EMPLOYMENT TRIBUNALS (SCOTLAND)

Case No: 4100227/2025

Held in Edinburgh via Cloud Video Platform (CVP) on 5 and 8 September 2025

Employment Judge A Strain

Ms L Budge	**Claimant** **Represented by:** **Mr T Emslie-Smith - Solicitor**
User Testing Limited	**Respondent** **Not present and Not represented**

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that:

1. The claimant's ME is a qualifying disability in terms of section 6 of the EA 2010;

2. The claimant's claims of direct disability and sex discrimination, failure to make reasonable adjustments and unfair constructive dismissal are successful; and

3. The claimant's claim of discrimination in terms of section 15 of the EA 2010 is unsuccessful and is dismissed.

REASONS

Background

1. The claimant was represented by Mr Tom Emslie-Smith, Barrister. The respondent was neither present nor represented. No ET3 had been lodged.

2. The Tribunal had sight of an email dated 5 September from solicitors in which it was stated they acted generally in employment law matters for the respondent but had not received any instructions in regard to this matter.

3. The Tribunal noted the contents of the email and considered that there was no appearance for the respondent. It was in accordance with the overriding

objective to proceed with the Hearing on an undefended basis in absence of the respondent.

4. The claimant asserted claims detailed in her application in respect of Constructive Unfair Dismissal, Direct Disability Discrimination, Indirect Disability Discrimination, Discrimination arising from Disability, Failure to make reasonable adjustments, Direct Sex Discrimination, outstanding notice pay and Breach of the ACAS Code.

5. A list of issues for determination by the Tribunal had been lodged in advance (Pages 35-40).

6. The Tribunal Hearing was in respect of liability only. The question of remedy had been reserved.

7. The claimant had lodged a bundle in advance of the Hearing (pages 1-386). This included a statement from the claimant (Pages 41-44) produced in compliance with an order from the Tribunal dated 11 April 2025.

8. The Tribunal heard evidence from the claimant.

9. At the conclusion of the Hearing submissions were made in respect of qualifying disability, direct sex and disability discrimination, discrimination under section 15, failure to make reasonable adjustments and constructive dismissal only. The Tribunal confined its consideration to the matters addressed in the submissions.

Findings in fact

10. Having heard the evidence and considered the documentary evidence before it the Tribunal made the following findings in fact:

Qualifying disability

11. The claimant has had and continues to have Myalgic Encephalomyelitis (**ME**) since her early teenage years (Pages 41, 242). She had this condition from commencement of her employment until its termination.

12. On a daily basis the claimant suffers from joint and muscle pain, a weakened immune system and extreme fatigue. With stress, she loses energy and feels exhausted. (Pages 41-42).

13. Stress causes pain, joint stiffness, sleeping more, mobility issues, limping, limited use of hands, extreme fatigue and flu like symptoms. (Pages 41-42).

14. The claimant's immune system is weakened and she is therefore more susceptible to cold/flu. (Pages 41-42).

15. The claimant is required to rest and take time off work in order to manage her symptoms. (Pages 41-42).

Knowledge of disability

16. The respondent knew about the claimant's ME since her third day of employment, when she informed her then line manager, Steven Glass.

17. The claimant told colleagues in management positions of her ME as set out in the list attached to her statement (Pages 43-44).

The claimant's role with the respondent

18. The claimant was employed by the respondent initially as a Security Analyst and then as Director, Security Operations with effect from 24 February 2020.

19. The claimant had a contract of employment with the respondent (Pages 48-73).

20. The claimant's normal place of work was at the respondent's premises in Edinburgh and her normal hours of work were 9am to 5.30 pm Monday to Friday.

21. The claimant's team was the only team which had women in it.

22. The claimant's Duties and Responsibilities included running the Security Operations Team and managing 5 full time staff, covering 24 hours a day incident response, third party risk management, data loss prevention, security education and awareness training, data subject requests, designing, implementing and running security programs covering all platforms and products the respondent sold.

23. The respondent is involved in the delivery of software platforms for customer feedback on customer experiences, including websites, mobile applications, prototypes and real world experiences.

24. The claimant achieved strong performance reviews with positive feedback in annual reviews about achievements and contributions. She was promoted on 3 occasions after commencing employment. She received multiple bonuses for high performance.

