Case Number: 1300012/2023
& 1302616/2023

EMPLOYMENT TRIBUNALS

Claimant: Mrs S Bradley

Respondent: Integra Supported Housing Walsall Limited

Heard at: Birmingham **On:** 8, 9, 10 &11 April 2024 [parties]
22, 23 & 24 May 2024 [panel]

Before: Employment Judge Maxwell
Mrs Ellis
Mr Faulconbridge

Appearances
For the claimant: in person, assisted by her sister Ms Tillson
For the respondent: Ms Veimou, Litigation Consultant

RESERVED JUDGMENT

1. The Claimant's unfair dismissal claim is not well-founded and is dismissed.

2. The Claimant's direct disability discrimination claim is dismissed on withdrawal.

3. The Claimant's discrimination arising from disability claim is not well-founded and is dismissed.

4. The Claimant's failure to make reasonable adjustments claim is not well-founded and is dismissed.

5. The Claimant's harassment claim is well-founded and succeeds.

6. The Claimant's victimisation claim is well-founded in part and succeeds with respect to the non-acceptance of her resignation retraction.

REASONS

Preliminary Matters

1. The Claimant was assisted during these proceedings by her sister, Ms Tillson. The Respondent was represented by Ms Veimou, a Consultant.

2. There was some initial confusion about the Respondent's concession on the question of disability. Ms Veimou said this was admitted with respect to asthma only. The Claimant said a fuller concession had been made when a previous hearing was vacated. On reviewing the Tribunal file, it became apparent a preliminary hearing in public had been listed to determine whether the Claimant was a disabled person at material times by reason of anxiety. This was vacated following a concession by the Respondent in that regard too. Ms Veimou apologised for the confusion, explaining she had taken this matter over from another representative. Accordingly, it being admitted the Claimant was disabled by reference to both of the impairments relied upon, the only related question for the Tribunal to determine would be that of knowledge.

3. We were provided with a bundle of documents prepared by the parties and running to page number 1,158, although to the total page count was somewhat higher at 1,173.

4. We received witness statements and heard evidence from:

    4.1 Sarah Bradley, the Claimant;

    4.2 Claire Musgrove, the Respondent's Director of Complex Care and Forensics;

    4.3 Lee Kiernan, the Respondent's Operations Director.

5. It quickly became apparent the matter was underlisted. Rather than postponing the final hearing, we decided it was in the interests of justice to hear all of the evidence and submissions in the current time allocation and then the panel would reconvene to deliberate as soon thereafter as we were able. We would provide the parties with a reserved decision.

6. Whilst the Claimant was giving evidence, the Judge explored the list of issues with her. He explained the difference between direct discrimination because of disability within section 13 of the Equality Act and discrimination arising from disability pursuant to section 15. This was as a precursor to asking the Claimant to explain why she said the various treatment complained of was done because of her disability. In response the Claimant said the legal labels in the list of issues had been attached by the Employment Judge dealing with the case management hearing. The Judge explained that he did not want to put the Claimant "on the spot" and invited her to think about this. He said if she believed there was evidence showing the things complained of had been done because of disability, then she should refer to this in her closing submissions. If on the other hand, she thought there was no such evidence, then she might wish to withdraw those complaints. Notably, the matters complained of as direct

discrimination were also relied upon in connection with other claims being brought. Subsequently, when making her closing submissions, the Claimant withdrew the complaints of direct discrimination.

Facts

Witnesses

7. We were satisfied that all witnesses were doing their best to give an honest account of events based on their recollection, although in the case of the Claimant we came to the conclusion, for reasons which are expanded upon below, that she was on occasion prone to misconstrue or over-interpret things said to her. After her resignation, she also adopted positions and corresponded with a view to building her claim.

Background

8. The Respondent is a registered healthcare and social support provider for adults regulated by the Care Quality Commission. It provides services to clients in the 18 to 55 age range. These individuals may face various challenges as a result of their mental health and / or at risk of offending.

9. The Claimant began her employment with the Respondent on 1 January 2019, as a Support Worker. Not long after doing so, on 15 March 2019, the Claimant completed a health questionnaire. With respect to a question about asthma, the Claimant circled the yes and wrote “asthma (very mild)”. She also noted a latex allergy. In response to a question about mental illness, the Claimant circled no.

10. The Claimant did well. In July 2019, she was promoted to the position of Project Lead / Manager. In February 2021, the Claimant was appointed to the position as Operational Area Manager, sometimes known as Regional Locality Manager. Her line manager was Alex Martin, the Respondent’s Quality and Compliance Director.

11. Unsurprisingly, the Respondent was affected by the Covid pandemic. The nature of the business involved regular close contact with clients. Many of the Respondent’s employees were identified by their GPs as being especially vulnerable. In their cases, special measures were taken, including self-isolation and/or fitted facemasks. The Claimant was not one of these employees.

12. The Claimant had the use of a company lease vehicle. This was not part of the benefit package for her role, rather a specific arrangement had been made to cater for her personal circumstances. The Claimant could not afford to buy a new car or obtain personal finance in that regard. An agreement was reached with the Respondent whereby it would lease a vehicle for the Claimant’s use but she would pay the costs of this.

July 2021

13. In July 2021, Ms Musgrove received reports from staff to the effect they had found it difficult to contact the Claimant, at times when Ms Musgrove believed she ought to have been on site. As a result, Ms Musgrove made some enquiries into the Claimant's whereabouts. Having done this, Ms Musgrove was satisfied

the Claimant have been where she should have been at relevant times. It appeared to Ms Musgrove, the difficulty with staff members being able to contact her would probably be resolved if the Claimant were to share her calendar, in this way they would know where she could be found at any given time.

14. The Claimant learned of Ms Musgrove having made enquiries. She immediately came to the conclusion she was being accused of falsifying her timesheets. This was not the case and is an example of the Claimant over-interpreting limited information and arriving at a mistaken negative conclusion.

15. On 23 July 2021, the Claimant and Ms Musgrove spoke whilst at the Respondent's head office. Ms Musgrove sought to tell the Claimant about the concerns which have been raised with her by staff and to make her suggestion about calendar sharing. The Claimant was most unhappy. She wanted to know who had been complaining and why they had not raised any concerns directly with her. The volume level of the conversation began to escalate and the Claimant left abruptly.

16. A few days later on 26 July 2021, the Claimant wrote to Ms Martin:

> **In regard to last weeks incident I have since spoken with my union who have advised I request a full investigation to be carried out in line with company grievance procedures and advised to gather my own evidence to defend these allegations. Not that I should have too nor have I committed any kind of offence that warranted any of this causing me immense upset over the last week.**
>
> **I will discuss with you tomorrow anyway Alex.**
>
> **I feel empty now but il continue to carry on even though I am extremely hurt and il do my job to the best of my ability but I won't let this go until whoever has vindictively caused me all this upset resulting in a defamation of my character is dealt with accordingly.**

17. Ms Martin, replied inviting the Claimant to pursue a grievance under the Respondent's procedure:

> **Should you wish to take the course of action i will need all meetings now to be held formally with a note taker**
>
> **If you can action your grievance to me in formal writing and we can begin the grievance procedure.**

18. In the event, the Claimant did not raise a grievance, rather she decided, in her words to "move on".

<u>November 2021</u>

19. On 23 November 2021, the Claimant, who was absent from work with a respiratory infection, exchanged messages with Ms Musgrove, who was herself on sick leave at the time. This began with the Claimant attaching a photo of various medication and saying:

Hi Clare just to update iv spoken to dr this morning cuz I was worried about my breathing last night I was experiencing bouts of shortness of breath -Iv got a bad chest and respiratory infection and been put on steroids for 5 dayshave to take 8 in the morning :(inhalers and antibiotics never felt so poorly in year […]

20. The exchange continued:

CM - Oh god Sarah […] just take it easy x

C - I'm gonna have to take a few days off work because dr has advised complete rest for the next 5 days at least. She said if I try to keep going I could end up in hospital so im going to listen and get myself better.

[…]

Thanks for your messages im gonna try to get in for the weekend if im better xx

CM - Ok well just take it steady you are burnt out. Get some honey as well it helped me loads – I'm off Friday […]

C - I had honey last night Scott bought me some from Tesco snd warned it up it after vile but I can speak better today still croaky but better than yesterday.

it came in so sudden I was fine Sunday it's completely wiped me out x

CM - That was me I was on support with JH I sneezed & went rapidly downhill I then finished at 6 and didnt get out of bed for 3 days was so poorly but within a week I was fine […] xx

C - I'm back in bed again now Iv never slept so much x

CM - I was the same & I don't sleep it's bloody awful isn't it - you will soon be on the mend I'm Sure xx

C - Not nice because I'm used to being on the go but sometimes these things happen to make u realise I guess.

Anyway I'm hoping to be better by Friday once Iv finished these steroids and antibiotics so il hopefully be able to attend site for meeting with Anna.

Iv just ordered a PCR kit too to cover my return although I know it's not that dr advised too cuz of the sector I'm in x

CM - Yeah I did the same I think it's this new super flu xx

21. Some days later the Claimant returned to work and resumed her usual duties. She did not report any ongoing symptoms or say she needed any assistance.

March 2022

22. In a WhatsApp message to Mr Kiernan of 10 March 2022, the Claimant said how happy she was to be line-managed by him and that she had sensory overload which played havoc with her anxiety the previous day

August / September 2022

23. At the end of August or beginning of September 2022, the Respondent's then Financial Manager was suspended on allegations of serious wrongdoing. In his absence, Mr Allen instructed all senior managers to keep a close eye on the overtime claims in their respective functions. Following up on this instruction at the end of August or beginning of September, Ms Musgrove noticed an occasion on which several managers all claimed overtime at one particular site, Foxyards, on the same date. Ms Musgrove rang those managers to make enquiries. Ms Musgrove did not call the Claimant, who was one of the claiming managers, because she was then on leave as her mother had recently died. Ms Musgrove was told that the managers were all there at the same time because they were tidying up following recently building work. The site had been left unsafe, in particular with sharps lying around. Ms Musgrove was satisfied by this explanation. It was necessary to make Foxyards safe for the arrival of clients. As a result, she made no further enquiries. It appears that one of the managers spoken to told the Claimant about this.

24. Once again, the Claimant appears to have misconstrued or over-interpreted what she was told. Notwithstanding this was a concern about careful management of the overtime budget and whether there was a need for several managers to be on site at the same time, the Claimant construed it as an allegation of fraud and fabrication. Furthermore, despite Ms Musgrove having noticed that several managers were on site, the Claimant appears to have decided enquiries were targeted upon her.

25. Later in September 2022, Ms Musgrove learned that an employee whose employment was shortly to come to an end had not been allocated sufficient shifts to account for her contracted hours. At the same time, the Claimant had put herself down to work an additional shift as overtime. This did not appear to Ms Musgrove as appropriate. It would increase the overtime bill and leave an employee short of their normal hours. Ms Musgrove decided to take the Claimant off this shift and put the leaving employee on it. The Claimant was most unhappy about this and there was an exchange of messages:

> **C – Iv heard you were querying why I am in on Sunday on a 9-9?? The reason is due to so many shifts were outstanding and no staff to cover them. Staff are already being utilised and respectfully with the ongoing pay issues staff are not willing to keep picking up.**
>
> **Also […] didn't have her 40 hours because her leave date is Friday. This means that as this week should of been her weekend on on the statics she would not be able to fulfil that due to notice period ending.**
>
> **There's no shifts to give her in the week and I did advise […] to be on standby for any sickness calling in over the week to accommodate any loss in hours but I couldn't give her shifts in the week that aren't there.**

> **If I'm not required to come in Sunday and a preference of agency being called in place then that's absolutely fine, il happily take myself back off to prevent any further discussions being held.**
>
> **CM - I have queried it as the shifts are all over the place and […] reported she had had her Saturday shift removed and she has not had her contracted hours.**
>
> **As a senior management team we will look at shifts and allocations across the board as the overtime bill is ridiculous as is the use of agency. […]**

26. Whilst Ms Musgrove's concern was about management of the overtime budget and ensuring staff had their contracted hours, once again the Claimant misconstrued this as an allegation of fraud. It was part of Ms Musgrove's role to manage the overtime bill in her work function. The Claimant was not accused of fraud or fabricating claims for payment with respect to work on this or any other occasion.

