EMPLOYMENT TRIBUNALS

Claimant: **Ms E Hollindale**

Respondent: **Atlas BFW Management Ltd**

Heard at: **Manchester (by video)**

On: **1 to 4 April 2025**
(and in Chambers 25 to 27 June and 28 August 2025)

Before: **Employment Judge Eeley (sitting alone)**

Representation
Claimant: Mr B Culshaw, solicitor
Respondent: Mr R Quickfall, counsel

RESERVED JUDGMENT

1. The claimant's complaint of section 15 discrimination arising from disability is dismissed upon withdrawal by the claimant.

2. The complaints in respect of failure to make the reasonable adjustments listed at numbers 4, 8, 10, 12, 18, and 19 in the claimant's Scott Schedule are dismissed upon withdrawal by the claimant.

3. The claimant's remaining complaints of failure to make reasonable adjustments are not well founded and are dismissed.

4. The claimant's claim of constructive unfair dismissal is not well founded and is dismissed.

REASONS

Background

1. By a claim form dated 23 March 2023 the claimant presented a claim of constructive unfair dismissal, section 15 discrimination arising from disability and for breach of the duty to make reasonable adjustments. ACAS Early Conciliation took place between 6 February 2023 and 20 March 2023.

2. I received written and oral witness evidence from the following witnesses

during the course of the hearing:

a. The claimant,
b. Phillip Webster, respondent's former interim Director of Operations
c. Sarah Senior, respondent's Managing Director.

3. The Tribunal had the benefit of an agreed hearing bundle consisting of 781 pages. Some additional pages were added during the hearing. These included a screenshot of Annette Smith's diary for 15 September 2022 and a selection of pages, variously paginated to page 807, which gave further information about various aspects of bipolar disorder. I read those pages to which I was referred by the parties. Numbers which appear in square brackets below are references to pages in the hearing bundle, unless otherwise indicated. The Tribunal also had the benefit of a written chronology and oral closing submissions on behalf of both parties.

4. At the start of the hearing I was asked to decide whether the Tribunal should make an anonymity order pursuant to rule 49 of the Employment Tribunals Rules of Procedure 2024. After hearing submissions, I declined to make such an order for the reasons which I gave orally during the hearing.

5. The claimant withdrew the claim of section 15 discrimination on day one of the final hearing and consented to it being dismissed upon withdrawal.

6. The claimant asserted that she was disabled by reason of bipolar disorder and 'complex trauma.' The respondent conceded that the claimant was disabled by reason of bipolar disorder but did not concede that 'complex trauma' constituted a disability within the meaning of the Equality Act 2010. The respondent's position is that complex trauma is not a diagnosis and is not conceded. However, the respondent argued that this alleged disability made no material difference or contribution to the claimant's case.

7. In relation to the issue of knowledge, the respondent conceded that it knew of the bipolar diagnosis at the material times but did not know of the impact of the bipolar in relation to the PCPs in the reasonable adjustments claim.

8. In relation to the claim for reasonable adjustments, the parties had composed a Scott Schedule setting out the reasonable adjustments contended for and the respondent's response to each complaint. This was located at [81-94] of the hearing bundle and was referred to by both parties' representatives during the course of the hearing. The claimant had provided a disability impact statement which was at [95-102]

The Facts

The respondent organisation and its ways of working

9. The claimant was employed by the respondent, a company that delivers non-clinical services to the NHS, from 28 October 2019 until 31 January 2023. At the date of termination of her employment, the claimant was the respondent's Head of Quality, Risk and Compliance. The claimant resigned from her employment on 15 November 2022 and her employment terminated on 31 January 2023.

10. The claimant's initial contract of employment as Quality and Environmental Management Systems Coordinator started on 28 October 2019, pursuant to the contract of employment at [112].The claimant was promoted to the role of Head of Quality, Risk and Compliance on 29 March 2021. The letter of appointment and job description were at [171 and 172-185]. The promotion came with an attendant pay increase. The claimant maintained that the job description was only a draft but I accept the respondent's evidence that the substance of the job description had been finalised, it was just the grading of the post against the pay scale which needed to be finalised (as per the letter [171].)

11. The claimant started work on 28 October 2019. At that time, the claimant's manager was Mr Maguire, the acting CEO. Afterwards Mr Stove was appointed as Managing Director. Mr Stove line managed the claimant for a period of time. When Mr Stove requested fewer staff management responsibilities, the claimant was transferred to the management of Ellis Smith (interim Director of Operations.) Mr Stove left the respondent in May 2022. Mr Smith was himself replaced by Phil Webster when he joined the respondent as Interim Director of Operations in July 2022.

12. In November 2021 Ms Senior joined the respondent as Finance Director. She became Managing Director on 16 May 2022. Until September 2023, Ms Senior was carrying out the dual role of Financial Director and Managing Director.

13. The respondent provides non-clinical services to the NHS, such as portering, transport, estate management, facilities management, property services, procurement and medical engineering, and cleaners. It is a wholly owned subsidiary of Blackpool Teaching Hospitals NHS Trust. The respondent has a total of approximately 195 employees. Support services are commissioned from the Trust. The respondent's HR services were provided by the Trust.

14. As Head of Quality, Risk and Compliance, the claimant was employed in a senior position within the organisation. The claimant's responsibilities included health and safety, ensuring mandatory training was undertaken, ensuring appropriate policies and procedures were in place and up to date, and ensuring that the respondent met its health and safety obligations. She was also responsible for risk and quality management, including the corporate risk register and the respondent's quality management system. The claimant had a team of around 6 to 7 direct reports.

15. Following the Covid pandemic, when staff started to return to the respondent's premises, the respondent agreed to implement a hybrid working model, if practicable. Staff were asked to attend the workplace a minimum of three days per week, although apparently this was not strictly

enforced.

The start of the claimant's employment

16. Prior to starting work for the respondent the claimant completed a 'work health assessment' form for the respondent [104-106]. The claimant mentioned her bipolar disorder and noted that it had been triggered in February 2019 and the claimant had been hospitalised for two months as a result. She maintained that she had fully recovered, this had been the first and only hospital admission of this kind and, with her current health regime, medication and no longer working in a toxic environment, she did not envisage any form of relapse. She disclosed that she had been diagnosed in 2011 and was taking medication and having six-monthly reviews. She described the condition as well controlled. She also referred to asthma, sleep apnoea, high blood pressure and ankle arthrodesis. She referred to the need for reasonable adjustments and suggested that she would need disabled parking close to the office for mobility reasons. She disclosed an episode of ill health absence from work for 4 months in 2019. She indicated that there had been no relapse since and that she was working with no issues.

17. On 20 September 2019 Occupational Health wrote to Dr Ogundipe for more information about the claimant's bipolar disorder. A reply was received dated 7 October [108]. It confirmed that the claimant had an established diagnosis of Bipolar Affective Disorder which was then in full remission. It confirmed that the claimant was mentally stable. It confirmed that the claimant was hard-working and very independent. It noted that, "Being able to recognize her limit and taking adequate rest in order to avoid burnout should be encouraged at her work place. This will also hopefully be explored during her psychology assessment." The management plan was for monthly reviews with her care co-ordinator and 6-monthly appointments with the psychiatrist. It was noted that the claimant was on the waiting list for a psychology assessment and suitable therapy. It noted that the claimant had previously had input from a support worker which was a day to day support with social inclusion activities outside her home but since starting work this was no longer required. The letter confirmed the medications that the claimant was taking.

First Occupational Health Report

18. Dr Lyne (of the respondent's occupational health service) wrote to Mr Ryland (of the respondent) on 16 October 2019 [111]. Dr Lyne confirmed that the claimant was fit for work and that she has a long term condition for which the Equality Act was likely to apply, although no specific adjustments to her job role were identified. She continued, *"Emma has consented to me making you (as her manager) aware that she had a chronic mental health condition in which her mood dips from time to time (although infrequently) and I advise you to have a low threshold to refer Emma to occupational health for support if needed."*

First resignation

19. On 26 October 2021 the claimant contacted the crisis team. On the same date she tendered her notice of resignation. She told Mr Stove and Ms Fishwick that there were multiple reasons why she had made the decision, which she was not then in a position to detail but would do so as soon as she was able. She confirmed that she was happy to work with both of them to bring her then current workstreams to a satisfactory conclusion or handover as best she could [284].

20. Mr Stove responded to this message by saying it was a shame she had come to that decision. He enquired whether it would help if they had a telephone or Teams conversation to discuss the claimant's reasons for resignation as he wanted to understand them. He later indicated that the claimant should not hesitate to reach out if there was anything that they could help her with. He concluded "We are here to help and support you Emma and please do keep in touch." Ms Fishwick also asked the claimant if she wanted an occupational health referral or if there was anything else they could do to help her.

21. The following day the claimant sent a more detailed email [281]. In that email the claimant confirmed that she would rather not leave but she felt 'dammed' if she stayed and 'dammed' if she didn't. She pointed out that the earlier occupational health recommendation of having manager she could talk to and a mentor/buddy to support her mental health were already not in place. She continued that she was a trauma survivor and that Mr Stove's management style or "way with people" was a massive trigger for her. She asserted that she was, "literally terrified of Les and the way he behaves with others and this has created an environment at work which is difficult to deal with." Due to this fear the claimant said she had not challenged things over the previous few months which she would otherwise have challenged or addressed with her manager. Her fear meant that she just allowed things to happen and had not addressed them. She referred to a panic attack and a nose bleed in a meeting the previous day which she attributed to Mr Stove's challenging and spotlighting people in the meeting. She said, *"I perhaps don't need to tell you that this kind of behaviour can be perceived as bullying, intended or not."* She said, *"I'm really not sure where I can go with this as Les is who he is and my general feeling is that opening up will see my 'cards marked' anyway so I guess I feel there's now nothing to lose by going through some of the issues below and seeing what you can suggest (if anything.)"* The claimant went on to set out a number of concerns about changes to her role and her perception that her position was undermined by the way certain situations with staff had been handled by others. She indicated that she was overwhelmed by the work she had to do as key administrative roles were not being covered due to recruitment delays. She referred to unreasonable last minute demands and a lack of response from the SLT. She painted a picture of being overstretched in her work.

<u>Second Occupational Health Report.</u>

22. There was a further occupational health referral for the claimant on 24 November 2021. The occupational health consultation took place on 13 January 2022 and the case notes were included in the hearing bundle. The plan summarised at the end of the notes was to encourage meeting to

formulate a Wellness Action Plan. It was anticipated that this would enable management to identify important workplace triggers that could potentially affect the claimant's mental health and performance. The adviser anticipated an agreement being made with the claimant about how these triggers could be avoided in the workplace and appropriate action that should be taken in the event of an acute issue.

23. This resulted in an occupational health report dated 14 January 2022 [298-299] which was written by Dr Ferguson. The claimant had disclosed a low mood, which was largely due to stressors in her personal life. The claimant's psychotherapy sessions had recently concluded but she remained under the care of a psychiatrist. The report confirmed that the claimant was fit to continue working. To support the claimant, Occupational Health encouraged management to meet with the claimant and formulate a Wellness Action Plan. It was anticipated that this process would enable management to identify important workplace triggers that could potentially affect the claimant's mental health and performance. The report indicated that an agreement should be reached with the claimant about how these triggers could be avoided in the workplace and appropriate action that should be taken in the event of an acute issue. Occupational Health would be happy to review the Wellness Action Plan (hereafter "WAP") after it had been completed, if necessary. The report provided an online link to a guide for managers in completing such WAPs. The claimant was assessed as fit to continue working. Dr Ferguson had not arranged a routine review for the claimant but indicated that he would be happy to review the WAP after it had been completed.

24. On reading this occupational health report it is apparent to me that the doctor only makes one specific recommendation for an adjustment, namely the provision of a Wellness Action Plan. This might well lead to the identification of other potential adjustments but prior to the WAP being drawn up, the doctor was not in a position to specify what proposed adjustments would emerge from it. The WAP was, in effect, the gateway to the identification of those other potential adjustments.

25. In May 2022 Ellis Smith became Acting Director of Operations and the claimant's line manager. Sarah Senior became acting Managing Director as well as Finance Director. She continued with the duties of both posts until a new Finance Director was appointed in September 2023.

26. Ms Senior's impression of the claimant was that, at times, she did not like being questioned in meetings. She gave the example of a SLT meeting in around May 2022 where the claimant stated that none of the respondent's policies and procedures were fit for purpose. This caused alarm. Others were dubious that this could be correct, given that the respondent had an external audit every year as part of its ISO accreditation and this included an audit of policies and procedures. The auditors had not raised concerns. When the claimant made this assertion, Ms Senior and the Head of Facilities sought to understand how she had come to that conclusion but she could not explain.

27. It appears that some SLT meetings would be more challenging than others. For example, there was a meeting in May 2022 where a problem had arisen

with the respondent's "Flexible Futures Policy." The SLT needed to understand the situation and decide how to resolve the problem. Ms Senior had asked everyone to input details into a spreadsheet detailing information about the posts within their service. At the meeting each member of the SLT explained the position in their service and if there were any issues. There was a discussion about how these could be resolved. The claimant refused to discuss this at the meeting and claimed that the policy was a contractual benefit and that to discuss her service would reveal the identities of the individuals involved. Ms Senior tried to explain that she did not need to know the staff identifies but the claimant would not engage with this and so Ms Senior decided not to pursue it further.

28. It was later reported back to Ms Senior that the claimant had felt personally attacked at the meeting. The respondent's position was that there had been nothing unreasonable or humiliating about the discussion but there had been a genuine and legitimate difference of professional opinion. I accept that a business such as the respondent's cannot function properly unless such disagreements can be discussed openly during meetings of the business's senior employees. The notes of the meeting [733-735] do not disclose anything of particular note or concern.

29. Between 30 May and 18 July 2022 the claimant was absent on sick leave with 'stress and anxiety.' The claimant was taken into mental hospital for respite care. The respondent was informed. The claimant remained in hospital for two weeks. When the claimant's sick leave started, her line manager was on holiday and Ms Senior dealt with his line reports in his absence. She contacted HR for advice [307-310] The claimant submitted a sick note to cover absence for work related stress and anxiety for the period to 30 June. A further sick note for absence in July was submitted on 5 July.

30. The claimant had a phone call with her new HR contact, Stephen Moore, on 5 July. The claimant maintains that Mr Moore assured her that she would receive full support on her return to work and that a timely return to work meeting would take place. On the back of that she would be referred to Occupational Health and a risk assessment and WAP would be put in place to support her and provide reasonable adjustments to reporting lines and her workload. She maintains that it was also agreed that she could have a phased return to work, specifically two days absent per week for the first two weeks and then, on a temporary basis at least, she would be allowed not to work on Wednesdays but to make up time on other days.

31. On 21 July Ellis Smith emailed the claimant [323]. He indicated that whilst the claimant had not submitted an OMG paper, she should have attended the previous day's OMG meeting as it would have been useful for the claimant to have caught up with the wider management team and to have found out more about what was going on. He commented that it was a particularly full meeting. He told the claimant to obtain a copy of the recent minutes and actions discussed at the meeting previous day. The claimant noted that this email was copied to Sarah Senior.