The claimant's Working Conditions from September 2023 until termination

25. On 6 September 2023 the claimant reported to Xavier Ferrer (**XF**) who (was the respondent's Chief Information Security Officer and the claimant's line manager) that work pressures were impacting on her heath and her disability.

26. An internal change occurred in early 2024 with recruitment into XF's team, Security Engineering.

27. The claimant's workload increased, with new projects and there was no new resource in Security Operations where she worked. All new resource went to XF's team, Security Engineering. The claimant reported this as a concern to XF on 19 February 2024 (Page 220), 22 February 2024 (Pages 109-110), 30 May 2024 (Pages 149-150), 9 September 2024 (Pages 279-281).

28. In the week commencing 1 July 2024 the claimant reported to the respondent through their online system called *"Lattice" "Far too much work. Struggling."* (Page 257) and on the week commencing 1 July 2024, she reported via Lattice that she was *"Out sick quite a lot - struggling under workload pressure everywhere."* (Page 259).

29. In July 2024 the claimant took annual leave which was approved by XF. Her leave application specified that she was taking leave as she needed to recharge and was burning out.

30. On 23 July 2024 whilst on leave XF sent the claimant messages requiring her to perform work (Pages 283 and 263-264). This exhausted the Claimant and required her to stay in bed for the rest of the day.

31. On 21 August 2024 XF left an extensive list of tasks for the claimant to deal with immediately upon her return to work after a period of sick leave (Page 282). This resulted in the claimant having to work on a bank holiday to catch up (Page 273).

32. The claimant repeatedly told the respondent that she was sick, exhausted, or that she needed to take time off due to the workload (Pages 216, 220, 222, 116, 228, 234, 237, 149, 251, 253, 255, 257, 251, 255 all are examples of this).

33. Throughout August and September 2024, the claimant was unnecessarily involved in work outwith her remit, was working with the sales team and contacted whilst not at work. Her working hours on average exceeded 8 hours per day.

34. The claimant's health deteriorated due to the heightened stress levels, lack of resource and increased workload.

35. In the week commencing 2 September 2024 the claimant was off sick due to stress. She was contacted by a colleague, Gonzalo Alvarez-Castellanos (**GAC**) to attend a meeting with the auditors at short notice. She had to cancel meetings to attend.

36. At the beginning of September 2024, the claimant was informed that she would be required to undertake a physical walkthrough for physical security auditors, which the claimant considered would impact her health due to physical exertion. The audit was scheduled in the last week of the sales quarter, which was the claimant's busiest time.

37. At this time she was also nominated to attend an Aspire Course on top of her heavy workload, having already been on the same course in April and pulled out because it did not reflect her level of expertise.

38. On 10 September 2024 the claimant had an in person meeting with XF at the Edinburgh office at which she said that the job was "running her into the ground," that it was impacting her illness, she couldn't go on and she needed help. XF responded firstly that he was "back from holiday and what could he do?" and told her that "it might not be as bad as you think it will." He made no adjustments to the claimant's workload and failed to offer any other support to the claimant.

39. On 10 September 2024 the claimant raised concerns about her workload with Kim Cupp (Chief of Staff to the CTO). She explained that she was sick and that her health was being impacted. Ms Cupp said that she would follow up the next day. The claimant received no contact on 11 or 12 September 2024. No support was offered or adjustments made to her workload.

40. The claimant felt she was being targeted by the actions of the respondent. She felt the respondent wished to compromise her in the performance of her role due to her disability and her being female.

PCPs

41. The respondent applied the following PCPs to the claimant:

    a. An expectation/requirement to undertake an (unreasonably) high workload;

    b. An expectation/requirement to carry out the claimant's role with reduced resources, and a lack of resources.

    c. An expectation/requirement to undertake work while on annual leave/sickness absence.

Reasonable adjustments

Claimant's workload

42. The Claimant considered that her workload was excessive and she was under resourced.

Adapted chair

43. The respondent did not conduct an ergonomic assessment of the claimant's workspace.

44. An adapted chair would have mitigated the impact of ME on the claimant when in the office.

45. The claimant's ME was exacerbated due to prolonged sitting.

Quiet space

46. The claimant informed the office staff in the Edinburgh office that she required a place to rest. ME symptoms were made worse if she did not have a good rest.

47. Office staff observed her going for a nap in the medical room.

48. The medical room which the claimant required to use was not an appropriate place to lie down for a rest. The medical room only had a hard leather chair. The claimant either rested in the chair or on the floor.