Resignation

27. The Claimant decided to resign. She sent a WhatsApp message to Mr Kiernan on the evening of 27 September 2022, which included:

> **I'm off this week too sorting my moms house after her passing. I am going to be honest I have recently applied for 2 new jobs as I simply can not take any more of this pushing back f my mental health within the senior management team. I have tried so hard to keep going but Iv had enough now. Iv also found out today none of my pension has been paid since February even though over £800 has been taken from my wages during that period.**
>
> **Am I able to put you as a reference as my line manager as I feel you would give an honest holistic reference person centred to my skills.**
>
> **I will give my 4 weeks notice and support to train up a new ops manager but I have to think about my mr tal health now.**

28. By an email of 29 September 2022 sent after the close of business hours, the Claimant formally tendered her resignation, attaching a letter:

> **Please accept this as my formal resignation. This letter represents my official notice of resignation from my position of Operational Area Manager within Integra Supported Housing on Friday 29.9.22**
>
> **I would like to take this opportunity to show appreciation for the knowledge and experience I have gained during my time here, and I thank you personally Jon for the opportunities given to progress in my career.**
>
> **I trust 4 weeks' notice is the sufficient amount of time required for you to find a replacement so my final working day will be 27th October 2022.**
>
> **I will ensure the Lease car is valeted and returned before my leave date as I am on annual leave from 24th October, which will overlap my final working day.**

> **Of course, I'd like to offer any assistance in training up the person that will take over my position, or support to train up an individual internally to take over my role should you require this.**

29. Ms Adey, HR Manager, replied the following morning on 30 September 2022, informally:

> **I knew it was coming, but oh no...I'm so sad that you're leaving. I will correspond officially once I have spoken to JA. But just in the meantime wanted to say I hope you're moving onwards and upwards and that you are appreciated wherever you're going, as you are a really lovely lady and an asset to any company.**

30. The Claimant responded almost immediately, in rather different terms from her resignation letter:

> **The disrespect shown towards me during the most difficult time of my life is nothing short of sickening and I refuse to tolerate any more of this power struggle that's going on in that office.**
>
> **Also, the fact none of my pension has been paid since February even though hundreds of pounds have been taken was the straw that broke the camel's back.**
>
> **Iv just lost my mom and the fact I'm hearing whilst I'm off that management are calling questioning why I'm in work but have no desire to speak with me directly evidences that there's no respect there from certain individuals.**
>
> **I spoke with my union yesterday and was advised to serve notice of resignation considering Iv attempted to discuss this untoward behaviour in the past with no resolution so to protect my own mental health I'm not tolerating this anymore.**

Post-Resignation

31. Following her resignation, by an email of 30 September 2022 Ms Martin invited the Claimant to a meeting:

> **I received your resignation yesterday evening, Can you please attend head office Monday at 10 am to see myself and Jonathan, please?**
>
> **This is to discuss the strategy moving forward as you exit the role of operations manager and to ensure a seamless process for both yourself and us as an organisation.**

32. The Claimant responded to this invitation the same day, saying that she wished to seek support from her trade union and take legal advice before agreeing to attend:

> **I am sorry but can i request support from my union before i agree to any scheduled meeting ?? this is to safeguard myself surrounding recent notification of further "internal discussions held about me with managers" regarding my shifts that appears to once again insinuate potential allegations of foul play, even though i have done nothing wrong.**

> **Also, i will require professional employment law advice surrounding my exit that is fair to all as the reason for my notice being served is due to a multitude of factors regarding unfair treatment and sheer disrespect during a grieving period of losing my mother.**
>
> **Recent tribulations have been disclosed whilst on leave sorting through my mother's belongings that have triggered a decline in my mental health and contributed in me feeling i have no alternative but to submit my resignation.**
>
> **I will contact my union Monday and schedule in a formal meeting once i can establish if my union rep can support with this to cover us all as burying heads in the sand has on escalated grievances that should have been addressed from the start after multiple supervisions have been held regarding professional conduct to no improvement prevail.**

33. Ms Martin wrote back saying this was not an exit interview, rather it concerned "Walsall and Wolverhampton" (i.e. the Respondent's premises at those places).

34. In response to this, the Claimant said she was entitled to support at any meeting regarding her exit. She then went on to set out various complaints about matters which she said had led her to resign. Notwithstanding this, she said she was prepared to support the training of her replacement.

35. Ms Martin replied, disputing the application of section 10 of the Employment Relations Act:

> **If you are to attend a Formal Meeting with your employer on any issue regarding your employment – whether it be a disciplinary, grievance, redundancy, performance, discrimination, sickness absence or harassment matter – your legal right to be accompanied is set out in Section 10 of the Employment Relations Act 1999.**
>
> **This meeting is none of the above, can please request again that you attend head office Monday at 10am, you have taken a period of leave with multiple factors to discuss and hand over from a management perspective. To return the service without any hand over from us is not protocol you know this from attending head office every week.**

36. Notably, whilst the Claimant asserted a legal right under the Employment Relations Act to be accompanied, she did not say she needed to be accompanied at any meeting by her trade union representative because she was suffering with anxiety or any other health problem.

37. The Claimant chose not to attend the meeting proposed on 3 October 2022. Ms Martin sent an email asking where she was. In response to this the Claimant wrote:

> **Please see attached sick note on medical advice from my GP. Please can I request you refrain from any further contact with myself. I will not be answering any calls or emails whilst I am not in the correct frame of mind to do so.**
>
> **HR we're notified and correct procedures were followed. There is no reason for you to contact me now. I will be in touch once I have**

> **completed my formal grievance for vexatious harassment causing a significant impact to my mental health.**

The sick note referred to was a self-certificate submitted by the Claimant.

38. Ms Adey wrote to the Claimant in formal terms on 3 October 2022. This letter provided that the Claimant's last working day would be 27 October 2022. Ms Adey also noted:

> **You have been invited to attend an exit interview, with Alex Martin, at Head office, on Monday 03.10.2022, however, you have declined this invitation, and have said that you do not wish to attend any future meetings at Head Office.**
>
> **Please can you contact Alex Martin or Jonathan Allen directly to arrange a date and time to return your lease car, laptop and charger, Pleo Card and any other company property you may have in your possession.**

Grievance

39. Later that afternoon, the Claimant lodged a formal grievance. She alleged the Respondent had failed to discharge of its duty of care under the Health and Safety at Work Act and was in breach of the implied term of trust and confidence. The Claimant's email included:

> **I have been subjected to a systematic campaign of psychological harassment by Clare for a significant period of time, harassment by which is unwanted, uninvited and unwelcome, and has contributed to a significant decline in my performance and mental health.**
>
> **[…]**
>
> **Being psychologically harassed has created a hostile, oppressive and intimidating environment in which to work and communicate with her on a professional level. Furthermore, it has caused me needless stress, distress and anxiety, and resulted in me requiring medical intervention. This has had, and is having a 'detrimental impact' upon both my mental and physical health and after consultation with my doctor is also of the same medical opinion.**
>
> **[…]**
>
> **As a direct consequence' of Clare's conduct over the last 12 months, I have felt at times extremely low in mood, and have cried on numerous occasions, not wanting to get out of bed and face work, lack of sleep, and low motivation. I have raised her conduct to you personally on multiple occasions, informally last year when I was accused of not being in work by what Clare disclosed as "multiple staff notification" and when challenging her on why she had not spoken to me about this personally, instead opting to discuss it around a board table with other managers, I was advised by her verbally; with you present she "liked to gather her evidence first". This was a clear indication that she was insinuating that I had fraudulently stated I was working hours that I hadn't and of which evidence I had specifically requested to be informed of if I was being investigated for something regarding my work, evidence of which she was unable to provide on the basis of 'hearsay' contrary to the fact these**

'multiple staff from the same clique' had failed to also provide any proof to back up these false allegations made against me.

[…]

I advised both you and Alex the following week 26.7.21 how this altercation had affected my mental health and I had felt victimised and belittled, trialed and convicted over malicious false hearsay that hadn't even been addressed to me following the correct organizational procedures to even allow me the opportunity to defend the alleged allegation.

[…]

I was then notified that when I again took some annual leave to empty my mother's house, my hours of work had come into question again as last year's allegation which evidently derived from assumption yet again without establishing any facts. This left me feeling extremely unsettled and questioning why I was again being put under a microscope during difficult circumstances I was currently experiencing in my home life when I had done nothing wrong to warrant this.

Later into the same week I was again notified that she had called a manager regarding Fox yards and had unambiguously queried why we was there all day, who was there and what time did we leave? She was advised when she queried my name specifically that I left at 6pm and that the reason I was there was helping to clear a newly opened trauma unit for the arrival of a new service user to a house that was unfit to move into due to nails and screws all over the building left by the carpenters.

[…]

In a final Blow to my already declining mental health, I received notification of my pension not being paid during the recent financial scandal involving AR. I discussed this with you over the phone and you assured me this was just the 'employer's contribution' when in fact deductions that have been taken out my own wages since February have also not been paid. This has been confirmed in writing by the Peoples pension themselves whom I contacted to see if things had been rectified.

I wish to make it clear, that I no longer wish to work with Integra supported Housing. This is due to the very fact that the unwanted conduct by Clare is 'prejudicial' to my health, and as such, poses a significant 'danger' to my physical and psychological health.

To this end, I am asserting a statutory right pursuant to s.44(1)(c) of the ERA 1 996. I am bringing to my employer's attention by reasonable means that parameters at work are prejudicial to my health, safety and well-being.

40. Ms Adey acknowledged receipt the same day and said a response would follow in due course. On 4 October 2022, the Claimant asked for all future correspondence to be sent to her personal email.

41. Mr Kiernan wrote to the Claimant on 11 October 2022, addressing various matters and inviting her to think again about her resignation:

> **I am in receipt of your letter of resignation dated 29.09.2022. I am concerned by the contents of this letter and feel that you may have resigned in haste.**
>
> **I would therefore ask that you reconsider your decision to resign from your employment and allow the company opportunity to resolve your issues. If you do wish to retract your notice, then please do so in writing within the next 7 days.**
>
> **In your letter of resignation, you raise a number of grievances and therefore I would like to invite you to attend a formal grievance hearing at 11:00 am on Tuesday 18th October 2022 at head office, this can either be face-to-face or via Microsoft teams if you prefer. […]**
>
> **You have the right to be accompanied at the meeting by a work colleague or an accredited trade union representative and it is up to you to inform your companion of the date and time of the hearing.**
>
> **Please confirm whether or not these meeting arrangements are suitable to you as soon as possible in case alternative arrangements are necessary. As stated above, please also let me know with regard to your resignation. Unless I hear from you with a retraction or a request for an extended period of consideration, I will have no option but to process your resignation, even if a grievance process is ongoing.**

42. The Claimant also submitted a GP note saying she was unfit for work for 2 weeks because of "feeling stress at work".

Lease Vehicle

43. The Claimant wrote to Mr Allen, the Respondent's owner, on 13 October 2022, saying she had been "notified" of his intention to cancel the insurance on the lease vehicle she used. The Claimant complained of being required to return this vehicle before her employment terminated and queried whether it meant her employment had already terminated. Having set out her belief she was being treated disgracefully, the Claimant said she would return all of the company property she had. The Claimant left the vehicle at the home of a colleague.

