimant's case, 5 days (on the basis of the hours worked). Equally, that the Claimant's role as part of a sales team based in a contact centre was not suitable for a permanent home working location. Further, that although in the FW application the Claimant indicated that he would go into the office 1 to 5 days *'as necessary'* , when clarification was sought on this at hearing he accepted that potentially that may mean he may not have to go in at all because, as far as he was concerned, training needs etc could all continue to be dealt with remotely as they had been through the Covid-19 pandemic.

61. It is not for Tribunal to question the business needs of the Respondent nor, was this previously identified as an issue prior to the hearing.

62. The Tribunal have no reason to doubt Mr MacDonald's evidence that the plan had been when Smart Working Max came in that the Claimant along with the rest of his sales team which come in for a week. During that week, there would be training, and an opportunity to engage with others on the team and build a rapport. That that was required for the team to work effectively had been identified as a business need and

integral to Smart Working Max. Nevertheless, within the Smart Working Max there was also flexibility to allow, albeit on a temporary basis, an employee to reduce the number of days if need be, work different hours to others on his team and even not be required to come in for the full week or, change his attendance to adhoc dates. In regard to what was meant by temporary basis, again, the Tribunal had no reason to doubt Mr MacDonald's evidence that that was open in length and would be extended as required to meet the needs of the employee. By way of example Mr MacDonald referred to the Claimant's return to the office at the being of October 2021 and although his team were due to be in that full week, the Claimant had been able to work a reduced week of 3 days as he was needed at home.

63. In regard to the delay in providing his response to the outcome of the appeal meeting, the Tribunal accept Mr MacDonald's evidence that the 3 day delay was because he had wanted to make the appropriate enquiries to ensure that the flexibility that the Claimant identified that he required could be met under the terms of Smart Working Max and as such, that on refusing the appeal there was a '*way forward'.*

64. Equally, the Tribunal accept Miss Finnie's evidence that best practice would have been for Mr MacDonald to have undoubtedly followed up his decision by arranging a further meeting with the Claimant nevertheless, the Tribunal also accept Mr MacDonald's evidence that that had not happened as the Claimant had been off work from the 13 October 2021 on self -certified sick leave because of *'cold/flu/pneumonia/respy infec'*.

65. The Tribunal refer to the agreed list of issues. The acts relied upon extend from the initial email dated 30 May 2021 enquiring about the HWP , the original denial of the Claimant's FW application to the appeal outcome decision of 7 October 2021. The latter being asserted as the final act on the part of the Respondent which lead to Claimant's resignation.

66. As such, the issue for determination is whether between 30 May 2021 there was a course of conduct on the part of the Respondent comprising of several acts and omissions, the final act being that of 7 October 2021, which viewed cumulatively, amounted to a breach of the implied term of trust and confidence.

67. The Tribunal, although accepting that better practices could have been employed nevertheless, find that the Respondent's conduct falls short of conduct which is a significant breach going to the root of the contract of employment.

68. In summary, the Claimant sought to have a variation in his contract which allowed him to work from home on a permanent basis with a need for a very limited attendance at the office. The Tribunal are satisfied that the Claimant's role as a member of the sales team was not a role suitable for homeworking on a permanent basis. The Tribunal are also satisfied that to meet the Respondent's business needs that a homeworking based location is not, or has it ever been considered a viable option for a person in his role. As such, the Tribunal are satisfied that the Claimant knew this and was told this by not only Mr Weston, but also by Mr MacDonald. Further, the Tribunal are satisfied

that any arrangement made for the purposes of homeworking during the Covid-19 pandemic was never intended to be on a permanent basis, and specifically, not to amount to a change in the place of work for the purposes of the contract of employment, be that express or implied (as asserted by the Claimant). The Tribunal are satisfied that the Respondent's delay in the return to work for all of its employees after the restrictions were lifted was solely in order to recognise the significant impact that homeworking may have had, and to allow employees an opportunity to effectively reorganise themselves be that in their personnel or home lives, in order that they could return to the office.