Parking space

49. In June/July 2024, the claimant asked for a parking space to be made available. She was told that she could not have one because others had priority. She was told, informally, that she would need to request a space in the morning.

50. Without a parking space near the office, the claimant was required to travel into work. The physical exertion required to travel into work caused her fatigue due to her ME.

51. A space was made available for another disabled colleague. Other non-disabled users were provided with spaces, one of them to assist with his commute.

*Conduct of Mr Gonzalo Alvarez-Castellanos (**GAC**)*

52. GAC regularly interrupted the claimant and spoke over her in meetings. The behaviour continued despite the claimant complaining to XF.

53. XF witnessed GAC's behaviour but did not speak up for the claimant, or challenge GAC's behaviour.

54. On 8 February 2024 in a 1 to 1 session with XF, the claimant said that it was a common trend with GAC that she would give an answer which was ignored, and when XF gave the same answer it was accepted.

55. GAC spoke Spanish in meetings to other male members of the Security Engineering team, despite knowing that the claimant could not speak Spanish. The claimant raised this in a meeting with XF in the week commencing 8 January 2024 (Page 209).

56. Following this GAC persisted despite knowing that it was not tolerated in the business. The claimant considered and felt that she was being deliberately excluded.

57. GAC communicated with the claimant in a demanding fashion, sending emails in all capital letters, and unprofessional in tone. On 23 July 2024 the claimant raised the use of all capitals in an email from GAC with XF (Page 283).

58. In April 2024 the claimant attended an onsite meeting at which GAC talked loudly and spoke over junior female colleagues. One of the female colleagues was made to cry. Male colleagues of the same level were talked to more courteously. The claimant challenged GAC on this behaviour. She raised this conduct in a 1 to 1 meeting with XF in the week commencing 22 April 2024 (Page 238).

59. GAC was responsible for instances in August and September 2024 where the claimant was required to do excessive work at short notice.

60. GAC sent messages to the claimant at all hours of the day and night and requested her resource without any warning or planning. She was expected to deliver on this with little notice and additional resource from XF.

61. In the week commencing 2 September 2024 GAC required the claimant to attend an audit with a few hours' notice, requiring her to cancel meetings to attend (Page 276).

62. GAC told the claimant to 'stop taking it personally' and said 'don't take it personally' when working together and she disagreed or had an alternative approach. The use of the phrase was raised in meetings by the claimant with XF in the weeks commencing 29 February 2024 (Page 114), the week commencing 22 April 2024 (Page 238) and the week commencing 27 May 2024 (Pages 247- 248).

63. The conduct of GAC made the claimant feel belittled and undermined as a female.

Resignation

64. At meetings with XF and Kim Cupp (Chief of Staff to the CTO) on 10 September 2024 the claimant made it clear that the work pressures were having a significant impact on her physical health, affecting her ability to cope, and making her position untenable. XF and Ms Cupp failed to provide

appropriate acknowledgement of the concerns, provide any support or make any adjustments. The claimant considered this the “last straw”.

65. The claimant resigned by letter of 12 September 2024 (Page 302). She resigned because of the respondent’s failure to provide support in response to her requests, and the impact that this was having on her health and ability.

66. XF’s response to the claimant’s resignation acknowledged that the respondent’s actions had a detrimental effect on the Claimant. He referred to the claimant having been “put in a difficult situation,” that “the company in such situation should not be an excuse letting employees burn as it happened to you” and that the claimant had been forced to get to the point where she resigned (Page 303).

67. The claimant was replaced within 24 hours of her resignation by a male IT manager who contacted her on LinkedIn to ask for insights and tips into the role.

68. The treatment the claimant received during her employment with the respondent seriously affected the claimant’s self-confidence and mental health. She has been left with low self-confidence, ongoing anxiety and fear of reprisal by the respondent. She continues to feel traumatised and upset.

The relevant law

Disability discrimination

69. The starting point for a Tribunal is whether or not a claimant has a qualifying disability under section 6 of the EA 2010. Section 6 provides:

Disability

> *(1) A person (P) has a disability if—*
>
> *(a) P has a physical or mental impairment, and*
>
> *(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.*

70. The onus of proof of impairment is upon the Claimant on the balance of probabilities.

Long-term effect

71. Schedule 1 paragraph 2.(1) of the EA 2010 provides:

> *The effect of an impairment is long-term if —*
>
> *(a) it has lasted for at least 12 months,*

(b) it is likely to last for at least 12 months, or

(c) it is likely to last for the rest of the life of the person affected.