44. It is notable that despite a substantial volume of correspondence at this time passing between the Claimant and her managers, this did not include a request for the vehicle to be returned early or any suggestion that insurance would cease. Given the Claimant's propensity to misconstrue or over-interpret what was said, we think that is likely to have happened on this occasion. The Respondent did not require her to return the vehicle prematurely.

45. Ms Adey, responded to the Claimant the following day:

> **I am aware you have raised the matter of returning the vehicle and other items that belong to the company. The protocol in relation to the return of all company belonging clearly stare that these must be returned to head off for inspection prior to return due to:**
>
> > **a/ your personal responsibility to have maintained the vehicle to a satisfactory standard.**

> **b/ To ensure there is no damage or repair requirement that you would be liable for.**
>
> **This is clear and transparent.**
>
> **You have chosen to return the vehicle to […] private accommodation, and although this is outside of the normal policy, I have not challenged this, as I do not wish to add any stress or anxiety.**
>
> **Finally, you have neither been coerced or pressured into returning the vehicle you could have retained the vehicle until 24.10.22 which you have identified as your last day of working, but due to lack of dialogue, with HR we have been totally dependant upon information shared with a third party. As this initial action was your instigation, I have made the assessment that this was your preferred method of communication, although this is not in line with our policy or protocol. Again, this was to provide a sensitive response in relation to your disclosed anxiety and stress response.**
>
> **As part of your leaving the organisation, I have made no charge for your use of the vehicle this month, which will be reflected in your final payslip.**

Further Complaints / Grievances

46. On 14 October 2022, the Claimant wrote to the Respondent again. Whilst she did not say this email was a grievance, she did raise further complaints, including about calls and messages regarding her non-attendance at the proposed handover / exit meeting and being denied union accompaniment. Whilst the point was not made in the clearest terms, the Claimant also appeared to express a concern that if she had attended, the Respondent might have attempted to persuade her to reconsider her resignation, which she said she believed would have caused her mental health to decline. She complained of being "deceitfully advised through a third party" about the circumstances in which and / or date when she had to return her company vehicle. Finally she raised the lack of a response to her earlier grievance.

47. The Claimant was invited to a meeting with Mr Kiernan to discuss her grievance. She was told this could be conducted face to face or by Teams.

48. On 17 October 2022, the Claimant wrote raising a further grievance about various matters and seeking to retract her resignation but without affirming her employment:

> **3. After reconsidering my position, I wish to withdraw my resignation. Thank you**
>
> **4. As such, I will continue to remain employed. However, in so doing, I do not affirm and/or acquiesce to the breaches of the implied term of mutual trust and confidence, which have occurred, and which led to my submitting my resignation & grievance letters. Please be advised that I continue to work and accept my pay under protest.**
>
> **[…]**

6. In your letter dated 11.10.22, you have invited me to attend a grievance meeting on 18.10.22 […]

7. Your omission to make reasonable adjustments to the grievance procedures is to my 'detriment'. It is also a contravention of s.13(1); s.15(1)(a)(b); s.19(1)(2)(b)(c)(d)(3); s.20(3); s.21(1)(2) and s.39(2)(b)(d)(5) of The EqA 2010

[…]

10. My GP has also referred me to the primary mental health team on 3.10.22 which I had advised of when informing the organization that I had received urgent medical intervention on 3.10.22. Notwithstanding, I am also taking anti-anxiety medication to control my anxiety attacks in addition to Beclomethasone and Ventolin inhalers for my asthma attacks. For the avoidance of doubt, in my email dated 30.9.22, I informed Alex Martin of the fact my mental health had deteriorated over the continued allegations of Clare, of which I had specifically requested union representation to discuss any formal matters regarding a strategy in me leaving the organization, of which was denied.

[…]

12. Thus, it was not a proportionate means of achieving a legitimate aim to invite me to attend a grievance meeting without implementing any reasonable adjustments to accommodate my asthma and anxiety, viz: to remove the substantial disadvantage on protected grounds of disability. Hence, I am raising further grievances against you and my employer for disability discrimination.

13. Moreover, you have only allowed me to have either a workplace colleague or trade union as my chosen companion at the grievance meeting on 18.10.22. This applies a discriminatory provision, criterion, practice upon me, and furthermore, upon employees who share my protected characteristic of disability:

PCP

14. You and my employer only allowing me to have either a workplace colleague or trade union representative as my chosen companion at the grievance meeting. It was not a proportionate means of achieving a legitimate aim to have followed s.10 of The ERA 1999 slavishly.

[…]

18. Attending a grievance meeting without having the assistance of a family member or friend present to assist me in putting in place coping strategies in the event I have an asthma or panic attack would put me (and would also put persons who share my protected characteristic of disability) at a substantial disadvantage in comparison to non-disabled persons. Grievance proceedings are necessarily stressful. Without appropriate support neither myself nor persons who share my disabilities could easily deal with an asthma or panic attack. Suffering or anticipating an asthma or panic attack during the grievance meeting would leave myself (and would also leave persons who share my protected

> **characteristic of disability) less able to deal with the important matters within the grievance meeting.**
>
> **[…]**
>
> **21. Notwithstanding, the adjustment of allowing a family member or friend to attend as 'my chosen companion' was 'reasonable' insofar that a family member or friend could be expected to be able to provide appropriate support and would cause no particular problem for either you or my employer other than a departure from the grievance policy.**
>
> **[…]**
>
> **25. To amend the grievance policy and procedures for persons with physical and/or mental impairments to allow someone other than a workplace colleague or trade union representative to accompany them to grievance meetings. This position is supported within The Statutory Code of Practice on Employment 2011, with express particular Chapter 17 (paragraph 6.93): […]**
>
> **26. To have offered / suggested / implemented the right to have someone else as my chosen companion at the grievance meeting, which you and my employer omitted to do. Why?**

49. During the hearing before us, the Claimant said she had never asked to be accompanied at a grievance meeting by a family member or friend. This proposition is difficult to accept in light of paragraphs 13, 14, 18, 21 and 25, which clearly convey an assertion the Respondent should have done this. It is also correct to note the Claimant asked for the process to be conducted in writing.

50. Whilst the Claimant asked to retract her resignation she had, in her own words, "not the slightest intention" of returning to work. This step was taken solely for the purpose of and in the belief it would better assist her to pursue her complaints.

51. Mr Kiernan replied to the Claimant on 19 October 2022:

> **Thank you for your e-mail dated 17/10/2022. I note your request to withdraw your resignation, as you are likely aware the company has no legal obligation in accepting this. I have passed on your request to retract notice to the company owner 'Jon'.**
>
> **Should you wish to discuss this matter then please contact Jon at Head Office, by no later than the close of play on Monday 24th October.**
>
> **Any points regarding the grievance process can be considered at the hearing. I would however like to clarify that we have not refused any reasonable adjustments to the grievance process and are certainly willing to consider adjustments to support your participation. You have specifically stated that you would appreciate being accompanied by a family member or friend to support you during the hearing and we agree to your request. Please confirm in advance who this will be. This does not impact your right to still be accompanied by a colleague or trade union representative of your choosing. Again, we would politely ask to confirm**

> **who that will be, if you do decide to have a colleague or trade union representative.**
>
> **We can take breaks throughout the meeting at any time, if you feel that would be beneficial.**
>
> **Please let me know if there were any further adjustments you would like us to consider in advance of the hearing to enable us to consider these. Additionally if you could provide some availability slots, I will then look to flexibly meet with such arrangements.**

52. As can be seen from Mr Kiernan's reply, he had picked up upon the suggestion the Respondent ought to allow the Claimant to be accompanied at a grievance hearing by a friend or family member and agreed to this. Whilst he did not instead of that course, immediately propose the matter be dealt with in writing, he did ask the Claimant if there were any other adjustments she wished for.

53. The Claimant wrote to Mr Kiernan on 20 October 2022. She challenged his assertion the company had no legal obligation to accept her retraction and said this was victimisation as a result of her 17 October 2022 grievance. The Claimant disputed the need for her to contact Mr Allen to discuss a retraction of her resignation. There was a lengthy section in the Claimant's email where she sought to make a distinction between the refusal of an adjustment on the one hand and the omission to make an adjustment on the other. The Claimant said she was under no obligation to suggest what adjustments might be necessary. We pause to note that whilst this might be an accurate statement of the law, if an employee has some idea of what might help them and fails to say, they risk the employer being unaware of the need to take that step. Employees would be well-advised to speak up in such circumstances and make any suggestions which have occurred to them. Legalistic correspondence may serve less well than practical representations, at least if the employee wishes for an adjustment to be made, as opposed to writing in order to prepare the groundwork a Tribunal claim. The Claimant appears to have been more concerned about the latter. In any event, the Claimant did then repeat her request for a written grievance process. She asked for this letter and her email to Mr Martin of 30 September 2022 to be accepted as grievances. She also said she would be submitting a grievance about the removal of her car.

54. The Claimant's sent a further grievance on 22 October 2022. She recited much of the recent correspondence that had passed between the parties and complained about this. She said she had received phone calls from a colleague, saying that Ms Martin had asked when she intended to return her vehicle, which made her anxious, and on 13 October 2022, she had been told the insurance would be removed on 14 October 2022, which resulted in an anxiety attack. In the circumstances, the Claimant decided to return the vehicle, leaving it at the colleague's home. She also said that when returning this, she learned that the vehicle would be taken over by Mr Allen's brother and would not, therefore, be returned to the lease company. She also said that payments were still due for her pension and she was making protected disclosures in the public interest.

55. In light of the volume of the Claimant's allegations of unlawful behaviour by the Respondent and the complex / litigious nature of her correspondence, the

Respondent decided to have a third party investigate her grievance. The Respondent instructed Citation in this latter regard.

56. On 24 October 2022, Mr Kiernan wrote to the Claimant:

> **Thank you for your patience, just to confirm that all your points raised will be addressed through the grievance process.**
>
> **A representative shall be in contact with you shortly, this is felt to be the best step towards having the concerns raised seen to impartially.**

57. By email of 25 October 2022, Mr Kiernan invited the Claimant to a grievance meeting, suggesting various dates when this might be accommodated either in person or by way of Teams.

58. The Claimant submitted a further fit not, saying she was unfit to work for two weeks because of "feeling stress at work".

59. On 26 October 2022, the Claimant wrote to the Respondent, repeating her request for a written grievance procedure as a reasonable adjustment. Mr Kiernan replied the same day agreeing to this:

> **We accept you request for reasonable adjustments; it is absolutely fine for the grievance to be handled in written form.**
>
> **I will share this information with the consultant, they shall then review the case and make touch with both me and you.**
>
> **[…]**
>
> **If there is any further support we can offer at this time, please do not hesitate in letting us know.**

60. The Claimant did not contact Mr Allen about the retraction of her resignation. There was no further discussion about this and in the absence of an agreement to continue her employment, it terminated pursuant to the notice she had given, on 27 October 2022.