69. As such, although the Tribunal consider that there could have been further discussions with the Claimant specifically in regard to how the Smart Working Max initiative could be tailored to allow for the flexibility he required nevertheless, the Tribunal find at no time was the Claimant ever misled about either his eligibility under the HWP, the FW policy or that it was ever viable that as a sales advisor his contracted place of work could be on a permanent basis at home.

70. In summary, the Tribunal accept that undoubtedly having waited for a period of time for the outcome to the FW application and then appeal, that the negative outcome was very disappointing nevertheless, the Tribunal find that the Respondent's conduct over that period was not such that it amounted to a breach of the implied term of trust and confidence for all the reasons outlined.

Disability

Legal Framework

71. Section 6 of the EqA 2010 defines what is meant by disability.

'(1) A person (P) has a disability if—

*(a) P has **a physical or mental impairment**, and*
*(b) the impairment has a **substantial** and **long-term adverse effect** on P's ability **to carry out normal day-to-day activities**.*

72. Section 6 of the EqA 2010 must be read together with Schedule 1 of it to establish who is considered as having the '*protected characteristic'* of disability. In short, Schedule 1 supplements the definition of disability set out in section 6.

73. The assessment of whether the Claimant was a disabled person for the purposes of section 6 of the EqA 2010 is not determined on the basis of his circumstances at the date of this hearing but at the time of the alleged discriminatory acts, *'the relevant time'* (**All Answers Ltd v Mr W [2021] EWCA Civ 606**). The burden is on the Claimant to show that he was a disabled person.

74. The Tribunal's starting point when considering the approach to adopt is that as set as out within **Goodwin v The Patent Office [1999] ICR 302**. In short, four questions should asked be asked.

(i) Does the Claimant have a mental or physical health impairment?

(ii) Does the impairment have an adverse effect on the Claimant's ability to carry out normal day-to-day activities?

(iii) Is the effect substantial?

(iv) Is it long-term?

75. When applying the **Goodwin** approach, although the questions are addressed separately, what must be considered is the overall picture (**Mr A Elliott v Dorset County Council UKEAT/0197/20/LA**)

76. In regard the first of the **Goodwin** questions, the Appellant has provided an Impact Statement. The Tribunal do not repeat what is set out within it however, to summarise, it provides a history of mental health problems stemming back to his childhood.

77. The statutory definition of disability requires for the impairment to have a substantial and long term adverse effect on the Claimant's ability to carry out normal day-to-day activities

78. When considering normal day-to-day activities those activities should encompass activities relevant to the Claimant in both his professional/working and personal life. The focus should be on what the Claimant cannot do because of the impact of the impairment, as opposed to what he can still do. (**Paterson v Commissioner of Police of the Metropolis [2007] IRLR 763** and **Aderemi v London and South Eastern Railway Ltd UKEAT/0316/12)**. Normal means what would be normal for most people and includes mobility, concentration, memory, incontinence, in short, the list is non exhaustive. The question is whether the disability prevents a person from undertaking ordinary tasks.

79. In regard long term, Schedule 1 of the EqA 2010 provides a statutory definition. Long-term means an impairment which has lasted for at least 12 months, one that is likely to last for at least 12 months, or one likely to last for the rest of the life of the person affected.

80. When considering as to whether the impairment is substantial, the Tribunal refer to paragraph 4 of Schedule 1 of the EqA 2010. Equally we refer to section 212(1) of the EqA 2010 which defines substantial as meaning '*more than minor or trivial*'.

81. The Tribunal also refer to the guidance in **Leonard v South Derbyshire Chamber of Commerce [2001] IRLR 19**. In summary, **Leonard** states that when considering what is meant by *'substantial adverse effect'*

(i) focus should not be on what the employee can do easily but should be on what they cannot do or can only do with difficulty.