Substantial adverse effect

72. Substantial means more than minor or trivial (***Goodwin v The Patent Office [1999] IRLR 4 EAT***). If an impairment has had a substantial adverse effect on a person's ability to carry out normal day-to-day activities but that effect ceases, the substantial effect is treated as continuing if it is likely to recur (Schedule 1, paragraph 2.(2) of EA 2010). Likely to recur is interpreted as "could well happen" (The Guidance on the Equality Act 2010 (published by the UK Government). It is not assessed on the balance of probabilities.

Normal day to day activities

73. The focus of the EA 2010 is things that the Claimant either cannot do or can only do with difficulty, rather than on the things the Claimant can do. The Guidance on the Equality Act 2010 (published by the UK Government) states at page 34 "in general, day-to-day activities are things people do on a regular or daily basis, and examples include shopping, reading and writing, having a conversation or using the telephone, watching television, getting washed and dressed, preparing and eating food, carrying out household tasks, walking and travelling by various forms of transport, and taking part in social activities. Normal day-to-day activities can include general work-related activities, and study and education related activities, such as interacting with colleagues, following instructions, using a computer, driving, carrying out interviews, preparing written documents, and keeping to a timetable or a shift pattern."

74. ***Aderemi v London and South Eastern Railway Ltd [2013] ICR 591 EAT,*** Langstaff P said, "It is clear first from the definition in section 6(1)(b) of the Equality Act 2010, that what a Tribunal has to consider is an adverse effect, and that it is an adverse effect not upon his carrying out normal day-to-day activities but upon his ability to do so. Because the effect is adverse, the focus of a Tribunal must necessarily be upon that which a claimant maintains he cannot do as a result of his physical or mental impairment. Once he has established that there is an effect, that it is adverse, that it is an effect upon his ability, that is to carry out normal day-to-day activities, a Tribunal has then to assess whether that is or is not substantial. Here, however, it has to bear in mind the definition of substantial which is contained in section 212(1) of the Act. It means more than minor or trivial."

75. A tribunal considering the question of disability should ensure that each step is considered separately and sequentially and that tribunals and courts should give a purposive construction to the legislation, which is designed to confer protection rather than restrict it (***Goodwin***).

Reasonable adjustments

76. Section 20 of the EA 2010 provides:

> *(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.*
>
> *------*
>
> *(1) A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.*
>
> *(2) For the purposes of subsection (1), a provision, criterion or practice is discriminatory in relation to a relevant protected characteristic of B's if—*
>
> > *(a) A applies, or would apply, it to persons with whom B does not share the characteristic,*
> >
> > *(b) it puts, or would put, persons with whom B shares the characteristic at a particular disadvantage when compared with persons with whom B does not share it,*
> >
> > *(c) it puts, or would put, B at that disadvantage, and*
> >
> > *(d) A cannot show it to be a proportionate means of achieving a legitimate aim.*

77. Section 21 of the EA 2010 provides:

> *(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) A provision of an applicable Schedule which imposes a duty to comply with the first, second or third requirement applies only for the purpose*

> *of establishing whether A has contravened this Act by virtue of subsection (2); a failure to comply is, accordingly, not actionable by virtue of another provision of this Act or otherwise.*

Direct discrimination

78. Direct discrimination occurs where *"because of a protected characteristic, A treats B less favourably than A treats or would treat others"* (section 13(1), EA 2010).

79. The less favourable treatment must be because of a protected characteristic. This requires the tribunal to consider the reason why the claimant was treated less favourably: what was the respondent's conscious or subconscious reason for the treatment?

80. The tribunal will need to consider the processes which led A to take a particular course of action in respect of B, and to consider whether a protected characteristic played a significant part in the treatment.

81. If the treatment of B puts them at a clear disadvantage compared with others, then it is more likely that the treatment will be less favourable.

82. There must be no material difference between the circumstances of B and the comparator (section 23(1), EA 2010).

83. A constructive dismissal can amount to an act of discrimination - **Nottinghamshire County Council v Meikle [2004] IRLR 703.**

Burden of proof

84. A two-stage approach to the burden of proof applies **[Royal Mail Group Ltd v Efobi [2021] UKSC 33]:**

    Stage 1: can the claimant show a prima facie case? If no, the claim fails. If yes, the burden shifts to the respondent.