61. On 2 November 2022, Mr Walker of Citation wrote to the Claimant, introducing himself and asking a number of questions. His letter also confirmed the Respondent's willingness to deal with the matter on paper, as the Claimant had requested:

> **Firstly to introduce myself, my name is Jon Walker, and I am a HR/Employment Law Consultant working for Citation (employment law specialist.)**
>
> **Integra Supported Housing have asked me as an impartial consultant to investigate into your grievance and once concluded, provide Lee with recommendations in relation to an outcome. Lee will though make the final decision on this grievance.**
>
> **I am aware that you want your grievances to be dealt with in written form with yourself. I have reviewed your grievances and have prepared some**

> **questions that I would like you to consider and provide full, clear answers in response.**
>
> **[…]**
>
> **Once I receive your responses, I may need to seek further clarity from you, or you will provide me with sufficient information to progress with my investigations.**
>
> **If you have any queries in relation to the above or the questions, please let me know.**

62. On 3 November 2022, the Claimant wrote to the Respondent raising further grievances, including that it had shared her personal information with Mr Walker without first obtaining her consent. She said this was a breach of her data protection rights.

63. Also on 3 November 2022, Mr Kiernan wrote to the Claimant confirming the termination of her employment:

> **I write further to my letter of 11th October 2022 in which I asked you to reconsider your resignation, as I felt you may have made the decision in haste. You subsequently wrote to me on 17th October 2022 stating that you did wish to withdraw your resignation.**
>
> **On 19th October 2022, I asked you to contact Jon at Head Office by 24th October 2022 to discuss your wish to withdraw. I made you aware that it was your decision to terminate your employment and we had no obligation to accept your withdrawal. I felt it was a reasonable request asking you to speak to Jon if you were serious about your decision to withdraw your resignation and to discuss this in more detail. However, you failed to do this and questioned on 20th October 2022 why you needed to do so.**
>
> **As you failed to speak to Jon as requested, it has been decided that we have now accepted your resignation. I am sorry that you have decided to leave our employment.**
>
> **Your final day of employment was 27th October 2022.**

64. The decision not to accept the Claimant's retraction of her resignation was that of Mr Allen. The Respondent did not call him to give evidence and explain his reasons. Mr Kiernan offered his speculation in this regard, but he was not the decision-maker.

65. On 7 November 2022, the Claimant wrote to the Respondent alleging that the decision to accept her resignation was an act of victimisation because she had complained of discrimination.

66. Mr Kiernan wrote to the Claimant about her grievances:

> **As the company had been threatened with legal action in the way of a WhatsApp message, which the company is aware of. You had disclosed that you may have chosen to walk away during your notice but had been given no choice to pursue the matter through ACAS.**

Since this, you have provided further grievances containing allegations that the company has breached employment acts. Therefore, the company felt it had to respond in protecting its interests and had every right to seek legal advice and share the information contained in the grievance/s.

On 24/10/22 you had been notified via an e-mail that a representative shall be in contact with you shortly, this was felt to be the best step towards having the concerns raised seen to impartially.

The company did not receive any notice to not proceed with impartial representation.

Your data has been processed under the following:

- **Consent is not the only lawful basis that is used for processing data. Your personal data has been processed by both Integrated Supported Housing and Citation under the following lawful basis: Article 6 (1) (b) processing is necessary for the performance of a contract; Article 6 (1) (c) processing is necessary for compliance with a legal obligation to which the controller is subject; Article 6 (1) (f) processing is necessary for the purposes of the legitimate interests pursued by the controller.**

- **Regarding any special category personal data processed this was done under the following: Article 9 (2) (f) processing is necessary for the establishment, exercise or defence of legal claims.**

Based on the above and in attempt to resolve your grievance, can I please ask you to consider the questions that you have been sent by Jon Walker and respond in a timely manner?

If you are uncomfortable with the case being supported by a HR Consultancy firm, then we will reasonably take your request on-board and consider alternative arrangements for 'legal' representation.

67. The Claimant responded to Mr Kiernan on 8 November 2022, indicating that she would respond to Mr Walker but that should not be construed as an “affirmation” of the alleged data breach.

68. Ms Adey wrote the Claimant on 11 November 2022. She set out her view, namely the Respondent had acted properly with respect to the Claimant’s personal information. Ms Adey also said Mr Walker would be asked to address the Claimant’s recent allegation of victimisation with respect to the retraction of her resignation.

69. On 14 November 2022, the Claimant sent Mr Walker her response to his questions. This was a 36 page document, into which she had inserted excerpts from various items of correspondence, highlighting what she considered to be points of importance. The Claimant also wrote to Ms Adey saying that she had now responded to Mr Walker’s questions and provided “59 pieces of evidence”.

70. On 24 November 2022, the Claimant wrote to Ms Adey about the retraction of her resignation:

> **The fact lee's secondary request to contact 'Jon' came after I had raised further grievances against integra, and I already fully complied with his first request on 17.10.22 to withdraw my resignation in writing within 7 days, any owed leave should have been processed and my p45 sent on the last pay run if the decision was based on me not contacting Jon.**
>
> **Instead, the fact Iv had to wait another month for my p45 and any owed paid leave is completely unacceptable and unjustified considering it is evident that the decision to not withdraw my resignation was already decided from the 24.10.22 and is fully documented in lees response on 3.11.22.**

Vehicle Remedial Work

71. On 28 November 2022, an email was sent to the Claimant about the cost of remedial work on her lease vehicle:

> **Further to the return of your lease vehicle I can now identify the remedial charges for repair and replacement to allow the car to be returned to the standard that the lease company require, as the vehicle was returned to head office for assessment prior to it's return this assessment was completed at the address of M. Small on the date of it's return and had not been driven by any party following this.**
>
> **Repair of 3 diamond cut wheels £110 per wheel**
>
> **Smart repair to lower door £95**
>
> **Respray of front bumper damage £280**
>
> **Internal Valet £60**
>
> **Total amount = £765.00**
>
> **I would be grateful if you ensure payment is made within 14 days. Should you require a copy of your company vehicle lease agreement this can be provided at your request.**

72. The Claimant replied immediately, disputing the need for any remedial works, at least with respect to the state in which she had returned the vehicle:

> **Respectfully, the car was returned in immaculate condition and integra have had the vehicle since the 14th October 2022 after it was corruptively and deceitfully taken back by Jonathan via […].**
>
> **I am aware Jonathan's brother […] has been driving the lease vehicle since it was handed back on 14.10.22, staff have had great privilege in informing me of that, and I have photo evidence of the condition it was returned alongside a signed document to state the date it was received by M small.**

73. Ms Adey responded the same day:

> **I am aware that you retuned the car to M. Small at her property and the vehicle was not checked by M. Small but she merely stated that it had been returned to her. As you are aware this is not normal company policy**

> **or practice. I must reiterate the vehicle was collected from the property immediately following your return of it. The damage insitu was evident on the vehicle on its collection. I have requested M. Small to provide a statement with regard to its return. The use of the vehicle now it is back under company management is at the companies discretion. The delay with regard to informing you due to us having obtained relevant quotes for the remedial work. I would be grateful if you would address the matter of the outstanding balance within the allotted 14 day period.**

74. There was subsequent correspondence in which the Claimant disputed the existence of any damage when she returned the vehicle and said it had been driven afterwards. The Claimant produced various photos showing a white BMW vehicle without any obvious signs of damage.

228. We are satisfied that the Respondent did incur a charge in the sum of £765 for repair to the vehicle. Whilst the photos produced by the Claimant show no obvious damage, the itemised invoice includes matters of a very minor nature. Alloy wheels may easily sustain a small scuff or nick. The smart repair to the door suggests a minor blemish. Whilst the bumper was resprayed, it was not replaced and nor is there a charge for filling or other dent repair. This suggests marking on the paintwork. Whilst we were surprised the Respondent did not include evidence of the charge it received for these repairs, as opposed to the invoice it created for the purposes of billing the Claimant, we think it most unlikely the Respondent would have engaged in a fraud, whether by reason of the Claimant doing a protected act or at all. Nor does it seem likely that any damage occurred in the short period between the Claimant returning the vehicle and the request made to her for payment, as opposed to the much longer time when she using the vehicle on a regular basis. These charges are consistent with normal wear and tear when a vehicle is in use day to day, as opposed to, say, accident damage.

<u>Grievance Investigation</u>

75. As part of his investigation, Mr Walker carried out interviews with various relevant witnesses, including: Mr Allen; Mr Kiernan; Mr Martin; Ms Small; Ms Musgrove; and Mr Wood. The interviews were recorded and then, fully transcribed.

76. Mr Allen’s interview took place on 8 December 2022. This included:

> **JW She also said about mental health. Were you aware of any mental health issues that she had**
>
> **JA Well, having worked in mental health, there's a big difference between having a mental health difficulty and having a mental illness. […] You know, in Sarah's case, she's not made me aware. I could say, well, I'll tell you what I'll say then. I should say Sarah, if she had a formal diagnosis, she should probably be diagnosed instead with having an EPD; Emotionally stable personality disorder, and I'm being straight with you about that, but that's not classed as a mental illness either. So, she may have mental health issues that may be pertinent to adverse childhood experiences she's had because I know they weren't great you know. But that doesn't mean she has a mental illness. […]**

77. By an email of 23 December 2022, the Claimant chased Mr Walker for an update. He replied the same day. Mr Walker apologised for the lack of recent contact but explained he had now completed the majority of his investigations. Mr Walker said he would be on leave and the Claimant would not, therefore, receive an outcome until January.

78. On 3 January 2023, Mr Walker wrote to the Claimant again, saying that he hoped to get an outcome to her as soon as possible. He reiterated that whilst he was the investigator and would make a recommendation, Mr Kiernan was the Respondent's decision-maker.

79. In early February 2023, the Claimant wrote to the Respondent raising further grievances in a document entitled "Re: appendage to grievance(s)". This included complaints about the lack of a response to her earlier grievances.

Grievance Outcome

80. Mr Kiernan wrote to the Claimant with the outcome of her numerous grievances. His letter is misdated 14 February 2022. It is likely the actual date of sending was 13 or 14 February 2023. The Claimant's complaints were not upheld. The reasons were set out over 7 pages. The Claimant was informed of her right to appeal. She was also provided with copies of the interview transcripts.

Grievance Appeal

81. On 14 February 2023, the Respondent wrote to the Claimant complaining about Mr Walker's decision on her grievance and the amount of time allowed for her to appeal against this, which she said amounted to disability discrimination. Notwithstanding her assertion that 5 days was insufficient, she then went on to set out a critique of the decision over 7 pages, citing principles of employment law. The Claimant wrote again on 15 February 2023, on this occasion her points ran to 11 pages.

82. Mr Kiernan responded to the Claimant on 15 February 2023 and this included:

> **This matter has since been transferred over to Jonathan Allen - who shall be chairing your right of appeal.**
>
> **should prepare for it carefully. This will include reviewing the employee's appeal notice and the notes from the original grievance hearing.**
>
> **I'd expect if not done so already, that Jonathan shall respond to your appeal in due course, please bear in mind that this may take some time. Jonathan will have to prepare for it carefully. Including time to review your appeal notice and the notes from the original grievance hearing.**

83. Following further correspondence, the Respondent agreed to put back the deadline for the Claimants' ground of appeal to 27 February 2023. Whilst at the Tribunal the Claimant argued she ought to have been given even more time, she did not ask the Respondent for that contemporaneously. Furthermore, the Claimant agreed it would have been reasonable for the Respondent to understand that a sufficient accommodation in this regard had been made.

84. The Claimant submitted her fullest grounds of appeal on 27 February 2023. This was a document in similar form to her earlier representations. She also included the interview transcripts with her comments in that regard. In total, this ran to just over 100 pages.

85. Mr Allen was on holiday until the end of February and had a period of ill-health thereafter. He was being supported, in relation to administrative matters, by Ms Cupitt.