32. The claimant replied the same day [322] and copied in Sarah Senior. She complained about the criticism of her failure to attend the meeting and more broadly about adjustments to help her return to work. She stated, *"I'm not*

sure what your expectations are of someone who's been off for quite some time with mental health problems and recovering from a bowel operation, and on their second day back? I was happy to return several months earlier than I should have really, to support Atlas, because I know you are struggling and I really want to support you… I had already communicated to you yesterday that I couldn't attend OMG and advised that would submit reports needed ASAP and catch up as soon as I could so, I feel this email is completely uncalled for. In addition, my phased return has already been interrupted as you insist you want me to attend Board today, when I supposed to be off on phased return. This is despite the fact that although large meeting (and unprofessional behaviour from managers) makes up a significant part of my major anxiety, you are expecting me to attend these, even when I'm completely unprepared. There has been no formal return to work interview, handover, nothing has been maintained in terms of reporting in my absence, there is no support or wellness plan in place. There is a reluctance to formally allow me to work flexibly, to allow my early return and continued recovery and wellness. No referral to occupational health has been made. Nothing. Yet, you expect me within one day to get up to speed completely, with my whole division, know what's going on and submit all Board, Client, and OMG papers and, attend all meetings; and to add insult to injury, yesterday (the morning of my second day) with no back story, no heads up, I have a consultant thrust upon me due concerns over "compliance management"…. Did anyone even consider how that would impact on me yesterday? I'm really sad to say that Atlas obviously does not appear to be a suitable environment that can support my return right now so I think it would be of benefit for us to re look at my situation."

33. Sarah Senior forwarded the claimant's email to Philip Webster on 22 July, *"Just to keep you in the loop."* Mr Webster's response on 22 July to Sarah senior said, *"Mmm! She said all the right things to me earlier in the week ref wanting to help, get things right, needing resource in the team etc and I did ask her about her welfare following her absence which she openly told me about and was feeling okay which she advised she was. He comments about me has unnerved her around compliance and she is feeling vulnerable as I will be turning the stones over. Is it moving to a protected conversation with her?"* The claimant saw this email exchange as part of disclosure for the Tribunal proceedings.

34. Mr Webster joined the respondent as Director of Operations on an interim basis in July 2022. He joined the business week commencing 18 July and for the first few weeks he worked only two to three days per week whilst he transitioned out of his previous role. This means that he received the email forwarded by Sarah Senior within his first week in his post. Mr Webster indicated that he would have had a short chat with the claimant in his first week but not a formal meeting. He would be just getting to know his staff and the claimant was just returning from sick leave. Hence the overlap between Ellis Smith addressing matters before they were passed to Mr Webster as the claimant's new line manager. At this stage Mr Webster did not know the claimant and did not really know the background to her health etc. He had not undertaken a formal review of her HR file, for example.

35. Mr Webster was asked about the content of his email which referred to the possibility of a protected conversation. He explained that the reference to

the protected conversation was an off the cuff reaction to the last sentence of the claimant's email. The last sentence read: "I'm really sad to say that Atlas obviously does not appear to be a suitable environment that can support my return right now so I think it would be of benefit for us to re look at my situation." I accept Mr Webster's explanation as truthful. As a new member of the team, without knowledge of the claimant or the background, this was a logical and understandable reaction to the claimant's email. Her email could well be objectively interpreted as indicating that she did not intend to continue in her employment. I appreciate that this is possibly not what the claimant herself actually meant to convey, but it is a reasonable interpretation of her message. In such circumstances, raising a reference to a protected conversation was not indicative of any animosity towards the claimant, rather a lack of background knowledge of the situation. Indeed, all the surrounding evidence indicates that the claimant and Mr Webster subsequently got on well and worked well together. This does not fit with an attitude of animosity from Mr Webster towards the claimant from the outset. I do not accept that such animosity actually existed. Mr Webster's reference to 'turning over stones' was not a reference to performance managing the claimant but to following up on his early conversations with the claimant about focusing on health and safety compliance. It is also relevant to note that Mr Webster received this email in his first week in the post. He cannot be assumed to have had any significant degree of background knowledge at this stage in the chronology.

36. There were only two Directors in the business at about this time (i.e. Mr Webster and Ms Senior.) Mr Webster reported to Ms Senior. The SLT (Senior Leadership Team) comprised the Directors and Heads of Service (of which there were around six.) The role of the SLT was to lead the organisation and organise and deliver its strategic objectives. Each Head of Service also had to deliver the objectives of their own portfolio.

37. There were monthly Board meetings. The Board included Directors and representatives from the Trust (Blackpool Teaching Hospitals NHS Foundation Trust.) The Directors met HR on a weekly basis to discuss any workforce matters. This would include discussing referrals to Occupational Health.

38. SLT meetings were held on a weekly basis. Once a month there were formal Operational Management Group Meetings ("OMG" meetings.) SLT meetings would discuss various matters and would set agendas for the OMG meetings and discuss what formal papers needed to be produced for the OMG meetings.

39. I accept the respondent's evidence that the OMG and SLT meetings were key senior management meetings and that it was essential that the claimant attend in order to discharge key duties. I also accept that, from August 2022 the meetings were moved from Wednesdays to Thursdays in order to facilitate the claimant's attendance.

40. OMG meetings were chaired by the Managing Director. During the meeting each member of the SLT was required to report on their portfolio and, as a team, they decided which reports should go to the Board. As was to be expected at this level of seniority in the organisation, team members were

expected to voice their opinions and have a dynamic conversation at such meetings. Frustrations might arise during the course of the meetings but this did not necessarily mean that anyone was challenged inappropriately or behaved inappropriately towards their colleagues. This sort of exchange was likely to be a feature of day to day professional life at such a senior level within such a business.

41. The respondent did establish expected standards of behaviour which were to be found on the respondent's SharePoint, accessible to all. The respondent had a set of core values. Standards of behaviour for staff were set out and the respondent's appraisal form had a section scoring staff against core behaviours, including interpersonal skills and team work. There was also a bullying and harassment policy ("Prevention of Bullying and Harassment Policy") [741-762]. The respondent's job specifications also included details of core behaviours [183-184].

42. The respondent operated a hybrid working model. Staff were generally asked to come into work for three days per week as a rule of thumb. Whilst Mr Webster would be in daily contact with the Heads of Service, he also had monthly one-to-ones with his team.

43. Mr Webster first met the claimant during his first week in the role. He popped into the office to introduce himself to her and her team. He had an informal meeting with her in the first week to understand her role and better understand any matters or concerns of particular relevance to her.

44. As Director of Operations Mr Webster was responsible for all of the respondent's operations including capital, hard facilities management, soft facilities management, health and safety and quality risk and compliance. He had four people reporting direct to him. The claimant was one of those direct reports.

45. Returning to the email which was forwarded to Mr Webster on 22 July, his evidence to the Tribunal was that he took the last paragraph of the claimant's email [323] to mean that she was perhaps looking to exit the organisation. It was on this basis that he mentioned the potential for a protected conversation. However, he does not recall having received a response to that email and he does not recall having any discussions with Ms Senior about a protected conversation with the claimant. Ms Senior was concerned that there had not been a formal response to the claimant's email, even though she had not made a formal complaint [342-343].

<u>Return to work interview.</u>

46. A return to work interview was arranged for the claimant the next day, 22 July [328]. This was conducted by Ellis Smith as Mr Webster was still new in his role. The claimant had had 40 days of sickness absence. It was noted that the claimant had consulted her GP and that the reason for absence was "stress and anxiety in the workplace." The claimant was recorded as requesting a phased return to work. She stated that she required to be absent two days per week for the first two weeks and then an assignment change to release her from the business for every Wednesday but assign four hours across the other four working days. A further occupational health

referral was to be made but no further action was required under the respondent's attendance management policy.

47. The respondent's evidence was that Ellis Smith agreed with the claimant that she would have a phased return to work and could reduce her hours to 34 per week over four days and that she could attend counselling sessions on Wednesdays. This was initially to be on a temporary basis pending the conclusion of the counselling sessions, at which point it would be reassessed.

48. The claimant maintained that she was not given a copy of the return to work interview note. She maintains that Mr Smith did not discuss the content of the email dated 21 July during the course of the return to work meeting.

49. The claimant noted, in her evidence to the Tribunal, that, "these changes did take place." This appears to be a reference to a phased return to work and assignment change to release the claimant from the business every Wednesday afternoon. She noted that this was discussed and agreed with Mr Moore prior to the meeting also. The claimant asserts that during the meeting she referred to various actions which had not taken place:

- no welcome back or enquiry as to how she was feeling;
- no formal briefing or handover;
- no occupational health referral, discussions relating to adjustment/wellness maintenance;
- the inheritance of a workload that had not been managed for the period she was off sick (examples of this were on the SLT agenda);
- no support or agreements how workflow would be managed and supported to help her "get back on her feet";
- a breakdown of her already agreed phased return days, with Ellis Smith demanding Board papers and her attendance at the Board meeting within that week.

Third Occupational Health Report

50. The referral to occupational health was made on 22 July and resulted in a further report by Dr Ferguson dated 27 July 2022 [339-341]. The report recorded that the claimant had recently reduced her contracted hours to 34 per week over 4 days. The claimant had primarily attributed her sickness absence to work related stress and anxiety but also confirmed she had recently undergone bowel surgery. The claimant had told Dr Ferguson about the recent deterioration of her mental health prior to the recent period of sickness absence. During the consultation the claimant identified stressors in the workplace that she felt impacted on her mental health. In particular, she talked about the workplace culture and management style. She expressed that she would appreciate greater support from management, with consideration given towards her mental health problems. Dr Ferguson encouraged a meeting with management to further discuss and help resolve the workplace issues as perceived by the claimant. He stated that conducting a Stress Risk Assessment would likely help to facilitate this meeting with an emphasis on the demand and support domains of the tool. He provided a link to guidance on carrying out a stress

risk assessment using a return to work questionnaire. He also noted that management might wish to revisit the support of a WAP with the claimant. This would enable the respondent to identify important triggers that could potentially affect the claimant's mental health and performance in the workplace. He again provided a relevant online link.

51. Dr Ferguson recorded the claimant as fit to return to work with the listed adjustments. The limitations and adjustments advised were:

    a. Short/flexible breaks throughout the course of a working day. *[The claimant says that at no point prior to her resignation was she told that this was approved or that there was any action by the company to indicate that this was approved. As a result, she says that she did not take these breaks which affected her anxiety and feelings of depression and, as a result, made it more difficult for her to do her job without stress or distress.]*

    b. Allowing time off work to attend medical appointments/psychotherapy sessions, if necessary.

    c. Regular meetings with management, at least weekly for the next four weeks to help ensure that the claimant was coping well with her duties and settling back into the workplace. [*The claimant says that in the following six weeks she had only two meetings with management. Both were with Mr Webster and only one discussed how she was coping with her duties and settling back into work. She says that no reason was given for why she was not offered the meetings that occupational health recommended*.]

52. In relation to the likelihood of recurrence, Dr Ferguson noted that it was possible that the claimant could suffer deterioration in her mental health going forward. This could be triggered by workplace stressors. He reiterated that he had recommended a meeting with management to further discuss and help resolve the workplace stressors as perceived by the claimant. He had recommended a Stress Risk Assessment and a WAP. He noted that the aforementioned workplace adjustments would help to support the claimant in the workplace. He noted that it is possible that other adjustments would stem from the stress risk assessment. Dr Ferguson had not arranged a routine occupational health review for the claimant at that time.

53. In her witness statement the claimant indicated that none of the numerous recommendations contained in the report were implemented. However, the company arranged a meeting with her to consider adjustments.

54. The claimant consented to the release of the third occupational health report to the respondent on 3 August 2022 [344]. Mr Webster confirmed that he received a copy of this report in early August. It is unclear whether his discussions with HR about the contents of the report were minuted or, indeed, what precisely emerged from those discussions.

55. Mr Webster took over responsibility for line managing the claimant in early August. He became aware of the contents of the occupational health report.

56. Mr Webster's perception was that he developed a good working relationship with the claimant. His view was that he and the claimant spoke regularly about her 'triggers.' He understood her main concern to be the SLT and OMG meetings. During such meetings every SLT member would be asked questions on their portfolio. The claimant had indicated that she had difficulties with this process. Mr Webster interpreted this as the claimant taking offence at the questions and the claimant having a perception that others (such as Ms Senior) were 'on her'. She would raise the way that Ms Senior asked questions with Mr Wester after the meetings. Mr Webster understood that this is what the claimant was referring to when she talked about "unprofessional behaviour from managers" in her email of 21 July 2022. Mr Webster had not seen anything untoward in the way that questions were asked and sought to reassure the claimant that it was normal for questions to be asked and that the questions which were asked of her were appropriate and reasonable.

57. Mr Webster says that the claimant asked if such questions could be delivered to her before the meetings so that she could prepare her answers. Mr Webster's view was that it was not possible to obtain every question that might be asked in advance as the discussion in the meeting would be dynamic and new matters would arise during the discussion.

58. Mr Webster's proposal was that he and the claimant would work together on preparing for the SLT meetings and considering the issues that might potentially be asked. As Mr Webster would be present at those meetings, he would also be able to step in and help if there were any difficulties during the meetings. If SLT members could not answer questions during the meetings they would take the question away and provide the answer at a later date. This option was open to the claimant and others within the SLT.

59. Mr Webster noted that the SLT and OMG meetings were held in person on a Wednesday. They were important meetings and an essential means of communication amongst the team. Whilst 'in person' attendance was preferred, attendance by Teams did happen on occasion without any issues.

60. The respondent's position is that in August 2022 Ms Senior changed the meetings from Wednesdays to Thursdays in order to facilitate the claimant's attendance. The idea was that the claimant would be able to attend her therapy on a Wednesday but still be able to come to the relevant meetings on a Thursday. I accept the respondent's evidence in this regard.

61. Mr Webster was due to go on holiday towards the end of August but realised that the claimant needed to be sent a letter regarding her email of 21 July, the adjustments that had been put in place, and the next steps. Whilst he discussed and agreed the themes of the letter with HR, he did not see the letter itself before it was sent out. It was sent to the claimant whilst he was away on holiday. When he saw the letter on his return, he broadly agreed with the contents of it but the tone and language were not what he personally would have used.

62. The letter from Mr Webster to the claimant was dated 26 August 2022 [347]. He indicated that as part of his handover in joining the respondent, he had

been made aware of the claimant's email of 21 July in relation to her concerns regarding wellbeing and phased return to work. He asked her to accept his apologies on behalf of the respondent as it appeared that nobody had replied to her email. He attributed this to there being some confusion about who had replied due to it being sent to a number of individuals and the claimant's line manager returning to his substantive post. He continued, *"I was concerned at the tone and content of your response to what I considered a reasonable request from Ellis for you to have attended Operational Management Group. There is nothing in the email that should have caused or triggered the reaction it got as I consider it to be polite and professional. I appreciate you are being supported with a phased return to work following your absence but as a senior manager within Atlas it is essential for you to attend key meetings such as Operational Management Group to discuss operational and business issues with your peers and colleagues. Whilst Ellis clearly said there was no issue with the lack of a report his expectation was that you should have been in attendance to catch up and to hear first-hand what was going on within the company and have an opportunity to input and add your views to the discussions held. There is nothing within the email that expected you to be fully up to speed on day 1 of your return to work. The email was saying it would have been helpful for you to have attended to get up to speed on the wider issues and he then asked you to catch up with Ashley to get the minutes so you could catch up on the operational issues discussed at the meeting. I considered this to be appropriate."* He continued, *"I am somewhat concerned that you are stating that you did not attend the meeting due to unprofessional behaviours from managers and this impacts on your anxiety. I also understand you have requested to not work on a Wednesday and reduce your hours to 34 per week spread over 4 days. I understand that Ellis has agreed to this on a trial basis however I will need to review this with you as whilst this can be accommodated for a temporary period it cannot be accommodated long term. The rationale for this is that you are an integral part of the senior management team, and it is not in line with the needs of the business for you not to attend important management meetings. I have no problem with you wanting to reduce your working hours and work 4 days per week, however the day will need to be reviewed as operationally not working on a Wednesday will have a negative impact on operational management as there is a requirement for all managers at that level to be in attendance at key meetings for Atlas."* He continued that if the claimant was requesting flexible working she needed to put that request in writing so that it could be considered pursuant to the statutory framework. He also noted that on receipt of the occupational health report he had decided that it would be helpful to discuss the report in detail and put in place a wellbeing plan, including stress risk assessment and support package to meet the claimant's underlying health needs. He proposed a meeting on 5 September and recognised her concerns in relation to unprofessional behaviours at senior meetings which he was happy to discuss in more detail if the claimant would find this useful. He was happy to discuss any remaining concerns that the claimant had. He concluded, *"In the meantime if you have any queries or concerns, please do not hesitate to contact me."*

63. By this stage the stress risk assessment had already been recommended. It was unclear why this was not completed with Mr Webster at an early stage. It only arose in November as an active task for Mr Webster. That

said, he was new to the role and there may not have been time to get this done before they were overtaken by events. Mr Webster indicated in cross examination that he intended to go away for his one week holiday at the end of August and then deal with the stress risk assessment on his return. His view was that his plans were somewhat changed when the claimant sent her two letters dated 29 August. These letters, to his mind, took precedence. He was also aware that there was no WAP in place. It seems that he prioritised what he saw as the other reasonable adjustments over the process of completing a WAP. The letters of 29 August from the claimant triggered a response which displaced any prior plans to look at completing a WAP. Whilst Mr Webster maintained that he did, in the end, complete the Stress Risk Assessment with the claimant in November, he accepted that he did not do the WAP with her at that, or any subsequent, stage.