    Stage 2: is the respondent's explanation sufficient to show that it did not discriminate?

85. The burden will shift where there are facts from which a tribunal could decide, in the absence of any other explanation that a breach has occurred. In that situation a respondent is required to show a non-discriminatory explanation for the primary facts on which the prima facie case is based [**Glasgow City Council v Zafar [1998] IRLR 36 (HL)**].

Constructive dismissal

86. 'Dismissal' is defined in s 95(1) ERA 1996 to include ‘constructive dismissal’, which occurs where an employee terminates the contract under which they are employed (with or without notice) in circumstances in which they are entitled to terminate it without notice by reason of the employer's conduct (s 95(1)(c)).

87. The test of whether an employee is entitled to terminate their contract of employment without notice is a contractual one: has the employer acted in a way amounting to a repudiatory breach of the contract or shown an intention not to be bound by an essential term of the contract: ***(Western Excavating (ECC) Ltd v Sharp [1978] ICR 221).***

88. Was there a repudiatory breach of the claimant’s contract? If so, was the breach a factor in the claimant’s resignation? If so, did the claimant affirm the breach? Was there a repudiatory breach of contract?

89. There must be a breach of contract by the employer. The breach must be “a significant breach going to the root of the contract” ***(Western Excavating).*** This may be a breach of an express or implied term. The essential terms of a contract would ordinarily include express terms regarding pay, duties and hours and the implied term that the employer will not, without reasonable and proper cause, act in such a way as is calculated or likely to destroy or seriously damage the mutual trust and confidence between the parties ***(Malik v Bank of Credit and Commerce International Ltd [1998] AC 20).***

90. Other terms may be implied into a contract of employment. For a term to be implied, the following conditions (which may overlap) must be satisfied: (1) it must be reasonable and equitable; (2) it must be necessary to give business efficacy to the contract, so that no term will be implied if the contract is effective without it; (3) it must be so obvious that ‘it goes without saying’; (4) it must be capable of clear expression; (5) it must not contradict any express term of the contract. ***(B.P. Refinery (Westernpoint) Pty Ltd v Shire of Hastings (1977) 180 C.L.R. 266).***

91. The breach may consist of a one-off act amounting to a repudiatory breach. Alternatively there may be a continuing course of conduct extending over a period and culminating in a “last straw” which considered together amount to a repudiatory breach. The “last straw” need not of itself amount to a breach of contract but it must contribute something to the repudiatory breach. Whilst the last straw must not be entirely innocuous or utterly trivial it does not require of itself to be unreasonable or blameworthy ***(London Borough of Waltham Forest v Omilaju [2005] IRLR 35).***

92. Whether there is a breach is determined objectively: would a reasonable person in the circumstances have considered that there had been a breach.

As regards the implied term of trust and confidence: "The test does not require a Tribunal to make a factual finding as to what the actual intention of the employer was; the employer's subjective intention is irrelevant. If the employer acts in such a way, considered objectively, that his conduct is likely to destroy or seriously damage the relationship of trust and confidence, then he is taken to have the objective intention spoken of…" ***(Leeds Dental Team Ltd v Rose [2014] IRLR 8, EAT).***

93. There is no rule of law that a constructive dismissal is necessarily unfair. If it finds there has been a constructive dismissal a Tribunal must also consider whether that dismissal was fair or unfair having regard to section 98(4) of the ERA 1996, which provides – "(4) Where the employer has fulfilled the requirements of sub-section (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)- (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and (b) shall be determined in accordance with equity and the substantial merits of the case".

94. The Tribunal must therefore consider whether the respondent had a potentially fair reason for the breach (***Berriman v Delabole Slate 1985 ICR 546***) and whether it was within the range of reasonable responses for an employer to breach the contract for that reason in the circumstances. When making this assessment, the Tribunal must not substitute its own view of what it would have done but consider whether a reasonable employer would have done so, recognising that in many cases there is more than one reasonable response.

Submissions

95. Mr Emslie-Smith lodged written submissions following conclusion of the hearing on 8 September 2025.

Observations on the evidence

The claimant

96. The Tribunal found the claimant's evidence to be credible and reliable. The Tribunal considered her evidence to be candid, honest, clear and concise.