(ii) the decision maker should not attempt to balance what an employee can do against what he cannot do; he must consider the whole picture.

(iii) because an employee can mitigate the effects of impairment, it does not prevent them being disabled.

(iv) the Guidance (then DDA guidance) should not be taken too literally, and the examples given in it are to be treated as only illustrative not used as a checklist.

82. In summary, when considering the cumulative effects of an impairment it is important to consider its effect on more than one activity, which if taken together could result in an overall substantial adverse effect.

Medical evidence disclosed material to the relevant time

83. No GP notes and records have been disclosed prior to the Claimant's attendance with his GP on the 28.10.2021 (page 84 onwards) . On that date it had been recorded that he told the GP that he was struggling with his mental health, *'life generally'*, that there were issues in work and he began a course of antidepressant medication. Thereafter, there was one further entry in the GP notes and records before the Claimant's notice period expired (4 November 2021). It was recorded on that date that work was causing issues because they were not following through on homeworking policies and that he could not cope at work because of his anxieties. A fit note was issued on that date.

84. In addition, there is a letter from his GP dated 4 March 2022 confirming all of the aforementioned and reference to the Claimant suffering from work related stress.

85. In regard to the Respondent having knowledge of his long-standing asserted mental health problems, the Claimant relies upon his having four sessions of counselling arranged through work from the end of January 2021 to the beginning of March 2021 and the references to mental health in the emails sent.

Whether the Claimant was a disabled person within the meaning of section 6 of the Equality Act 2010 at the time of the alleged discriminatory acts

86. The Claimant relies upon what is set out within his Impact Statement dated ('statement' - page 86/87 Bundle A).

87. The Claimant's statement is overall somewhat generic in content. In summary, it sets out the difficulties that arose in his family life following his wife's miscarriage in September 2019 and the need for him following that to reduce his hours because she was struggling at home. He identifies the positive impact that being able to work from home from April 2020 had on their family life, and then the issues that he had from May 2021 onwards in regard the HWP enquiry and then the FW application. In short, it does not specifically address the impact of the asserted mental health problems on his ability to undertake normal day-to-day activities nor, does the Claimant amplify upon that at hearing.

88. An employment *'Absence record'* has been provided (page 126). Other than the entry on 28 October 2021 indicating absence on grounds of stress there are no other entries recording any absences being as a result of mental health issues.

89. As identified in **Paterson, Aderemi** and **Leonard** focus should be on what the Claimant cannot do because of the impact of the impairment, as opposed to what he can still do. Further, the approach should be a holistic one with a consideration of the cumulative impact of the impairment.

90. The EqA 2010 guidance sets out what would be considered normal day-to-day activities.

'In general, day-to-day activities are things people do on a regular or daily basis, and examples include shopping, reading and writing, having a conversation or using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, and taking part in social activities. Normal day-to-day activities can include general work-related activities, and study and education related activities, such as interacting with colleagues, following instructions, using a computer, driving, carrying out interviews, preparing written documents, and keeping to a timetable or a shift pattern'

91. The Claimant's evidence identifies and establishes that despite his asserted mental health problems that on a daily basis at the relevant time he was able to get up every day, dress himself, was eating, did what he needed to do to support his wife, manage his affairs and effectively, get on with his life. His evidence is that he was able to work his 37.5 hours a week, and when not working he supported his wife with the care of their three children.

92. The counselling report referred to counselling that the Claimant received in early 2020. No further evidence of any treatment in regard to subsequent mental health issues has been provided other than then the GP notes and records dating from 28 October 2021. The Tribunal accept that at that time, having reviewed the Claimant's wife's Impact Statement, her GP records, and the report from Kent County Council that undoubtedly, there were issues relating to his wife's mental health which unquestionably would have put pressure on the Claimant and ultimately, impacted upon his own mental health nevertheless, the Tribunal cannot identify as to how that impact would equate to the Claimant having a mental impairment for the purposes of section 6 of the EqA 2010 on the basis of the evidence.