64. There was a template for the WAP at [721]. It poses a series of questions for the employee about the particular triggers that they face and the impact of work and associated matters on their health. It is as much about facilitating a conversation between the claimant and her manager as anything else. It triggers the flow of information and makes sure that the manager is fully aware of the individual employee's personal circumstances. Mr Webster accepted that he did not look at the link to the WAP template before the meeting on 15 September. He felt that other events overtook him during this time. He felt it was necessary to prioritise the adjustments discussed at the meeting on 15 September.

65. Mr Webster confirmed that he did not discuss the claimant's option of taking short flexible breaks as needed during the period up to the 15 September meeting because he did not think that a senior manager would need to be told this. In his view, it is part of the autonomy enjoyed by a senior manager. In his view, if the claimant needed to take five 30 minute breaks that would be fine. However, he confirmed that he did, in fact, discuss this at the meeting on 15 September and reiterated that this option was available to her. He removed any uncertainty on the claimant's part at this meeting. In his view, she knew from this date (if not before) that she could take breaks whenever she wanted.

66. In relation to meetings, Mr Webster confirmed that he had all manner of meetings with the claimant on a range of topics. Some meetings were weekly, some were once every two weeks and some were impromptu, as needed. He maintained that he was regularly asking the claimant about her welfare. I accept this evidence from Mr Webster as truthful and accurate.

67. The claimant responded to Mr Webster's letter by a letter dated 29 August [349-352]. She wrote a second letter on the same date [353-355]. Those two letters were sent to Mr Webster on 2 September 2022 [357-358].

68. Mr Webster met the claimant on 2 September. The claimant was visibly upset. The claimant expressed that she had been upset by the letter sent in Mr Webster's name on 26 August. She raised various concerns about her return to work and the recent meetings she had attended. The claimant said that she did not want to raise any grievances but wanted to move forwards, build relationships and gain clarity on her objectives. Mr Webster did not think Ms Senior's working relationship with the claimant was actually broken

but that the claimant perceived that it was. The claimant explained that she had actually written two letters, one of which set out a request for adjustments. He asked her to forward copies of those letters because he had not yet seen them. The plan was that the claimant and Mr Webster would meet again on the claimant's return from annual leave. Mr Webster made a note of the meeting [739]. The salient points from the note from the Tribunal's perspective are:

a. The claimant was upset to have received the letter on 26 August without warning and she had been unable to discuss it with anyone. Mr Webster had wanted to make sure she had a timely update.
b. The claimant felt that some meetings had happened in Mr Webster's absence (OMG) where she felt that her work had not been appreciated and was undervalued. Mr Webster explained the other point of view, being that the team needed to be able to talk openly and positively to discuss issues in meetings. Challenge is not intended to undermine but to make sure that the team gets things right.
c. The claimant had reflected on her letter sent after her return to work in July. She felt she could have handled that correspondence better.
d. The claimant did not want to focus on grievances etc. but wanted to build relationships and move forward with a clear role and objectives. Mr Webster asked her to forward the two letters so he could review them and then they could plan a meeting to go through the issues raised.
e. The claimant raised the fact that she had been absent on Friday but when Ms Senior could not track her down she asked someone else to contact her rather than calling her direct herself.

69. The first of the claimant's letters [349] was said to be an attempt by the claimant to get matters back on track. She hoped that it would not be received with hostility. She indicated that she was sending a separate letter as a formal request for change in the flexibility and working hours relating to her role. She made it clear that those requests were made pursuant to the Equality Act to make reasonable adjustments rather than as a request for flexible working. She set out in this letter the impact that Mr Webster's letter had on her given that it was received without warning just before a bank holiday weekend. She indicated that receipt of his letter caused three days of elevated stress, anxiety and rumination and adversely impacted on her ability to sleep. She felt that it had undermined her relationships with colleagues and leaders and resulted in her wanting to remove herself from the organisation again. She indicated that her letter was effectively a cry for help from someone suffering with mental health problems. She indicated that when she had returned to work she had been promised (and had not received) a briefing or handover, occupational health referral or discussions relating to adjustments, a managed work load. In short, she said had not received the support that she needed in order to return to work successfully without exacerbating her mental health problems. When put in that context she felt that her letter had not been unreasonable or unjustified. The claimant felt that she had offered two different communications explaining why she was unable to attend the meeting and it was in that context that she found Ellis's email to be unfair. She indicated that her, *"genuine anxiety and fear of such meetings is factual and longstanding and should already*

be documented in several places." She continued that, *"this barrier to my well-being should not come as a surprise to the organisation."* She set out her background experiences of returning to work from sickness absence in the past.

70. The second letter dated 29 August [353] was entitled "request for reasonable adjustments." She requested the following:

- A disability support worker/Advocate/support worker familiar with the workings of mental health needs in the workplace and the Equality Act. This would be intended to support the claimant in better understanding and communicating her needs.
- The claimant requested a coach to help support her in understanding and overcoming mental and communication barriers she experienced in the workplace because of her disability and to build greater confidence.
- A workplace buddy/point of contact to whom the claimant could turn for support when she was struggling.
- Greater understanding and compassion to be developed throughout the organisation by way of workshops and training for managers.
- Greater flexibility in working arrangements to help her manage symptoms and meet medical and psychiatric needs. Specifically, she requested not to work Wednesdays as this is the day she undertook mental health treatment. The treatment was expected to be long term. The claimant requested the break midweek to manage her general symptoms and cope with the treatment. She asked to work the remaining 34 hours per week during the other four working days. Working times to be kept flexible on working days accordingly.
- The ability to take regular short breaks/time out when required to ensure she does not become overwhelmed.
- In addition to Wednesday off work, the claimant wanted to work from home one day per week to lessen the impact of the office environment on her health and to focus on getting tasks completed.
- Written assurances that global policy would be established, communicated and enforced within the organisation to outline behaviours and conduct which are deemed appropriate and professional in relation to conduct within meetings and when dealing with interactions between colleagues, peers and subordinates. She wanted to agree an "exit strategy" for situations where this policy was not upheld in order to enable her to limit detrimental effects on her condition.
- Until the assurances requested were given, the claimant wanted attendance at meetings with her to be limited so that there were only three people present, unless discussed and agreed with her in advance.
- Assurances that any critique of the claimant's conduct, behaviour or work would be dealt with appropriately within a privately held meeting and conducted in compassionate, understanding and professional way. She asked that such matters never be addressed in meetings involving a wider circle of colleagues.
- She asked that she be given advance and fair warning of such meetings so that she was not "blindsided." She wanted to be given the opportunity to ask questions, understand the issues being raised

and prepare adequate responses.

- She requested that she be notified verbally in advance of any other formal communications, written or otherwise, relating to her employment, so that she could be given a “heads up” and the opportunity to discuss these with her line manager.
- She requested clarity in relation to her job description and responsibilities and for her tasks to be limited to those specifically relating to the role in the immediate future. This was to avoid feeling overwhelmed.
- She requested clarity and clear instruction in relation to the tasks required of her to help her understand and ensure that she keeps on task and does not become overwhelmed.
- She requested weekly supervision with her line manager to help her in prioritising work and avoid taking on too much.
- She asked for clarity in relation to the ‘formal establishment’ she was responsible for managing together with practical administrative support in helping get the support required (i.e. employees or organisations) in order to ensure organisational needs were met appropriately.

71. The claimant believed that all of her requests would already have emerged if she had had the WAP that had previously been recommended and if a risk assessment had been carried out.

72. The claimant says that her letters dated 29 August were emailed to Mr Webster on 2 September and had been provided to him beforehand by hand. The respondent disputes that. The claimant says that she wrote them over the weekend and then went to Mr Webster’s PA. She says that she left the letters in envelopes for Mr Webster that day. The respondent suggested that 29 August had been a bank holiday and suggested that there would have been no need to email the letters to Mr Webster if he already had them in paper form.

73. I accept that the claimant may have provided a paper copy of the letter before she emailed it to Mr Webster. However, I also accept that Mr Webster may not have been aware of this and is unlikely to have had an opportunity to read the letters before they were emailed to him on 2 September. This is consistent with the emails arranging for the letters to be forwarded by email to Mr Webster after they had spoken on 2 September. 29 August 2022 was, in fact, the August bank holiday. It is most likely that the claimant wrote the letters over the weekend and then left them for Mr Webster at some point on 30 August. I accept that Mr Webster first saw the letters and was able to read them on 2 September. This fits with the contents of their discussion on 2 September and the fact that he asked the claimant to email them to him during that discussion on 2 September. When Mr Webster spoke to the claimant on 2 September he had not seen the letters and did not know what they contained. He had the discussion with the claimant without the background knowledge of what the letters contained. He was reacting to what the claimant said to him in person during this conversation.

74. Through the process of Tribunal disclosure the claimant has become aware of emails between Mr Webster and Ms Senior on 2 September [356]. Mr Webster’s email indicated that he had not yet received the claimant’s letters

of 29 August. He refers to her sending these two letters later. He noted that the claimant wanted to draw a line in the sand, forget what had happened in the past, was not interested in grievances etc. and just wanted to build relations, be trusted and have clear objectives. Mr Webster felt that the contents of the first letter had in fact been covered during his discussion with the claimant on 2 September and therefore he did not feel that a written response to that letter was needed.

75. In her response to Mr Webster, Ms Senior asked whether he had tackled the claimant's "*unreasonable behaviour e.g. attendance issues and lack of resilience?"* She also asked how the claimant was proposing to rebuild relationships. The claimant says that at the time, she was completely unaware that the respondent viewed matters in this way and so was unable to address these issues. The claimant also notes that her two letters dated 29 August were also forwarded to Ms Senior and that she was unaware of this. She says it would have helped her to have been informed what information was being shared, when and with whom. Ms Senior's evidence was that when she referred to the claimant's lack of resilience, she was referring to finding a way to have a positive conversation with the claimant and move things forward because the claimant often became emotional.

76. Mr Webster had not felt that it was appropriate to raise issues of the claimant's 'unreasonable behaviour' or 'lack of resilience' in his discussion with the claimant on 2 September. He actually felt that these issues would likely be resolved if he and the claimant continued to work together closely. Ms Senior asked Mr Webster to produce a file note of his conversation with the claimant.

77. The claimant's request for reasonable adjustments was shared with Annette Smith, HR manager at the Trust (who provided HR services to the respondent.) It is likely that Mr Webster and Ms Smith met to discuss the claimant's letter at some point before arranging to meet the claimant and discuss it with her.

Meeting on 15 September 2022

78. The claimant, Mr Webster and Ms Smith met on a date which has now been agreed between the parties as 15 September 2022. The purpose of the meeting was to discuss the contents of the claimant's two letters dated 29 August.

79. Mr Webster felt that it was a positive meeting and that they had agreed a way to move forwards and support the claimant. I accept Mr Webster's evidence in this regard. It was agreed that there would be a follow up meeting on 11 November.

80. On 6 October there was an SLT meeting [779]. The notes from that meeting disclose that, under the topic of Any Other Business, Mr Webster addressed the issue of poor behaviours which he would be addressing with all SLT members. Ms Senior said that this would be incorporated into the work to be done with Boo Coaching. There is reference to leadership and accountability in the SLT, how performance could be improved by the

development of a behavioural framework to underpin values and the development of objectives.

81. On 10 October 2022 Ms Smith from HR sent the claimant an email setting out the matters which had been agreed at the 15 September meeting and inviting the claimant to a further meeting on 11 November 2022. [362-364].The respondent's position in relation to the claimant's requests is recorded as being:

a. The claimant would take action to contact Access to Work directly about a disability support worker and provide updates to Mr Webster about this. The claimant had indicated that there may be some financial investment required on this (presumably from the respondent.) *[In her witness statement the claimant indicated that this promise was kept.]*

b. In relation to the request for the coach to support the claimant in understanding and overcoming some of the mental and communication barriers, the respondent recorded that discussions were already ongoing with regards to engaging the services of a coach for the SLT team. The claimant and Mr Webster were to have a discussion about what would be beneficial for the claimant in this space in order to help formulate what was needed.

c. In relation to the request for a workplace buddy, this was to be Mr Webster in the first instance. The claimant could go to him for support and if he was unavailable she could contact Annette Smith. *[in her witness statement the claimant indicated that this promise was kept.]*

d. In relation to workshops and training for managers, Annette Smith was to understand what was available for managers and this could then be signposted.

e. In relation to Wednesdays off work, Mr Webster was to discuss this with the claimant in terms of how this would work with the potential to put a flexible working request in.

f. In relation to the ability to take regular short breaks/time out when required, Mr Webster and the claimant were to discuss an appropriate approach to this and put in place appropriate strategies.

g. In relation to an additional day each week working from home, Mr Webster was to discuss this with the claimant.

h. In relation to an 'exit strategy' and formal policy outlining appropriate and professional behaviour, the claimant and Mr Webster were to discuss this and determine the best approach from a working week perspective.

i. In relation to maximum of three people in meetings with the claimant it was recorded that this had been resolved with discussions with PB. [In her witness statement the claimant maintained that Mr Webster assured her that he would attend the meetings with the claimant where there were more than three people present and would observe behaviours. She maintained that he did not attend several of these meetings and he did not give a reason why he did not attend. She asserted that he would have been notified of the meetings and invited to them.]

j. In relation to conveying a critique of the claimant's conduct or work etc., Mr Webster was to act as a coach and ensure appropriate ways

of working, conduct and approaches are enacted. The same was recorded against the request for verbal advance notification of formal communications in relation to the claimant's employment so she could be given the 'heads up' and an opportunity to discuss this with her line manager.

k. In relation to clarification of the claimant's job description, roles and responsibilities, Mr Webster was to schedule time with the claimant to go through clear objectives and provide clarity on roles and responsibilities. The same was recorded in relation to diverting work which was not a core part of the claimant's role away from the claimant to reduce the risk of her being overwhelmed.
l. In relation to clarity and clear instructions, Mr Webster was to act as a coach and ensure that appropriate ways of working, conduct and approaches were enacted.
m. In relation to weekly supervision, Mr Webster had scheduled weekly 121s and would continue to do so.
n. In relation to the request for clarity in relation to the establishment that the claimant was managing and practical and administrative support, Mr Webster was to ensure that this was covered during his discussions.

82. The claimant indicated, in an email on 10 October, that she had completed an Access to Work application and that it could take up to 20 weeks.

83. The claimant says that around this time she completed drafts of the risk assessment and wellbeing forms and left these for Mr Webster on his desk. She also says that she left information on his desk about an organisation who could provide a disability support worker to help the claimant and the respondent. She says that neither Mr Webster nor anyone else at the respondent responded to these documents before she left her employment.

84. Mr Webster's recollection is that he sent an email to the claimant regarding completion of a stress risk assessment on 1 November. He recalled completing this alongside the claimant but he notes that the completed copy of the assessment has not been located [373-376].