97. The Tribunal had no hesitation in accepting her evidence.

Decision and reasons

Disability

98. The Tribunal considered whether or not the claimant had a disability as defined in section 6 of EA 2010.

99. In this regard the Tribunal adopted and followed the approach in ***Goodwin*** that each step has to be considered separately and sequentially, and, that tribunals and courts should give a purposive construction to the legislation, which is designed to confer protection rather than restrict it.

100. The tribunal considered that the claimant's evidence was an honest account of events. The tribunal found her evidence of the impact of her ME during the relevant period to be compelling.

Impairment and long term effect

101. The tribunal was satisfied on the evidence that the claimant's ME was an impairment and had a long term effect.

102. The claimant described the impact the condition had on her on a daily basis and that she had ME since her early teens.

Substantial adverse effect on normal day to day activities

103. The tribunal accepted the claimant's evidence before the tribunal and within her Statement (Pages 41-42) as to the effect upon her ability to perform normal day to day activities and tasks as defined in the Guidance.

104. The Tribunal accepted that the adverse effect was more than minor or trivial and was in fact substantial (following ***Goodwin v The Patent Office***). Whilst clearly the effect varied from day to day during the relevant period it did get worse and was detrimentally impacted by stress during the relevant period.

105. It was to the claimant's credit that she was able to perform the duties of her employment outwith episodes and periods where her condition was so severe that she had to take time of work. The "effect" was likely to and did recur.

106. In the circumstances the Tribunal conclude that the claimant had a qualifying disability as defined in section 6 of EA 2010 from the commencement of her employment until its termination.

Failure to make reasonable adjustments

107. The PCPs relied upon by the claimant were:

    a. An expectation/requirement to undertake an (unreasonably) high workload;

    b. An expectation/requirement to carry out the claimant's role with reduced resources, and a lack of resources.

c. An expectation/requirement to undertake work while on annual leave/sickness absence.

108. The Tribunal found on the facts established that the respondent did apply these PCPs to the claimant. This was evidenced by the numerous requests from XF, requests made during absence on leave or sickness and the clearly inadequate resources and unreasonable expectations placed upon her.

109. Examples of this were the under resourcing of her team, XF contacting the claimant whilst on holiday on 23 July 2024; on 28 August 2024 XF leaving the claimant an extensive lost of tasks to cover on return from sick leave; 21 August 2024 XF contacting the claimant whilst on sick leave; September 2024 requiring the claimant to attend the Aspire course; requiring the claimant to the physical walkthrough with the auditor in September 2024.

Substantial disadvantage

110. The Tribunal found that on the facts established the claimant was put at a substantial disadvantage in comparison with the claimant's chosen comparators, Director of Engineering (Anna Mora) and Director of Support (Monserrat Antigues), both of whom were at a similar level to her and had high workloads because of the exacerbating effect stress had on her ME symptoms and the need to take rests.

Did the respondent know or ought reasonably to have known that the claimant was likely to be placed at a substantial disadvantage as a result of the PCP?

111. The tribunal consider that the answer to this question is yes. The respondent was well aware of the impact of the PCPs on the claimant from the claimant herself. The claimant brought the impact of these PCP's to the attention of XF on numerous occasions. The respondent knew or ought reasonably to have known the impact of the PCPs on the Claimant due to her disability.

Did the respondent take such steps as were reasonable in order to avoid the disadvantage?

112. The tribunal consider there to have been an abject failure by the respondent to consider any reasonable adjustments in light of the PCPs and the claimant's disability.

113. The claimant repeatedly told XF and others within the organisation of the impact the PCPs were having on her. The respondent ignored and took no action to support the Claimant or make any adjustments.

114. The Tribunal considered each of the suggested reasonable adjustments.

Claimant's workload

115. The Tribunal consider that it would have been reasonable for the respondent to have offered the claimant support by managing her workload. This could have included reducing her workload through prioritising work, assigning appropriate work to her team, ensuring that she was not called upon to do unnecessary work, hiring staff to her team or making staff available to assist with her work, not requiring her work while on leave.

Adapted chair

116. The Tribunal consider it would have been reasonable for the respondent to have conducted an ergonomic assessment of the claimant's workspace and to have provided her with an adapted chair. The claimant was placed at a substantial disadvantage compared to persons without ME due to the exacerbation to her ME caused by prolonged sitting. Such an adjustment would have been inexpensive and of significant benefit to the claimant.