93. In summary, when considering all the evidence in the round in relation to the impact of the asserted mental impairment, the evidence indicates that at the relevant time, despite the issues the Claimant asserts he had, he was nevertheless, on a day-to-day basis, in control, he was functioning normally. He had a structured day. There was no suggestion of self-neglect. He was looking after himself. He dressed, feed himself, and got on and did what he needed or was required to do on a daily basis. In short, the Claimant was doing all of what are considered to amount to normal day-to-day activities. The Tribunal accept that for the majority of that period the Claimant was not required to go into the office nevertheless, at the beginning of October 2021 when he did need to, he was able to do so. Equally, although the Tribunal accept that he returned and was only able to work 3 days because he was needed at home nevertheless, there was no suggestion that that shortened week was because of any health issue on his part.

94. In summary, what must be considered is what the Claimant could not do because of the impact of the mental health impairment, as opposed to what he could still do.

95. The Claimant in evidence refers to anxieties in regard to driving to the office. Nevertheless, at the beginning of October when it was necessary for him to return to the office, he was able to do that. When Mr MacDonald met with him on 4 October 2021 the Claimant was in the office. In that meeting the Claimant did not identify any specific issue in regard to his own health.

96. Further, although the Tribunal accept that from October 2021 the Claimant was then not going into the office because of initially *'cold/flu/pneumonia/respy infec'*, and then work-related stress, he was nevertheless on the basis of what is set out in GP notes and records otherwise functioning.

97. In summary, having considered all the evidence in the round the Tribunal find in the period it is considering that the Appellant's asserted mental health issues had little, if any impact, upon his ability to undertake normal day-to day activities.

98. The Tribunal do not intend to recite any further of the evidence. Our starting point has been the statutory definition and to consider, in short, in the first instance as to whether the impact of the mental health impairment was at the relevant time having a substantial adverse effect on the Claimant's ability to undertake normal day-to-day activities (**Goodwin**). The Tribunal considered this aspect of the statutory definition before it went on to consider the long-term effect. There was no evidence of any previous mental health diagnosis. Further, until the 28 October 2021 the Claimant had not seen a doctor in regard to his mental health albeit, the Tribunal accept that there had been four sessions of counselling in early 2020. Nevertheless, even then there was no evidence of any impact on normal day- to- day activities. As such, the Tribunal find that the mental impairment was not substantial.

99. Further, even if the Tribunal are wrong on that, the Tribunal find that the Claimant has failed to discharge the burden of proof in regard to the longevity of the impairment. What amounts to long-term as previously stated is clearly defined. When considering the long term impact of the impairment, again, as previously stated, the Claimant's position is considered as at the time of the alleged discriminatory acts. The Tribunal have attached weight to what is set out in the GP notes and records and the letter from the GP, all post resignation. The GP did not identify any concerns in relation to the risk of self-harm in short, he identified the issue to be work-related stress and even then, despite suffering from the latter from what was recorded it identified little impact on the Claimant's ability to undertake what could only be described from the activities recorded as, normal day-to-day activities.

100. In summary, for all the reasons identified, the Tribunal find that in the first instance, that the impact of the asserted mental impairment was not substantial and did not adversely affect the Claimant's ability to undertake normal day - to-day activities at the relevant time. Further, even if wrong on that, in the second instance, that it was not at the time of the alleged discriminatory acts, long term.

Claimant's Indirect Disability Discrimination

101. On basis of what is set out above the Tribunal find that the Claimant was not disabled for the purposes of section 6 of the EqA 2010 and as such, his claim of indirect discrimination on grounds of disability fails.

Indirect Disability Discrimination by Association

Legal framework

102. The PCP identified is the introduction of Smart Working Max or Lite without any exceptions. It is not in issue that it would have been the Smart Working Max without exceptions that is the relevant PCP for the purposes of the Claimant's claim.