85. Mr Webster gave evidence that, on 8 November, the claimant sent a copy of a strategy and asked for feedback. Ms Senior responded on 9 November. The claimant was apparently upset by the email.

86. Mr Webster sent the email on 14 October 2922 which was aimed at addressing behavioural issues [740].

87. From Ms Senior's perspective, an issue arose where the claimant was not taking responsible for some issues which were within her purview. She asked Mr Webster to pick this up with the claimant [369-370]. Whilst this particular example related to the claimant, she accepted that other members of the SLT also failed to take responsibility appropriately. Hence, in October 2022 she made arrangements for "Boo Coaching and Consulting" to provide coaching to the SLT on "Improving our Collective Performance." The claimant left prior to the commencement of this programme of work.

88. I also heard that every month the respondent held a client meeting which was managed by the Trust. At these meetings the respondent reported on its performance against KPIs. As part of her role, the claimant attended these meetings and reported on matters within her service area. On 26 October 2022 Ms Senior sent an email to the claimant regarding one such meeting which the claimant and Ellis were both expected to attend. She asked them to confirm which of them would be providing the update on fire safety. She also gave each of them further updates to prepare. The claimant's response was to say that she was unable to do as requested because she had not been briefed on it and had "no clue" what was being referred to. Ms Senor was surprised at this as the claimant had previously attended such meetings and provided similar updates and so should have known what was being referred to. The claimant did not attend the meeting in question until she was prompted to by text from another member of the SLT. Ms Senior asked Mr Webster to address this with the claimant. [371-372]

89. On 8 November the claimant sent the SLT a copy of a strategy she was preparing and requested feedback on it. Ms Senior responded on 9 November with feedback as requested. In her response she attempted to support the claimant and raise the profile of this piece of work. It was reported to Ms Senior that the claimant was upset at this email as she felt that Ms Senior had 'lambasted her'. The claimant had been advised to go home and then contact Ms Senior to discuss the issue. She did not contact Ms Senior. Ms Senior was concerned when she found out about this and sought HR advice on the emails that she had sent. She was reassured that there was nothing wrong with the emails that she had sent.

90. I have reviewed the email in question [378]. It is objectively unremarkable. It is businesslike in tone and raises queries and makes suggestions (i.e. it provides the feedback requested.) It recognizes the complexity of what the claimant was trying to do and seeks to recruit the assistance and support of others within team. There is nothing within it which would ring alarm bells for the objective reader that it was likely to cause upset on the claimant's part. I accept that the claimant was, in actual fact, upset by it but I do not consider, objectively speaking, that it 'lambasted' her.

91. There was a catch up meeting scheduled to take place between the claimant, Mr Webster and Annette Smith on 11 November. However, this could not go ahead due to the claimant's intervening sickness absence.

November sickness absence

92. The claimant was absent from work on sick leave from 10 November to 14 November [279]. She says that this was because of continuing stress and anxiety caused by the lack of progress with the adjustments.

Claimant's resignation

93. The claimant tendered her resignation on 15 November 2022 [380]. She says that she went to see Mr Webster in his office and told him that she was resigning because of the lack of progress with the adjustments she needed and because of the impact this was having on her mental health. Mr

Webster recalls the claimant saying something along the lines of it was time for her to move on and she wanted to focus on her MBA. He noted that the claimant did not raise any specific complaints when she told him she was resigning and that she did not say that she felt she had no choice but to resign. She did not say anything about feeling that she had been forced out. Mr Webster recalls an amicable conversation where he told her that he was sorry she was leaving. The claimant asked if she could serve her notice at home and Mr Webster said he would speak to Ms Senior about this. (It was subsequently agreed that the claimant would serve her notice at home and that she would not be required to work after 23 November 2022.)

94. The claimant addressed her resignation letter to Mr Webster and said: *"I regret to inform you that I wish to resign from my position of Head of Quality, Risk and Compliance within Atlas BFW Management Ltd. As per our discussion, my last working day will formally be Tuesday 31 January 2023. I will make arrangements with you to agree a handover as required. It has been a pleasure working with the team and I wish them all every success for the future."* The claimant's notice period ended on 31 January 2023.

95. Mr Webster acknowledged receipt of the resignation on 17 November [381-383]. He said that it had been great working with the claimant and he thanked her for her help and support during their time working together. He indicated he would be happy for her to work from home until 23 November to allow some practical time to inform the wider team of her intentions and plans to manage work and agree a handover. The fact of the claimant's resignation and interim arrangements were set out in emails dated 21 November [384-385]

96. The claimant complimented Mr Webster in a further email dated 21 November. She said, *"I really am sad that we can't carry on working together, as I think we could have made amazing things happen! I'd love to hear from you in the future. It's been a real pleasure meeting you. I'm just sorry it's been under such circumstances..."* [387-388]

97. On 21 November Ms Senior issued an announcement to the rest of the senior management team regarding the claimant's departure [386]. I accept that this is standard procedure. The claimant was also given the opportunity to put out a statement [384-385].

98. There was a further text exchange between the claimant and Mr Webster prior to Christmas. Mr Webster knew that the claimant was undertaking her MBA and so he provided her with a copy of the dissertation that he had prepared for his MBA. This was done in an effort to support the claimant.

99. On 20 January 2023 HR emailed Mr Webster and asked him to complete the claimant's termination form [392-393]. He received a further email from HR asking him to calculate the claimant's annual leave. He did this [394].

<u>The respondent's evidence regarding the proposed adjustments.</u>

100. Mr Webster addressed the proposed adjustments as they arose in the claimant's letter of 10 October 2022. He addressed what had happened in

relation to the proposed adjustments after the meeting at which they were discussed given that, in the main, the claimant asserted that the agreed plan of action had not been implemented.

101. In relation to the request for a disability/support worker he noted that the respondent did not have anyone in-house who could perform these functions. Hence it was agreed that the claimant would contact Access to Work in order to see what could be obtained. The claimant did in fact make contact with Access to Work but it is unclear what actually happened to the application and whether Access to Work processed it in the time remaining before the claimant tendered her resignation.

102. In relation to the claimant's request for a coach, Mr Webster's position was that they discussed the fact that Ms Senior was already in the process of engaging an external coaching service. It was agreed that the claimant and Mr Webster would discuss this further in order to determine what the claimant needed. He maintained that they did discuss that coaching was something which the respondent company was arranging.

103. In relation to the claimant's request for a buddy, as Mr Webster was already supporting the claimant, it was agreed that he would act as her buddy. It was agreed that, if he was unavailable for any reason, the claimant would contact Annette Smith. Mr Webster believed that the claimant had indeed contacted Annette on occasion.

104. In relation to workshops and training of managers in relation to mental health it was agreed that Annette Smith could look into this further.

105. With regard to the claimant's request for flexibility in working arrangements, to not work Wednesdays and to work 34 hours per week, it was agreed that this would be discussed further and the claimant could put in a flexible working request. He noted that the claimant's work arrangements had already been adjusted so that she did not work Wednesdays and she worked 34 hours per week. Mr Webster confirmed that the claimant continued to work in this way until she handed in her notice. She was not required to work that notice. Ms Senior confirmed that following the claimant's return from sick leave in July 2022, the claimant worked four days a week and did not work on Wednesdays. Further, the claimant was also permitted to work from home at least one day per week. This was in line with the business's hybrid working model where staff are asked to attend the workplace three days per week, although it is not strictly enforced. There was no requirement that staff had to work on Wednesdays if they worked a four day week.

106. In relation to the issue of short/regular breaks and to work from home one day per week, Mr Webster asserted that they did discuss that subsequently. Mr Webster's view was that the claimant had autonomy in her role and could take breaks whenever she wanted. He also noted that the respondent operated a hybrid working policy and the claimant already worked at least one day per work from home. Ms Senior also gave evidence that the respondent is a small organisation. As a result, the Directors and the SLT have to work together and be flexible as there isn't a large team to whom they can delegate. On the other hand this, together with the seniority of the

claimant's role, meant that she had a large degree of autonomy. The respondent did not micromanage the claimant or her colleagues so she would be able to manage her own time and take breaks whenever she wanted, as could all staff.

107. In relation to the claimant's concern that there had been abrasive, critical and hostile behaviours from management, it was agreed that the claimant and Mr Webster would discuss how best to approach this from a working week perspective. As Mr Webster was already providing the claimant with support, it was agreed that this should continue. Mr Webster also recalled discussing and agreeing with the claimant that, if she was stressed, she could excuse herself, for example, by saying that she needed a glass of water. The claimant did not want to say to the other people that she was stressed and so the discussion was about how the claimant could come up with some form of 'cover story' to get herself out of the meeting if she needed to because of rising stress levels. Mr Webster's view is that, as a result of his discussions with the claimant, they agreed that she did not need a written policy in order to facilitate this.

108. The claimant had requested that she only attend meetings with three people. Mr Webster says that he had already discussed this with the claimant and he was of the view that this was not reasonably practicable. An example of this was the OMG meetings. Given the claimant's role as "Head of" it was important that she attend such meetings. This would, by definition, mean that she had to attend meetings with more than three people present. This was actually a very important set of regular meetings that the claimant really needed to attend given the nature of her role. The respondent's position was that, essentially, the claimant could not opt out of such meetings on a regular basis without it adversely affecting the substantive performance of her role. In light of this, the respondent did not agree to facilitate this part of the claimant's requests. Instead, this issue would be addressed by other means, such as the ongoing support Mr Webster intended to give to the claimant.

109. The claimant had requested that she be given advance warning of meetings and questions and issues so that she could prepare responses in advance. She also wanted to be notified verbally in advance of any formal communications relating to her employment. Again, Mr Webster says that he agreed with the claimant that he would act as a coach in these matters and ensure appropriate ways of working, conduct and approaches. He maintains that he did this. He also agreed that he would ensure that there was clarity and clear instructions given in relation to the claimant's tasks. The claimant asked for weekly supervision but the respondent's position was that this was already happening through Mr Webster's weekly one-to-ones with the claimant. These were expected to continue on an ongoing basis.

110. Mr Webster says that he agreed with the claimant that he would work with her to develop clear objectives and provide clarity on her role and responsibilities. His evidence was that, prior to the claimant's resignation, they started working on a target operating model which would have included reviewing the claimant's job specification and ensuring that her objectives

were up to date. He took the view that this would also ensure that the claimant was not given work that did not fit within her core role. However, the claimant resigned before this work was completed. Mr Webster's evidence was that, as part of this they would also have discussed the support that the claimant needed, such as administrative support.

111. Mr Webster says that, as a follow up to the discussions with the claimant, he discussed expected standards of behaviour with his team members at the weekly one-to-ones. He also sent an email on 14 October 2022 [740] reminding his team to carefully consider their language, the tone they used when speaking to one another, and that discussions and challenges should be positive and respectful. He stated that, moving forward, chatting behind other people's backs, being disrespectful and unprofessional would not be accepted. He asked that, if anyone heard one of their colleagues speaking in such a way, they should challenge the colleague and report it to Mr Webster. He noted that they had an upcoming coaching day and he decided that a behavioural charter should be created.

112. Mr Webster says that there was also an ongoing discussion as to who had which jobs, tasks and responsibilities and he explained that he intended to create an organogram of responsibilities/accountabilities for the team to discuss and agree as a team.

113. In relation to a WAP, Mr Webster did not complete a formal document but felt that his discussions with the claimant effectively fulfilled the same function. In his view, the same outcome was obtained via different means.

114. In relation to breaks Mr Webster was of the view that there was nothing stopping the claimant from taking breaks any time she wanted. He noted that the respondent did not have fixed break times.

115. Mr Webster's view was that there was nothing preventing staff from attending appointments or psychotherapy sessions during work time if they needed to. Senior staff (such as the claimant) would not need permission for this. All he asked was that they be put in in the diary so that it was known that the individual employee was not available at that time. More junior staff would need to ask their line manager. Ms Senior's evidence was to the same effect, staff were able to attend appointments in work time if need be. Junior members of staff would have to agree this with their line manager but senior staff such as the claimant would not need "permission". As a courtesy and for practical purposes she would be expected to make her line manager aware of this.

116. Mr Webster asserted that he had regular one-to-one meetings with all members of his team once he took over line management of them at the end of July 2022.

117. Mr Webster was not aware of any practice in place at the respondent which would require those staff working a four day week to work on Wednesdays. He maintained that the claimant did not work Wednesdays. He also maintained that all staff could work from home, including the claimant, as the respondent had a hybrid working model. This was in line with Ms

Senior's evidence.

118. Mr Webster did not accept that the respondent required staff to attend meetings without awareness of the standards of behaviour required of all staff. He considered that all staff were fully aware that they were expected to act professionally and courteously. Ms Senior agreed. She also did not think that there was a practice of conveying criticism of staff in front of their colleagues.

119. Mr Webster did not think that a policy was required for staff to be able to leave meetings when stressed. A member of staff could excuse themselves from a meeting and leave if they needed to. He asserted that members of the SLT did, in fact, excuse themselves and leave meetings. Ms Senior confirmed this. Staff would not need permission to leave a meeting. They could leave as required if feeling stressed. I accept that this would reflect the reality amongst a group of senior level professionals. I appreciate that, depending on the particular circumstances, an individual getting up and leaving a meeting might feel self-conscious about doing this. They might feel conspicuous but it is not apparent what else the respondent could do about this to minimise any discomfort. Indeed, having a more formalised policy is likely to have made the whole process more awkward than letting staff make their excuses and leave, as and when required.

120. Mr Webster did not accept that there was a practice of conveying criticism of staff in front of colleagues. If there was a need to raise a concern, this would be done in private.

121. Mr Webster was not aware of a practice of meetings being held with staff without warning. He accepted that there might have been occasions where an emergency or a critical incident occurred on site and there would need to be an urgent meeting to discuss it but this would be an operational matter and such instances would be few and far between. The claimant's participation in such meetings would be minimal, if at all.

122. Mr Webster did not understand the assertion that meetings were conducted without the opportunity for staff to ask questions, understand issues or prepare responses. Staff could ask questions at meetings and if they didn't understand an issue they would be able to ask for clarification. Mr Webster maintained that it would not be possible to predict every question that might be asked at a meeting and prepare a response.

123. Mr Webster was not aware of any policy or other sort of practice that staff should work without an up to date job description. He took steps in relation to job descriptions. In Mr Webster's experience there had to be a degree of flexibility in the role of senior staff and job descriptions are usually only reviewed if there is, for example, a restructure. Mr Webster says that he was not aware that staff were required or expected to undertake tasks outside their core job description.

124. Ms Senior gave further evidence orally about the issue of coaching. She confirmed that the respondent went out and got quotes and engaged Boo Coaching because they had a coaching approach for the SLT and the coaching was offered to individuals as well as the team. For example,

individuals could do a “Brew with Boo”. In essence, it was hopped that this would make “bosses” into “better bosses.” She suggested that if an individual coach was required for the claimant this could have been identified as part of Boo Coaching’s input into the business. However, this was entirely undocumented. She also maintained that the coaching was commissioned in the October of 2022 and was originally due to start in November. Two people left the SLT. A New Head of Facilities was due to start in January and, as a result, the coaching started in January 2023 once those job vacancies had been filled. They decided to delay until after the claimant left so that new appointees would have the benefit of the coaching.

125. Ms Senior confirmed that, although she had high level oversight of the matters being addressed with the claimant during this time, the day to day progress would happen between the claimant and Mr Webster. Her involvement would be to ‘check-in’ periodically and ask whether matters were progressing. Ms Senior accepted that the WAP was not formulated and that it could have proved helpful for the claimant given the occupational health recommendation.

The disability impact statement

126. The claimant produced a disability impact statement for the Tribunal which led the respondent to concede that bipolar disorder met the definition of disability during the relevant period (but not ‘complex trauma’.)