86. On 10 March 2023, Ms Cupitt wrote the Claimant acknowledging receipt of her appeal grounds:

> **Please do accept this email as a receipt of your grievance appeal, and please do accept my apologies for the late reply acknowledging the same. I am not sure if you are aware that Jonathan has been away on holiday and I received your documents yesterday,**
>
> **I will endeavour to form a response to the appeal within the ten days as requested.**

87. The Claimant then sent two emails to Ms Cupitt, asking about her position within the Respondent whether she had appropriate seniority to deal with the appeal.

88. Ms Cupitt wrote to the Claimant again on 31 March 2023:

> **I am sorry that I haven't been in touch, but I am emailing to provide you with an update. Due to the in-depth information that you have provided the response is taking longer than anticipated. I am going to extend the time to reply and I am hopeful that I will have response by the end of April. This must be disappointing for you and I can only apologise.**

89. The Claimant wrote immediately to Mr Kiernan, complaining about various matters, including that Ms Cupitt was dealing with her grievance appeal.

90. Mr Kiernan replied on 5 April 2023:

> **My involvement in your case had ended at the point of the original grievance decision. As a reminder, your case has been escalated to an appeal process. Therefore, any area that is considered to be involved or under your appeal claims should be directed to the Chair. In this instance it would be Jonathan Allen.**
>
> **[…]**
>
> **I believe that Jonathan has since provided an update in regard to his position and the assigned role that Miss Culpitt is to have during your Grievance Appeal. Therefore, I consider this matter to be concluded.**

91. The Claimant replied the same day:

> **To confirm I have not received any update from Jonathan Allen in respect of anyone's position in my grievance appeal.**

> **I am currently in talks with my legal team about matters that have since arisen whereby the organisation continues to breach their own policies and agreed ways of working.**
>
> **I think this matter needs to just be addressed by the litigate route now. If there is anything else I require I will resubmit a new DSAr.**

92. A letter from the Claimant's GP of 11 April 2023 provided that she "is now diagnosed with General Anxiety Disorder in addition to depression". It is unclear when this diagnosis was made but the GP refers to worsening anxiety since October 2022.

93. On 9 May 2023, Mr Allen wrote to the Claimant:

> **I am writing to acknowledge receipt of your written appeal against the decision not to uphold your grievance. As part of the process, I have arranged a formal grievance appeal hearing with you to discuss the details of your grievance appeal at 10am on 15/05/2023 at Integra Head Office. I will chair this hearing and Rachel Cupitt will accompany me at the hearing to act as my witness and note taker. I must apologise for the delay in hearing the appeal, this has been due to ill health.**
>
> **For ease of reference, I have categorised your appeal points as follows:**
>
> > **Health and safety, points 1 – 122**
> >
> > **Discrimination on the grounds of disability, points 123 – 142 and points 491 - 550**
> >
> > **Directors Fiduciary Duties, points 143 – 163**
> >
> > **Harassment, points 164 – 219**
> >
> > **Bullying and harassment, points 220 – 378**
> >
> > **Retraction of resignation, points 379 – 435**
> >
> > **Company car, points 436 – 490**
> >
> > **Delays in Grievance Process, points 551 - 579**
>
> **If you disagree with this summary or wish to clarify any points, please do let me know as soon as possible.**
>
> **You have the right to be accompanied at the meeting by a work colleague or an accredited trade union representative and it is up to you to inform your companion of the date and time of the hearing, etc.**
>
> **Please confirm whether or not these meeting arrangements are suitable to you as soon as possible in case alternative arrangements are necessary.**

94. The Claimant responded to Mr Allen immediately:

> **I am writing to acknowledge receipt of your written response to my appeal Via Rachel Cupitt and to further oppose to partake in any meeting at Integra head office as you have now requested to schedule on 15.5.23, in**

> **consideration of the fact that a grievance was raised on 17.10.22 in regard to indirect discrimination due to Integra's omission to make reasonable adjustments to the grievance procedure after being notified multiple times of my significant ill mental health and how the cumulative effect of my exacerbated anxiety and Asthma combined put me at a significant disadvantage.**

95. The Claimant then went on to criticise the Respondent for a failure to make reasonable adjustments:

> **Firstly, you have palpable knowledge that I have a severe anxiety disorder (Generalised Anxiety Disorder) and I am asthmatic both of which puts me at a significant disadvantage.**
>
> **Due to the omission of integra to have identified and implemented reasonable adjustments to the grievance procedures, I requested as a reasonable adjustment to undertake the grievance procedures via written form. This adjustment was reasonable to make. This adjustment was also within the size, scope, and resources of integra to make in accordance with s.39(2)(b)(5) & s.149(4) of The EqA 2010.**
>
> **[…]**
>
> **It was not a proportionate means of achieving a legitimate aim to invite me to attend a grievance appeal meeting without implementing any reasonable adjustments to accommodate my Anxiety and Asthma, viz: to remove the substantial disadvantage on protected grounds of disability, even though you have palpable knowledge of both, and is why the grievance hearing was conducted via written form after 3 requests were made.**
>
> **Moreover, you have only allowed me to have either a workplace colleague or trade union as a chosen companion at the grievance Appeal meeting on 15.5.23.**
>
> **In consideration that I am no longer employed with Integra this applies further discriminatory practices upon me or persons who share my protected characteristics, as I no longer have work colleagues now, I have been unlawfully dismissed from the organisation.**
>
> **[…]**

96. In light of the Claimant's representations, the Respondent decided to deal with her grievance appeal on paper.

97. On or about 13 June 2023, Ms Cupitt sent the Claimant some questions in writing from Mr Allen. The Claimant did not reply to these questions. She had decided not to further participate in the Respondent's processes and her appeal was not pursued to an outcome.

Law

Unfair Dismissal

98. So far as material, section 95 of the **Employment Rights Act 1996** ("ERA") provides:

> **95 Circumstances in which an employee is dismissed**
>
> **(1) For the purposes of this Part an employee is dismissed by his employer if (and, subject to subsection (2) only 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.**

99. Where, as here, the respondent denies dismissal, the claimant has the burden of proving dismissal within section 95(1)(c).

100. In accordance with **Western Excavating v Sharpe [1978] IRLR 27 CA**, it is not enough for the claimant to leave merely because the employer has acted unreasonably, rather a breach of contract must be established.

101. In order to prove constructive dismissal four elements must be established:

101.1 there must be an actual or anticipatory breach by the respondent;

101.2 the breach must be fundamental, which is to say serious and going to the root of the contract;

101.3 the claimant must resign in response to the breach and not for another reasons;

101.4 the claimant must not affirm the contract of employment by delay or otherwise.

102. Implied into all contracts of employment is the term identified in **Malik v BCCI [1997] IRLR 462 HL**:

> **The employer shall not without reasonable and proper cause conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.**

103. In **Baldwin v Brighton and Hove City Council [2007] IRLR 232** the EAT held that a breach of trust and confidence may be caused by conduct calculated or likely to have the proscribed effect.

104. When determining whether, objectively, the employer's conduct was likely to seriously damage trust and confidence, the employee's behaviour may also be relevant, see **Tullett Prebon PLC v BGC Brokers LP [2010] IRLR 648**.

105. Either as an incident of trust and confidence, or as a separate implied term, employers are under a duty to afford their employees a means of prompt redress

with respect to their grievances; see **W A Goold (Pearmark) Limited v McConnell [1995] IRLR 516 EAT**, per Morrison J:

> **11. […] It is clear therefore, that Parliament considered that good industrial relations requires employers to provide their employees with a method of dealing with grievances in a proper and timeous fashion. This is also consistent, of course, with the codes of practice. That being so, the industrial tribunal was entitled, in our judgment, to conclude that there was an implied term in the contract of employment that the employers would reasonably and promptly afford a reasonable opportunity to their employees to obtain redress of any grievance they may have. It was in our judgment rightly conceded at the industrial tribunal that such could be a breach of contract.**

106. At least insofar as the question of breach of the implied term of trust and confidence is concerned, the band of reasonable responses test does not apply; see **Buckland v Bournemouth University [2010] IRLR 445 CA**.

107. In a last straw case, the final act relied upon need not in isolation constitute a breach of contract, nor even amount to unreasonable or blameworthy conduct, although an entirely innocuous act will not suffice; see **Omilaju v Waltham Forest London Borough Council [2005] IRLR 35 CA**.

108. Whilst mere delay will not amount to affirmation, where the employee continues to perform their contract a point may be reached when that becomes persuasive evidence they have indeed affirmed the contract; see **W E Cox Toner (International) Limited v Crook [1981] ICR 823 EAT**.

109. Where the breach of contract relied upon is comprised of conduct over a period of time, if there was affirmation in the middle this the question may arise whether the claimant has lost the right to rely upon the earlier behaviour. This point was addressed recently by the Court of Appeal **Kaur v Leeds Teaching Hospitals NHS Trust [2018] EWCA Civ 978**, per Underhill LJ:

> **51. […] As I have shown above, both Glidewell LJ in Lewis and Dyson LJ in Omilaju state explicitly that an employee who is the victim of a continuing cumulative breach is entitled to rely on the totality of the employer's acts notwithstanding a prior affirmation; provided the later act forms part of the series (as explained in Omilaju) it does not "land in an empty scale". I do not believe that this involves any tension with the principle that the affirmation of a contract following a breach is irrevocable. Cases of cumulative breach of the Malik term (which was not the kind of term in issue in either Safehaven or Stocznia Gdanska) fall within the well- recognised qualification to that principle that the victim of a repudiatory breach who has affirmed the contract can nevertheless terminate if the breach continues thereafter. It is true that, as Safehaven says, the correct analysis in such a case is not that the victim can go back on the affirmation and rely on the earlier repudiation as such: rather, the right to terminate depends on the employer's post-affirmation conduct. Judge Hand may therefore have been right to jib at Lewis J's reference to "reactivating" the earlier breach (though, to be fair to him, he did say "effectively re-activates"); but there is nothing wrong in speaking of the right to terminate being revived, by the further act, in the straightforward sense that the employee had the right, then lost it but now has it again.**

110. Where the claimant resigns in part because of a repudiatory breach of contract, that will suffice, the breach need not be the only or the main cause for that decision; see **Nottinghamshire County Council v Meikle [2004] IRLR 703**.

111. If a constructive dismissal is established the employment tribunal must still consider whether the respondent has shown a potentially fair reason for dismissal within ERA section 98(1) and whether or not dismissal was reasonable in all the circumstances under section 98(4).

Direct Discrimination

112. In the employment field and so far as material, section 39 of **the Equality Act 2010** ("EqA") provides:

> **(2) 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.**

113. As to the meaning of any other detriment, the employee must establish that by reason of the act or acts complained of a reasonable worker might take the view that they had thereby been disadvantaged in the circumstances in which they had thereafter to work. An unjustified sense of grievance cannot amount to a detriment for these purposes; see **Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285 HL**.

114. EqA section 13(1) provides:

> **(1) 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.**

115. The Tribunal must consider whether:

115.1 the claimant received less favourable treatment;

115.2 if so, whether that was because of a protected characteristic.

116. The question of whether there was less favourable treatment is answered by comparing the way in which the claimant was treated with the way in which others have been treated, or would have been treated. This exercise may involve looking at the treatment of a real comparator, or how a hypothetical comparator is likely to have been treated. In making this comparison we must be sure to compare like with like and particular to apply EqA section 23(1), which provides:

> **(1) On a comparison of cases for the purposes of section 13, 14 or 19 there must be no material difference between the circumstances relating to each case.**

117. Evidence of the treatment of an actual comparator who is not close enough to satisfy the statutory definition may nonetheless by of assistance since it may help to inform a finding of how a hypothetical comparator would have been treated.