103. As to whether Smart Working Max without exceptions is specifically a provision, or a criterion, or a practice is irrelevant as it is not in issue that it falls within a PCP. The focus of the Tribunal is whether the Smart Working Max without exceptions would put persons who share the Claimant's characteristic at a particular disadvantage when compared to persons who do not have that characteristic. In short, there must be a *'disadvantage'*.

104. Although, the Tribunal find that the Claimant was not disabled nevertheless, it is not in issue that the Claimant's wife at the relevant time was disabled for the purposes of section 6 of the EqA 2010.

105. Section 19A of the EqA 2010 reproduces the principal established in **CHEZ Razpredelenie Bulgaria AD v Komisia za zashtita ot diskriminatsia (Case C-83/14)** that the person without a relevant protected characteristic is indirectly discriminated against where they suffer alongside persons with a relevant protected characteristic from a particular disadvantage arising from the discriminatory Provision Criterion or Practice ('PCP')**.** In short, it allows a person without the protected characteristic to bring an indirect discrimination claim.

106. As such, applying Section 19A, the Claimant can bring a complaint of indirect discrimination by association on the basis that because of his wife's disability, he suffers alongside persons with the relevant characteristic.

107. It is key that the PCP must put the person at a particular disadvantage when compared to others who do not share that characteristic. As such, what needs to be considered is the group disadvantage to persons who share that characteristic. In order to test whether there is a group disadvantage it is necessary to construct a pool of people for comparison. In the construction of the pool what is important is that it must be made of people who are affected by the PCP, either positively or negatively to allow the Tribunal then to split the pool into people with the characteristic and people without it.

108. The Claimant refers to that pool being those who are disabled. The disability is the Claimant's wife's mental impairment as such, the Tribunal identify it to be those

persons disabled by reason of mental impairment. The Claimant argues he suffers alongside persons with the relevant characteristic and there to be a group disadvantage to those within that pool of persons as a result of the impact of Smart Working Max or Lite without exceptions. The Claimant does not specifically identify any other persons within the pool other than himself.

109. Turning to the particular disadvantages identified by the Claimant. The Tribunal are referred to what is set out at paragraphs 11 a to e of the agreed list of issues in regard to the same. Five disadvantages are identified over the period 30 May 2021 to 27 October 2021 which the Tribunal set out below.

'a. 30.05.2021 – Claimant emailed David Weston re BT Homeworking policy referencing childcare and wife's mental health. There was no written response, expect perhaps Microsoft teams, but the verbal response was that I could not apply because it did not apply to me and no homeworker assessment was completed.

b. 30.07.2021 – Initial denial of Claimant's flexible working request

c. 07.10.2021 – Denial of Claimant's flexible working request appeal

d. 22.10.2021 – Reply to Claimant's resignation referring to reasonable adjustments to support you in a smart working set pattern but no flexibility on smart working itself

e. 27.10.2021 – failing to offer fewer than 4-5 office days per month or spreading them out over the month'

110. In his written closing submissions, the Claimant asserts that the Respondent failed to take first into account how effectively he had worked from home throughout the Covid-19 pandemic. Secondly, there was failure to consider a phased return to the office and thirdly, the impact of anxiety and depression. Finally, a complete failure to take into account either his own disability or his wife's disability and as such, as identified on 30.5.2021, 30.7.2021, 7.10.2021, 22.10.2021 and/or 27.10.2021 to consider accommodating him either under the HWP and/or FW policy as the Smart Working Max or Lite without exceptions would not be able to sufficiently accommodate *'his particular needs'*.

111. The Tribunal find at this early juncture in regard to this issue that the Claimant does not get over the first hurdle in relation to this aspect of his claim. In short, he had failed to identify as to how Smart Working Max without exceptions has put him at a particular disadvantage, as a person who suffers alongside persons with the relevant characteristic, other than, he wanted his contracted place of work to be his home, and did not wish to be committed to the 5 day requirement to come into the office.