Quiet space

117. The claimant informed the office staff in the Edinburgh office that she required a place to rest. Office staff observed her going for a nap in the medical room.

118. The medical room only had a hard leather chair. The claimant either rested in the chair or on the floor.

119. Without a place to lie down for a rest, the claimant was at a substantial disadvantage compared to other colleagues who were not disabled because the ME symptoms were made worse if she did not have a good rest.

120. The respondent did not adapt the medical room to have an appropriate place to lie down for a rest. It would have been reasonable to do so. Such an adjustment would have been inexpensive and of significant benefit to the claimant.

Parking space

121. The claimant's request for a parking space to be made available. She was told that she could not have one because others had priority.

122. Without a parking space near the office, the claimant was at a substantial disadvantage compared to other colleagues who were not disabled because of the physical exertion required to travel into work caused her fatigue due to her ME.

123. A space was made available for another disabled colleague. Other non-disabled users were provided with spaces, one of them to assist with his commute.

124. In the circumstances the Tribunal consider it would have been reasonable to have provided the claimant with a parking space. Such an adjustment would have been inexpensive and of significant benefit to the claimant.

125. The claim in respect of a failure to make reasonable adjustments is successful.

Direct discrimination

126. Mr Emslie-Smith submitted that in the absence of any other explanation, the Tribunal could infer that the respondent was deliberately requiring the claimant to perform at such levels and subjecting her to such excessive and unreasonable demands in order to set her up to fail because of her disability. He submitted that such an inference could be drawn from the following:

    a. The respondent's knowledge of the disability and the effect of excessive work;

    b. The pattern of short notice before tasks;

    c. The proximity of this behaviour to the claimant's requests for rest and time off; and

    d. Her immediate replacement upon resignation.

127. The Tribunal agreed that such an inference could be drawn from the evidence under section 136 of the EA 2010.

128. The respondent clearly had knowledge of her disability and the effect of excessive work upon it.

129. The respondent's imposition of a heavy workload on the claimant, making requests at short notice which required her to drop everything and cancel meetings to attend too, contacting her with work requests during periods of absence, ignoring her pleas of being under resourced and overworked, requiring her to go on unnecessary courses (such as the Aspire) and her immediate replacement within 24 hours all provide a basis for the inference.

130. The Tribunal found that by the respondent's actions they treated the claimant less favourably than a hypothetical comparator who did not suffer from ME and that the reason for that treatment was her ME.

Unfavourable treatment (section 15)

131. The Tribunal considered whether the claimant had suffered unfavourable treatment because of something arising in consequence of her disability.

132. Mr Emslie-Smith submitted that the claimant was treated unfavourably because her health was affected by a heavy workload, she required rest and she required sick leave if her health was affected by work pressure. These reasons for treatment arose from her M.E. They cannot be shown to be a proportionate means of achieving a legitimate aim.

133. The tribunal were not persuaded by that argument. The treatment did not arise in consequence of her disability it arose because of her disability.

134. The claim in respect of section 15 is unsuccessful.

Sex discrimination

135. Mr Emslie-Smith submitted that the actions of GAC, in the main, were acts which constituted less favourable treatment of the Claimant due to her sex. By his actions the respondent had discriminated against the claimant on the basis of her sex.

136. The Tribunal considered that the following acts of GAC, applying s.136 EA 2010, in the absence of alternative explanation, were made because he had a dismissive and/or unequal attitude to women. GAC treated the Claimant less favourably than a hypothetical comparator who was a male in the same role as her because of her sex:

    a. GAC regularly interrupted the claimant and spoke over her in meetings.

    b. GAC speaking Spanish in meetings to other male members of the Security Engineering team, despite knowing that the claimant could not speak Spanish.

    c. GAC persisting with the use of Spanish after the claimant having complained to XF.

    d. GAC communicating with the claimant in a demanding fashion, sending an email in all capital letters, and unprofessional in tone.

    e. In April 2024 the claimant attended an onsite meeting at which GAC talked loudly and spoke over junior female colleagues. One of the female colleagues was made to cry.

    f. GAC requiring the claimant to do excessive work at short notice in August and September 2024 and excluding her from key decisions and from conversations for planning timescales for audits.

    g. GAC sending messages to the claimant at all hours of the day and night and requesting her resource without any warning or planning.