118. As to whether any less favourable treatment was because of the claimant's protected characteristic:

118.1 direct evidence of discrimination is rare and it will frequently be necessary for employment tribunals to draw inferences from the primary facts;

118.2 if we are satisfied that the claimant's protected characteristic was one of the reasons for the treatment complained of, it will be sufficient if that reason had a significant influence on the outcome, it need not be the sole or principal reason;

119. In the absence of a real comparator and as an alternative to constructing a hypothetical comparator, in an appropriate case is may be sufficient to answer the "reason why" question - why did the claimant receive the treatment complained of.

120. The definition in EqA section 13 makes no reference to the protected characteristic of any particular person, and discrimination may occur when A is discriminated against because of a protected characteristic that A does not possess; this is sometimes known as 'discrimination by association'.

Discrimination Arising

121. Insofar as material, EqA section 15 provides:

> **(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.**

122. The causal connection between treatment and disability was considered in **Pnaiser v NHS England, Coventry City Council [2016] IRLR 170**. Simler J considered the existing body of case law:

> **31. […] From these authorities, the proper approach can be summarised as follows:**

> **(a) A Tribunal must first identify whether there was unfavourable treatment and by whom: in other words, it must ask whether A treated B unfavourably in the respects relied on by B. No question of comparison arises.**
>
> **(b) The Tribunal must determine what caused the impugned treatment, or what was the reason for it. The focus at this stage is on the reason in the mind of A. An examination of the conscious or unconscious thought processes of A is likely to be required, just as it is in a direct discrimination case. Again, just as there may be more than one reason or cause for impugned treatment in a direct discrimination context, so too, there may be more than one reason in a section15 case. The 'something' that causes the unfavourable treatment need not be the main or sole reason, but must have at least a significant (or more than trivial) influence on the unfavourable treatment, and so amount to an effective reason for or cause of it.**
>
> **(c) Motives are irrelevant. The focus of this part of the enquiry is on the reason or cause of the impugned treatment and A's motive in acting as he or she did is simply irrelevant: see Nagarajan v London Regional Transport [1999] IRLR 572 . A discriminatory motive is emphatically not (and never has been) a core consideration before any prima facie case of discrimination arises, contrary to Miss Jeram's submission (for example at paragraph 17 of her Skeleton).**
>
> **(d) The Tribunal must determine whether the reason/cause (or, if more than one), a reason or cause, is "something arising in consequence of B's disability". That expression 'arising in consequence of' could describe a range of causal links. Having regard to the legislative history of section 15 of the Act (described comprehensively by Elisabeth Laing J in Hall), the statutory purpose which appears from the wording of section 15 , namely to provide protection in cases where the consequence or effects of a disability lead to unfavourable treatment, and the availability of a justification defence, the causal link between the something that causes unfavourable treatment and the disability may include more than one link. In other words, more than one relevant consequence of the disability may require consideration, and it will be a question of fact assessed robustly in each case whether something can properly be said to arise in consequence of disability.**
>
> **[…]**
>
> **(f) This stage of the causation test involves an objective question and does not depend on the thought processes of the alleged discriminator.**

123. Justification involves two stages: firstly, the identification of a legitimate aim and then secondly, a consideration of whether proportionate means were adopted in its pursuit.

124. Proportionality requires, a balance between the discriminatory effect of the treatment on the claimant on the one hand, as against the reasonable needs of

the business on the other. Relevant to striking that balance will be a consideration of:

124.1 the nature and extent of the discriminatory impact upon the claimant;

124.2 the more serious the impact, the more cogent must be the justification;

124.3 whether the employer's aim could have been achieved less discriminatory means.

Reasonable Adjustments

125. EqA sections 20 and 21 provide, so far as material:

> **20 Duty to make adjustments**
>
> **[…]**
>
> **(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.**

126. Pursuant to EqA schedule 8, paragraph 20(1)(b), a person is not subject to the duty to make reasonable adjustments if they neither knew nor could have been reasonably expected to have know of the claimant's disability and that they were likely to be placed at a disadvantage by the relevant provision, criterion or practice ("PCP"):

> **20 Lack of knowledge of disability, etc.**
>
> **(1) A is not subject to a duty to make reasonable adjustments if A does not know, and could not reasonably be expected to know—**
>
> **[…]**
>
> **(b) [in any case referred to in Part 2 of this Schedule]1 , that an interested disabled person has a disability and is likely to be placed at the disadvantage referred to in the first, second or third requirement.**

127. The Equality and Human Rights Commission ("EHRC") EqA **Code of Practice** identifies factors which may be relevant to the reasonableness of a proposed step.

128. Pursuant to the decision in **Secretary of State for Work and Pensions v Wilson [2009] UKEAT/0289/09** the Employment Tribunal must have regard to:

128.1 the extent to which it would be practicable for the employer to take the steps proposed;

128.2 the feasibility of the steps proposed.

129. When considering the reasonableness of an adjustment the practical effect, objectively assessed is key; see **Royal Bank of Scotland v Ashton [2011] ICR**

632 EAT. A claimant does not, however, need to go so far as to show a 'good' or 'real' prospect, it is sufficient if there is 'a' prospect the disadvantage will be removed or reduced; **See Leeds Teaching Hospital NHS Trust v Foster [2011] UKEAT/0552/10/JOJ**, .

Harassment

130. Insofar as material, EqA section 26 provides:

> **(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 conduct has the effect referred to in subsection (1)(b), each of the following must be taken into account—**
>
> > **(a)the perception of B;**
> >
> > **(b)the other circumstances of the case;**
> >
> > **(c)whether it is reasonable for the conduct to have that effect.**

131. Whilst the unwanted conduct need not be done 'on the grounds of' or 'because of", in the sense of being causally linked to, a protected characteristic in order to amount to harassment, the need for that conduct be 'related to' the protected characteristic does require a "connection or association" with that; see **Bakkali v Greater Manchester Buses (South) Ltd t/a Stage Coach Manchester: UKEAT/0176/17/RN**; per Slade J:

> **31. […] Conduct can be "related to" a relevant characteristic even if it is not "because of" that characteristic. It is difficult to think of circumstances in which unwanted conduct on grounds of or because of a relevant protected characteristic would not be related to that protected characteristic of a claimant. However, "related to" such a characteristic includes a wider category of conduct. A decision on whether conduct is related to such a characteristic requires a broader enquiry. In my judgment the change in the statutory ingredients of harassment requires a more intense focus on the context of the offending words or behaviour. […] "the mental processes" of the alleged harasser will be relevant to the question of whether the conduct complained of was related to a protected characteristic of the Claimant […] However such evidence from the alleged perpetrator is not essential to the determination of the issue. A tribunal will determine the complaint on the material before it including evidence of the context in which the conduct complained of took place.**

132. In relation to the proscribed effect, although C's perception must be taken into account, the test is not a subjective one satisfied merely because C thinks it is. The ET must reach a conclusion that the found conduct reasonably brought about the effect; see **Richmond Pharmacology v Dhaliwal [2009] IRLR 336 EAT**.

133. Guidance on the threshold for conduct satisfying the statutory definition was given by the EAT in **Betsi Cadwaladr University Health Board v Hughes [2014] 2 WLUK 991**.

Victimisation

134. So far as material, EqA section 27 provides:

> **Victimisation**
>
> **(1) A person (A) victimises another person (B) if A subjects B to a detriment because—**
>
> **(a) B does a protected act, or**
>
> **(b) A believes that B has done, or may do, a protected act.**
>
> **(2) Each of the following is a protected act—**
>
> **[…]**
>
> **(d) making an allegation (whether or not express) that A or another person has contravened this Act.**

135. Guidance on separability in victimisation cases was provided in **Martin v Devonshires Solicitors [2011] ICR 352 EAT**, per Underhill P:

> **22 We prefer to approach the question first as one of principle, and without reference to the complex case law which has developed in this area. The question in any claim of victimisation is what was the "reason" that the respondent did the act complained of: if it was, wholly or in substantial part, that the claimant had done a protected act, he is liable for victimisation; and if not, not. In our view there will in principle be cases where an employer has dismissed an employee (or subjected him to some other detriment) in response to the doing of a protected act (say, a complaint of discrimination) but where he can, as a matter of common sense and common justice, say that the reason for the dismissal was not the complaint as such but some feature of it which can properly be treated as separable. The most straightforward example is where the reason relied on is the manner of the complaint. Take the case of an employee who makes, in good faith, a complaint of discrimination but couches it in terms of violent racial abuse of the manager alleged to be responsible; or who accompanies a genuine complaint with threats of violence; or who insists on making it by ringing the managing director at home at 3 am. In such cases it is neither artificial nor contrary to the policy of the anti-victimisation provisions for the employer to say "I am taking action against you not because you have complained of discrimination but because of the way in which you did it". Indeed it would be extraordinary if those provisions gave employees absolute immunity in respect of anything said or done in the context of a protected complaint. (What is essentially this**

> **distinction has been recognised in principle–though rejected on the facts–in two appeals involving the parallel case of claims by employees disciplined for taking part in trade union activities: see Lyon v St James Press Ltd [1976] ICR 413 ("wholly unreasonable, extraneous or malicious acts": see per Phillips J at p 419C—D) and Bass Taverns Ltd v Burgess [1995] IRLR 596.) Of course such a line of argument is capable of abuse. Employees who bring complaints often do so in ways that are, viewed objectively, unreasonable. It would certainly be contrary to the policy of the anti-victimisation provisions if employers were able to take steps against employees simply because in making a complaint they had, say, used intemperate language or made inaccurate statements. An employer who purports to object to "ordinary" unreasonable behaviour of that kind should be treated as objecting to the complaint itself, and we would expect tribunals to be slow to recognise a distinction between the complaint and the way it is made save in clear cases. But the fact that the distinction may be illegitimately made in some cases does not mean that it is wrong in principle.**

Burden of Proof

136. The burden of proof is addressed in EqA section 136, which so far as material provides:

> **(2) 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.**
>
> **(3) But subsection (2) does not apply if A shows that A did not contravene the provision occurred.**

137. When considering whether the claimant has satisfied the initial burden of proving facts from which a Tribunal might find discrimination, the Tribunal must consider the entirety of the evidence, whether adduced by the claimant or respondent; **see Laing v Manchester City Council [2006] IRLR 748 EAT**.

138. Furthermore, a simple difference in treatment as between the claimant and his comparators and a difference in protected characteristic will not suffice to shift the burden; see **Madarassy v Nomura [2007] IRLR 246 CA**.

139. The burden of proof provisions will add little in a case where the ET can make clear findings of a fact as to why an act or omission was done or not; see **Martin v Devonshires Solicitors [2011] IRLR 352 EAT**, per Underhill P:

> **39. This submission betrays a misconception which has become all too common about the role of the burden of proof provisions in discrimination cases. Those provisions are important in circumstances where there is room for doubt as to the facts necessary to establish discrimination generally, that is, facts about the respondent's motivation (in the sense defined above) because of the notorious difficulty of knowing what goes on inside someone else's head "the devil himself knoweth not the mind of man" (per Brian CJ, YB 17 Ed IV f.1, pl. 2). But they have no bearing where the tribunal is in a position to make positive findings on the evidence one way or the other, and still less where there is no real dispute about the respondent's motivation and what is in issue is its correct characterisation in law […]**

Conclusion

Unfair Dismissal

140. We will address in turn, each of the matters relied upon by the Claimant as amounting or contributing to a repudiatory in breach of contract.

2.1.1.1 By a senior manager (Claire Musgrave) falsely accusing the claimant of fabricating her time sheets in July 2021

141. The Claimant was not accused of fabricating her time sheets, falsely of otherwise. No allegation of such wrongdoing was put to her on this or any other occasion. Following reports from staff about difficulty contacting the Claimant, Ms Musgrove made some limited enquiries, by which she was satisfied. It did, however, occur to Ms Musgrove that it would be easier for staff to contact the Claimant if she shared her calendar and intended to make this suggestion. This was appropriate conduct on the part of Ms Musgrove, in the furtherance of her management responsibilities. Unfortunately and not for the last time, the Claimant jumped to a mistaken conclusion. This in turn, fuelled an ill-tempered exchange at head office on 23 July 2021.