112. The Tribunal do not repeat what it is previously stated in that it is not for it to go behind the business needs of the Respondent nor, prior to this hearing, was it ever indicated that that was in issue. The business needs were, as already identified above, that the Claimant's place of work location needed to remain as the office location, with a requirement to come into the office 5 days in the month dependent upon how the team chose to work, or on ad hoc days as identified in the FW refusal letters.

113. The Tribunal find that the Smart Working Max without any exceptions allowed the Claimant the level of flexibility he sought. Inherent within it was that the Claimant could ultimately determine if and when he came into the office. Equally, what hours he wished to work. Smart Working Max was introduced at the beginning of October 2021. In the initial rollout period when the Claimant went into the office and when he then needed to go home after 3 days he was able to so without any issue. Even if it had not suited the Claimant to work for 5 days in a row, he was able to select ad hoc days. Both Mr MacDonald and Ms Finnie in evidence identified that Smart Working Max or Lite without exceptions was an initiative designed to encompass dealing with a myriad of issues, which included disability, carer's responsibilities, childcare issues, commute issues, again, the list is not exhaustive. The Claimant has failed to identify as to how he was put at a particular disadvantage by Smart Working Max without exceptions other than he could not have a 100% homeworking location.

114. Further, in regard there being an insufficient rollout period, the Tribunal were advised that Smart Working Max or Lite without exceptions as a future way of working was brought to the attention of all employees some months prior to its introduction. In short, that the Claimant was fully aware that it was to be introduced as far back as May 2021 was not in issue. The Tribunal were provided with a copy of the return to work email sent to all employees dated 6 July 2021 indicating that there would be a return to the office-based location from October onwards. Ms Finnie identified the reasons for the long run in period to be, as previously set out by the Tribunal, because the Respondent understood and accepted the issues that there would be for many of their employees in returning to the office. The Tribunal are satisfied on the evidence that the Smart Working Max without any exceptions, did not put the Claimant at a particular advantage.

115. Further, the Tribunal are satisfied that the Respondent, and in particular, Mr MacDonald at the time of the appeal meeting took time to explore with the Claimant as to exactly what he required by way flexibility and thereafter, to explore as to whether it was viable that that could be met under the terms of Smart Working Max without exceptions. The Tribunal attach weight to Mr MacDonald's evidence that at the time of the appeal meeting the only outcome on FW application that the Claimant was seeking was a home working full-time contract and not to be committed to coming into the office to 5 days a month which was never going to be viable.

116. In summary in regard to this particular issue, whether the Claimant was put at a particular disadvantage as a person who suffers alongside persons with the relevant characteristic, the Tribunal find that the has Claimant has failed to identify the group disadvantage to those who are disabled by way of mental impairment as a result of Smart Working Max and/or Lite without exceptions. He has failed to identify as to why in particular, Smart Working Max without exceptions failed to allow him the flexibility that he required other than, he could not through it, have a 100% home working contract. In summary, no evidence has been adduced of the group disadvantage.

117. Further, even if the Tribunal are wrong on that, the Tribunal find that Smart Working Max and/or Lite without exceptions was and is a business need, and as such is appropriate and necessary and proportionate means to achieve a legitimate aim. Smart Working was introduced to reflect the positive impact of hybrid working flowing from the Covid-19 pandemic and to offer flexibility to those who had childcare issues, care responsibilities, disabilities, commute issues, needed to work on a flexible basis with differing shift times which includes night shifts or even weekend shifts, the list is non exhaustive. Nevertheless, business needs also identified a necessity for the majority of workforce to still come to their location office to work as a team, interact as a team and be trained as a team for up to 5 to 7 days a month depending upon the hours worked. In short, permanent home working was never viable for the majority of the workforce which includes, the role that the Claimant had.