She was expected to deliver on this with little notice and additional resource from XF.

h. In the week commencing 2 September 2024 GAC requiring the claimant to attend an audit with a few hours' notice, requiring her to cancel meetings to attend.

i. GAC told the claimant to 'stop taking it personally' and said 'don't take it personally' when working together and she disagreed or had an alternative approach.

137. It was also of significance that the claimant was replaced by a male within 24 hours of her resignation.

138. In all the circumstances the Tribunal found that the claimant was treated less favourably by GAC because of her sex and that a male comparator would not have been treated in the same way.

Constructive dismissal

139. Mr Emslie-Smith submitted that the claimant had resigned in response to the respondent's repudiatory breach of the implied term that the employer will not, without reasonable and proper cause, act in such a way as is calculated or likely to destroy or seriously damage the mutual trust and confidence between the parties (***Malik v Bank of Credit and Commerce International Ltd [1998] AC 20***).

140. He also submitted that the respondent had breached implied terms to provide reasonable support to the claimant and a safe system of work/workplace.

141. Mr Emslie-Smith submitted that persistent failure by the employer to make a reasonable adjustment as required by the disability discrimination legislation can amount to a breach of the term of mutual trust and confidence and relied upon ***Nottinghamshire County Council v Meikle [2004] IRLR 703***. He referred to ***Greenhoff v Barnsley MBC [2006] IRLR 98*** in which a serious breach of the obligation on the part of the respondent over a period of time to make reasonable adjustments was said to be "almost bound" to be a breach of trust and confidence.

142. The Tribunal agreed with Mr Emslie-Smith that the respondent's failures to make the reasonable adjustments found above were, taken together and viewed objectively, of such significance and magnitude and over such a prolonged period of time as to amount to a breach of the implied term of mutual trust and confidence.

143. The conduct of the respondent through the respective actions/conduct of XF and GAC were in and of themselves sufficient to constitute breaches of the implied term of trust and confidence.

144. XF continued to impose unreasonable and excessive workloads on the claimant, make demands of her during periods of absence in the face of the claimant telling him the detrimental impact this was having on her and that she was under resourced and overworked.

145. GAC continued to behave in a manner towards the claimant which was clearly intended to exclude her and demean her because of her sex.

146. The Tribunal found that there had clearly been a continuing course of conduct extending from September 2023 until the claimant's resignation and that conduct amounted to a breach of the implied term.

Last straw

147. The claimant asserted that the last straw was when, on 10 September 2024, the claimant had an in person meeting with XF at the Edinburgh office at which she said that the job was "running her into the ground," that it was impacting her illness, she couldn't go on and she needed help. XF responded firstly that he was "back from holiday and what could he do?" and told her that "it might not be as bad as you think it will." He made no adjustments to the claimant's workload and failed to offer any other support to the claimant.

148. On 10 September 2024 the claimant raised concerns about her workload with Kim Cupp (Chief of Staff to the CTO). She explained that she was sick and that her health was being impacted. Ms Cupp said that she would follow up the next day. The claimant received no contact on 11 or 12 September 2024. No support was offered or adjustments made to her workload.

149. The claimant felt that her position had become untenable in light of the poor treatment and lack of support over a significant period of time and the impact this was having on her health. There was no indication from XF or Ms Kupp on 10 September 2024 that matters were going to change.

150. Viewing the facts objectively the Tribunal found that the actions of the respondent relied upon by the claimant were sufficient to amount to a repudiatory breach of the implied term. The claimant resigned in response to that breach. As such she was constructively dismissed by the Respondent.

151. The Tribunal makes no findings with regard to the other implied terms asserted by Mr Emslie-Smith.

152. The Tribunal then considered whether that dismissal was fair or unfair having regard to section 98(4) of the ERA 1996, which provides – "(4) Where the

employer has fulfilled the requirements of sub-section (1), the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer)- (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and (b) shall be determined in accordance with equity and the substantial merits of the case."

153. The Tribunal must therefore consider whether the respondent had a potentially fair reason for the breach (***Berriman v Delabole Slate 1985 ICR 546***) and whether it was within the range of reasonable responses for an employer to breach the contract for that reason in the circumstances. No evidence was led by the respondent.

154. The Tribunal consider and find that there was no potentially fair reason for the dismissal. The claimant's dismissal was accordingly unfair.

Date sent to parties 22 October 2025