127. In her statement the claimant stated that for many years she had suffered from bipolar disorder and complex trauma. She asserted that these conditions, each and together, have had a substantial effect on her ability to carry out day to day activities. She set out a table of medications and the dosages taken. She did not describe the purpose or effect of each of these medications. In addition to medication, the claimant has had a number of other non-medication based interventions over the years. These include talking therapies, home visits from various people including the Community Psychiatric Nurse, EMDR, trauma based therapies, cognitive behavioural therapies and residential stays in mental health facilities to stabilise and improve her mental health. The claimant asserted that the non-medication based interventions have been many, intense and frequent.

128. The claimant set out the ways in which her disability affected her including (the list is non exhaustive):

    a. Nightly sleep disturbance;
    b. Chronic stress and extreme fatigue;
    c. Extreme anxiety;
    d. High blood pressure;
    e. Nosebleeds and headaches;
    f. Nightmares
    g. Intrusive thoughts and excessive rumination and dread;
    h. Inability to concentrate on tasks such as reading or driving;
    i. She became withdrawn and isolated and struggled to engage with others;

j. Suicidal thoughts
k. Depression;
l. Auditory hallucinations
m. Feelings of being overwhelmed, humiliation and paranoia and irrational responses to situations'.
n. Aches and pains heightening a diagnosis of ME;
o. Lack of motivation in relation to personal care, food preparation and eating or household chores.

129. She listed a number of ways in which her impairments affected her day to day activities. Her sleep is reduced and she does not have an active social life. Her condition adversely affects personal relationships. Travelling is said to be extremely challenging and is kept to a minimum. Her ability to drive has been curtailed leading to increased isolation. Household tasks are undertaken by others. Social confidence and confidence to try new things have been diminished. Family relationships are strained.

The law

Section 20/21: reasonable adjustments.

130. Section 20 (so far as relevant) states:

(1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.
(2) The duty comprises the following three requirements.
(3) The first requirement is a requirement, where a provision, criterion or practice of A's puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
(4) The second requirement is a requirement, where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.
(5) The third requirement is a requirement, where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

…

131. Section 21 states:

(1) A failure to comply with the first, second or third requirement is a failure to comply with a duty to make reasonable adjustments.

(2) A discriminates against a disabled person if A fails to comply with that duty in relation to that person.
(3) …

132. The correct approach to a claim of unlawful discrimination by way of a failure to make reasonable adjustments remains as set out in Environment Agency v Rowan 2008 ICR 218 and is as follows:

(a) Identify the PCP applied by or on behalf of the employer,
(b) Identify comparators (if necessary),
(c) Identify the nature and extent of the substantial disadvantage suffered by the claimant.

133. The identification of the applicable PCP is the first step that the claimant is required to take. If the PCP relates to a procedure, it must apply to others than the claimant. Otherwise, there can be no comparative disadvantage.

134. In Ishola v Transport for London [2020] EWCA Civ 112 it was noted that the phrase PCP should be construed widely but remarks were made about the legislator's choice of language (as opposed to the words "act" or "decision".) Simler LJ stated, *"I find it difficult to see what the word "practice" adds to the words if all one off decisions and acts necessarily qualify as PCPs…. If something is simply done once without more, it is difficult to see on what basis it can be said to be "done in practice." It is just done; and the words "in practice" add nothing….The function of the PCP in a reasonable adjustment context is to identify what it is about the employer's management of the employee or its operation that causes substantial disadvantage to the disabled employee…To test whether the PCP is discriminatory or not it must be capable of being applied to others because the comparison of disadvantage caused by it has to be made by reference to a comparator to whom the alleged PCP would also apply…. In my judgment, however widely and purposively the concept of a PCP is to be interpreted, it does not apply to every act of unfair treatment of a particular employee. That is not the mischief which the concept of indirect discrimination and the duty to make reasonable adjustments are intended to address. …In context and having regard to the function and purpose of the PCP in the Equality Act 2010, all three words carry the connotation of a state of affairs (whether framed positively or negatively and however informal) indicating how similar cases are generally treated or how a similar case would be treated if it occurred again. It seems to me that "practice" here connotes some form of continuum in the sense that it is the way in which things generally are or will be done. That does not mean it is necessary for the PCP or "practice" to have been applied to anyone else in fact. Something may be a practice or done "in practice" if it carries with it an indication that it will or would be done again in future if a hypothetical similar case arises. Like Kerr J, I consider that although a one-off decision or act can be a practice, it is not necessarily one. …in the case of a one-off decision in an individual case where there is nothing to indicate that the decision would apply in future, it seems to me the position is different. It is in that sense that Langstaff J referred to "practice" as having something of an element of repetition about it."*

135. A ‘substantial disadvantage’ is one which is ‘more than minor or trivial.’

136. Only once an employment tribunal has gone through the steps in Rowan will it be in a position to assess whether any adjustment is reasonable in the circumstances of the case, applying the criteria in the EHRC Code of Practice. The test of reasonableness is an objective one. The effectiveness of the proposed adjustments is of crucial importance. Reasonable adjustments are limited to those that prevent the PCP from placing a disabled person at a substantial disadvantage in comparison with persons who are not disabled. Thus, if the adjustment does not alleviate the disabled person’s substantial disadvantage, it is not a reasonable adjustment. (Salford NHS Primary Care Trust v Smith [2011] EqLR 1119) However, the threshold that is required is that the adjustment has ‘a prospect’ of alleviating the substantial disadvantage. There is no higher requirement. The adjustment does not have to be a complete solution to the disadvantage. There does not have to be a certainty or even a ‘good’ or ‘real’ prospect of an adjustment removing a disadvantage in order for that adjustment to be regarded as a reasonable one. Rather it is sufficient that a tribunal concludes on the evidence that there would have been a prospect of the disadvantage being alleviated. (Leeds Teaching Hospital NHS Trust v Foster [2011] EqLR 1075.

137. Where the disability in question means that an employee is unable to work as productively as other colleagues, adjustments to enable her to be more efficient would indeed relate to the substantial disadvantage she would otherwise suffer (Rakova v London Northwest healthcare NHS trust [2020] IRLR 503. It cannot be assumed that a desire to achieve greater efficiency does not reflect the suffering of a substantial disadvantage. The fundamental question is what steps it was reasonable for the respondent to have to take in order to avoid the particular disadvantage not what ought ‘reasonably have been offered.’

138. An employer has a defence to a claim for breach of the duty to make reasonable adjustments if it does not know and could not be reasonably be expected to know that the disabled person is disabled and is likely to be placed at a substantial disadvantage by the PCP etc. The question is what, objectively, the employer could reasonably have known following reasonable enquiry.

139. A holistic approach should be adopted when considering the reasonableness of adjustments in circumstances where it takes a number of adjustments, working in combination, to ameliorate the substantial disadvantage suffered by the claimant

140. The test of reasonableness is an objective one (Smith v Churchills Stairlifts plc 2006 ICR 524, CA,) In assessing reasonableness in the context of section 20, it is necessary for the tribunal to look at the proposed adjustment from the point of view of both the claimant and employer and then make an objective determination as to whether the adjustment is or was a reasonable one to make.

141. When addressing the issue of reasonableness of any proposed adjustment the focus has to be on the practical result of the measures that can be

taken (Royal Bank of Scotland v Ashton 2011 ICR 632, EAT) It is not a question of considering the employer's thought processes or other processes leading to the making of (or failure to make) a reasonable adjustment.

142. An important factor to consider is the extent to which taking a particular step would be effective in preventing the substantial disadvantage caused to the disabled person. It is unlikely to be reasonable for an employer to have to make an adjustment that involves little benefit to the disabled person. Further, the essential rationale of the section 20 duty is to make adjustments that are effective in keeping a disabled person in employment, not to enable them to leave employment on favourable terms. However, as stated by Elias LJ in Griffiths v Secretary of State for Work and Pensions 2017 ICR 160, CA "So far as efficacy is concerned, it may be that it is not clear whether the step proposed will be effective or not. It may still be reasonable to take the step notwithstanding that success is not guaranteed; the uncertainty is one of the factors to weigh up when assessing the question of reasonableness." A measure that on its own may be ineffective might nevertheless be one of several adjustments which, when taken together, could remove or reduce the disadvantage experienced by the disabled person. A step that is relatively easy for the employer to take is more likely to be reasonable than one that is difficult.

143. It is no part of the duty to make reasonable adjustments for the employer actively to consult the employee about what adjustments should or could be made. In Tarbuck v Sainsbury's Supermarkets Ltd 2006 IRLR 664, EAT Mr Justice Elias (as he then was) stated at paragraph 69:

> "There can be no doubt that any employer would be wise to consult with a disabled employee in order to be better informed and fully acquainted of all the factors which may be relevant to a determination of what adjustment should reasonably be made in the circumstances. If the employer fails to do that, then he is placing himself seriously at risk of not taking appropriate steps because of his own ignorance. He cannot then pray that ignorance in aid if it is alleged that he ought to have taken certain steps and he has failed to do so. The issue for the Tribunal will then be whether it was reasonable to take that step or not."

He continued at paragraph 71:

> "The only question is, objectively, whether the employer has complied with his obligations or not. That seems to us to be entirely in accordance with the decision of the House of Lords in Archibald v Fife Council [2004] ICR 954. If he does what is required of him, then the fact that he failed to consult about it or did not know that the obligation existed is irrelevant. It may be an entirely fortuitous and unconsidered compliance: but that is enough. Conversely, if he fails to do what is reasonably required, it avails him nothing that he has consulted the employee."

In effect while it will always be good practice for the employer to consult, there is no separate and distinct duty on an employer to consult with a

disabled worker. The only question is, objectively, whether the employer has complied with its obligation to make reasonable adjustments.

144. In Rider v Leeds City Council EAT 0243/11 the EAT followed Tarbuck and held that the carrying out of an assessment as to what reasonable adjustments might be made in respect of a disabled employee was not, of itself, capable of amounting to a reasonable adjustment.

145. An employer can satisfy the duty to make reasonable adjustments even if the adjustments adopted are not the adjustments preferred by the employee (Garrett v Lidl Ltd UKEAT/0541/0).

146. An 'auxiliary aid' is described in the EHRC Code of Practice on Employment at paragraph 6.13:

> "An auxiliary aid is something which provides support or assistance to a disabled person. It can include provision of a specialist piece of equipment such as an adapted keyboard or text to speech software. Auxiliary aids include auxiliary services; for example, provision of a sign language interpreter or a support worker for a disabled worker."

Burden of Proof

147. Section 136 of the Equality Act 2010 provides that, once there are facts from which an employment tribunal could decide that an unlawful act of discrimination has taken place, the burden of proof "shifts" to the respondent to prove any non-discriminatory explanation. The two-stage shifting burden of proof applies to all forms of discrimination under the Equality Act including direct discrimination, harassment, indirect discrimination, discrimination arising from disability under section 15 and the failure to make reasonable adjustments under section 20. Although similar principles apply, what needs to be proved depends, to a certain extent, on the nature of the legal test set out in the respective statutory sections.

148. The wording of section 136 of the act should remain the touchstone. The relevant principles to be considered have been established in the key cases: Igen Ltd v Wong 2005 ICR 931; Laing v Manchester City Council and another ICR 1519; Madarassy v Nomura International Plc 2007 ICR 867; and Hewage v Grampian Health Board 2012 ICR 1054.

149. The correct approach requires a two-stage analysis. At the first stage the claimant must prove facts from which the tribunal could infer that discrimination has taken place. Only if such facts have been made out on the balance of probabilities is the second stage engaged, whereby the burden then "shifts" to the respondent to prove (on the balance of probabilities) that the treatment in question was "in no sense whatsoever" on the protected ground.

150. The approved guidance in Barton v Investec Henderson Crosthwaite Securities Ltd [2003] ICR 1205 (as adjusted) can be summarised as:

a) It is for the claimant to prove, on the balance of probabilities, facts from which the employment tribunal could conclude, in the absence of an adequate explanation, that the respondent has committed an act of discrimination. If the claimant does not prove such facts, the claim will fail.
b) In deciding whether there are such facts it is important to bear in mind that it is unusual to find direct evidence of discrimination. In many cases the discrimination will not be intentional.
c) The outcome at this stage will usually depend on what inferences it is proper to draw from the primary facts found by the tribunal. The tribunal does not have to reach a definitive determination that such facts would lead it to conclude that there was discrimination, it merely has to decide what inferences could be drawn.
d) In considering what inferences or conclusions can be drawn from the primary facts, the tribunal must assume that there is no adequate explanation for those facts. These inferences could include any that it is just and equitable to draw from an evasive or equivocal reply to a request for information. Inferences may also be drawn from any failure to comply with the relevant Code of Practice.
e) When there are facts from which inferences could be drawn that the respondent has treated the claimant less favourably on a protected ground, the burden of proof moves to the respondent. It is then for the respondent to prove that it did not commit or, as the case may be, is not to be treated as having committed that act. To discharge that burden it is necessary for the respondent to prove, on the balance of probabilities, that its treatment of the claimant was in no sense whatsoever on the protected ground.
f) Not only must the respondent provide an explanation for the facts proved by the claimant, from which the inferences could be drawn, but that explanation must be adequate to prove, on the balance of probabilities, that the protected characteristic was no part of the reason for the treatment. Since the respondent would generally be in possession of the facts necessary to provide an explanation, the tribunal would normally expect cogent evidence to discharge that burden.

151. The shifting burden of proof rule only applies to the discriminatory element of any claim. The burden remains on the claimant to prove that the alleged discriminatory treatment actually happened and that the respondent was responsible. The statutory burden of proof provisions only play a role where there is room for doubt as to the facts necessary to establish discrimination. In a case where the tribunal is in a position to make positive findings on the evidence one way or another as to whether the claimant was discriminated against on the alleged protected ground, they have no relevance (Hewage). If a tribunal cannot make a positive finding of fact as to whether or not discrimination has taken place it must apply the shifting burden of proof.

152. Where it is alleged that the treatment is inherently discriminatory, an employment tribunal is simply required to identify the factual criterion applied by the respondent and there is no need to inquire into the employer's mental processes. If the reason is clear or the tribunal is able to identify the criteria or reason on the evidence before it, there will be no question of inferring discrimination and thus no need to apply the burden of proof rule. Where the act complained of is not in itself discriminatory and the reason for the less favourable treatment is not immediately apparent, it is necessary to explore the employer's mental processes (conscious or unconscious) to discover the ground or reason behind the act. In this type of case, the tribunal may well need to have recourse to the shifting burden of proof rules to establish an employer's motivation.

153. The claimant bears the initial burden of proving a prima facie case of discrimination on the balance of probabilities. The requirement on the claimant is to prove on the balance of probabilities, facts from which, in the absence of any other explanation, the employment tribunal could infer an unlawful act of discrimination. The employer's explanation (if any) for the alleged discriminatory treatment should be left out of the equation at the first stage. The tribunal must assume that there is no adequate explanation. The tribunal is required to make an assumption at the first stage which may in fact be contrary to reality. In certain circumstances evidence that is material to the question whether or not a prima facie case has been established may also be relevant to the question whether or not the employer has rebutted that prima facie case.

154. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, with more, sufficient material from which tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an unlawful act of discrimination (see Madarassy).

155. If the claimant establishes a prima facie case of discrimination the second stage of the burden of proof is reached and the burden of proof shifts onto the respondent. The respondent must at this stage prove, on balance of probabilities that its treatment of the claimant was in no sense whatsoever based on the protected characteristic.

156. In some instances, it may be appropriate to dispense with the first stage altogether and proceed straight to the second stage (Shamoon v Chief Constable of the Royal Ulster Constabulary [2003] ICR 337.) The employment tribunal should examine whether or not the issue of less favourable treatment is inextricably linked with the reason why such treatment has been meted out to the claimant. If such a link is apparent, the tribunal might first consider whether or not it can make a positive finding as to the reason, in which case it will not need to apply the shifting burden of proof rule. If the tribunal is unable to make a positive finding and finds itself in the situation of being unable to decide the issue of less favourable treatment without examining the reason, it must examine the reason (i.e. conduct the two stage inquiry) and it should be for the employer to prove that the reason is not discriminatory, failing which the claimant must succeed in the claim.