142. Ms Musgrove was acting with reasonable and proper cause. Her conduct was not, objectively, likely to seriously damage or destroy trust and confidence.

2.1.1.2 In September 2022 Ms Musgrave again accusing claimant of claiming hours she had not worked

143. Following the suspension of the Financial Manager, Ms Musgrove had been instructed to pay close attention to the overtime bill. In doing this she noticed an occasion when several managers all made an overtime claim on the same occasion. Ms Musgrove made enquiries into why this was so. Once again, Ms Musgrove was satisfied by what she discovered. It is difficult to understand how the Claimant, on learning of Ms Musgrove looking into this, came to believe that an allegation of fraud (putting in false overtime claims) had been levelled at all, let alone against her in particular. Quite plainly, Ms Musgrove had reasonable and proper cause to do as she did and her conduct, objectively, was not likely to seriously damage or destroy trust and confidence.

144. There was also an occasion, when Ms Musgrove switched the Claimant on the rota for another employee, so the latter was working contracted hours. This was an exercise in managing the overtime bill and ensuring staff were put to work in accordance with their contract. It had nothing whatsoever to do with allegations of fraud or falsifying payment claims. There was some dispute before us about the correct interpretation of the rota and last day of work for the employee. It is however, unnecessary for us to resolve that dispute. We are satisfied Ms Musgrove genuinely believed the position to be as she described. This is consistent with the messages she sent to the Claimant at the time. Ms Musgrove had reasonable and proper cause to act as she did. Furthermore, such conduct could not, objectively, seriously damage or destroy trust and confidence, even if Ms Musgrove was mistaken about the date on which the employee's employment would come to an end. Ms Musgrove gave a clear explanation of

why she did what she did at the Claimant had no reasonable cause to believe this was done other than in good faith.

2.1.1.3 Failing to send the claimant to an occupational health assessment in November 2021

145. The Claimant had a short period of absence from work as a result of an acute respiratory infection. She exchanged messages with Ms Musgrove, who had experienced a similar illness not long beforehand. The Claimant returned to work thereafter, without any apparent ongoing difficulty and resumed her normal duties. The Claimant expressed no concern. There was nothing, reasonably or otherwise, to put the Respondent on notice of the need to make further enquiries and make an occupational health referral. In not doing this, the Respondent acted with reasonable and proper cause. Furthermore, the lack of such a referral in the circumstances could not, objectively, seriously damage or destroy trust and confidence.

146. None of the matters relied upon by the Claimant, whether viewed individually or cumulatively, amounted to a Repudiatory breach of contract. The Claimant resigned her employment. She did not do so in circumstances which entitled her to treat herself as having been dismissed. Accordingly, the Claimant not having been dismissed her unfair dismissal claim must fail.

Discrimination Arising from Disability

147. For her discrimination arising from disability claim, the unfavourable treatment relied upon by the Claimant is:

6.1.1 Requiring attendance in person at a grievance appeal hearing on 15 May 2023 with either only a trade union representative or work colleague in contrast to previous arrangements when she had been able to give her representations in writing

148. The Respondent did not require the Claimant to attend an appeal hearing in person with only a work colleagues or trade union representative. The letter of 9 May 2023 invited her to attend in that way but also invited her to confirm whether these arrangements were suitable and indicated a willingness to make alternative arrangements. Attendance in person at a grievance hearing is, in most cases, preferable. Appearing before the decision-maker is the ‘gold standard’ as it affords the appellant to best opportunity to articulate their grounds before the person who will be deciding on the outcome. In some cases it is necessary to proceed otherwise, as an adjustment for the employee. The Respondent did not know, in May 2023, what the Claimant's preference would be, but its letter plainly invited her to say if she wished to proceed otherwise than as proposed. The Claimant's response did indicate as much and in light of this the Respondent agreed to deal with the matter in writing, sending questions to the Claimant that she chose not to answer.

149. Further and separately, the manner in which the Respondent wrote to the Claimant inviting her to participate in the appeal was not, to any extent whatsoever, because of the something the Claimant relies upon, namely “she was more susceptible to panic attacks and needed the reassurance of a family

member or close friend". That appears to be the Claimant's explanation for why she wanted not to attend a meeting without a family member or friend.

150. Accordingly, the Claimant's discrimination arising from disability claim must fail.

151. The question of justification does not arise.

152. Whilst knowledge of disability does not arise either, as it may be relevant for later claims it is convenient for us to address it at this stage.

Knowledge

153. As set out above, on joining the Respondent, the Claimant wrote that she had mild asthma. Aside from a chest infection in November 2021, she did not report any symptoms in this regard, did not have any time off work for this reason and nor was she seen using an inhaler. Some of the Respondent's employees required additional measures during the pandemic because their GP had identified them as being especially vulnerable. This was not so for the Claimant. Whilst the Respondent knew the Claimant had asthma, it did not know and it would not be reasonable for it to know that this impairment had a substantial adverse effect, whether long-term or at all.

154. The Respondent did not know and nor was it reasonable for the Respondent to know that the Claimant suffered with anxiety, or of a resulting long-term substantial adverse effect. The Claimant had, in passing, made fleeting references to her mental health or suffering anxiety. The use of such language to describe minor or transient variations in mood is increasingly common. It did not and would not, reasonably, put the Respondent on notice the Claimant had a significant ongoing health problem affecting her normal day to day activities. The Claimant did not have time off work as a result of poor mental health and nor did she seek any adjustments or other accommodation.

155. The position changed after the Claimant's resignation. Whilst her GP fit note presented on 11 October 2022 merely spoke of stress at work, which would not tend to convey an ongoing health problem, on 17 October 2022 in her grievance the Claimant set out further information about both her asthma and anxiety. She referred to suffering with both of these conditions and said there had been a deterioration in the same. The Claimant also said she was taking prescribed medication for both, which would tend to raise the question of deduced effect. Whilst that information in and of itself may not have been sufficient to show the statutory test was satisfied, it would, reasonably, put the Respondent on notice of the possibility the Claimant was a disabled person and need to make further enquiries. Had the Respondent done so, it is likely the Claimant would have provided very full responses, as she wished to develop and build her claims. In these circumstances, we are satisfied the Respondent either had knowledge with effect from 17 October 2022 or that it would be reasonable to treat the Respondent as having such knowledge.

Reasonable Adjustments

156. We will begin by considering each of the matters relied upon by the Claimant as amounting to a provision, criterion or practice ("PCP").

7.2.1 Requiring attendance at a grievance meeting and grievance appeal hearing with only trade union representative or work colleague

157. Whilst the Respondent had such a PCP, it was not applied to the Claimant. The Respondent proposed such a meeting but at the same time, expressly, invited the Claimant to say whether alternative arrangements were required. The Claimant wished to have her appeal dealt with on paper and the Respondent agreed.

7.2.2 Requiring the claimant to lodge her appeal within only 5 days

158. The Respondent's grievance procedure provided that appeal should be made within five days and as such, there was a PCP to this effect. Once again, however, this was not applied in the Claimant's case. She was given far longer in which to lodge her appeal.

7.2.3 Not answering grievance/grievance appeal in good time

159. Quite plainly, the Respondent had no general practice of not answering grievances or grievance appeals in good time.

160. Given that in each case, we have found there was no PCP or if there was, it was not applied to the Claimant, her reasonable adjustments complaint must fail. Notwithstanding this finding is sufficient to dispose of Claimant's claim of a failure to make reasonable adjustments, we will go on to consider the questions of disadvantage and whether there were steps it was reasonable for the Respondent have to take.

Disadvantage

161. The Claimant did not have a trade union representative or work colleague she could call upon to accompany her. Had the Respondent applied a PCP in this regard, that state of affairs would be likely to exacerbate her anxiety. She was, to that extent, at a disadvantage or greater disadvantage than would be a non-disabled comparator. The impairment of asthma is not relevant in this regard. Whilst the Claimant made reference to the possibility of suffering an asthma attack at such a hearing, there is no evidence whatsoever to suggest this was likely. The evidence did not show even one occasion on which the Claimant's asthma had ever caused her any difficulty whatsoever at work. This is simply an example of the Claimant trying to build her case and find things to complain about.

162. There is no evidence to suggest the requirement to lodge an appeal within 5 days put the Claimant at any disadvantage whatsoever, whether by reference to anxiety or asthma. Within that time, the Claimant was able to present a critique of the grievance decision, with case law. The reason she wanted more time was not because of her disability, it was because she wanted to prepare a very substantial written case.

163. A delay in answering the Claimant's grievance or appeal, would be likely to exacerbate her anxiety and to that extent put her at a substantial disadvantage compared with someone without her disability. Once again, the asthma is irrelevant in this regard.

Steps

7.5.1 Allowing the claimant to have family member or close friend with her during the grievance and/or grievance appeal

164. This step was allowed. It was offered at the grievance stage. We have no doubt it would have been offered at the appeal stage, if the Claimant had sought it or indicated that would be helpful to her. She wished for both processes to be dealt with in writing. The Respondent agreed. There was no further step that it was reasonable for the Respondent to have to take in that regard.

7.5.2 Allowing the claimant to submit her grievance in written form

165. The Respondent did allow this. There was no further step that it was reasonable for the Respondent to have to take in this regard.

7.5.3 Extending the time for the claimant to submit her appeal

166. The Respondent did extend the time for the Claimant's appeal. She sought no further extension beyond that agreed and it was reasonable for the Respondent to understand it had done all that was necessary this regard. Furthermore, the Claimant was able within that time to present a vast, detailed and complex appeal document. There was no further step that it was reasonable for the Respondent to have to take in this regard.

167. Nor was there any other step, separate from the matters the Claimant contended for, that it would have been reasonable for the Respondent have to take. The Claimant's complaint in this regard appears contrived. She is attempting to seize upon and complain about suggestions the Respondent made, in circumstances where it invited her to say if other measures were necessary and quickly agreed to her requests.

7.5.4 Responding to the grievance and grievance appeal in a reasonable time

168. Our conclusion is that, notwithstanding the overall period was somewhat protracted, the time taken to respond to the Claimant's grievance and appeal was reasonable in the circumstances applying.

169. It is not the case that the Claimant, simply, submitted a grievance in October 2022 and the Respondent took until February 2023 to respond. The Claimant submitted complaint after complaint in the period up to 28 November 2022. Some of her representations were expressly stated to be grievances, others appeared in substance to amount to such and she subsequently asked for certain emails which had not been termed a grievance to be treated in this way. The Claimant did not merely complain about events in the workplace in the period up to her resignation, she complained about very many of the steps taken by the Respondent thereafter. Nor were her complaints limited to factual representations. The Claimant sought to rely upon an array of statutory rights

and legal principles taken from various sources. The documents she produced in this regard were lengthy and detailed. The Claimant also provided a 36 page response to Mr Walker's questions. Investigations were conducted in December 2022, by way of detailed interviews with relevant witnesses. For the sake of accuracy, these were recorded, transcribed and then checked, which will inevitably have been a time consuming process. By the end of December 2023, Mr Walker was seized of a large body of evidence and submissions. We do not consider it unreasonable for the analysis of this material and the making of his recommendations to have taken until February 2023. Mr Kiernan then needed to consider whether to accept the recommendations or not. In these circumstances, there was no failure to deal with the grievance in a reasonable time.