Indirect Sex Discrimination, Indirect Sex Discrimination by Association and Indirect Marriage or Civil Partnership Discrimination

118. The Tribunal d0 not repeat the legal framework, however, make the same finding in regard the Claimant's claims of Indirect Sex Discrimination, Indirect Sex Discrimination by Association and Indirect Marriage or Civil Partnership Discrimination.

119. In short, in considering the same the Tribunal apply the same legal framework as set out above. Again, the issue is as to whether Smart Working Max without any exceptions put the Claimant at a particular disadvantage either directly or, by association. The Tribunal find that it did not. As previously stated, the Tribunal find that it is an initiative which was driven by the success of hybrid working during the pandemic. It is an initiative which seeks to specifically identify, address and accommodate issues that the Respondent's employees had irrespective of gender or marriage/ civil partnership status with childcare, carer's responsibilities, commute time, working hours, again, the list is non exhaustive.

120. The Claimant asserts that Smart Working Max and/or Lite without exceptions put him at a particular disadvantage because of the impact on his wife, because she was at home, and it inferred she should therefore bear the childcare responsibilities. In short, a failure by the Respondent to recognise the need for him to be able to work from home and the difficulties that he would have in attending the office 5 days months.

121. When the Claimant started his job for the Respondent he had to commute to the Canterbury office on a daily basis. This was something that he agreed to do at that time. What the Claimant has failed to explain as to why it now puts him at a particular disadvantage as a result of his marital status or sex, equally by association. The Claimant asserts that Smart Working Max or Lite without exceptions was indirectly discriminatory on the basis of commute time. Commuting to work even if limited to 5 days of week or, on an ad hoc basis over a month is something which every employee would have to do irrespective of where they lived. In regard to childcare arrangements, the Claimant's evidence was that his wife looked after the children for him to work. It was not in issue that her mental impairment was a barrier to her being able to do so. In short, as to how they manage childcare was and is clearly a matter for them as a

family, as it is in any other family. Again, the Tribunal could not identify as to how Smart Working Max without exceptions put the Claimant at a particular disadvantage.

122. As previously stated which was not an identified issue in any event, the Tribunal were satisfied that the requirement to come into the office 5 days a month or, on an ad hoc basis every month, is a business need. The Tribunal find that it does not put the Claimant at a particular disadvantage on grounds of sex, directly or by association or by marriage or civil partnership.

123. Further, even if wrong on that, the Tribunal find, that the Smart Working Max and/or Lite without exceptions is a legitimate means to obtaining a proportionate aim. Again, the Tribunal do not rehearse the evidence but find that the initiative was introduced to address the issues that the Claimant identifies, and to recognise the need for flexibility in the workplace that is not gender specific or because of a person's married or civil partnership status, in short, it recognises the need for flexibility of both female and male employees both within and outside relationships in regard to their childcare, and care commitments.

Conclusion

124. The Claimant undoubtedly will be disappointed in regard to what the Tribunal have decided. As explained to the Claimant at the outset, the Tribunal are bound by the law. In short, that the Respondent did not agree to his place of work location being that of his home on a permanent basis or being able to go into the office less than 5 days a month makes for neither an unfair constructive dismissal claim or, indirect discrimination be that direct or by association by reason of disability or sex or indirect discrimination by reason of marriage and civil partnership.

125. As stated at the outset what is set out within this document are the reasons for the Tribunal's decision. It is not a recitation of the oral evidence; details of the oral evidence is contained within the record of proceedings. Therefore, although further matters raised and points addressed and argued may not be set out above nevertheless, the Tribunal considered all the evidence in the round in making it decision. The issues for the Tribunal to determine had been clearly defined at a previous preliminary hearing. As such, although raised during the course of the hearing by the Claimant matters pertaining to his performance, BT passport, physical health problems and potential other reasons pertaining to business restructure, they were not matters which had previously been identified as issues for determination.

126. As such, having considered all the evidence in the round, all complaints brought by the Claimant are dismissed.

Tribunal Judge MM Thomas

Date 2 April 2024