157. Where it is alleged that an employer has failed to make reasonable adjustments, the burden of proof only shifts once the claimant has established not only that the duty to make reasonable adjustments had arisen but also that there are facts from which it could reasonably be inferred (absent an explanation) that the duty been breached. Demonstrating that there is an arrangement causing a substantial disadvantage engages the duty, but it provides no basis on which it can be properly inferred that there is a breach of that duty. Rather, there must be evidence of some apparently reasonable adjustment that could have been made. Therefore, the burden is reversed only once a potentially reasonable amendment adjustment has been identified Project Management Institute v Latif [2007] IRLR 579.

Unfair dismissal

158. Employees with qualifying service have a right not to be unfairly dismissed. Section 95 Employment Rights Act 1996 deals with the concept of dismissal. A dismissal includes where (section 95(1)(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."*

159. An employee alleging constructive dismissal must show that the employer committed a serious or repudiatory breach of contract (serious enough to justify the employee resigning), that she resigned in response to that breach (not for some other unconnected reason), that she did not delay too long or acquiesce in relation to the beach or affirm the contract notwithstanding the breach.

160. The employee is only entitled to treat herself as constructively dismissed if the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract. The fundamental (or repudiatory) breach of contract may be based on an express or an implied term of the contract of employment.

161. One of the central implied terms of any contract of employment is the 'implied term of mutual trust and confidence.' This is the implied term that the parties will not, without reasonable and proper cause, conduct themselves in a manner which is calculated or likely to destroy or seriously damage the relationship of mutual trust and confidence between employer and employee (see Malik and Mahmud v Bank of Credit and Commerce International SA [1997] ICR 606). Any breach of the implied term of mutual trust and confidence will be considered to be a fundamental breach of contract given the central and fundamental nature of this implied term to the existence of the contract of employment.

162. As stated in Woods v WM Car Services (Peterborough) [1981]ICR 666:

"To constitute a breach of this implied term, it is not necessary to show that the employer intended any repudiation of the contract: the tribunal's function is to look at the employer's conduct as a whole and determine whether it is such that its effect, judged reasonably and sensibly, is such that the employee cannot be expected to put up with it."

163. Reasonableness of the respondent's actions may be evidence as to whether there is a fundamental breach (and a constructive dismissal) but the test nevertheless remains contractual (Lewis v Motorworld Garages Ltd [1985] IRLR 465, also Western Excavating (ECC) Ltd v Sharp [1978] ICR 221). It is not enough for the employee to leave merely because the employer has acted unreasonably; its conduct must amount to a breach of the contract of employment.

164. Where it is alleged that an employee resigned in response to a 'last straw' event London Borough of Waltham Forrest v Omilaju [2005] IRLR 35 reminds us (per Dyson LJ):

"14 The following basic propositions of law can be derived from the authorities:

1. The test for constructive dismissal is whether the employer's actions or conduct amounted to a repudiatory breach of the contract of employment.
2. It is an implied term of any contract of employment that the employer shall not without reasonable and proper cause conduct itself in a manner calculated or likely to destroy or seriously damage the relationship of mutual trust and confidence between employer and employee: see, for example, Malik v Bank of Credit and Commerce International …
3. Any breach of the implied term of mutual trust and confidence will amount to a repudiation of the contract…The very essence of the breach of the implied term is that it is calculated or likely to destroy or seriously damage the relationship.
4. The test of whether there has been a breach of the implied term of mutual trust and confidence is objective. As Lord Nicholls said in Mahmud at page 610H, the conduct relied on as constituting the breach must 'impinge on the relationship in the sense that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer.'
5. A relatively minor act may be sufficient to entitle the employee to resign and leave his employment if it is the last straw in a series of incidents. It is well put at para [480] in Harvey on Industrial Relations and Employment Law:

'Many of the constructive dismissal cases which arise from the undermining of trust and confidence will involve the employee leaving in response to a course of conduct carried on over a period of time. The particular incident which causes the employee to leave may in itself be insufficient to justify his taking that action, but when viewed against a background of such incidents it may be considered sufficient by the courts to warrant their treating the resignation as a constructive dismissal. It may be the "last straw" which causes the employee to terminate a deteriorating relationship."

…

15. The last straw principle has been explained in a number of cases, perhaps most clearly in Lewis v Motorworld Garages Ltd [1986] ICR 157. Neill LJ said (p167C) that the repudiatory conduct may consist of a series of acts or incidents, some of them perhaps quite trivial, which cumulatively amount to a repudiatory breach of the implied term of trust and confidence. Glidewell LJ said at p169F: '(3) The breach of this implied obligation of trust and confidence may consist of a series of actions on the part of the employer which cumulatively amount to a breach of the term, though each individual incident may not do so. In particular, in such a case the last action of the employer which leads to the employee leaving need not itself be a breach of contract; the question is, does the cumulative series of acts taken together amount to a breach of the implied term?...This is the "last straw" situation.

16. Although the final straw may be relatively insignificant, it must not be utterly trivial: the principle that the law is not concerned with very small things (more elegantly expressed in the maxim "de minimis non curat lex") is of general application.

…

19. ….The quality that the final straw must have is that it should be an act in a series whose cumulative effect is to amount to a breach of the implied term. I do not use the phrase "an act in a series" in a precise or technical sense. The act does not have to be of the same character as the earlier acts. Its essential quality is that, when taken in conjunction with the earlier acts on which the employee relies, it amounts to a breach of the implied term of trust and confidence. It must contribute something to that breach, although what it adds may be relatively insignificant.

20. I see no need to characterise the final straw as "unreasonable" or "blameworthy" conduct. It may be true that an act which is the last in a series of acts which, taken together, amounts to a breach of the implied term of trust and confidence will usually be unreasonable and, perhaps, even blameworthy. But, viewed in isolation, the final straw may not always be unreasonable, still less blameworthy. Nor do I see any reason why it should be. The only question is whether the final straw is the last in a series of acts or incidents which cumulatively amount to a repudiation of the contract by the employer. The last straw must contribute, however slightly, to the breach of the implied term of trust and confidence. Some unreasonable behaviour may be so unrelated to the obligation of trust and confidence that it lacks the essential quality to which I have referred.

21. If the final straw is not capable of contributing to a series of earlier acts which cumulatively amount to a breach of the implied term of trust and confidence, there is no need to examine the earlier history to see whether the alleged final straw does in fact have that effect. Suppose that an employer has committed a series of acts which amount to a breach of the implied term of trust and confidence, but the employee does not resign his employment. Instead, he soldiers on and affirms the contract. He cannot subsequently rely on these acts to justify a constructive dismissal unless he can point to a later act which enables him to do so. If the later act on which he seeks to rely is entirely innocuous, it is not necessary to examine the earlier conduct in order to

determine that the later act does not permit the employee to invoke the final straw principle."

165. When resigning and claiming to have been constructively dismissed, an employee who is a victim of a continuing cumulative breach of the implied term of trust and confidence 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 (Kaur v Leeds Teaching Hospitals NHS Trust [2019] ICR 1.)

166. When considering the issue of affirmation, mere delay by itself does not constitute affirmation but if it is prolonged it may be evidence of implied affirmation Chindove v William Morrisons Supermarket [2014] 3 WLUK 752 The principle is whether the employee has demonstrated that he has made the choice. He will do so by conduct; generally by continuing to work in the job from which he need not, if he accepted the employer's repudiation as discharging him from his obligations, have had to do. He may affirm a continuation of the contract in other ways: by what he says, by what he does, by communications which show that he intends the contract to continue. But the issue is essentially one of conduct and not of time. There is no automatic time; all depends upon the context. Part of that context is the employee's position. An important part of the context is whether the employee was actually at work, so that it could be concluded that he was honouring his contract and continuing to do so in a way which was inconsistent with his deciding to go. Where an employee is sick and not working, that observation does not have the same force.

167. Where there is a constructive dismissal which is not for an automatically unfair reason (such as a protected disclosure), the dismissal may nevertheless be found to be a fair dismissal if the respondent can show that the reason for dismissal was one of the potentially fair reasons permitted by the Employment Rights Act 1996. In the context of a constructive dismissal, the Tribunal will be concerned with the reason, or principal reason, for the fundamental breach of contract. If a potentially fair reason for dismissal is established, then the Tribunal will go on to consider whether the dismissal was fair, applying the range of reasonable responses test to both the substance of the dismissal and the procedure adopted by the respondent. The Tribunal will consider whether, applying the test of fairness in section 98(4), the respondent acted reasonably in all the circumstances in treating that reason as sufficient reason to dismiss the claimant.

168. The respondent in this case did not seek to argue that there was a fair reason for any dismissal, rather that there was no constructive dismissal in the first place.

Conclusions

Disability

169. The respondent has conceded that the claimant was disabled by reason of bipolar disorder at all relevant periods for the purposes of this claim. The impairment of 'complex trauma' was not conceded.

170. I have reviewed the evidence given by the claimant in relation to complex trauma. It is contained primarily in her disability impact statement [95]. The claimant's statement largely talks about the impact of the two impairments taken together, rather than separating them out. For example, she lists the medication she has taken and the psychological therapies she has received but does not specify if the treatments were addressing one or other impairment, or both. In essence she puts two different labels on the same constellation of symptoms and experiences. It is impossible to attribute the substantial adverse effects on day to day activities that she describes to one label/ impairment rather than the other. In essence the two labelled impairments stand or fall together.

171. Given the difficulties in separating out the effects of the two different labelled impairments, and to the extent that the evidence establishes that bipolar was a disability, I find that it also establishes that 'complex trauma' was a disability in this case (in terms of substantial adverse effect on day to day activities and the requisite longevity.) However, in reality, for the purposes of the discrimination claim the two impairments need to be considered together. It may therefore be, as suggested by the respondent, that the additional disability of 'complex trauma' does not add anything of substance to the claimant's case on liability. It does not take matters further forward. If a complaint succeeds based on bipolar disorder it does not matter whether it also succeeds on the basis of 'complex trauma.' If the complaint fails when examined 'through the lens' of bipolar disorder it is unlikely to succeed when examined on the basis of 'complex trauma.'

172. The claimant's medical records disclose that the bipolar diagnosis dates back to August 2012. The references to PTSD go back to 2014 with some suicidal ideation from 2012. The trauma seems likely to have arisen from traumatic experiences whilst still a child. I am not satisfied that the PTSD adds a great deal to the discrimination claim and so go no further in making findings in relation to it. Neither legal representative addressed me on it.

173. The respondent has also conceded knowledge of the claimant's bipolar disability but not knowledge of disability by reason of complex trauma.

The reasonable adjustments/auxiliary service claim

174. The Scott Schedule of reasonable adjustments sets out the claimant's case in numbered sections. I have therefore addressed each aspect of the claim by reference to the numbering in the Scott Schedule (i.e. RA1, RA2 and so on.)

RA1: Wellness Action Plan "WAP"

175. This complaint is framed as the failure to provide an auxiliary service, namely the formulation of a wellness action plan. The claimant says that this was recommended but never carried out with her. She argues that this put her at a substantial disadvantage as triggers to the deterioration of her mental health would not be identified. The claimant says that if the triggers had been identified then agreement could have been reached about how the triggers could be avoided in the workplace and appropriate action could

be taken in the event of an acute issue. The auxiliary service is referred to in the Scott Schedule as "meet with the claimant and formulate a Wellness Action Plan."

176. I accept that, without a meeting to formulate a WAP, the claimant might lose an opportunity to identify adjustments and plan to make changes, to her potential disadvantage. However, we cannot know what the outcome of such a meeting would have been and whether any substantive measures or adjustments would have been identified for the claimant as a result of the WAP process.

177. The respondent submitted that meeting and formulating a WAP is not capable of constituting an auxiliary service within the meaning of the Act. It noted that the examples given in the EHRC Code are of interpreters and support workers. Formulating a plan is not, said the respondent, similar in nature to such auxiliary services.

178. I accept that the proposed auxiliary service is different in nature from the examples given in the Code. It is a 'one off' meeting rather than the provision of a support service. An auxiliary service, such as an interpreter, is provided on an ongoing basis and alleviates the disadvantage 'in real time' whilst the employee is at work. It enables the worker to operate on a more level playing field comparable to that of their non-disabled colleagues. The auxiliary service, or assistance, actually alleviates the disadvantage itself. The meeting to formula a WAP was not, in itself, going to alleviate the disadvantage and facilitate the claimant carrying out her job role. It would not necessarily put her on a more level playing field. Rather, such a meeting to formulate a WAP is akin to a consultation process. The end result *might* be the identification of reasonable adjustments. Those identified reasonable adjustments may alleviate the disadvantage but the meeting and the formulation of the WAP itself do not.

179. I am satisfied that the proposed meeting to formulate a WAP is not properly considered as an auxiliary service within the meaning of the Act. I find that RA1 is more properly formulated as a reasonable adjustment claim under section 20(3) rather than an auxiliary service claim under section 20(5) and (11). The claimant is not asking for provision of a service. She is asking for a meeting to formulate a plan. That is not a service which is in any sense ongoing or which, itself, removes disadvantage suffered by the claimant at work. Indeed, it is entirely possible that any such meeting might conclude that no further or additional reasonable adjustments were required.

180. Even if it were accepted that this was an auxiliary service, it cannot be said that 'but for' the provision of the meeting to formulate the WAP the claimant would be at a substantial disadvantage. This is because the WAP itself does not remove or alleviate the disadvantage. Rather, it *may* identify ways of doing so by way of other adjustments. Then again, it may not identify anything further which the employer can do by way of adjustments. A WAP without subsequent implementation of further specific measures does nothing to help.

181. The claimant sought to submit that the very process of going through the meeting to formulate a WAP would, in itself, alleviate her anxiety. It would

therefore alleviate the disadvantage or at least help to do so. That submission does have some attraction until one remembers that it depends on *how* the meeting was conducted and what the *outcome* of the meeting was. If the claimant was unhappy or dissatisfied with the substance or manner of the discussion I can well anticipate that it would do nothing to alleviate her symptoms or alleviate her disadvantage. If she reacted badly to the manager's approach or manner during the meeting, it would not be beneficial. If the discussion identified measures which the claimant wanted but the respondent felt unable to implement, this would only increase the claimant's dissatisfaction and emotional/psychological symptoms (even if the respondent's approach in the meeting and to the proposals was objectively reasonable.) Only a meeting which went well (from the claimant's subjective point of view) would alleviate the disadvantage. This all demonstrates that the 'but for' test in the section is not satisfied. One cannot say that 'but for' the provision of the WAP meeting and formulation of a WAP, the claimant would be at a substantial disadvantage compared with the relevant comparator.

182. Further, or alternatively, the case law on reasonable adjustments under section 20(3) (such as Tarbuck) indicates that a consultation is not a reasonable adjustment as it does not, itself, alleviate the disadvantage. Rather, it may result in the *identification* of reasonable adjustments and raise an employer's awareness and increase their knowledge of the potential steps that it might be reasonable to take. Whilst I appreciate that the claimant pursues this complaint as an auxiliary service rather than a reasonable adjustment flowing from a PCP, I consider that similar principles apply in both subsections. The aim of all the subsections of section 20 is to make adjustments to remove or alleviate the substantial disadvantage suffered by the disabled employee compared to the non-disabled comparator. I consider that if a consultation-type measure is not a reasonable adjustment under section 20(3) for the reasons set out in the case law (relating to it not alleviating the disadvantage), then the same principle is applicable in relation to the measure if it is properly to be described as an auxiliary service under section 20(5). That is the mischief at which section 20, as a whole, is aimed.