170. As far as the appeal is concerned, the Claimant provided her grounds in several documents of increasing length, the last running to over 100 pages, sent on 27 February 2023. There was then a two month delay before Mr Allen wrote to the Claimant on 9 May 2023, with a summary of his understanding or her grounds and proposals for an appeal meeting. Mr Allen's initial analysis of the Claimant's documents would, reasonably, have been a time-consuming process and in circumstances where this was being done alongside other duties or tasks, which it likely was, we would have said at least one month was a reasonable period. It is apparent that more time was taken here because Mr Allen had a period of ill health, for which he apologised to the Claimant. That is a fact relevant to the question of what it was reasonable for the Respondent to have to do in the circumstances. Given the need for someone more senior than Mr Kiernan to determine the appeal and that it was the Claimant's last opportunity in the internal processes, Mr Allen as owner of the Respondent was the appropriate person. In response to Mr Allen, the Claimant then raised further complaints about a failure to make reasonable adjustments in connection with her appeal. This was a wholly unnecessary step. The Respondent had shown itself more than willing to make adjustments to its processes. It had expressly invited the Claimant to say if any different arrangements were required. In response to the Claimant's apparent wish to have a family member or friend attend the grievance hearing, the Respondent agreed. When she asked for a written process, the Respondent acceded to this. This was not only the approach at the grievance stage, Mr Allen had extended the same opportunity in his grievance invitation letter. The Claimant could simply have asked for the matter to be dealt with in writing, to support her with anxiety. Further litigious correspondence was unlikely to lead to a more rapid determination. The Respondent did agree to a written process and that required Mr Allen to think about all of the questions he might want to ask at a hearing and reduce these into a sensible written form, which he did. The Claimant had the opportunity to answer these questions and chose not to. The exercise was not one in which the Claimant was seeking to obtain a resolution, she was looking for more things to complain about. As such, taking into account Mr Allen's ill-health, it was not reasonable for the Respondent to have deal with the grievance appeal more quickly than it did. The grievance appeal process did not, however, result in a finding because the Claimant chose not to further participate.

171. Accordingly, the Claimant's reasonable adjustments claim fails. The Respondent did not apply the alleged PCPs and in any event, took all the steps it was reasonable to have to take.

Harassment

172. The unwanted conduct for harassment is:

> 8.1.1 Accusing the claimant of having a personality disorder, which the claimant discovered in the outcome of her grievance in February 2023

173. Whilst we are not sure the word "accusing" is appropriate, we are satisfied that in substance, the conduct complained of was done. It was plainly unwanted by the Claimant and she complained.

174. This conduct was related to the protected characteristics of disability. The Claimant is a disabled person by reason of the impairment of anxiety. This is a mental health problem. During his interview with Mr Walker for the grievance investigation, Mr Allen speculated about and gave his opinion on the Claimant's mental health. We have cited the relevant passage earlier in this decision. Quite plainly, this commentary is related to the Claimant's disability.

175. Whilst we do not agree with the Claimant that Mr Allen's comments were "calculated to cause offence" we believe they did. The Claimant told us and we accept she was deeply upset by the personal nature of his statements. She found his comments to be very hurtful. She objected to him speaking in this way at all. She pointed out that Mr Allen is not a clinician and said his remarks were especially inappropriate given she had recently informed the Respondent of her deteriorating mental health.

176. The Claimant learned what Mr Allen said when she received the interview transcript in February 2023. Mr Allen appears to downplay the seriousness of the Claimant's symptoms, saying they did not amount to her having a mental illness. He suggested the way in which she had suffered was far lesser than the way that he himself had. It would be reasonable for the Claimant to be offended by the belittling nature of these comments. There is some contradiction in what Mr Allen wrote, on the one hand he argues the Claimant did not have a mental illness, on the other he purports to say what her diagnosis should be, namely an emotionally stable personality disorder. The diagnosis of a recognised condition would tend to suggest a mental health problem. We were very surprised that Mr Allen felt it necessary and appropriate to speculate along these lines. It was obviously likely to and did indeed cause offence. Whilst we are mindful of the language used in section 26 and the importance of not finding that satisfied too easily, we cannot say it was unreasonable for the Claimant to consider that Mr Allen's words created an offensive environment.

177. For these reasons, the Claimant's harassment claim succeeds. The question of remedy will be determined at a separate hearing.

Victimisation

178. For doing a protected act, the Claimant relies upon:

> Bringing a grievance on 17 October 2022 where she stated that the respondent was failing in its duty to make reasonable adjustments

179. This was a protected act. The Claimant that she had been discriminated against in various different ways and identified the Equality Act 2010 provisions relied upon.

180. We will address each of the alleged detriments in turn.

9.2.1 On 3 October 2022 refusing the claimant her request to bring union representation to an exit interview

181. The Claimant was not allowed to bring a trade union representative to the meeting which had been proposed following her resignation. We are not satisfied it is correct to describe this as an exit interview, since it was intended to address the running of the Respondent's sites. It would therefore, seem to have been more in the nature of a meeting to discuss handover. In any event, the Claimant had no statutory right to accompaniment, as it was not on any analysis a disciplinary or grievance meeting. Furthermore, the Respondent's stance cannot have been influenced by the Claimant's doing of a protected act on 17 October 2022, as that would not occur for another 14 days.

9.2.2 Withdrawing its offer that the claimant could retract her resignation on 19 October 2022 and on 3 November 2022 by indicating that it was accepting her resignation

182. These detriments were done. On 11 October 2022, the Respondent invited the Claimant to retract her notice within the next seven days. When she sought to do so on 17 October 2022, the Respondent did not accept this. Instead, on 19 October 2022 she was told it would be considered and she was invited to contact Mr Allen. Thereafter, the Respondent did not agree to continue her employment and this came to an end on 27 October 2022. The Respondent confirmed the position on 3 November 2022.

183. We have, therefore, an apparent change in the Respondent’s enthusiasm for continuing the Claimant’s employment. Notably, when the Claimant wrote to the Respondent on 17 October 2022, she did so in highly qualified and contentious terms. There was no suggestion of a change of heart on her part. She positively sought to rebut any inference of an intention to waive the alleged repudiatory breach contract. She also asserted a multitude of legal wrongs, including discrimination under the Equality Act 2010. This sequence of events would allow for a finding that the Respondent’s decision not to accept the Claimant’s retraction was affected by what she had written on 17 October 2022, which included various protected acts. In order for a claim of victimisation to succeed, a Claimant need not show that the protected act was the sole or even main reason for a detriment then done. It is sufficient if the protected act is only a minor part of why the detriment was decided upon, as long as it had a material influence. In the circumstances, we find the initial burden on the Claimant is discharged and the Respondent must satisfy us that the treatment complained of was in no sense whatsoever because of her protected act. We have received no satisfactory evidence in this regard. Mr Kiernan spoke to this point briefly in his witness statement. He also answered questions asked by the Tribunal. His evidence is, however, not merely second-hand but speculation. He did not purport to be reciting what Mr Allen had said to him, rather he speculated on the reasons for the decision, telling us what he assumed. The Respondent did not

call Mr Allen, the decision-maker, to give any evidence. This is an extraordinary omission. Indeed, it is a factor which could be relied upon for the drawing of an adverse inference in this regard. In any event, we are satisfied the Respondent has not discharged its burden and, therefore, the Claimant's complaint of victimisation with respect to her retraction not being accepted succeeds.

9.2.3 Unreasonably requiring the claimant to return her company car by 14 October 2022 (i.e. two weeks before the end of her notice period)

184. We have not found any requirement made of the Claimant to return the vehicle early. Despite a great deal of correspondence going back and forth, such a request is notable by it absence. Following the Claimant returning the vehicle prematurely, Ms Adey confirmed the Claimant had not been required to do this. It is most likely the Claimant came to a misunderstanding, perhaps as a result of something said by a colleague. The Claimant has a tendency to overinterpret what is said by others. Further and in any event, the Claimant returned the vehicle before doing the protected act relied upon. It could not, therefore, have caused any request in this regard.

9.2.4 Refusing to make reasonable adjustments despite the claimant repeatedly asking for them

185. We have already addressed the Claimant's reasonable adjustments claim. There was no failure to make reasonable adjustments.

9.2.5 Excessive delay on hearing and responding to the claimant's grievance dated 17 October 2022

186. We have already addressed the question of delay in connection with the reasonable adjustments claim. We are not satisfied there was any excessive delay. Further and in any event, the time taken to deal with the Claimant's grievance was not influenced to any extent whatsoever by her doing or protected acts, save in a non-relevant (i.e. separable) way, namely the more matters she complained about and the greater the complexity of her representations, the longer this was likely to take to deal with.

9.2.6 Excessive delay on hearing and responding to the claimant's grievance appeal

187. We repeat the comments set out immediately above.

9.2.7 Requiring the claimant to attend an appeal hearing with either only a trade union representative or work colleague in contrast to previous arrangements when she had been able to give her representations in writing

188. We have already addressed this issue in connection with the reasonable adjustments claim. The Claimant was not required to attend a hearing with such accompaniment. Whilst a meeting held in that way was proposed, the invitation letter expressly invited her to say if other arrangements were necessary and the Respondent agreed to deal with the appeal in writing at the Claimant's request.

9.2.8 Sending personal data without seeking her permission relating to the claimant to a third party (Citation) as part of its investigation into her grievance

189. We are somewhat doubtful about whether the instruction of an external consultant, without expressly asking the Claimant for her permission to share her data, amounts to a detriment in the **Shamoon** sense. The Claimant was told of the Respondent's intention to ask a consultant to deal with her grievance before that occurred and she raised no objection. It is difficult to see how that could take place without some such sharing of her personal data. Furthermore, the instruction of an external party to make a recommendation on the grievance would appear to be advantageous to the Claimant, a better position than it being dealt with by a manager about whom she had complained.

190. Further and in any event, the taking of this step had nothing whatsoever to do with the Claimant having done a protected act, at least not in a relevant way. Our conclusion is that the decision to instruct Mr Walker was driven by the size and complexity of the body of grievances she had submitted.

9.2.9 Making a false accusation of damage of company car by the Claimant

191. There was no false accusation of damage. Our finding is that minor remedial works were necessary to bring the vehicle up to the standard required by the lease company from the position when the Claimant returned it. The description and indeed the associated costs are consistent with minor blemishes rather than substantial damage. Whilst the Claimant may not have identified these matters herself, it is likely the vehicle assessor looked at the vehicle in a rather more fastidious way.

9.2.10 Refusing to make reasonable adjustments when requested

192. This is a repetition of a previous allegation. There was no such refusal.

9.2.11 Insisting on an inappropriate level of manager to hear the claimant’s grievance appeal

193. The Respondent did not insist on an inappropriate level of manager to determine the Claimant's grievance. The Claimant is referring to Ms Cupitt in this regard. The Respondent appointed Mr Allen to hear her appeal. Ms Cupitt dealt with the administrative side of things and corresponded with the Claimant in the absence of Mr Allen, who was on holiday and also had a period of ill health. The Claimant was told of Mr Allen’s appointment at the beginning of the appeal process and this was subsequently reiterated by Mr Kiernan and then Mr Allen himself when he invited her to an appeal hearing.

194. Accordingly, the victimisation claim fails save with respect to the retraction of her resignation.

Limitation

195. The Claimant’s complaint about the Respondent not accepting the retraction of her grievance was presented on 3 January 2023. This was less than three months after the relevant event. Her claim was in time.

196. The Claimant’s complaint regarding Mr Allen’s commentary on her mental health was found by the Judge at case management to be within her second ET1,

which was presented on 24 February 2023. This was less than three months after the relevant event. Her claim was in time.

EJ Maxwell

Date: 31 May 2024