183. I am satisfied that the meeting to formulate a WAP was, in substance, a consultation measure such that the principles in Tarbuck etc. would be applicable. A further, subsidiary point is that if I were to hold otherwise and decide that the Tarbuck principles do not apply in auxiliary service cases, the principles enunciated in Tarbuck et al could be simply circumvented by choosing to characterise a case as an 'auxiliary aid/service' case rather than a reasonable adjustment claim.

184. I am satisfied that, whether considered under section 20(3) or section 20(5), the complaint at RA1 does not succeed. For the above reasons I have concluded that the complaint at RA1 is not well founded and must be dismissed.

RA2: Working throughout the day without short breaks.

185. The claimant tried to maintain in her evidence that she had to be available for clients and managers at all times so that it was impossible for her to take the breaks. She maintained that there was no permission to have flexible and short breaks. It wasn't possible to just take breaks, it would need to be structured.

186. Taking all the evidence in the around I do not accept the claimant's evidence on this issue as truly reflecting what happened in this case. In reality, the claimant was in a senior, professional position. Short ad hoc breaks would not be monitored or policed by the employer at this level of seniority in the workforce. A key aspect of a senior position within a company is the greater autonomy that goes hand in hand with higher seniority and greater responsibility. The claimant was not working in the sort of workplace (such as, perhaps, a call centre) where short breaks are routinely monitored or policed, perhaps as part of an employee's KPIs. The evidential picture that the claimant sought to paint was unrealistic given the nature of the workplace and of the work that she did. It also did not fit well with a workplace which adopted a hybrid working model. If employees could routinely work from home for some of the time, this does not sit well with the degree of managerial oversight which would be required to police and enforce strict rules about breaks.

187. I am not satisfied that the claimant has proved her factual case in this regard. When it was put to the claimant that nobody stopped her from going on a break, she sought to turn this around and say that she was not actively given permission and therefore she did not take the breaks. If this is genuinely what the claimant thought was necessary then she was labouring under a misapprehension. Further, it is not clear how her managers would know that this is what she believed. Without some awareness of the claimant's belief, the managers would not be in a position to correct the misunderstanding so that she took the breaks she wanted .

188. Further, if one refers to the gaps in time between emails sent to the claimant (e.g. several hours at [346]), the claimant was not automatically 'chased up' for a response if she failed to respond within minutes of an email being sent to her. The claimant was given hours to respond before her reply is chased. This suggests that the claimant could have taken a short break or breaks during the intervening period without there being any problem. This pattern of communication is much more consistent with the respondent <u>not</u> monitoring or policing her breaks in the way the claimant suggests. It indicates quite a relaxed approach to the claimant managing her own working time.

189. On balance, I prefer the respondent's evidence in relation to this aspect of the case. The factual underpinnings of this aspect of the claimant's case are not proven. The claimant may have felt that she needed permission to take a break in order to feel reassured in doing so but that feeling was not caused by the conduct or approach of anyone within the respondent's organisation or management team.

190. In light of the above I am not satisfied that the claimant has established the PCP that she relies on at RA2. There was no PCP of working throughout the working day without short breaks. It therefore follows that I cannot

establish that she was put at a substantial disadvantage as regards her mental health as a result of such a PCP. Furthermore, for the reasons summarised above, I am satisfied that the claimant could, in fact, take short breaks whenever she wanted and that nobody would have monitored this or taken her to task about it. This was part and parcel of the seniority of her role. The adjustment was, in substance, already in place. She could take short breaks and must have realised this given the nature of the role and all the relevant circumstances of the case.

191. In light of the above I find that the complaint at RA2 is not well founded and it is dismissed.

RA3: To work throughout the working day without flexible breaks.

192. In reality RA2 and RA3 are so closely related as to be two sides of the same coin. There is no material difference between the two complaints. For the same reasons as set out above, I find that the claimant has not proved the existence of the pleaded PCP on the facts of this case. The factual underpinning of the complaint is absent. Consequently, she has not proved the related substantial disadvantage. The respondent has, de facto, made the adjustment contended for. The claimant was able to take the flexible breaks without let or hindrance. The claimant was not micromanaged. She was a member of the SLT and was given commensurate autonomy.

193. For those reasons I conclude that the complaint at RA3 is not well founded and is dismissed.

RA4: Not attending appointments/treatment in work time or not to attend such appointments/sessions without permission.

194. During cross examination of Mr Webster, Mr Culshaw confirmed that the claimant was withdrawing this complaint. I have therefore dismissed that complaint upon withdrawal.

RA5: Regular meetings between the claimant and management, at least weekly for the following four weeks to ensure that she was coping well with her duties and settling back into the workplace.

195. In her oral evidence the claimant did not accept that such meetings took place. She contended that any weekly meetings were not of this nature but related to very specific tasks, things that were additional to her normal workload. The claimant did not agree that the meetings with Mr Webster were weekly or regular. Mr Webster maintained that such meetings *did* take place and that these were part of his one-to-ones with the claimant. In reality this is likely to have been part of his line management responsibilities in any event but was more formalised because of the claimant's request for reasonable adjustments.

196. On balance, I preferred the evidence of the respondent on this issue. I find that these regular one-to-one meetings *did* take place and that they could

be used to address any issues of concern for the claimant, whether they were specific matters or more general matters. This reflected the fact that the claimant and Mr Webster actually had a good working relationship, as was demonstrated in some of the contemporaneous documents. That working relationship was developed, at least in part, through regular discussions and meetings, both planned and ad hoc. The claimant sought to make rigid distinctions and suggest that meetings were held for very specific issues and not for more general issues. I conclude that her position has an air of unreality about it. In reality, my finding is that the claimant and Mr Webster were regularly in contact and actually had a good working relationship. I accept that he had weekly one-to-one meetings with the claimant, as he did with others that he line-managed. Those meetings could be used to address matters of concern to the claimant and I do not accept that she was precluded from raising concerns
at these meetings.

197. This part of the claimant's case is therefore not established on the facts. The auxiliary service of regular meetings was provided and the claimant was able to call upon Mr Webster's support as and when needed. Consequently, the component parts of the legal complaint are not made out. This complaint is dismissed.

RA6: Respondent to conduct a stress risk assessment.

198. The claimant completed her part of this document but wanted management input. The email attaching the blank document is dated 1 November and suggests that Mr Webster was attempting to sort this out with her. Mr Webster says that he sat down with the claimant to do this but cannot find the product of that meeting. The claimant says that this never happened. She says she did not get management input. I am inclined to accept that there may have been discussions between the two of them on the subject but if a finalised risk assessment was not produced, retained and implemented, then the risk assessment has, to all intents and purposes, not been done.

199. This complaint is very similar to that at RA1 concerning the WAP. The respondent seeks to run the same argument i.e. that the risk assessment itself is not a reasonable adjustment but the implementation of any adjustments identified by the stress risk assessment *might* be.

200. The sample risk assessment in the bundle [374] is much more 'tick box' in nature. It is a risk assessment in the traditional sense and less of a template for a supported managerial conversation which might reduce anxiety and build management relationships. There is nothing to suggest that it has to be completed in person, alongside the manager. Hence Mr Webster says in his email that the claimant could fill it in first and they could review it together.

201. The form asks a series of standardised questions in relation to potential causes of stress. The person filling in the form states whether particular matters have been a problem for them. There is a further column which asks what can be done about the problem and asks whether the employer can make any adjustments. It is, in effect, a consultation exercise and provides

a written document where the employee can request adjustments. It does not itself propose solutions or adjustments. Depending on the circumstances of the case it may or may not lead to the identification of potential reasonable adjustments. If adjustments are identified it does not automatically follow that the respondent will agree to implement them. They may or may not be reasonable adjustments when viewed in their proper context. In short, the mere process of completing the risk assessment would not necessarily have got the claimant what she wanted. Nor is there any evidence that, 'but for' completion of the risk assessment, there was a significant risk of a negative impact on the claimant's mental health. There is no medical evidence to assist me in concluding that the completion of the risk assessment form would itself remove mental health disadvantage. Once again, any impact on the claimant's mental health would be dependent on the risk assessment resulting in concrete proposals for adjustments which the respondent then implemented. The risk assessment would have to result in the claimant obtaining the adjustments that *she* considered necessary before it would alleviate any risks to her mental health.

202. In essence the same reasoning as that set out above in relation to RA1 (the WAP) is equally applicable to RA6 (the stress risk assessment.) I repeat and rely upon the matters set out above in relation to RA1 in relation to RA6. I am not satisfied that RA6 (the risk assessment) is properly characterised as an auxiliary service for the reasons already set out above. Whether this complaint is looked at in relation to a PCP or as an auxiliary service claim, the completion of the risk assessment did not itself amount to a reasonable adjustment in all the circumstances. It was effectively a consultation exercise to potentially identify reasonable adjustments rather than a being a reasonable adjustment itself. The principles in Tarbuck would apply here also.

203. On the above basis I find that the complaint at RA6 is not well founded and should be dismissed.

RA7: wellness action plan

204. This is in essence a duplication of RA1. It is therefore not necessary to consider it separately. It is dismissed as a duplicate of RA1.

RA8: Provide the claimant with a disability support worker/advocate.

205. During cross examination of Mr Webster it was confirmed that the claimant was withdrawing this complaint. It has therefore been dismissed upon withdrawal.

RA9: Provide the claimant with the assistance of a coach able to support her in better understanding and overcoming mental and communication barriers the claimant experienced in the workplace.

206. The claimant contends that the respondent should have provided her with the assistance of a coach able to support her in better understanding and overcoming mental and communication barriers that the claimant experienced in the workplace. During cross examination respondent's counsel queried whether there was a difference between a coach and a disability support worker. Were they one and the same thing? The claimant's view was that a support worker would help her and the respondent to ensure that support measures were put in place regarding wellbeing. By contrast, she felt that a coach would look at how the claimant would be doing the job day-to-day and help her to overcome any challenges, such as communications barriers. In her mind the coach would be work-focused, whereas the disability support worker would be wellbeing-focused. It is true to say that the claimant may not have made this distinction abundantly clear prior to the hearing. However, they are related issues and can properly be addressed on the available evidence.

207. Mr Webster confirmed, in the course of cross examination, that there was a discussion about a coach during the meeting on 15 September. He was referring to Boo Coaching. Boo Coaching were being looked at to support the SLT. They would provide coaching on leadership, behavioural frameworks, OMG meetings etc. The claimant was aware of this. However, he accepted that this coaching was more general across the team, it was not specific to the claimant's situation, albeit she might benefit from the results of such coaching.

208. The respondent now accepts that this was properly to be considered as an auxiliary service. However, they query whether a coach would have removed the substantial disadvantage. It was posited that this was largely a matter of medical evidence and there was no medical evidence available to support the claimant's position. It was also noted that the occupational health reports do not recommend a coach and do not suggest that one is necessary.

209. In any event, the claimant requested a coach and steps were taken to acquire one. This could not be done immediately. There was no pre-existing resource that was 'on tap' and available to be utilized straight away. It is apparent that Boo Coaching were due to be brought into the organisation. Whilst they were initially to address issues across the SLT, I accept that they could also play a role on a one-to-one basis for the claimant, as explained by Ms Senior. They were being recruited from November onwards but the claimant left her employment at this stage.

210. In light of the above, I am not convinced that the claimant has proved that she was put at the alleged substantial disadvantage as a result of the absence of the auxiliary service. In the absence of an occupational health recommendation or some other form of medical evidence, I cannot be satisfied what difference the coach would make to the claimant's disability or the effects of it. I cannot be satisfied there was the necessary substantial disadvantage. I cannot be satisfied that, in the absence of the coaching service, there was a significant risk of a negative impact on the claimant's mental health as compared to non-disabled comparators.

211. If I am wrong about that and the respondent *did* have a duty to provide a

coach, I am satisfied that the respondent has in fact discharged that duty on the facts of this case. This issue was first raised by the claimant following her absence in July. It was discussed at later meetings and steps were taken to engage Boo Coaching. This happened in a relatively short period of time and the claimant then resigned before the plans could come to fruition. In light of this, if the respondent was under a duty to provide this service, it had taken reasonable steps within a reasonable time frame to discharge the duty. It was not in a position to buy these services in any quicker 'off the peg.' It could not reasonably be expected to obtain this service sooner than it in fact did. It had taken such steps as were reasonable.

212. For the above reasons I conclude that this complaint is not well founded and should be dismissed.

RA10: Respondent to provide the claimant with a 'workplace buddy' or point of contact to whom the claimant could speak when she felt she was struggling for support.

213. During the cross examination of Mr Webster it was confirmed that the claimant had decided to withdraw this allegation. It has therefore been dismissed upon withdrawal.

RA11: Respondent to run a workshop and a training course for managers to increase their understanding of employees with mental health needs.

214. I am satisfied that the respondent evinced an intention to find suitable training and roll it out across the organisation but did not have adequate time to do this before the claimant resigned. The respondent could have communicated this more clearly to the claimant and reassured her that it would definitely go ahead, but in reality the intention was there and suitable training was being identified. The claimant accepted that she was told that it would be looked into less than a month before she resigned.

215. Mr Webster confirmed that Annette Smith was looking to see what training was available but the claimant left her employment before anything was found. This search for workshops is not documented within the bundle. The claimant would have no way of knowing that the respondent was in fact following up on its plans in this regard, as previously discussed at the meeting on 15 September. I also note that Mr Webster had started to address the behaviours of SLT members both during the meeting on 6 October and in an email on 14 October .

216. I am satisfied that provision of such workshops and training to managers to increase their understanding of employees with mental health needs is likely to have reduced the claimant's overall anxiety and stress levels. She is likely to have been reassured that she would be taken seriously and would be properly assisted, supported and listened to. To that extent, I accept that it would have removed a substantial disadvantage for the claimant and would have constituted a reasonable adjustment. However, this is not something that could be sourced and implemented straight away. Whilst there is relatively little documentary evidence to demonstrate what steps were being

taken, I accept the evidence given by the respondent's witnesses that Annette Smith of HR was looking into getting this training. Once again, the claimant resigned shortly after this became an issue for the respondent to address. In essence the respondent ran out of time to provide this before the claimant left the organisation.

217. For those reasons I am satisfied that the respondent did discharge its duty to make adjustments/provide the auxiliary service as quickly as was reasonable in all the circumstances. It discharged its duty to take reasonable steps to provide the auxiliary service within a reasonable timeframe. That aspect of the claimant's case is not well founded and is therefore dismissed.

RA12: Having Wednesdays as the claimant's non-working day in her four day working week.

218. During the cross examination of Mr Webster the claimant withdrew this allegation. It has been dismissed upon withdrawal.

RA13: Claimant to be able to take regular short breaks or 'time outs' when needed.

219. RA13 is effectively the same as RA2 and RA3 using slightly modified terminology. The complaint fails for the same reasons stated above in relation to RA2 and RA3. I repeat and rely on the observations set out above. For the same reasons, this aspect of the claimant's case also fails and is dismissed.

RA14: Permitting the claimant to work from home one day per week.

220. The claimant maintained that the ability to work one day per week from home was only a temporary measure and that, after the Covid pandemic, the business wanted the SLT to be back working from the office. The claimant's assertion was that she did not get permanent permission to work from home one day per week and that this unnecessarily increased her anxiety as she could not be sure that she would be allowed to continue to do this. Again, this is not the way that the claimant's Scott Schedule came across to the objective reader. She does not say that what she was requesting was the formalisation of a temporary/informal practice which was already in place.

221. In oral evidence the claimant sought to suggest that she had to *ask* for permission to work from home from week to week but that was not part of her witness statement. Under questioning, the claimant steadfastly maintained that it was an underlying assumption that she had to work all of her hours from the office. However, there was nothing to that effect in her witness statement or in the bundle.

222. The claimant's evidence to the Tribunal on this issue was unreliable and I prefer the evidence of the respondent's witnesses on the point. In particular,

Mr Webster is no longer employed by the respondent and so owes the respondent nothing. He has no reason to lie about it when he says that hybrid working was in place and that three days per week working in the office would have been acceptable amongst the SLT workforce as a whole, not just for the claimant.

223. During cross examination Mr Webster also maintained that working from home one day per week was agreed in principle during the discussion on 15 September. The respondent was flexible as to which day the claimant chose. There was no set working from home day which would be adhered to every week. He was unable to say why this was not recorded in Annette Smith's record of the meeting. However, he made the valid point that he could see that this practice would help the claimant and her health and he had no reason not to agree to it then and there during the meeting. In essence, it was an easy thing for him to agree to.

224. In light of my findings of fact the claimant has not established the PCP contended for and has not established the failure to provide the requested auxiliary service. The reality is the claimant *could* work from home in the way that she alleges she should have been able to do. She was able to work from home one day per week. In those circumstances the complaint at RA14 fails and is dismissed.

RA15: Respondent to provide written assurances to the claimant that a formal policy will be established, communicated and enforced outlining appropriate and professional conduct in meetings and more broadly between colleagues.

225. During cross examination the claimant confirmed that the section of this complaint which referred to limiting the number of people attending meetings with the claimant to three people was withdrawn. The remainder of the allegation in the Scott Schedule was pursued.

226. In cross examination Mr Webster confirmed that two measures were taken which dealt with this complaint. First, he spoke to the whole SLT about behaviours (see notes of meeting on 6 October). Second, the respondent engaged with Boo Coaching to address this. He maintained that he never saw the behaviours towards the claimant that she alleged.

227. This part of the claimant's case seems to be raised at paragraph 8 of the claimant's letter at [364.] The claimant accepted that Mr Webster sent an email to the SLT about appropriate behaviour [740], although she says that she did not see it herself. It was emailed to her. The claimant says that there was no conversation with her to say that this was going to happen or to 'connect the dots' for her and show her that this was what she had asked for.

228. In my view the claimant's expectation is somewhat unrealistic. She is asking for the adjustment to be made and also for a direct and specific communication to her to alert her to the fact that the requested step is being taken and to point out that this is the adjustment. This is an overly formalistic approach and it is unreasonable to expect this extra layer of communication

from the respondent in the circumstances. The respondent has done what was asked of it and the claimant would have realised that if she had read the emails that were sent to her. The claimant says that this was not enforced but does not take account of the fact that there was due to be a follow up meeting on 11 November which could not go ahead because of her absence. The claimant then decided to resign.

229. The standards that the claimant seeks to impose on the respondent are too high in terms of an expected timeframe for action. It is clear that the respondent had taken this issue in hand and was in the process of delivering on its assurances. The claimant resigned before this could come to complete fruition. This is not a case where the employer failed to act within a reasonable time frame.

230. I also note that this issue of 'behaviours' etc. was raised specifically at the SLT meeting on 6 October when the claimant was present. She would have been aware that the respondent was acting on this issue, as requested. The claimant sought to suggest that she did not think Boo Coaching were dealing with her issues, just outward facing communications etc. Again, that evidence had an air of unreality about it. Having reviewed the available evidence I am satisfied that the discission about Boo Coaching and the behavioural framework recorded in these minutes was quite clearly part of the respondent's attempts to make adjustments for the claimant and address her outstanding concerns.

231. In light of the above I am not satisfied that the claimant has established the relevant PCP for this complaint. There is no indication that staff attended meetings without an awareness of the standards of behaviour expected of them. Furthermore, the proposed adjustments were made: written assurances *were* given, an email was sent, and Boo Coaching were engaged to address this issue in terms of policy and behavioural frameworks.

232. In light of the above this aspect of the case is not well founded and is dismissed.

<u>RA16: Respondent to agree for the claimant to be able to leave meetings where she was experiencing stress caused by the conduct of colleagues.</u>

233. The respondent's position is that if the claimant was feeling stressed there was nothing to stop her from leaving the meeting. The claimant said that it was not clear that this would be okay and she was looking for assurance that this would be acceptable. In fact, Mr Webster went so far as to coach the claimant as to what she could say as an excuse to leave (e.g. getting a glass of water.) The claimant disputed that this took place and suggested it was not realistic to leave the whole of a meeting in order to get a glass of water. This is perhaps missing the point or the significance of the suggestion. The very fact that Mr Webster would come up with such a strategy for the claimant suggested that she could rest assured that he would not have a problem with her leaving a meeting because she was stressed. He was her line manager. She should have been able to take

some reassurance from him in this way. The claimant denied that the conversation took place. I have no reason to believe that Mr Webster was lying about this, particularly given that they worked well together generally speaking. I prefer the respondent's evidence on this issue.

234. Mr Webster maintained that he did discuss exit strategies with her and that people leave meetings all the time. He noted that the claimant's concern was that she did not want to be perceived as leaving a meeting because she was stressed. Further, the claimant effectively accepted in her evidence that there was no such PCP in place.

235. In light of the above I am satisfied that the respondent made the requested adjustment. The claimant knew that she could leave meeting when she needed to and exit strategies were actually discussed between the claimant and Mr Webster.

236. Consequently, this aspect of the claimant's claim fails and is dismissed.

RA17: Respondent to provide the claimant with ongoing assurance that any critique of her conduct, including her behaviour and work, is conveyed in a private meeting and conducted in an understanding and professional way.

237. The claimant accepted in cross examination that there was no policy of criticizing staff or doing this in public and that is not what she intended to convey in this part of the Scott Schedule. Mr Webster confirmed that he did what he could to support and protect the claimant in meetings. He would look at agendas and reports and try to 'second guess' what might happen at meetings as a result. He would then try and support her during the meeting. In effect there was pre meeting preparation.

238. In light of the findings of fact I am not satisfied that the claimant has established the PCP in this part of the case. There was no PCP to convey criticism of staff in front of colleagues.

239. In any event, I am satisfied that, in reality, the respondent did what it could to make adjustments to ensure that critiques were handled in a sensitive way and that the claimant was not subjected to unnecessary criticism in public. Given the nature of the claimant's role within the SLT and the senior level at which the employees were operating, there still had to be a free and fair exchange of views and a discussion within SLT and OMG meetings. Not everything could be pre planned so as to protect the claimant. This would not be a reasonable requirement. It would be too much of an impediment to the proper and efficient management of the business.

240. Furthermore, I am satisfied that what the claimant viewed as a critique might objectively be seen as a difference of opinion or a discussion point. Whilst the claimant's mental health should be protected if reasonably practicable, if the claimant was upset by a disagreement during a meeting this may be due to her own sensitivity levels rather because of a breach of the respondent's duty to make *reasonable* adjustments. In my view, the balance

and assessment of reasonableness favours the respondent in this part of the claimant's claim. There is no evidence that the claimant was ever given a critique of her work in a way which was not private or professional or which breached a duty to make reasonable adjustments.

241. In light of the foregoing this part of the claimant's claim fails and is dismissed.

RA18: Respondent to provide the claimant with advanced warning of meetings.

242. In cross examination it was confirmed that the claimant has withdrawn this aspect of the claim. It has therefore been dismissed on withdrawal.

RA19: Regarding meetings, the claimant to be provided with the opportunity to ask questions, understand the issues raised and the opportunity to prepare responses.

243. In cross examination it was confirmed that the claimant has withdrawn this aspect of the claim. It has therefore been dismissed on withdrawal.

RA20: Respondent to provide the claimant with clarity as to her job description and responsibilities. Specifically update the written job description to reflect her core role.

244. I am not satisfied that there is any evidence that staff worked without up to date job descriptions. The claimant's job description was up to date. The only aspect to be completed was the pay benchmarking process and this would have nothing to do with adjustments for the claimant's disability. It did not relate to the nature of the role and responsibilities.

245. Even if the PCP had been established, I am satisfied that the claimant did in fact have sufficient clarity as to her job description and responsibilities. To the extent that changes needed to be made, these were under active discussion with Mr Webster and could not be finalised in a vacuum. Some matters needed to be considered as part of a review of the responsibilities of the whole team.

246. Mr Webster understood this allegation as being less a reference to mental health and more a reference to being overworked. He maintained that they did have discussions after 15 September. The claimant wanted admin support. He said that they discussed the organisation and where particular tasks best fitted. He confirmed that he needed to think through the implications across the organisation. He asserted that the claimant was aware that that was going on. He accepted that he did not get round to putting this in writing before the claimant resigned but he was sure that the claimant was aware that he was doing a review of the team at the time. He made the valid point that this could not be done wholly in isolation. He would still have to consult with those employees who took on parts of the claimant's previous tasks/workload. He was satisfied that she knew what her role was.

247. In light of the above, I am not satisfied that the complaint has been established on the facts. The component parts of the cause of action are not established. The respondent had discharged its duties in relation to the job description, role and responsibilities. In light of this, this part of the claim must fail and be dismissed.

RA21: For the immediate future, claimant's work tasks are limited to those relating specifically to this role.

248. This and RA 22, 23 and 25 relate to the claimant not being asked to work outside of the core tasks in her job description. The adjustment is essentially to make sure that the claimant's job is clarified and she is given clear instructions in order to ensure that the workload fits the core role. The claimant wanted her tasks to be limited to those specific to her role. The claimant accepted this in cross examination.

249. I am satisfied that this was something that Mr Webster was in the middle of addressing with the claimant. There had been discussions about the role and he was intending to create an organogram. This may not have been finished by the time that the claimant resigned but I do not think that the respondent had dragged its heels on this. Mr Webster was 'on the case'. Nor am I satisfied that the reference to an organogram meant that Mr Webster was delaying this issue until the whole organisation was reviewed. He was addressing the claimant's position individually but intended to follow this up by putting it in its proper context. In reality, the clarification of the claimant's job role would necessarily have a knock on effect on others within the structure. If a task did not 'belong' to the claimant's role, whose was it? (Mr Webster had already identified that staff in the SLT would attempt to 'pass the buck' and say something was not part of their job.) This needed to be clarified to make sure that all work was covered. Hence the need to look at the whole organisation and not just review the claimant's post in a vacuum.

250. The claimant sought to lay the blame at the door of previous managers and suggested that this had been ongoing before Mr Webster became involved. That may or may not be true, but the respondent only received specific recommendations from occupational health on this at a later stage of the claimant's employment. I am not convinced that the respondent would have reasonable warning of the need to do this (i.e. knowledge of the duty to make the reasonable adjustments) before the last of the occupational health reports [340].

251. Furthermore, the claimant did have access to a copy of her job description. The claimant contended that this was only a draft. I do not accept that contention for the reasons already stated. I am not satisfied that the claimant has established or proved an example of her being asked to do a task which was actually outside of her job role.

252. In light of the above the claimant has failed to establish the stated PCP or the absence of the auxiliary service regarding ensuring she was not expected to undertake core tasks outside her job description. The claimant

has not shown that the respondent had failed to make the adjustments contended for. In those circumstances this part of the claim fails and is dismissed.

RA22: For the time being the respondent to ensure that any workload that does not fit into her core role be diverted.

253. This complaint is, in substance, a repeat of RA21 using slightly different terminology. I therefore repeat and rely upon my reasons in relation to RA21 in dealing with RA22. The complaint at RA22 fails and must be dismissed for the same reasons as that at RA21.

RA23:The respondent to provide the claimant with clear instructions as to the tasks required of her.

254. The pleaded PCP is "to undertake tasks expected of them by senior management." In reality the claimant and others within the SLT were expected to do their jobs and the tasks given to them. It is not clear to me how such a PCP put the claimant at the necessary substantial disadvantage as compared to the relevant non-disabled comparator. Furthermore, the claimant has not established that the respondent failed to make the adjustment contended for. The claimant was provided with the clear instructions as to what was required of her. In particular, Mr Webster had regular meetings with the claimant on a one to one basis during which clarification and instructions could be given. I also refer to the observations made above in relation to RA 21.

255. In light of the above, there is no evidence to show that the respondent failed to make the adjustment contended for. As a result this complaint fails and is dismissed.

RA24: The respondent to provide the claimant with weekly supervision with her line manager.

256. The claimant accepted in her oral evidence that she had meetings with Mr Webster about specific tasks or ad hoc meetings but asserted that she did not have regular supervision. The impression given by the claimant was that she now accepted that she did get meetings but they were not 'the right type' of meetings. Such distinctions could be made in theory but in practice in this case the claimant did have weekly supervision with her line manager. Put another way, the claimant could not point to the difference that scheduling more or different types of meetings would have made. I find that, in practice, there was no shortage of meetings and no shortage of support or supervision from her line manager. The claimant could ask Mr Webster for what she wanted and she would get it. Otherwise, she could raise matters in the weekly meetings which happened as a matter of course during her time with the respondent business. In substance the claimant did have weekly supervision with her line manager and could call upon him at

any time for support and guidance if it was required.

257. In light of my findings of fact as set out herein (and in relation to RA5), I find that this complaint is not established on the facts. The legal components of the claim are not made out. The claimant received the auxiliary service contended for. This complaint is not well founded and is dismissed.

RA 25: Clarification of the jobs in the division (properties) and assignment of members of staff to recruit persons to the vacancies within the division so as to relieve the claimant of tasks.

258. This was closely related to RA 23 in terms of the pleaded PCP. The claimant may well have stablished that she was required to complete tasks given as part of her job but there is no evidence that her job as such put her at a substantial disadvantage as compared to the relevant non disabled comparator. Further, I did not receive sufficient evidence to be satisfied that there were jobs which needed to be filled such that someone else needed to be assigned to do the recruiting and take this issue off the claimant's plate. I am not satisfied that there is enough evidence to establish this part of the claim and it fails and is dismissed.

Unfair dismissal

259. The claim of unfair dismissal is intrinsically linked to the claim for failure to make reasonable adjustments. The list of issues asks whether, if the Tribunal finds that the respondent failed to make the reasonable adjustments contended for, such failure amounted to a repudiatory breach of the implied term of mutual trust and confidence.

260. As set out above, I have not upheld any of the claimant's claims that the respondent breached the duty to make reasonable adjustments. In those circumstances, there is no basis on which I can find that the respondent committed a repudiatory breach of contract so as to found a claim of constructive unfair dismissal. Give my other findings in this case, I cannot conclude that the respondent acted without reasonable and proper cause in such a way as was calculated or likely to destroy or seriously damage the relationship of mutual trust and confidence. Furthermore, I note that the claimant chose to resign when the respondent was still in the process of implementing some of the measures that it had discussed with the claimant at previous meetings. The claimant gave the respondent only a limited time to act and some of the measures (such as sourcing training) could not be implemented immediately. She did not wait to see what would happen.

261. Without a repudiatory breach of contract I am unable to find that the claimant was constructively dismissed and so the claim of unfair dismissal must likewise fail and be dismissed.

Approved by:

Employment Judge Eeley

29 August 2025

JUDGMENT SENT TO THE PARTIES ON: 1 September 2025

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FOR THE TRIBUNAL OFFICE

Notes

Reasons for the judgment having been given orally at the hearing, written reasons will not be provided unless a request was made by either party at the hearing or a written request is presented by either party within 14 days of the sending of this written record of the decision. If written reasons are provided they will be placed online.

All judgments (apart from judgments under Rule 51) and any written reasons for the judgments are published, in full, online at *https://www.gov.uk/employment-tribunal-decisions* shortly after a copy has been sent to the claimants and respondents.

If a Tribunal hearing has been recorded, you may request a transcript of the recording. Unless there are exceptional circumstances, you will have to pay for it. If a transcript is produced it will not include any oral judgment or reasons given at the hearing. The transcript will not be checked, approved or verified by a judge. There is more information in the joint Presidential Practice Direction on the Recording and Transcription of Hearings and accompanying Guidance, which can be found here:

www.judiciary.uk/guidance-and-resources/employment-rules-and-legislation-practice-directions/